

Because We Can Doesn't Mean We Should and if We Do: Urban Communities, Social and Economic Justice, and Local Economic-Development-Driven Eminent Domain Practices

Economic Development Quarterly
2015, Vol. 29(3) 245–261
© The Author(s) 2015
Reprints and permissions:
sagepub.com/journalsPermissions.nav
DOI: 10.1177/0891242415575423
edq.sagepub.com


Kirk E. Harris¹

Abstract

One powerful expression of the neoliberal orthodoxy within economic development practice in the United States has been local governments' use of economic-development-driven eminent domain. However, the presumed benefits but not the actual harm of the eminent domain actions typically eludes the working-class and low-income segments of the community that often shoulder the greatest consequences of the action. Municipal governments must be much more exacting, deliberative, and strategic in ensuring there is an obvious and direct connection between the potential economic development opportunities leveraged by eminent domain practices and the benefits, opportunities, and resources that the community derives from those transactions of local government. Thoughtfully and strategically designed and executed Community Benefit Agreements have tremendous potential to afford working-class and low-income residents, as well other city residents, a chance for more equitable and democratic results than they frequently experience under existing economic-development-driven eminent domain practice.

Keywords

urban planning, land use law, economic development, neoliberalism, eminent domain, social and economic justice, Community Benefit Agreements (CBAs)

Municipalities are granted broad police powers to promote land use and zoning outcomes, though these must meet the constitutional litmus test of serving the “public interest.” Those of us in academia and in professional practice within the fields of urban planning and community and economic development, as well as the public-at-large, have struggled mightily with the concepts of *public use*, *public interest*, and the *public good*. Local municipal governments have similarly struggled with ideas of advancing the public good. They have also experienced the challenges of heightened public concern when implementing economic-development-driven eminent domain strategies. The nagging questions are which public, whose interests, and how do we define the public good in the context of economic-development-driven eminent domain practice?

In the earlier part of the 20th century, the courts were inconsistent and uncertain in the application of their standard of review in eminent domain cases (Kotlyarevskaya, 2005). In the absence of fraud and/or bad faith, courts have generally been slow to second-guess municipal governmental decision makers as to whether the public interest is being served; however, that deference was not uniform. Early in

the development of eminent domain jurisprudence, the courts' lack of uniformity resulted from the emerging interpretation of the requirement of public use under the taking clause of the constitution. In that context, the appropriateness of eminent domain actions was subject to an evolving judicial and policy dialogue within an expanding and increasingly industrial economic landscape. The essential legal question embedded in the evolutionary history of eminent domain taking is whether the public interest is advanced and maintained under the public use provision of the taking clause of the constitution.

The 1954 Supreme Court case of *Berman v. Parker*, 348 U.S. 26 (1954) clarified the rule of law related to governmental action in eminent domain cases and solidified the concept of the *public purpose* doctrine. Under this concept,

¹University of Wisconsin-Milwaukee, WI, USA

Corresponding Author:

Kirk E. Harris, Department of Urban Planning, School of Architecture and Urban Planning, University of Wisconsin-Milwaukee, 2131 E Hartford Avenue, Milwaukee, WI 53201-0413, USA.
Email: keharris@uwm.edu

urban settlements identified as blighted properties could be taken from one set of property owners and transferred to another set of private persons or to a private entity as long as a legitimate public purpose is served. *Berman* revealed the Supreme Court's sentiment on governmental action and the exercise of eminent domain, ultimately giving deference to municipalities and state legislatures in interpreting the meaning of public use. *Berman* is particularly notable because the property being subject to the eminent domain process in that case could not be characterized as blighted or as a slum (Jennings & Jordan-Zachery, 2010). The plaintiff, Sam Berman, was seeking to preserve his predominately African American mixed-income community, which possessed a viable neighborhood department store and a host of small businesses. Mr. Berman lost his struggle to save his community. The District of Columbia Redevelopment Land Agency and the National Capital Planning Commission were successful in their efforts to get the court to sanction their dismantling of a community whose residents were 97.5% African American premised on claims of redevelopment. That redevelopment never materialized.¹ The result of *Berman* shows the stark contrast between the court's sanction of municipal authority to exercise its eminent domain power to advance a presumably public purpose and the decidedly inequitable outcome for Mr. Berman's community.

Eminent domain differs in comparison with other commonly recognized development tools—such as enterprise zones, tax increment financing (TIF) districts, and various tax incentive programs—where the cost and presumed benefits are more broadly spread across all citizens/taxpayers in the municipality. Eminent domain has the unique feature of targeting a particular segment of the municipality as the focus of its impact, most commonly a community.^{2,7} Eminent domain allows for a sudden and complete removal of existing urban forms, which are replaced with new forms and functions that bring about a complete spatial and physical reconfiguration of the urban fabric. The communities affected bear almost all of the direct and indirect costs of the eminent domain action, but they likely will not experience a benefit commensurate with the costs they bear. It is this feature that makes eminent domain inherently more likely to produce gross inequalities for some citizens while producing windfalls for others.

This study first seeks to examine how economic development practice and the deployment of eminent domain at the local level has too often compromised poor and working-class neighborhoods, a trend buttressed by a neoliberal ideology that is progrowth, development centric, and equity mitigating. Second, in the context of considering the economic development literature, I discuss whether the existing logic driving municipal economic development strategies makes sense given the past and present sets of experiences of local municipal governments and their communities. I highlight some historically important and nationally recognized

eminent domain cases in which the outcomes related to the exercise of eminent domain authority did not prove to substantially deliver the benefits claimed to be forthcoming. This was especially true for communities most affected by the eminent domain action. Next, I consider the Community Benefit Agreement (CBA) as a tool that must be further refined to be effectively deployed by local governments. Finally, I propose a more robust model for CBAs that advances an economic development practice that is more transparent and more participatory, and that assures benefits to the most highly affected communities while minimizing the impacts of displacement created by the eminent domain action.

Kelo: The Jurisprudence of Eminent Domain Remains Unchanged After a Half Century and Reinforces a Troublesome Practice

Kelo v. City of New London, 545 U.S. 469 (2005) is the Supreme Court's most recent affirmation and sanctioning of municipal governmental authority to exercise eminent domain for the "public purpose" of economic development. Yet as articulated in her comments as a part of her dissent in *Kelo*, Justice O'Connor argued that the exercise of municipal authority in the form of eminent domain has had its greatest negative impacts on low-income neighborhoods. In fact, there are numerous documented instances that memorialize the troublesome results of governmental action in the form of eminent domain. Furthermore, Justice Thomas pointed out the problem in the deployment of eminent domain for economic development purposes:

Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. (*Kelo v. City of New London*, 545 U.S. 469, 2005)

Kelo presented an opportunity for the court to reexamine the legitimacy of governmental authority in advancing economic-development-driven eminent domain practice. In no way parting from its earlier decision in *Berman*, in *Kelo*, the Supreme Court reaffirmed and essentially strengthened the legal nexus among governmental, quasi-governmental, and private entities to advance a progrowth economic development agenda. However, the policy maintained by *Kelo* was not fully embraced by individual private landowners or the public-at-large, who viewed the governmental action that precipitated *Kelo* as overreaching, destructive, and fundamentally unfair (Nadler & Diamond, 2008).

The crises that can be generated within communities by eminent domain practice stem from the confluence of

various business and corporate interests that have influence over government when it carries out its authority. Furthermore, eminent domain authority is frequently extended to quasi-governmental institutions with an evident bias toward business interests. Within this nexus of governmental, quasi-governmental, and business stakeholders, the core ideal of the use of eminent domain authority as a way to further the broader public good is subverted. Early researchers identified this tendency by describing a direct link between business elites and their support of specific political players who would advance a growth agenda as the key function of local governments (Logan & Molotch, 1987). As a result, municipal governments have increasingly shown a growth-focused development approach, which prioritizes the benefits and advantages of corporate interests rather than embracing a distributive and allocation-focused strategy. This approach leads to wealth and property transfers facilitated by certain municipal government practices—such as the exercise of eminent domain authority—that have often fueled growing economic and social disparities at the local level. In turn, this has resulted in communities being left on the fringe of economic development outcomes and has, in some instances, generated community opposition, thus placing the legitimacy of such governmental action in question (Mayer, 2007; Sandefur, 2006).

An understanding of the appropriateness of governmental action and its legitimacy emerges from three distinct vantage points: that of the general public, that of those citizens directly experiencing the impacts of the eminent domain action, and that in which judicial oversight defines and sanctions the formal legal context for municipal authority in eminent domain actions. Regarding the exercise of eminent domain authority, local governments must find a balance among these three often divergent vantage points to retain and preserve the legitimacy of such governmental action in economic-development-driven eminent domain practice.

The nexus realized among governmental, quasi-governmental, and private interests is manifest in the burgeoning and now broad acceptance of the neoliberal orthodoxy at the local level. This orthodoxy favors unfettered entrepreneurialism, unencumbered free markets, and individual private property rights over collective aspirations. Judicial sanctioning of increased discretion by municipal governments to determine the course of economic development via eminent domain has advanced as a powerful tool in local governments' economic development arsenal, one that can take absolute control over the "creative destruction" of land and land ownership interests at the local level (Brenner & Theodore, 2002, p. 15). In this context, market-driven determinants and competition are often presented by municipalities as the essential imperative underlying their economic development strategies that typically translate into incentive-rich competition-driven models of economic development that are very broadly articulated and carried out, but that are

not very discriminating. Such market-driven entrepreneurial logic emphasizes the notion that intensive growth and development patterns benefit the citizenry-at-large in a locality—typically by strengthening the local tax base, creating jobs, meeting local housing demand, and so on. This paradigm, however, ignores the distinction between use values and exchange values, and the fact that the benefits derived from the pursuit of exchange values by intensive development are unevenly distributed across the community (Logan & Molotch, 1987). In short, a local government's ability to strike a balance or tend to the interests of those disproportionately harmed by the eminent domain action is compromised. Some observers of municipal governments have characterized these progrowth tendencies as "shoot anything that flies; claim anything that falls" (Rubin, 1988, p. 237). This preoccupation with progrowth economic development strategies is essentially a result of the coalescing of various aspects of neoliberal ideology. Academicians have long deliberated on the evolution of the neoliberal paradigm, which developed as free markets were increasingly liberated from state regulation, although simultaneously requiring a restructured state mechanism that enforces market rule on all aspects of society (Brenner & Theodore, 2002).²

Challenges of Advancing Equity in Communities: Understanding the Market-Driven Tendencies of Municipal Economic Development as the Precursor for Economic-Development-Driven Eminent Domain

Fundamentally, the taking of private land by government is about the redistribution of resources within the context of serving a presumed public good. I argue that any such transfer should generate a greater level of equity and social and economic justice.

Government officials, corporate and business elites, private developers, and others with private land interests have been said to form a confluence of interests that intersect to form "growth coalitions" or "urban regimes" (Stone, 1989). To address perceived declines experienced by cities through the 1960s, municipal governments began to invoke urban renewal, slum clearance projects, and downtown expansion as central strategies to revitalize their cities. Over time, local governments intensified their deal-seeking behavior, and this tendency still drives municipalities to engage in entrepreneurial endeavors in which business attraction, land-based development projects, and competition with neighboring localities culminates in a capitalist frenzy in which "... urban areas become the arena in which property entrepreneurs use government and other civic institutions to maximize returns on their investments" (Molotch, 1988, p. 118). Fiscally-strapped localities must act to remain solvent and

viable in terms of their ability to meet growing service demands and support existing municipal operations. This prodevelopment agenda of local municipalities' cuts across political persuasions; even the most progressive urban governments cannot resist the path of urban entrepreneurialism that consequently increases disparities in wealth and income and limits community participation, even in cities that exhibit strong growth (Harvey, 1989; McGovern, 2013; Pagano & Bowman, 1995). The propensity of local government to adopt market-oriented entrepreneurialism has broadened since the 1980s, based on a fundamental belief that *if you don't compete, you can't win*. But the cost of engagement can be significant for the municipality and its residents. The economic competition may be tantamount to a race to the bottom³ for its low-income and working-class residents (McCarthy, 2007).

There has been a growing tendency for local governments to be indiscriminate in their selection and pursuit of development opportunities. Too often, municipalities have unquestioningly embraced the economic and spatial agendas put forward by quasi-governmental and corporate powers, and have legitimized unsubstantiated claims of economic improvements in the region (Jennings & Jordan-Zachery, 2010). Other observers of local economic development patterns, including Rubin (1988), suggest that what appears to be indiscriminate behavior by local governments with respect to the deployment of their economic development policies may simply be the manifestation of a neoliberal orthodoxy. This orthodoxy is deeply embedded in the local political processes and economies of municipalities, resulting in an unwavering commitment to corporate-centric economic development (Brenner & Theodore, 2002; Reese & Rosenfeld, 2001).

Conventional wisdom presupposes that economic development policy within municipalities is about maximizing economic outcomes for all. However, growing inequality at the local level has demonstrated that the conventional wisdom does not capture the complexity and nuances associated with local governmental actions related to economic development initiatives. The "revitalization" process often uses giveaways to private interests—such as tax abatements or relaxes zoning codes, among various other tools—that have now become the norm for local economic development practices (Hackworth, 2007). Despite the enormous expenditures of federal, state, and municipal tax dollars at the local level, existing empirical evidence provides no substantive proof that economic development incentives and subsidies promote economic growth (Jennings & Jordan-Zachery, 2010; Krumholz, 1999; Sagar, 2011).

Compounding the problem associated with local deployment of traditional economic development strategies has not only been the general failure to produce significant results but also the failure to fairly distribute any benefits derived from the deployment of those strategies (Krumholz, 1999). Economic development strategies typically focus on "trickle-down" benefits, where the continued and unobstructed

accumulation of wealth by a select group will, in theory, eventually filter down to low-income and working-class communities in the form of wages, but reality does not support this notion. Rather, traditional supply-side strategies function to move business activity and capital across geographic locations, increasing competition between cities and regions, and tend to mitigate job and tax base benefits for particular localities within a region (Reese, 1998).

There has been an ongoing critique of the disjuncture between the use of local economic development strategies and the delivery of benefits to localities and communities (Peters & Fisher, 2002, 2004; Weber, 2002b). Among these economic development strategies are tax abatements, TIF districts, and enterprise zones, all of which are common tools deployed by local governments in pursuit of economic development within cities (Peters & Fisher, 2002, 2004). Moreover, local economic development initiatives promote a functional reality wherein the benefits of local economic development tend to be "privatized," whereas the related risks of those initiatives are essentially "socialized," that is, borne by the local government (Barnekov & Rich, 1989, p. 220).

For at least two decades, academicians looking at economic development tools and strategies of local government have identified numerous problems associated with those tools and their promised outcomes. The burgeoning imperative of the neoliberal orthodoxy obscured the voices of concern regarding local governments' use of economic development tools and strategies. Data show that poor cities with the poorest citizens and highest rates of unemployment are the ones that direct capital into expensive economic development incentives, such as tax abatements to corporate interests, TIF districts, and direct loans to business groups, even though these incentives offer no guarantee of success (Rubin & Rubin, 1987; Wilder & Rubin, 1996). In a 2004 review of the academic literature assessing governmental economic development incentive programs that promise increased tax revenues, job growth, and employment opportunities for the working-class and disadvantaged population, Peters and Fisher (2004) stated:

It is possible that incentives do induce significant new growth, that the beneficiaries of that growth are mainly those who have greatest difficulty in the labor market, and that both states and local governments benefit fiscally from that growth. But after decades of policy experimentation and literally hundreds of scholarly studies, none of these claims is clearly substantiated. Indeed, . . . there is a good chance that all of these claims are false. (p. 35)

A recent study by Zheng and Warner (2010) found that governments that rely heavily on incentives tend to be confronted with intergovernmental competition and stagnating or declining economies with lower tax bases; that is, the offering of incentive programs contributes to a cycle of destructive competition.

There is minimal opposition to the trends of inequality and disparity fostered by traditional economic development strategies at any political level of significance. Fundamental to the neoliberal approach is the pursuit of a normalcy that constantly produces extreme conditions of poverty and homelessness, and then applying location-specific neoliberal strategies to obfuscate these tensions while impelling the ideal of “marketization” (Wilson, 2004, p. 772). State and local governments’ narrow policy focus on incentivizing capital investment schemes, economic growth, and security persistently ignores longstanding issues of racial inequality and social justice for all by placing municipal actions for poverty alleviation, distressed labor markets, and inadequate low-income housing outside the purview of the neoliberal state. Simultaneously, neoliberal urban redevelopment is reconstructed as an entrepreneurial and market-oriented scheme beneficial to “all” social groups, effectively nullifying the concerns about unresolved racial inequity and the absence of social justice for specific communities (Mele, 2013).

This phenomenon of failing to embrace community interests in favor of corporate interests is also advanced by a view of “community” as a barrier to city progress. As Shattschneider observed:

The struggle over deciding the “public good” pits people against each other, thus resulting in the creation of “enemies.” These are identifiable persons or stereotypes of persons to whom evil traits, or intentions can be attributed. [O]ften used to suggest that homeowners of economically challenged areas are enemies of not only the immediate area, but also of all surrounding areas. They are presented as backwards and picayune, and not caring about the future well being of the city.

The corporate players, however, are presented as visionaries and do-gooders and are not guided by sordid mercantile interests, but rather by the public interest. (Jennings & Jordan-Zachery, 2010, pp. 13-14).

There is consistent deployment of corporate-centered public-private development strategies, even in the absence of a plausible cost-benefit advantage to the municipalities and their working-class and low-income residents. These strategies promote a symbolic sense of progress that is compelling, politically expedient, and congruent with the entrenched neoliberal philosophy that has dominated local economic development activities, while foreclosing the possibilities of more redistributive development strategies (Ledebur & Woodward, 2003). The enduring question remains as to how to reconcile the legal sanctioning and legitimacy of economic development practice as well as the public perception of governmental legitimacy when the benefits of economic development practice are elusive and the impacts on communities are uneven and inequitable.

Some legal observers suggest that public-private development that has been the dominant model relied on by municipalities for more than a half century may in fact lessen the burden of local government in satisfying the due process requirements for the exercise of its power and authority by substituting the “profit-making” behavior of private actors as a proxy for their efforts to promote the “public good,” thus offering an alternative mechanism of legitimizing governmental action (McFarlane, 2007, p. 41). Moreover, there is a concern that by vesting public-private development entities that reside outside of traditional governmental structures with public authority, municipalities create limits on the transparency of decision making, and thus make accountability for decisions difficult, if not impossible. This lack of transparency operates to suppress or subvert democratic engagement and resistance to actions that may disproportionately affect segments of the municipality, its communities, or its neighborhoods. With little information flow about the related costs and benefits of the economic development strategies to be initiated, and a lack of information on the communities most deeply affected, the citizenry-at-large and those community residents most affected by the economic development decisions are intentionally left uninformed. The citizens/residents most affected by the economic development decisions often have little opportunity through democratic channels to participate in the decision-making process that is affecting their community. These communities most often have low-income and working-class residents who are frequently left with no options to challenge the course of action that has unilaterally sealed their community’s fate.

In the face of the aggressive, largely unresisted merging of the public/government interest with private/corporate interests, the notion of *public-private partnerships* is shifting to *private-public partnerships*, signaling the preeminence of market-driven, private-interest-oriented development initiatives (Sagalyn, 2007). Moreover, Rubin (1988) states, “. . . ‘bias’ is shown in a low key fashion. It is the sum of many small decisions rather than one or two dramatic capitulations through which the public sector tilts toward the business community” (p. 250). In the absence of effective public scrutiny and critique, the “unitary interest”⁴ of local government goes unchecked with respect to the deployment of public funds and resources. The role of municipal governments has transmuted from an overarching guidance of spatial, economic, and social order to a development pattern where all factors are subsidiary to economic development and the drive for economic growth, with its presumed result of the expansion of the municipal revenue base. This development paradigm insulates municipal governments from assuming responsibility for the rampant destruction of low-income and working-class neighborhoods and displacement of populations in the name of revenue generation (Jennings & Jordan-Zachery, 2010).

To preserve the critical function of local government to make decisions in terms of land use and taking, it is vital for government to act with a greater understanding of the implications of its actions and with a greater degree of precision and thought on how to create more equitable and sustainable community outcomes. When tempered with the criteria of equity and sustainability, economic development strategies will shield government from public protest resulting from what may be viewed as its arbitrary and reckless decision making.

Specific Community Experiences With Eminent Domain for Economic Development

For analytical purposes, one can examine governmental exercise of economic-development-driven eminent domain in three distinct periods of time. The first time period is the era between the *Berman* and *Kelo* rulings. The next period was that in which the Supreme Court reaffirmed its position on economic-development-driven eminent domain as manifest in *Kelo*. The third period is the post-*Kelo* era in which the orthodoxy of judicial opinion consistently upholds existing economic-development-driven eminent domain practices of local government, which has precipitated reactive legislative actions that are presumed to constrain municipal governmental authority. Table 1 describes high profile national examples of economic-development-driven eminent domain initiatives through these three eras, which represent approximately 60 years of local government and community experience with economic-development-driven eminent domain.

In reference to Table 1, Poletown, *Kelo*, and Atlantic Yards, respectively, provide historical markers for the three eras and provide us with important insight into the similarity and consistency of the troublesome attributes and outcomes of economic-development-driven eminent domain strategies at the local level. Based on a study of the features of each case, four areas of concern have been identified, all of which affect the regions where economic-development-driven eminent domain practices are pursued. The areas of concern include (a) the benefits issue (dealing with whether promised benefits from the development are actually realized), (b) the displacement issue (assessing if the region under development faces significant residential and/or business displacement resulting in a disruption of the community), (c) participation concerns (ensuring opportunities for communities most affected to have influence over the decision making in the development process), and (d) the problem of transparency (because of the absence of accountability on the part of the quasi-governmental agencies and private entities).

In each of the case studies, as observed in Table 1, there were large parcels of land at issue with respect to the eminent domain action: 465 acres in Poletown, Detroit (Wylie, 1989), 90 acres in Fort Trumbull, New London, CT (Cavanaugh, 2006), and 22 acres in Atlantic Yards, New York. The land

use characteristics of the parcels affected by the eminent domain action were residential and populated primarily by low-income and working-class communities, as well as some middle-class and mixed-use communities. All the initiatives had powerful corporate stakeholders at the table—like General Motors, Pfizer, and Forest City Ratner—who played a major role in establishing the priorities of the development process. Each development proposal vastly altered the land use of the area. In Poletown, the redevelopment built an automobile plant, whereas in Fort Trumbull, a business and office district were planned (Staley & Blair, 2005). Atlantic Yards created a mixed-use zone around a new office and sports complex (Alper, 2005). In Poletown and Fort Trumbull, there was essentially no community engagement in the planning and decision-making processes. Although the Atlantic Yards development had some community involvement, it was limited and highly prescribed despite a CBA being in place. The development was highly contested in that not all community stakeholders were involved in the CBA.

In each of the cases, the municipalities formed relationships between themselves and quasi-governmental entities, powerful private development actors, and corporate elites. These relationships leveraged considerable resources from the municipal, state, and federal governments with little or no security related to a return on governmental investment or assurance of specific and direct benefits to a broad set of community stakeholders, including those communities most affected by the development. Transparency was not sufficiently practiced in the aforementioned developments because specific information about the development process and priorities was not readily available to the public-at-large. Even in the Atlantic Yards development, where a CBA was present, the lack of transparency remained an issue because of the conflict of interest associated with the only community group involved in the CBA. Specifically, it also received funding from the developer, and as a result, the community group limited the information it shared with other community stakeholders.

In each instance, there was a major disruption of neighborhoods, a displacement of businesses, and a less than favorable impact on community and social institutions. Additionally, in both Poletown (Wylie, 1989) and Fort Trumbull, despite the development's destructive influences on residential housing, affordable housing was not contemplated in the scope of the project. For the Atlantic Yards development, the original commitment to the number of affordable housing units resulting from the development was curtailed and limited to a smaller component of the development (Bagli, 2011; Pratt Institute Center for Community and Environmental Development, 2005). The benefits promised in each case were not fully realized in terms of both the number and quality of jobs with long-term employment prospects. Only 1,400 of the 6,000 promised jobs in the Poletown development were realized (Wylie, 1989), no jobs at all were realized of the 4,000 or more jobs expected in the Fort Trumbull development

Table 1. Highlighting Nationally Recognized Community Experiences With Economic-Development-Driven Eminent Domain Practice From the Pre-Kelo, Kelo, and Post-Kelo Eras.

	Pre-Kelo	Kelo	Post-Kelo
	Poletown, Detroit, Michigan	Fort Trumbull, New London, Connecticut	Atlantic Yards, New York City
<i>Benefits issue</i>			
Have the promised benefits to city and community been delivered?			
Development status	GM factory built, but plant never achieved the capacity or jobs it promised	Land remains undeveloped	Under development Sports arena opened in 2012; scope and benefits of the project substantially scaled back
Jobs actualized	1,400 of the promised 6,000 were finally available	0	15,000 construction jobs of 1-year duration and limited if any of the promised permanent jobs were produced
Affordable housing	Not in the project scope	Not in the project scope even though the proposed development was mixed use	50% of the development would be affordable housing as per CBA Concerns about the method of indicating affordability, which disadvantages existing residents
Formal assurances	None	None	CBA
<i>Displacement issue</i>			
Is the level of displacement within the community necessary to attain the economic development objectives?			
Residents displaced	4,200 individuals/1,400 homes	115 properties of private residential, business and community institutions	Approximately 20 properties/850 individuals based on survey by DDDDB (Atlas, 2005), but 334 based on Forest City Ratner Companies (CCED, 2005)
Businesses displaced	144 businesses		Approximately 65 properties (industrial and commercial)
Social displacement	6 churches/1 hospital		
<i>Community issue</i>			
What was the opportunity for community participation and the nature of community reaction to the project?			
Nature of community participation	Direct confrontation between community and government	Community outrage and public controversy about governmental action	Conflicts between community organizations themselves, as well as conflicts between governmental entities and community interests
Governmental response to community reaction	Water lines shut off; police intervention to break up protests	No direct action by government other than their engagement in litigation	No direct action by government other than their engagement in litigation
<i>Transparency issue</i>			
Is there a high level of transparency and specificity related to transactions/negotiations between private entities, quasi-governmental, governmental bodies, and community related to the government's return on investment (ROI) and a clear understanding of community benefits to be derived?			
Federal contribution	—	—	\$193.9 million
State government contribution	Change in takings Clause in state legislature (targeted decision to allow transfer of property to General Motors)	\$73 million to NLDC; \$5.35 million bond issue and \$10 million bond issue toward the creation of a Fort Trumbull State Park	\$16.2 million
City government contribution	\$240-\$300 million	One property sold by city to Pfizer for \$1 (targeted decision ensuring Pfizer's continued interest in the project to the detriment of the existing neighborhood and residents)	\$180.5 million
Nature of the quantity and quality of information sharing on the specifics of the economic development "deal" and its impact on the long-term indebtedness and financial stability of the city	Limited information shared on the specifics of economic development "deal" that is almost exclusively shaped by a public/private development corporation with virtually no public influence over decision making	Limited information shared on the specifics of economic development "deal" almost exclusively shaped by a public/private development corporation with virtually no public influence over decision making	ACORN is the only community organization that is a signatory on the CBA and received a \$1.5 million loan from the developer. As the sole organization benefiting from the CBA, ACORN may have had a conflict of interest and thus was not appropriately incentivized to share information with a broad array of community stakeholders and community organizations

Note. GM = General Motors; CBA = Community Benefit Agreement; DDDDB = Develop Don't Destroy Brooklyn; CCED = Cumberland County Economic Development; NLDC = New London Development Corporation; ACORN = Association of Community Organizations for Reform Now.

Source. Data for Poletown: Corsetti, Wylie, and Wieske (1983); Corsetti (2004); Risen (1985); Wylie (1989). Data for Fort Trumbull: Carney (2009); Carstensen, Lott, McMillen, and Weerasinghe (2001); Cavanaugh (2006); New London Development Corporation (2000); Sorkin and Wilson (2009); *Susette Kelo et al. v. City of New London* (2005). Data for Atlantic Yards: CCED (2005); Brooklyn United for Innovative Local Development (2005); Good Jobs New York (2012); Oder (2009); Atlas (2005).

(Cavanaugh, 2006), and in the Atlantic Yards development, only short-term construction jobs were available despite the promise of more long-term employment being made available for neighborhood and community residents.

In each of the cases outlined, there was significant community contestation of the project. In the Poletown and Fort Trumbull developments, there was no immediate effort to link the developments' outcomes to specific community

benefits. In the Atlantic Yards development, there was a CBA in place (Brooklyn United for Innovative Local Development, 2005), but it proved to be less than effective because it was not sufficiently reflective of the interest of a number of community organizations, resulting in intracommunity conflict. Significantly, the municipality had no accountability in leveraging a broader set of community interests through its formal governmental role.

What I note in these three case studies in which eminent domain practice has been legitimized by the courts is an ongoing discomfort and questioning of municipal action by both the public-at-large and state legislative entities as to the appropriateness, fairness, and effectiveness of the use of economic-development-driven eminent domain. In short, the case studies discussed are exemplars of the ongoing challenge and problematic nature of economic-development-driven eminent domain practice and the harm and inequities that the practice can promote.

There is a consistency of inequitable outcomes generated by economic-development-driven eminent domain as seen in the case studies described above. This can be ascribed to the rise and dominance of neoliberalism within the context of municipal governments' economic development framework. In all three case studies, judicial sanction of governmental action has occurred and reinforced local governments' use of economic-development-driven eminent domain. Although legitimized by judicial decisions, however, municipal government in its exercise of eminent domain has not enjoyed a similar embrace by the public-at-large, and this is also true of some state legislatures in the post-*Kelo* era (Somin, 2007). There is a need to reconcile these divergent vantage points to legitimize governmental actions in advancing the perceived public good. The review of the data associated with the three highly visible eminent domain case studies explored in this article suggests the need for a new strategy and approach to build more equitable outcomes with respect to economic-development-driven eminent domain practice. Fasenfest and Reese (1999) suggest that planners, economic development practitioners, governmental officials, and other important stakeholders take a "critical policy evaluation" posture⁵ in an effort to better direct and evenly distribute the benefits of economic development activities to community residents. Critical questions must be posed about the fairness of economic-development-driven eminent domain strategies and their consequences if our responses are to be appropriate and well suited to the issues to be addressed.

Critical Questions That Need to Be Asked About Economic Development and Eminent Domain

Eminent domain is one of the economic development tools deployed by local governments by which the assemblage of land is possible, and it provides a unique and powerful

opportunity to reconfigure land ownership, rights, and land use patterns. Longstanding legal precedent, policy, and practice have afforded municipal governments' considerable autonomy, decision-making powers, and opportunity to engage in economic development strategies that are often claimed to generate significant and tangible public benefits using eminent domain as the development tool. Historically, local governments have not been taken to task to specifically account for the benefits alleged to be forthcoming from the exercise of the eminent domain authority under local economic development programs. Local governments also have not been held to fully account for the tremendous impact and displacement often generated by the same action. The results of the exercise of the eminent domain authority can lead to the leveling of large segments of communities, the loss of affordable housing, the loss of small businesses, and the destruction of neighborhood and community social infrastructure, and can precipitate the affects of gentrification that make communities unaffordable for the existing working-class and low-income individuals (Carpenter & Ross, 2009). From a historic and present-day perspective, it is important to acknowledge that eminent domain practices have disproportionately been applied to and compromised the integrity of low-income and working-class neighborhoods and communities (Carpenter & Ross, 2009; Phillips & Sillah, 2009). For example, the disproportionately negative impacts of eminent domain practices on the African American community during the "urban renewal" period were so pervasive and so far reaching that the period is identified by some urban scholars of the time as the period of "negro removal" (Byrne, 2005, p. 8).

The eminent domain process for economic development also potentially harms a broad array of economically diverse homeowners because the constitutional requirement of "just compensation" may systematically undercompensate homeowners relative to "... unique noninstrumental, or 'dignitary,' harms—resulting from the nature of the government's action . . ." (Garnett, 2006, p. 106). Those indignities and harms may include loss of community and neighborhood ties, loss of social supports, an elevated sense of displacement and anxiety, and uncertainty related to future governmental actions.

In the post-*Kelo* scenario of economic-development-driven eminent domain practice, state legislatures have incorporated reforms to provide some refuge for communities from being indiscriminately beset by eminent domain takings. These reforms, enacted across a majority of states, cover a wide spectrum of potential legislative solutions. But for the most part, they are considered ineffectual and symbolic because of the obfuscation of critical terms such as "blight," "sound growth," and "economic or social liability" that continue to reinforce and rationalize existing municipal economic development practices (Somin, 2007, p. 1931; see also Lopez, Jewell, & Campbell, 2009).

There have been no explicit requirements advanced by state legislatures pre- or post-*Kelo* to ensure that municipalities fully secure the equitable distribution of benefits when deploying economic-development-driven eminent domain practices. Governmental agencies must deploy an explicit equity objective to exact from private entities the entire set of benefits promised during any negotiations related to an economic development initiative leveraged by eminent domain. Equally important is the need to ensure that the communities most affected by the eminent domain action realize meaningful and significant benefits by playing a part in decision making to articulate the benefits they require in the face of the often tremendous consequences of redevelopment. If appropriately configured, CBAs can be a meaningful tool to facilitate more equitable outcomes and to reconcile multiple vantage points and interests within the context of local governmental exercise of economic-development-driven eminent domain.

Examining New Forms of CBAs as a Potential Innovation in Advancing Governmental Legitimacy and Community Equity

In the United States, income and wealth disparities between the affluent and low-income and working-class urban communities have grown dramatically over time (Goldsmith & Blakely, 2010). This trend has placed many urban communities on the brink of economic catastrophe. Simultaneously, there has been a burgeoning interest in central city development. Wolf-Powers (2010) observed that:

[I]n many central cities in the late 1990s and early 2000s, private investors began to value urban land in which they had previously taken little interest. The resurgent popularity of cities as cultural destinations and sites for market-rate and luxury homes combined with market and governmental incentives for infill, brownfield, and transit-oriented development stimulated building booms in neighborhoods at the fringes of central business districts, on former industrial waterfronts, and along major transportation corridors during the 1990s and early 2000s. (p. 2)

The confluence of growing economic inequality and the growth of development pressure within American urban centers have heightened the likelihood of community resistance and/or opposition to large- and small-scale development initiatives, particularly if they are leveraged by municipal governmental use of eminent domain. Planners, economic development professionals, and stakeholders concerned about community outcomes must have tools to effectively mitigate the inequitable affects of economic-development-driven eminent domain. CBAs can be used by community advocates and municipal governments to enhance opportunities for low-income and working-class communities within the context of urban development and revitalization (Wolf-Powers, 2010).

The CBA has its origins in California. In 1998, the Los Angeles Alliance for a New Economy created what is considered to be the first CBA. Known as the Hollywood and Highland CBA, the agreement focused on the development of a major hotel and retail complex in Hollywood (Salkin & Lavine, 2007). The CBA leveraged certain benefits for the community that the developer would provide. These included installing traffic improvements near the developed area, ensuring that workers at the completed center would be paid a living wage, enforcing a first source hiring plan, and developing a policy of union neutrality. For these benefits, the community supported the development project in its entirety and gained the developer \$90 million in subsidies from the city.

A CBA is a legally enforceable contract, signed by community groups and by a developer and acknowledged by local government.⁶ The CBA sets forth a range of community benefits that the developer agrees to provide as part of a development project. CBAs create a context for establishing a constructive dialogue between local communities, local governmental leaders, and private development interests, which typically does not occur during most economic development initiatives.

Figure 1 (Gross, LeRoy, & Janis-Aparicio, 2005) represents the typical dynamics and configuration of engagement within most economic development initiatives (i.e., absent a CBA). The city and the developer negotiate terms based on a development plan created by governmental (or quasi-governmental) agencies. Community organizations, worker unions, and neighborhood groups engage independently with the city to leverage resources and benefits. In the present context of urban governance, this scheme often creates top-down policies and programs imposed on communities by the government in the name of economic development. Communities may ultimately contest these developments, but most experience little or no success. Meanwhile, the developer maintains a superior position with respect to government and community, constantly leveraging more incentives from the government. This yields less return on the government's investment and typically generates marginal or no benefits to local low-income and working-class communities.

A representation of the existing CBA model can be seen in Figure 2 from Gross et al. (2005). CBAs are most effective as a strategy when the following occurs: (a) a coalition of communities or community stakeholders are relatively organized around their collective interests, (b) local government is supportive of the community position and seeks to encourage cooperation from private sector stakeholders, and (c) developers see the benefits or advantages of cooperation and are willing to come to the table to negotiate a CBA (Saito, 2012). As seen in the Atlantic Yards case study, the CBA process can be undermined by selective participation and limited accountability to those most affected by the development process. The flaw in the existing CBA model is that it may fail to galvanize a broad and diverse cross-section of the community as stakeholders and participants in

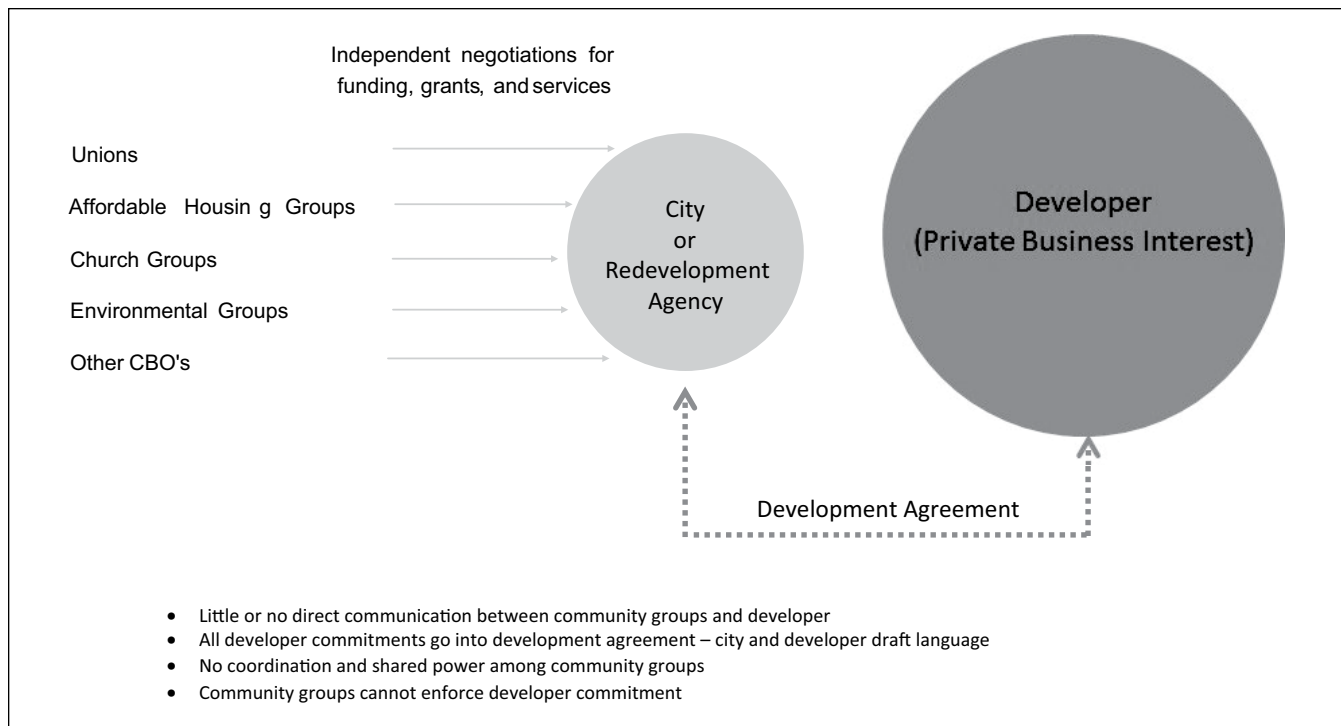


Figure 1. Conventional development practice in cities.

Note. CBA = Community Benefit Agreement; CBO = community-based organization.

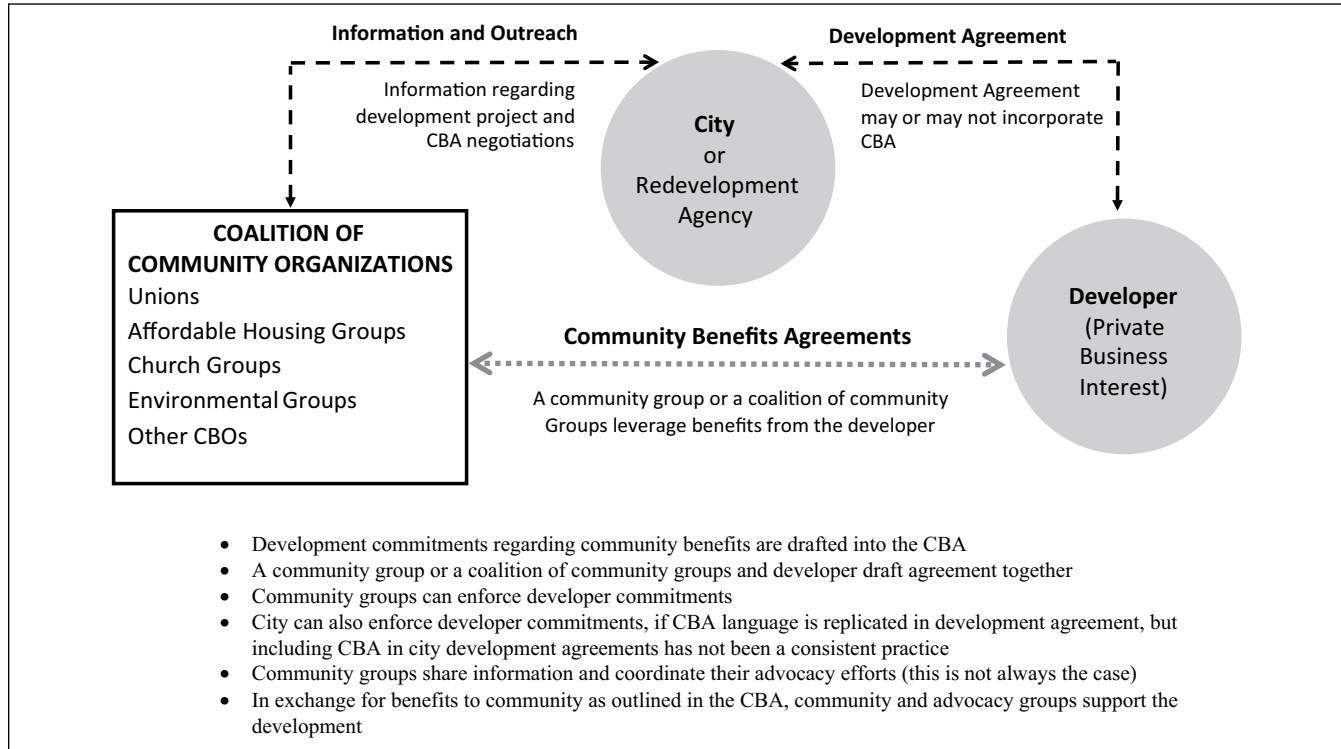


Figure 2. Conventional CBA.

Note. CBA = Community Benefit Agreement; CBO = community-based organization.

Source. Figure adapted from "Community Benefits Agreements: Making Development Projects Accountable," by Gross et al. (2005), published by Good Jobs First and the California Partnership for Working Families (pp. 12-13). Copyright 2005 by copyright holder. Reprinted with permission.

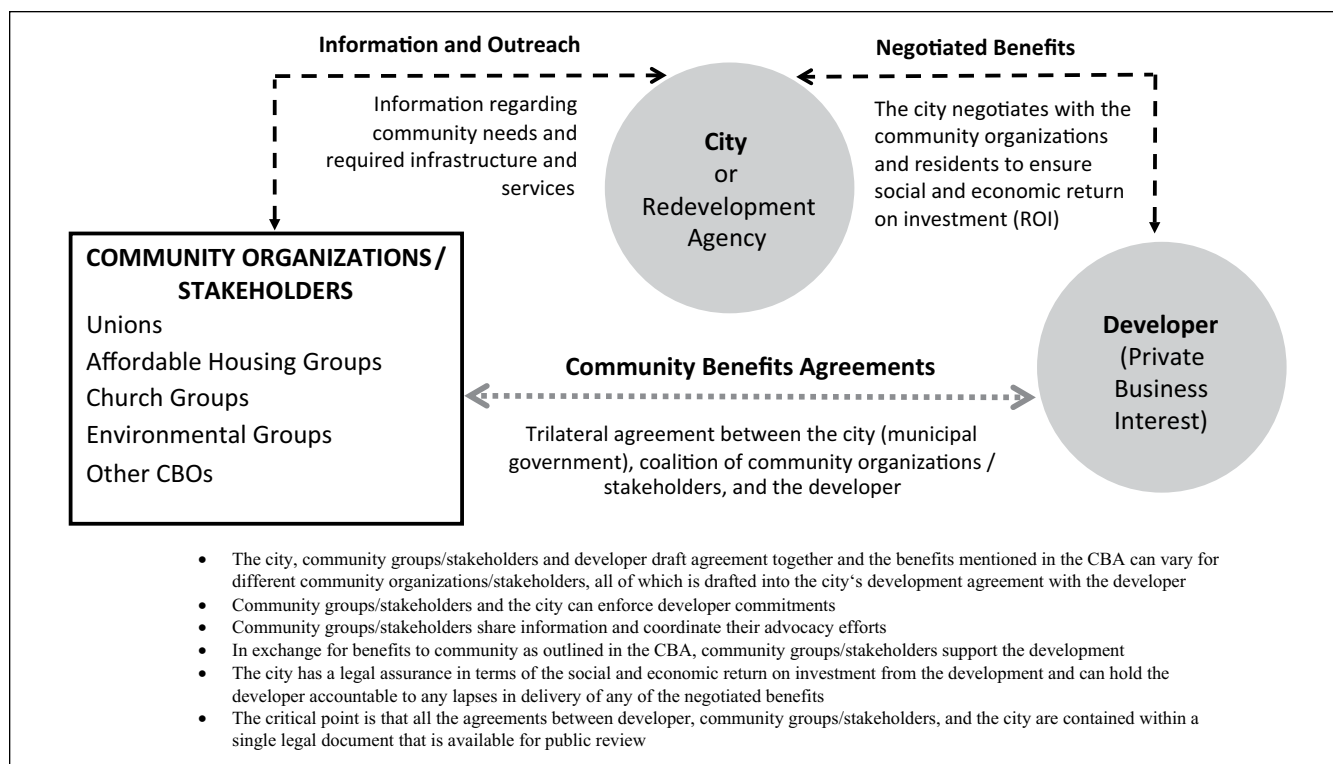


Figure 3. Revised CBA model.

Note. CBA = Community Benefit Agreement; CBO = community-based organization.

the decision-making process. Under this scenario, government has a limited role in the CBA process and, therefore, may fail to maximize the opportunities to enforce equitable outcomes and advance the public good, as well as ensure that the most affected communities receive benefits from the development process.

Figure 3 is adapted from Gross et al. (2005) and represents a configuration of the CBA model that I revised in response to the conflicts reflected in existing CBAs, such as that seen in the Atlantic Yards case study. The proposed model envisions a more active role for government, wherein local government takes back its responsibility to further the public good, which over time through judicial sanction and neoliberal approaches to development, has been relinquished to quasi-governmental and private entities. With the revised CBA model, the local government has assurance of social and economic return on investment (ROI) to guarantee that the developer will deliver the promised benefits in return for the incentives provided by the government. This suggests that municipalities will play a more active role than existing CBAs require in assuring that governmental investment advances fair and equitable outcomes on behalf of the public good and those most affected by the development. The proposed CBA model is distinguishable from existing CBA and conventional development models in that there is a shared decision-making and negotiating power among the three key

domains of influence: the city, community stakeholders, and the developer. The newly proposed CBA model contemplates a single contractual agreement entered into by the city, the developer, and the community stakeholders, thus formalizing the relationship among these interests wherein the benefits and/or return on investment is contractually secured for all. All the negotiated benefits required by community stakeholders, the developer, and the city must be described in the CBA and made available for public review. This ensures that the exercise of community authority and influence is heightened and legitimized by governmental sanction and more effectively promotes accountability, particularly, as it relates to delivery of the promised economic development benefits. Although this seems to be an enormously ambitious approach, it makes an effort in a transparent way to balance all the respective interests through contractual negotiations.

I argue that local governments need to proactively embrace and master the use of the new CBA model as a catalyst and a tool to stimulate discourse and generate opportunities for greater community participation and equity. There is much work to be done in the development of processes and protocols necessary to support the design and application of the new CBA model in various situations to ensure it meaningfully encompasses local community needs.

The use of a CBA represents an important first step in being more deliberate to effectively capture the returns to

communities, given the often substantial array of resources afforded to private sector developers by municipal governments. CBAs help municipal governments promote a clear (as opposed to an illusory) link between government support of private sector development and municipal governmental responsibility to ensure that a public good is realized more equitably across the community. This link is critical when local government invokes its eminent domain authority in support of private sector economic development initiatives. I argue that the stronger, more apparent, and concrete the link is between economic-development-driven eminent domain and the attending benefits, resources, and opportunities generated on behalf of the city-at-large and the most affected communities, the more likely it is local governmental authority will be viewed as legitimate when exercising its eminent domain power.

Criteria for a More Robust and Equity-Seeking CBA

Given the evolving state of CBAs, they themselves must be measured against a set of standards that guarantee their fidelity to the objective of ensuring the promised returns on municipal investment are realized. The new model for the CBA must also ensure the neighborhoods and communities most affected by the economic-development-driven eminent domain initiative receive concrete and specific benefits that are commensurate with the impact that the eminent domain action has on them. It said, when constructing the new model of CBAs, there are four areas to address if it is going to evolve into a best practice tool for advancing social justice and equity and the public good.

The new CBA model should: (a) guarantee promised community benefits, particularly as they relates to those communities most affected; (b) mitigate or eliminate community displacement impacts; (c) maximize stakeholder input, particularly from those communities and neighborhood residents most affected; and (d) promote transparency in the dissemination of information about the details of the economic-development-driven eminent domain initiative, such that the public understands the totality of the opportunities and costs of the development to be undertaken. Table 2 identifies in detail the four issue areas critical to setting the stage for the new CBA model. Table 2 also identifies the equity objective advanced by the issue areas and their accompanying guiding principles.

With respect to community benefits to be managed by the new model of CBAs, the equity objective is to ensure that economic-development-driven eminent domain delivers the benefits or ROI claimed, and that the benefits from the economic development initiative are fully shared by the most affected communities and neighborhoods. As a guiding principle, when evaluating the delivery of benefits, benefits should be tangible and measurable. For example, evaluators

should consider the actual increase and/or retention of housing, small businesses, and so on. Finally, with respect to benefits, there should also be an agreed on approach for actively auditing or evaluating the delivery of the promised benefits with *clawbacks*, which entails the revision of governmentally provided incentives and supports (Ledebur & Woodward, 2003) if the promised benefits are not delivered or not delivered at the scale promised.

Displacement is one of the most troubling and destructive forces resulting from the exercise of eminent domain. In the context of an equity-seeking objective, Table 2 provides guidance on the issue of displacement. CBAs should anticipate the disproportionate burden that low-income and working-class communities have experienced in the context of eminent domain initiatives. As such, in working through the details of the development process, close consideration should be given to the selection of neighborhoods or communities targeted for economic-development-driven eminent domain initiatives to ensure fair and reasonable alternatives to the targeting of low-income and working-class communities. If reasonable alternatives do not exist, CBAs should contemplate arrangements, supports, and direct compensations to all business owners and neighborhood and community residents (who may or may not be homeowners), who will be most affected by the eminent domain action. A full and complete articulation of the specific strategies to be used to mitigate, minimize, or eliminate the displacement effects of the economic-development-driven eminent domain process should be captured in the CBA.

With respect to community participation, the communities most affected by the economic-development-driven eminent domain initiative should have a significant say in the structuring of the development opportunities and impacts. As shown in Table 2, the equity consideration is to give voice to those communities most affected by the economic development initiatives that are leveraged by the eminent domain process. As a practice principle, CBAs should clearly articulate an approach that will promote participation and input opportunities for diverse stakeholders, with a particular focus on those most affected as a result of the eminent domain initiative. This input should be factored in at the earliest stages of the development process and maintained throughout the economic development initiative.

As the final point of consideration for the building of the new model of CBAs, CBAs should support and promote significant levels of transparency within the economic development process. The equity goal here is to advance democratic practices and inclusion by sharing the goals and objectives of the economic development process and providing an opportunity for the citizenry-at-large—and, more particularly, providing opportunities for communities and neighborhoods most affected by the development process—to understand and to question the development process and rationale. As a guiding principle, CBAs should require that

Table 2. Criteria for Improving the Efficacy of CBAs.

Issues	Equity objective	Guiding principles
Community benefits	The promotion of equitable distribution of benefits (access to jobs, housing, and transportation) gained from economic development activities across communities, with a greater focus on neighborhoods and communities most directly affected by the economic-development-driven eminent domain initiatives.	<ol style="list-style-type: none"> 1. Address the specific needs (whether housing, jobs, or mobility) of the segment of the city, communities, and/or neighborhoods that will be most affected/bear the majority of the burden of the eminent domain action. 2. Engage the communities most affected by the economic development scheme to ascertain the services, benefits, and assistance required in these communities. 3. Identify specific needs that require attention in the city-at-large and develop evaluation criteria to measure the project's effectiveness in delivering projected benefits. 4. Closely examine the claims being made about the anticipated benefits from the economic-development-driven eminent domain project and ascertain whether or not the benefits of the project are overstated or lack factual foundation. 5. The projections of the benefits to be derived from the eminent domain action and the impact on neighborhoods and communities must be discussed at open public forums and modifications to the project must occur based on public feedback. 6. Actively audit the develop strategies to be enacted by local governments to ensure that the benefits promised by private developers in an economic-development-driven eminent domain scheme are actually delivered and put in place clawbacks, rescission, and/or penalty plans for when the developer fails to fulfil development commitments.
Community displacement	Mitigate the racial and class bias historically present in the targeting of low-income, working-class, and minority neighborhoods for economic-development-driven eminent domain initiatives.	<ol style="list-style-type: none"> 1. Consider the selection of communities to be targeted by economic development eminent domain based on their economic resilience and their ability to socially and economically sustain the impacts of displacement. 2. Consider strategies in the deployment of economic-development-driven eminent domain that mitigate the burden or the consequences of eminent domain, including residential displacement, destruction of community institutions, and dismantling of neighborhood fabric. 3. Mandate that economic-development-driven eminent domain schemes have mitigation and support component as part of the fair compensation that offers homeowners and non-homeowners, as well as small businesses relocation support and an opportunity to be located in the new development area. Make available other supports and resources that lessen the stress and impact of displacement that the eminent domain initiative might have. 4. Closely consider strategies that mitigate the gentrifying effects of eminent-domain-driven economic development.
Community participation in the development process	Enhance opportunities for democratic, inclusive, and participatory practices in city redevelopment proposals more generally and economic-development-driven eminent domain projects more particularly.	<ol style="list-style-type: none"> 1. Mandate public participation as an essential component of any economic development driven eminent domain scheme supporting significant attendance by community members to avoid top-down approaches that are closed and involve unilateral decision making. 2. Engage the segment of the city, communities, neighborhoods most affected by the economic-development-driven eminent domain initiative early in the decision-making process. 3. Get feedback from the most affected communities about potential impacts, ideas about ways to minimize disruption, and ideas about approaches and strategies that may meet community needs more effectively. Incorporate that community feedback into the economic development proposal.
Transparency in the development process	Encourage democratic and open engagement, as well as honest information sharing about the eminent domain initiative, with particular emphasis on the segments of the city, communities, or neighborhoods most affected by the economic-development-driven eminent domain process. Transparency must be advanced as an essential democratic goal of a legitimately functioning municipal government.	<ol style="list-style-type: none"> 1. Make information on the planning of eminent-domain-driven economic development initiatives readily available early in the planning process. 2. At the city level, economic development goals and proposed developments projects for the city must be shared and publicized through various information dissemination vehicles (i.e., city website, newspapers, radio, public forums, etc.). This must be done in a prolific, deliberate, and conscientious way to maintain significant levels of information flow about the opportunities and challenges present in the eminent-domain-driven economic development process. 3. Discourage convening that limit the opportunities for community stakeholder engagement by the community-at-large and more particularly by communities most affected the economic-development-driven eminent domain initiative. Limit ex parte meetings between government and development and/or corporate interests related to economic-development-driven eminent domain project outcomes, opportunities, and challenges.

information about the development be shared and publicized through various publicly accessible information dissemination vehicles (i.e., city website, newspapers, radio,

public forums, etc.) in multiple languages specific to the demographics of the city. CBAs should demand that the information sharing be done in a deliberate and conscientious

way, with government assuming an active role in requiring transparency and information sharing about the development initiative. This should occur at every phase of the development process, with focused efforts toward the communities most affected by the development process. This will facilitate the role of local government in ensuring democratic and participatory decision making related to the development process, which ultimately strengthens the public's view of governmental legitimacy.

Conclusion

This study explores the authority and influence of local government in development and how that authority and influence has grown over time, particularly in the use of eminent domain for economic development purposes. What is clear is that the outcomes associated with local governmental use of such authority for these purposes has at best generated mixed results in nationally recognized developments, and at its worst has been disruptive and in some cases destructive to communities. In this article, I do not argue that local governments should be severely curtailed in their ability to exercise their eminent domain authority to promote economic development. Rather, I argue that to maintain their legitimacy in the exercise of that authority, municipal governments must be much more deliberative and strategic in ensuring there is an intimate, obvious, and direct connection between the potential economic development opportunities leveraged by the use of eminent domain and the benefits that the community-at-large and those communities most affected derive from such transactions. I propose a new form of CBA as a potentially powerful tool that could be used by municipal governments to shape important economic development and equity outcomes at the local level.

The new CBA model proposed allows for the practice of urban democracy, where communities can leverage real benefits for residents from those private interests looking to develop their property, and where government assumes the role of facilitator overseeing the equitable exchange of property and benefits between stakeholders. It can be argued that CBAs add a layer of unnecessary complexity to an existing and functioning system of economic development, because it is the government's *inherent* responsibility to create and maintain a stable economic and social order. However, based on the national examples highlighted in this article, in the absence of an effective CBA model (such as the one proposed here), government may continue to miss the mark, be complicit in advancing inequitable outcomes for communities, and continue to lessen the accountability of private development interests.

One lesson to be learned from the crises of neoliberal governance is that democracy can only be achieved by the constant engagement of civic and community stakeholders in the processes of decision making and urban planning. Thus,

CBAs can empower civic and community stakeholders to reengage in processes of governance from which they have been disenfranchised by the rise of the neoliberal orthodoxy and its accompanying imperatives. The capacity to promote equity is explicitly linked to the role of government in ensuring that the public good and social justice are promoted across a broad array of local and community stakeholders. This capacity also upholds our fundamental beliefs about fairness and equity that we seek to promote as a democratic civil society.

Acknowledgments

I would like to offer my profuse thanks to Erin Brault and Nick Tulach for their early efforts associated with the development of this article. I also want to thank Nancy Frank for her feedback on a very early version of this article, and my enormous thanks also go out to the peer reviewers for their rigorous review and insightful input. Finally, my deep and warm appreciations extend to Sahana Goswami for her engaged intellectual support related to the refinement and contouring of this article.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. The southwestern community of the city of Washington, DC, has yet to realize any benefit from the governmental economic development revitalization plan that was the basis of the eminent domain action in the *Berman et al. v. Parker et al.* case (1954), and none of the promised shopping centers and other promised amenities ever materialized (Jennings & Jordan-Zachery, 2010).
2. The market-focused political agenda, seen in the present day, is not a simple characterization of business interests gaining and maintaining political power; rather, it is the manifestation of economic liberalism that states a liberalized economy requires that collective decision making involve a constitutional state with limited substantive powers of economic and social intervention, and a commitment to maximizing the formal freedom of actors in the economy and the substantive freedom of legally recognized subjects in the public sphere (Jessop, 2002).
3. "The race to the bottom" is characterized by the growing expenditures made by municipalities on economic development incentive programs that derive little, if anything, in return for those significant expenditures. Based on a national sample of local governmental economic development programs, Richard Florida (2012) found there was no statistically significant association between economic development incentives and per capita wages or average incomes, no evidence that incentives grow more jobs for college graduates or knowledge workers, and no substantive proof that incentives

- decrease state unemployment rates. The only statistically significant association Florida found was a relationship between incentives and poverty rates. The poorest cities seem to engage more aggressively in economic development incentive programs with limited or no return while assuming enormous costs. An earlier work by Morgan (2009) has similar findings. Weber (2002a) also found that government personnel do a poor job in contractually holding firms accountable for the economic development incentives they receive. Moreover, government officials are often reticent to sanction firms that receive lucrative incentives but fail to deliver on their commitments that were the basis for the granting of the incentives. This further compromises local governments' ability to meet their job and revenue generation objectives and ultimately further undermines municipalities' fiscal integrity and long-term economic health.
4. Peterson (1981) articulated the concept of government's deal-seeking behavior in his book, *City Limits*. Peterson argues that local governments operate within a highly fragmented system and that municipalities seek to protect their economic interest by competing with other municipalities, who themselves are looking for opportunities to generate tax revenue through the acquisition and location of businesses within their geographic boundaries.
 5. Critical policy evaluation that planners and economic development practitioners must carry out when involved in a project would require the asking of the following questions: (a) How were the particular goals, as defined in economic development strategies, developed? (b) Who participated in the design and adoption of goals? (c) How is economic development being conceptualized through job creation? (d) Is wealth distribution a consideration? (e) What kind of indicators would best assess the impact of the economic development strategies? and (f) Is the economic development strategy taking into account the overall development of the community as a whole? (Jennings & Jordan-Zachery, 2010, p. 10)
 6. CBAs can function appropriately and provide economic benefits to private entities and the local community only when there is a strong legislative and governmental presence in the role of facilitator. California is the leading state in the use of CBAs, having the most agreements in stages of development or implementation. A possible reason for the success of this development paradigm in California may be the state's ratification of this system by statute, as well as the presence of intense and progressive activism and advocacy by community organizations across the state (Salkin & Lavine, 2010).
 7. In the context of this paper, a community refers to a specific area of a city, such as neighborhood, which is most directly affected by the issues discussed herein, yet sometimes lacks a defined boundary or perimeter. To avoid confusion, when referring to the larger geographic boundary that defines a locality, terms such as municipality or city will be used.
- References**
- Alper, A. M. (2005). *Estimated fiscal impacts of the proposed Atlantic Yards project*. New York, NY: Economic Development Corporation.
- Atlas, J. (2005). *The battle in Brooklyn*. Retrieved from <http://www.nhi.org/online/issues/144/brooklynbattle.html>
- Bagli, C. V. (2011, March 16). Prefabricated tower may rise at Brooklyn's Atlantic Yards. *The New York Times*. Retrieved from http://www.nytimes.com/2011/03/17/nyregion/17yards.html?pagewanted=all&_r=0
- Barnekov, T., & Rich, D. (1989). Privatism and the limits of local economic development policy. *Urban Affairs Quarterly*, 25, 212-238.
- Berman et al., v. Parker et al., 348 U.S. 26 (U.S. Supreme Court 1954). *Appeal from the United States District Court for the District Of Columbia*. Retrieved from <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=348&invol=26>
- Brenner, N., & Theodore, N. (2002). Cities and geographies of "actually existing neoliberalism." In N. Brenner & N. Theodore (Eds.), *Spaces of neoliberalism: Urban restructuring in North America and Western Europe* (pp. 2-32). Hoboken, NJ: Blackwell.
- Brooklyn United for Innovative Local Development. (2005). *Community benefits agreement*. Retrieved from www.buildbrooklyn.org/pr/cba.pdf
- Byrne, P. J. (2005). Condemnation of low income residential communities under the takings clause. *UCLA Journal of Environmental Law & Policy*, 23, 131-169.
- Carpenter, D. M., & Ross, J. K. (2009). Testing O'Connor and Thomas: Does the use of eminent domain target poor and minority communities. *Urban Studies Journal*, 46, 2447-2461.
- Cavanaugh, T. (2006). Endgame in New London, or, another successful five-year plan: Last decade's business model and this week's evictions. *Reason*. Retrieved from <http://reason.com/archives/2006/06/08/endgame-in-new-london-or-anoth>
- Curbed, N. Y. (2009). *Gehry's Atlantic Yards arena design dropped*. Retrieved from http://ny.curbed.com/archives/2009/06/04/breaking_gehrys_atlantic_yards_arena_design_dropped.php
- Fasensfest, D., & Reese, L. A. (1999). Critical perspectives on local development policy evaluation. *Economic Development Quarterly*, 13, 3-7.
- Florida, R. (2012, December 7). The uselessness of economic development incentives. *The Atlantic CityLab*. Retrieved from <http://www.citylab.com/work/2012/12/uselessness-economic-development-incentives/4081/>
- Garnett, N. S. (2006). The neglected political economy of eminent domain. *Michigan Law Review*, 105, 101-150.
- Goldsmith, W. W., & Blakely, E. J. (2010). *Poverty and inequality in U.S. cities* (2nd ed.). Philadelphia, PA: Temple University Press.
- Gross, J., LeRoy, G., & Janis-Aparicio, M. (2005). *Community benefits agreements: Making development projects accountable*. Retrieved from <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/cba2005final.pdf>
- Hackworth, J. (2007). *The neoliberal city: Governance, ideology, and development in American urbanism*. Ithaca, NY: Cornell University Press.
- Harvey, D. (1989). From managerialism to entrepreneurialism: The transformation in urban governance in late capitalism. *Geografiska Annaler. Series B, Human Geography*, 71, 1-17.
- Jennings, J., & Jordan-Zachery, J. S. (2010). Determining the public good and evaluating local economic development: Critique

- of the U.S. Supreme Court's *Kelo v. New London* decision. In J. Jennings & J. S. Jordan-Zachery (Eds.), *Urban spaces: Planning and struggles for land and community* (pp. 1-18). Lanham, MD: Lexington Books.
- Jessop, B. (2002). Liberalism, neoliberalism, and urban governance: A state-theoretical perspective. In N. Brenner & N. Theodore (Eds.), *Spaces of neoliberalism: Urban restructuring in North America and Western Europe* (pp. 105-125). Hoboken, NJ: Blackwell.
- Kotlyarevskaya, O. V. (2005). "Public use" requirement in eminent domain cases based on slum clearance, elimination of urban blight, and economic development. *Connecticut Public Interest Law Journal*, 5, 197-231.
- Krumholz, N. (1999). Equitable approaches to local economic development. *Policy Studies Journal*, 27, 83-95.
- Ledebur, L., & Woodward, D. P. (2003). Adding a stick to the carrot: Location incentives with clawbacks, rescissions, and recalibrations. In S. B. White, R. D. Bingham, & E. W. Hill (Eds.), *Financing economic development in the 21st century*. New York, NY: M. E. Sharpe.
- Logan, J. R., & Molotch, H. L. (1987). The city as a growth machine. In *Urban fortunes: The political economy of place* (pp. 50-98). Berkeley: University of California Press.
- Lopez, E. J., Jewell, R. T., & Campbell, N. D. (2009). Pass a law, any law, fast! State legislative responses to the *Kelo* backlash. *Review of Law & Economics*, 5(1), 101-135.
- Mayer, M. (2007). Contesting the neoliberalization of urban governance. In H. Leitner, J. Peck, & E. S. Sheppard (Eds.), *Contesting neoliberalism: Urban frontiers* (pp. 90-115). New York, NY: Guilford Press.
- McCarthy, L. (2007). The commerce clause as a constraint on wasteful business incentives: Roadblock or bump in the road in the "race to the bottom?" *Tijdschrift voor Economische en Sociale Geografie*, 98, 482-492.
- McFarlane, A. G. (2007). Putting the "public" back into the public-private partnerships for economic development. *Western New England Law Review*, 30, 39-60.
- McGovern, S. J. (2013). Ambivalence over participatory planning within a progressive regime: Waterfront planning in Philadelphia. *Journal of Planning Education and Research*, 33, 310-324.
- Mele, C. (2013). Neoliberalism, race and the redefining of urban redevelopment. *International Journal of Urban and Regional Research*, 37, 598-617.
- Molotch, H. (1988). Strategies and constraints of growth elites. In S. Cummings (Ed.), *Business elites and public policy* (pp. 25-48). Albany, NY: State University of New York Press.
- Morgan, J. Q. (2009). Using economic development incentives: For better or for worse. *Popular Government*, 16-29. Retrieved from <http://sogpubs.unc.edu/electronicversions/pg/pgwin09/article3.pdf>
- Nadler, J., & Diamond, S. S. (2008). Government takings of private property: *Kelo* and the perfect storm. In N. Persily, J. Citrin, & P. Egan (Eds.), *Public opinion and constitutional controversy* (pp. 287-310). New York, NY: Oxford University Press.
- Pagano, M. A., & Bowman, A. M. (1995). *Cityscapes and capital*. Baltimore, MD: John Hopkins University Press.
- Peters, A. H., & Fisher, P. S. (2002). *State enterprise zone programs: Have they worked?* Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.
- Peters, A. H., & Fisher, P. S. (2004). The failures of economic development incentives. *Journal of the American Planning Association*, 70(1), 27-36.
- Peterson, P. E. (1981). *City limits*. Chicago, IL: University of Chicago Press.
- Phillips, S., & Sillah, M. R. (2009). A house is not a home: Effect of eminent domain abuse on the poor, African Americans, and the elderly. *Housing and Society*, 36(1), 115-136.
- Pratt Institute Center for Community and Environmental Development. (2005). *Slam dunk or airball? A preliminary planning analysis of the Brooklyn Atlantic Yards project*. New York, NY: Pratt Institute Center for Community and Environmental Development.
- Reese, L. A. (1998). Sharing the benefits of economic development: What cities use Type II policies? *Urban Affairs Review*, 33, 686-711.
- Reese, L. A., & Rosenfeld, R. A. (2001). Yes, but . . . : Questioning the conventional wisdom about economic development. *Economic Development Quarterly*, 15, 299-312.
- Rubin, H. (1988). Shoot anything that flies; claim anything that falls: Conversations with economic development practitioners. *Economic Development Quarterly*, 2, 236-251.
- Rubin, I. S., & Rubin, H. J. (1987). Economic development incentives: The poor (cities) pay more. *Urban Affairs Review*, 23(1), 37-62.
- Sagalyn, L. B. (2007). Public/private development: Lessons from history, research, and practice. *Journal of the American Planning Association*, 73(1), 7-22.
- Sagar, T. (2011). Neo-liberal urban planning policies: A literature survey 1990-2010. *Planning in Progress*, 76, 147-199.
- Saito, L. T. (2012). How low-income residents can benefit from urban development: The LA live community benefits agreement. *City & Community*, 11, 129-150.
- Salkin, P. E., & Lavine, A. (2007). Negotiating for social justice and the promise of community benefits agreements: Case studies of current and developing agreements. *Journal of Affordable Housing & Community Development Law*, 17, 113-144.
- Salkin, P. E., & Lavine, A. (2010). Community benefits agreements and comprehensive planning: Balancing community empowerment and the police power. *Journal of Law and Policy*, 10, 157-216.
- Sandefur, T. (2006). The "backlash" so far: Will Americans get meaningful eminent domain reform? *Michigan State Law Review*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=868539
- Somin, I. (2007). Is post-*Kelo* eminent domain reform bad for the poor? *Northwestern University Law Review*, 101, 1931-1943.
- Staley, S., & Blair, J. P. (2005, February 3). Eminent domain, private property, and redevelopment: An economic analysis. *Reason*, pp. 1-3.
- Stone, C. N. (1989). *Regime politics: Governing Atlanta*. Lawrence: University Press of Kansas.
- Susette Kelo et al. v. City of New London, 545 US 469 (U.S. Supreme Court 2005).

- Weber, R. (2002a). Do better contracts make better economic development incentives? *Journal of the American Planning Association*, 68(1), 43-55.
- Weber, R. (2002b). Extracting value from the city: Neoliberalism and urban development. In N. Brenner & N. Theodore (Eds.), *Spaces of neoliberalism: Urban restructuring in North America and Western Europe* (pp. 172-193). Hoboken, NJ: Blackwell.
- Wilder, M., & Rubin, B. (1996). Rhetoric versus reality: A review of studies of state enterprise zone programs. *Journal of the American Planning Association*, 42(4), 473-491.
- Wilson, D. (2004). Toward a contingent urban neoliberalism. *Urban Geography*, 25, 771-783.
- Wolf-Powers, L. (2010). Community benefits agreements and local government: A review of recent evidence. *Journal of the American Planning Association*, 76(2), 1-19.
- Wylie, J. (1989). *Poletown: Community betrayed*. Urbana: University of Illinois Press.
- Zheng, L., & Warner, M. (2010). Business incentive use among U.S. local governments: A story of accountability and policy learning. *Economic Development Quarterly*, 24, 325-336.

Author Biography

Kirk E. Harris is a faculty member in the Department of Urban Planning at the University of Wisconsin-Milwaukee, and a former legal services lawyer and not-for-profit executive, who served as an economic development consultant for ShoreBank Corporation and as an urban policy expert for the 2008 Obama presidential campaign. His research and practice interests and expertise focus on social welfare policy, family and community strengthening, economic and community development, and social and economic justice.