

Eminent Domain and the Public Good: The Poletown Case Revisited

John Critchett*, Ph.D., Donald Conrad#, J.D.

*Professor of Accounting & Finance, School of Business, Madonna University

#Attorney, Donald R. Conrad Law Offices, PLC

Abstract: In this paper we briefly trace the history of eminent domain law in the U.S, including the 2005 U.S. Supreme Court decision in *Kelo v. City of New London*, which allowed property to be condemned for the purpose of building a research facility for the Pfizer Corporation. We review the use of the terms “public use” and “public purpose” in precedent cases, and propose that they can lead to different legal outcomes. We specifically re-examine the 1981 Michigan Supreme Court decision that allowed a 465 acre area in the heart of Detroit known as “Poletown” to be condemned for the purpose of building a General Motors plant which promised thousands of jobs during a time of economic turmoil for Detroit and surrounding communities. Many residents came together to form the Poletown Neighborhood Council (PNC) to oppose the condemnation and destruction of their homes and community, but they did not have adequate bargaining power and resources to prevail against the economic interests of General Motors and the cities of Detroit and Hamtramck. The resulting condemnation of hundreds of homes, businesses, and a fifty year old Catholic church has been cited as a textbook case of social injustice. In 2004, the Michigan Supreme Court reversed its earlier Poletown decision and, in 2016, Michigan voters passed Proposition 4, which placed significant restrictions on future eminent domain actions in Michigan. We examine the question of whether the economic interests of a corporation can represent the public “good” and propose some factors that future courts should consider in eminent domain cases. Among these are the social and psychological costs associated with these actions, and the intangible social value of neighborhoods and communities.

Introduction

The fifth amendment to the U.S. Constitution states “...nor shall private property be taken for public use, without just compensation. This single phrase creates two separate legal issues relevant to eminent domain cases: the idea that “public use” is required for judicial taking of property, and the separate issue of compensation to the property owner. As discussed later in this paper, for a number of years, several courts and legislatures interpreted “public use” in terms of “public purpose.” In the wake of the 2005 *Kelo* decision, a large number of state legislatures enacted statutes that limited the ability of government units to employ eminent domain purely for the benefit of private development interests. In this way, they returned to a more literal interpretation of the term “public use.”

In the early 1980s, however, many courts and legislatures, including those in Michigan, followed a broad interpretation of the term “public use.” In this paper, we specifically examine the 1981 *Poletown* decision that allowed the Cities of Detroit and Hamtramck to condemn a viable neighborhood that occupied 465 acres of land in order for General Motors Corporation to build a Cadillac plant. We use *Poletown* as a cautionary tale to illustrate what can occur when governments take a broad view of the fifth amendment provisions regarding eminent domain. Using *Poletown* as an example, we develop some recommendations for future courts and legislatures to consider when debating the merits and proper outcomes for eminent domain cases. We begin by briefly reviewing the history of eminent domain practices and rulings in the U.S.

Legal History of Eminent Domain

In the 19th and early 20th centuries, eminent domain was employed primarily for the purpose of building roads, bridges, railroad tracks, and gristmills. In the case of roads and bridges, there was no question that the public could actually *use* them. Public use of railroads and gristmills was clearly less direct, but even in these cases, courts were careful to weigh the *necessity* of the proposed project, and also the benefits to the public. For example, the Michigan Supreme court ruled in 1852 in *Swan v. Williams*¹ that land could be condemned for the purpose of constructing railroad tracks. One of the most respected jurists of his day, Michigan Supreme Court Justice Thomas Cooley wrote the opinion in *Ryerson v. Brown* (1877),² which ruled against the condemnation of land for the purpose of constructing a gristmill. A number of states had passed “Mill Acts” which allowed upstream land to be condemned to allow gristmills to use the downward flowing water as a power source. Justice Cooley noted that changes in technology were allowing steam powered mills (which did not need to be located on rivers) to replace water powered mills. As a result, “necessity of the extreme sort” was not present in this case, and the land condemnation was disallowed. This same phrase was cited by Michigan Supreme Court Justice James Ryan in his dissenting opinion in the *Poletown* case.³ Justice Ryan did not view the construction of a Cadillac plant as an “extreme necessity.”

¹*Swan v. Williams*. 2 Mich. 427 (1852).

²*Ryerson v. Brown*. 35 Mich. 333 (1877).

³*Poletown Neighborhood Council v. City of Detroit*. 410 Mich. 616, 304 N.W.2d 455 (1981).

After World War II, courts and legislatures began using eminent domain for urban redevelopment by clearing “blighted” areas. The justification cited was public “health and safety.” The most famous case involving urban redevelopment during this time period was *Berman v. Parker* (1954).⁴ In this case, land that was considered a “slum area” was condemned for the purpose of redevelopment by a private development company, despite the fact that there was a viable department store that would be razed as part of the condemnation process. Later in this paper, the authors acknowledge that condemnation of property whose current use poses a genuine public health and safety issue is a legitimate exercise of the government’s eminent domain powers. Whether in the *Berman* case the area was truly blighted is a matter of debate.

In the 1981 *Poletown Neighborhood Council v. City of Detroit* decision, which will be discussed in detail in the next sections, the Michigan Supreme Court decided in a 5-2 ruling that the economic situation in Detroit was sufficiently dire that the eminent domain authority should preempt the property rights of citizens that were unwilling to sell their homes voluntarily. It should be noted that many Poletown residents and some businesses *were* willing to sell their properties voluntarily after being promised greater than market value compensation. The average Poletown homeowner was paid about \$13,000 for his/her home, but this amount was considered to exceed the market value at the time in an economically

⁴*Berman v. Parker*. 348 U.S. 26 (1954).

depressed area.⁵ As noted earlier, Justice James Ryan wrote one of the two dissenting opinions which was later cited in the 2004 *County of Wayne v. Hathcock* case.⁶

In 2005, in *Kelo v. City of New London*,⁷ the United States Supreme Court cited *Berman* in support of its conclusion that the City of New London, Connecticut could seize land, including a modest home owned by Suzette Kelo, for private redevelopment, principally for a research facility for the pharmaceutical giant Pfizer Corporation. As was the case with General Motors in 1981, thousands of new jobs were promised by Pfizer. The land was condemned and Suzette Kelo lost her home, but Pfizer later backed out of the project, and the land sat vacant for many years. In the wake of *Kelo*, dozens of states, including Michigan, Arizona, and Minnesota, passed legislation restricting seizures of land for private redevelopment.

In 2004, before *Kelo*, the Michigan Supreme court had already overturned the *Poletown* decision in *County of Wayne v. Hathcock* by concluding that transfer of private property from one private use to another private use does not constitute a “public use” as defined under earlier case law. In the *Hathcock* case, land adjacent to the Detroit-Wayne County Metropolitan airport was sought for the purpose of building an office park. The court noted that office parks can be built in virtually any location, and that government intervention was

⁵Jenny Nolan, “Auto plant vs. neighborhood: The Poletown battle,” *Detroit News*, January 26, 2000.

⁶*County of Wayne v. Hathcock*. 471 Mich. 445 (2004).

⁷*Kelo v. City of New London*. 545 U.S. 469 (2005).

not required to acquire suitable land for such a purpose. This was essentially the same argument used in *Ryerson* with respect to the location of grist mills. In 2006, the voters of Michigan passed Proposition 4, an amendment to the Michigan Constitution which placed substantial limits on the use of eminent domain authority to transfer property from one private use to another. In the following sections, we will examine the facts behind the *Poletown* case, and the various competing interests. We will conclude by considering lessons learned, and by providing our own recommendations for future courts and legislatures.

Poletown and Beyond

In the Spring and Summer of 1981, a drama played out in a working class, ethnically diverse community that straddled the cities of Detroit and Hamtramck, affectionately called “Poletown” due to the large number of residents of Polish heritage. In June of 1980, Detroit mayor Coleman Young and GM Chairman Thomas Murphy announced that GM would build a Cadillac plant in an area of Poletown then partly occupied by the Dodge Main plant which had been recently closed as part of Chrysler Corporation’s bankruptcy reorganization. GM set a May 31st, 1981 deadline for all necessary approvals, or it threatened to build the plant in another state. The cities of Detroit and Hamtramck (where some of the land was located) would have to condemn the land through eminent domain. Their cause was made easier by a 1980 Michigan law (the Uniform Condemnation Act) which allowed land to be condemned for a “public purpose” rather than for a “public use.”

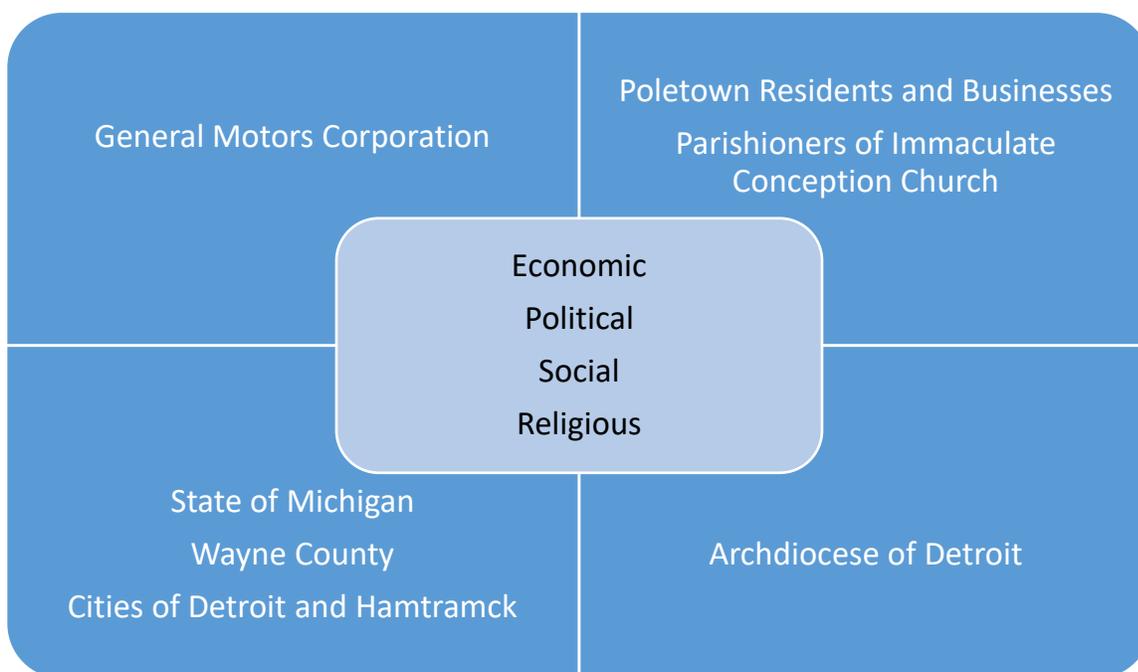
When GM detailed its plan for the plant and its facilities, it became apparent that it was interested in a much larger parcel of land than was occupied by the Dodge Main plant. GM planned to build ground level (not structured) parking lots, and allocate land for open spaces

and rail lines. The plan called for 465 acres north of the I-94 expressway, a neighborhood known as Poletown. This area contained 1,400 homes, dozens of businesses, a hospital, and a 50 year old Catholic church, whose parishioners would become “ground-zero” for the fight to save the area from condemnation. A number of residents formed the “Poletown Neighborhood Council” (PNC) to oppose the condemnation and destruction of their homes and community, but they did not have adequate bargaining power and resources to prevail against the economic interests of General Motors and the cities of Detroit and Hamtramck. As noted earlier, these citizens did not necessarily represent a majority of the residents, as many homeowners were satisfied with the above market compensation which they were being offered.

Unsuccessful legal actions beginning with the City of Detroit and Wayne County culminated in the March 1981 Michigan Supreme Court decision in favor of the eminent domain action. Subsequent legal actions in federal courts and presentations before the Detroit City Council also failed to stop the condemnation. As a mitigating strategy, the Council tried to bargain with the City and GM to reduce the acreage for the plant, but these efforts were rebuffed. A Washington D.C. architect retained by the Council drew up plans that would reduce the plant area by 165 acres by replacing surface lots with parking structures and reducing landscaping, but GM insisted that its original plan be followed. During the fall of 1981, hundreds of buildings and structures in Poletown were razed, and the land was readied for construction. In an ironic twist to the story, actual plant construction was delayed by two years, and the plant did not actually open until early 1985. Today the plant produces Cadillac, Buick, and Chevrolet vehicles.

The definitive book on the Poletown saga was written in 1989 by journalist Jeanie Wylie. She gave it the title *Poletown: Community Betrayed*.⁸ It tells the personal stories of many of the residents and parishioners who struggled to save their community. She was also involved in the production of a 1983 documentary film entitled *Poletown Lives*. Jeanie Wylie-Kellermann died on December 31st, 2005 after a battle with brain cancer. The next sections of the paper examine in more detail the economic, political, social, and religious interests of each of the competing “factions” which are identified in Figure 1.

Figure 1: Poletown stakeholders and their interests



⁸Jeanie Wylie, *Poletown: Community Betrayed* (Urbana: University of Illinois Press, 1989).

General Motors

In 1980, GM reported its first net loss since 1921 (Wylie, 1989). All three of the major auto companies were losing market share to Japanese auto manufacturers who were producing higher quality, more fuel efficient vehicles. GM threatened to close two existing plants in Detroit which, together, employed 15,000 people, and to make investments in production facilities in Mexico. It also threatened to locate the proposed plant out-of-state if all of the necessary approvals were not obtained before May 1st, 1981. Southeastern Michigan was in a severe economic recession, with the unemployment rate in Detroit around 15%. GM correctly reasoned that it was in an excellent bargaining position. In fact, Detroit mayor Coleman Young and governor William Milliken quickly became strong supporters of GM's plant proposal. The company also obtained the support of the UAW and, for the most part, that of the City's two leading newspapers, *The Detroit News* and *The Detroit Free Press*. The two newspapers did run some personal interest stories that highlighted the plight of elderly residents who had lived in Poletown all of their lives, and for whom a forced eviction would pose a real hardship. But the tone of the editorials usually returned to the same argument: that the relocation of the residents and businesses in Poletown was necessary to ensure the construction of a plant which promised up to 6,000 jobs.

Government Units

From the outset of the Poletown saga, the greatest source of political support for the proposed plant came from the mayor of Detroit, Coleman Young. He argued that Detroit was in a crisis situation, economically, and that the City had no choice but to support the project. In

effect, he invoked a utilitarian argument: that the project would provide the greatest good for the greatest number of people. Jeanie Wylie pointed out a number of ironies associated with the mayor's strong support of the project. Coleman young's father, William, owned a dry cleaning shop in an area of Detroit known as "Black Bottom" for its predominantly African-American population. In the 1950's, his shop was condemned as part of an eminent domain action to allow the construction of the I-94 expressway (the same expressway that formed the Southeastern border of Poletown in 1981). The mayor was already an adult at this time, so he did not personally experience having a home condemned, but it must have had an impact on his aging father. A second irony associated with the mayor was that his early political career was as a union organizer and civil-rights activist. In addition to its residents of Polish heritage, the Poletown neighborhood including a substantial number of African-American residents who would be forced to relocate if the GM plant was constructed. More than one of these residents publicly questioned the mayor's loyalties to the African-American community in Detroit.

In addition to the mayor, the governor of Michigan, William Milliken, and the State's two U.S. Senators, Carl Levin and Donald Riegle, also supported the project. The political affiliations of these four individuals created an interesting mix: William Milliken was a Republican, and the other three individuals were considered "liberal" Democrats. Jeanie Wylie pointed out in her book that the concept of eminent domain is not strictly a conservative or "liberal" idea and, thus, it should not be surprising that support for GM's project could come from both sides of the political aisle. Left-of-center political doctrine generally supports the ability of governments to limit the exercise of private property rights when the exercise of those rights conflicts with a greater societal interest. The jobs promised by the new GM plant

were considered to represent a greater societal interest. On the other hand, the new plant would be private property, and would be physically unavailable for “use” by the residents whose own private property would be condemned. Right-of-center political doctrine generally supports “pro-business,” “pro-growth” policies that were represented by the proposed plant. Figure 2 illustrates the conflicting political theories that cross party lines, and which could result in bipartisan support for an eminent domain action.

Figure 2

	Arguments in Support of Eminent Domain Actions	Arguments in Opposition to Eminent Domain Actions
Conservative	<ul style="list-style-type: none"> • Encourage business growth and development 	<ul style="list-style-type: none"> • Private property rights are violated
Liberal	<ul style="list-style-type: none"> • Encourage government actions in support of the greater good 	<ul style="list-style-type: none"> • Rights of lower-income and minority populations are violated

Residents and Parishioners

Many of the residents of Poletown were elderly couples who had lived in the immediate area for their entire adult lives. They were conservative and patriotic. Their fathers and grandfathers had fought in both world wars. They were hard-working union members, many of whom had worked for GM at other plant locations. The area had declined, economically, over the previous decade, but the residents took great pride in their homes and businesses, and they were well-maintained. More importantly, the neighborhood was a socially cohesive unit. The older residents of Polish descent had good relationships with their African-American neighbors. There were also viable businesses in the area, including St. Joseph Hospital.

The residents worshipped at several churches, including three that were Catholic. One of these churches, St. Hyacinth, was located to the south of I-94 and, therefore, was not part of the condemned area. It is still an active church today in an area now known as "Poletown East." Of the remaining two, the largest, with the most active congregation, was Immaculate Conception Church. Construction of the church was completed in the early 1930s, and it featured ornate interior design and a number of valuable religious relics and artifacts. Though their numbers had dwindled in recent years with migration to the suburbs, the parishioners were deeply committed to the physical structure and presence of this church, and to its priest, Father Joseph Karasiewicz. Father Karasiewicz strongly disagreed with the decision of the Archdiocese of Detroit to sell the church property to the City of Detroit for \$2.8 million. He had tried to intercede with Cardinal John Dearden on behalf of his parishioners to save the church, but was told that the decision, however painful, was necessary, and that the Archdiocese would do everything possible to re-locate the parishioners to other churches. Father Karasiewicz did

not accept this decision. As the date for demolition approached, he participated in a 29-day sit-in at the church, along with several of his parishioners, and a member of Ralph Nader's legal team, which had been providing legal assistance to oppose the condemnation plan. On July 15th, 1981, a Detroit Police Department SWAT team forcibly removed the remaining individuals from the building, and the demolition process began shortly thereafter. While on temporary reassignment to another church, Father Karasiewicz died from a heart attack on December 14th.

Archdiocese of Detroit

The Archdiocese was in a difficult situation. In the spring of 1981, Cardinal Dearden had determined that politically and legally, condemnation of the Poletown area seemed inevitable. At the same time, the Catholic churches in the area had been steadily losing parishioners as the migration to the suburbs that began in the 1950's continued unabated. The average weekly attendance for services at Immaculate Conception church was around 30 parishioners.⁹ Cardinal Dearden made the difficult decision to sell church properties in the affected area to the city of Detroit for \$2.8 million. These funds could be used to support the mission of the church in other ways. Shortly after the demolition of the church, Archbishop Edmund Szoka took over the leadership of the Archdiocese. Archbishop Szoka's parents had emigrated to the U.S. from Poland, so he was well aware of the deep loyalty which the parishioners of

⁹Jenny Nolan, "Auto plant vs. neighborhood: The Poletown battle," *Detroit News*, January 26, 2000.

Immaculate Conception had for their church. He officiated at the funeral for Father Karasiewicz, and was named a Cardinal in 1988.

Looking back with the hindsight of 37 years, we can ask whether the Detroit-Hamtramck Assembly Center was a good “investment” for the City of Detroit. John Mogk, a professor at Wayne State University Law School, has studied the use of eminent domain in the Detroit area, and he has argued strongly that the plant has provided substantial economic benefits. In addition to the wages and salaries of the workers, the plant supports other businesses, including suppliers, which multiply the overall economic impact. He points out that the plant is one of only two remaining auto plants in the city, the other being the Chrysler Jefferson Avenue Assembly Plant, also built over 30 years ago.¹⁰

Corporations and the Public Good

In the aftermath of Poletown, employment levels at the Detroit-Hamtramck Assembly Center have been up and down, with frequent layoffs and temporary shutdowns, as consumer demand has shifted from the smaller, fuel efficient vehicles demanded in the early 1980s to larger SUVs that are more popular today. The plant currently employs around 1,600 hourly and 200 salaried workers (media.gm.com). At no time has the plant employed the 6,000 workers which were originally promised by GM. In addition to the out-of-pocket cost to the City of Detroit for purchasing the condemned properties, the Detroit City Council approved a 12 year

¹⁰John Mogk, “Mogk: Why Detroit needs eminent domain,” *Detroit News*, January 14, 2015.

50% property tax abatement for the new plant in 1981. In 2009, GM filed for bankruptcy, and went through a painful reorganization process that was financially assisted by the federal government.

A legitimate question should be asked by all courts considering the merits of an eminent domain action: can a corporation and its economic interests represent the “public good?” As noted in the review of Eminent Domain law, courts and legislatures have swung back and forth between the concepts of “public use” and “public purpose.” The 5th amendment to the U.S. Constitution states “...nor shall private property be taken for public use, without just compensation.” In early U.S. court cases, roads, bridges, canals, and railroad tracks were considered to have a “public use.” As statutes and case law evolved, the term “public purpose” was used to justify the taking of property for commercial ventures, particularly in the case of economically “blighted areas.” This was the situation in the 1954 *Berman v. Parker* decision. In the wake of the 2005 *Kelo* decision, many states re-examined the wisdom and equity of taking private property for commercial development. According to the National Conference of State Legislatures (ncsl.org), 42 states enacted legislation between 2005-2011 to more narrowly define the circumstances under which a governmental unit can exercise eminent domain authority. Essentially, these states moved closer to a “public use” criterion, and away from “public purpose.”

The authors of this paper would like to argue that the movement toward a “public use” criterion is a necessary step toward equity and social justice. Any business (including large corporations like GM and Pfizer) can provide economic benefits to a community. Thus, in an abstract sense, they provide a “public good.” The legal issue, however, is whether government

units should have the authority to coerce the sale of private property in anticipation of this “public good” based on promises made by a private company. We support an approach based on the *Ryerson* case. Under this approach, property should not be transferred from one private use to another, unless a public “necessity” can be demonstrated. We do acknowledge that public health and safety would constitute a “necessity.” The term “public use” should also mean that the public has a legal right to “use” the property (or at a minimum, derive direct benefits from it) after it has been reconstituted. This was always true of roads, bridges, tunnels, and parks and greenspaces. It is certainly not true in the case of commercial development such as a GM or Pfizer facility. As Justice Ryan noted in his *Poletown* dissent, public use should also involve some governmental oversight. A city park, for example, would be maintained by a city, and patrolled by city police.

A related issue which has been very difficult for states and legislatures to deal with is the process and method of weighing the overall costs and benefits to all stakeholders of forcibly converting property from an existing use to a new one. Assume, for example, that a city decides to build a park in an area that is currently being occupied by 25 modest residential homes. The homeowners may be adequately compensated for the market value of their homes, but they are not necessarily being made “whole” in a broader sense. Suppose, for example, that the homeowners are elderly individuals who will not be using the park. They may take brief daily walks, but the existing sidewalks in their neighborhood are sufficient for this purpose. In fact, they may have to relocate several miles away from the park, so they may not be able to use it, even if they so desired. The benefits of the park will, therefore, accrue to *other* stakeholders. In addition to not gaining significant benefits from the park, the residents

may *lose* social benefits as neighbors and friends who live in the immediate area are forced to disperse. It is difficult to assign a monetary value to the social benefits of neighborhoods and communities, as these benefits are intangible.

In financial accounting, an intangible asset called “Goodwill” is created when one company purchases another company, and the purchase price exceeds the fair value (market value) of the purchased company’s net assets. The Goodwill is simply the difference between the purchase price and the fair value of the net assets. In this situation, the purchase price is determined through bargaining by the two companies in an “arms-length” transaction. The economic value of the Goodwill represents intangibles like the human capital of the employees, and the reputation of the firm for high quality goods and services. The presumption is that both parties have a high level of business sophistication, and can arrive at a “fair” price.

Most of the economic theory which has been applied to eminent domain involves whether or not the same type of “bargaining” by the affected parties will provide an optimal or sub-optimal result. Miceli (2011) argues, for example, that property owners may have the ability to bargain for higher than market-value compensation. He calls this the “holdout problem.” In order to achieve this result, however, the property owners would need to possess a certain level of sophistication and knowledge regarding the workings of real estate markets, and also the financial resources to retain effective attorneys. In the case of the Poletown situation, the residents lacked both of these prerequisites.

There is also a practical problem associated with market value compensation in eminent domain cases. Frequently, the affected neighborhood is in an economically distressed area. In this situation, market values of property will also be distressed. Presumably, the expectation

would be that residents would use the compensation for their homes to move to “better” neighborhoods. The obvious problem is that market prices for comparable homes in these new neighborhoods would be higher than the compensation received from the homes that would be seized. This was the case with many of the Poletown residents who did move to suburbs of Detroit. Retired couples had to take on new mortgages or dip into their retirement savings to be able to afford the new homes.

Providing greater than market value compensation to homeowners will reduce the incentives for private developers and government units to pursue an eminent domain action. Michigan’s Proposition 4 provides for 125% of market value to be paid in the case where a principal residence is taken. However, even Proposition 4 does not attempt to consider the economic value of a neighborhood or community. Homeowners bargaining as individual agents cannot assign an economic value to a neighborhood. We propose that courts should consider whether viable neighborhoods will be destroyed as a result of an eminent domain action when determining if an eminent domain action is “necessary.” We also suggest that courts look at socio-economic factors. In both the Poletown and Kelo cases, the affected neighborhoods were in working class areas with sizable minority populations. These are the populations which are least likely to be able to afford competent legal counsel, and least able to be successful at the bargaining processes which are championed by economic theory.

A final consideration involves the possible psychological impacts on homeowners whose homes have “sentimental value.” Nicole Garnett (2006) has identified what she terms “dignitary harms” associated with property takings. Private homes are not simply economic assets. There is a pride of ownership or “endowment effect” that cannot be quantified.

Children are raised in homes, and their memories as well as those of their parents are inextricably linked to the physical dwelling. One of the reasons that the parishioners of Immaculate Conception Church fought so hard to preserve their church was because they were married there, and their children were baptised there. Moving to another church would allow them to continue worshipping on Sunday, but the physical presence of their former church would be destroyed forever. We believe that courts should take into consideration the *type* of property that would be subject to an eminent domain action and whether any “dignitary harms” might result from condemnation. Courts are in the habit of weighing the relative strength of arguments and of facts and evidence. We believe that they are also best suited to factor intangibles like neighborhoods and types of property into their decisions.

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