

POLETOWN NEIGHBORHOOD COUNCIL v. CITY  
OF DETROIT: ECONOMIC INSTABILITY,  
RELATIVISM, AND THE EMINENT  
DOMAIN PUBLIC USE LIMITATION

Destabilization of the international economy, interregional shifts in the factors of production, technological change, and the rise of foot-loose industries have severely shaken the old American industrial heartland.<sup>1</sup> Faced with the prospects of high unemployment and declining revenues, states in the Middle West and North East have attempted to deal with their economic decline by enacting redevelopment legislation.<sup>2</sup> In *Poletown Neighborhood Council v. City of De-*

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1. See generally B. BLUESTONE & B. HARRISON, CAPITAL AND COMMUNITIES: THE CAUSES AND CONSEQUENCES OF PRIVATE DISINVESTMENT (1980) (a critical account of the plant closing phenomenon); H. PERLOFF, E. DUNN, JR., E. LAMPARD & R. MUTH, REGIONS, RESOURCES AND ECONOMIC GROWTH (1960) (Resources for the Future Study) (standard work on regional economic growth in the United States); K. SALES, POWER SHIFT (1976) (study of the rise of the sunbelt states in the American political economy); Easterlin, *Regional Income Trends, 1840-1950*, in AMERICAN ECONOMIC HISTORY 525 (S. Harris ed. 1961), reprinted in THE REINTERPRETATION OF AMERICAN ECONOMIC HISTORY 38 (R. Fogel & S. Engerman eds. 1971) (classic article describing the trends in regional economic inequality in the United States); Williamson, *Regional Inequality and the Process of National Development: A Description of Patterns*, 13 ECON. DEV. & CULTURAL CHANGES 3 (1965), reprinted in, REGIONAL ANALYSIS 99 (L. Needleman ed. 1968) (theoretical model of regional economic inequality).

2. Over the years, state legislatures and the federal government have adopted a variety of measures designed to spur economic development. These measures include slum clearance statutes, see, e.g., N.Y. GEN. MUN. §§ 500-525 (McKinney 1974 & Supp. 1980), economic development corporation acts, see, e.g., OHIO REV. CODE ANN. §§ 1726.01-.15 (Page 1978), and tax increment financing plans, see, e.g., ILL. ANN. STAT. Ch. 24 §§ 11-74, 4-1 to 4-11 (Smith-Hurd 1980). The vast majority of this legislation has been adopted since the New Deal, when public and private sector planners realized that classical economic assumptions about the marketplace were no longer valid.

Obviously, a study of these statutes and their impact is beyond the scope of this case comment. It is only important to note their diversity of features and their primary purpose—to sustain aggregate demand. See *infra* note 65 and subsequent text.

*troit*,<sup>3</sup> a sharply divided Michigan Supreme Court<sup>4</sup> upheld the use of a redevelopment act<sup>5</sup> and dramatically expanded the state's power of eminent domain.

The *Poletown* story began in 1980 when the General Motors Corporation announced that it would close two Detroit plants because of obsolescence.<sup>6</sup> Amid rumors that a new plant would be located in a sunbelt state, General Motors approached the city and offered to build in Detroit if an adequate site could be acquired and certain conditions met.<sup>7</sup> The city and the Detroit Economic Development Corporation researched nine sites. Only one location, an old ethnic enclave called "Poletown," was found adequate. Public reaction to the project was favorable. Despite widespread approval, the Poletown Neighborhood Council and several residents of the affected area challenged the taking. They claimed that the use of the power of eminent domain under these circumstances did not result in a taking

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3. 410 Mich. 616, 304 N.W.2d 455 (1981) (*per curiam*).

For other secondary authorities discussing *Poletown*, see Bixby, *Condemnation of Private Property in Order to Construct General Motors Plant is for "Public Use"*: *Poletown Neighborhood Council v. City of Detroit*, 13 URB. LAW. 694 (1981); Shulman, *Comment: What's Good for General Motors . . .*, LAND USE L. & ZONING DIG., Aug. 1981, at 22.

4. The *Poletown* court divided 5 to 2. Justices Fitzgerald and Ryan filed dissents. 410 Mich. at 636, 645, 304 N.W.2d at 460, 464. For an analysis of Justice Ryan's dissent, see *infra* notes 53-62 and accompanying text.

5. 410 Mich. at 634-35, 304 N.W.2d at 459-60. For the relevant portion of MICH. STAT. ANN. 5.3520(2) (Callaghan Supp. 1981), see *infra* note 45.

6. 410 Mich. at 636-37, 647-49, 304 N.W.2d at 460-61, 465-66. Justice Ryan's dissent provides the most useful analysis of the *Poletown* facts and how they tie in with contemporary political, social, and economic problems. See *id.* at 646-60, 304 N.W.2d at 465-71.

7. *Id.* at 649-58, 304 N.W.2d at 466-70. General Motors required a 450 to 500 acre parcel of land. The Poletown site, which the Detroit Economic Development Corporation labeled the Central Industrial Park, consisted of 465 acres. The site encompassed land in the cities of Detroit and Hamtrac. Only the Detroit land was at issue in *Poletown*. *Id.* at 637 n.2, 304 N.W.2d at 460 n.2.

Among the mutually agreed upon conditions, which Justice Ryan asserted were dictated by General Motors, was the requirement that title to the entire site vest in the City of Detroit by May 1, 1981. *Id.* at 655, 304 N.W.2d at 469. Other conditions dealt with transportation infrastructure, utilities, taxes, and toxic waste disposal. *Id.* at 655-57, 304 N.W.2d at 469-70. Justice Ryan explained these provisions by referring to the troubles besetting the American automotive industry and the City of Detroit. *Id.* at 646-48, 650-52, 304 N.W.2d at 465, 467. A more analytical treatment would explain the contractual provisions in terms of economic instability, locational economics, and corporate externalization of costs.

for a public use.<sup>8</sup> The trial court denied the plaintiffs' request for injunctive and declaratory relief.<sup>9</sup> On appeal, the Michigan Supreme Court affirmed.<sup>10</sup> The court held that the project served a valid public purpose<sup>11</sup> and that the taking was for a public use.<sup>12</sup>

The power of eminent domain is the power which inheres in a sovereign to take private property for a public use upon the payment of just compensation.<sup>13</sup> Among the limitations on the power are the re-

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8. *Id.* at 658-59, 304 N.W.2d at 470-71.

The taking was effected under Michigan's Uniform Condemnation Procedures Act, MICH. STAT. ANN. §§ 8.26(1)-8.265(27) (Callaghan Supp. 1981), a "quick take" statute. The Act "does not confer the power of eminent domain" or "prescribe or restrict the purposes for which or the persons by who the power may be exercised." *Id.* at § 8.265(2). It only establishes procedural safeguards.

Under the Economic Development Corporations Act, MICH. STAT. ANN. §§ 5.3520(1)-(27) (Callaghan Supp. 1981), enacted in 1974, a municipality can condemn property under MICH. STAT. ANN. §§ 8.11-.31 (Callaghan 1977) in order to transfer it to a municipal economic development corporation under MICH. STAT. ANN. § 5.3520(22) (Callaghan Supp. 1981).

9. 410 Mich. at 628, 304 N.W.2d at 457.

10. *Id.* at 634-35, 304 N.W.2d at 457. Trial was held in the circuit court between November 17 and December 2, 1980. On December 9, the trial court entered judgment for the defendants and dismissed the plaintiffs' complaint. Thereafter, the plaintiffs applied to leave to appeal prior to the court of appeal's decision. Bypass was granted and argument was heard on March 3, 1981. The trial court's judgment was affirmed on March 13. *Id.* at 628-29, 637, 659-60, 304 N.W.2d at 457, 461, 471. The expedited supreme court proceedings were necessary because of the May 1, 1981 vesting requirement. For the vesting requirement, see *supra* note 7.

11. *Id.* at 634-35, 304 N.W.2d at 459.

12. *Id.* The plaintiffs also argued that the project violated the Thomas J. Anderson, Gordon Rockwell Environmental Protection Act of 1970, MICH. STAT. ANN. §§ 14.528(101)-(208) (Callaghan 1980 & Supp. 1981), because the project "will have a major adverse impact on the adjoining social and cultural environment which is referred to as Poletown." 410 Mich. at 635, 304 N.W.2d at 460 (quoting plaintiffs' complaint). After invoking the maxim of *ejusdem generis*, the supreme court held that social and cultural environments fall outside the purview of the Act. *Id.* at 635-36, 304 N.W.2d at 460. *Ejusdem generis* is a maxim of statutory construction, which provides that when general words appear in conjunction with an enumeration of particulars, the former are to be limited to the class of things indicated by the latter. Kernochan, *Statutory Interpretation: An Outline Method*, 3 DALHOUSIE L.J. 333, 361 (1976).

13. *Nagle v. City of Grand Island*, 144 Neb. 67, 69, 12 N.W.2d 540, 541 (1943) (taking power belongs to the state and may be exercised either directly by the legislature or through the medium of corporate bodies or of individual enterprises to whom the legislature delegates such power); *Cannata v. City of New York*, 24 Misc. 2d 694, 700, 204 N.Y.S.2d 982, 989-90 (1960), *modified*, 14 A.D.2d 813, 221 N.Y.S.2d 457 (1961), *aff'd*, 11 N.Y.2d 210, 227 N.Y.S.2d 903, 182 N.E.2d 395 (power of eminent domain inheres in the state and can only be used to take private property for a public

quirements of due process,<sup>14</sup> just compensation,<sup>15</sup> necessity,<sup>16</sup> and

use) *appeal dismissed*, 371 U.S. 4 (1962). See also I. LEWIS, A TREATISE ON THE LAW OF EMINENT DOMAIN IN THE UNITED STATES § 3 (3d rev. ed. 1909).

Under the fifth amendment of the United States Constitution, the federal government cannot take private property for a public use without just compensation. U.S. CONST. amend V. A number of states have incorporated the just compensation limitation into their constitutions. See, e.g., ALA. CONST. art. I, § 23; DEL. CONST. art. I, § 8; MICH. CONST. art. X, § 2; PA. CONST. art. I, § 10. Other states have expanded the public's constitutional rights by requiring just compensation for the taking or damaging of private property for a public use. See, e.g., ARIZ. CONST. art. 2 § 17; CAL. CONST. art. I, § 14; ILL. CONST. art. I, § 15; MINN. CONST. art. I, § 13. See generally Comment, "Takings" Under the Police Power—The Development of Inverse Condemnation as a Method of Challenging Zoning Ordinances, 30 SW. L.J. 723, 723-24 (1976).

The taking power must be distinguished from two other constitutional powers—the taxing power and the police power. On the distinction between the taxing and taking powers, see I. LEVEY, CONDEMNATION IN U.S.A. § 5.02 (1969); I. LEWIS, *supra*, § 4; 11 E. MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 32.04 (3d rev. ed. 1977); 1 P. NICHOLS, THE LAW OF EMINENT DOMAIN § 1.42 (3d rev. ed. 1980).

The distinction between the police power and the power of eminent domain is more amorphous. As a result, two theoretical models have been developed. One model posits a continuum; that is, the police and taking powers blend into one another. Under this theory, it is possible to have a regulatory taking. See *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 636 (Rehnquist, J., concurring); *id.* at 639-60 (Brennan, J., dissenting) (1981) (five justices adhere to the continuum approach); Van Alstyne, *Modernizing Inverse Condemnation: A Legislative Prospectus*, 8 SANTA CLARA LAW. 1, 28 (1967) (statement of continuum model); Note, *Inverse Condemnation: Its Availability in Challenging the Validity of a Zoning Ordinance*, 26 STAN. L. REV. 1439, 1445-46 (1974) (criticism of continuum theory).

The other conceptual model is based on the idea that there is a distinction between the powers; that is, each power has an outer limit. Under this view, a regulatory taking will not be permitted. *Id.* See, e.g., *Agins v. City of Tiburon*, 24 Cal. 3d 266, 598 P.2d 25, 157 Cal. Rptr. 372 (1979), *aff'd on other grounds*, 447 U.S. 255 (1980) (expressly rejecting continuum model). See also I. LEVEY, *supra* § 5.01; I. LEWIS, *supra* § 6; 11 E. MCQUILLIN, *supra* § 32.04; 1 P. NICHOLS, *supra* § 1.42, which adhere to the second conceptual approach.

14. See, e.g., *Chicago, B. & Q. R.R. v. Chicago*, 166 U.S. 226 (1897). In *Chicago*, the Court stated:

a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the State or under its direction for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment . . . and the affirmance of such judgment by the highest court of the State is a denial by that State of a right secured. . . . [by the United States Constitution].

*Id.* at 241.

15. See, e.g. *id.*; *Secombe v. Milwaukee & St. P. Ry.*, 90 U.S. (23 Wall.) 108 (1874), *cited in Cannata v. City of New York*, 24 Misc. 2d at 700, 204 N.Y.S.2d at 989-90 (compensation must be made for the taking).

16. See, e.g., *Town of West Hartford v. Talcott*, 138 Conn. 82, 91, 82 A.2d 351, 355 (1951) (the test for the necessity of a taking is reasonable necessity, not absolute

public, as opposed to private, use.<sup>17</sup> This public use requirement has generated substantial controversy.

No precise definition of the phrase "public use" exists. Definition is difficult because of the changing characteristics of society.<sup>18</sup> As a result, the courts have developed two different and irreconcilable schools of thought.<sup>19</sup> The older view, more respected in the nineteenth century, put a restrictive meaning on the public use limitation.<sup>20</sup> According to this view's ill-defined test, a "public use" is a "use by the public."<sup>21</sup> The newer and more widely accepted interpre-

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or indispensable necessity); *Trombley v. Humphrey*, 23 Mich. 471, 474-75 (1871) (the doctrine of necessity is the foundation of the taking power and such doctrine must justify and limit any appropriation of property for a public use).

17. 2A P. NICHOLS, *supra* note 13, § 7.1.

18. In *New York City Hous. Auth. v. Muller*, 270 N.Y. 333, 340, 1 N.E.2d 153, 155 (1936) (slum clearance) the court stated:

[O]ver the years and in a multitude of cases the courts have vainly attempted to define comprehensively the concept of a public use and to formulate a universal test. They have found here as elsewhere that to formulate anything ultimate, even though it were possible, would in an inevitably changing world, be unwise if not futile. . . . 'The law of each age is ultimately what that age thinks should be the law' [citation omitted].

*Id.* In a similar vein, the court in *Dornan v. Philadelphia Hous. Auth.*, 331 Pa. 209, 221, 200 A. 834, 840 (1938) (slum clearance) noted that "definition has been left, as indeed it must be, to the varying circumstances and situations which arise, with special reference to the social and economic background of the period in which the particular problem presents itself for consideration." *Id.*

19. In *State v. Land Clearance for Redevelopment Auth.*, 364 Mo. 974, 986, 270 S.W.2d 44, 50 (1954) (constitutional challenge to redevelopment law), the court noted that courts have put forward two theories in an attempt to describe the subjects to which the expression "public use" applies. According to the court, one theory of "public use" limits the application to "employment"- "occupation." *Id.* The more liberal and flexible meaning makes the phrase synonymous with "public advantage." *Id.* The distinctions between the two schools of thought are more fully discussed in I. LEWIS, *supra* note 13, § 257; 11 E. MCQUILLIN, *supra* note 13, § 32.39a; C. RHYNE, *MUNICIPAL LAW* § 17-2 (1957). See *infra* notes 20-22 and accompanying text.

20. Nichols, *The Meaning of Public Use in the Law of Eminent Domain*, 20 B.U.L. REV. 615, 617-18 (1940) (discussion of the narrow meaning of "public use" in the 19th century). See also, Comment, *The Public Use Limitation on Eminent Domain: An Advance Requiem*, 58 YALE L.J. 599, 603-04 (1949) [hereinafter cited as Comment, *Public Use Limitation*] (historical origins of the restrictive "use by the public" test); Comment, *The Public Use Doctrine: "Advance Requiem" Revisited*, 1969 LAW SOC. ORD. 688, 688-91, 696-702 (maintains that the "use by public" test retains some vitality in condemnation actions dealing with public highways and community economic development projects).

21. Two influential decisions that grappled with the problems of the older approach and rejected it in favor of a broader definition of "public use" are *New York City Hous. Auth. v. Muller*, 270 N.Y. 333, 339-43, 1 N.E.2d 153, 154-56 (1936) and

tation is broader in scope. Inclusive of older applications, the newer definition encompasses the concepts of "public advantage," "utility," and "benefit."<sup>22</sup>

While the courts continue to disagree over the meaning of "public use," they agree on the proper demarcation of legislative and judicial functions. Courts uniformly hold that the determination of the necessity of a taking falls within the legislative domain.<sup>23</sup> Courts adhere

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Dornan v. Philadelphia Hous. Auth., 331 Pa. 209, 216-21, 200 A. 834, 838-40 (1938). For a discussion of *Muller* and *Dornan*, see *supra* note 18.

A modern decision that implicitly applies the "use by the public" test is opinion of the Justices, 152 Me. 440, 131 A.2d 904 (1957) (condemnation for an industrial park is not a public use). For a discussion of the opinion, see *infra* notes 40-43 & 445. Other authorities adopting the "use by the public" approach include *United States v. Certain Lands in City of Louisville*, 9 F. Supp. 137, 138-40 (W.D. Ky.), *aff'd*, 78 F.2d 684 (6th Cir.), *cert. granted*, 296 U.S. 567 (1935), *dismissed*, 297 U.S. 726 (1936) ("public use" means a use by the government for legitimate governmental purposes or a use open to all the public, even though available to only a part of the public); *Fountain Park Co. v. Hensler*, 199 Ind. 95, 107-17, 155 N.E. 465, 469-72 (1927) (a "public use" is a use of property that affects the public generally, or any number thereof, as distinguished from particular individuals).

For a general discussion of the "use by the public" doctrine and its demise, see I. LEWIS, *supra* note 13, § 258; 11 E. McQUILLIN, *supra* note 13, § 32.39a; Nichols, *supra* note 20, at 618-24; Comment, *Public Use Limitation*, *supra* note 20, at 603-08.

22. See, e.g., *In re* Petition of Detroit for Condemnation of Lands for Airport, 308 Mich. 480, 484, 14 N.W.2d 140, 142 (1944) (taking of private property for a public use not restricted to public health and safety purposes, but includes takings for the public welfare or necessity); *Board of Water Comm'rs v. Manchester*, 87 Conn. 193, 204-05, 87 A. 870, 873 (1913), *aff'd*, 241 U.S. 649 (1915) (*per curiam*) (public use means public usefulness, utility, or advantage). See also 11 E. McQUILLIN, *supra* note 13, § 32.39a (discussion of public benefit concept).

One commentator, adhering to 19th century conceptions of public use, vigorously disagrees with the now predominant viewpoint:

[I]f the constitution means that private property may be taken for any purpose of public benefit and utility, what limit is there to the power of the legislature? This view places the whole matter ultimately in the hands of the judiciary, as though the constitution read that private property may have to be taken for such purposes as the Supreme Court deems of public benefit or advantage. . . . Whether the public will have the use of property taken under a particular statute is a question which may be readily determined from an inspection of the statute, but whether a particular improvement will be of public utility is a question of opinion merely, about which men may differ, and which cannot be referred to any definite criterion.

I. LEWIS, *supra* note 13, § 258, at 503. Lewis relied heavily on *Bloodgood v. Mohawk & H. Ry.*, 18 Wend. 9, 60-1 (N.Y. 1837) (Sen. Tracy, concurring). Tracy's concurring opinion is considered the source of the "use by the public" test. See Nichols, *supra* note 20, at 617; Comment, *Public Use Limitation*, *supra* note 20, at 603.

23. *Schenck v. City of Pittsburgh*, 364 Pa. 31, 36, 70 A.2d 612, 614 (1950) (no judicial interference in the absence of fraud or palpable bad faith); *In re* Real Prop-

to this position because a taking is considered a political act.<sup>24</sup> In contrast, courts will not necessarily accept legislative declarations of public use. Courts show less deference on the public use issue because of the separation of powers' doctrine.<sup>25</sup> It is a judicial function to rule as a matter of law whether the declared use is actually a public use.<sup>26</sup> In deciding this issue, however, the courts usually defer to the

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erty in County and City of New York, 48 Misc. 2d 365, 264 N.Y.S.2d 802, 807 (1965), *aff'd*, 25 A.D.2d 260, 268 N.Y.S.2d 957, *aff'd*, 18 N.Y.2d 250, 273 N.Y.S.2d 337, 219 N.E.2d 797 (1966), (no inquiry into legislative motive) *cert. denied*, 385 U.S. 1006 (1967). The same standard applies to takings that have been initiated by administrative agencies. *See, e.g.*, Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 146, 104 A.2d 365, 371 (1954) (slum clearance). *See generally* McIntire, "Necessity" in Condemnation Cases—*Who Speaks for the People?*, 22 HASTINGS L.J. 561 (1971).

In King County v. Theilman, 59 Wash. 2d 586, 594, 369 P.2d 503, 507 (1962) (condemnation for road held sufficiently arbitrary and capricious so as to amount to constructive fraud), the court indicated that "'Public use' and 'necessity' cannot be separated with scalpellic precision, for the first is sufficiently broad to include an element of the latter." *Accord* 11 E. McQUILLIN, *supra* note 13, § 13.24. *Contra* 1 P. NICHOLS, *supra* note 13, § 4.11; I. LEWIS, *supra* note 13 § 255(162). Nichols and Lewis maintain that "public use" and "public necessity" are separate and distinct concepts. The *Theilman* approach, however, is more intellectually satisfying.

24. C. BEACH, JR., COMMENTARIES ON THE LAW OF PUBLIC CORPORATIONS § 666 (1893); C. ELLIOT, THE PRINCIPLES OF THE LAW OF MUNICIPAL CORPORATIONS § 117 (3d ed. 1925).

25. C. ELLIOT, *supra* note 24, § 117. Elliot appropriately states:

[T]he question of the public character of the use is aimed at the very power of the legislature, under the constitution, to authorize the condemnation at all; and this question of its own constitutional power cannot be conclusively decided by the legislature itself.

*Id.*

26. Housing and Redevelopment Auth. v. Minneapolis Metropolitan Co., 259 Minn. 1, 14, 104 N.W.2d 864, 874 (1960) (courts will protect a property owner when it appears that property is in fact taken for an improper use or the conditions for the exercise of the taking power are not met). *Accord* Cleveland v. City of Detroit, 322 Mich. 172, 179, 33 N.W.2d 747, 750 (1948) (question of whether a proposed use is public is a judicial one); Murry v. LaGuardia, 291 N.Y. 320, 329, 52 N.E.2d 884, 887-88 (1944) (a declaration of legislative policy is not conclusive upon the question of public purpose). *See also* C. BEACH, *supra* note 24, § 666.

One aspect of a court's determination of a public use is whether the public use is dominant or incidental to the private use. If the public use is dominant, the taking will be upheld. A court will not uphold a condemnation if the private use is dominant. Resolution of this issue depends upon the particular facts of each case. *See* Boise Redevelopment Auth. v. Yick Kong Corp., 94 Idaho 876, 880, 499 P.2d 575, 579 (1972) (mere incidental benefit to a private interest will not invalidate an urban renewal plan); Wilson v. Long Branch, 27 N.J. 360, 376, 142 A.2d 837, 846 (1958) (possibility that some profit to private party may result is immaterial); Hogue v. Port of Seattle, 54 Wash. 2d 799, 836, 341 P.2d 171, 193 (1959) (public use must be a "really

legislature.<sup>27</sup>

With the exception of a handful of cases,<sup>28</sup> all of the pre-*Poletown* decisions dealing with the post-condemnation transfer of real property to industrial and commercial interests were reached within the context of "slum clearance" legislation.<sup>29</sup> The courts are divided, however, over whether the post-condemnation transfer is indicative of a public or private use. *Hogue v. Port of Seattle*<sup>30</sup> is representative of the minority of decisions which reject a post-condemnation transfer under slum clearance statutes.<sup>31</sup> In *Hogue*, the port district attempted to condemn fully developed agricultural and residential

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public" use). See also *Berman v. Parker*, 348 U.S. 26, 33, 34 (1954) (an incidental private use can be a means to an end; namely, the public use).

27. See, e.g., *State v. Land Clearance for Redevelopment Auth.*, 364 Mo. 974, 987-89, 270 S.W.2d 44, 51-52 (1954) (legislative declaration of purpose entitled to great weight); *Yonkers Community Dev. Agency v. Morris*, 45 A.D.2d 889, 890, 357 N.Y.S.2d 887, 888 (1974), *aff'd*, 37 N.Y.2d 478, 373 N.Y.S.2d 112, 335 N.E.2d 327 (resolution of public use question depends to a large extent on legislative findings), *appeal dismissed*, 423 U.S. 1010 (1975). Cf. *Gohld Realty Co. v. City of Hartford*, 141 Conn. 135, 146-47, 104 A.2d 365, 371 (1954) (agency decision open to judicial review if it was unreasonable, made in bad faith, or resulted from an abuse of power). See cases cited *supra* note 26.

28. E.g., *Courtesy Sandwich Shop, Inc. v. Port of New York Auth.*, 12 N.Y.2d 379, 190 N.E.2d 402, 240 N.Y.S.2d 1 (World Trade Center project falls within the instrumentalities of commerce exception to the public use doctrine), *appeal dismissed*, 375 U.S. 78, *reh. denied*, 375 U.S. 960 (1963). For brief discussions of the instrumentality of commerce exception, see *id.* at 388-89, 190 N.E.2d at 404-05, 240 N.Y.S.2d at 5-6; *Poletown Neighborhood Council v. City of Detroit*, 410 Mich. 616, 670-72, 304 N.W.2d 455, 476-77 (Ryan, J., dissenting). Other cases not falling within the slum clearance category will be discussed subsequently. See *infra* notes 40-43 and accompanying text.

29. See cases cited *infra* notes 30-35 & 37; Shulman, *supra* note 3, at 23.

30. 54 Wash. 2d 799, 341 P.2d 171 (1959). The 1955 act at issue in *Hogue* required that the condemned property be classified as marginal. *Id.* at 803, 341 P.2d at 174. In other words, the act was not a true slum clearance statute.

31. For other decisions rejecting a post-condemnation transfer under slum clearance legislation, see *City of Little Rock v. Raines*, 241 Ark. 1071, 411 S.W.2d 486 (1967); *Adams v. Housing Auth.*, 60 So. 2d 663 (Fla. 1952); *Housing Auth. v. Johnson*, 209 Ga. 560, 74 S.E. 2d 280 (1953); *Edens v. City of Columbia*, 228 S.C. 563, 91 S.E.2d 280 (1956).

Another commonly cited decision is *Opinion of the Justices*, 332 Mass. 769, 126 N.E.2d 795 (1955) (proposed redevelopment act unconstitutional). The Massachusetts Supreme Court held that public funds cannot be used for the primary purpose of acquiring private land by either condemnation or purchase in order to transfer it to a private party for a private use. *Id.* at 781-82, 126 N.E.2d at 802. Cf. cases cited *supra* note 26.



property in order to establish an industrial park.<sup>32</sup> The court expressly rejected the defendant's theory that the plaintiffs' land could be condemned because it had a "higher and better" economic use.<sup>33</sup>

Unlike *Hogue*, the slum clearance decisions upholding the post-condemnation transfer of property to business interests have either implicitly or explicitly approved the greater economic benefit principle.<sup>34</sup> Two New York decisions are illustrative. In *Cannata v. City of*

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32. 54 Wash. 2d at 803-37, 341 P.2d at 174-92.

33. *Id.* at 827, 833, 341 P.2d at 187, 191. See also *Edens v. City of Columbia*, 228 S.C. 563, 91 S.E.2d 280 (1956), wherein the court implicitly rejected the economic benefit theory. In *Edens*, the court adopted a more conservative rationale and denied the taking because it was not done to provide low-cost housing for the residents of the affected area. The court stated:

Some of the decisions of other courts immediately in point that are contrary to our view, which are not distinguishable upon different constitutional provisions or former judicial interpretations, proceed upon the theory that a public use is accomplished by the seizure and destruction of slum or "blighted" areas and the disposition of the land thereafter to private owners for private purposes is merely incidental. We think that this would be a strained view of the facts in the case *sub judice*, and we cannot follow it. The purpose here is not to provide better, low-cost housing to the present occupants of the area, or indeed any housing at all; but is to transform it from a predominantly low-class residential area to a commercial and industrial area. It seems to us to be a grandiose plan which cannot be dissected and the result of it reasonably said to be incidental. However desirable the object is from a municipal planning viewpoint, it cannot be attained by the exercise of the power of eminent domain. Other contrary decisions hold that restrictions upon the future use of "redeveloped" land is a public use; but that is in the nature of zoning, which derives from the police power.

*Id.* at 573, 91 S.E.2d at 284.

34. See, e.g., *Katz v. Brandon*, 156 Conn., 521, 533-34, 245 A.2d 579, 586 (1968) (if public use which justifies taking in the first instance is use of property for purposes other than slums, that public use continues after the property is transferred to private parties); *Graham v. Houlihan*, 147 Conn. 321, 327-29, 160 A.2d 745, 749, (sections of statute dealing with redevelopment of blighted areas are to be construed liberally to allow taking of property that is in substantially better condition than surrounding property) *cert. denied*, 364 U.S. 833 (1960); *Gohld Realty Co. v. City of Hartford*, 141 Conn. 135, 143-44, 104 A.2d 365, 369-70 (1954) (redevelopment act contemplates that after blighted area is taken for redevelopment purposes, some or all of the property may be sold to private parties, even if they are not the original owners); *People ex rel. Adamowski v. Chicago Land Clearance Comm'n*, 14 Ill. 2d 74, 79, 150 N.E.2d 792, 795 (1958) (legislature has determined as a matter of public policy that blighted vacant areas can be taken under redevelopment act because the property is unmarketable and impairs the growth of the community by preventing alternative uses); *Housing and Redevelopment Auth. v. Minneapolis Metropolitan Co.*, 259 Minn. 1, 7-11, 104 N.W.2d 864, 870-71 (1960) (municipal housing authority plan to redevelop area for light industry and commerce, but with no provision for housing to replace condemned housing, is valid exercise of agency discretion); *Schenck v. City of Pittsburgh*, 364 Pa. 31, 36-38, 70 A.2d 612, 614-15 (1950) (redevelopment act intended to

*New York*,<sup>35</sup> the court stated that condemnation of substandard real estate for needed industrial sites is a public use.<sup>36</sup> *Yonkers Community Development Agency v. Morris*<sup>37</sup> reached a similar result. In *Yonkers*, the defendants tried to prevent the taking of three parcels of land that were adjacent to an Otis Elevator Company plant.<sup>38</sup> The court held that private property can be taken for a public use other than the elimination of urban blight so long as any private benefit that might accrue is subordinate to a dominant public purpose.<sup>39</sup>

Directly confronting the issue of condemnation for industrial development, the Maine Supreme Judicial Court explicitly rejected the economic reasoning behind the New York decisions in *Opinion of the Justices*.<sup>40</sup> In the opinion, the court advised the state legislature that a bill granting the taking power to the City of Bangor for the purpose of acquiring land for an industrial park would be unconstitutional if enacted.<sup>41</sup> The court premised its decision on a narrow definition of

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give wide scope to municipalities in redesigning and rebuilding areas because they no longer meet economic and social needs of modern city life and progress).

35. 11 N.Y.2d 210, 182 N.E.2d 395, 227 N.Y.S.2d 903, *appeal dismissed*, 371 U.S. 4 (1962).

36. 11 N.Y.2d at 215, 182 N.E.2d at 397, 227 N.Y.S.2d at 906.

37. 37 N.Y.2d 478, 335 N.E.2d 327, 373 N.Y.S.2d 112 (1974) *appeal dismissed*, 423 U.S. 1010 (1975).

38. *Id.* at 480-82, 335 N.E.2d at 330-32, 373 N.Y.S.2d at 116-18. The *Yonkers* situation is analogous to that in *Poletown*. See *supra* text accompanying notes 6-7. The Otis Elevator Company, one of the largest employers in Yonkers, threatened to leave the city because the company lacked the space needed to expand and modernize its facilities. *Yonkers Community Dev. Agency v. Morris*, 45 A.D.2d 889, 890, 357 N.Y.S.2d 887, 889 (1974) (Munder, J., dissenting).

39. 37 N.Y.2d at 482-83, 335 N.E.2d at 331, 373 N.Y.S.2d at 117-18. *Contra Edens v. City of Columbia*, 228 S.C. 563, 91 S.E.2d 280 (1976), discussed *supra* note 33.

40. 152 Me. 440, 131 A.2d 904 (1957). See also *United States v. Two Tracts of Land*, 387 F. Supp. 319 (E.D. Tenn. 1975), *aff'd*, 532 F.2d 1083 (6th Cir.) (Tennessee Valley Authority taking of land for construction and operation of dam and reservoir project not capricious and arbitrary even though property might be sold to private parties for industrial and recreational use), *cert. denied*, 429 U.S. 827 (1976). *Contra Prince George County v. Collington Crossroads, Inc.*, 275 Md. 171, 339 A.2d 278 (1975) (condemnation for industrial park in order to increase tax base, create jobs, and diversify local economy). But see *City of Owensboro v. McCormack*, 581 S.W.2d 3 (Ky. 1979) (act authorizing municipality to condemn property in order to transfer it through local development agency to private parties for industrial and commercial purposes held unconstitutional); *Karesh v. City Council*, 271 S.C. 339, 247 S.E.2d 342 (1978) (power of eminent domain cannot be used to acquire land for a privately-owned and operated convention center).

41. 152 Me. at 445, 448, 131 A.2d at 906, 908.

“public use.”<sup>42</sup> As a result, the court concluded that the legislation amounted to no more than an attempt to take private property because another party’s use of the land appeared economically and socially more desirable.<sup>43</sup>

In *Poletown*, the majority did not confront the use issue within the context of slum clearance legislation. The controlling legislative purpose in the Detroit Economic Development Corporation’s enabling act deals with the social and economic problems of unemployment, a deteriorating industrial and commercial base, and declining state and local revenues.<sup>44</sup> Thus, the Michigan statute giving rise to the *Poletown* taking is similar to the bill at issue in *Opinion of the Justices*.<sup>45</sup> Instead of following the approach of the Maine court, how-

42. *Id.* at 446-47, 131 A.2d at 907. *See supra* notes 20-21 and accompanying text.

43. 152 Me. at 447, 131 A.2d at 907. The court relied on *Crommett v. City of Portland*, 150 Me. 217, 107 A.2d 841 (1954) (slum clearance law held constitutional). In *Crommett*, the court said that redevelopment, taken alone, is not a public use for which the taxing or taking powers may properly be utilized. *Id.* at 236, 107 A.2d at 852. *Cf. In re Opinion of the Justices*, 332 Mass. 769, 126 N.E.2d 795 (1955), discussed *supra* note 31. The *Crommett* court further stated:

However beneficial it might be in a broad sense, it would clearly be unconstitutional for the legislature to provide for the taking of any area in a city for the purpose of redevelopment by sale or lease for private purposes. Such a proposal would amount to no more than the taking of A’s property for sale or lease to B on the ground that B’s use would be economically or socially more desirable. 150 Me. at 236, 107 A.2d at 852. Nevertheless, the court concluded that the statute did not lead to impermissible takings for private uses. In the court’s opinion, the redevelopment of blighted areas was a secondary purpose. *Id.* The primary purpose of the act was not to redevelop a municipality, but to clear away slums and prevent their recurrence. *Id. Accord* *Berman v. Parker*, 348 U.S. 26, 35 (1954) (property may be taken to eliminate slums and the blighted areas that tend to produce slums).

44. MICH. STAT. ANN. § 5.3520(2) (Callaghan Supp. 1981). *See infra* note 45.

45. Compare the legislative purposes of the bill at issue in *Opinion of the Justices* and the act in *Poletown*. The “emergency preamble” of HOUSE PAPER 983, ME. LEGIS. DOC. NO. 1407 (1957), *quoted in* *Opinion of the Justices*, 152 Me. at 441, 131 A.2d at 904-05 reads:

Whereas, industrial development is essential to the preservation and betterment of the economy of the city of Bangor and its inhabitants; and

Whereas, present opportunities for such development are limited under present conditions, and proposed imminent industrial development awaits the availability of an industrial area. . . .

The “declaration of necessity” of MICH. STAT. ANN. § 5.3520(2) (Callaghan Supp. 1981) states:

There exists in this state the continuing need for programs to alleviate and prevent conditions of unemployment, and that it is accordingly necessary to assist and retain local industries and commercial enterprises to strengthen and revitalize the economy of this state and its municipalities; that accordingly it is

ever, the *Poletown* court adopted the economic theory underlying the New York decisions.

After noting that the powers conferred by the Economic Development Corporations Act<sup>46</sup> were for the "performance of essential public purposes," the *Poletown* majority casually dismissed the plaintiffs' first line of argument.<sup>47</sup> The court held that there is no distinction between a "public use" and a "public purpose."<sup>48</sup> The majority found that the terms were used interchangeably in the state's statutes and decisions in order to describe "the protean concept of public benefit."<sup>49</sup> Combining this conclusion with the court's limited power of review in condemnation actions,<sup>50</sup> the majority held that any benefit which accrued to General Motors was a mere incident of what was

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necessary to provide means and methods for the encouragement and assistance of industrial and commercial enterprises in locating, purchasing, constructing, reconstructing, modernizing, improving, maintaining, repairing, furnishing, equipping, and expanding in this state and in its municipalities; and that it is also necessary to encourage the location and expansion of commercial enterprises to more conveniently provide needed services and facilities of commercial enterprises to municipalities and the residents thereof. Therefore, the powers granted in this act constitute the performance of essential public purposes and functions for this state and its municipalities.

*Id.*

46. MICH. STAT. ANN. §§ 5.3520(1)-(27) (Callaghan Supp. 1981).

47. 410 Mich. at 631, 634, 304 N.W.2d at 458, 459. The majority emphasized the statute's public purpose language. See *supra* note 45.

48. *Id.* at 629-30, 304 N.W.2d at 457. Rhyne notes that "public purpose" is sometimes used as a synonym for "public use." C. RHYNE, *supra* note 19, § 17-2.

49. 410 Mich. at 629-30, 304 N.W.2d at 457. Michigan subscribes to a liberal definition of "public use." See *supra* note 22.

50. *Id.* at 632-33, 304 N.W.2d at 458-59. The majority relied on *Gregory Marina, Inc. v. City of Detroit*, 378 Mich. 364, 144 N.W.2d 503 (1966) (taxpayers' action challenging municipality's construction and operation of marina) and *Berman v. Parker*, 348 U.S. 26 (1954). In *Marina*, the court stated that the determination of what constitutes a public purpose is primarily a legislative function. 378 Mich. at 396, 144 N.W.2d at 516. The legislature's determination is only subject to judicial review if it is arbitrary. *Id.* at 396, 144 N.W.2d at 516. See *supra* notes 23 & 26 and accompanying text.

The *Poletown* court cited *Berman* for the proposition that "when a legislature speaks, the public interest has been declared in terms 'well-nigh conclusive.'" 410 Mich. at 633, 304 N.W.2d at 459; *Berman v. Parker*, 348 U.S. 26, 32 (1954). The *Berman* standard of review—minimal scrutiny—is characteristic of the 20th century retreat from judicial activism in substantive due process cases not involving personal rights. L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 9.2 n.10 (1978). See *infra* notes 54-55 and accompanying text.

essentially a dominant public purpose.<sup>51</sup>

*Poletown* might have become just another eminent domain case were it not for its newsworthiness<sup>52</sup> and Justice Ryan's poignant dissent.<sup>53</sup> The justice criticized the majority's use of a minimal standard of judicial review,<sup>54</sup> which he asserted the court had never used in prior eminent domain cases.<sup>55</sup> Justice Ryan claimed that the majority erred by applying the rules of review governing aid to private corporations through the taxing power. He argued that the correct scope of review was that associated with the taking power.<sup>56</sup> Nevertheless,

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51. 410 Mich. at 634, 304 N.W.2d at 459. See *supra* note 26 and text accompanying notes 35-39.

52. *Poletown* has received extensive coverage in the media. Justice Ryan noted this in his dissent. *Id.* at 646, 304 N.W.2d at 465.

53. *Id.* at 645, 304 N.W.2d at 464. See *supra* note 4.

54. *Id.* at 667-69, 304 N.W.2d at 474-75.

55. *Id.* at 669, 304 N.W.2d at 475. Justice Ryan maintained that the court had always made an independent determination of what constitutes a public use in eminent domain cases. *Id.* As a result, he was critical of the majority's reliance on *Gregory Marina, Inc. v. City of Detroit*, 378 Mich. 364, 144 N.W.2d 503 (1966), and *Berman v. Parker*, 348 U.S. 26 (1954). See *supra* note 50 and accompanying text. Justice Ryan was particularly distressed by the invocation of *Berman*. 410 Mich. at 668, 304 N.W.2d at 475. He claimed that *Berman* stood for minimal judicial review of acts of Congress with respect to application of the fifth amendment taking clause. *Id.*

Justice Ryan is not alone in his criticism of the use of *Berman*. In *Edens v. City of Columbia*, 228 S.C. at 574-76, 91 S.E.2d at 284-85, the South Carolina Supreme Court voiced its objection to the landmark federal decision by citing *Lashly, The Case of Berman v. Parker: Public Housing and Urban Redevelopment*, 41 A.B.A. J. 501 (1955). *Lashly* saw *Berman* as diminishing individual property rights. *Id.* at 503.

Nevertheless, it must be noted that the *Poletown* majority believed it applied a strict standard of review. In its per curiam decision, the court stated:

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. 410 Mich. at 634-35, 304 N.W.2d at 459-60. The literal interpretation the majority gave MICH. STAT. ANN. § 5.3520(2), (Callaghan Supp. 1981), leaves one questioning the intellectual honesty of the court. See *supra* note 47 and accompanying text. Could the majority deny condemnation for the construction of a service station? See *Reed v. City of Seattle*, 124 Wash. 185, 213 P. 923 (1923) (although public benefits from lease of condemned land to filling station company, the use is a private use, not a public use). Much depends on the meaning of the word "significant." 410 Mich. at 634-35, 304 N.W.2d at 459-60. The significance of the public benefit cannot be determined absent a specific social and economic context. See *infra* note 63.

56. 410 Mich. at 662-69, 304 N.W.2d at 472-75. In the section of his dissent dealing with the distinction between "public use" and "public purpose," Justice Ryan

Justice Ryan conceded that Michigan statutes and decisions used the terms "public use" and "public purpose" interchangeably. He concluded, however, that the jurisprudences of the taxing and taking powers were not used interchangeably.<sup>57</sup>

The only line of cases which Justice Ryan found that could support the use of the taking power were the slum clearance decisions.<sup>58</sup> He indicated that the redevelopment of blighted neighborhoods is a public use, which can be legitimately accomplished through the means of incidental private gain.<sup>59</sup> For Justice Ryan, *Poletown* was distinguishable.<sup>60</sup> The public end of improved employment conditions and increased state and local revenues depended upon General Motors' financial success, not the city's acquisition of land.<sup>61</sup> As a result,

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traced the usage of these terms with respect to the taxing power and the taking power. *Id.* See *City of Little Rock v. Raines*, 241 Ark. 1071, 1084-85, 411 S.W.2d 486, 494 (1967) (that a project is one for which public funds may be expended is not sufficient basis for finding that use of property is public use justifying the condemnation of private property). *Contra* *Prince George's County v. Collington Crossroads, Inc.*, 275 Md. 171, 189-90, 339 A.2d 278, 288 (1975) (issuance of government bonds to provide for financing of private industrial and commercial development is a "public purpose").

57. 410 Mich. at 669, 304 N.W.2d at 475.

58. *Id.* at 672-74, 304 N.W.2d at 477.

Justice Fitzgerald argued in his dissent that despite the superficial similarity of the slum clearance cases, none of them justified the *Poletown* taking. *Id.* at 640-41, 304 N.W.2d at 462. He relied on *In re Slum Clearance in Detroit*, 331 Mich. 714, 50 N.W.2d 340 (1951) (taking of property to raze slum and aid in redevelopment constitutional notwithstanding subsequent sale of property to private developers). In *Slum Clearance*, the court stated that the public purpose of slum clearance is the controlling purpose of the condemnation. *Id.* at 720, 50 N.W.2d at 343. The resale of the condemned property is an incidental and ancillary purpose designed to abate part of the cost of clearance. *Id.* See *Ellis v. City of Grand Rapids*, 257 F. Supp. 564 (W.D. Mich. 1966) (once primary purpose of slum clearance has been established, it is generally irrelevant what secondary purposes are involved). See also cases cited *supra* note 26.

Based on the *Slum Clearance* decision, Justice Fitzgerald concluded that the transfer of land to General Motors was not incidental to the taking. 410 Mich. at 641, 304 N.W.2d at 462. According to him, it was only through the acquisition and use of the property that the public purpose of promoting employment could be achieved. *Id.* Hence, the economic benefits of the project are incidental to the private use of the property. *Id.* See *infra* notes 59 & 61 and accompanying text.

59. *Id.* at 672-74, 304 N.W.2d at 477. See *infra* notes 26 & 58.

60. *Id.* at 672, 304 N.W.2d at 477. In addition to distinguishing the slum clearance decisions, Justice Ryan distinguished another line of cases because they fell within the "instrumentality of commerce" exception to the public use doctrine. *Id.* at 670-72, 304 N.W.2d at 476-77. See *supra* note 28.

61. *Id.* at 676, 304 N.W.2d at 478. See *supra* note 58.

Justice Ryan concluded that the majority subordinated a constitutional right to private corporate needs.<sup>62</sup>

Justice Ryan's analysis of the complex legal, political, and economic factors at issue in *Poletown* is persuasive. One is left wondering whether the plaintiffs adopted the correct strategy by not challenging the facial validity of the Economic Development Act<sup>63</sup> in addition to the use created.<sup>64</sup> This point, however, is academic. The majority implicitly established the constitutionality of the Act by holding that it was constitutional as applied.<sup>65</sup>

62. *Id.* at 684, 304 N.W.2d at 482. Earlier in his dissent, Justice Ryan stated that: acceptance of [the defendants' argument] . . . would vitiate the requirement of "necessity of the extreme sort" and significantly alter the balance between governmental 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.

*Id.* at 676, 304 N.W.2d at 478. *But see* W. WILLIAMS, *THE CONTOURS OF AMERICAN HISTORY* 354-60, 384-86 (1973), which persuasively argues that the shift has already occurred. *Cf.* *Courtesy Sandwich Shop, Inc. v. Port of New York Auth.*, 12 N.Y.2d 379, 398-99, 190 N.E.2d 402, 410-11, 240 N.Y.S.2d 1, 13-14 (Van Voorhis, J., dissenting) (conservative critique based on pre-Keynesian economic thought), *appeal dismissed*, 375 U.S. 78 (1963). *See supra* note 2.

63. The majority observed that the plaintiffs did not challenge the legislative declaration that programs designed to alleviate unemployment and develop industry and commerce are "essential public purposes." 410 Mich. at 631, 304 N.W.2d at 458. The court also noted that the plaintiffs did not challenge the proposition that the legislature has the power to promote its program under MICH. CONST. art. 4, § 51. 410 Mich. at 631, 304 N.W.2d at 458. MICH. CONST. art. 4, § 51 provides:

The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

Neither of these questions, however, settles the issue of whether a legislature can enact a statute with as broad a purpose as MICH. STAT. ANN. § 5.3520(2) (Callaghan Supp. 1981). *See supra* note 48. It is arguable that such a statute is facially unconstitutional because the legislature has not placed a clear limitation on the statute's scope. In the absence of a legislative limitation, the only way a statute of this type can be upheld is by a reviewing court reading a limitation into the act. The *Poletown* majority adopted this approach. *See supra* note 55 and accompanying text.

64. The *Poletown* majority noted that the plaintiffs were only challenging the application of the statute. 410 Mich. at 631-32, 304 N.W.2d at 458. *See supra* note 63.

65. *See supra* notes 63-64 and accompanying text.

In a manner of speaking, the significance of *Poletown* lies less with the actual decision than it does with the statute giving rise to the taking.

I think [the General Motors project] 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 industrial cities in the midwest and northeast across the Nation; . . . If we can assem-

By upholding the application of the Act, the majority reinforced the liberal definition of the public use limitation, a product of the nineteenth century structural transformation of the American economy. *Poletown* indicates that individual property rights will be further subordinated to the needs of large corporations when economic and demographic changes require the state to intervene more forcefully in the economy. Stabilization of the social structure requires state intervention. Thus, courts and legislatures will define "public use" in a manner that is consistent with the needs of the social system during a particular historical period. The relativism implicit in this conceptualization of the public use, however, does not mean that each generation defines the limitation anew. Certain principles of the law of eminent domain remain constant. It is within this overarching framework that each generation develops its concept of the public use.

*Neil H. Lebowitz*

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ble this land, doing justice to those who live there, both the merchants and the state, I think we can open up an approach for other northern industrial cities who are landlocked as we are, who have lost population to relocate and to reassemble and to attract industry. . . . I consider it of great importance, the ability of this city to survive, and to the ability of other cities in the industrial belt, that is the midwest, and the northeast, all these cities face exactly the same problem as Detroit does, escalating unemployment and decreasing population, the exodus of industry.

Trial Testimony of Mayor Coleman A. Young, *quoted id.* at 651 n.4, 304 N.W.2d at 467 n.4. *See supra* note 2.