

# *Poletown Neighborhood Council v Detroit*

## Private Property and Public Use

410 Mich 616 (1981)

In a monumental effort to bolster its crumbling economic base, in 1980 the City of Detroit condemned an entire neighborhood to make room for a new General Motors plant. Some of the residents of the gritty, integrated, working-class neighborhood known as “Poletown” challenged the scheme, claiming that it violated the Michigan Constitution’s provision that government could not use its “eminent domain” power to transfer property from individuals to private corporations. In a controversial decision, the Michigan Supreme Court rebuffed the challenge, marking what some argued was a new standard in the law of “takings,” allowing the exercise of eminent domain power for economic development.

Poles had settled in large numbers in the neighborhood south of Hamtramck, taking jobs in the manufacture of cigars, stoves, radiators, and steam engines. By 1900, 48,000 had come, the best-known being Leon Czolgosz, the anarchist who assassinated President William McKinley in 1901. Other ethnic groups followed, especially African Americans. Detroit became a majority-black city in the 1970s, and elected its first African-American mayor, Coleman Young, in 1974. By 1980, about half of Poletown was black.<sup>1</sup> By this time, Poletown, Detroit, and Michigan were all suffering intensely from the economic decline of industrial, “rust-belt” America.

The industrial economy that sustained Detroit was in crisis. Consistent economic growth had run from World War II until the late 1960s. American manufacturers faced little global competition until then, when they found themselves with outdated plants and expensive labor forces. This was particularly true in the automotive sector where the wages and benefits were disproportionately high as strong unions pressed for wages and benefits that the unbroken success of the Big 3 automotive manufacturers seemed to be in a position to afford indefinitely. In fact, however, higher labor costs (as well as high costs for annual styling changes and other expenses) had been passed on to consumers in the price of cars, creating a vulnerability to lower-cost foreign imports.<sup>2</sup> Steel and auto workers earned almost twice as much as the average manufacturing employee by 1980. Old antitrust and banking policies, and new health, safety, welfare, and environmental policies, aggravated the situation. Many manufacturers relocated to states in the South and West (and eventually abroad) where there were lower labor costs and taxes. At the same time, a new immigration act

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Hamtramck section of Detroit heavily populated by Poles. From photo essay re Polish American community.

added 35 million immigrants to the domestic work force in the last third of the century. Six hundred and seventy thousand auto and steel jobs were lost between the summer of 1979 and the summer of 1980 alone; 1.2 million were gone by 1982. In all, one in seven manufacturing jobs disappeared in the recession of the period.<sup>3</sup>

The pressures facing the auto industry were most intense in Detroit, and they actually began in the mid-1950s. The auto industry in the city of Detroit had peaked by 1955 when imports began to make a meaningful dent in the market. Chrysler alone lost 23,000 jobs in Detroit from 1955–1958. The Packard Motor Co. closed its doors and its jobs disappeared. Hudson merged with Nash and moved to Wisconsin. This cost Detroit 35,000 jobs. While the combined firm later became American Motors, with its headquarters in the Detroit area, it had no factories there.<sup>4</sup> And growing foreign competition was only one side of the labor coin. Technology allowed fewer workers to do more, and jobs were shed as technical innovation increased. Detroit was losing its population, industry, and tax base, declining in population by 10 percent in the 1950s, and another 9 percent in

the 1960s. Then Detroit was shaken by the race riots of 1967 and extreme “white flight.” Fully one-fifth of the city’s residents left in the 1970s (and another 15 percent were to depart in the 1980s). By 1980, unemployment reached 18 percent in Detroit, and was nearly double that rate among African Americans.

It was no surprise then, that in 1980, like many other Detroit neighborhoods, Poletown was declining. The nearby Dodge Main plant, which had been built in 1910 by the Dodge brothers in Hamtramck, closed that year. The area was “undermined by a lack of employment, an aging population, crime, the increasing poverty of people on fixed incomes, a decline in private and public services, and deteriorating housing stock.”<sup>5</sup> But it was not considered blighted by the standards of the time; it remained a community with many homes, small businesses, and churches. Indeed, it was later asserted that Poletown “was considered a rare and desirable urban community by many sociologists, since it seemed to be the embodiment of a stable, integrated community.”<sup>6</sup> Poletown was, for example, untouched by the great Detroit riot of 1967, which inflamed many black neighborhoods, killed 43, injured thousands, and caused millions of dollars of property losses. But the fact that many residents hoped that the area could be revitalized necessarily meant that its vitality was, at a minimum, in jeopardy.

Detroit Mayor Coleman Young concluded that Poletown would need to be sacrificed to serve his larger goal of keeping business in the city. Young began his career as a fiery, civil rights militant, involved as an officer of the Tuskegee Airmen fighting Jim Crow regulations in the army, in the UAW-CIO until ousted by Walter Reuther as too left wing, and becoming in 1951 the executive director of the National Negro Labor Council, the most radical black labor organization at the time.<sup>7</sup> He endeared himself to some in the black community by standing up to the House Un-American Activities Committee. When Michigan Republican Charles Potter asked him, “Do you consider the Communist Party un-American?” he replied, “I consider the activities of this committee un-American.” But after his time in the left-wing Progressive Party, he became a Democrat in 1959. He was elected a Michigan state senator in 1960 and four years later was Democratic leader of the State Senate and in 1968 the first black Democratic National Committeeman. Elected mayor in 1974, Young ran on a platform promising economic development for the city, and he had substantial business support. In 1976 he helped Jimmy Carter become president. At this point, Mayor Young was now part of the political establishment, but he remained blunt, aggressive, and determined to change the racial climate. Under the Carter administration, Detroit received significant new support from Washington. But by the end of the 1970s, Chrysler, a major Detroit employer, was in desperate straits. The City indicated its willingness to spend huge sums to bolster it, but in January 1980, Chrysler closed Dodge Main and, yet again, thousands of highly paid jobs vanished. Mayor Young zealously endeavored to keep the City financially solvent and to retain jobs. When he asked General Motors what it would take for it to expand employment in Detroit, GM indicated its willingness to build a new Cadillac assembly plant if the City could provide a 500-acre site, with adequate road and rail

transportation, other improvements, and tax abatements, in a short time frame. The only site in the city that fit the bill was Poletown, and GM insisted that the City condemn the area and turn it over to the company by May 1981. The area included over 6,000 residents, 1,400 houses, 144 businesses, 16 churches, two schools, and a hospital. It was expected to cost the city \$200 million to compensate, raze, and improve the area, in hopes that the new factory would create 6,000 jobs directly (although this would only partly offset the employment lost by the anticipated closing of two other GM plants), and thousands more related to the plant.

While such wholesale displacement dismayed many later observers, so desperate were the city and state to keep GM in Detroit that few voices opposed the plan. Most of the political establishment believed that the plan was necessary to stave off economic calamity. The major Detroit media agreed; organized labor endorsed it. Despite the intense attachment of local parishioners and priests to their churches, the Roman Catholic hierarchy accepted the plan and deconsecrated and sold its Poletown buildings and moved the stained glass and statuary. Despite the image of powerful interests trampling the rights of the working class and the poor, most left-wing activists acquiesced, probably due to Mayor Young’s radical bona fides and their support of his larger goals. When Governor William Milliken, who supported the project on the whole, simply gave audience to Poletowners who did not, Young was furious. As for the few, like Ralph Nader, who objected to the plan, Young replied, “Ralph Nader is psychotic in his hatred of GM,” and warned that any delay in condemnation proceedings would jeopardize the effort.<sup>8</sup> The displacement proceeded rapidly, aided by the recently enacted Uniform Condemnation Procedures (or the “quick-take”) Act. This allowed the City to take condemned property and demolish it quickly, while dispossessed owners could later litigate if not satisfied with the compensation rendered. Generous relocation benefits were provided and many, but not all,

Poletown and other “urban renewal” projects, combined with a lack of decent housing and an atmosphere of racism, created a great tension in Detroit. In 1967, that tension erupted. The Detroit Riot of 1967 began when police raided an after-hours drinking club in a predominantly black neighborhood. They were expecting to make a few simple arrests, but instead walked in on a party of more than 80 people being held for two returning Vietnam veterans. The officers attempted to arrest everyone who was on the scene. A crowd quickly gathered to watch the transport of the arrestees. After the last of the police cars had left the scene, a small group lifted the bars on a nearby store window, broke the window, and unwittingly began the series of events that have become known as the Detroit Riot of 1967. Further incidents of vandalism were reported, looting and fires spread through the northwest side of Detroit, then crossed over to the East Side. Within 48 hours, the National Guard was mobilized, followed by the 82nd airborne, which was called in on the fourth day of the riot. As police and military troops sought to regain control of the city, violence escalated. When the 5-day riot was over, over 40 people were dead, over 1,000 were injured, and over 7,000 had been arrested.

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residents were willing to take them and go. As increasing numbers of Poletowners moved out, those who remained faced dangerous demolition, arson, and crime, and further diminished public services.<sup>9</sup> Local activists, joined by Nader, scrambled to challenge the proceedings as an illegal eminent-domain taking.

In England and the United States, government had the power to take private property for public use if it compensated the property owners. This power was known as “eminent domain.” The principle that such government power must be limited extended at least as far back as the Magna Carta. Colonial and early American judges treated the principle as rooted in natural justice, and it found expression in both the federal and state bills of rights. Michigan’s Constitution (article X, section 2 of the 1963 Constitution) copied the U.S. Constitution, declaring that “private property shall not be taken for public use without just compensation.” In the strictest interpretation, private property could never be taken for private use. As United States Supreme Court Justice Samuel Chase put it in 1798, “a law that takes property from A and gives it to B” must be invalidated as “contrary to the great first principles of the social compact.”<sup>10</sup> “Public use” could also be strictly interpreted as public ownership and operation, such as a fort, a public school, or a highway. In the nineteenth century, states made exceptions for privately owned businesses that provided important services and were regulated by the State—grist mills and railroads most especially. In Michigan, the Supreme Court allowed the extension of eminent domain power to railroads while it denied that municipalities could use the taxing power to support railroad bonds (see *Salem*). But Justice Cooley, to whom both sides would appeal in twentieth-century eminent-domain litigation, interpreted “public use” quite strictly. Only “necessity of the extreme sort” could justify the eminent domain power.<sup>11</sup> As he put it in his 1878 *Treatise*, “vague grounds of public benefit from the more profitable use” that a new private business might provide did not justify a taking.<sup>12</sup> Privately owned entities could almost never take private property

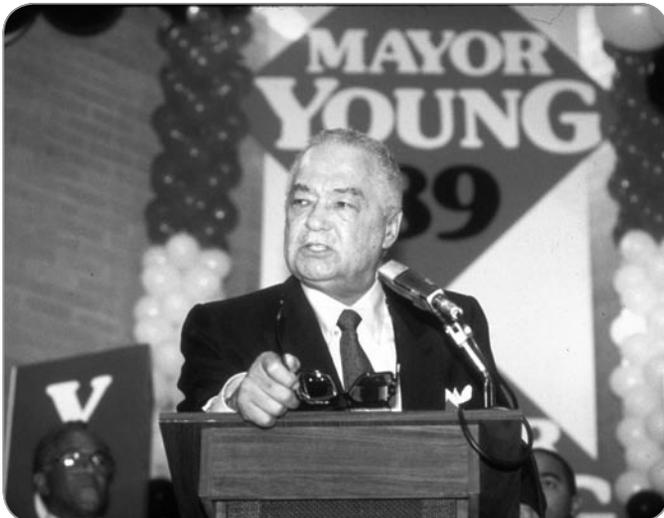
under the claim that the new owners would produce more employment, higher real estate value, or taxes.

Takings became more common as constitutional protection of property rights weakened in the twentieth century. State and federal courts approved condemnation for “slum clearance,” or the elimination of “blighted” urban areas. Michigan accepted this rationale in 1939.<sup>13</sup> Urban highway construction also displaced thousands of poor and working-class residents who had little political power to resist.<sup>14</sup> Interstate 94 had cut through the Poletown-Hamtramck neighborhood and displaced 1,400 families. I-75 had cut through the “Black Bottom” area of Detroit, which pushed many African Americans into Poletown.<sup>15</sup> These takings followed from the New Deal’s great increase of government power over the economy. Believing that the Great Depression showed the failure of free-market capitalism, the New Dealers embarked on a program of public investment, or “state capitalism.”<sup>16</sup> After the great clash between President Roosevelt and the United States Supreme Court, most judges accepted greater state power over private property. As Justice Harlan F. Stone put it, the Court would accept legislative power in cases of “ordinary commercial transactions,” while it reserved scrutiny for legislative infringements of non-property rights. This became known as the “double standard” or “preferred freedoms” doctrine, which reduced judicial protection for economic rights.<sup>17</sup> By 1980, it was more likely that the courts would accept takings that would increase employment or tax revenue.

The Poletown Neighborhood Council tried to stop the project in the Wayne County Circuit Court. In a 10-day trial shortly after Thanksgiving, 1980, the court ruled that the City had not abused its discretion in using its power of eminent domain; the only grounds (other than “fraud, or error of law”) on which it could be challenged were under the Uniform Condemnation Procedures Act. The council appealed the case to the Michigan Court of Appeals, and to the Michigan Supreme Court for permission to bypass the Court of Appeals. On February 21, 1981, the Supreme Court granted the request and issued an injunction halting the condemnation proceedings. This put great pressure on the parties and justices, since General Motors insisted that the City transfer title to the property in less than 10 weeks.

The Supreme Court’s acceptance of the appeal buoyed the hopes of the Poletowners, being “the first institutional response to the neighborhood’s crisis that seemed to indicate a community victory.”<sup>18</sup> The optimism was short-lived, however, as the Court quickly upheld the original decision. The case was argued on March 3, and decided just 10 days later. In a 5-2 decision, with Justice Coleman joining the three Democrats and Independent Justice Levin, the Court upheld the City’s actions. Its per curiam opinion (that is, no individual justice was identified as the author) held that the terms “public use” and “public purposes” “have been used interchangeably in Michigan statutes and decisions in an effort to describe the protean concept of public benefit.” It quoted the United States Supreme Court on judicial deference to legislative determinations of public benefit, that “when a legislature speaks, the public interest had been declared in terms ‘well-nigh conclusive.’” It concluded that the project’s public benefits were “clear and

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Detroit Mayor Coleman Young campaigning with his name on wall behind and balloons.

significant,” and that the private benefits to General Motors were “merely incidental.” But this was not a blank check for such projects, it noted. “If the public benefit was not so clear and significant, we would hesitate to sanction approval of such a project.”<sup>19</sup>

Republican Justices Fitzgerald and Ryan dissented. Fitzgerald entered his opinion along with the majority decision; he denied that the judiciary needed to defer to the legislature in eminent domain cases; “Determination whether a taking is for a public or a private use is ultimately a judicial question,” he said. He dismissed the majority’s putative authorities for the decision, claiming that “there is simply no precedent for this decision in previous Michigan cases.” Indeed, Michigan had a more stringent takings standard than most states, one closer to “public use” than “public purpose,” “benefit,” or “interest.” “Certainly,” he wrote, “we have never sustained the use of eminent domain power solely because of the economic benefits of development.”<sup>20</sup>

Justice Ryan worked on his fuller dissenting opinion for another month. “I could not understand this rush to judgment by our colleagues except that they were caught up in this frenzy of civic enthusiasm on which this whole cause had been riding for a year,” Ryan recalled.<sup>21</sup> He called *Poletown* “an extraordinary case,” one that would be remembered to have “seriously jeopardized the security of all private property ownership” and “judicial approval of municipal condemnation of private property for private use.” He said that it showed “how easily government, in all of its branches, caught up in the frenzy of perceived economic crisis, can disregard the rights of the few in allegiance to the always disastrous philosophy that the end justifies the means.” In his view, the project was clearly for the primary benefit of General Motors, which he described as the “guiding and sustaining, indeed controlling, hand” behind the proceedings. “The evidence then is that what General Motors wanted, General Motors got.” He did not mean to demonize GM. The company in fact had displayed an admirable “social conscience” in a highly competitive economic environment. Nevertheless, in this case the private benefit of GM was primary, and the public benefits incidental. Ryan agreed with Fitzgerald’s dissent regarding the Michigan precedents and judicial deference to legislative determination of public benefit, but went further and explicitly held the Condemnation Act to violate the Constitution’s eminent-domain provision. The statute placed “the state taking clause...on a spectrum that admits of no principles and therefore no limits.”<sup>22</sup>

*Poletown* facilitated “the largest relocation of people under the auspices of eminent domain—in the shortest period of time—in the history of the United States.”<sup>23</sup> At the time, most observers hailed the majority and the GM plan. Coleman Young regarded the *Poletown* project as the greatest accomplishment of his administration, and repeated the process with Chrysler and other corporations. Legally, the United States Supreme Court appeared to follow the logic of *Poletown*, and in 1984 gave a similarly broad berth to legislative takings (*Hawaii Housing Authority v Midkiff*, 467 U.S. 229) though other state court decisions were mixed. Few voices objected to the process. These tended to be on the extreme right and extreme left of the political spectrum; what Ralph Nader



The General Motors Detroit/Hamtramck assembly plant, July 13, 2006, in Detroit, Michigan.

Photo by Jeff Haynes/AFP/Getty Images

called the “corporate socialism” of *Poletown* made strange bedfellows. A free-market group called the Council for a Competitive Economy scored the decision, and “the Detroit media were perplexed that an advocate of business could criticize GM.” Justice Ryan, regarded as the right-winger on the Court, later recalled being congratulated by Detroit city councilman Kenneth Cockerell, an avowed Marxist, for standing up for the powerless.<sup>24</sup>

After about a decade, though, second thoughts began to sink in, and there was a growing view that *Poletown* “acquired a kind of infamy in legal and social science circles, forever equated with the idea of government folly, gross waste, and a what-were-they-thinking sort of horror.”<sup>25</sup> However, it should be noted that those views came from two very different directions: one which saw *Poletown* as a violation of property rights that were receiving insufficient protection, the other which interpreted *Poletown* as a triumph of corporate greed over the powerless, with the legal analysis functioning merely as camouflage. The plant’s opening was delayed, and it ended up providing only about half of the hoped-for jobs. Owner suits raised the price paid by Detroit for the project from \$200 million to closer to \$300 million. An oil company that the city estimated to be worth \$350,000 won a \$5 million award at trial. Most of this money came from state and federal aid, since GM paid only \$8 million for the property. A revival of interest in property rights, associated especially with the University of Chicago’s “law and economics” movement, gave intellectual ammunition to the cause of limiting eminent domain.<sup>26</sup> Social and cultural critics bemoaned the ill effects of bureaucratic planning on American cityscapes.<sup>27</sup> Justice T. G. Kavanagh later confessed, “I think if I had it to do over again, I wouldn’t vote the way I voted in that case.... I overstepped the bounds there. I think I was probably wrong on *Poletown*.”<sup>28</sup> In the late 1980s and early 1990s, the United States Supreme Court seemed to take a turn back toward restricted takings law.<sup>29</sup>

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Some of the main arguments against the *Poletown* decision are that the takings were bad for the area and that the building of the *Poletown* plant was not as good for the city as originally anticipated. Of course, not everyone would agree that *Poletown* was decided incorrectly, or that it should have been overturned. In a June 2008 letter to the editor in *Crain's Detroit Business*, Wayne State University Law Professor John Mogk vehemently defended the *Poletown* decision. Mogk wrote:

*What happened [as a result of the building of the plant] was that 4,200 residents were paid 200 percent of the value of their homes in a declining neighborhood, along with thousands of dollars more in relocation assistance, to make way for a 3.6 million-square-foot plant in an attempt to preserve thousands of high-paying jobs on the factory floor and five times as many jobs in local suppliers when GM's World War I plants on the city's southwest side were to be closed.*

Mogk concluded his letter with an admonition: "Those who are giving thanks that *Poletown* will never happen again should think again."

The Michigan Supreme Court revisited the case in 2004 and vehemently overruled *Poletown*, striking down an attempt by Wayne County to take private land to build the "Pinnacle Project," a business and technology park.<sup>30</sup> Justice Robert Young's unanimous decision in *County of Wayne v Hathcock* noted the "clash of two bedrock principles of our legal tradition: the sacrosanct right of individuals to dominion over their private property...and the state's authority to condemn private property for the commonweal."<sup>31</sup> Young made a strong statement of constitutional "originalism," the theory that the Constitution ought to be interpreted according to the understanding of those who wrote and ratified it, a theory associated with the conservative jurisprudential movement of the late twentieth century.<sup>32</sup> Albeit, when the Constitution used "technical or legal terms of art," such as the eminent-domain provision, it needed to be construed according to the day's legal understanding of such terms. In 1963, there were few instances in which private property might be transferred to private parties—in cases of "public necessity of the extreme sort otherwise impracticable," in cases "when the private entity remains accountable to the public in its use of that property," and "when the selection of the land to be condemned is itself based on public concern." As Young noted, the Pinnacle Project "implicates none of [these] saving elements." *Poletown* was the county's only justification, and that case "is most notable for its radical and unabashed departure from the entirety of this Court's pre-1963 eminent domain jurisprudence." Indeed, the decision was such a radical departure that even advocates of judicial restraint "must overrule *Poletown* in order to vindicate our Constitution, protect the people's property rights, and preserve the legitimacy of the judicial branch as the expositor—not creator—of fundamental law."<sup>33</sup> *Poletown* was gone, but the principle that the *Poletown* Neighborhood Council

fought for had been vindicated. Some, like PNC attorney Ronald Reosti, who appeared before the Court in both *Poletown* and *Hathcock*, were still alive to savor the victory.

Justice Elizabeth Weaver entered a concurring opinion, but only because she believed that the majority had not repudiated *Poletown* thoroughly enough. She believed that the Court's appeal to the technical, legal understanding of "public use" in 1963 was "elitist," and left significant loopholes for abuse of eminent-domain power. The Court's willingness to let governments condemn property on the basis of blight was one example. "A municipality could declare the lack of a two-car garage to be evidence of blight," she noted, as an Ohio municipality had.<sup>34</sup> Some property-rights advocates shared Justice Weaver's concern that the decision still allowed government too much power to take private property.<sup>35</sup> While the Michigan Supreme Court was now unanimous in thinking *Poletown* to have been decided in error, the decision retained strong defenders. The problems of the inner cities had not ended, and the potential loss of a tool for assembling large parcels for redevelopment was considered a significant problem by those that believed that distressed urban communities were at a serious disadvantage without it. A major GM plant, employing thousands of highly paid union workers, remains in operation 25 years later; one can only wonder what condition *Poletown* would be in today had the plant not been built and the neighborhood remained. Indeed, property-rights enthusiasts seemed to have the rug pulled out from under them shortly after *Hathcock*, when the United States Supreme Court upheld a Connecticut economic-development taking very much like *Poletown*.<sup>36</sup> The city of New London justified the taking of individual homes because new businesses would provide greater tax revenues for the city. Opponents asked the Court to reject such economic-benefit takings and follow the Michigan Supreme Court's *Hathcock* doctrine. The Court was split 5-4, and there was a much greater public outcry against it than there had been to *Poletown*. But the United States Supreme Court explicitly noted that states were free to establish more stringent takings standards than the federal courts. Indeed, it explicitly cited *Hathcock* as an example of a state that had done so.<sup>37</sup>

The Michigan Supreme Court, by overturning *Poletown*, appeared to have obviated the necessity of legislative strengthening of property rights, but the legislature enacted a law in the spring of 2006 that reinforced its holding that private property could not be taken for economic development. It also overwhelmingly (106-0 in the House of Representatives and 31-6 in the Senate) sent a constitutional amendment (Proposition 4) to the voters for ratification. Proposition 4 prohibited "taking private property...for purposes of economic development or increasing tax revenue." If the property taken was an individual's primary residence, the owner was entitled to 125 percent of the property's fair market value. It also required the State to demonstrate that the taking was for a public use, and imposed stricter standards of proof in cases of condemnation for "blight."

Michigan voters approved Proposition 4 in November 2006. Thirty-four other states had also altered their laws or constitutions to make takings more difficult. Donald J. Borut, the executive

director of the National League of Cities, while admitting that eminent domain was sometimes abused, “said that property-rights groups have played to public fears in a way that discourages thoughtful discussion about how individual rights should be balanced against projects that benefit the community as a whole. He described anti-*Kelo* sentiment as a ‘huge emotional tsunami that’s been rushing through the country.’”<sup>38</sup> Wayne Law School Professor John E. Mogk agreed, saying that the amendment would have a “chilling effect on the willingness of investors to undertake development.”<sup>39</sup> Mogk called *Hathcock* “unprecedented in Michigan takings jurisprudence.” It “rewrote the state’s constitution and removed the power of the legislature to meet the economic necessities of the people of Michigan.” The Court “wrongfully overturned *Poletown*” and “imposed an economic ideology on the state legislature and the people of Michigan” in a way that “will potentially have a crippling effect on the city of Detroit to rebuild.”<sup>40</sup>

The early twenty-first century saw a surprising reassertion of the Lockean, founding-era view of property rights being anterior to government, which is instituted primarily to protect property rights.<sup>41</sup> In some cases, this principle could be taken to violent extremes. In 2003, for example, Steven Bixby, a New Hampshire native, asserting the state motto of “live free or die,” and claiming to exercise the “right to revolution,” killed two police officers who attempted to take his South Carolina property for a highway-widening project. He was ultimately condemned to death.<sup>42</sup>

## FOOTNOTES

1. Wylie, *Poletown: Community Betrayed* (Urbana: Univ of Ill Press, 1989).
2. Conot, *American Odyssey, A History of a Great City* (Wayne State Univ Press, 1986).
3. Moreno, *Black Americans and Organized Labor: A New History* (Baton Rouge: Louisiana State Univ Press, 2006), pp 276–278.
4. Conot, *American Odyssey*, *supra*.
5. Wylie, *Poletown*, *supra* at 23.
6. Lewis, *Corporate prerogative, “public use” and a people’s plight: Poletown Neighborhood Council v City of Detroit*, Det C L R 909 (1982).
7. Darden, Hill, Thomas and Thomas, *Detroit: Race and Uneven Development* (Temple Univ Press, 1987).
8. Nolan, *Auto Plant vs. Neighborhood: The Poletown Battle*, Detroit News, January 27, 2000. He also called Nader a “carpetbagger.”
9. Wylie, *Poletown*, *supra* at 84–109, 125–30; *Poletown Neighborhood Council v City of Detroit*, 410 Mich 616, 658–659; 304 NW2d 455 (1981).
10. *Calder v Bull*, 3 US 386, 388; 1 L Ed 648 (1798).
11. *Ryerson v Brown*, 35 Mich 332 (1877); Main, *How Eminent Domain Ran Amok: Kelo and the Debate over Economic Development Takings*, Policy Review 133 (October/November 2005).
12. Ely, Jr, *Thomas Cooley, “public use,” and new direction in takings jurisprudence*, Mich St L R 847 (2004).
13. Lewis, *Corporate Prerogative*, *supra* at 916.
14. See, e.g., Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York: Knopf, 1974).
15. Wylie, *Poletown*, *supra* at 19–20.
16. Schwartz, *The New Dealers: Power Politics in the Age of Roosevelt* (New York: Knopf, 1993).
17. Ely, *Thomas Cooley*, *supra* at 852; *US v Carolene Products*, 304 US 144, 152; 58 S Ct 778; 82 L Ed 1234 (1938).
18. Wylie, *Poletown*, *supra* at 117.
19. *Poletown Neighborhood Council v City of Detroit*, *supra* at 630, 633–634.
20. *Id.* at 639, 642–43.
21. Roger F. Lane, interview with James J. Ryan, November 13–15, 1990.
22. *Poletown*, *supra* at 646, 653, 657, 681.
23. Lewis, *Corporate Prerogative*, *supra* at 909.
24. Main, *How Eminent Domain Ran Amok*; Ely, *Thomas Cooley*, *supra* at 851–53; Wylie, *Poletown*, *supra* at 132, 137, 215; Roger F. Lane, interview, *supra*.
25. Main, *How Eminent Domain Ran Amok*, *supra*.
26. See especially, Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge: Harvard Univ Press, 1985).
27. Jacobs, *The Death and Life of Great American Cities* (New York: Modern Library, 1993 [1961]).
28. Roger F. Lane, interview with Thomas G. Kavanagh, November 19–20, 1990.
29. Kelly, Harbison, & Belz, *The American Constitution: Its Origins and Development*, 7th ed (New York: W. W. Norton, 1991), pp 747–748; *Lucas v South Carolina Coastal Council*, 505 US 1003; 112 S Ct 2886; 120 L Ed 2d 798 (1992); Ely, *Thomas Cooley*, *supra* at 853.
30. *County of Wayne v Hathcock et al.*, 471 Mich 445; 684 NW2d 765 (2004).
31. *Id.* at 450.
32. Kelly, Harbison, & Belz, *The American Constitution*, *supra* at 754–767.
33. *County of Wayne v Hathcock*, *supra* at 473–477, 479, 483.
34. *Id.* at 486, 501. Justice Cavanagh dissented from the retroactive application of the Court’s decision. The county had proceeded on the basis of the *Poletown* precedent, and should not be punished for following the Court’s misreading of the Constitution.
35. Somin, *Overcoming Poletown*, Mich St L R 1005 (2004); Mossloff, *The death of Poletown*, Mich St L R 837 (2004).
36. *Kelo v New London*, 545 US 469; 125 S Ct 2655; 162 L Ed 2d 439 (2005).
37. *Id.* at n 22. “We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose ‘public use’ requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law.”
38. Pristin, *Voters Back Limits on Eminent Domain*, New York Times, November 15, 2006, p 6.
39. *Id.*
40. Mogk, *Eminent domain and the “public use”: Michigan Supreme Court legislates an unprecedented overruling of Poletown in County of Wayne v Hathcock*, 51 Wayne L R 1332 (2005).
41. Epstein, *How Progressives Rewrote the Constitution* (Chicago: Univ of Chicago Press, 2005), p 126. Locke defined “property” as more than just “real and personal estate.” “Property” was anything that a person had a right to—one’s opinions, religious beliefs, talents, and abilities, for example, as well as one’s material possessions. See also Madison, “Property,” in *The Founders’ Constitution*, ed Kurland & Lerner (Indianapolis: Liberty Fund, 1987), p 598.
42. Nossiter, *An Outsider’s Murder Trial Shakes a Southern Town*, New York Times, February 15, 2007, p 20; *Death Penalty in Slayings of Two Law Officers*, Los Angeles Times, February 22, 2007, p 10.

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