

REVIEW & OUTLOOK

Poletown's Revenge

It must come as cold comfort to the citizens of Poletown, who back in 1981 had their homes taken away from them by the city of Detroit and bulldozed for a car factory. But the Michigan Supreme Court has finally stated the obvious: What's good for General Motors wasn't so good for the people—and it sure didn't justify violating their "sacrosanct" Constitutional property rights.

A property-rights reversal has national implications.

Though Friday's decision comes nearly a quarter-century after an earlier Michigan Supreme Court cleared the way for Detroit to condemn the homes, churches, schools and hospitals of Poletown on behalf of a Cadillac plant, it's hard to overstate the significance of this reversal. By expanding the justifications for eminent domain seizures to include "economic development," the earlier decision not only ushered in the destruction of a neighborhood. It set a woeful precedent that continues to embolden unseemly coalitions of private developers and tax-hungry municipalities using government powers to take other people's land.

Friday's decision was unanimous. The lead opinion put it this way: "Poletown's 'economic benefit' rationale would validate practically any exercise of the power of eminent domain on behalf of a private entity. After all, if one's ownership of private property is forever subject to the government's determination that another private party would put one's land to better use, then the ownership of real property is perpetually threatened by the expansion plans of any large discount retailer, 'megastore,' or the like."

Exactly. Remember, we're not talking about a public highway or bridge. To the contrary, today we have governments taking land from Peter because they'd rather Paul have it. In the Michigan case, Wayne County was fighting to condemn the property of a handful of owners after they refused to sell land the county wanted to use for a business and technology park.

In one sense you can hardly blame the planners. Once the Poletown case shifted the test from "public use" to "public benefit," it put any limits on eminent domain on a slippery slope. State and local governments all across America have been happily sliding down it ever since—

and citing Poletown as their justification. The Institute for Justice reckons that between 1998 and 2002 some 10,000 private properties were either taken by or threatened with eminent domain on behalf of other private parties.

In Mississippi, the state legislature tried to use eminent domain to take private land belonging to an African-American family and hand it over to a Nissan plant. In Ohio, the town of Norwood has declared some private homes "blighted" so they can get a new mall. In Arizona, one town invoked eminent domain when it tried to replace a brake shop with a hardware store. In the New Jersey shore town of Long Branch, the city is trying to take oceanfront homes from the present homeowners and build expensive new condos for yuppies.

On it goes, to the point where the "economic development" argument has essentially vitiated what the Founders intended by putting property rights in the Constitution in the first place: to prevent the rich and powerful from manipulating the law to take property from those less well connected. The good news is that this latest Michigan ruling should force a major rethink. We have in mind Connecticut, whose high court now finds itself in something of a pickle as a result of the Michigan ruling.

Earlier this year, the Connecticut Supreme Court, in a controversial 4-3 ruling, upheld a bid by the city of New London to seize some perfectly fine waterfront homes and replace them with an office building—and of course invoked Poletown to do it. The Poletown decision, the majority opinion declared, illustrates "amply how the use of eminent domain for a development project that benefits a private entity nevertheless can rise to the level of a constitutionally valid public benefit."

Actually, what it really illustrates is that a little fudge in language and definition can lead to gross violations of fundamental Constitutional protections. Right now the U.S. Supreme Court is deciding whether to hear the New London appeal. What better opportunity to remind greedy governments what an earlier U.S. court once called eminent domain: "the despotic power."

Still in Business

Yesterday's increase in the ISM manufacturing index should put to rest any fears that the economic expansion is hitting the wall. The widely followed measure rose to 62 in July, up from 61.1 in June, and has now remained above 60 for nine months in a row.

That's the longest such stretch since the 1980s, and is all the more notable because new orders continued to rise smartly in July even as inventories fell. In short, companies have been ramping up to meet what is genuine demand for goods.

All of this signals continued growth for the part of the economy that some have worried would never recover, given global competition and the rise of China. There's no denying that U.S. goods companies have had to do heroic work to stay competitive in recent years, but they've pushed productivity to remarkable levels and now manufacturing employment is also coming back. The ISM jobs index fell slightly to 57.3 in July from 59.7 in June, but that still sig-

nals new hiring and makes a reading above the crucial 50 level for nine straight months.

High energy prices have no doubt restrained growth in recent weeks, leading to the second quarter's slower than expected GDP growth of 3%, following an average of 5% across the previous four quarters. But it's a tribute to this economy's momentum that it is plowing through even \$43-a-barrel oil to keep humming. Higher gas prices have caused consumers to rein in their spending some, but business spending has been picking up the slack just in time.

All of this growth, meanwhile, is beginning to flow through to the federal Treasury in higher revenues. The White House budget office's mid-session review last week forecast \$64 billion more in corporate and individual income tax receipts this fiscal year than it had predicted only last February. As John Kennedy said, a rising tide does lift all boats, even the federal government's.

Farmer's Market

They finally did it. Global trade negotiations, long gasping for air, got a new lease on life Sunday when the World Trade Organization reached a tentative agreement for industrialized countries to reduce their agricultural subsidies. At long last, poor countries will be able to participate more fully in the world trading system.

A welcome breakthrough in trade talks, the French aside.

Or at least that's the idea. The details have yet to be worked out and more marathon negotiations are ahead, but the good news is that the right course is set. The accord moves closer to the goal set out in the Doha "development round" of WTO trade talks launched in November 2001 and spearheaded by U.S. Trade Representative Robert Zoellick: Give developing countries the chance to realize their comparative advantage in agriculture in exchange for access for goods and services from developed countries.

The agreement starts out well, with rich countries agreeing to eliminate all agricultural export subsidies by a date yet to be determined. They will also make a "substantial reduction" in domestic farm supports—starting with a 20% cut in the first year of implementation. Mr. Zoellick said the U.S. would slash some subsidies "up to 50% if I can get market access."

Because the European Union, Japan and the U.S. are among the world's largest farming subsidizers—to the tune of \$300 billion a year—the biggest concessions come from them. Mom-and-pop farming may be folkloric but it has become prohibitively expensive in the industrialized world. Politicians, however, are afraid that a rationalization of the industry will cost them votes. A case in point is Japan, where inefficient but politically powerful farmers have the government in hock, which explains why foreign rice has to climb a 490% tariff wall.

But it's not as if trade ministers from industrialized countries came up empty in Geneva. Developing countries agreed to lower barriers for manufactured goods, which account for 60% of world trade. Barriers will also be lowered on services, where the U.S. often has its own comparative advantage. As Indian Trade Minister

Kamal Nath reminded his colleagues, scaling back farm subsidies will also ease U.S. and European taxpayer burdens. U.S. subsidies were \$12.15 billion in 2002, down from more than \$20 billion in each of the previous three years. In many cases, these subsidies went to the richest farmers.

The very ambitiousness of the pact raises the question of whether governments have signed an agreement they have no intention of keeping. About the only certainty is that politicians appealing for protectionism will try to derail the negotiations before the next round takes place in Hong Kong in December 2005. In Europe, France is already blasting the EU's Agriculture Commissioner, Franz Fischler, for giving away too much. (There those French "unilateralists" go again.)

The Bush Administration made the mistake of increasing U.S. farm subsidies in 2002, but has since been pushing the WTO accord at some domestic political risk. American farmers have generally been staunch free traders, selling more than a third of what they grow overseas. The largest U.S. farm group, the American Farm Bureau, applauded the deal yesterday as an "opportunity to continue to work toward agricultural trade liberalization."

But some less efficient farmers dislike competition, and Democrats are targeting the populist farm-country vote this election year. Senate Minority Leader Tom Daschle, who's in a tight re-election race, accused the Administration of "selling out" American farmers. "In this deal, big agribusiness has won and family farmers in South Dakota and across the country have lost," he said.

John Kerry has been all over the map on trade, and over the weekend suggested he might impose antidumping tariffs on steel imports. A spokesman for Mr. Kerry said yesterday that the candidate had no immediate comment on the WTO accord. That's hardly a good sign, given that whoever wins the White House in November will have to lead the world if the weekend's free-trade progress is going to continue.

By Kathy Gannon

ISLAMABAD—A sign outside the U.S. Embassy in Kabul reads: "The U.S. Embassy would be grateful if any of our friends who have information on terrorist activity or threats inform us between 10 a.m. and 12 p.m. on Sunday through Thursday." Written on a big billboard in English as well as in Afghanistan's official languages, Pashtu and Dari, it stands directly across from the main gates of the embassy, which is encased by giant walls topped with rolls of barbed wire and guarded by sentries in sandbag bunkers.

The sign seems absurd. Is information that could help bring terrorists to justice only welcome during a two-hour time slot on working days? Yet it drives home the difficulty that the U.S. faces in gathering intelligence in countries like Afghanistan, where even non-military Americans have to wear bulletproof clothing and can only travel in massively armed convoys.

That means they can only talk to people hand-picked for them, often by hosts who don't always want the whole truth told. It also leads to a heavy reliance on drop-ins—those who can muster the courage to face the overwhelming show of security and knock on the embassy gates, and then only during the right hours. That's true not just in Afghanistan, but also in Pakistan, where unaccompanied journeys by U.S. intelligence personnel are equally unthinkable in the country's tribal regions. Instead, the U.S. embassy in Islamabad—another island surrounded by formidable security—places a significant reliance on drop-ins, according to a CIA official stationed there. Other intelligence is bought, by paying locals in these inhospitable regions to speak out.

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The sections of the 9/11 Commission report on Pakistan and Afghanistan reflect this intelligence vacuum. The report states the obvious—that the border regions between Pakistan and Afghanistan, as well as southern and southwestern Afghanistan, are likely places for terrorists to congregate. It also gives the impression that the former Taliban regime gave birth to the isolated terrorist camps in Afghanistan, and the lawless atmosphere that allowed such activities to flourish.

The reality is that these camps predated the Taliban's September 1996 victory, and flourished unhindered when many of those associated with the current U.S.-backed Afghanistan government were last in power. For example, Abdul Rasul Sayyaf, a power-broker in Kabul now aligned to the U.S.-led coalition, requested and received Afghan passports for more than 600 Arabs in 1993-94, while he was a faction leader in the pre-Taliban government.

The sort of company that Mr. Sayyaf keeps was made all too clear at a recent press conference, where Ahmed Shah Ahmedzai, a close ally and former lieutenant in Mr. Sayyaf's Islamic

Frontier of Menace

Union, announced his candidacy for president. At that press conference, Mawlawi Mufleh, a radical cleric, denounced the presence of U.S. troops in the country and called for the establishment of an Islamic theocracy stretching from Afghanistan to Morocco.

Another region identified by the 9/11 Commission report as an ideal sanctuary for terrorists is the border region of Afghanistan, Pakistan and Iran. Again, the reality is that the region is a decades-old route used by drugs and weapons smugglers, in addition to would-be terrorists. A former member of the Taliban's security apparatus told me that this region is still being used to move money, mostly originating in Saudi Arabia, to the Taliban and al Qaeda.

He explained how the chain began with the money being given to Afghan businessmen living in Saudi Arabia, who used an informal money-transferring system to move it to Afghan businessmen in Iran. They, in turn, used their business connections to move the money to al Qaeda operatives in Afghanistan. A former member of the Taliban regime said that 1,000 al Qaeda operatives, possibly more, were in the border regions of Afghanistan—accessible from Pakistan—while the Taliban were in power, and are most likely still there. That is information that should have been readily available to U.S. intelligence services before 9/11, and which should have been acted on after the collapse of the Taliban.

Terrorists are also active on the Pakistani side of the border, where they are known to have links with local militants and even intelligence officials. But again there would appear to be an intelligence vacuum as far as the U.S. is concerned. For example, Wana in South Waziristan Agency has been the focus of recent antiterrorist operations. Yet no one of significance has been seen in the area, and only Chechen and Uzbek fighters are believed to be present. It seems the Pakistan military may be using the operation as a cover to tame the tribesmen of that area, rather than actually find and arrest significant members of al Qaeda.

A more logical area to focus on would be the Bajour Agency in northwestern Pakistan, which lies just across the border from Kunar and Nuristan regions in northeastern Afghanistan. Gulbuddin Hekmatyar, the renegade Party of Islam leader wanted by the U.S., is popular in Kunar and Nuristan—where heavily forested mountains make for easy camouflage, and Osama bin Laden was known to have camps

before Sept. 11, 2001. While its Pakistani partners keep the U.S.-led coalition busy hundreds of miles to the south, Taliban and al Qaeda move with relative freedom farther north, and in some of Pakistan's most congested cities, including Quetta and Karachi.

The 9/11 Commission report also praises President Bush and Congress "for their efforts in Afghanistan so far."

That however deflects from the many problems the country faces. Afghanistan is the world's largest opium-producing country and warlords allied with the government, either directly or indirectly, allow the drugs trade to continue to flourish. The Taliban, soundly defeated in 2001, are becoming increasingly active. Ordinary Afghans, disappointed at the pace of reconstruction, blame the international community for failing to disarm warlords.

Many ordinary Afghans and even some in top government posts privately say elections should be postponed until the country has been thoroughly disarmed.

A hard productive approach would be to take a look at the misplaced support and the allegiances of those the U.S. calls friends in Afghanistan. Why have the private armies controlled by commanders loyal to the Defense Minister Mohammed Fahim not been disarmed? Why has Mr. Fahim refused to hand over his weapons to the central government and been allowed to stymie the development of a national army?

Almost three years after the Taliban fell from power, the gun rules in Afghanistan. President Hamid Karzai made a courageous decision last week when he chose not to include Mr. Fahim as running mate on his presidential ticket. For many, that was the first real sign of Afghanistan trying to break from its violent past. Yet within 24 hours of that announcement, Zalmay Khalilzad, the U.S. ambassador, was meeting with Mr. Fahim, and publicly promising to heal his wounded feelings.

The 9/11 Commission report says, "The United States and the international community should help the Afghan government extend its authority over the country, with a strategy and nation-by-nation commitments to achieve their objectives." The tragedy is that, unless there is a rethink of existing policies and priorities, the opposite is in danger of happening.

Ms. Gannon, who has reported for the Associated Press from Pakistan and Afghanistan for 16 years, is writing a book about Afghanistan.

What JFK Can Teach JFK

By Robert Dallek

The principal task of every presidential nominee running against an incumbent is to demonstrate that he is presidential timber. John Kerry did just that last Thursday night with his well-written and well-delivered acceptance speech. His next great challenge is to make himself credible as a potential commander-in-chief and effective manager of the economy in the coming debates with President Bush. Doubts about Mr. Bush's capacity to serve as president were substantially reduced by his performance in the debates with Al Gore, whose eight years as vice president and identification with Bill Clinton's record made him a virtual incumbent.

The Kerry campaign sees this incumbent as unusually vulnerable. President Bush's four years, Mr. Kerry argues, have largely shattered the positive expectations of national prosperity, abundant jobs, and balanced federal budgets seen during President Clinton's second term. Mr. Bush's leadership on foreign affairs is also viewed as a weakness. A unilateralism that has alienated countries and peoples around the world has not given Mr. Bush the kind of sure-handed hold on voters a president needs in a re-election campaign. A prolonged war marred by the absence of weapons of mass destruction, unproven ties to al Qaeda, over 900 dead and more than 5,000 wounded U.S. troops has alienated a majority of Americans, and is a weak platform on which to seek a second term.

Indeed, George W. Bush seems more the offspring of the 1964 Barry Goldwater than of his father, George H.W. Bush. Like Goldwater, who frightened voters by joking about lobbing one into the men's room of the Kremlin, Mr. Bush is perceived by many voters as untrustworthy if not reckless. By contrast with his father, whose quick victory in Kuwait and refusal to march on Baghdad is seen as a model of wise action, George W. has been thrown on the defensive about the war. It has given Sen. Kerry the opening to use the word "strength" 17 times in his speech and to declare, "In these dangerous days, there is a right way and a wrong way to be strong. Strength is more than tough words. After decades of experience in national security, I know the reach of our power, and the power of our ideals."

President Bush unquestionably established himself as a strong national security leader immediately after the 2001 terrorist attacks. But his caution about setting up a department of Homeland Security and his early opposition to creating the 9/11 commission, whose report he is now rushing to embrace; his single-minded determination to attack Iraq, regardless of what the intelligence may have shown and lack of international support; and the continuing and costly insurgency after his incautious pronouncement about the end of major combat, have all opened him to attacks on his credibility as a wise and effective commander-in-chief.

Mr. Kerry enters the fall campaign in as strong a position as any Democrat since Jimmy Carter in 1976 and his prospects are certainly stronger than Bill Clinton's in 1992, when Bush 41 had his decidedly successful war against Iraq to his credit. Like Mr. Carter, who had the advantage of running against a failed Nixon presidency and Gerald Ford, who bore the onus of pardoning Nixon, Mr. Kerry enters the contest against a president with a less than sterling record in either domestic or foreign affairs.

John F. Kerry will want to remember John F. Kennedy's successful presidential bid in 1960. Like Mr. Gore, Nixon was a well established national figure as Ike's V.P. Like Kennedy, who carried potential negatives into the campaign—his youth and inexperience, his religion, his undistin-

guished congressional record and unenviable caution in response to McCarthyism—Sen. Kerry has to overcome questions about his capacity to speak to Americans in understandable ways and his

Sen. Kerry should study Kennedy's debates with Nixon.

alleged inconsistency as a senator or politician who speaks out of both sides of his mouth.

Sen. Kerry needs to recall how JFK outdid Nixon in their first and most important televised debate. Nixon had a reputation as a skilled debater with a track record of having effectively stood up to Nikita Khrushchev in the famous kitchen debate in Moscow. President Bush does not compare to Nixon on spontaneous forensic skills, but he will carry the mantle of the presidency into his confrontation with Mr. Kerry and it would be a serious mistake to dismiss him as some kind of lightweight. He will be well prepared and ready to strike at any Kerry weak points.

While Mr. Kerry will certainly want to emphasize President Bush's questionable record in the White House, he will do better to put a positive message before the country, not as some policy wonk but as a genuinely compassionate man with a clear, understandable vision of where to

lead the country at home and abroad. He began to do this last Thursday night, but he must do more to sway the undecideds. Like Kennedy, he will want to come across as less of a debater than a sensible man of action who can do better than the current administration in promoting prosperity and securing the country's safety. Mr. Kerry should recall that Kennedy's New Frontier was an attractive antidote to the mood of concern that had settled over the country at the end of Eisenhower's eight-year term, which was marred by three recessions, the Soviet's launch of Sputnik, and an alleged "missile gap."

It would be a mistake, however, for John Kerry to put himself too much in Kennedy's shadow, however attractive JFK remains to millions of Americans. Jimmy Carter's unsuccessful attempt to imitate Franklin Roosevelt's fire-side chat with an uninspiring televised talk should be a cautionary flag. As with most victors in presidential election contests, Mr. Kerry needs to walk the fine line between regard for party predecessors and programs and a demonstration of his capacity to overcome contemporary challenges with fresh ideas.

Mr. Dallek, currently the Montgomery Fellow and a visiting professor of history at Dartmouth, is the author of "An Unfinished Life: John F. Kennedy, 1917-1963" (Back Bay Books, 2004).

Pseudo-Tort Alert!

By Michael I. Krauss
And S. Fred Singer

As is now widely known, states' attorneys-general garnered a huge windfall for their treasuries (and for the bank accounts of selected private lawyers) in tort suits against tobacco companies. The suits were invalid as a matter of law, but never mind—they pressured Big Tobacco to agree, in exchange for shelter from competition, to split future profits with the states. (When private parties do this, it's racketeering.) Unfortunately, eight states' AGs have just shown that these suits are addictive—on July 21 they filed a new pseudo-tort intimidation suit against five large electric utilities.

What civil wrong have these defendants committed? They dared to operate 174 power plants, in full compliance with state and federal regulations. In so doing, they had the audacity to produce carbon dioxide, an unavoidable byproduct of burning fossil fuels. How has this caused the eight states (California, Connecticut, Iowa, New Jersey, New York, Rhode Island, Vermont and Wisconsin) to suffer? Would their populations be better off if we did not burn fossil fuels? Apparently so, says the tort suit—it alleges that the power plants are nuisances.

And did these five defendants behave differently from all those other utilities that were not sued? Not at all—the AGs want all companies to understand the moral of this story: Any company can be sued, at any time, for legally doing business, when the AGs decide to regulate by litigation. (The Big Apple joined the suit alleging that these dastardly emissions are "incompatible with maintaining a clean and sustainable" New York City.)

The absurdity is so palpable that it's almost insulting to have to spell it out. CO2 is nontoxic, odorless, colorless and not a "pollutant" under the federal Clean Air Act. Indeed, many of these same AGs threatened to sue the EPA because it didn't agree with them on this last point.

The AGs' main argument (apart from the breathtaking claim that the provision of energy is, somehow, a "nuisance") is that CO2 contributes to "greenhouse warming." But two recent

studies from the Universities of Rochester and Virginia demonstrate that the global warming claim is not supported by observational evidence. All of the elaborate computer models established by the warming lobby predict that the warming effect should increase with altitude, becoming twice as strong at about three miles high. The scientists compared results from three state-of-the-art models with four independent observational data sets. The disagreement was striking: The models all give temperature trends that increase with altitude—but the observations show the opposite.

The second study examined the disparity between thermometer measurements at the earth's surface, which show a significant warming trend, and temperatures of the lower atmosphere from balloons as well as from satellites; neither show significant atmospheric warming. (An earlier report by the National Academy of Sciences had also confirmed such a disparity.) Another way of determining the temperature near the ground surface agrees with both the satellite and independent balloon results, establishing that there is indeed no general warming. The conclusion? There's something wrong with the alleged warming trend derived from weather stations located mostly in growing urbanized areas and airports. Diverse analyses all point to local contamination of surface-station readings. Maybe all we can say for sure is that airports are warming.

Junk science plus junk law add up to one super-junk case. Voters in their states should remember the AGs' names, and every owner of a CO2-emitting device (a car, an oil furnace, or a mouth) should help relieve them of their addiction to tort suits at the ballot box. On the other hand, if the utilities have the courage to defend this case, we'll have the opportunity to test the scientific basis of the global warming scare in a court of law. And the sooner, the better.

Mr. Krauss, a law professor at George Mason, is author of "Fire and Smoke: Government Tort Suits and the Rule of Law" (The Independent Institute, 2001). Mr. Singer, professor emeritus at the University of Virginia and co-author of the cited scientific studies, was director of the U.S. Weather Satellite Service.