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LOCATIONAL JUSTICE: RACE, CLASS, AND THE GRASSROOTS PROTEST OF PROPERTY TAKINGS

Judith E. Koons*

*How do we keep hope alive for the kids in the projects?*¹

I. INTRODUCTION

Justice may be found in many dimensions. One dimension is that of location. "Locational justice" may be defined as the "where" of justice: it is justice that is grounded in land, home, and community, with regional connections and local participation in government.² How a society directs the use of land and treats property belonging to its citizens is a telling expression of how it applies principles of justice. In this respect, the landscape of many American cities has some sad tales to tell.

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1. This question was formed while listening to an interview of Mary J. Blige on National Public Radio. *Mary J. Blige, Making 'The Breakthrough,' All Things Considered* (NPR radio broadcast Jan. 21, 2006), <http://www.npr.org/templates/story/story.php?storyId=5165863>. Maintaining hope in the face of oppression is an extraordinary challenge for people who are subordinated. For groups that are engaged in political and economic struggle, one resource that may be tapped is the memory of victories, large and small, of groups that have gone before. CORNEL WEST, *KEEPING FAITH: PHILOSOPHY AND RACE IN AMERICA* 238 (1993). This article offers witness to one such group.

2. From a locational perspective, the justice or injustice of governmental action optimally includes consideration of its distributive, environmental, and social process dimensions. See Clifford Green, *Seeking Community in the Metropolis*, in *CHURCHES, CITIES, AND HUMAN COMMUNITY* 298 (Clifford J. Green ed., 1996) (proposing that "[s]eeking community in the city and binding up its wounds, hostilities, and fears means using [an] inclusive metropolitan paradigm"); cf. IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE passim* (1990) (arguing against reducing social justice to distribution and urging attention to institutional decision-making, division of labor, and cultural imagery as issues that often guide patterns of distribution).

In 2005, the United States Supreme Court issued a decision that marks another chapter in the story of locational justice. In *Kelo v. City of New London*, a five-Justice majority of the Court held that a local government's development plan condemning fifteen homes in order to stimulate local economic development satisfied the "public use" requirement of the Fifth Amendment.³ In dissent, Justice O'Connor proclaimed that

[u]nder the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public—in the process.⁴

More telling than the landmark decision, however, was the populist outcry that it prompted. In the wake of *Kelo*, a grassroots movement was generated that crossed political lines and sent state and federal legislators scurrying.⁵ The political right denounced judicial activism and governmental violation of cherished property rights, while the political left warned that expanded powers of eminent domain would target communities of poor people and people of color.⁶

Within a week of the decision, the U.S. House of Representatives passed a resolution expressing "grave disapproval" of the majority opinion in *Kelo*.⁷ In addition, bills were introduced in the House and Senate that would withhold federal financial assistance to local governments and states where eminent domain is used to transfer property to private parties for economic development.⁸ Legislatures in

3. *Kelo v. City of New London*, 125 S. Ct. 2655, 2668 (2005).

4. *Id.* at 2671 (O'Connor, J., dissenting).

5. See, e.g., Judy Coleman, *The Powers of a Few, the Anger of the Many*, WASH. POST, Oct. 9, 2005, at B02; David Lightman, *Lawmakers Stand Up to Court*, HARTFORD COURANT, July 1, 2005, at A1.

6. Lightman, *supra* note 5, at A1; Eric Heisler, *Ruling Has Unexpected Effect Here—It Stalls Projects*, ST. LOUIS POST-DISPATCH, Aug. 28, 2005, at B1; see also *Eminent Domain—Public Use: Sen. Cornyn Sees Bill to Curb Use of Eminent Domain Clearing Congress*, 74 U.S.L.W. 2230 (2005) [hereinafter *Clearing Congress*] (quoting the executive director of the Georgetown Environmental Law and Policy Institute: *Kelo* was "a model of judicial restraint because it was consistent with 100 years of case law.").

7. H.R. Res. 340, 109th Cong. (2005).

8. See, e.g., H.R. 4128, 109th Cong. (2005); S. 1313, 109th Cong. (2005); *Clearing Congress*, *supra* note 6 (referring to several House and Senate bills).

thirty states took action on bills and constitutional amendments to limit the power of eminent domain.⁹ Governors in three states—including the Connecticut home of New London—declared moratoria on the condemnation of property.¹⁰ Meanwhile, local governmental officials urged caution amid “frenzied rhetoric,” insisting that eminent domain, when used properly, could help “create jobs, grow business and strengthen neighborhoods.”¹¹

The grassroots opposition to *Kelo* is the point of ignition for this article. Asking how a populist movement may sustain hope for locational justice, this article offers a historic, social, and normative interrogation of property takings and other land use decision-making in America. From this vantage point, the article argues that the struggle for locational justice may be advanced through racial and socioeconomic coalitions that seek political and economic participation in democratic processes, not simply through judicial or legislative protections of property rights.¹²

The article moves through the discussion in four ways. First, the article offers a case study of a grassroots challenge to the City of Cocoa’s plans to “redevelop” (i.e., eliminate) its historic African American community. Lessons from the Cocoa struggle may be instructive to the post-*Kelo* populist movement. Second, the article interrogates the race and class dimensions of land use decisions in America. Third, the article considers the significance of coalition-building to the success of grassroots movements. Finally, the article proposes that the justice that is necessary to protect residential property rights must extend beyond distributive justice. Keeping hope alive for grassroots movements

9. *Eminent Domain—Public Use: House Approves Legislation to Curb Use of Eminent Domain Powers for Profit*, 74 U.S.L.W. 2263, 2263 (2005); see also *Eminent Domain—Public Use: Kelo Decision Unleashes Grass Roots Backlash Against Property Seizures*, 74 U.S.L.W. 2067 (2005) (outlining responses of states).

10. Coleman, *supra* note 5, at B02.

11. Carolyn Lochhead, *Lawmaker Cautions Against Eminent Domain in Rebuilding; Maxine Waters Sees Threat to Poor Blacks in New Orleans*, S.F. CHRON., Sept. 21, 2005, at A19 (quoting Eddie Perez, Mayor of Hartford, Connecticut).

12. Sheila Foster, *Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement*, 86 CAL. L. REV. 775, 778-79 (1998) (asserting that grassroots groups are struggling not simply against distributive outcomes).

requires expanding the notion of justice beyond equity in property holdings.

II. *HOUSTON V. COCOA*: A CASE STUDY OF LEGAL AND POLITICAL STRUGGLE FOR LOCATIONAL JUSTICE¹³

A. *Background of the Cocoa Dispute*

The local newspaper was filled with stories of the City of Cocoa's plans to implement its Redevelopment Plan by adopting a rezoning ordinance that would eliminate its historic African American community. The neighborhood—identified as the "Core" of the Redevelopment Area—was formed in the earliest days of the city.¹⁴ In the 1880s, white settlers built their homes and stores on the banks of the Indian River. By 1886, a sizeable African American community had arisen approximately six blocks west, on the other side of Florida Avenue.¹⁵ The line between the white downtown area and the African American neighborhood was marked by railroad tracks that paralleled Florida Avenue in the 1890s.¹⁶

Prosperity in the 1920s permitted African American residents to build modest single-family homes on small lots.¹⁷

13. This section is drawn from a case study of the struggle of the African American community of Cocoa, Florida, to survive displacing land use plans and redevelopment activities. See Judith E. Koons, *Fair Housing and Community Empowerment: Where the Roof Meets Redemption*, 4 GEO. J. FIGHTING POVERTY 75 (1996) (prepared by lead counsel for the residents). For an article surveying the laws of zoning and civil rights with some discussion of *Houston v. City of Cocoa*, see Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low Income Communities of Color*, 77 MINN. L. REV. 739, 771-72 (1993) (authored by Rutgers' law professor who served as one of the lead attorneys with the NAACP Legal Defense Fund in the *Houston v. City of Cocoa* case).

14. COCOA, FLA., COCOA REDEVELOPMENT PLAN SUPPLEMENT: 90 YEARS FORWARD 64 (July 27, 1982) (including Apr. 14, 1981, resolution) [hereinafter PLAN SUPPLEMENT].

15. Ruby A. Myers, *History of Cocoa*, in THE HISTORY OF BREVARD COUNTY, FLORIDA 6 (compiled by the Alpha Theta Chapter of Delta Kappa Gamma, Brevard County Central Reference Library, Cocoa, Fla.).

16. Henry Flagler was an oil tycoon who bought up small railroads and converted them to transport tourists from New York to his Florida hotels. ELAINE M. STONE, BREVARD COUNTY: FROM CAPE OF THE CANES TO SPACE COAST 36 (1988). Flagler's Florida East Coast Railroad reached the Cocoa-Rockledge station on Feb. 27, 1893. *Id.*

17. Koons, *supra* note 13, at 83.

Land was often bought outright, followed later by the building of a home. Women typically worked for ten cents an hour scrubbing floors in the white riverfront homes, while men labored in the groves for up to fifty cents an hour.¹⁸

By the 1940s, the African American neighborhood featured black-owned businesses that served the residents, including Dr. B.C. Scurry's office, J.C. Ager's Grocery, Evelyn's Beauty Shop, and Rosa Marie's Coffee Shop.¹⁹ Two churches—the historic Mt. Moriah A.M.E. Church and the popular Greater St. Paul's Baptist Church—were the cornerstones of the community.

By the 1980s, the neighborhood was home to 536 people who lived in 276 homes.²⁰ Nearly all of the residents were African American.²¹ Severe poverty dominated the neighborhood: 76% of the residents earned less than \$5,000 per year.²² Yet the neighborhood provided affordable housing to its residents. Below-market rent was available for the tenants, while mortgages were rare among the homeowners, over half of whom were elderly.²³

However, the neighborhood also was marked by heavy commercial uses that were neither owned by nor serving the residents.²⁴ Auto body shops, junk yards, and a paint manufacturing operation were spread throughout the area, along with a number of vacant lots. At the center of the neighborhood was a facility for dispatching cable trucks of a major utility company. These commercial businesses were the daily companions of the residents.

In 1988, a special section of the Orlando Sentinel

18. Laurin Sellers, *Blacks Vow to Save Neighborhood*, ORL. SENT., Mar. 23, 1988, at B4.

19. Advertisements for the latter three businesses could be found in THE SCRIPT, July 13, 1946 ("Brevard County's Only Colored Newspaper").

20. PLAN SUPPLEMENT, *supra* note 14, at 92.

21. With the exception of a few tenants in mobile homes, located outside the historic boundaries of the neighborhood, all known residents of the neighborhood were African American. In 1980, 29% of Cocoa's population of 16,096 was African American. BUREAU OF THE CENSUS, U.S. DEPT OF LABOR at P-1 tbl.P-1, P-18 tbl.P-3 (1980).

22. *Id.* Of 4,429 African Americans in 1,454 households in Cocoa, 23.5% of the homeowners and 60.7% of the renters lived below poverty level. *Id.* at H-55 tbl.H-11.

23. Tenants paid an average of \$130 per month for rent, when \$250 stood as the minimally expected rent for a standard unit. Koons, *supra* note 13, at 83.

24. See PLAN SUPPLEMENT, *supra* note 14, at 96 (Existing Land Use Map).

featured the impact of the proposed zoning ordinance on the neighborhood. Below a banner headline, "Cocoa: Neighborhood Must Go," City Councilman Noah "Sonny" Butt, Jr., was quoted as saying, "[T]he city should buy and tear down the neighborhood a block at a time until developers are willing to come in."²⁵ Other city officials had similar visions for the neighborhood: "I see a One Harbor Place, the 1900 Building. I see the Hilton at Rialto Place. . . . If we have one holdout property owner and something like a Hilton wants to come in . . . you're darn tootin' we'd do everything to get that property."²⁶ The Redevelopment Coordinator reasoned, "If we're going to have a development come in, you can't have Mrs. Smith in her little shack on the corner. . . . She's going to have to go somewhere else too."²⁷ In sum, the author of the Redevelopment Plan advised: "The core area, in pragmatic, cold dollars and cents, should be very valuable."²⁸

To challenge the City's threatened destruction of her neighborhood, one of the homeowners, Beatrice Houston, stepped into the shoes of community organizer and lead plaintiff. Ms. Houston's daughter, local businesswoman Roni Houston McNeil, mobilized a community protest and client support organization called Save Our Neighborhood. Expressing pride in the contribution African Americans made to the City, Ms. McNeil asserted that Cocoa was built on the backs of African Americans. She proudly relayed the story of her great grandfather, who was the first postman of Cocoa.²⁹ Neither Ms. McNeil nor her mother could countenance the destruction of the community that their family had helped to build. Grover Rowe, born in the neighborhood over fifty years before, was as firm in his resolve: "The city thinks that just because people are old and poor they can't do anything about it. . . . Well, the city may have the money, but we have God and the U.S. government. And they can't take this land from us."³⁰

25. David Scruggs & Laurin Sellers, *Transition to Glitz May Be Slow in Coming to Crime-Ridden Area*, ORL. SENT., Feb. 21, 1988, at 1.

26. David Scruggs & Laurin Sellers, *Cocoa: Neighborhood Must Go*, ORL. SENT., Feb. 21, 1988, at 1.

27. *Id.* ("It's not like they're leaving the good old days. The good old days are long gone for those people.")

28. *Id.* at 12.

29. Sellers, *supra* note 18, at B4.

30. *Id.*

Within a year of the City's adoption of the rezoning ordinance, three formal proceedings were filed on behalf of the residents: 1) a state administrative challenge to the City's Comprehensive Plan;³¹ 2) a federal administrative challenge to the City's use of funds under the Community Development Block Grant (CDBG) program;³² and 3) a federal class-action lawsuit grounded in the Fair Housing Act.³³

B. History of Land Use Laws in Cocoa

While members of Save Our Neighborhood worked as community organizers, counsel for the residents invoked state and federal Freedom of Information Acts to inspect and copy the City Council and Redevelopment Agency files.³⁴ After reviewing thousands of documents, a pattern of historic incremental destruction of the neighborhood emerged. Over the span of five decades, a host of land use tools had been turned on the neighborhood, seemingly with the purpose of forcing the residents to leave their homes.

Upon excavating the zoning history of Cocoa, the legal team discovered three major zoning ordinances. A major rezoning had occurred in 1974, in which the Core Area had been zoned for heavy commercial use.³⁵ Prior to that, another comprehensive rezoning had taken place in 1959.³⁶ In this

31. The residents' state administrative challenge was based on violations of environmental, historic, and citizen participation provisions of the state Growth Management Act and regulations. See Growth Management Act, FLA. STAT. §§ 163.3161-3241 (1985); see also Amended Final Order in Challenge to Comprehensive Plan, *Austin v. Department of Community Affairs*, ER FALR 89:0128 (Adm. Com. Sept. 29, 1989).

32. Cocoa residents raised environmental, historic, and civil rights claims with HUD. See Conciliation Agreement in HUD Administrative Proceeding, *Houston v. City of Cocoa* (Dep't of Hous. & Urban Dev. June 15, 1990). For an article discussing the interface between environmental and civil rights claims as illustrated in the HUD administrative proceedings, see Karl S. Coplan, *Protecting Minority Communities with Environmental, Civil Rights Claims*, 206 N.Y. L.J. 1 (1991) (prepared by co-counsel in *Houston v. City of Cocoa* with Berle, Kass & Case, New York City).

33. Consent Decree in Federal Class Action, *Houston v. City of Cocoa*, No. 89-082-CIV-ORL-19 (M.D. Fla. Oct. 26, 1990); see also Koons, *supra* note 13, at 94 (discussing twelve claims for relief, including violations of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968); 42 U.S.C.A. § 3601 (West Supp. 2006).

34. FLA. STAT. § 119.01-16 (1991); 5 U.S.C.A. § 552 (West Supp. 1988).

35. Cocoa, Fla., Ordinance 1618 (Nov. 26, 1974).

36. Cocoa, Fla., Ordinance 1478 (July 28, 1959).

rezoning, the City had imposed intense commercial zoning on the Core Area. The earliest zoning of Cocoa surfaced in the bottom layer, in 1940, when the City had zoned the residential portions of the neighborhood for heavy commercial use.³⁷ Reconstructed maps of the affected areas told the story: from the origin of zoning in Cocoa, white residential areas were given protective residential zoning while the Core Area was given incompatible displacement-inducing zoning.³⁸

Incompatible zoning, called "expulsive" zoning by the planning expert for the residents, had been the City's pre-Redevelopment Plan displacement tool.³⁹ Such zoning likely had led to the deterioration of black-owned single-family homes which had been replaced, over the years, by junk yards and auto body shops. That proposition was supported by census data: between 1970 and 1980, the number of occupied dwelling units in the Core Area declined from 290 to 244 and the black population fell from 734 to 591.⁴⁰

Zoning was not the only mechanism that undermined the residential integrity of the neighborhood. Eminent domain was used to re-route major thoroughfares, resulting in the displacement of people of color from Cocoa. In earlier days, the neighborhood had extended farther north and west, but this land was taken, in the legal sense, from black families on three occasions. First, in 1927, the Florida East Coast Railway moved from its alignment near the river to a location several blocks west.⁴¹ Second, around 1960, State Road 520, which became the northern boundary of the neighborhood,

37. The zoning district for the neighborhood was in a "T" shape, which approximated the residential area of the neighborhood. Black-owned grove land was apparently excluded from the commercial district. *Id.*

38. Counsel requested a copy of the City's 1974 zoning map. Koons, *supra* note 13, at 101. Because maps of the 1940 and 1959 zonings no longer existed, a paralegal reconstructed those maps from legal descriptions and a 1939 County plat map. *Id.*

39. Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, in ZONING AND THE AMERICAN DREAM 122 (Charles M. Haar & Jerold S. Kayden eds., 1989).

40. To assess the impact on the residents of the prior zonings, counsel reviewed 1970 and 1980 Census block data, aerial maps of the area, and anecdotal evidence by long-term residents of lot-by-lot changes in the neighborhood. See, e.g., Interview with Beatrice Houston, in Cocoa, Fla. (July 18, 1988).

41. Interview with Al Trafford, realtor and Chair, Cocoa's Planning and Zoning Board, in Cocoa, Fla. (May 19, 1988).

was widened.⁴² Third, in 1961, U.S. 1 was moved to parallel the relocated railway and form the western boundary of the neighborhood.⁴³

A fourth use of eminent domain bore signs of irony. Another black residential neighborhood had grown up in Cocoa on the western side of the newly relocated tracks. In 1959, most of these residents were moved several miles west, outside the City limits, to make room for scattered-site public housing.⁴⁴ Through the City's use of eminent domain, affordable single-family homes owned by African American residents had been destroyed to provide sites for assisted housing, which came to be occupied by African American tenants. The City had displaced African American homeowners for poorer African American tenants.

C. The Cocoa Redevelopment Plan

With the rise of redevelopment, a host of governmental forces was directed at the neighborhood. In 1980, the City Council adopted a resolution that "one or more slum or blighted areas" in the City were in need of redevelopment.⁴⁵ Shortly thereafter, the Redevelopment Area and Agency were established.⁴⁶ The first substantive issue that was addressed by the Agency was housing repair work in the Redevelopment

42. One of the leaders of the black community during the 1940s and 1950s provided information regarding her family's displacement from King Street by condemnation. Interview with Dorothy Sweetwine, in Cocoa, Fla. (Aug. 25, 1988).

43. Interview with Elin Reynolds, in Cocoa, Fla. (Oct. 17, 1988) (Florida Department of Transportation advised of the realignment of U.S. Highway 1). The expert planner for the residents, Yale Rabin, suggested that the neighborhood may have become a target for expulsive zoning when the Florida East Coast Railway was relocated. To Rabin, the 1927 realignment of the railroad left the Core Area in the rare and vulnerable position among east coast African American neighborhoods of standing on the east side of the railroad tracks. Cf. CHARLES M. HAAR AND DANIEL W. FESSLER, *THE WRONG SIDE OF THE TRACKS* 12 (1986) (noting railroad tracks as the archetypal symbol in the United States of class and race divisions).

44. Telephone interview with Frank Chavers, Executive Director, Cocoa Public Housing Authority (Oct. 10, 1988); interview with Rev. W. O. Wells, former Chair, Redevelopment Agency, in Cocoa, Fla. (May 17, 1988).

45. Cocoa, Fla., Resolution Determining a Necessity for Redevelopment of Blighted Areas Within the City of Cocoa, Fla. (July 8, 1980).

46. Cocoa, Fla., Resolution Establishing Redevelopment Area Based on Certain Findings of Fact Pursuant to Section 163.357 Florida Statutes (Apr. 14, 1981); Cocoa, Fla., Ordinance 10-81 (Apr. 14, 1981) (establishing Redevelopment Agency and enumerating powers).

Area. The Agency recommended, and the City Council approved, a moratorium on spending funds for housing improvements in the Redevelopment Area.⁴⁷ Federal Community Development Block Grant (CDBG) funds were blocked on an indefinite basis to the residents of the Redevelopment Area most in need of such funds.⁴⁸ With forces of decay and disinvestment at work, the Agency began preparing the Redevelopment Plan.⁴⁹

When the Redevelopment Area was presented for adoption, it proposed the wholesale destruction of the African American neighborhood.⁵⁰ The Redevelopment Area was divided into twelve project areas.⁵¹ Projects 1, 2, 3, and 4 envisioned a ninety-nine slip marina, a restaurant complex, and three sets of riverfront condominiums.⁵² Project 6 set the stage for a Historic Preservation District in the white downtown and riverfront area. Plans were advanced for other public improvement, retail commercial, and light industrial projects. But the largest project area, the fifty-eight acre, historic African American neighborhood, was denoted the "Core" of the Redevelopment Area and identified as Project 12.⁵³

In a diagram of Project 12, all of the Core Area homes were gone, including those owned by Beatrice Houston and

47. Cocoa, Fla., Minutes of Redevelopment Agency at 6 (May 14, 1981); Cocoa, Fla., Minutes of City Council at 4 (May 26, 1981); Cocoa, Fla., Minutes of City Council at 2 (Jan. 12, 1982); Cocoa, Fla., Minutes of City Council at 3 (Apr. 12, 1983) (indefinite moratorium).

48. A former employee of the City advised counsel that the purpose of the moratorium was to lower property values in the Core Area so that properties could be acquired less expensively.

49. Displacement is set into motion by gentrification, where residents are forced out of their homes by actions taken to increase the investment in and the attractiveness of an area. Chester Hartman, *The Right to Stay Put*, in LAND REFORM, AMERICAN STYLE 302, 303 (Charles C. Geisler & Frank J. Popper, eds., 1984). Displacement is also brought about by disinvestment, which sets into motion the "opposite set of forces." *Id.* at 304 (advising that disinvestment "may represent a city's conscious policy of 'planned shrinkage' or 'triage' to induce people to move out as a way of preparing the area for some form of redevelopment without the necessity of eminent domain and formal relocation services").

50. Cocoa, Fla., Ordinance 28-82 (July 27, 1982); COCOA FLA., COCOA REDEVELOPMENT PLAN: 90 YEARS FORWARD 16 (July 27, 1982) [hereinafter REDEVELOPMENT PLAN].

51. PLAN SUPPLEMENT, *supra* note 14, at 41-66.

52. *Id.* at 41, 43, 45, 48.

53. *Id.* at 64.

Grover Rowe. In their stead were townhouses, professional offices, shopping centers, and a city park.⁵⁴ In assessing the impact of Project 12, the Redevelopment Plan Supplement stated: "Clearly the greatest impact to occur in the core area project will be the relocation. A total of 276 residential units representing 536 persons will require relocating to other suitable housing as well as 46 businesses."⁵⁵ Among all twelve projects, the total anticipated "residential workload" for displacement was 326 households, at least 276 of which were African American.⁵⁶

After the City adopted the Redevelopment Plan, the Redevelopment Agency obtained appraisals for each parcel of land within the Core Area.⁵⁷ The appraisals were markedly low.⁵⁸ The City also began a program of aggressive code enforcement in the neighborhood, resulting in the destruction of a number of homes that the residents claimed were structurally sound.⁵⁹

Even with these destructive forces at work, the acquisition and relocation costs of Project 12 continued to be prohibitive. Consequently, Redevelopment officials devised a private displacement plan to eliminate the homes in the Core Area. To implement this plan, the rezoning ordinance was proposed to induce development through a system of transferable development rights and performance bonuses.⁶⁰

54. *Id.* at 64-65.

55. *Id.* at 66.

56. REDEVELOPMENT PLAN, *supra* note 50, at 39.

57. Letter from Dennis E. Basile, Clark A. Maxwell, and Robert W. Houha, Real Estate Appraisers, to Doug Robertson, Redevelopment Director (Mar. 9, 1982) (referring to appraisals of 300 properties in Redevelopment Area).

58. Two vacant lots owned by residents of the neighborhood were valued between \$500 and \$1000. Letter from Dennis E. Basile for Robert W. Houha, Real Estate Appraisers, to Doug Robertson, Redevelopment Director (Apr. 12, 1982) (range of value estimate for lot on Smith Lane); Letter from Dennis E. Basile for Robert W. Houha, Real Estate Appraisers, to Doug Robertson, Redevelopment Director (Apr. 12, 1982) (range of value estimate for lot on Oleander Street).

59. *See* Koons, *supra* note 13, at 103-04 (relaying story of Dorothy Sweetwine, whose home of the "hardest wood" was condemned on the pretext of termites); *see also* interview with Doug Robertson, Redevelopment Director, in Merritt Island, Fla. (June 1, 1988) (advising that "dozens" of homes were demolished during his tenure as Redevelopment Director).

60. *See* Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 138 (1978) (upholding transferable development rights (TDRs) against a taking challenge). Traditionally, TDRs have been used to protect environmentally or historically sensitive property. *See, e.g.,* City of Hollywood v. Hollywood, Inc., 432 So. 2d

Zoning for the Core Area was dramatically revised. The primary use district for the neighborhood had been wholesale commercial, with intense commercial principal uses such as warehousing. After the rezoning ordinance, however, the neighborhood was marked for high density residential and refined commercial uses.⁶¹ Suddenly, minimum lot size was tripled, rendering all of the residents' lots or uses nonconforming. Moreover, the Core Area was designated as the transferor area, attracting developers to the neighborhood to capture new development rights and bonuses. Specifically, the guarantee of increased density in the neighborhood provided developers the opportunity to aggregate parcels, to build larger and more expensive units, and to transfer development rights to valuable riverfront areas. Zoning became an instrument of gentrifying displacement.⁶²

Concurrently with the adoption of the rezoning ordinance, the City began a "streetscape" project on Hughlett Avenue, the major road running north and south in the Core Area.⁶³ Massive pipes appeared on the residents' front yards. While representatives of the City attempted to explain the installation of pipes as improvements to the residential community, a City memo observed that the Hughlett Avenue streetscape would create a "drawing and retention mechanism" for business enterprise.⁶⁴ A number of City documents also proposed obtaining easements that, if secured, would leave many residents without front yards.⁶⁵ Despite public disclaimers, it seemed that the City was

1332 (Fla. 1983). The ordinance implementing the Redevelopment Plan in Cocoa was the first known instance in which TDRs were employed as an offensive measure to attract development to an area for the purpose of redeveloping it.

61. Cocoa, Fla., Ordinance 7-88 (Mar. 8, 1988).

62. Hartman, *supra* note 49, at 302-04 (discussing the displacing effects of disinvestment and gentrification). The moratorium on the use of housing rehabilitation funds in the area and the rezoning ordinance reflected serial disinvestment and gentrification in Cocoa.

63. Koons, *supra* note 13, at 87. The Hughlett Avenue Streetscape Project was advanced by the City as a landscaping and infrastructure improvement project. *Id.* at 96.

64. Memorandum from Rochelle Lawandales, Community Improvement Director, to James P. McKnight, Redevelopment Agency Director (Mar. 13, 1986) (referring to the role of the streetscape to induce business location in the neighborhood).

65. Easements Needed for HLO Project (n.d.) (Cocoa Redevelopment files—a typed list of parcels in the neighborhood).

literally laying the foundation in the streetscape to attract developers to the neighborhood.

On the heels of adopting the zoning ordinance, Cocoa launched a series of public hearings to consider far-reaching changes to its Comprehensive Plan. The African American neighborhood was the only residential area of the City given, in its entirety, incompatible land use designations. As predicted in the zoning ordinance, the future land use map designated the neighborhood for high density residential and commercial land uses.⁶⁶

D. Growing Opposition to the City of Cocoa's Plans

1. The Role of the Media

Residents of the neighborhood and members of Save Our Neighborhood rose in opposition to the City's zoning, land use, and redevelopment plans. From the outset, all parties appreciated the role of the media. Cocoa's vulnerability rested on public opinion. Residents appeared in the media on a daily basis to trade blows with City officials. Ms. McNeil continued to press her message: "Improve, not remove," while her mother asserted, "This community is the founding black community of Cocoa. It has been here for 100 years, and I hope my great-great-grandchildren are still here in another 100 years."⁶⁷

As residents advanced their stories in public hearings and in the press, another theme appeared: "Save Grandmas' Homes." While observers had anticipated public opinion to be divided along racial lines, the division instead occurred between residents and developers. Public support began building for the residents. As the City Council moved through its pro-development land use hearings, support for the residents grew, at first from groups of homeowners, and then from environmental and historic groups. The residents

66. A comprehensive land use plan may be likened to a constitution of a municipality, guiding future development. Land development regulations, such as a zoning code, must flow from and implement the land use plan. Reverse "planning from zoning" violates well-accepted planning principles. *See, e.g., Machado v. Musgrove*, 519 So. 2d 629, 632 (Fla. Dist. Ct. App. 1987), *cert. denied*, 529 So. 2d 694 (Fla. 1988).

67. John A. Nagy, *Cocoa Neighbors File Lawsuit Over City's Plan to Convert Area*, FLA. TODAY, Feb. 2, 1989, at 2B.

were winning the war of the press. Such success would not have been possible, though, without the solidification of Save Our Neighborhood.

2. *Save Our Neighborhood*

To more effectively represent the residents, Beatrice Houston and Roni Houston McNeil organized Save Our Neighborhood and formed an Executive Committee composed of residents, adult children of residents, and business leaders in the African American community.⁶⁸ The Executive Committee went door-to-door throughout the neighborhood, distributing copies of key documents such as the zoning ordinance. Committee members answered questions and ascertained whether the residents supported the goal of preserving the neighborhood. After discovering overwhelming support, the Executive Committee organized a series of neighborhood meetings.⁶⁹

In between meetings, Save Our Neighborhood worked daily for community survival. Members of the Executive Committee attended all City board meetings, gathered facts, submitted memos, gathered client information, talked with the media, developed public relations packages, and worked with political and homeowner groups. Pressing forward, members of the Executive Committee gained knowledge of redevelopment, city budgeting, CDBG, fair housing, affordable housing, ordinances, resolutions, zoning, land uses, and class actions. The Executive Committee returned its newfound knowledge to the community, and also used it to negotiate with the City.

3. *The Residents' Legal Challenges*

Of the three legal proceedings filed on behalf of the

68. For a history of neighborhood organizing and organizational caveats, see Robert Fisher, *Neighborhood Organizing: Lessons from the Past*, 15 SOC. POL'Y 9 (1984).

69. See LEE STAPLES, *ROOTS TO POWER: A MANUAL FOR GRASSROOTS ORGANIZING* 20-52 (1984) (identifying four distinct phases of grassroots organizing: groundwork (gathering basic information about community and power dynamics at work); organizing committee ("gatekeepers" of community lead to initial core group for the organizing drive); recruitment drive (six-week, door-to-door effort); and formation meeting (recruitment drive culminating in meeting to elect leadership and plan action)).

residents,⁷⁰ the challenge to the Comprehensive Plan was the first to go to a hearing. The proceeding attracted considerable attention: it was the first citizens' challenge in the state to be heard under the 1985 amendments to the Growth Management Act.⁷¹ Residents faithfully attended the long, mind-numbing proceedings that were often chock-full of testimony regarding wetlands mitigation criteria and level of service standards on roadways. Months later, however, the hearing officer issued a Recommended Order that found in favor of the residents on environmental grounds.⁷² Jaws dropped, not only in Cocoa, but throughout the state. The residents had prevailed in the one proceeding they had been expected to lose. More surprising was the broad effect of their victory. In the fight to preserve their neighborhood, low-income grandmothers from Cocoa's black community had secured environmental justice for people in the State of Florida.⁷³

70. First, the residents challenged the City's Comprehensive Plan based on non-civil rights violations of the state Growth Management Act and regulations. See Amended Final Order in Challenge to Comprehensive Plan, *Austin v. Dep't of Community Affairs*, ER FALR 89:0128 (Adm. Com. Sept. 29, 1989). Second, Cocoa residents raised environmental, historic, and civil rights claims with HUD. See Conciliation Agreement in HUD Administrative Proceeding, *Houston v. City of Cocoa* (Dep't of Hous. & Urban Dev. June 15, 1990). Third, eight named plaintiffs filed a suit in federal court on behalf of a class of residents of the neighborhood. See Consent Decree in Federal Class Action, *Houston v. City of Cocoa*, No. 89-082-CIV-ORL-19 (M.D. Fla. Oct. 26, 1990).

71. Donna O'Neal, *Grandmoms Defeat Cocoa Growth Plan*, ORL. SENT., Sept. 15, 1989, at A1; see also Growth Management Act, FLA. STAT. §§ 163.3161-3241 (1985).

72. The Hearing Officer determined that the elimination of the wetlands from the City's Future Land Use Map, when read against background data that detailed the importance of wetlands for drainage and water quality, rendered the Comprehensive Plan internally inconsistent. Recommended Order, *Austin v. Dep't of Community Affairs*, No. 88-6338GM (Div. of Admin. Hearings, June 2, 1989). The Governor and Cabinet, sitting as the Administration Commission, ratified the environmental finding and also found for the residents on two additional grounds: the failure of the City to protect known historic resources and the City's violation of public participation requirements. Amended Final Order in Challenge to Comprehensive Plan, *Austin v. Dep't of Community Affairs*, ER FALR 89:0128 (Adm. Com. Sept. 29, 1989).

73. O'Neal, *supra* note 71, at A1 (noting the case as the first major test of 1985 Growth Management Act and quoting environmentalists as saying that the case "sends a strong message to local governments that state officials are serious about protecting citizens and the environment from haphazard development"); see also Laurin Sellers, *State Agency Honors Three for Fight*, ORL. SENT., May 4, 1990, at F1 (reporting awards given to residents for the proceeding).

Not long after the Hearing Officer issued the Recommended Order in the Comprehensive Plan case, the U.S. Department of Housing and Urban Development (HUD) encouraged city officials to settle the residents' federal administrative challenge.⁷⁴ Settlement discussions resulted in a proposed settlement of the HUD proceedings and the federal class action suit.⁷⁵ Key terms of the proposal included protective residential zoning and land use designations for the neighborhood, a permanent injunction against involuntary displacement of the residents, the allocation of \$675,000 for a program of rehabilitation for residents' homes, and the designation of a historic district in the oldest part of the neighborhood.⁷⁶

As the legal team negotiated the terms of the agreement, the federal judge entered an order upholding each of the residents' claims for relief, thus affirming plaintiffs' standing and theory of the case.⁷⁷ The court readily acknowledged the application of the Fair Housing Act to discriminatory redevelopment and land use activities.⁷⁸

74. Environmental, historic, and civil rights objections were lodged with HUD. See Conciliation Agreement in HUD Administrative Proceeding, *Houston v. City of Cocoa* (Dep't of Hous. & Urban Dev. June 15, 1990). The residents' environmental comments asserted that the redevelopment plan was a single major federal action with significant impact on the human environment and, therefore, required an Environmental Impact Statement. See Koons, *supra* note 13, at 92-93 (citing also the City's failure to consider the impact of its activities on structures eligible for inclusion in the National Register of Historic Places). As their primary civil rights claim, the residents objected to the use of CDBG funds to bring about displacement with the purpose or effect of discriminating on the basis of race. *Id.*

75. Consent Decree in Federal Class Action, *Houston v. City of Cocoa*, No. 89-082-CIV-ORL-19 (M.D. Fla. Oct. 26, 1990); see also Koons, *supra* note 13, at 94.

76. The settlement agreement was conditional. The parties agreed to enter into a proposed consent decree of the federal class action suit that would not become effective until after approval by the court, followed by the adoption of implementing ordinances by the City. If the City adopted the curative ordinances, the court would then enter final judgment, and the consent decree would become fully effective. Because the consent decree was a *contract to settle*, and not a contract to rezone, the consent decree avoided the infirmity of contract zoning. See, e.g., *Hartnett v. Austin*, 93 So. 2d 86, 89 (Fla. 1956) (holding that a municipality may not contract away police powers).

77. Order Denying Motion to Dismiss, *Houston v. City of Cocoa*, 2 Fair Housing-Fair Lending (P-H) ¶ 15,625 at 16,208-09 (M.D. Fla. Dec. 22, 1989).

78. Plaintiffs' allegations of threatened injury—such as the City's encouraging discriminatory redevelopment of the neighborhood by attracting developers to the area—satisfied the requirements for standing. *Id.* Upholding

Despite the victories, residents were uncertain about whether the City would adopt the key ordinances necessary for the settlement. From the beginning, the City Council had been dead-set against the residents' claims, by a vote of four-to-one. As other community groups in Cocoa protested the growth-inducing policies of the City Council, Save Our Neighborhood joined a coalition of six other neighborhoods in Cocoa to engage in grassroots political activism. At every election and in between, members of the coalition pounded the pavement in Cocoa. Time and time again, Save Our Neighborhood and the coalition moved the people of Cocoa to the polls and to public hearings. Over the span of two elections, the coalition defeated pro-development candidates. These grassroots efforts transformed the City Council into a body that, by a three-to-two vote, affirmed the values of neighborhood, environmental, and historic preservation.⁷⁹

As a result of the residents' political and legal activism, the City adopted the curative ordinances and the federal court approved the consent decree. For the first time in its 100-year history, the neighborhood had acquired protective legal status. However, one of the greatest products of the struggle with the City was the community strength that was summoned. To demonstrate how lessons of the struggle in Cocoa can be employed by the post-*Kelo* populist movement, the article first turns to our nation's land use history and then to cross-race and -class coalition-building.

the more novel claims, the court found the Thirteenth Amendment's prohibition of badges and incidents of slavery was fairly alleged and enforceable under 42 U.S.C. § 1983, as were claims arising under other federal statutes, including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act of 1966 (NHPA). *Id.* In approving the latter claims, the court affirmed NEPA's protection of the urban as well as the natural environment and NHPA's protection of residents' enjoyment of the historic character of areas where some properties may be eligible for inclusion in the National Register. *Id.*

79. See, e.g., George Mercedes, *Cocoa Council Reverses Direction*, FLA. TODAY, Nov. 21, 1989, at 1B.

III. A HISTORY OF SEGREGATION IN LAND USE CONTROLS BY RACE, ETHNICITY, AND CLASS⁸⁰

A. Zoning and Segregation

Land use controls have long been employed to segregate and burden communities based on race, ethnicity, and class. The origin of zoning lies in race and class divisions. Racial zoning arose contemporaneously with the Great Migration of southern blacks that began in the 1890s.⁸¹ San Francisco adopted the first residential segregation ordinance in 1890.⁸² Twenty years later, Baltimore adopted the first racial housing segregation ordinance directed at African Americans.⁸³ The notion of segregated zoning statutes was considered "the Baltimore idea" and was followed by thirteen other cities, including Louisville, Winston-Salem, and Atlanta.⁸⁴ A number of cities resisted passing similar ordinances until the ordinances were reviewed by the Supreme Court.

In 1917, Louisville's Residential Segregation Ordinance was considered by the Supreme Court in *Buchanan v.*

80. Research for portions of this section was originally prepared for *Locational Justice: Zoning, Poverty and the American City*, a paper submitted for Emancipation from Poverty: A Faith Strategy for Urban Ministry, taught by the Rev. Dr. James A. Forbes, Jr., Luce Visiting Lecturer in Urban Ministry, Harvard Divinity School, fall semester 1997.

81. Green, *supra* note 2, at 6-7 ("Provoked by racial attacks and lynchings, and attracted by job opportunities in industrial cities, thousands and thousands of people moved from the countryside and small towns of the rural South to the cities of the North and Midwest. During World War I about half a million people migrated, and from 1916 through the 1960s more than six million people relocated in the North. In the decade from 1910 to 1920, Chicago's black population grew from 44,000 to 110,000. Migrating blacks often met in the North a hostility comparable to what they had left in the South: in 1919 alone there were over twenty major race riots.").

82. *In re Lee Sing*, 43 F. 359, 360-62 (N.D. Cal. 1890) (invalidating an ordinance that declared it to be "unlawful for any Chinese to locate, reside or carry on business within the limits of the city and county of San Francisco, except in that district of said city and county hereinafter provided for their location"); see also OSCAR T. SHUCK, HISTORICAL ABSTRACT OF SAN FRANCISCO (1897), available at <http://www.sfgenealogy.com/sf/history/hbabs1.htm> (discussing San Francisco's "Bingham Ordinance," adopted in 1890 and ruled unconstitutional later that year).

83. A. Leon Higginbotham, Jr., et al., *De Jure Housing Segregation in the United States and South Africa: The Difficult Pursuit for Racial Justice*, 1990 U. ILL. L. REV. 763, 810 (1990).

84. *Id.* at 811.

Warley.⁸⁵ Buchanan, a white real estate broker who was sympathetic to civil rights, sold his lot to Warley, the local president of the NAACP.⁸⁶ The contract stated that the full purchase price of \$250 was not due until Warley had the right to occupy the property.⁸⁷ When Buchanan sued for the final \$100 owed, Warley raised the unenforceability of the contract under the segregation ordinance.⁸⁸

Given a choice of reasons to reject the ordinance—race discrimination or abridgement of property rights—the Supreme Court ruled that racial zoning offended private property rights.⁸⁹ Consequently, the decision has been characterized more as “a pronouncement on the primacy of property rights than a rejection of the premises underlying the enforced separation of the races.”⁹⁰ Perhaps due to the ambiguity with which the Supreme Court addressed the equal protection issue in *Buchanan* and the deeply entrenched nature of racism in the United States, local governments continued to enact racial zoning ordinances.⁹¹ Even after local governments stopped enacting explicit racial zoning ordinances, implicit racial zoning continued.⁹² Moreover, the neutral language of zoning and its efficiency-based ideology produced “a relentless segregation of uses” that reflected not only racial divisions, but also socioeconomic and ethnic segregation.⁹³

85. *Buchanan v. Warley*, 245 U.S. 60 (1917).

86. Higginbotham, *supra* note 83, at 851.

87. *Id.*

88. *Id.* The case was an “ironic spectacle” in which a white plaintiff was asserting the unconstitutionality of the segregation ordinance; the black defendant was hoping to lose the case that his counsel, for the City of Louisville, wanted to win so that white neighborhoods would not be infiltrated by African Americans. *Id.*

89. *Buchanan*, 245 U.S. at 82.

90. Dubin, *supra* note 13, at 745; see also James W. Ely, Jr., *Reflections on Buchanan v. Warley, Property Rights, and Race*, 51 VAND. L. REV. 953, 964 (1998) (“*Buchanan* forcefully demonstrates that regard for property rights is not an end in itself, but is also important for securing individual autonomy and other personal liberties.”).

91. Dubin, *supra* note 13, at 801 (Miami enacted a racial zoning ordinance in 1945; Birmingham defended its ordinance before the Supreme Court in 1951; the racial district law in Texas remained on the books until 1969).

92. *Id.* at 755 (discussing exclusionary zoning mechanisms that, by creating financial barriers to housing, are “virtually as effective in operation as the explicitly racial laws invalidated in *Buchanan*”).

93. Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20

Illustrating the class dimensions of zoning was the nation's first comprehensive zoning ordinance which was adopted by New York City in 1916.⁹⁴ That ordinance was prompted by the desire of the Fifth Avenue Merchants Association in Manhattan to preserve the upscale character of Fifth Avenue from encroachment by the garment industry.⁹⁵ Ten years later, the Supreme Court considered the constitutionality of the comprehensive zoning plan of the Village of Euclid, a suburb of Cleveland.⁹⁶ The zoning ordinance not only excluded businesses from residential areas, but also barred multifamily residences from single family dwelling districts.⁹⁷ Finding that the restrictions—"the crux of the more recent zoning legislation"—were a valid exercise of the police power, the Court looked for analogy to the common law of nuisance.⁹⁸ Under "polite" language that used no overt racial or class-based slurs, the opinion contained "code words" that represented stereotypical imagery of tenement house districts.⁹⁹ In upholding the ordinance, the Supreme Court also upheld zoning as a mechanism that safeguarded socioeconomic, ethnic, and racial privilege.¹⁰⁰ Just as the Fifth Avenue Merchants Association in Manhattan, the owners of property on Euclid Avenue (also called "Millionaire's Row") had successfully employed zoning to protect vested class interests.¹⁰¹

Other land use measures—from private restrictive

FORDHAM URB. L.J. 699, 826 (1993) (proposing that the "neutral, efficiency-based language of use zoning" often masked "[m]ore pernicious segregations").

94. J. Gregory Richards, *Zoning for Direct Social Control*, 1982 DUKE L.J. 761, 762 (1982).

95. Ely, *supra* note 90, at 957.

96. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

97. *Id.* at 380-82.

98. *Id.* at 390.

99. Richard Chused, *Euclid's Historical Imagery*, 51 CASE W. RES. L. REV. 597, 613-14 (2001) (observing that Justice Sutherland's opinion "called forth the most negative, stereotypical imagery of New York tenement house districts" and demonstrated "what the nuisance analogy could do for the upper class").

100. *Id.* at 613 ("Zoning rules, like many of the other moral reforms of the late nineteenth and early twentieth centuries, were designed to significantly reduce the likelihood that middle- and upper-class children would come into contact with poor, immigrant, or black culture.").

101. *Id.* at 603 (noting that Euclid Avenue "was lined with mansions as it headed west toward Cleveland"). In one fell swoop, Fifth Avenue merchants, Euclid Avenue mansions, single-family zones, and the children of the rich were freed from the threat of 'other' people and poverty." *Id.* at 614.

covenants to federal housing policies—have been used for segregative purposes. After striking explicit racial zoning in 1916, the Supreme Court upheld racial covenants in 1926.¹⁰² From 1934 to 1947, the Federal Housing Administration and the Veterans Administration adhered to policies that promoted segregation in insured housing while, from 1937 until 1972, the Department of Housing and Urban Development facilitated discriminatory siting of public housing.¹⁰³ In addition, policies and practices of local governments often burdened African American neighborhoods:

These practices include the provision of inferior municipal services, selective use of annexation and boundary line changes to disenfranchise and deny services to black residents, inequitable relocation or non-location of important public institutions, regressive and disparate property tax assessments, encouragement of mortgage and insurance redlining, and the disproportionate displacement of African-American families through urban renewal, highway, and local redevelopment projects.¹⁰⁴

B. Environmental Racism

Zoning and land use practices have also operated to draw noxious uses into communities of low-income people and people of color. Two studies were pivotal in raising the nation's consciousness of civil rights and environmental injustice. In 1983, the General Accounting Office observed that three out of four hazardous waste landfills in the South were in low-income African American communities.¹⁰⁵ In 1987, the United Church of Christ affirmed a national pattern of disproportionate siting of commercial hazardous waste sites in minority communities.¹⁰⁶ With other data, the

102. *Corrigan v. Buckley*, 271 U.S. 323 (1926) (validating a twenty-one year private covenant not to sell lots to African Americans).

103. Dubin, *supra* note 13, at 751-54.

104. *Id.* at 760-61.

105. U.S. GEN. ACCOUNTING OFFICE, *SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES* (1983).

106. COMM'N FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, *TOXIC WASTES AND RACE IN THE UNITED STATES* xiv (1987) (noting three out of five Black and Hispanic Americans lived in communities with uncontrolled toxic waste sites; more than fifteen million Blacks and eight million Hispanics lived

studies show that people of color suffer due to exposure to environmental toxins arising out of the location of locally unwanted land uses (LULUs) within and proximate to their communities.¹⁰⁷

An example of "environmental racism" was recently evident in the wake of Hurricane Katrina.¹⁰⁸ Three miles south of Lake Pontchartrain was the site of the 95-acre Agricultural Street Landfill.¹⁰⁹ In 1969, the City of New Orleans built an elementary school and a public housing authority on top of the municipal landfill in which ordinary garbage was mixed with liquid hazardous waste at a depth between two and thirty-two feet.¹¹⁰ With most of the residents of African American descent, the neighborhood was referred to as the "Black Love Canal."¹¹¹ Toxic material from the landfill was among the hazardous waste that was floating in the streets of New Orleans after the levees were breached.¹¹²

C. From Urban Renewal to Redevelopment

Zoning controls have gone hand-in-hand with eminent domain to implement urban renewal plans.¹¹³ Urban renewal

in such communities; approximately half of Asians/Pacific Islanders and Native Americans lived in such communities).

107. See, e.g., ENVTL. PROT. AGENCY, ENVIRONMENTAL EQUITY i (June 1992) (finding that "racial minority and low-income populations are disproportionately exposed to lead, selected air pollutants, hazardous waste facilities, contaminated fish tissue and agricultural pesticides in the workplace"); see also Kathy Seward Northern, *Battery and Beyond: A Tort Law Response to Environmental Racism*, 21 WM. & MARY ENVTL. L. & POL'Y REV. 485, 500 (1997).

108. Robert D. Bullard, *Introduction*, in CONFRONTING ENVIRONMENTAL RACISM 11 (Robert D. Bullard ed., 1993) ("The practice of targeting communities of color for the siting of unpopular industrial facilities is a form of environmental racism."); see also ROBERT D. BULLARD, *DUMPING IN DIXIE* (1990).

109. CTR. FOR PROGRESSIVE REFORM, AN UNNATURAL DISASTER: THE AFTERMATH OF HURRICANE KATRINA 20 (Sept. 2005).

110. *Id.* Instead of excavating the site, the Environmental Protection Agency decided on a limited excavation, with the placement of two feet of "clean fill" on top of the buried waste. *Id.*

111. *Id.*

112. *Id.*

113. Norman Marcus, *New York City Zoning—1961–1991*, 19 FORDHAM URB. L.J. 707, 709 (1992). "Eminent domain" has been attributed to Hugo Grotius, who used the term in the 1625 work, *De Jure Belli et Pacis*. Rachel A. Lewis, *Strike That, Reverse It: County of Wayne v. Hathcock: Michigan Redefines*

has been widely acknowledged as having discriminatory purposes and effects. In fact, urban renewal plans of the 1960s were often described as “negro removal.”¹¹⁴ The seeds of urban renewal, planted in the early 1900s, took root with slum clearance plans to “help” poor people by alleviating overcrowding.¹¹⁵ Governmental intervention to produce World War I housing, and the crisis mentality of the Depression, spurred on the use of urban renewal.¹¹⁶ By the 1930s, slum clearance was enacted with a vengeance. In two hundred cities between 1949 and 1961, thousands of housing units were razed, displacing 85,000 households, most of whom were poor households of color.¹¹⁷ With the discrediting of urban renewal in the 1970s, the practice was renamed “urban revitalization” or “redevelopment” and was fueled by baby-boomer gentrification as well as by zoning classifications that effected economic and racial segregation.¹¹⁸

In Cocoa, the devastating impact of the City’s redevelopment activities were apparent in one corner of the neighborhood. The northwest corner of the neighborhood was located at the intersection of two of the busiest roads in the County. Six structures, including four homes long-owned by black families, stood in the way of redevelopment. The Redevelopment Agency brokered the deal for the sale and demolition of the homes.¹¹⁹ A Bojangle’s fast-food restaurant quickly materialized on the site. The Bojangle’s became a Popeye’s, which became a Hardee’s not long thereafter. Hardee’s went out of business and was boarded-up. A second

Implementing Economic Development Through Eminent Domain, 50 VILL. L. REV. 341, 346 n.30 (2005) (citing 1 NICHOLS ON EMINENT DOMAIN § 1.12[1] (3d ed. 2006)).

114. See *Garrett v. City of Hamtrack*, 335 F. Supp. 16, 18-19 (E.D. Mich. 1971), *rev’d in part on other grounds*, 503 F.2d 1236 (6th Cir. 1974); Lochhead, *supra* note 11, at 2 (reporting that African-American communities have been targeted for urban renewal with such frequency that redevelopment activities have come to be known as “black removal”).

115. Paul Boudreaux, *Eminent Domain, Property Rights, and the Solution of Representation Reinforcement*, 83 DENV. U. L. REV. 1, 8 (2005).

116. Aoki, *supra* note 93, at 765.

117. *Id.* at 765-69 (noting also that federal highway programs displaced 100,000 families per year).

118. *Id.* at 809.

119. Two families received \$100,000 and \$65,000 for the prime sites of four structures. A vacant third piece of property, black-owned, was purportedly obtained for \$20,000.

business on the site became a discount auto insurance business, replacing a palm reader and astrology enterprise.

Redevelopment has long been criticized for destroying affordable homes and local businesses in large and small cities in the United States.¹²⁰ Meanwhile, the General Accounting Office (GAO) has estimated that there are over 450,000 brownfield sites scattered across the United States.¹²¹ Most of these abandoned waste sites are proximate to communities of color, as well as to low-income and working class communities.¹²² These brownfield sites, which could serve as more appropriate targets of clean-up and reclamation for redevelopment, have been largely ignored by local governments and developers.¹²³

The foregoing historical perspective affirms that the zoning and land use experience of the people of Cocoa was not unique. One of the great tragedies of our nation's land use history is the burdening, if not destruction, of communities of poor people and people of color. In *Kelo*, however, the property owners were neither low-income nor people of color. Furthermore, among those protesting property takings in the wake of *Kelo* are communities of white, middle-class homeowners.¹²⁴ This divergence from the historical legacy of

120. Compare Charlotte Allen, *A Wreck of a Plan; Look at How Renewal Ruined SW*, WASH. POST, July 17, 2005, at B01 (describing effects of the redevelopment of southwest Washington, a predominately African American neighborhood with thriving small businesses, until eminent domain destroyed its character, as approved in *Berman v. Parker*), with Juliet Ellis et al., *Brownfield Neighborhoods Revitalization 2* (2002) (Resource Paper for Second National People of Color Environmental Leadership Summit) (discussing the Bayview/Hunters Point areas in San Francisco, site of numerous abandoned industrial facilities, two Superfund sites, a closed military facility, and two power plants).

121. U.S. GEN. ACCOUNTING OFFICE, GAO-06-07, *ECONOMIC DEVELOPMENT ADMINISTRATION: REMEDIATION ACTIVITIES ACCOUNT FOR A SMALL PERCENTAGE OF TOTAL BROWNFIELD GRANT FUNDING* (Oct. 27, 2005).

122. SECOND NATIONAL PEOPLE OF COLOR ENVIRONMENTAL LEADERSHIP SUMMIT, RESOURCE PAPERS: A SYNTHESIS 3 (Robert D. Bullard ed., 2002), available at <http://www.ejrc.cau.edu/SummitPolicyExSumm.html> (citing ROBERT D. BULLARD ET AL., *RACE, EQUITY, AND SMART GROWTH: WHY PEOPLE OF COLOR MUST SPEAK FOR THEMSELVES* (2000)).

123. U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-98-87, *SUPERFUND: EPA'S USE OF FUNDS FOR BROWNFIELD REVITALIZATION 3* (Mar. 1998) ("Developers' avoidance of brownfields has contributed to a loss of employment opportunities for city residents, a loss of tax revenues for city governments, and an increase in urban sprawl.").

124. Phil Sutin, *Rally in Sunset Hills Protests the Use of Eminent Domain*,

racial and socioeconomic discrimination in land use decision-making is potentially momentous, as discussed in the following section.

IV. COALITION-BUILDING AND LOCATIONAL JUSTICE

Over the past twenty years, some feminist and critical race scholars have insisted on approaching systems of oppression as interstructured.¹²⁵ For example, the community-building project of the Mexican American Legal Defense and Educational Fund identified "socioeconomic stratification within communities of color as a central factor that militates against building stronger and more cohesive communities."¹²⁶ Because middle-class status provides minimal protection from discrimination,¹²⁷ the project proposed that a communal approach that spans class differences is essential to the struggle for racial justice.¹²⁸

The case study of Cocoa illustrates how racial justice can be advanced through the formation of coalitions that bridge race and class.¹²⁹ Within Save Our Neighborhood, a strong

ST. LOUIS POST-DISPATCH, Aug. 8, 2005, at 5 (reporting protest of middle-income residents to eminent domain to make way for a \$165.2 million shopping center and office complex in Missouri); Christopher Montgomery, *Ratners Target New York*, PLAIN DEALER (Cleveland), Nov. 30, 2005, at A1 (detailing plans for a \$3.5 billion mixed use development in Brooklyn and the opposition from community groups that assert the project will wipe out their vibrant neighborhood).

125. See, e.g., YOUNG, *supra* note 2, at 37-40 (defining oppression as a structural concept—"the institutional constraint on self-development"—and naming five "faces" of oppression: exploitation, marginalization, powerlessness, cultural imperialism, and violence); see also Patricia Hill Collins, *Gender, Black Feminism, and Black Political Economy*, in 568 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 41, 47-48 (2000) (discussing principles of "intersectionality," in which hierarchies of gender, sexuality, race, and class mutually construct and reinforce one another).

126. Joseph Erasto Jaramillo, *The Community-Building Project: Racial Justice Through Class Solidarity Within Communities of Color*, 9 LA RAZA L.J. 195, 197 (1996).

127. *Id.* at 201.

128. *Id.* at 210.

129. Two ethnographic studies demonstrate the effects of the lack of race and class consciousness on the life chances of low-income and African American youth. In one study of white, working-class young men in Britain, the "lads" rejected the achievement ideology of school, recognizing that education would not enable them to go much further than they already were. JAY MACLEOD, *AIN'T NO MAKIN' IT* 18-20 (1995) (referring to PAUL E. WILLIS, *LEARNING TO LABOR* 148 (1977)). While this insight had the potential to coalesce into class solidarity and political activism, that potential was not actualized because the

alliance was forged among low-income homeowners, low-income tenants, middle-class business people, and adult children of residents. In addition, Save Our Neighborhood formed alliances across lines of class and race with three other groups—environmentalists, historic preservationists, and homeowners from more affluent neighborhoods in Cocoa. These newly formed community bonds were the basis for the residents' political and legal victories.

On a national level, the formation of political coalitions has been instrumental to progressive politics and to shaping social policies such as welfare.¹³⁰ In the past fifty years, the "linchpin for political majorities" has been the middle class.¹³¹ Progressive democratic change is dependent on an alliance of the working class and the middle class. Since World War II, the middle class in the United States has been aligned with the market.¹³² However, a nascent coalition of middle class and working class property owners has arisen in protest of the *Kelo* decision, showing the possibility of realignment of middle class loyalties and, with that new alliance, the

lads valorized manual labor, equating it with masculinity. *Id.* at 19. Consequently, identification with patriarchy and male privilege undermined the formation of a class consciousness that had carried the promise of altering their life courses.

In the United States, a study of two groups of young men in public housing, one group called the "Brothers" that was predominantly African American and the second group called the "Hallway Hangers" that was predominantly white, observed that neither group saw structural constraints of race and class as limiting their life options. *Id.* at 6, 250. Elaborating on this theme, the study proposed that people who are poor are victimized by a class system that is in denial of its class caste system. The experience of the Brothers and Hallway Hangers was a testament to the power of social class but, due to the absence of an organizing political framework, their awareness of class was "politically limp and inchoate." *Id.* at 266. Consequently, lacking race or class consciousness and experiencing prison, drugs, unemployment, and the low-wage labor market, the teenagers became young men who blamed themselves for their failed aspirations. *Id.* at 155-238, 247-50.

130. GØSTA EPSING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* 31 (1990). As the "decisive" factor that differentiates welfare regime-types, Epsing-Andersen cites the political alliances that are formed in a society with the middle-class. *Id.* at 31. In the Scandinavian model, for example, a working-class-white-collar alliance was struck and a middle class was formed that is devoted to social democracy. *Id.* at 31-32. In the liberal regimes, including the United States, "the middle classes became institutionally wedded to the market." *Id.* at 32.

131. *Id.* at 31.

132. *Id.* at 32.

potentiality of more than momentary political change.¹³³

Yet, if this new coalition focuses simply on distributive outcomes—i.e., only on property holdings and legal battles—it is unlikely to survive countervailing political and economic forces. Consequently, the notion of justice that is necessary to protect residential property for mixed class and race coalitions must extend beyond claims for property. The next section of the article will consider the normative goals that will sustain such a coalition.

V. BEYOND PRIVATE PROPERTY AND DISTRIBUTIVE JUSTICE?

One of the chief failings of government-sponsored redevelopment efforts over the past century has been the failure of local governments to ensure the participation of residents in development plans.¹³⁴ While it cannot be questioned that substantive outcomes of local government development plans are critical to the well-being of communities, an outcome-based movement may be expected to achieve a spotty record of some wins and some loses, but is insufficient to sustain momentum for political change.¹³⁵ To promote locational justice, community groups must reach beyond distributive justice.¹³⁶

133. See, e.g., Montgomery, *supra* note 124, at A1 (detailing community protest in Brooklyn of \$3.5 million mixed use project); Sutin, *supra* note 124, at 5 (reporting on opposition of middle-income residents in Sunset Hills, Missouri); see also John-Thor Dahlburg, *An Eminent Domain High Tide*, L.A. TIMES, Nov. 29, 2005, at A12 (describing “largest eminent-domain case in the nation” in Riviera Beach, Florida, in which the city plans to displace about 6,000 residents—many of them African American and blue-collar workers—for a \$1 billion waterfront yachting and residential complex).

134. Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REFORM 689, 692 (1994).

135. Compare Ruth M. Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999, 1008 (1994) (contrasting a traditional view of poverty law as an instrumentality, a “weapon” which may “backfire,” and a newer vision of the law as a preexisting part of all social relations), with Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992) (examining tension between long-term collectivist approach focusing on power development and short-term, client-centered approaches emphasizing instrumental gain), and Angelo Ancheta, *Community Lawyering*, 81 CAL. L. REV. 1363, 1366 (1993) (arguing for achievement to be measured by victories, not by transformation, even though there may be conflicts between short-term victories and long-term strategies).

136. Conceptualizing justice in terms of distribution has a long heritage in western law and philosophy. See, e.g., ARTISTOTLE, NICOMACHEAN ETHICS

A "just" distribution of material goods is a necessary but insufficient predicate for locational justice.¹³⁷ Claims of community groups for justice are often grounded in nondistributional concerns, such as being excluded from decision-making power and processes.¹³⁸ To fully attend to these claims, the normative content of justice must extend beyond a distributive paradigm to also include social processes.¹³⁹ Where the goals of social movements include an insistence on citizen participation in governmental decision-making, community groups are oriented toward a broad notion of participatory democracy that honors both property rights as well as relations between people and government.¹⁴⁰ Moreover, when grassroots alliances that bridge race and class are able to link their legal victories to political and economic struggle, new political possibilities are created.¹⁴¹

As suggested by the Cocoa case, residents have two options when government ignores their claims: they can go to court or to the voting booth.¹⁴² In Cocoa, the residents did both. However, political activism was the route that ensured legal victory.

The protest group in Cocoa maintained its momentum for five years. After settling the legal claims with the City, the residents and Save Our Neighborhood attempted to make the transition to a community development corporation. That effort was not successful.¹⁴³ However, it may be fairly said that the effects of their collective action have had a profound continuing influence on the landscape and politics of Cocoa.

Book V.C.2, in GEORGE C. CHRISTIE AND PATRICK H. MARTIN, JURISPRUDENCE 96 (2d ed. 1995) (advising that one kind of particular justice "is manifested in distributions of honour or money or other things that fall to be divided among those who have a share in the constitution"); see also YOUNG, *supra* note 2, at 15 (observing that "theories of justice tend to restrict the meaning of social justice to the morally proper distribution of benefits and burdens among society's members").

137. YOUNG, *supra* note 2, at 15, 19 ("While distributive issues are crucial to a satisfactory conception of justice, it is a mistake to reduce social justice to distribution.").

138. *Id.* at 20.

139. *Id.* at 25.

140. *Id.* at 34.

141. Foster, *supra* note 12, at 779.

142. Coleman, *supra* note 5, at B02.

143. Among the factors militating against the transition from a protest group to a community development corporation were burnout, lack of technical expertise and resources, and continued political opposition.

The memory of their resistance serves as an important resource for grassroots movements that look to victories of the past as sustenance for the future.¹⁴⁴

VIII. CONCLUSION

The future of locational justice is grounded in the formation of cross-race and cross-class coalitions that tie victories (and losses) to a political and economic struggle. Active participation of such citizen groups in governmental decision-making creates new political possibilities that serve to protect residential property interests. The process of coalition-building, itself, prompts a number of questions. Will communities of color be receptive to uniting across class differences and to forming alliances with lower and middle income white groups? Will white middle-class homeowners be able to fashion the political vision to recognize that their interests are aligned with communities of poor people and people of color? Will lower income groups of white people be able to discern the joinder of their interests with those of people of other races and classes? Will all of these groups be able to broaden their vision from immediate distributive outcomes to wider notions of participatory democracy and carry out a protest that is based on the interpenetration of racial and economic justice? The residents of Cocoa offer one example of successful coalition-building for wider political participation and preservation of property rights.

What is the legacy of the people of Cocoa? How does their struggle contribute to the post-*Kelo* social movement? Our nation's history demonstrates that the struggle of grassroots movements goes forward in a cyclical fashion, with epochs of mobilization and advances followed by periods of repression and containment.¹⁴⁵ Of moment to this article is the notion that insurgencies of the past leave "social traces" that offer encouragement to groups that are coalescing around issues of social justice.¹⁴⁶ In this historic cycle of social insurgency and containment, the people of Cocoa take their place alongside four hundred years of civil rights activists. The memory of their legal and political victory is a

144. WEST, *supra* note 1, at 238.

145. *Id.* at 244.

146. *Id.* at 238.

wafer of hope for future movements.