Masters of Their Own Eminent Domain: The Case for a Reliance Interest Associated with Economic Development Takings

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The only person for whom the house was in any way special was Arthur Dent, and that was only because it happened to be the one he lived in. . . .

. . . .

. . . [T]he council wanted to knock it down and build a bypass instead.[1]

—Douglas Adams

INTRODUCTION

When *Kelo v. City of New London*[2] upheld the use of eminent domain for private economic development projects, there was a massive public outcry.[3] In the wake of *Kelo*, forty-three states enacted reform measures to restrict the use of eminent domain.[4] However, these reforms did not eliminate such takings but merely sought to restrict them in various ways.[5] As a result, little has been done to resolve the fundamental concerns raised by *Kelo*'s expansive reading of the eminent domain power.

In this Note, I will address an aspect of economic development takings that is frequently ignored: the issue of what happens *after* a taking occurs. Whereas most of the literature and case law focus on when takings are permissible and how to limit their use,[6] little attention is paid to the vulnerability of communities resulting from the reliance they place on corporate entities in the wake of economic development takings. The inevitable gap between municipal intent and corporate prerogatives has, at times, been disastrous for municipalities.[7]

This after-the-fact vulnerability is similar to that experienced by communities in the 1980s and 1990s, when economic shifts led to the closure of a number of factories on which communities had relied for decades.[8] Writing about the substantial harm and unemployment in the wake of these closings, many authors proposed

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1. DOUGLAS ADAMS, THE HITCHHIKER'S GUIDE TO THE GALAXY (1979), *reprinted in* THE MORE THAN COMPLETE HITCHHIKER'S GUIDE 7 (Wing Books 1989).

2. 545 U.S. 469 (2005).

3. Steven J. Eagle, Kelo v. City of New London*: A Tale of Pragmatism Betrayed, in* EMINENT DOMAIN USE AND ABUSE: *KELO* IN CONTEXT 195, 196 (Dwight H. Merriam & Mary Massaron Ross eds., 2006).

4. Ilya Somin, *The Limits of Backlash: Assessing the Political Response to* Kelo, 93 MINN. L. REV. 2100, 2102 (2009).

5. *See infra* section I.C.2.

6. *See generally, e.g.*, EMINENT DOMAIN USE AND ABUSE, *supra* note 3. The case law on point has also focused almost exclusively on the permissibility of takings that have not yet occurred. *See, e.g.*, *Kelo*, 545 U.S. 469; Haw. Hous. Auth. v. Midkiff, 467 U.S. 229 (1984); Berman v. Parker, 348 U.S. 26 (1954).

7. *See* JEANIE WYLIE, POLETOWN: COMMUNITY BETRAYED 7 (1989); William Yardley, *After Eminent Domain Victory, Disputed Project Goes Nowhere*, N.Y. TIMES, Nov. 21 2005, at A1.

8. *See* Marleen A. O'Connor, *Restructuring the Corporation's Nexus of Contracts: Recognizing a Fiduciary Duty To Protect Displaced Workers*, 69 N.C. L. REV. 1189, 1196–97 (1991).

recognizing new or expanded legal remedies to address these injustices;[9] however, most of the more significant overhauls that were proposed did not catch on.[10] I will argue that these solutions should be reexamined as possible means to address problems with takings.

In Part I of this Note, I will discuss *Kelo*, focusing not only on the decision itself, but also on the back-end hazards that *Kelo* and its ilk reveal. I will discuss the manner in which even thoroughly considered development plans that rely on the use of eminent domain may leave municipalities vulnerable to abuse by private entities. Finally, I will criticize the backlash to *Kelo* by discussing the value that eminent domain can have for economic development and by demonstrating that the backlash has been mostly ineffective[11] and has done little to improve outcomes when takings inevitably occur.

In Part II, I turn to a problem that consumed a great deal of ink in the 1980s and 1990s: how to deal with the rash of plant closings that occurred during that time period. Although some successful state legislation was enacted around the country,[12] I focus heavily on more progressive proposals that suggested comprehensive reform, particularly the recognition of new, corporate fiduciary duties[13] and the recognition of an expanded reliance interest to protect communities.[14] Though ultimately unsuited for the plant-closing paradigm, these examples are quite instructive.

In Part III, I propose applying these theories to economic development takings as a means to close the gap between municipal intent and corporate action. As I will explain, the application of these theories is justified in the eminent domain context for reasons that did not exist in the plant-closing context: the uniquely destructive nature of eminent domain[15] and the Constitution's explicit "public use" requirement for takings.[16] Finally, I will offer one form such a proposal could take—adapting language from claims brought by

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9. *See, e.g.*, Marleen A. O'Connor, *Promoting Economic Justice in Plant Closings: Exploring the Fiduciary/Contract Law Distinction To Enforce Implicit Employment Agreements*, *in* PROGRESSIVE CORPORATE LAW 219 (Lawrence E. Mitchell ed., 1995) (advocating the use of expanded fiduciary obligations to protect displaced workers); Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611 (1988) (supporting the recognition of property-based reliance interests to protect communities harmed by corporate actors).

10. *See* Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745, 819 (2009).

11. *See generally* Somin, *supra* note 4 (reviewing failure of public backlash to mitigate community harm from takings).

12. Ivan C. Dale, Comment, *Economic Development Incentives, Accountability Legislation and a Double Negative Commerce Clause*, 46 ST. LOUIS U. L.J. 247, 266 (2002).

13. *See, e.g.*, O'Connor, *supra* note 8, at 1195–96.

14. *See, e.g.*, Singer, *supra* note 9, at 621–23.

15. *See generally* CARLA T. MAIN, BULLDOZED: "*KELO*," EMINENT DOMAIN, AND THE AMERICAN LUST FOR LAND (2007) (discussing physical and social destruction of communities subjected to eminent domain); WYLIE, *supra* note 7 (discussing the eradication of an otherwise-healthy community through the use of eminent domain).

16. U.S. CONST. amend. V.

Local 1330, United Steelworkers of America against U.S. Steel[17]—in order to provide greater protection for communities.

I. *KELO*, BACKLASH, AND EMINENT DOMAIN

A. THE *KELO* DECISION

In *Kelo v. City of New London*, the U.S. Supreme Court held that governments may take private property and give it to another private entity for the purpose of promoting economic development.[18] The case presented a plan for economic development in New London, Connecticut, a "'distressed municipality'"[19] facing "severe economic distress . . . rising unemployment and stagnant tax revenues."[20] In response to these circumstances, the New London Development Corporation (NLDC) crafted a comprehensive development plan, capitalizing on the arrival of a new facility operated by the pharmaceuticals giant Pfizer.[21] This plan would cover approximately ninety acres and create new housing, parkland, and support for the adjacent Pfizer facility.[22] However, it required the city to acquire several properties by eminent domain—including fifteen properties belonging to Susette Kelo and the other eight plaintiffs.[23]

It was undisputed that the city did not intend the general public to use the seized land freely and that some portion of it would be given over for the use of Pfizer.[24] Acknowledging that it would be impermissible for the government to "take the property of *A* for the sole purpose of transferring it to another private party *B*,"[25] the Court nevertheless held that a "'public end may be as well or better served through an agency of private enterprise than through a department of government . . . . We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects.'"[26]

Although past Supreme Court cases had upheld the transfer of land to new private ownership, these rulings relied on the ground that the taking itself—not the recipient—would serve a public purpose.[27] In *Hawaii Housing Author-*

17. *See* Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264, 1280 (6th Cir. 1980).

18. 545 U.S. 469, 485–90 (2005); *see also* Daniel S. Hafetz, Note, *Ferreting Out Favoritism: Bringing Pretext Claims After* Kelo, 77 FORDHAM L. REV. 3095, 3095 (2009).

19. *Kelo*, 545 U.S. at 473.

20. Kelo v. City of New London, 843 A.2d 500, 540 (Conn. 2004).

21. *Kelo*, 545 U.S. at 473–74.

22. *Id.* at 474–75.

23. *Id.* at 475.

24. *Id.* at 478–79.

25. *Id.* at 477.

26. *Id.* at 486 (quoting Berman v. Parker, 348 U.S. 26, 33–34 (1954)); *cf. id.* at 492 (Kennedy, J., concurring) (finding it important that the development plan was aimed at capitalizing on Pfizer's presence rather than providing a benefit to Pfizer).

27. *Id.* at 498–99 (O'Connor, J., dissenting). A variety of other takings that would serve clear public purposes or grant land to common carriers has historically been permitted, but *Kelo* is unique in its applicability to private actors serving private purposes. *Id* at 501.

ity v. Midkiff, the Court upheld Hawaii's decision to take land from a handful of dominant landowners, deferring to the Hawaii legislature's determination that the concentration of ownership in a relative few was, itself, problematic.[28] Similarly, in *Berman v. Parker*, the Court upheld takings within a blighted area of Washington, D.C., deferring to Congress's findings that the area was inherently harmful in its present state.[29] In contrast, New London did not claim that there was anything inherently problematic about the homes that it was attempting to seize.[30] Rather, the city justified the taking by relying on the benefits expected to accrue after the fact, based on hopes that benefiting Pfizer would, in turn, allow Pfizer's presence to spur the local economy. The Court accepted New London's reliance on a private actor to serve public ends,[31] and considered the dispositive issue to be whether the plan was genuinely aimed at accomplishing a public purpose or whether such purpose was merely a pretext for providing a private benefit.[32] Finding the economic development plan to be legitimately aimed at a public purpose, the Court sided with New London.[33]

On the whole, there is nothing about this decision that should be particularly shocking; as the Court noted, there was "no principled way of distinguishing economic development from the other public purposes that [the Court has] recognized,"[34] and others have noted that any other result "would have muddled clear and long-settled state court precedents."[35] Moreover, even under this deferential standard, courts have not hesitated to strike down truly pretextual takings.[36] Nevertheless, in the wake of *Kelo*, the category of "economic development takings" has become the subject of considerable debate.[37]

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28. 467 U.S. 229, 241 (1984).

29. 348 U.S. 26, 33–34 (1954).

30. *Kelo*, 545 U.S. at 475 (noting that the properties were not "blighted or otherwise in poor condition; rather, they were condemned only because they happen[ed] to be located in the development area").

31. *Id.* at 474–75.

32. *Id.* at 477–78.

33. *Id.* at 485–86, 489. Ironically, as a result of the negative publicity that arose from the *Kelo* ruling itself and the risk that further litigation would follow, New London's attempts to develop the site were "effectively paralyzed," and the development project was never carried out. *See* Patrick McGeehan, *Pfizer To Leave City that Won Land-Use Suit*, N.Y. TIMES, Nov. 13, 2009, at A1; Yardley, *supra* note 7.

34. *Kelo*, 545 U.S. at 484.

35. John R. Nolon & Jessica Bacher, *'Takings' and the Court: Despite Alarmists 'Kelo' Decision Protects Property Owners and Serves the General Good*, 231 N.Y. L.J. 5, 5 (2005).

36. *See, e.g.*, 99 Cents Only Stores v. Lancaster Redevelopment Agency, 237 F. Supp. 2d 1123, 1129 (C.D. Cal. 2001) (striking down the taking of a 99-cent store to allow for the expansion of an adjacent Costco as a pretextual transfer from one party to another); Bailey v. Myers, 76 P.3d 898, 904 (Ariz. Ct. App. 2003) (striking down the taking of a brake shop for the purposes of converting it to a hardware store as lacking a valid public purpose).

37. *See, e.g.*, Charles E. Cohen, *Eminent Domain After* Kelo v. City of New London*: An Argument for Banning Economic Development Takings*, 29 HARV. J.L. & PUB. POL'Y 491 (2006); Ilya Somin, *Overcoming* Poletown*:* County of Wayne v. Hathcock*, Economic Development Takings, and the Future of Public Use*, 2004 MICH. ST. L. REV. 1005.

B. THE VULNERABILITY OF LOCALITIES

Although the harm resulting from the condemnation of Susette Kelo's home received substantial coverage in the wake of the *Kelo* decision, a different sort of harm was illuminated more recently, when Pfizer announced that it would be closing down its facility in New London.[38] The closing will take 1,400 jobs out of the city and move them to a town a few miles away, "leav[ing] behind the city's biggest office complex and an adjacent swath of barren land that was cleared of dozens of homes to make room for a hotel, stores and condominiums that were never built."[39]

New London is not the only municipality that has been harmed by its reliance on corporate actors to spur economic development. In *Poletown Neighborhood Council v. City of Detroit*,[40] Detroit was confronted with General Motors' (GM) plan to close a major facility in the city in the spring of 1980.[41] Desperate to find a site for a new factory, Detroit condemned the vibrant and diverse community known as Poletown for the construction of a new plant that would bring some 6,000 jobs to the city.[42] Poletown was undeniably not blighted or otherwise distressed, and was known for "its sound housing stock, its low rents, its good access to shops and services, and its tolerance for divergent ethnic groups and religious denominations."[43] Nevertheless, the Michigan Supreme Court upheld the taking in a per curiam opinion, finding that it would provide a "clear and significant" benefit and that "its significance for the people of Detroit and the state [had] been demonstrated."[44]

After the homes were condemned, however, GM failed to come through on many of its earlier commitments. Following initial delays in opening,[45] the

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38. McGeehan, *supra* note 33, at A1.

39. *Id.* Although Pfizer's exit from New London exemplifies the back-end risks of eminent domain, the exclusive use of New London as a case study is complicated by the fact that the development project was never completed, due in part to negative publicity arising out of the *Kelo* decision. *See* Yardley, *supra* note 7, at A1.

40. 304 N.W.2d 455, 460 (Mich. 1981) (per curiam), *overruled by* Cnty. of Wayne v. Hathcock, 684 N.W.2d 765 (Mich. 2004).

41. *Id.* at 460–61 (Fitzgerald, J., dissenting). The closure would have led to the loss of about 6,150 jobs. *Id.* at 467 (Ryan, J., dissenting).

42. Charlotte Allen, *A Wreck of a Plan: Look at How Renewal Ruined SW*, WASH. POST, July 17, 2005, at B1.

43. WYLIE, *supra* note 7, at 7.

44. *Poletown*, 304 N.W.2d at 459–60. Although *Poletown* predates *Kelo* by more than two decades, it reached the same holding that the Supreme Court would eventually reach in *Kelo*. *Compare id.* at 549 ("The power of eminent domain is to be used in this instance primarily to accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community. The benefit to a private interest is merely incidental.") *with* Kelo v. City of New London, 545 U.S. 469, 486–87 (2005) (recognizing that complex community redevelopment plans focused on the public good may be most effectively achieved through private enterprise). However, also prior to *Kelo*, the Michigan court reversed its position on state constitutional grounds, finding that private development was not a permissible public purpose. *See* County of Wayne v. Hathcock, 684 N.W.2d 765, 784 (Mich. 2004).

45. Peter Behr, *GM Plant Delay Set for 1 Year: Poletown Facility Plans Altered by Decline in Sales*, WASH. POST, Nov. 4, 1981, at D8.

plant only operated sporadically, and GM eventually laid off many of its initial hires.[46] The plant employed only about half as many people as had been initially estimated [47] and forced many of them to work involuntary overtime.[48] As Detroit went into debt to cover the cost of compensating the owners of condemned properties, GM closed several more plants, resulting in a $10 million loss in tax revenue for Detroit.[49] In all, the cost to the city, state, and federal governments of building the Poletown plant exceeded $300 million.[50] When viewed in its entirety, this looks more like extortion than partnership. Indeed, the mayor acknowledged that keeping GM in town was a matter of "'the ability of [the] city to survive,'"[51] and Justice Ryan, dissenting from the *Poletown* majority, observed that Detroit had "its economic back to the wall."[52]

The disconnect between the aims of economic development proposals and the ability of governments to work with private actors to accomplish their goals is by no means new.[53] As I will discuss in the next section, however, the potential for these after-the-fact abuses remains substantial and has not been addressed in the aftermath of *Kelo*.

C. BACKLASH

The *Kelo* decision sparked a backlash as strong as any Supreme Court decision in recent history, transcending traditional political lines.[54] Representative Maxine Waters (D-CA) described *Kelo*'s use of eminent domain power as "'the most un-American thing that can be done.'"[55] Overwhelming majorities of the public indicated their disagreement with the Court's holding.[56] Even four years later, the *Wall Street Journal*

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46. WYLIE, *supra* note 7, at 214.

47. Terry Pristin, *Connecticut Homeowners Say Eminent Domain Isn't a Revenue-Raising Device*, N.Y. TIMES, Sept. 8, 2004, at C8. There are several estimates of how many people have been employed at the Poletown plant in the roughly two decades since it opened. Most recently, the *Detroit Free Press* put the number of persons employed at the plant at 1,944. Ben Schmitt & Kate Merx, *GM Seeks Tax Abatement To Build Electric Chevrolet Volt at Poletown: Detroit City Council Panel Hears the Pitch*, DETROIT FREE PRESS, Sept. 25, 2008, at 2.

48. WYLIE, *supra* note 7, at 215.

49. *See id.* at 214, 216.

50. MAIN, *supra* note 15, at 9.

51. Poletown Neighborhood Council v. City of Detroit, 304 N.W.2d 455, 467 n.4 (Mich. 1981) (Ryan, J., dissenting), *overruled by* Cnty. of Wayne v. Hathcock, 684 N.W.2d 765 (Mich. 2004).

52. *Id.* at 467.

53. *See* Allen, *supra* note 42, at B1 (discussing failed taxpayer-subsidized redevelopment projects).

54. *See, e.g.*, Somin, *supra* note 4, at 2101–02 ("The Kelo backlash probably resulted in more new state legislation than any other Supreme Court decision in history."); *see also About Us*, THE CASTLE COALITION, http://www.castlecoalition.org/index.php?option=com_content&task=view&id=42&Itemid=138 (last visited Mar. 10, 2010) (an organization dedicated to "fighting eminent domain abuse," whose website references the danger of "greedy governments and developers who seek to use eminent domain to take private property for their own gain"). Even less alarmist commentators have suggested, "It's not just that the government can seize your property, it's that the government is taking it to benefit people who matter more—because they can pay more." Judy Coleman, *The Powers of a Few, the Anger of the Many*, WASH. POST, Oct. 9, 2005, at B2.

55. Charles Hurt, *Congress Assails Domain Ruling*, WASH. TIMES, July 1, 2005, at A1.

56. *See* Somin, *supra* note 4, at 2109–10.

described the ruling as "one of the worst in recent years."[57] The *New York Times* noted that, "[i]n a rare display of unanimity that cut[] across partisan and geographic lines, lawmakers in virtually every statehouse across the country [advanced] bills and constitutional amendments" in response to *Kelo*.[58]

There are at least three possible ways of viewing this backlash. First, many authors have argued that the backlash itself was unwarranted, and that economic development takings serve a valid and important purpose.[59] Second, it has been argued that the legislative response to *Kelo* was mostly symbolic, yielding relatively few meaningful restrictions on the takings power.[60] Both of these critiques have been discussed at length. Third—and most important for the purposes of this Note—is the reality that municipalities will inevitably continue using the eminent domain power and, in so doing, will continue to be subject to the will of private entities with wholly private motivations, notwithstanding the public use requirement.

1. Takings Can Serve Important Municipal Goals

"Government's power to take property against an owner's will is both a powerful tool for public policy and a threat to liberty. It may be used for good or for ill."[61] John Fee has taken the position that eminent domain is no different from any other government power; although it may be subject to abuse, eminent domain may be an extremely effective tool for providing for important public needs.[62] New York City Mayor Michael Bloomberg has even gone so far as to assert, "'You would never build any big thing in any place in any big city in this country if you didn't have the power of eminent domain . . . .'"[63] The National League of Cities, the American Planning Association, and other planning organizations strongly support the outcome in *Kelo*,[64] and it has been argued that "the benefits from such condemnations, such as increased tax revenues, employment opportunities, and overall neighborhood revitalizations, outweigh any arguments put forth for prohibiting economic development takings from constituting a public use."[65] Indeed, Robert Moses, who was responsible for the construction of roads, bridges, parks, and other development projects that fundamentally reshaped New York, relied heavily on the use of eminent domain to pave the

57. Editorial, *Pfizer and* Kelo*'s Ghost Town*, WALL ST. J., Nov. 11, 2009, at A20.

58. John M. Broder, *States Curbing Right To Seize Private Homes*, N.Y. TIMES, Feb. 21, 2006, at A1.

59. *See generally, e.g.*, THE FOUR SUPREME COURT LAND-USE DECISIONS OF 2005: SEPARATING FACT FROM FICTION 1–94 (Am. Planning Ass'n ed., 2005) [hereinafter LAND-USE DECISIONS] (compiling a number of pieces published by the American Planning Association and others showing considerable support for the *Kelo* decision).

60. *See, e.g.*, Somin, *supra* note 4, at 2105.

61. John Fee, *Reforming Eminent Domain*, *in* EMINENT DOMAIN USE AND ABUSE, *supra* note 3, at 125, 125.

62. *See id.* at 130–31.

63. Diane Cardwell, *Bloomberg Says Power To Seize Private Land Is Vital to Cities*, N.Y. TIMES, May 3, 2006, at B1.

64. *See generally, e.g.*, LAND-USE DECISIONS, *supra* note 59, at 1–94.

65. Nasim Farjad, Note, *Condemnation Friendly or Land Use Wise? A Broad Interpretation of the Public Use Requirement Works Well for New York City*, 76 FORDHAM L. REV. 1121, 1121 (2007).

way for development.[66]

Moreover, even those who oppose economic development takings generally support their use for at least some purposes.[67] For example, even in the midst of the backlash against *Kelo*, most state reforms preserved an exception allowing the use of eminent domain to repair blighted communities.[68] Thus, a role for takings will persist even if the use of eminent domain is restricted to certain situations. As a result, limiting the frequency of takings will not ameliorate the hazards associated with the eminent domain power.[69]

2. The Failure of Legislative Reforms

Even if we assume that economic development takings should be restricted, it is doubtful that state legislation aimed at limiting or eliminating such takings in the wake of *Kelo* has had a meaningful impact. In a comprehensive study, Ilya Somin analyzed the reforms that were enacted by the states in the wake of *Kelo*.[70] Of the thirty-six pieces of reform legislation enacted by state legislatures, twenty-two "provide[d] little or no protection for property owners against economic development takings."[71] Many of these laws are ineffective because, despite purporting to impose stringent limits on—or wholly bar—economic development takings, they provide exceptions for cases of "blight" and define blight so broadly as to allow the justification of almost any potential taking.[72] Other reforms leave large loopholes, so that if any other purpose besides mere economic development can be claimed for a proposed taking, it would be permissible. For example, Connecticut law bars the taking of property "for the primary purpose of increasing local tax revenue," but does not otherwise place any restrictions on the

66. *See generally* ROBERT A. CARO, THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK (1974) (discussing Moses's use of eminent domain to dispossess hundreds of thousands of people to make way for development projects that remade the face of New York).

67. *See* Cohen, *supra* note 37, at 566–67. Although Cohen advocates for the elimination of all development takings, he does so with the awareness that his proposal is viable only if it provides alternative means for redeveloping blighted areas. *Id.* at 499. *But see* Amanda W. Goodin, Note, *Rejecting the Return to Blight in Post-*Kelo *State Legislation*, 82 N.Y.U. L. REV. 177, 179 (2007) (arguing that blight alleviation is a particularly harmful use of eminent domain because it seizes land from those who are already poor and underrepresented).

68. *See infra* section I.C.2.

69. *See* Coleman, *supra* note 54 ("[Blight takings] often met with failure rather than success—parts of many American central cities look like brutalist concrete ghost towns.").

70. Somin, *supra* note 4, at 2120.

71. *Id.* States that enacted reforms by means of referendum had a higher rate of effective reforms, although several suffered from flaws similar to those present in legislatively enacted laws. *See id.* at 2143–44.

72. *Id.* at 2120–31. "As a practical matter . . . vague and open-ended definitions of 'blight' permit local authorities to take almost any property, and thus open the door to any evasion of legislative restrictions on private economic development takings." James W. Ely, Jr., *Post-*Kelo *Reform: Is the Glass Half Full or Half Empty?*, 17 SUP. CT. ECON. REV. 127, 135 (2009). However, courts have refused to defer to unreasonable definitions of blight and have rejected pretextual findings of blight. *See, e.g.*, Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 924 A.2d 447, 464–65 (N.J. 2007).

purposes that a taking may serve.[73] Even less effective are those reforms that merely raise minor procedural hurdles, such as a Maryland law requiring the condemnation of a property to be carried out within four years of its initial authorization.[74] Although a handful of states has banned economic development takings outright[75] or created meaningful restrictions on their use,[76] these are a minority.

At the federal level, the response has been even more toothless. Although the House of Representatives overwhelmingly passed a resolution disapproving of the *Kelo* decision, there has been no meaningful, substantive response from Congress.[77] Similarly, although President Bush signed an executive order purporting to restrict the use of eminent domain in federally funded projects, the language of the order adopts the same standard that was applied in *Kelo*.[78] Thus, Professor James W. Ely has observed that "there is no realistic prospect for any move to curb economic development takings at the federal level."[79]

Of the overwhelming majority of states that have enacted post-*Kelo* reforms, many "afford virtually no additional protection for property owners and seem calculated to placate public opinion rather than to reign in the exercise of eminent domain."[80] These failures may move us past questions over whether *Kelo*-type takings *should* be restricted and instead require us to deal with the reality that they *will* occur. Thus, the most effective solutions to the problem may be those that close the gap between what municipalities intend and what corporate actors will actually do.[81]

3. The Dangers of Post-takings Abuses

Accepting that takings will occur makes it more important to focus on ensuring that such takings are, at least, successful in serving the public good. In

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73. CONN. GEN. STAT. ANN. § 8-193(b)(1) (West 2010); *see also* DEL. CODE ANN. tit. 29, § 9505(15) (2003 & Supp. 2008) (requiring that property be taken only "for the purposes of [recognized public uses]" expressly listed in the statute).

74. MD. CODE ANN., REAL PROP. § 12-105.1 (LexisNexis Supp. 2009).

75. *See* Somin, *supra* note 4, at 2138–39.

76. *Id.* at 2139–41.

77. *See* Ely, *supra* note 72, at 132. The Private Property Rights Protection Act has been introduced in the House of Representatives in each Congress since *Kelo*, but, except for the 109th Congress, in which the bill passed the House of Representatives and died in the Senate, it has not been moved out of committee. *See* H.R. 1885, 111th Cong. (2009); H.R. 3053, 110th Cong. (2007); H.R. 4128, 109th Cong. (2005); *cf.* Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006, Pub. L. No. 109-115, § 726, 119 Stat. 2396, 2494–95 (2006) (nominally restricting funds allocated by the Act for projects using eminent domain but containing large loopholes).

78. *See* Exec. Order No. 13,406, 71 Fed. Reg. 36,973 (June 23, 2006) (requiring that any federally funded projects that use the eminent domain power do so "for the purpose of benefiting the general public").

79. Ely, *supra* note 72, at 131.

80. *Id.* at 134.

81. Indeed, the Court found the City of New London to have had proper motivation and to be pursuing what it honestly believed to be the best course for the public good through a comprehensive development scheme that just happened to rely on private actors to achieve its goals. *See* Kelo v. City of New London, 545 U.S. 469, 492–93 (Kennedy, J., concurring).

this context, the departure of Pfizer[82] and abuses by GM[83] are the main harms to be addressed. One aspect of the problem illuminated by these departures is the reality that communities need the corporations more than the corporations need the communities: for example, Pfizer had a lesser stake in its success in New London than did the city itself. As Nancy Kubasek and Garrett Coyle discuss, this disconnect can be disastrous for localities:

> Because corporations do not face consequences if their estimates to the legislature differ from reality, a moral hazard problem is present: corporations have an incentive to overstate the number of jobs and the amount of tax revenue they will create given a suitable site. Moreover . . . the judiciary cannot review the likelihood that the public benefit targeted by the taking will be achieved. The logical corollary of this moral hazard problem is that legislatures may press for eminent domain condemnations to which they would never have consented had they known the actual or even likely outcomes.[84]

The end result of this hazard, as evidenced in the aftermath of *Kelo* and *Poletown*,[85] is that cities may require their citizens to make significant sacrifices for economic benefits provided by corporations that never respond in kind. After enduring the expense, litigation, and public vitriol associated with the NLDC's development project, New London is left with ninety acres of undeveloped land and *still* no major employer while Pfizer makes a clean break, leaving New London holding the bag.[86] By dismantling a community to encourage GM to remain, Detroit traded the goodwill of its citizens and substantial public debt for jobs that never materialized in a factory that continues to request further benefits from the city.[87]

However, the reliance of municipalities on private actors to serve as economic engines is not limited to the eminent domain scenario. Local industries have driven local economies for years (and derived benefits for doing so). These issues were most prominent in the 1980s and 1990s, as shifts in the American economy disrupted many of these relationships.

II. COMMUNITIES AND THE CORPORATIONS THAT HURT THEM

The troublesome interactions between large corporations and their host municipalities were discussed at length during the 1980s and 1990s in the context of increasingly common plant closures.[88] In this Part, I will describe these prob-

82. McGeehan, *supra* note 33.

83. WYLIE, *supra* note 7, at 214–15.

84. Nancy Kubasek & Garrett Coyle, *A Step Backward Is Not Necessarily a Step in the Wrong Direction*, 30 VT. L. REV. 43, 60–61 (2005) (citation omitted).

85. *See supra* sections I.A–I.B.

86. *See* McGeehan, *supra* note 33; Yardley, *supra* note 7.

87. *See* Pristin, *supra* note 47; Schmitt & Merx, *supra* note 47.

88. *See, e.g.*, O'Connor, *supra* note 8, at 1196–99.

lems as presented in the plant-closing context and discuss the solutions that were proposed for these problems.

A. *YPSILANTI* AND PLANT CLOSURES

In the early 1990s, *Charter Township of Ypsilanti v. General Motors Corp.*[89] became a prominent example of the harms arising from plant closings.[90] The town of Ypsilanti, Michigan, had been the site of GM's Willow Run plant for years.[91] In the 1980s, the township had granted the plant several tax abatements at GM's request,[92] basing its decision to do so on the manufacturer's stated intention to continue production in Ypsilanti.[93]

Nevertheless, when demand for cars produced at Willow Run did not meet GM's expectations, the company decided to shut down the plant and transfer its operations to Arlington, Texas.[94] Faced with the loss of approximately 4,500 jobs and a massive blow to the local economy, Ypsilanti sued in state court, asserting, *inter alia*, a promissory estoppel claim based on the grants of tax abatements.[95] The trial judge, Judge Shelton, found that GM's statements were promises to remain in Ypsilanti and that the tax abatements were granted in reasonable reliance on that promise.[96] The court therefore ruled for the town, concluding:

> There would be a gross inequity and patent unfairness if General Motors, having lulled the people of the Ypsilanti area into giving up millions of tax dollars which they so desperately need to educate their children and provide basic governmental services, is allowed to simply decide that it will desert 4500 workers and their families because it thinks it can make these same cars a little cheaper somewhere else. Perhaps another judge in another court would not feel moved by that injustice and would labor to find a legal rationalization to allow such conduct. But in this Court it is my responsibility to make that decision.[97]

However, the court of appeals reversed, finding that GM's commitments were merely "hyperbole and puffery" and could not reasonably be perceived as a

89. 506 N.W.2d 556 (Mich. Ct. App. 1993) (per curiam); *see also* Charter Twp. of Ypsilanti v. Gen. Motors Corp., No. 92-43075-CK, 1993 WL 132385 (Mich. Cir. Ct. Feb. 9), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

90. *See, e.g.*, O'Connor, *supra* note 9, at 228–30.

91. *Ypsilanti*, 506 N.W.2d at 557–58.

92. *Id.*

93. *Ypsilanti*, 1993 WL 132385, at *5. An Ypsilanti trustee expressed doubts about the wisdom of granting the abatements, to which GM responded with a letter stating, in part, "'it is not our intention to transfer production operations to other . . . plant locations . . . . [W]e are dedicated to retain and/or increase jobs at Ypsilanti and will maintain this dedication in the future. We intend to keep this facility a viable operation for the community and General Motors.'" *Id.* (emphasis omitted).

94. *Id.* at *8.

95. *Id.* at *1, *13.

96. *Id.* at *12–13.

97. *Id.* at *13.

promise.[98] Moreover, the court found that "reliance on the promise would not have been reasonable" because tax abatements had never given rise to explicit commitments not to relocate.[99] In contrast with Judge Shelton's high-minded rhetoric on the interests of justice, the court of appeals's per curiam opinion read the law narrowly, and its conclusion was consistent with the outcomes in similar cases.[100] As the Michigan Court of Appeals recognized, there was very little that could force GM to protect the interests of Ypsilanti, no matter how vulnerable the township may be.

B. THE PLANT-CLOSING PROBLEM

In the early and mid-1990s, many authors discussed the issues presented in *Ypsilanti*. The deindustrialization of the American economy meant that plant closings—with resultant layoffs—coincided with a shortage of new jobs for displaced blue-collar workers.[101] Communities frequently felt compelled to offer tax incentives and other benefits to lure or retain major industries, even as many communities were harmed by these same entities.[102]

These incentives proliferated rapidly in the 1980s and 1990s,[103] but by 1995, "[s]purred by tight economies, as well as public resentment of industry handouts and industrial flight," the granting of corporate incentives had become characterized by caution.[104] On the one hand, these incentives had existed since the earliest days of the United States, and their use allowed political leaders to claim an active role in encouraging economic growth and to collect credit for any resultant successes.[105] On the other hand, there was no consensus as to whether these incentives were actually effective in encouraging local develop-

98. Charter Twp. of Ypsilanti v. Gen. Motors Corp., 506 N.W.2d 556, 559 (Mich. Ct. App. 1993) (per curiam).

99. *Id.* at 561.

100. *See, e.g.*, Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264, 1277–79 (6th Cir. 1980); Scott J. Ziance, *Making Economic Development Incentives More Efficient*, 30 URB. LAW. 33, 37–40 (1998) (discussing *City of Yonkers v. Otis Elevator Co.*, 844 F.2d 42 (2d Cir. 1988), in which the court rejected a similar set of claims against a departing economic engine).

101. *See* O'Connor, *supra* note 8, at 1196. O'Connor goes on to discuss why these permanent job losses were particularly destabilizing, insofar as they led to unusually long periods of unemployment and often resulted in the former plant workers finding less prestigious, lower-paying jobs. *Id.* at 1197–98.

102. *See* Edward A. Zelinsky, *Tax Incentives for Economic Development: Personal (and Pessimistic) Reflections*, 58 CASE W. RES. L. REV. 1145, 1149 (2008) ("Consequently, the message corporations and developers advance in such negotiations—give us a tax break or we will ignore (or leave) your community—is difficult for officials to evaluate. Perhaps the corporations and developers are bluffing; it is difficult for state and local officials negotiating with them to know, and politically risky for such officials to find out.").

103. Dale, *supra* note 12, at 247–48.

104. Jennifer L. Gilbert, *Selling the City Without Selling Out: New Legislation on Development Incentives Emphasizes Accountability*, 27 URB. LAW. 427, 428 (1995).

105. *See* Ziance, *supra* note 100, at 35–36. "Economic development incentives have been used for more than one hundred years, and they will continue to be used for at least another one hundred years." *Id.* at 63.

ment.[106] At the very least, "development incentives, by themselves, [did] nothing to alleviate the problem of businesses leaving dependent communities in favor of more profitable business climates."[107] In an attempt to address this disconnect between benefits granted by municipalities and those they received in return, several reforms were proposed.

C. REFORM PROPOSALS

There are three broad categories of reforms that were discussed in response to concerns about the granting of corporate benefits. First, as in the takings context, statutory reforms were enacted in many states.[108] Another set of proposals sought to reinterpret corporate law, typically applying relatively new, stakeholder-focused theories to impose on corporations a fiduciary duty towards their employees or surrounding communities.[109] A third group of proposed reforms sought remedies in the common law, often advocating for the recognition of reliance interests or property rights to form the basis of a legal right granted to localities.[110]

1. Statutory Reforms

Several states enacted laws to address perceived problems with corporate incentives. Some states required that entities receiving benefits meet certain obligations: Minnesota, for example, initially enacted legislation requiring that any public subsidy or tax benefit result in a net increase in jobs.[111] Others limited who could receive certain benefits at all: for example, the Oklahoma Saving Quality Jobs Act not only requires certain levels of job creation but also restricts its benefits to industries that are "at risk" or "strategically important" to the state.[112] Other states, like Arizona, required recipients of certain financial incentives to remain in the community for a minimum period of time following

106. Kary L. Moss, *The Privatizing of Public Wealth*, 23 FORDHAM URB. L.J. 101, 108–11 (1995) ("The Federal Reserve Bank of Atlanta noted: 'Investment is a long term profit-oriented decision, and virtually no amount of special incentives . . . is likely to attract and keep a firm in an area in which the long-term profitability criteria are not present.'" (quoting MARTIN TOLCHIN & SUSAN TOLCHIN, BUYING INTO AMERICA: HOW FOREIGN MONEY IS CHANGING THE FACE OF OUR NATION 65 (1988)).

107. Dale, *supra* note 12, at 255.

108. *See, e.g.*, Gilbert, *supra* note 104, at 456–57, 481–90; Michael H. LaFave, Note, *Taking Back the Giveaways: Minnesota's Corporate Welfare Legislation and the Search for Accountability*, 80 MINN. L. REV. 1579, 1595–98 (1996).

109. *See, e.g.*, O'Connor, *supra* note 8, at 1227–36 (discussing statutes enacted by several states to protect job losses following corporate takeovers, and noting that over half of the states have enacted some form of stakeholder statute).

110. *See, e.g.*, Singer, *supra* note 9, at 1038–40 (arguing that property law includes a reliance interest based on relationships of mutual dependence).

111. MINN. STAT. § 116J.991 (1996) (repealed 1999). This law was later replaced by requirements that beneficiaries remain in the community for a minimum of five years and meet certain job and wage goals. MINN. STAT. ANN. § 116J.994 (West 2005 & Supp. 2010).

112. OKLA. STAT. ANN. tit. 68, § 3704 (West 2001). The at-risk establishment must also create one new job for each at-risk job saved. *Id.*

the receipt of benefits.[113] Overall, at least sixty jurisdictions have enacted some form of accountability legislation to place obligations on the beneficiaries of tax breaks and other subsidies—often providing for "clawbacks" of subsidies in the event of a failure to fulfill attached conditions—since 1994.[114]

Although many of these statutes have not yet been tested, there are early signs that they will be an effective way for states to recover funds from companies that fail to provide promised benefits.[115] Therefore, within the plant-closing context, there are arguments to be made in favor of statutory reform. However, these arguments do not transfer to the takings context—notwithstanding the fact that economic development takings have a greater potential to harm communities than do subsidies or tax benefits[116]—because the apparent lack of political will to attach meaningful restrictions to takings makes legislative solutions infeasible.[117] Moreover, these laws create isolated, transaction-based obligations, requiring the disgorgement of a specific benefit if conditions are not met; they do little to prevent or to alleviate the broad economic harm that a private actor can wreak on a community. Forcing GM to repay its tax benefits would not have kept a major employer in Ypsilanti.

2. Corporate Law Reforms

Another suggestion for solving the plant-closing problem is based in corporate law. Relying on progressive, "stakeholder" theories of corporate law, these proposals advocate for a fiduciary duty to a broad community of those with a stake in the corporation.[118] One such argument suggests that a duty to employees should "arise in recognition of the significant investments of time and human capital that employees make in the corporation."[119] Others argue in favor of extending these obligations even more broadly, providing for a fiduciary duty to nonshareholder classes in general, including entire communities.[120] These proposals would not mandate that corporations remain in unprofitable locations; however, they would impose a duty to consider factors beyond just shareholder profit—such as the impact that closings would have on a host

113. ARIZ. REV. STAT. ANN. § 43-1080 (West 2006) (requiring corporations that do not remain for five years to repay a portion of the benefits received); *see also* MINN. STAT. ANN. § 116J.994.

114. Dale, *supra* note 12, at 249. For a concise list of statutes enacted prior to 1995, see Gilbert, *supra* note 104, at 481–89.

115. *See, e.g.*, Dale, *supra* note 12, at 266. For example, in 1996 New York City successfully recovered $60,000 from Bank of America after it purchased equipment with a city sales tax exemption and then removed it from the state. *Id.*

116. *See infra* section III.A.

117. *Cf.* Somin, *supra* note 37, at 1014–15 (attempting to explain why neither Detroit nor New London placed any restrictions on the corporate beneficiaries of eminent domain).

118. *See* Mark E. Van Der Weide, *Against Fiduciary Duties to Corporate Stakeholders*, 21 DEL. J. CORP. L. 27, 31 (1996).

119. O'Connor, *supra* note 8, at 1252.

120. *See* David Millon, *Communitarianism in Corporate Law: Foundations and Law Reform Strategies*, *in* PROGRESSIVE CORPORATE LAW, *supra* note 9, at 2, 11–13.

community—and impose a duty to mitigate these impacts.[121]

However, there are numerous critiques of these "multifiduciary" models of corporate governance. At a fundamental level, the traditional goals of corporate law may be ill-served by models that sacrifice the efficiency of the shareholder-centered model.[122] Moreover, there are pragmatic concerns that a broad pool of potential stakeholders would enable corporate boards to justify almost any action in the name of *some* putative stakeholder.[123] As a result, this would do little to protect community interests while, at the same time, it would significantly diminish the accountability of corporate boards to any one set of interests.[124] Additionally, these proposals would alter the structure of corporate governance in ways that are not strictly limited to the plant-closing scenario, but rather would affect the whole of corporate law. Although it is uncertain in what direction corporate law may proceed in the coming years, thus far there has not been a fundamental departure from the traditional, shareholder-focused structure of corporate law.[125]

3. A Role for Reliance

A third set of proposals focuses on the role of reliance in the common law.[126] Among the most compelling (and comprehensive) of these proposals is Joseph William Singer's discussion of a "reliance interest in property."[127] Singer relies on *Local 1330, United Steel Workers of America v. U.S. Steel Corp.*, in which the union asserted a property interest in U.S. Steel on behalf of the residents of Youngstown, Ohio.[128] In a pre-trial hearing, the judge considered that claim, stating:

> "Everything that has happened in the Mahoning Valley has been happening for many years because of steel. Schools have been built, roads have been built. Expansion that has taken place is because of steel. And to accommodate that industry, lives and destinies of the inhabitants of that community were based and planned on the basis of that institution: Steel.
>
> We are talking about an institution, a large corporate institution that is virtually the reason for the existence of that segment of this nation . . . .

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121. *See id.*; O'Connor, *supra* note 8, at 1247–54.

122. *See* George W. Dent Jr., *Stakeholder Governance: A Bad Idea Getting Worse*, 58 CASE W. RES. L. REV 1107, 1144 (2008).

123. *See* O'Connor, *supra* note 8, at 1233.

124. Van Der Weide, *supra* note 118, at 67.

125. *See* Robert N. Strassfeld, *Introduction: Corporations and Their Communities*, 58 CASE W. RES. L. REV. 1017, 1029 (2008). *But cf.* Millon, *supra* note 120, at 11–14 (discussing legislation allowing or requiring the consideration of nonshareholder interests but casting doubt on its ability to change corporate decision making). If anything, the model of the corporation as a free-standing creature serving only the shareholders is even more firmly entrenched after *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

126. Reliance interests lay at the heart of several of the legal claims brought by communities that have fallen victim to plant closings. *See, e.g.*, Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264, 1270 (6th Cir. 1980) (asserting a claim similar to an easement by estoppel); Charter Twp. of Ypsilanti v. Gen. Motors Corp., 506 N.W.2d 556, 558 (Mich. Ct. App. 1993) (per curiam) (asserting a claim for promissory estoppel).

127. Singer, *supra* note 9, at 699–700.

128. *Id. passim*; *see also Local 1330*, 631 F.2d at 1264.

. . . .

> It would seem to me that when we take a look at the whole body of American law and the principles we attempt to come out with . . . that a property right has arisen from this lengthy, long-established relationship . . . ."[129]

In the end, however, the court found no basis for such a claim,[130] a finding that was upheld by the Sixth Circuit on appeal.[131]

Singer questions this conclusion, arguing instead that "[t]he legal system sometimes protects the more vulnerable party to [a] relationship by recognizing and protecting her reliance interest in property" against the ownership of a stronger party.[132] He points to examples such as adverse possession, easements by estoppel, and the public trust doctrine as instances where the law derogates the naked rights of ownership in favor of protecting the reliance of other users of a property.[133] This framework "recognizes that ownership and obligation are deeply connected with each other"[134] and suggests that property law does more than just protect individual ownership rights.[135] Though this conception of property law sounds revolutionary, the vulnerability of localities arising from the continuous, mutual relationship that characterizes many plant-closing scenarios bears considerable similarity to other situations where property rights have evolved to protect vulnerable parties.[136]

Singer has offered a particularly detailed proposal for how such a property right would look. In short, this right would prevent the owner as traditionally conceived from simply severing ties with the community, and would instead grant all affected parties rights upon the termination of the relationship or closing of the plant.[137] The claim asserted in *Local 1330* is similar to this proposal, asserting an easement requiring U.S. Steel to help preserve the steel industry in the community, to account for costs of "rehabilitating the community and the workers" when closing plants, and to "[b]e restrained from leaving the [region] in a state of waste."[138] Other authors have gone further, proposing barring a corporate entity that has received benefits from taking *any* unilateral

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129. *Local 1330*, 631 F.2d at 1279–80.

130. United Steel Workers of Am., Local No. 1330 v. U.S. Steel Corp., 492 F. Supp. 1, 10 (N.D. Ohio 1980).

131. *Local 1330*, 631 F.2d at 1280–82 (the Sixth Circuit expressed "great sympathy for the community interest reflected" in the claims of a property interest but found that there was simply no authority to support such a claim.).

132. Singer, *supra* note 9, at 664.

133. *Id.* at 665–75. Singer goes on to discuss a wide range of other property doctrines that reflect an interest in protecting a weaker party that has relied in various ways on property that is owned by another party. *Id.* at 675–99.

134. Alexander, *supra* note 10, at 819.

135. *See id.* at 746–47.

136. *See* David Schultz & David Jann, *The Use of Eminent Domain and Contractually Implied Property Rights To Affect Business and Plant Closings*, 16 WM. MITCHELL L. REV. 383, 421 (1990).

137. *See* Singer, *supra* note 9, at 699.

138. Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264, 1280 (6th Cir. 1980).

action that would harm its host municipality.[139]

However, despite holding some intuitive appeal, the wholesale adoption of theories such as this would require an abrogation of many common assumptions about the rights of corporations.[140] In addition, although the recognition of reliance interests is common in property law, it stands in some tension with traditional notions of property as absolute ownership.[141] This is one powerful reason why, despite calls for such a theory to be developed by the judiciary[142] or by academics,[143] no new property interest has been recognized.[144] Indeed, to read such a broad property interest into the law wherever a municipality has come to rely on a large corporate entity would work no less a change in corporate law than would the recognition of new fiduciary duties.[145]

D. A LACK OF FAR-REACHING SOLUTIONS TO PLANT CLOSURES

Plant closures and relocations have triggered a strong reaction and a powerful sense that there should be a solution for the perceived injustice that has been done, even if there is no clear legal basis for such redress.[146] However, the only solutions that have been put in place are relatively modest legislative measures,[147] and more revolutionary proposals have made little headway.[148] Despite intense academic discussions of novel ways to address plant closings in the late 1980s and early- to mid-1990s, this debate has tapered off in the last decade or so.[149] In the next section, I demonstrate why these more progressive theories—particularly the recognition of reliance interests—should be reexamined in the context of economic development takings.

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139. *See* Schultz & Jann, *supra* note 136, at 422.

140. *See Local 1330*, 631 F.2d at 1280 (noting that there is no established legal basis for holding U.S. Steel accountable to its community); Joseph William Singer, *Corporate Responsibility in a Free and Democratic Society*, 58 CASE W. RES. L. REV. 1031, 1033–34 (2008) (discussing the conception of a corporation as an independent entity with freedom to act as it pleases).

141. Singer, *supra* note 9, at 633–37.

142. *Id.* at 744–48.

143. Alexander, *supra* note 10, at 818–19.

144. *See id.*; Moss, *supra* note 106, at 129.

145. *See Local 1330*, 631 F.2d at 1282 ("We find no ground to . . . order a steel manufacturing corporation to continue the operation of two plants which it . . . [has] found to be unprofitable."); *see generally* Singer, *supra* note 140 (discussing the effects of a broader conception of rights and duties on business).

146. *See, e.g.*, *Local 1330*, 631 F.2d at 1266 ("'United States Steel should not be permitted to leave the Youngstown area devastated after drawing from the lifeblood of the community for so many years. Unfortunately, the mechanism to reach this ideal settlement, to recognize this new property right, is not now in existence in the code of laws of our nation.'" (quoting United Steel Workers of Am., Local No. 1330 v. U.S. Steel Corp., 492 F. Supp. 1, 10 (N.D. Ohio 1980))).

147. *See supra* section II.C.1.

148. *Cf.* Alexander, *supra* note 10, at 818–19 (continuing to advocate for the implementation of Singer's ideas in 2009).

149. *Cf.* Kevin P. Lee, Note, *Toward a Nonshareholder Property Interest in Locally Funded Industries: The Easement in Jobs*, 70 GEO. WASH. L. REV. 831, 833 (2002) (renewing the debate and proposing a solution to plant closing and eminent domain problems). Nevertheless, there is generally a paucity of literature on this topic written after the 1990s.

III. A NEW RELIANCE INTEREST FOR TAKINGS

Although Ypsilanti, Youngstown, Detroit, and New London were all left similarly vulnerable to the economic powerhouses on which they had relied, the eminent domain cases are, in many ways, analytically distinct from plant closings. People may have been angry that GM chose to leave Ypsilanti as it did, but at a fundamental level even critics view this as an appropriate exercise of rights belonging to corporations.[150] In contrast, a *Kelo*-type taking *subordinates* individual property rights to the greater good.[151] Whereas corporate entities are assumed to pursue profitability as a primary goal,[152] both the Takings Clause itself and the derogation of property rights involved in a taking justify the use of a different standard.[153] In the remainder of this Note, I will discuss why these key differences make the recognition of expanded property interests appropriate in the takings context for reasons that are absent in the plant-closing context. First, these economic development takings present a narrow, particularly disruptive type of transaction that both justifies greater protections and provides a bright line that separates the takings context from the larger field of corporate law. Second, the "public use" requirement provides a further justification for protecting communities more aggressively than is appropriate in the plant-closing context.[154] Finally, I will advocate for a particular reliance interest that could be recognized in cases of economic development takings.

A. THE SINGULARLY DESTRUCTIVE POWER OF EMINENT DOMAIN

Whereas reading new rights into plant closings has the potential to upset the whole of corporate law, these rights could be narrowly applied to eminent domain takings without heralding significant changes elsewhere in the law. Most importantly, there is little, if any, ambiguity over when a taking occurs.[155] Although there is a compelling

150. *Cf.* Singer, *supra* note 140, at 1034–35 (describing basic notions of property as applied to corporations). Courts have been loath to compromise the property rights of corporate entities—or the market as a whole—by second-guessing the business decision to close one's own plant. *See Local 1330*, 631 F.2d at 1266; Charter Twp. of Ypsilanti v. Gen. Motors Corp., 506 N.W.2d 556, 559–61 (Mich. Ct. App. 1993) (per curiam).

151. *See* Ashley J. Fuhrmeister, Note, *In the Name of Economic Development: Reviving "Public Use" As a Limitation on the Eminent Domain Power in the Wake of* Kelo v. City of New London, 54 DRAKE L. REV. 171, 172–73 (2005).

152. *See* Singer, *supra* note 140, at 1033–34.

153. *See* U.S. CONST. amend. V; Kelo v. City of New London, 545 U.S. 469, 480 (2005).

154. *Kelo*, 545 U.S. at 498–500 (O'Connor, J., dissenting) (arguing that a public use is served by a private entity only when the private entity is acting in the public good in the manner of a common carrier or when the taking itself, rather than the private party's use, serves the public good). Although not commanding a majority, Justice O'Connor's view gets at the core of what a public use entails. *See also* Cnty. of Wayne v. Hathcock, 684 N.W.2d 765, 782 (Mich. 2004) (finding that, under Michigan law, granting condemned property to a private entity serves a "public use" only "when the private entity remains accountable to the public").

155. *See* 26 AM. JUR. 2D *Eminent Domain* § 2 (2004) ("'Eminent Domain,' in its simplest terms, is the inherent power of a governmental entity to take privately owned property and convert it to a public use."); *cf. id.* §§ 9–16 (discussing what may constitute a taking).

case for why labor concessions[156] or tax abatements[157] may trigger similar reliance, the frequency of these interactions and inherent vagueness of their terms make it hard to allow these transactions to trigger new rights and obligations. In contrast, an economic development taking necessarily creates a clear relationship between a community and a corporate entity:[158] when a town seizes multiple parcels of land and conveys them to a private owner,[159] it has implicated that private party in its claim to serve the "public use." The unusual allocation of costs when takings occur creates a unique risk of abuse in all takings,[160] and narrow limitations would prevent corporate entities from taking advantage of communities that have left themselves and their residents uniquely vulnerable.[161]

Indeed, in the takings milieu, a community is not merely fostering private enterprise to gain a benefit, but is exacting a heavy price from its residents that is justifiable only by the public interests to be served.[162] The mere fact that takings come at a cost does not render them unique; after all, "'[t]ax give-aways take away potential funds for states to invest in education, quality universities . . . and infrastructure.'"[163] However, these diffuse costs are not exacted against the rights of individual citizens; when a steelworker in Youngstown shouted, "'Those are our jobs!'"[164] he was speaking metaphorically.[165] In contrast, when Susette Kelo referred to "'our homes,'"[166] there was nothing abstract about it. She personally bore the costs of development in the name of the public good, and the resulting surplus is being passed to a private beneficiary.[167] These costs are also experienced by the population at large, as trust in property rights is subsumed by fears that "all property is at risk of being taken for the benefit of another private owner that can create more employment opportunities."[168]

In the long term, the harms resulting from failed projects built around takings are entirely different from those left by plant closings or unsuccessful tax

156. Local 1330, United Steel Workers of Am. v. U.S. Steel, 631 F.2d 1264, 1270–79 (6th Cir. 1980).

157. Charter Twp. of Ypsilanti v. Gen. Motors Corp., 506 N.W.2d 556, 557–58 (Mich. Ct. App. 1993) (per curiam).

158. *See* Singer, *supra* note 9, at 657; *see also* Joshua P. Rubin, Note, *Take the Money and Stay: Industrial Location Incentives and Relational Contracting*, 70 N.Y.U. L. REV. 1277, 1319 (1995) (describing "GM's resort to neoclassical law" as a means to violate "the norms governing the relationship" with Ypsilanti).

159. *See* Kelo v. City of New London, 545 U.S. 469, 494 (2005) (O'Connor, J., dissenting).

160. Fee, *supra* note 61, at 130–31.

161. *See* WYLIE, *supra* note 7, at 214–15.

162. *See* RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN 8–16 (1985) (discussing the tension between Lockean notions of property rights and the takings power).

163. Moss, *supra* note 106, at 110 (quoting WILLIAM SCHWEKE, ET AL., BIDDING FOR BUSINESS: ARE CITIES AND STATES SELLING THEMSELVES SHORT? CORPORATE ENTERPRISE DEVELOPMENT 26 (1994)).

164. Singer, *supra* note 9, at 637.

165. *Cf.* Bishop v. Wood, 426 U.S. 341, 344–45 (1976) (discussing circumstances under which a property interest in employment may exist).

166. Yardley, *supra* note 7.

167. *See* Gregory S. Alexander, *Eminent Domain and Secondary Rent-Seeking*, 1 N.Y.U. J. L. & LIBERTY 958, 960 (2005).

168. Fuhrmeister, *supra* note 151, at 178.

incentives. It is true that some tax incentives that attract businesses diminish communities' long-term ability to provide the services and benefits that may attract industry in the future.[169] And when a plant closes, it can decimate a local economy.[170] However, Youngstown still exists; Poletown does not. A plant closing may metaphorically destroy a community, but the taking of a large area by eminent domain can do so literally.

Thus, the costs of eminent domain takings are greater even than those of major plant closings and are borne almost entirely by the residents who are dispossessed to make way for economic growth. These takings wholly defeat individual property rights and may dismantle vibrant communities for uncertain gain.[171] Although a reliance interest would not give Susette Kelo back her home, it would protect communities against the uniquely high costs of takings by protecting the benefit that justified the taking initially.

B. PUBLIC USE AND THE UNIQUE NATURE OF EMINENT DOMAIN

The constitutional public use requirement provides further justification for imposing obligations on corporate actors that are inappropriate for the plant-closing scenario.[172] Recognizing a reliance interest would create a clear and meaningful difference between "tak[ing] private property currently put to ordinary private use, and giv[ing] it over for new, ordinary private use,"[173] and a permissible economic development taking wherein the private beneficiary is ostensibly serving the public good. It would also address Justice Kennedy's apparent discomfort with the possibility that *Kelo* could open the door to a broad range of takings without adequate safeguards against fabricated or pretextual public purposes.[174] Granting a legally cognizable interest to communities would not address these concerns prior to a taking, but would provide an after-the-fact remedy for those takings from which a public benefit never accrues because of the bad faith of a corporate actor.

Reference to the Public Use Clause provides a limiting principle, as well, that is absent from the plant-closing scenario. When an industry leaves a community, any rights that are asserted are claimed to arise from the mere act of entering and conducting business within that community,[175] or possibly from receiving benefits for

169. *See* Moss, *supra* note 106, at 108–10.

170. *See* Rubin, *supra* note 158, at 1308.

171. "Uncompensated involuntary sacrifices violate the basic commitment to personal autonomy and the protection of legitimate individual expectations. To expect individuals to make personal sacrifices for the common good is legitimate just insofar as accounts will even up in the long run, that is, so long as reasonable grounds exist to believe that the total long-term burdens that the individual bears will balance out the total long-term benefits she receives." Alexander, *supra* note 10, at 760 (citation omitted).

172. *See* U.S. CONST. amend. V. In fact, similar restrictions have been justified based on similar language in state constitutions applicable to tax benefits or other corporate incentives. *See* Moss, *supra* note 106, at 116.

173. Kelo v. City of New London, 545 U.S. 469, 501 (2005) (O'Connor, J., dissenting).

174. *See id.* at 491–93 (Kennedy, J., concurring).

175. *See* Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264, 1281 (6th Cir. 1980).

so doing.[176] It would strain traditional corporate law notions to construe so broad an obligation from mere presence and interaction.[177] However, in the takings context, a right would arise from the exercise of a government power that is itself subject to constitutional restrictions. This is not run-of-the-mill business activity, and the requirement that takings serve the public good can justify protecting municipalities from being harmed by their reliance on corporate actors.[178]

Providing after-the-fact accountability addresses the Court's concerns while squaring neatly with its reluctance to enunciate strict limitations on the use of eminent domain. The holding in *Kelo* that there need be no "'reasonable certainty' that the expected public benefit[] will actually accrue"[179] was justified because of the impracticality of requiring front-end proof of results that likely could not be ascertained with certainty until later in the process.[180] However, in preserving the discretion of local government, the Court does nothing to counter the incentive for corporations to overstate the anticipated benefits of any project in order to make it easier to justify the use of the eminent domain power.[181] By recognizing a reliance interest on the back end, freedom to exercise discretion is preserved for municipalities in a way that also protects them. The weight that the Court gives to the likelihood that a development plan will achieve actual benefits further supports the recognition of legal interests that would make sure those benefits are realized.[182] Indeed, these after-the-fact remedies may be the only way to determine when takings did, in fact, fail to serve the public interest.[183]

Nor is it meaningful that no such interest has yet been recognized, because

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176. *See* Charter Twp. of Ypsilanti v. Gen. Motors Corp., No. 92-43075-CK, 1993 WL 132385, at *11–12 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

177. *See* Singer, *supra* note 140, at 1032–35 (discussing the disjunction between moral obligations on individuals and legal expectations on corporations); Van Der Weide, *supra* note 118, at 83–84 (arguing that shareholders are properly the primary constituency deserving protection from corporate law).

178. *See* Fuhrmeister, *supra* note 151, at 212–25.

179. Kelo v. City of New London, 545 U.S. 469, 487 (2005).

180. *Id.* at 488 ("Orderly implementation of a comprehensive redevelopment plan obviously requires that the legal rights of all interested parties be established before new construction can be commenced. A constitutional rule that required postponement of the judicial approval of every condemnation until the likelihood of success of the plan had been assured would unquestionably impose a significant impediment to the successful consummation of many such plans.").

181. *See* Kubasek & Coyle, *supra* note 84, at 58–59. In fact, in *Kelo* the private developers were contractually obligated to comply with the development plan, but after the publicity following the Supreme Court's ruling, no development occurred. *See Kelo*, 545 U.S. at 486 n.15; McGeehan, *supra* note 33.

182. *See Kelo*, 545 U.S. at 477–78, 483–84. The Court noted that "[t]he City would no doubt be forbidden from taking petitioners' land for the purpose of conferring a private benefit on a particular private party. Nor would the City be allowed to take property under the mere pretext of a public purpose . . . ." *Id.* at 477–78. However, the Court upheld the plan because of its "comprehensive character," the likelihood that it would "provide appreciable benefits to the community," and the "thorough deliberation that preceded its adoption." *Id.* at 483–84. Justice Kennedy's concurring opinion similarly relied on the existence of a "comprehensive development plan" with benefits that "cannot be characterized as *de minimis*." *Id.* at 493 (Kennedy, J., concurring). However, he explicitly held the door open for "categories of cases in which the transfers are so suspicious" that a heightened review would be warranted. *Id.*

183. *Cf.* Parratt v. Taylor, 451 U.S. 527, 541 (1981), *overruled on other grounds by* Daniels v. Williams, 474 U.S. 327 (1986) (observing that when a prisoner's property is tortiously lost by prison officials, "it is not only impracticable, but impossible, to provide a meaningful hearing before the

the Supreme Court has only analyzed the permissibility of economic development takings *ex ante*, in the context of challenges from property owners to the takings themselves.[184] This is unsurprising because the primary harm caused by a taking is that visited on the original owner, whereas any harm to the community takes place long afterwards.[185] In these cases, the only questions presented were whether economic development was a valid justification for a taking,[186] and whether it was presumptively permissible to achieve a valid public purpose by conveying the seized property to a private party.[187] These cases provided no opportunity to consider more than whether a legislature has a rational basis to believe a benefit would accrue in the future.[188] In contrast, the right I propose here would focus on what *actually* happens rather than what is likely to happen in the future. By providing for this type of after-the-fact accountability, it is possible to defer to a legislature's decisions on how best to stimulate growth without eliminating potential legal challenges to the good faith of the beneficiaries of these choices.[189]

C. A NEW RELIANCE INTEREST

Because it appears unlikely that legislative remedies will solve the problems inherent in economic development takings, this Note argues that, consistent with *Kelo* and the common law, courts should recognize a protected reliance interest associated with economic development takings.[190] Although there are a number of forms such a right could take, I would draw inspiration from one of the claims asserted against U.S. Steel in an attempt to prevent them from leaving Youngstown, Ohio:

> [A] right, in the nature of an easement, requir[ing] that Defendant:
> a) Assist in the preservation of the institution of steel in that community;

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deprivation"). Similarly, in the takings context, it is only possible to determine if public benefits have actually accrued after the fact.

184. *See Kelo*, 545 U.S. at 475–76; Haw. Hous. Auth. v. Midkiff, 467 U.S. 229, 234–36 (1984); Berman v. Parker, 348 U.S. 26, 31 (1954).

185. *Compare Kelo*, 545 U.S. at 475 (petitioners brought case to prevent loss of homes prior to commencement of a development project), *with* Charter Twp. of Ypsilanti v. Gen. Motors Corp., No. 92-403075-CK, 1993 WL 132385, at *1 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993) (plaintiffs brought case to prevent termination of relationship between factory and town asserting, *inter alia*, that the relationship gave rise to contractual rights).

186. *See Kelo*, 545 U.S. at 484–85; *Midkiff*, 467 U.S. at 241–43; *Berman*, 348 U.S. at 31–33.

187. *See Kelo*, 545 U.S. at 477–78, 485–86; *Midkiff*, 467 U.S. at 243–44; *Berman*, 348 U.S. at 33–34.

188. *See, e.g.*, Milligan v. City of Red Oak, 230 F.3d 355, 360 (8th Cir. 2000); *see also* AM. JUR. 2D *Eminent Domain* § 44 (2004) (noting that to find that a taking of private property is rationally related to a public purpose requires merely that the legislature rationally could have believed that its act would carry out the public purpose).

189. *See* Steven J. Eagle, *A Resurgent "Public Use" Clause Is Consistent with Fairness*, *in* EMINENT DOMAIN USE AND ABUSE, *supra* note 3, at 90, 91.

190. For a spirited defense of the legitimate role judges may play in defining such rules, see Singer, *supra* note 9, at 744–48. Responding to Judge Lambros's lamentations that it would have been improper for him to rule to uphold Local 1330's novel claims against U.S. Steel, Singer counters that "judges act improperly when they fail to protect the vulnerable from the powerful. It is not neutral for judges to use their substantial power to reinforce private hierarchy." *Id.* at 747.

b) Figure into its cost of withdrawing and closing the Ohio and McDonald Works the cost of rehabilitating the community and the workers; and
c) Be restrained from leaving the Mahoning Valley in a state of waste and abandoning its obligations to that community.[191]

However, by its very nature, this right is focused on protecting a community from the departure of its major economic engine. It seeks to prevent a corporate entity from abandoning its historical practices, not to require any new actions by that entity. In the eminent domain scenario, on the other hand, a municipality is relying on a corporate entity to take positive actions to justify the use of the eminent domain power. Therefore, a right that would protect the reliance interest of a municipality following an economic development taking would have to have a slightly different emphasis, which I would express as:

A right, in the nature of an easement, requiring that a benefited entity:
a) Actively participate in the economic development of its community;
b) Figure into its cost of withdrawing the cost incurred by the community in reliance on the entity's presence; and
c) Be restrained from leaving the community in a state of waste and abandoning its obligations to that community.

This right would attach whenever the eminent domain power is used to transfer land to a private entity for the purpose of providing diffuse economic benefits. Such a right could be asserted by municipalities themselves[192] or by groups that represent the interests of the community or segments thereof, such as labor organizations.[193]

To the extent clauses (b) and (c) serve to protect the reliance interests of municipalities against the harms caused by the unanticipated exit of a major economic engine, these clauses resemble typical formulations of rights asserted (and rejected) in the plant-closing context.[194] Just as Local 1330 asserted that Youngstown's reliance on U.S. Steel estopped the corporation from "abandoning its obligation to that community,"[195] the tangible investment that a municipality makes when it gives a corporate entity land condemned by eminent domain is a powerful justification for preventing a corporate entity from walking out on that investment.[196]

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191. *See* Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264, 1280 (6th Cir. 1980). This language is taken from the complaint filed by Local 1330, distilling out the essential legal concepts from the union's claim. Unlike the proposal offered by Singer, *supra* note 9, at 699, this formulation would address not only the harms caused by exit from a community, but also guard against failures by corporate entities to make good on commitments relied upon by communities, even if these commitments are insufficient to support traditional promissory estoppel claims. *See, e.g.*, WYLIE, *supra* note 7, at 214–15; Allen, *supra* note 42.

192. *Cf., e.g.*, Charter Twp. of Ypsilanti v. Gen. Motors Corp., No. 92-43075-CK, 1993 WL 132385, at *1 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993) (claim by a municipality).

193. *Cf., e.g.*, *Local 1330*, 631 F.2d at 1265 (claim by a labor union).

194. *See, e.g.*, Singer, *supra* note 9, at 699.

195. *Local 1330*, 631 F.2d at 1280.

196. To the extent that these clauses are intended to protect a municipality's investment in a corporate entity, they are also similar in purpose to legislative requirements that recipients of tax

These clauses address two different aspects of the harms caused by exit. Clause (b) protects the communities against the tangible costs they incur as a result of their reliance on corporate entities, such as the costs of acquiring and condemning land, the payment of lost revenue to municipal governments, severance pay and retraining for fired employees, and other direct forms of compensation to restore a community to its fiscal *status quo ante*.[197] Clause (c) serves to protect the broader reliance of a community insofar as it may be impossible for any compensation to protect it adequately. This provision may also apply to a corporate entity that has not attempted to exit, or go so far as to prevent a corporation from departing at all where doing so, irrespective of any compensation the corporation may provide, would leave the community "in a state of waste" or would otherwise be abandoning the community. For instance, such an obligation might require GM to compensate Detroit—either in cash or in kind by benefiting the community—for overwhelming costs incurred in condemning Poletown,[198] or could entirely prevent Pfizer from abandoning its obligation to New London by moving 1,400 jobs to another city regardless of what restitution it is willing to pay.[199] Although this may seem a draconian limitation on the freedom of a corporate entity, such a limitation is proportionate to the similarly harsh use of eminent domain to establish a relationship in which a community is dependent on a corporation to provide it with benefits. Having eliminated communities and removed residents from their homes, it is appropriate to prevent the beneficiaries of such takings from walking out on these communities.

However, what most clearly sets the reliance interest I propose apart from previous proposals are the rights encompassed in clause (a). Whereas (b) and (c) prevent a corporation from frustrating reliance that is placed in it, (a) places positive obligations on a corporate entity to "actively participate in" preserving a local economy. This clause would make corporate entities partially responsible for bringing about the success of the development plans in which they are participating. The GM plant in Poletown, for instance, would be obligated to meet employment targets that were consistent with its initial estimates and with the investment that Detroit made in the plant.[200] Similarly, Pfizer would be obligated to help New London develop the Fort Trumbull area, giving Pfizer an interest in the project's success that is commensurate with its anticipated benefit.[201] This clause provides much of the bite behind the approach advocated here; although being irrevocably tied to a community under clauses (b) and (c) may create an incentive to make that community successful, clause (a) provides

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benefits remain in a community for a minimum period of years after receiving those benefits. *See, e.g.*, ARIZ. REV. STAT. ANN. § 43-1080 (D), (G), (H) (2006).

197. *Cf.* WYLIE, *supra* note 7, at 215; Singer, *supra* note 9, at 742, 744.

198. *See* WYLIE, *supra* note 7, at 214–15.

199. *See* McGeehan, *supra* note 33.

200. *See* WYLIE, *supra* note 7, at 214–15 (the plant initially offered only 3,400 on-again, off-again jobs, fewer than GM estimated); Schmitt & Merx, *supra* note 47 (reporting the plant as employing only 1,994 people in 2008).

201. *See* Yardley, *supra* note 7, (describing the New London development project's failure to get off the ground).

a right of action for corporations that nevertheless fail to do so.

Admittedly, the reliance interest described here is only one of many possible proposals, and my intention is to stimulate thinking on the feasibility and desirability of such an interest rather than to provide the final word. Although other authors have proposed extending similar rights to all recipients of tax benefits, subsidies, or other government incentives (including eminent domain),[202] my proposal is unique insofar as the right proposed would arise only in the context of economic development takings and not in other interactions between corporations and municipalities.

CONCLUSION

Kelo v. City of New London sparked national outrage and fomented fears over how effectively private property rights could be protected in the face of governments desperate to spur economic prosperity. However, the response to these concerns did not effectively remedy the problems identified in the aftermath of *Kelo*. Placing limitations on when land can be taken for economic development—if such limitations are effective at all—may diminish the use of eminent domain, but it does not do much to improve outcomes.

Instead, insight is available from plant closings in the 1980s and 1990s. Communities that were hurt by major businesses that shut down or moved elsewhere sought unsuccessfully to protect the reliance they had placed on these actors. Unlike the movement against eminent domain, many of the most interesting legal theories here focused on the back end—that is, on how to prevent industries from leaving after reliance had been placed on them, rather than how to protect those interests before dependent relationships developed. Although some front-end protections did emerge, such as legislation setting preconditions for tax benefits and contract clauses that placed obligations on businesses, many of the back-end proposals espoused in the 1980s and 1990s went nowhere. Indeed, a fundamental disconnect between the need for corporations to protect their shareholders and the interests of stakeholders in corporate action—though the subject of a vibrant debate in the law—has prevented steps to redefine the relationship between corporations and communities.

However, the different nature of eminent domain takings justifies just such a rethinking. Relying on the Public Use Clause, the bright line that sets off eminent domain from other forms of corporate benefits, and the greater costs of takings over other benefits, this Note has argued that communities should be granted a reliance interest in corporate entities receiving benefits from eminent domain takings. This is only one of many possible proposals, and there are many ways to protect the interests of communities in the eminent domain context. Due to the uniquely vulnerable position that towns are in when using eminent domain for economic development purposes, the recognition of legal grounds to offer meaningful protections after the fact should be further explored.

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202. *See, e.g.*, Dale, *supra* note 12, at 281.