

DETROIT AND THE DECLINE OF URBAN AMERICA

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The coming of Detroit's long-anticipated bankruptcy filing reminded me of a *New York Times* human-interest story of a couple of years ago, about its Grandmont Rosedale neighborhood, described as a still livable place whose residents were trying to preserve it, with limited success.¹ What caught my eye at the time was Sulzberger's recitation of the conventional wisdom factors said to be the cause of Detroit's downfall: "The many forces behind Detroit's shrinking population are well known by now: the decline of the auto industry, the high taxes and insurance, the troubled schools, the concerns about crime."² These factors may be "well-known" in Sulzberger's circles, but unfortunately, there is a lot more to the sad story of Detroit's downfall, which is but a part of a larger story of urban decay in America that remains grossly underreported by the press. In a nutshell, the misadventures of the automobile industry had a seriously negative impact, but they had comparatively little to do with Detroit's bankruptcy. Detroit, though the worst case of its kind, is hardly alone when it comes to the decline and imminent fall of urban America.

The American auto industry may have gone through a period of near-catastrophic decline caused by its prolonged lack of competitiveness that, coupled with growing automation in car manufacturing, brought a dramatic decline in employment.³ But that was then; this is now. Thanks to lavish government bailouts, Detroit's carmakers' employment and production numbers have improved considerably. As of this writing, General Motors' bonds have been upgraded out of "junk" status,⁴ and *The Wall Street Journal* reports that car manufacturers are struggling to find enough people to

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1. A.G. Sulzberger, *Trying to Save a City, or at Least a Part*, N.Y. TIMES, Mar. 26, 2011, at A12.

2. *Id.*

3. MARYANN KELLER, RUDE AWAKENING: THE RISE, FALL, AND STRUGGLE FOR RECOVERY OF GENERAL MOTORS 206-07 (1989); DAVID HALBERSTAM, THE RECKONING 56-57 (1986).

4. Chris Isidore, *GM's Debt Is No Longer Junk*, CNN MONEY (Sept. 23, 2013, 4:37 PM), <http://money.cnn.com/2013/09/23/news/companies/gm-junk-bond/>; see also Jerry Hirsch, *Carmakers Post Strong 2013 Sales*, L.A. TIMES, Jan. 4, 2014, at B1 (reporting car sales rising from 10.4 million in 2009 to nearly 16 million in 2013 and the car industry adding 173,000 jobs).

staff their humming three-shift operations.⁵ Unlike the aerospace industry that largely left Los Angeles at the end of the Cold War, American carmakers never left Detroit. General Motors (GM) moved its old corporate headquarters to that gleaming cylindrical tower in the Renaissance Center on the Detroit River. As far back as the 1980s, GM was the recipient of a plant site that was provided for a comparative pittance paid by the city in an act of a scandalous \$200 million misuse of the power of eminent domain, known as the *Poletown* case.⁶ And what is good for General Motors is good for Chrysler, as illustrated by the case of *City of Detroit v. Vavro*,⁷ which did for Chrysler what *Poletown* did for GM. The *Poletown* caper was a seizure of privately owned urban land that destroyed an unoffending community, consisting of hundreds of homes and businesses, sixteen churches and a major hospital, in order to transfer their property to GM as a site for a new Cadillac plant, which never achieved the level of promised new employment.⁸ Ford continues to operate in Highland Park and Dearborn, suburbs of Detroit where it has always operated. And Chrysler, which still runs manufacturing facilities in Detroit (although its old Dodge Main plant has been demolished), is headquartered in Auburn Hills, also a suburb of Detroit.

More important, the misadventures of the automobile industry, though troublesome, are not the real problem that brought the city of Detroit to its present sorry state.⁹ Detroit's suburbs that are subject to the same regional economic trends have been thriving. Los Angeles survived the departure of the aerospace industry at the end of the Cold War. Pittsburgh has managed after losing its steel plants, Chicago weathered the loss of the stockyards, and the South managed to survive the demise of King Cotton. Detroit's status as the proverbial urban basket case is the result of prolonged municipal profligacy and misrule in which the city messed up almost everything it touched; it made no real effort to fix its abysmal schools, to nurture new

5. Christina Rogers, *U.S. Car Plants Shift to Top Gear*, WALL ST. J., Aug. 17, 2013, at A1; see also Jaclyn Trop, *Auto Sales Are Soaring, Propelled by Leases*, N.Y. TIMES, Sept. 5, 2013, at B1.

6. *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981), *overruled by* *Cnty. of Wayne v. Hathcock*, 684 N.W.2d 765, 787 (Mich. 2004).

7. 442 N.W.2d 730, 731-32 (Mich. Ct. App. 1989).

8. Detroit spent \$200 million to take by eminent domain some 1,200 houses and over 400 local businesses, plus sixteen churches and a major 278-bed hospital, in order to raze them all and turn over their sites to General Motors for a new Cadillac plant. ARMOND COHEN, LINCOLN INT. MONOGRAPH NO. 82-5, POLETOWN, DETROIT: A CASE STUDY IN "PUBLIC USE" AND REINDUSTRIALIZATION 3-4 (Lincoln Inst. of Land Policy 1982). That plant was supposed to employ 6,000 people, but it provided only about 3,000 new jobs at its peak. See Carla T. Main, *How Eminent Domain Ran Amok*, POL'Y REV., Oct. & Nov. 2005, at 3, 18.

9. As of this writing, the *New York Times* reports that Detroit's population is now "only 700,000 . . . down from 1.8 million at its peak." Monica Davey, *Big Dreams, but Little Consensus, for a New Detroit*, N.Y. TIMES, Sept. 3, 2013, at A12.

industries, or otherwise enhance itself as a desirable habitat for people and businesses (read: employers). Instead, it grew dependent on federal handouts, high taxes (that drove people and businesses out), and the construction of crackpot “improvements,” like a downtown “people mover” (with not many people to move), multi-million-dollar stadiums for MLB and NFL teams (that by rights should have built their own), gambling casinos, and, as a madcap touch, a proposed trolley line for a city that had lost more than half of its population and was in the process of losing more. That is to say nothing of the crackpottiest idea of them all: proposing conversion of Detroit’s abandoned, vacant lots into farms, which would somehow persuade the city population to give up fast food in favor of fresh veggies.¹⁰

The kind of problems Detroit has been suffering from—notably local government misrule and profligacy, and the excessive pension demands of unions—have been severe but not unique to it. Other older American cities have also suffered a severe decline—notably Gary and Camden—even if they have not yet reached Detroit’s grotesque condition.¹¹

Still, at this time, Detroit’s automobile assembly lines are running on three shifts, employment and car production figures are up, and you can still see the U.S.A. in your Chevrolet, as in days gone by. The 2014 Chevy Impala was just picked by Consumers Report as the best new car, and Ford’s recent offerings have been as reliable as their foreign competition. So there has to be a lot more to Detroit’s downfall than just the misadventures of the car business. In fact, Detroit’s downfall was predictable, *and accurately predicted*, a long time ago for reasons that had little to do with car manufacturing. So what caused Detroit’s downfall?

First, the seeds of Detroit’s downfall were planted by well-meaning, smarter-than-thou do-gooders a long time ago. As urbanist Jane Jacobs noted in her famous book,¹² as far back as the early 1930s, the conventional wisdom of both sides of the ideological spectrum (including Herbert Hoover and Rexford Tugwell, FDR’s greenbelt tsar) called for radical growth of suburbs at the expense of cities and for a major population shift from the

10. Susan Saulny, *Razing the City to Save the City*, N.Y. TIMES, June 21, 2010, at A16.

11. See the photos in *Time Magazine* of October 5, 2009, or go to Google, type in “Ruins of Detroit,” and hit “enter.” You will then see just how bad things are in that unfortunate city. See, e.g., John Huey, *Assignment Detroit*, TIME MAG., Oct. 5, 2009, at 4; Daniel Okrent, *Detroit: The Death—and Possible Life—of a Great City*, TIME MAG. (Sept. 24, 2009), <http://content.time.com/time/magazine/article/0,9171,1926017,00.html>; Chris Edwards, *The Fabulous Ruins of Detroit*, WALKERVILLETIMES.COM (Oct. 2001), www.walkervilletimes.com/fabulous-ruins.html.

12. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 310 (Vintage Books 1992).

latter to the former.¹³ World War II disrupted that effort, but after the War the GI Bill helped create a large new middle class consisting of former servicemen who acquired a college education at government expense and, with it, entry into the middle class with all its aspirations and appetites (including middle-class housing). The effort to reshape cities resumed. What followed was the post-World War II tide of generous government home financing and tax subsidies of suburban housing that, beginning with Levittown,¹⁴ provided irresistible incentives for urban populations to move out of cities.

I can attest to these events, having been a part of that migration and having bought my first, entry-level home in the west San Fernando Valley in 1956 for \$12,000 with monthly payments lower than rents on an apartment of comparable size. In other words, the urban exodus to the suburbs came about largely because Uncle Sam bribed your Mom and Dad to leave cities and move to the suburbs where the livin' was easy and, as it turned out, lucrative. I sold that little two-bedroom house two years later for \$14,000, making a gain that exceeded the sum of my monthly payments (some of which were tax deductible). It did not take long for me to realize that I was thus de facto the beneficiary of free housing. I was not alone.

Then came the freeways. The good news was that they made commuting to city jobs convenient for the new suburbanites, but the bad news was that their construction and long-term effects devastated cities. Believe it or not, the freeways' catastrophic impact on Detroit was predicted explicitly in 1944 by its then mayor, Edward J. Jeffries. Jeffries worried out loud in a congressional committee hearing that putting freeways through cities would facilitate a major city-to-suburb population transfer.¹⁵ Urban dwellers would use those federally financed freeways to reach their city jobs after moving to the suburbs, said Jeffries, but this would also produce a mass abandonment of the city core by its residents, which in turn would bankrupt De-

13. That attitude was reflected in the 1926 diatribe delivered by Justice Sutherland's opinion in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394-95 (1926), which denounced apartments as despoilers of communities and, more recently, in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974). There, Justice Douglas praised the suburbs in florid language:

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. . . . The police power is . . . ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Id. at 9. Still, more recently in *Agins v. City of Tiburon*, 447 U.S. 255, 261 (1980), Justice Powell noted approvingly the practice of using sprawl-generating large-lot zoning (up to five acres per dwelling) as a means of preventing "ill effects of urbanization."

14. *Levittown, New York*, WIKIPEDIA, http://en.wikipedia.org/wiki/Levittown,_New_York (last updated Feb. 2, 2014).

15. ROBERT M. FOGELSON, *DOWNTOWN: ITS RISE AND FALL, 1880-1950*, at 317 (2001).

troit.¹⁶ Ironically, today, one of Detroit's major freeways is named after Jeffries.¹⁷

The urban riots that began in the mid-1960s,¹⁸ and the rise in urban crime coupled with a decline in law enforcement of the 1970s, continued the trend and established the idea that moving to the suburbs was highly desirable as compared to remaining in the increasingly shabby and dangerous cities. In short order, urban dwellers found themselves looking over their shoulders and living behind locks and chains, with street crime an ever-present concern. This is to say nothing about rise of the drug culture. Cocaine, the 1960s' "caviar of drugs," was transformed into cheap crack—with catastrophic results. The pot-puffing, laid-back hippie subculture gave way to hard drug effects that metastasized into inner cities, giving rise to widespread violence as junkies turned to crime to feed their habit and drug distributors fought over turf.

In the case of Detroit, the city's ongoing civic collapse manifested itself dramatically as far back as a quarter century ago with something called "Devil's Night," a custom whereby on the night before Halloween, city youths amused themselves by setting abandoned houses on fire by the hundreds every year, without effective interdiction by the police.¹⁹ The nationwide deinstitutionalization of the mentally ill who took to roaming city streets did not help things. Then, as foreseen by Jeffries back in the 1940s, came the effects of the urban freeways; not only did they facilitate the city-

16. *Id.*

17. The Jeffries Freeway is the segment of I-96 from Livonia east to I-275. *Interstate 96*, WIKIPEDIA, http://en.wikipedia.org/wiki/Interstate_96 (last updated Jan. 24, 2014).

18. For commentary on the riots' impact on Detroit, see Julia Vitullo-Martin, *The Day the Music Died*, WALL ST. J., July 20, 2007, at W11. For a grim recitation of casualty statistics in that riot, see Roger Biles, *Thinking the Unthinkable About Our Cities: Thirty Years Later*, 25 J. URB. HIST. 57, 57 (1998). Detroit was not alone. For a concise summary of the adverse conditions in American cities that ensued, see Sam Roberts, *The Year New York Lived Really Dangerously*, N.Y. TIMES, May 15, 2005, at WK3; and David Brooks, *Children of the '70s*, N.Y. TIMES, May 18, 2010, at A27 ("The crime wave eroded the sense of solidarity that existed after World War II. The rich isolated themselves. The middle classes moved to the suburbs."). For a sampling of conditions in other cities, see Christine H. O'Toole, *Slumbering Pittsburgh Neighborhood Reawakens*, N.Y. TIMES, Mar. 3, 2010, at B7 ("The [Pittsburgh] suburbs began to draw residents from the densely populated area in the late 1950s . . . and [the] urban renewal schemes . . . drove the area into a 40-year coma. By the 1980s East Liberty [in Pittsburgh] had lost more than one million square feet of commercial space and half its population."); Kirk Johnson, *For St. Louis, Great Expectations but a Slow-Rolling Renaissance*, N.Y. TIMES, Apr. 8, 2005, at A18 ("St. Louis . . . lost half its population in the decades after World War II . . ."); Lisa Chamberlain, *Cleveland Pulls Back from the Edge*, N.Y. TIMES, Sept. 28, 2005, at C9 ("[D]owntown Cleveland is almost completely devoid of major retailers . . ."); and Ted Rohrlich, *Urban Renewal Project in L.A. Begets Blight Instead*, L.A. TIMES, Apr. 28, 2008, at A1.

19. ZE'EV CHAFETS, *DEVIL'S NIGHT: AND OTHER TRUE TALES OF DETROIT* 3-5 (1990).

to-suburbs population transfer, but their construction also contributed to the downfall of cities by tearing down low- and moderately priced urban dwellings *en masse* and displacing hundreds of thousands of mostly working and middle-class city dwellers annually. In time, major urban department stores shut down or shrunk their city operations and moved to the suburbs where their customers had moved. Today, when strolling down the downtown streets of major American cities, one is struck by the paucity or absence of street-level retail businesses.

Detroit also acquired the dubious distinction of becoming an early champion in the dirty business of promoting “condemnation blight”—a process whereby areas targeted for city acquisition for redevelopment were subjected to municipal neglect and mistreatment that at times went so far as to withhold trash removal and even police protection²⁰ in order to drive values down so the city could acquire those areas on the cheap. These government activities went on until local federal courts in Detroit put a stop to them.²¹

Apart from the freeways, the judicially administered use of eminent domain for urban redevelopment, and its large-scale taking and razing of swaths of urban land, was another factor that made cities inhospitable to their inhabitants. For reasons that have not been judicially explained, in administering eminent domain laws, courts abandoned their cherished role of impartial guardians of constitutional rights who get to pass on the constitutionality of government activities and to invoke provisions of the Bill of Rights to protect the citizen from government abuses. Instead, the U.S. Supreme Court justices and lower court judges took the position that eminent domain takings are almost entirely a legislative matter, even though decisions to take specific properties are actually made by unelected local government functionaries (who are often influenced by the lobbying of the ultimate, usually private, beneficiaries of the redevelopment process).²² Nonetheless, their decision to use eminent domain is judicially deemed to be “well-nigh conclusive”²³ and, as such, not subject to meaningful judicial review or referenda.²⁴ So much for the efficacy of the checks and balances doctrine.

20. For citations to cases and commentaries dealing with these improper municipal techniques, see Gideon Kanner, *Condemnation Blight: Just How Just Is Just Compensation?*, 48 NOTRE DAME LAW. 765, 769-70 (1973).

21. See *Foster v. City of Detroit*, 254 F. Supp. 655, 663 (E.D. Mich. 1966), *aff'd*, 405 F.2d 138 (6th Cir. 1968); *Madison Realty Co. v. City of Detroit*, 315 F. Supp. 367, 371 (E.D. Mich. 1970); see also *City of Detroit v. Cassese (In re Elmwood Park Project Section I, Grp. B)*, 136 N.W.2d 896, 900 (Mich. 1965).

22. See Dean Starkman, *Condemnation Is Used to Hand One Business Property of Another*, WALL ST. J., Dec. 2, 1998, at A1.

23. *Berman v. Parker*, 348 U.S. 26, 32 (1954).

24. *Alexander v. Mitchell*, 260 P.2d 261, 263-64 (Cal. Dist. Ct. App. 1953).

The California Supreme Court—ever the far-out tribunal—went so far as to hold explicitly that a condemnor’s inherently self-serving decision that a contested taking met the statutory criteria of public necessity was conclusive and altogether non-justiciable, not even when the decision was the product of fraud, bad faith, and abuse of discretion.²⁵ The California legislature modified that harsh rule in 1976 and made findings of public necessity judicially reviewable in cases of bribery and “gross abuse of discretion,”²⁶ but the court never retreated from its extremist position in the decisional law.

I have not been able to fathom what possessed American judges, who pride themselves on their vigilance in defending the rights of individuals under the Constitution and their own independence from the other branches of government, to assume as a matter of policy that, in eminent domain cases, they would adopt a subservient, we-are-only-following-orders attitude when it comes to the implementation of the Public Use Clause of the Fifth Amendment and rubber-stamp virtually all government decisions to take private property. This is especially odd when the public character of the taking is not even reasonable, but merely, as the U.S. Supreme Court put it, “rationally related to [the] conceivable.”²⁷ This holding was bizarre because, as science fiction writers have demonstrated, *everything* can be conceived of and is therefore conceivable.²⁸ There is nothing in the Constitution that requires such a subservient attitude on the part of the courts in the context of eminent domain any more than in other fields of constitutional law. As the California Supreme Court made clear, it is simply a judicial policy choice.²⁹

Though the Constitution mandates that eminent domain takings be accompanied by payment of “just compensation” to the displaced property owners, courts admit that in practice, the fair market value, which they deem to be *the* measure of just compensation, falls short of the price that the subject property would fetch in a truly voluntary arm’s-length private sales transaction.³⁰ Moreover, compensation need not be paid prior to or simulta-

25. *People ex rel. Dep’t of Pub. Works v. Chevalier*, 340 P.2d 598, 603 (Cal. 1959).

26. CAL. CIV. PROC. CODE §§ 1245.220, .270(a) (West 2013) (effective July 1, 1976); see *Redevelopment Agency v. Norm’s Slauson*, 219 Cal. Rptr. 365, 370 (Ct. App. 1985).

27. *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984).

28. For a *reductio ad absurdum* application of this notion, see the court-counsel colloquy before a federal appellate court that is reproduced in Gideon Kanner, “[Un]equal Justice Under Law”: *The Invidiously Disparate Treatment of American Property Owners in Taking Cases*, 40 LOY. L.A. L. REV. 1065, 1080 n.68 (2007).

29. See *Bacich v. Board of Control*, 144 P.2d 818, 823, 826 (Cal. 1943) (conceding in the context of eminent domain law that judicial first impression decisions are not compelled by doctrinal principles, but are rather judicial policy choices).

30. *Kimball Laundry Co. v. United States*, 338 U.S. 1, 6, 8 (1949) (stating that judicially administered “fair market value” falls short of the prices voluntarily paid by real people in the market).

neously with the taking, so, using a procedure provided for in federal and state statutes,³¹ property can be seized and its owners displaced before compensation is finally determined—a process known in eminent domain litigation as a “quick take.” As federal courts have repeatedly noted, the government can simply seize private property without any process, due or otherwise, and say to the displaced owner “sue me.”³²

As for the quantum of compensation, judicial gloss on the law of eminent domain provides only for compensability of land and structures.³³ A variety of incontestably inflicted economic losses that are readily measurable by conventional valuation techniques are deemed by judges to be “incidental” or “consequential” and, as such, noncompensable. To the best of my knowledge, no one has provided a morally satisfactory explanation as to why such characterization of these damages makes payment for their infliction less worthy of compensation or why damages that are readily compensable in tort law are not compensable when they are intentionally inflicted in eminent domain cases.³⁴ Thus, in *People ex rel. Department of Public Works v. Symons*,³⁵ the California Supreme Court departed from the tradition of judicial impartiality and asserted (without any factual support) that it had a duty to keep condemnation awards down in spite of state statutory provisions equating just compensation with the *highest* price that the taken property would fetch in a private, voluntary transaction.³⁶ Otherwise, said the court, if condemnees were to be “too liberally” compensated, an “embargo” on public projects would have to be declared, citing neither evidence nor authority for this assertion.³⁷ Why indemnifying condemnees for proven, economic losses would be “too liberal” in eminent domain as opposed to tort law went without explanation. In 1976, the California legislature repealed the *Symons* rule, and no “embargo” ensued.³⁸

The court did not address the anomaly that damages that are freely paid to economically harmed tort plaintiffs are deemed noncompensable in

31. 40 U.S.C. § 3114 (2012); see CAL. CIV. PROC. CODE § 1255.410(a).

32. *Stringer v. United States*, 471 F.2d 381, 384 (5th Cir. 1973) (providing that the government may just seize private property and say to the owner “sue me” (quoting *United States v. Herrero*, 416 F.2d 945, 947 (9th Cir. 1969))).

33. For insightful early modern commentary on the shortcomings of compensability rules in eminent domain law, see Comment, *Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses*, 67 YALE L.J. 61 (1957).

34. See Thomas W. Merrill, *Incomplete Compensation for Takings*, 11 N.Y.U. ENVTL. L.J. 110 (2002). For a rare, candid judicial confession that courts discriminate against condemnees by refusing to award them damages for the kind of losses they routinely compensate in tort cases, see *Primetime Hospitality, Inc. v. City of Albuquerque*, 168 P.3d 1087, 1092, 1097 (N.M. Ct. App. 2007).

35. 357 P.2d 451, 455 (Cal. 1960).

36. CAL. CIV. PROC. § 1263.320(a).

37. 357 P.2d at 455.

38. CAL. CIV. PROC. CODE § 1263.320 (effective July 1, 1976).

eminent domain. Thus, the collateral source rule allows tort plaintiffs to recover damages for the same harm several times, the justification being that such multiple recoveries assure tort plaintiffs of receiving enough money to pay their lawyers and experts and still retain the full amount of the damages awarded to them by courts.³⁹ Why allowing multiple recoveries in tort cases in order to provide the claimant with full compensation is deemed justice, but is anathema in eminent domain litigation, has gone without explanation. This is a particularly striking anomaly since, in eminent domain cases, the condemnor receives value for its money (and thus pays little or nothing for what it acquires), whereas in tort law the defendant receives nothing (and pays the full amount of the judgment).⁴⁰

In most states, the constitutionally required “just compensation,” as judicially construed, does not include payment for the value of businesses damaged or destroyed in the process of condemnation. Nor does “just compensation” include damage to business stock in trade, for moving expenses, for the cost of finding and renovating new premises, for loss of use during the pendency of the eminent domain action, or for a variety of economic losses normally suffered when occupants of property are involuntarily displaced from it. Except for Florida,⁴¹ there is also no constitutionally mandated reimbursement for the cost of lawyers, appraisers, and other expert witnesses whose services are essential and whose fees have to be incurred by the property owners in order to recover the promised “just compensation.”⁴² To make matters worse, in practice, even when damages are theoretically compensable, government and its appraisers are notorious for “lowballing”—a term used to characterize the undercompensation that is common in eminent domain cases⁴³—as disclosed by congressional hearings as far back

39. See *Helfend v. S. Cal. Rapid Transit Dist.*, 465 P.2d 61, 69 (Cal. 1970).

40. To illustrate the collateral source rule in operation, the last time I sat on a jury (in an airplane crash tort case), we learned after the trial was over that the plaintiffs had already recovered from (1) the airplane manufacturer; (2) the engine manufacturer; (3) the magneto manufacturer; (4) the company that maintained the plane; and they were now trying to recover again from the carburetor manufacturer. We also learned after the trial was over that the cause of the crash, as determined by the FAA investigation, was a faulty magneto.

41. *Dade Cnty. v. Brigham*, 47 So. 2d 602 (Fla. 1950).

42. *Cnty. of L.A. v. Ortiz*, 490 P.2d 1142 (Cal. 1971) (holding that litigation expenses are not recoverable in eminent domain, even when their amount consumes the court-awarded net “just compensation”). Beginning in 1970, Congress enacted the Uniform Relocation Assistance and Real Property Acquisition Policy Act (URA), which provides for limited administrative awards of some “incidental” losses in eminent domain cases, but also provides that in case of government failure to follow the law condemnees have no right of action to seek judicial relief. 42 U.S.C. §§ 4601-4655 (2012); see *Delancey v. City of Austin*, 570 F.3d 590, 594 (5th Cir. 2009) (holding that no right of action for money damages exists under the URA). Likewise, the URA does not afford due process to claimants. *United States v. 131.68 Acres, St. James Parish, La.*, 695 F.2d 872, 876 (5th Cir. 1983).

43. For examples of condemnors’ offers that were less than their own appraisals, see *City of Naperville v. Old Second Nat’l Bank of Aurora*, 763 N.E.2d 951, 956 (Ill. App. Ct.

as the 1960s and later by studies in California, Utah, Minnesota, New York, and Georgia that were conducted over an extended period of time. These studies also demonstrated that condemnees who reject the condemnor's offers and litigate their compensation in court usually recover significantly higher compensation, whether from judges or juries. Nonetheless, ignorant of their rights and fearful of incurring the cost of litigation, most condemnees accept the inadequate offers, which makes these mass condemnations cheap and encourages condemnors to overconsume urban land they set out to take.

As Judge Richard Posner put it: "The fact [is] that 'just compensation' tends systematically to undercompensate the owners of property taken by eminent domain."⁴⁴ Thus, harsh government land acquisition policies and practices, aided and abetted by a judiciary that, while "talk[ing] a good game" about the fairness and justice of eminent domain compensation, has historically been hostile or indifferent to the plight of condemnees, are the norm.⁴⁵ It was thus not surprising that, motivated, at least in part, by the combined effects of these various factors adversely impacting urban populations, eminent domain cases were encouraged, and they led to displacement of large numbers of city dwellers who joined the exodus to the suburbs *en masse*.

My experience has been that most people are unaware of the magnitude of that population displacement, so it warrants brief mention here. Detroit lost more than half of its population.⁴⁶ But it was not just Detroit. As John Podhoretz noted, between 1960 and 1980, nearly a million people left New York, with 300,000 people departing Manhattan alone.⁴⁷ In the 1970s, New York was losing 36,000 residential units per year.⁴⁸ Nationally, between 1950 and 1968, 2.38 million urban housing units were destroyed by redevelopment.⁴⁹ The 1965 report of the Advisory Commission on Intergovernmental Relations reported that by the mid-1960s, some 73,000 families and 10,900 businesses were being displaced by urban redevelopment *annu-*

2002); *Althaus v. United States*, 7 Cl. Ct. 688, 691-92 (1985); and see also *United States v. 320.0 Acres, Cnty. of Monroe, Fla.*, 605 F.2d 762, 777-80 n.22 (5th Cir. 1979).

44. *United States v. Norwood*, 602 F.3d 830, 834 (7th Cir. 2010).

45. See generally Gideon Kanner, "Fairness and Equity," or Judicial Bait-and-Switch? *It's Time to Reform the Law of "Just" Compensation*, 4 ALBANY GOV'T. L. REV. 38 (2011).

46. See *supra* note 9.

47. John Podhoretz, *The Upper West Side, Then and Now: From Melees to Muggings to Serial Killers to a Spiritual Revival*, COMMENTARY, May 2010, at 27, 31.

48. Roberta Brandes Gratz, *From Hell to High Water*, N.Y. TIMES, Feb. 22, 2006, at A19.

49. Chester W. Hartman, *Relocation: Illusory Promises and No Relief*, 57 VA. L. REV. 745, 745-46 (1971).

ally.⁵⁰ This cities-to-suburbs exodus may no longer be the primary product of eminent domain takings, but a significant population outflow continues to this day.⁵¹

And what happened to Detroit's public schools was not that they became "troubled," as Sulzberger so delicately put it in his *New York Times* article.⁵² They suffered a catastrophic collapse in quality and safety, which today makes the "bad" school depicted in the 1955 movie "Blackboard Jungle" a model to be aspired to. This is to say nothing of forced student busing. When the United States Supreme Court decided in *Milliken v. Bradley* that busing was permissible, but only within the boundaries of the school district being desegregated,⁵³ it provided another powerful incentive for parents of the affected kids to move out of the local urban school districts into the suburbs where they were safe from judicial decrees ordering them to be bussed into decrepit and unsafe inner-city schools. One result of these judicial orders was that children of the well-to-do sought refuge in private schools, while others became participants in "white flight," a mass movement of middle class families to the suburbs.⁵⁴

One might be tempted to dismiss that phenomenon as a manifestation of white racism, and that was no doubt a factor, but the problem proved to be more far reaching. In time, the flight out of declining cities was embraced by African-American families as well. Symbolically, today's Watts population in Los Angeles is increasingly Hispanic.⁵⁵ A recent headline in the *New York Times* said it all: "Census Shows More Black Residents Are Leaving New York and Other Cities."⁵⁶

I am hardly the first to take note of all this. As far back as the presidency of Lyndon B. Johnson, the late Charles Haar, then Undersecretary of the U.S. Housing and Urban Development Department and, before his recent death, a retired Harvard law professor, was tasked with studying the

50. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, COMM'N REPORT NO. A-26, RELOCATION: UNEQUAL TREATMENT OF PEOPLE AND BUSINESSES DISPLACED BY GOVERNMENTS 129-30 tbls.1 & 2 (1964), available at <http://www.library.unt.edu/gpo/acir/Reports/policy/a-26.pdf>.

51. Aaron M. Renn, *Leaving Town*, CITY J., Spec. Issue 2013, at 68, available at http://www.city-journal.org/2013/special-issue_migration.html.

52. Sulzberger, *supra* note 1.

53. 418 U.S. 717, 743, 747 (1974).

54. Julia Vitullo-Martin, *Bricks and Mortals*, WALL ST. J., May 18, 2010, at A15.

55. Watts, a historically African-American area of Los Angeles (and the site of the 1965 Watts riots) is now 61.6% Latino and only 31.7% black. See *Watts, Los Angeles*, WIKIPEDIA, http://en.wikipedia.org/wiki/Watts,_Los_Angeles (last updated Jan. 31, 2014).

56. Sam Roberts, *Census Shows More Black Residents Are Leaving New York and Other Cities*, N.Y. TIMES, Sept. 12, 2007, at B1; Alex P. Kellogg, *Black Flight Hits Detroit*, WALL ST. J., June 5-6, 2010, at A1; see also Nicholas Riccardi, *Bell Tolls for K.C. Schools*, L.A. TIMES, Mar. 20, 2010, at A1 ("[B]lack families joined whites in moving to more suburban districts for better schools.").

condition of American cities. His conclusion was that cities faced a fork in the road: They would either become armed camps, or the urban exodus to the suburbs, which was then well underway, would continue apace. Johnson got wind of that study and, having his hands full with the Vietnam War, and evidently unwilling to stick his presidential harpoon into yet another controversial political whale, ordered it classified for thirty years. Those thirty years have gone by, and Haar's study became accessible to the public. It was written up by Roger Biles.⁵⁷

Then there was the NIMBY phenomenon and its effects.⁵⁸ Country living was always considered the prized prerogative of the well to do and, as such, superior to city living, so city dwellers did not need much enticing to make the outward move once suburban homes became affordable to them. But before the days of mass car ownership and freeways, moving out of the city was an option available mostly to the affluent; therefore, the mass middle-class movement to the suburbs after World War II was at first perceived as an affront to the entrenched inhabitants of the better suburbs. Unsurprisingly, it stimulated a form of class conflict between newcomers and incumbent suburbanites who looked upon themselves as the local aristocracy that turned to zoning and other land-use regulations as a means of excluding the new urban hoi polloi.⁵⁹ As Richard Babcock, the late dean of the nation's land use bar put it, the established suburbanite considers the local zoning ordinance as "an essential weapon in his battle with the forces of darkness."⁶⁰

But on the whole, the government-financed outward move by the urban middle class was unstoppable. Developers, unwilling to fight often unwinnable battles with local entrenched suburban communities,⁶¹ simply "leapfrogged" by going farther out beyond the suburban periphery, where land was cheaper and there were few NIMBY-neighbors opposing devel-

57. Biles, *supra* note 18.

58. This acronym stands for "not in my back yard." It became a commonly used epithet in these confrontations.

59. See ROBERT BRUEGMANN, *SPRAWL: A COMPACT HISTORY* 115-16, 189-90 (2005) (noting *inter alia* that the mass migration from cities to suburbs inspired resistance from suburban elites resisting what they saw as an invasion of their turf by folks less deserving of the high toned benefits of suburban living). Bruegmann had something there. Going back to the beginning, when *Village of Euclid v. Ambler Realty Co.* was before the trial court, the trial judge held zoning unconstitutional and opined that the real purpose of zoning was to effect social and economic class segregation. See *Ambler Realty Co. v. Vill. of Euclid*, 297 F. 307, 316-17 (N.D. Ohio 1924), *rev'd*, 272 U.S. 365 (1926).

60. RICHARD F. BABCOCK, *THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES* 21 (1966).

61. E.g., RICHARD F. BABCOCK & CHARLES L. SIEMON, *THE ZONING GAME REVISITED* 11-12 (1985) (describing how a small, but determined, town was able to defeat a major, wealthy developer and prevent it from building in Tuxedo Park, New York).

opment.⁶² Unfortunately, it would take us far beyond the scope of this Essay to explore the uses and misuses of zoning and other land-use regulations to promote or frustrate the various strategies of zoning advocates in the unending struggle between factions that strive to make suburbs more open or more exclusionary, so I won't attempt such an effort here, tempting though it may be. But I do recommend that my readers become acquainted with such classics as Richard Babcock's *The Zoning Game*⁶³ and Bernard Frieden's *The Environmental Protection Hustle*,⁶⁴ which, with style and wit, provide insight into these matters.

And don't forget the effects of inflation on home prices, which by degrees transformed even those entry-level, suburban, lower-middle-class tract homes into six-figure, rapidly appreciating but tax-advantaged family investments, thus adding a powerful financial incentive to leaving the city and buying a suburban house⁶⁵—the bigger, the better. Remember the lines in front of housing subdivision sales offices? How Sweet it was!

Finally, as noted above, there were the physical effects not just of freeways and their peripheral land-consuming impacts like interchanges and parking lots, but also of urban redevelopment, which became an effective machine for the destruction of low- and moderately priced urban housing. Bernard Frieden, late chairman of MIT's planning department, and his co-author Lynne Sagalyn describe how urban dwellings were razed⁶⁶ on a large scale. Julia Vitullo-Martin summed it up concisely when she said:

The disaster that befell many American cities in the post-World War II era is drearily familiar. We know that the building of interstate highways, combined with the Federal Housing Authority's red-lining of inner-city neighborhoods, encouraged the flight of the urban middle class to the suburbs. We also know that the federal government then ensured the ruin of much of what was left by pursuing "urban renewal"—that is, by demolishing working-class neighborhoods, destroying the traditional street grid and gouging the classic urban fabric with fortress-like public-housing projects [some of which have had to be demolished].⁶⁷

62. Ford Fessenden, *Farther Afield: Americans Head Out Beyond the Exurbs*, N.Y. TIMES, May 7, 2006, at D14.

63. BABCOCK, *supra* note 60.

64. BERNARD J. FRIEDEN, *THE ENVIRONMENTAL PROTECTION HUSTLE* (1979).

65. See, e.g., Corey Kilgannon, *Change Blurs Memories in a Famous Suburb*, N.Y. TIMES, Oct. 13, 2007, at B1 ("While a Levitt [home] initially sold for under \$10,000, one would do well to find one now for less than \$400,000."); John M. Broder, *50 Years Later, a Still-Proud Suburb Is Starting to Fray*, N.Y. TIMES, July 14, 2004, at A16 (reporting that the modest 800 to 1,100 square-foot homes in Lakewood, a working class suburb of Los Angeles that originally sold for \$7,575 to \$8,525, are now selling for over \$300,000).

66. BERNARD J. FRIEDEN & LYNNE B. SAGALYN, *DOWNTOWN, INC.: HOW AMERICA REBUILDS CITIES* 27-30 (1989).

67. Vitullo-Martin, *supra* note 54.

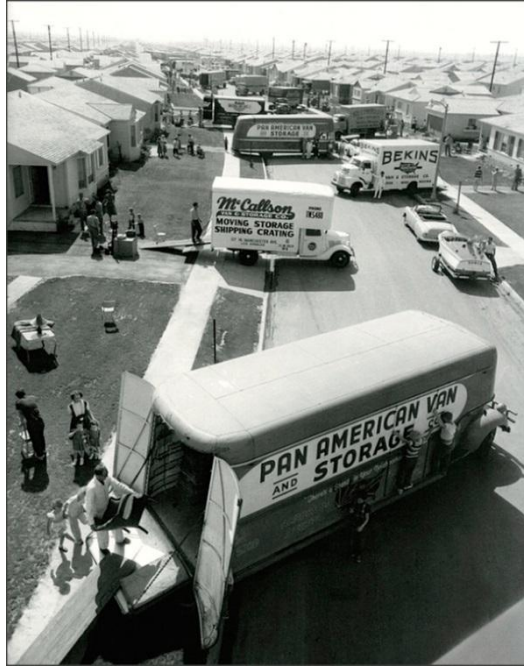


Photo: *Suburban Move in Day 1950s*
 J.R. Eyerman, *Moving Day in a Newly Opened
 Suburban Community* (Getty Images 1953)

And speaking of the feds' role in scattering urban populations, don't overlook the congressional directive to disperse federal facilities as a defense measure.⁶⁸

While all this went on, the suburbs kept looking better, safer, and more economically attractive to a growing number of urban dwellers. The rise of feminism contributed to the exodus when it conferred better paying jobs on women who could now pool their resources with those of their husbands and buy upscale family homes in the better suburbs, thereby gaining access to an agreeable lifestyle that was unattainable in cities, except perhaps at an

exorbitant and, for them, unaffordable cost. Thus, given the choice between attractive suburbs and life in the increasingly undesirable cities, moving to the suburbs became a no-brainer. So it should not be surprising that cities have been losing populations for decades, while the suburbs have been attracting more people. And I must stress again that it's many cities—not just Detroit. Other cities, notably but not exclusively, Baltimore, Bridgeport, Buffalo, Cleveland, Gary, St. Louis, Kansas City, Newark, Hartford, Camden, Scranton, and Philadelphia, are in a serious state of decline, but none of them can blame it on a declining automobile industry.

What can be done about it? Good question if you first decide that something should and can be done—a conclusion not shared by many Americans who may deplore the prevailing urban conditions, but respond to them by continuing to move from cities to suburbs if the Bureau of the Census is to be believed.⁶⁹ It took decades of economic disincentives and government misrule to bring American cities to their present unfortunate condition and, assuming we really want to turn back the clock and expend the effort and treasure necessary to work such a reversal—a doubtful proposi-

68. 12 U.S.C. § 1701n (2012).

69. See, e.g., Renn, *supra* note 51.

tion—it will likewise take similar effort, time, and money to transform today’s declining cities into a desirable middle-class habitat. Americans have grown accustomed to desirable suburban living and, notwithstanding the recent importunings of largely leftist “new urbanists” who profess to be intent on packing them into high-rise European-style dwellings and forcing them to give up their cars, show no sign of wanting to do that or to return to cities in large enough numbers to revive them as desirable family habitats. Thus, whereas the conventional planning wisdom of the past was that the “American dream” was embodied in a cottage in the suburbs, today’s planners, having executed a largely ideologically driven about-face, assert that high-density urban apartment living is superior. Or so they say.

But as far as the people are concerned, suburban living remains preferable. Among other things, those low-five-figure entry-level homes of the 1950s are now priced well into six figures and thus provide their working and lower-middle-class owners (who bought them when they became available and affordable) with undreamed-of nest eggs for their old age.⁷⁰ Ironically, it turned out that the fast-talking real estate salesmen of the 1950s were right. Buying a house did build wealth for a great many modestly endowed Americans. So why would one expect the beneficiaries of this state of affairs to give it all up and move back into cities they or their parents were glad to escape?

The 2008 crash of the housing “bubble,” in which government housing policies and financial regulations played a significant role (which is another sad story, but one beyond the scope of this Essay), may have reduced home equities, but on the whole—putting aside those reckless or foolish souls who took on mortgage debts they could not possibly pay off or, worse, people who refinanced their homes as they gained value in order to drain their increased equities and blow them on good living—suburbanites’ home equities remain much higher than they were twenty or thirty years ago, when large numbers of established suburban families bought their homes.

Around here, in Southern California, the weekend real estate advertising tabloids still offer plenty of seven-figure homes for sale, which of late are being snapped up by eager, often cash buyers as homes or investments, recession or no recession. The effort to make a bundle by buying and “flipping” homes is coming back in vogue⁷¹ so that would-be buyers of family homes often find themselves crowded out by professional investors/cash buyers.⁷² To prove my point, try buying a typical small, well-kept two-

70. See Kilgannon, *supra* note 65.

71. Alejandro Lazo, *Forget About “For Sale” Signs*, L.A. TIMES, June 23, 2013, at A1.

72. Andrew Khouri, *Home Prices Still Rising at a Torrid Pace*, L.A. TIMES, July 31, 2013, at B1.

bedroom, 1,600 square-foot, fifty-year-old home in a decent part of Burbank (a middle- to lower-middle-class suburban community where I live), for a half-million or so. Last time I looked (a few months ago), they were in the high \$600,000s to low \$700,000s range, and that was before the onset of the current boomlet in housing, which was brought about by diminished supply and low interest rates. The post-2008 wave of foreclosures may have hit relatively recent homebuyers, particularly in lower socio-economic communities, or those who lost their jobs in the recession, but the majority of middle-class suburban homeowners remains employed and still enjoys enviable home equities as well as attractive suburban lifestyles. Only about 20% of California homes are “underwater,” and those are largely in the downscale parts of the state, notably in places like the Central Valley and the Inland Empire.

Do you suppose that all these well-off suburbanites are likely to abandon their good life (including safer and higher quality schools for their children) and move into densely populated apartments in down-at-the-heels cities that are so beloved by today’s “progressive” urban planners? Not very likely, is it? The vaunted return to cities consists at this time of a trickle of increasingly elderly boomer empty nesters,⁷³ many of whom sold their suburban homes for small or not-so-small fortunes and pocketed their tax-free gains, and of “hip,” childless millennials settling in trendy city neighborhoods in search of the good life rather than of a stable family habitat—hardly a cohort capable of reestablishing permanently the vitality of cities populated by a vital middle class whose values and political clout are essential to cities’ continuous wellbeing.⁷⁴ What cities lack in order to become attractive again is a robust middle class with children whose absence in sufficient numbers does not bode well for the cities’ future.⁷⁵

Ideas have consequences. The embrace and implementation of the wholesome 1930s’ idea that good living means a suburban home with a lawn in front and a swing set in back, where kids can play and safely walk to school without the fear of being robbed or worse, exacted a price. It required that urban America make a choice, just as Haar concluded a half-century ago. And that is exactly what happened; this, of course, has been a matter of individual choice with each personal option—city or suburbs—

73. Peg Tyre with Catharine Skipp, *Seniors & the City*, NEWSWEEK, Oct. 11, 2004, at 44 (stating that the fastest growing segment of the population that is moving to the cities consists of the elderly (age bracket of 65-74)); Joel Kotkin & Ali Modarres, *The Childless City*, CITY J., Summer 2013, at 14, available at http://www.city-journal.org/2013/23_3_childless-cities.html.

74. See Joel Kotkin, *The Myth of the Back-to-the-City Migration*, WALL ST. J., July 6, 2010, at A17.

75. Timothy Egan, *Vibrant Cities Find One Thing Missing: Children*, N.Y. TIMES, Mar. 24, 2005, at A1; Laura Mansnerus, *Great Haven for Families, But Don’t Bring Children*, N.Y. TIMES, Aug 13, 2003, at A1.

offering advantages and disadvantages.⁷⁶ But the people's collective judgment has been unmistakable.

And once that choice was made (overwhelmingly in favor of suburban living), it required that urban-middle-class families leave cities in large numbers and move to the suburbs. Being sensible, they did so in large numbers because it was a personally attractive, lucrative, and government-subsidized option that provided families with a desirable habitat for children, as opposed to what was available in the declining, increasingly dangerous cities.⁷⁷ But as they moved in large numbers, they were not replaced in the cities, by a similar middle-class cohort, so they left behind urban desolation, particularly in places like Detroit, that then made things worse by its profligacy and incompetence.⁷⁸

So for the trendy planners who, a half century ago, touted the single-family suburban home to my generation as the embodiment of the American dream, but who are now touting its abandonment in favor of a mass return to crowded apartments in devastated cities, I have this bit of homely advice: Be careful what you wish for because you may get it.

In conclusion, following World War II, large numbers of inhabitants of American cities did not just up and leave on a whim. They were responding rationally to massive changes in urban social and economic conditions, and to government policies that were put in place after the war, providing powerful incentives to a city-to-suburbs population shift.

First, there was the creation (under the GI Bill) of a large, new, college-educated middle class with all its middle-class aspirations and appetites, including a desire and the means for acquisition of middle-class suburban housing.

Second, middle-class city dwellers were motivated to leave cities to escape riots that swept cities beginning in the 1960s, and the increasingly catastrophic decline in the safety and quality of public schools—to say nothing of forced bussing of middle class-children to decrepit and unsafe inner city schools.

Third, they were escaping rising urban prevalence of drugs and a rise in urban crime, notably in the 1970s.

Fourth, they were responding rationally to the physical devastation brought about in cities by construction of federally financed highways and by urban redevelopment, which, at its peak, displaced hundreds of thousands of urban dwellers annually.

76. For a charming personal essay on choosing city versus suburban living for a family with children, see Ada Calhoun, *Falling for Sprawl*, N.Y. TIMES MAG., Aug. 25, 2013, at 62.

77. Kotkin & Modarres, *supra* note 73.

78. See Mary Williams Walsh, *Detroit Spent Billions Extra from Pensions*, N.Y. TIMES, Sept. 26, 2013, at A1.

Fifth, they were taking advantage of generous government tax and housing policies as well as federally guaranteed mortgage loans that enabled them to buy desirable suburban homes on an unprecedented scale, thus granting them access to an agreeable lifestyle that until then was the prerogative of the well off.

Sixth, the suburban family home turned out to be a hugely successful, tax-advantaged investment that provided middle-class families not only with shelter, but also with unprecedented nest eggs for their old age. Even after the housing crash of 2008, the ownership of a family home continues to be viewed as a highly desirable asset as shown by the current rapid rise in the prices of family homes. To borrow Willie Sutton's memorable phrase, "That's where the money is." And that is also where the middle class is and that is where it means to stay.

Detroit has not been the only city to suffer from these effects. But it consistently displayed a high degree of incompetence, both in public governance and in the operation of its principal private industry,⁷⁹ making things worse. Its downfall and eventual bankruptcy should therefore not be allowed to masquerade as a problem of the automotive industry and even of local politics—however much those factors may have contributed to its downfall.

79. I may have been unduly upbeat at the beginning of this Essay about the new automobile industry. *See supra* text accompanying note 4. The latest news indicates that GM may be up to its old tricks reminiscent of the Corvair fiasco; it now appears that it failed to disclose to the feds and the public as well as to the bankruptcy court that the ignition switch in its Cobalt cars and other small cars has been defective for several years, and the defect appears to have been implicated in thirty-one crashes and twelve deaths. Daniel Ivory & Matt Apuzzo, *G.M.'s Bankruptcy Drawn Into Defect Inquiry*, N.Y. TIMES, Mar. 22, 2014, at B1. It would thus appear that my optimism about the born-again car industry may not be fully justified, and that this may only be another instance of Jean-Baptiste Alphonse Karr's bon mot that plus ça change, plus c'est la même chose (the more things change, the more they remain the same). Christopher Jensen, *G.M. Recall Total in 2014 Reaches 4.8 Million: Transmission Defect Is Latest Setback*, N.Y. TIMES, Mar. 30, 2014, at A20. Still, these unfortunate events do not appear to be involved in Detroit's misgovernance and decline, or in the past half-century's mass movement from city to suburbs, on which this Essay I based.