Private Business as Public Good: Hotel Development and *Kelo*

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I. INTRODUCTION

In the summer of 2004, New Haven Mayor John DeStefano, Jr. announced plans to demolish the all-but-derelict New Haven Coliseum[1] and replace it with a publicly financed redevelopment that would include a 300-room hotel.[2] Critics of the plan immediately objected that the hotel—even if it were completed—was a poor public investment, that there was no demand for such a hotel, and that the money could be better spent elsewhere.[3] Some critics pointed to New Haven's own checkered history of major development projects,[4] especially the failed downtown mall and the famously catastrophic Oak Street redevelopment. As of February 2006, the city was still considering variations on the hotel plan, though a report from the city's own Office of Economic

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1. *See, e.g.*, C.J. Hughes, *Coliseum Is On Its Way Out. But Wait.*, N.Y. TIMES, Aug. 3, 2003, § 14 (Conn.), at 3; David Shieh, *Demolition of Coliseum Begins*, YALE DAILY NEWS, Nov. 1, 2005, *available at* http://www.yaledailynews.com/article.asp?AID=30622.

2. *See* Jacob Leibenluft, *Debate Begins on Downtown*, YALE DAILY NEWS, Sept. 3, 2004, *available at* http://www.yaledailynews.com/article.asp?AID=26051.

3. David Cameron, *What's Wrong with Downtown Plans for Gateway and Coliseum*, YALE DAILY NEWS, Sept. 7, 2004, *available at* http://www.yaledailynews.com/article.asp?AID=26107. In response to public comment, the city is now considering alternatives to the hotel plan. David Shieh, *City May Modify Downtown Project*, YALE DAILY NEWS, Jan. 13, 2006, *available at* http://www.yaledailynews.com/article.asp?AID=31277.

4. Katie Dewitt, *City's Redevelopment Recalls Lee*, YALE DAILY NEWS, Sept. 27, 2005, *available at* http://www.yaledailynews.com/article.asp?AID=30027. Local government's generally unsuccessful attempts to arrest New Haven's decline through a variety of often drastic and generally unsuccessful fiscal measures have been made the subject of an already extensive literature. *See, e.g.*, ALLAN R. TALBOT, THE MAYOR'S GAME: RICHARD LEE OF NEW HAVEN AND THE POLITICS OF CHANGE (1967); RAYMOND E. WOLFINGER, THE POLITICS OF PROGRESS (1974); Norman I. Fainstein & Susan S. Fainstein, *New Haven: The Limits of the Local State*, *in* RESTRUCTURING THE CITY: THE POLITICAL ECONOMY OF URBAN REDEVELOPMENT (Susan S. Fainstein et al. eds., rev. ed. 1986). For classic discussions of New Haven's political economy in relation to redevelopment, see ROBERT A. DAHL, WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY (1961); G. WILLIAM DOMHOFF, WHO REALLY RULES? NEW HAVEN AND COMMUNITY POWER REEXAMINED (1978); *see also* John P. Elwood, *Rethinking Government Participation in Urban Renewal: Neighborhood Revitalization in New Haven*, 12 YALE L. & POL'Y REV. 138 (1994).

Development suggested that the proposal was not financially viable without subsidies from the city.[5] Just a few blocks from the site where DeStefano sought to build a new hotel, two other prominent buildings bear mute witness to New Haven's past development follies: the Omni Hotel of New Haven (formerly known as the Park Plaza) and the Hotel Taft. Together, the two remain the most towering figures in New Haven's hotel history, and their interwoven stories have much to say about the relationship between the hotel industry, the city, and the "public" benefits of private businesses.

This Note tells the story of New Haven's well-intentioned but ultimately disastrous attempts to revitalize its hotel industry, and relates that story to the current nationwide debate about the scope of state and federal eminent domain power. The history of New Haven hotels demonstrates that similar public redevelopment projects are unlikely to provide public benefits sufficient to outweigh their significant costs. This history thus offers a valuable lesson both for legislators working to limit the use of eminent domain in their states, and for New Haven itself, as the city struggles to decide how to fill the void left by the Coliseum's destruction.

A. Kelo *and the Meaning of "Public Use"*

In October 2004, just as the debate over New Haven's Coliseum was heating up, another hotel-centered redevelopment not more than an hour away was grabbing national attention in the *Kelo v. City of New London* litigation.[6] New London—like New Haven, a "distressed municipality" in Connecticut[7]—had launched a development plan in the 1990s calling for a waterfront conference hotel at the center of a "small urban village," which would include restaurants, shopping, and office space. The city, acting through a private nonprofit entity, was able to negotiate the purchase of most of the real estate required to build the "village."[8] But when Susette Kelo and some of her neighbors refused to sell their land, and the city initiated condemnation

5. David Shieh, *Elm City May Nix Hotel Plan*, YALE DAILY NEWS, Feb. 17, 2006, at 1 (quoting Deputy Director of Economic Development Tony Bialecki: "A hotel and conference center is still a possibility, [but] responsible development, ideally, the market [would] support on its own without any city subsidies." (alterations in original)). As this Note was going to press, the *New Haven Register* reported that New Haven was reconsidering the hotel plan. *See* Editorial, *New Haven Has Years of Delays, Setbacks, and Continuing Renewal*, NEW HAVEN REG., Apr. 9, 2006, at B2 (reporting that the subsidy necessary to draw a conference center developer was "unaffordable," but that city officials were still in discussion with hotel developers).

6. 125 S. Ct. 2655 (2005). For an extensive description of the facts in *Kelo*, see Steven E. Buckingham, Comment, *The* Kelo *Threshold: Private Property and Public Use Reconsidered*, 39 U. RICH. L. REV. 1279, 1279-93 (2005).

7. Office of Policy & Mgmt., State of Conn., Distressed Municipalities—Reimbursement of Tax Loss for Exemptions, http://www.opm.state.ct.us/igp/grants/DISTRESS.HTM (last visited Apr. 22, 2006).

8. *Kelo*, 125 S. Ct. at 2660; *see* CONN. GEN. STAT. § 8-188 (2005) (allowing municipalities to designate entities as development agencies in charge of implementation).

proceedings in November 2000, the *Kelo* litigation was born.

The homeowners argued that the condemnation of private residences for economic development purposes categorically violates the "public use" requirement of the Fifth Amendment[9] and that, even absent such a categorical decision, the proposed development in their case—for a hotel and "urban village"—was not a public use.[10] Though the homeowners rested the bulk of their argument squarely on the Fifth Amendment, they also pointed to the simple lack of economic benefits from major redevelopment projects.[11] Although the homeowners won temporary stays (and in some cases permanent injunctions) against some condemnations from the Connecticut Superior Court,[12] they ultimately lost on all the issues before a divided Supreme Court of Connecticut.[13] They appealed to the U.S. Supreme Court, where their case, *Kelo v. City of New London*, quickly became one of the most watched cases on the Court's docket during the 2004 Term.

In a 5-4 decision, the Court held that New London's proposed disposition of the petitioners' private property qualified as a "public use" within the meaning of the Takings Clause.[14] Having settled the constitutional issue, the majority opinion went on to hold that "empirical debates over the wisdom of the takings . . . are not to be carried out in the federal courts,"[15] but also "emphasize[d]" that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power" and that "the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate."[16]

The four dissenting Justices helped launch such a public debate. In her strongly worded dissent, Justice O'Connor argued that "the trouble with economic development takings is that private benefit and incidental public

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9. Brief of Petitioners at 11, Kelo v. City of New London, 125 S. Ct. 2655 (2005) (No. 04-108) [hereinafter Petitioners' Brief]; *see* U.S. CONST. amend. V ("[N]or shall private property be taken for public use, without just compensation.").

10. Petitioners' Brief, *supra* note 9, at 27. These arguments are explored in greater detail in Part II, *infra*.

11. *Id.* at 36 (arguing in the alternative that there must at least be a "reasonable certainty" that the condemnations will result in public benefits).

12. Kelo v. City of New London, 2002 Conn. Super. LEXIS 789, at *341 (Conn. Super. Ct. Mar. 13, 2002).

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

14. This Note does not engage with the constitutional Takings issues surrounding the use of eminent domain. Suffice to say, *Kelo* was no outlier in approving transfers of property from one private party to another. *See, e.g.*, Nat'l R.R. Passenger Corp. v. Boston & Maine Corp., 503 U.S. 407 (1992) (upholding transfer of railroad track from one common carrier to another); Haw. Hous. Auth. v. Midkiff, 467 U.S. 229 (1984) (upholding state's transfer of private land ownership to lessees as part of state program to break up inequitable landholding patterns); Berman v. Parker, 348 U.S. 26 (1954) (upholding taking of unblighted building as part of larger redevelopment program). On Takings law generally, see RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN (1985).

15. *Kelo*, 125 S. Ct. at 2667 (quoting *Midkiff*, 467 U.S. at 243).

16. *Kelo*, 125 S. Ct. at 2668.

benefit are, by definition, merged and mutually reinforcing."[17] Thus, if "the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings 'for public use,'" then there is no longer "any distinction between private and public use of property."[18]

The majority opinion rejected any role for courts in weighing the "positive side-effects" of New London's proposed "urban village,"[19] and instead relied on the public purpose of the city's condemnation. That did not mean, however, that the Justices in the majority agreed with the city that these predicted side effects were worth the cost. As if to hammer the point home just weeks after authoring the *Kelo* majority opinion, Justice Stevens proclaimed that its outcome was "unwise" and that the result was "entirely divorced from my judgment concerning the wisdom of the program."[20] He added, "the free play of market forces is more likely to produce acceptable results in the long run than the best-intentioned plans of public officials."[21]

B. *The* Kelo *Backlash*

The public reaction to *Kelo* was swift and overwhelmingly negative, most of it apparently directed at the Supreme Court for ruling the way it did, rather than at New London for taking on the project in the first place.[22] State legislatures quickly passed resolutions condemning the result,[23] and the U.S. House of Representatives overwhelmingly approved a bill expressing "grave disapproval" with *Kelo*.[24] In some states, grassroots opponents of government intervention mustered enough political support to scuttle redevelopment projects.[25]

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17. *Id.* at 2675 (O'Connor, J., dissenting).

18. *Id.* at 2671. Interestingly, just twenty years earlier Justice O'Connor ruled that the public use requirement was "coterminous with the scope of the sovereign's police powers" and further stated that the Court would accept any use of eminent domain that was "rationally related to a conceivable public purpose." *Midkiff*, 467 U.S. at 240-41.

19. *Kelo*, 125 S. Ct. at 2659, 2675.

20. Linda Greenhouse, *Justice Weighs Desire v. Duty (Duty Prevails)*, N.Y. TIMES, Aug. 25, 2005, at A1.

21. *Id.*

22. *E.g.*, Judy Coleman, *The Powers of a Few, the Anger of the Many*, WASH. POST, Oct. 9, 2005, at B2; *Hands Off Our Homes*, ECONOMIST, Aug. 20, 2005, at 71; Peter Hardin, *Eminent-Domain Outcry Spans Politics*, RICHMOND TIMES DISPATCH, Sept. 12, 2005, at A1; Editorial, *Kennedy's Vast Domain*, WALL ST. J., June 24, 2005, at A12; Diane Mastrull, *Eminent Domain Ruling's Backlash*, PHILA. INQUIRER, Nov. 14, 2005, at A1; Debra J. Saunders, *Your Home Can Be Pfizer's Castle*, S.F. CHRON., June 30, 2005, at B9.

23. *See, e.g.*, 2006 H.R. Res. 134 (Ky. 2006) (urging a constitutional amendment to "protect the rights and security of citizens in their private property"); 2005 H.R. Res. 49 (Ala. 2005) (expressing "grave disapproval" of *Kelo*); 2005 H.B. 3505, 73d Leg. Assemb., Reg. Sess. (Or. 2005) (declaring the existence of a property emergency, and amending Oregon's eminent domain statute to forbid seizures effected with the "primary purpose" of conveying the property "to a private party"); 2005 H.R. Res. 6636 (R.I. 2005) (urging the U.S. Congress to amend the U.S. Constitution in order to nullify *Kelo*).

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

25. Deena Winter, *Convention Center Need Still Unclear*, LINCOLN J. STAR (Neb.), Dec. 5, 2005, at

Vocal disapproval was soon followed by a proliferation of proposals to limit the states' powers of eminent domain.[26] As of December 1, 2005, four states had passed legislation in response to *Kelo*: Alabama, Texas, Delaware, and Ohio.[27] Currently, at least forty-seven states have considered some kind of anti-*Kelo* legislation.[28] In November 2005, the U.S. House of Representatives approved the Private Property Rights Protection Act of 2005 by a vote of 376 to thirty-eight.[29] As of April 2006, the bill was still before the Senate Judiciary Committee. Echoing at a federal level many of the restrictions contemplated in the state proposals, the Act would prohibit the federal government from exercising its power of eminent domain for economic development purposes,[30] and would withhold federal money from states that did so.[31]

Many of the state and federal proposals currently under consideration attempt to re-define the meaning of the term "public use." For example, some proposals declare that "economic benefit . . . by itself is not a public use,"[32] or prohibit a taking "if no economic benefit is provided to the public."[33] Some proposals attempt to limit the definition of "public benefit" by saying that no such benefit exists "if the property is transferred to a private entity for the primary benefit of the private entity."[34] These proposals appear to be motivated by a widespread feeling that *Kelo*-like takings are simply unfair to the homeowners whose lands are condemned. Representative Ted Poe, declaring his support for the Private Property Rights Protection Act, declared that the rationale in favor of economic development takings "is all about the money. It ought to be all about what is right."[35] Representative Jeb Hensarling added, "the recent Supreme Court decision in Kelo v. New London has commenced the tyranny. . . . Mr. Chairman, are we still in America?"[36]

A2 (describing developer's abandonment of hotel project following city council's refusal to authorize eminent domain); Tom Shaw, *Group Will Continue with Motel 6 Plan*, OMAHA WORLD-HERALD (Neb.), Aug. 7, 2005, at 2B (reporting that a hotel plan will go through despite city's refusal to use eminent domain).

26. *See, e.g.*, 2005 S.B. 12 (Cal. 2005) (proposing a state constitutional amendment stating that "public use does not include the taking of owner-occupied residential property for private use"). For a complete, updated list of state legislative initiatives, see Castle Coalition, Legislative Center, http://www.castlecoalition.org/legislation/index.html (last visited Apr. 23, 2006).

27. *See generally* TIMOTHY SANDEFUR, THE "BACKLASH" SO FAR: WILL CITIZENS GET MEANINGFUL EMINENT DOMAIN REFORM? 17-36 (Pac. Legal Found. Program for Jud. Awareness Working Paper Series 05-015, 2005), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=868539 (reviewing new state laws and selected state law proposals).

28. Castle Coalition, *supra* note 26.

29. H.R. 4128, 109th Cong. (2005).

30. *Id.* § 3.

31. *Id.* § 2.

32. S.B. 1110 (Ariz. 2006).

33. S.B. 524 (Fla. 2006).

34. S.B. 693 (Mich. 2005).

35. 151 CONG. REC. H9569, H9575 (daily ed. Nov. 3, 2005) (statement of Rep. Poe).

36. *Id.* (statement of Rep. Hensarling); *see also* 151 CONG. REC. H9569, H9573 (daily ed. Nov. 3, 2005) (statement of Rep. Gohmert) ("We are sending a loud message, that is not what the Constitution

But despite the condemnations of *Kelo* on fairness grounds, and the legislative proposals to limit it by narrowing the meaning of "public use," very little attention has been paid to the actual economic relationship between private development and public gain, the very inquiry suggested so strongly by Justice O'Connor's discussion of "positive side-effects" and Justice Stevens's condemnation of the "wisdom" of the New London program as a policy matter. In some states in which anti-*Kelo* legislation appears to have stalled,[37] an economic argument demonstrating the lack of "public benefits" from *Kelo*-style takings might usefully complement the argument that such takings are simply unfair.

This Note seeks to fill that theory gap by analyzing New Haven's attempts to revitalize its own hotel industry through massive public support. Applying the tools and theory of public finance, this Note argues that no matter the merits of the fairness argument and no matter how state law defines "public use," major public redevelopment projects like that attempted by New Haven are unlikely to provide the "positive side-effects" that would justify the exercise of the massive power that *Kelo* reserves for state and local governments. New Haven's own history exemplifies why these hotel projects so often fail. It also offers a valuable lesson for legislators working to limit the use of eminent domain and for cities like New Haven contemplating future public investment in hotels.

C. *Hotels and* Kelo

It is appropriate that a hotel is at the center of New London's proposed "urban village."[38] Publicly financed hotel projects were common long before the New London project—one recent study found that public spending on convention centers, including "convention amenities" like hotels, exceeds $2.4 *billion* per year[39]—and such projects are likely to become increasingly popular now that *Kelo* has reaffirmed the constitutionality of using eminent domain to support them. From Baltimore[40] to St. Louis[41] to San Diego,[42] city governments

says, it is not what is intended, it is not what we fought a revolution to end; and we will not stand by and allow a ridiculous Supreme Court decision to overrule that."); 151 CONG. REC. H9569, H9584 (daily ed. Nov. 3, 2005) (statement of Rep. Ortiz) ("Private property rights matter in this country, and violating those rights insults a very basic tenet of American fairness.").

37. California is, as of this writing, one prominent example. SANDEFUR, *supra* note 27, at 51.

38. *Kelo*, 125 S. Ct. at 2659.

39. HEYWOOD SANDERS, SPACE AVAILABLE: THE REALITIES OF CONVENTION CENTERS AS ECONOMIC DEVELOPMENT STRATEGY 1 (2005) (presenting data that "should give local leaders pause as they consider calls for ever more public investment into the convention business, while weighing simultaneously where else scarce public funds could be spent to boost the urban economy").

40. Jill Rosen & Lorraine Mirabella, *Hotel Plan Presents Puzzle for Council; Convention Proposal Data Contain Seeming Conflicts*, BALT. SUN, July 14, 2005, at 1A (describing debate over proposal for $305 million in public support for a hotel project).

41. Eric Heisler, *New Development Across from Galleria Will Include Two Hotels*, ST. LOUIS POST-

continue to commit millions of public dollars to hotel projects, either through direct subsidy or use of eminent domain.[43] Complicating the matter even further, the public dollars dedicated to hotel projects often come from special hotel taxes levied on existing hotels.[44] Furthermore, hotels themselves are the target of eminent domain condemnation or redevelopment,[45] just as New Haven's own Park Plaza would become.[46] In perhaps the most high-profile attempt to use eminent domain to develop a hotel project, a property rights activist incensed by *Kelo* sought condemnation of Justice Souter's New Hampshire farmhouse, which he planned to turn over to a developer and re-dub the "Lost Liberty Hotel."[47]

Despite the massive public investment in hotel projects, surprisingly little scholarly literature addresses the wisdom of this public support.[48] This Note seeks to partially fill that void by analyzing New Haven's public support for the Park Plaza Hotel. New Haven provides a particularly fertile record with which to evaluate the public nature of inns and hotels.[49] As in many American cities, New Haven's local government has been involved in hotel construction since the seventeenth century.[50] Today, as a mid-sized city that has fallen on hard times, New Haven fits the profile of many of the cities—New London being only the most obvious example—considering major public development projects in the wake of *Kelo*. New Haven also provides the additional benefit of

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DISPATCH, Sept. 10, 2004, at C6 (describing a two-hotel project that had survived an eminent domain challenge).

42. Martin Stolz, *Cigar Bar Owner Ends Eminent Domain Fight*, SAN DIEGO UNION-TRIB., June 12, 2005, at B-2 (reporting the city's victory in a "spirited and costly legal battle" to stop the city from taking cigar lounge as part of development plan for a Marriott Renaissance Hotel).

43. Tamara Lush, *Challenge to Eminent Domain; Property Seizure Is a Knotty Affair*, ST. PETERSBURG TIMES (Fla.), July 18, 2005, at 1B; Dylan Rivera, *PDC Hustles To Pre-empt Critic's Talk: A Professor Against Subsidies for Headquarters Hotels Is Invited to Portland*, OREGONIAN, Oct. 22, 2005, at B01; Luke Burbank, *Daytona Business Owners Fight Eminent Domain* (NPR radio broadcast, July 19, 2005). *See generally* Heywood Sanders, *Risk and Reality in Public Headquarters Hotel Development*, GOV'T FIN. REV., June 2004, at 21.

44. SANDERS, *supra* note 39, at 22-23; Dionne E. Anthon, Comment, *Unconventional Decisions: Challenging the Use of Hotel Taxes in Convention Center Projects*, 7 U. PA. J. CONST. L. 533, 536, 541-42, 558 (2004).

45. *See, e.g.*, Jeanette Almada, *City Renews Efforts To Acquire Motels on Lincoln Avenue*, CHI. TRIB., Aug. 8, 2004, at 7A; Tom Pelton & Scott Calvert, *Deal Cost City the Chance To Save Millions*, BALT. SUN, June 20, 2004, at 1A; *Town Pushes Its Effort To Close Hotel*, NEWSDAY (Nassau & Suffolk Ed.), June 28, 2005, at A13.

46. See *infra* notes 178-193.

47. Elizabeth Mehren, *Political Lightning Rod Planted on New Hampshire Farmhouse*, L.A. TIMES, Aug. 1, 2005, at A10. However, the proposal to confiscate Justice Souter's property was put to a vote in his home town and was soundly defeated. *Symbolic Vote in Souter's Favor*, UNION LEADER (Manchester, N.H.), Mar. 15, 2006, at A1.

48. The work of Heywood Sanders, *supra* notes 39 and 43, is the clear exception.

49. For broad perspectives on New Haven history from its founding until the present day, see generally EDWARD W. ATWATER, HISTORY OF THE CITY OF NEW HAVEN (1887); ROLLIN G. OSTERWEIS, THREE CENTURIES OF NEW HAVEN, 1638-1938 (1953); DOUGLAS W. RAE, CITY: URBANISM AND ITS END (2003).

50. *See infra* Section IV.D.

having an exceptionally rich and well-documented history of public works projects.[51]

This Note relates the complicated historical relationship between the hotel industry and the City of New Haven. Part II briefly introduces some basic concepts of public finance and explains their relevance for analyzing the public investment decision, whether it be through eminent domain or direct subsidy. Applying these public finance principles to New Haven history, Part III relates the story of how New Haven's local government replaced the city's most successful private hotel with a struggling publicly supported hotel that ultimately failed both as a public good and as a business. Part IV argues that subsidies for modern hotel development misconceive the nature of hotels' "public" benefits and distort sound public finance principles.

II. PUBLIC FINANCE THEORY AND ITS RELEVANCE TO HOTEL DEVELOPMENT

Cities considering whether to employ the vast powers of eminent domain permitted to them by *Kelo*, or whether to employ other methods of subsidizing private economic development,[52] must first evaluate whether such public investment is warranted. Public finance theory is perhaps the most appropriate tool available for this purpose.

Public finance theory[53] begins from the proposition that the competitive market economy is the ideal economic system, so ideal in fact that "market failure is a necessary condition for public sector activity."[54] The market imperfections most commonly used to justify government subsidies—such as those for hotels in New Haven—are those caused by *positive externalities*, defined as "benefits to third parties other than the buyers or the sellers of a good or service not reflected in the prices."[55] Externalities exist wherever the price of a good does not accurately reflect the total benefit it confers.[56]

When positive externalities exist—that is, when the market price for a good does not capture the total benefit it confers—then the good will not be provided at a socially optimal level. For example, a developer may be faced with the prospect of building a hotel at a cost of $10 million. She expects to receive $9 million in total receipts over the life of the hotel from the hotel's customers.

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51. *See supra* note 4.

52. Eminent domain in aid of private development serves as a subsidy by saving the developer the expense of assembling land piece by piece.

53. The treatment here is of necessity brief. For a more rigorous approach, see RICHARD W. TRESCH, PUBLIC FINANCE: A NORMATIVE THEORY (1981); *see also* DAVID HYMAN, PUBLIC FINANCE: A CONTEMPORARY APPLICATION OF THEORY TO POLICY (7th ed. 2002).

54. TRESCH, *supra* note 53, at 4.

55. HYMAN, *supra* note 53, at 95. Naturally, negative externalities—pollution is the most commonly cited example—are also used to justify government intervention, usually in the form of taxation.

56. *Id.* at 98.

Additionally, the hotel is expected to confer $3 million of benefits to *non*-customers, including the value of spillover business from hotel customers, prestige for the town, enjoyment of the building's architecture, and so on. Despite the total gross benefit of $2 million ($9 million to the developer plus $3 million to third parties, minus the $10 million in construction costs), the developer will not build the hotel, unless she has a way to collect some of the $3 million of "public" benefits.[57] This situation represents a net loss of utility, and most economists accept that government intervention may be necessary to ensure provision of the good. In this case, the government could pay the developer $1.5 million through tax abatements or direct subsidies, or even by using eminent domain to lower her costs of construction. Combined with the $9 million in expected receipts, this would guarantee the developer a profit of $500,000 and would still leave $1.5 million of gross benefit for the town ($3 million in public benefits minus $1.5 million in public costs). "The point is that an externality problem can always be thought of as a problem of market failure, in the sense that the correct set of competitive markets simply does not exist."[58]

Public goods are a special kind of externality: "Specifically, when an individual creates a positive externality with full effects felt by every person in the economy, the externality is a pure public good. At times, the boundary between public goods and externalities is a bit fuzzy."[59] Generally, however, public goods have two defining characteristics: they are nonexcludable and nonrival in consumption for an entire population of consumers.[60] National defense is often cited as an example of a public good. Of course, most goods—hotels included—are "mixed goods" which display characteristics of both public and private goods.[61] In fact, "many goods that are nonrival in consumption, and therefore have characteristics of public goods, are privately produced and supplied through markets."[62] Theaters,[63] convention centers,[64]

57. This is what is known as internalizing externalities. *See id.* at 101 ("Internalizing an externality results in changes in prices to reflect full marginal social cost or benefit of a good . . . . Internalization of externalities requires *identification* of the individuals involved and *measurement* of the monetary value of the marginal external benefit or cost."); *see also* B. Peter Pashigian & Eric D. Gould, *Internalizing Externalities: The Pricing of Space in Shopping Malls*, 41 J.L. & ECON. 115, 140 (1998).

58. TRESCH, *supra* note 53, at 101.

59. HARVEY ROSEN, PUBLIC FINANCE 87 (5th ed. 1999).

60. HYMAN, *supra* note 53, at 136.

61. RICHARD A. MUSGRAVE & PEGGY B. MUSGRAVE, PUBLIC FINANCE IN THEORY AND PRACTICE 41-58 (5th ed. 1989).

62. HYMAN, *supra* note 53, at 139.

63. *Id.*

64. Convention centers often include hotels, but also provide meeting spaces and business services in addition to guest quarters. On convention centers, see SANDERS, *supra* note 39. *See also* Sherie Louise Brezina, The Results of Convention Center Development in Second-Tier Cities: Three Case Study Investigations (1999) (unpublished Ph.D. dissertation, Michigan State University) (on file with author) (concluding that these investment decisions were motivated more by politics than by economics, and that positive externalities were less than anticipated).

and stadiums[65] are all frequently cited as examples of private goods with public good characteristics. As the Supreme Court itself recognized in *Berman v. Parker*, "[t]he public end may be as well or better served through an agency of private enterprise than through a department of government."[66] Courts have generally refused to apply their own public finance analyses, but public finance principles nonetheless appear throughout the cases. In *Kelo*, for example, references to externalities appeared in briefs,[67] during oral arguments,[68] and in majority and dissenting opinions.[69]

The *Kelo* Court declined to base its holding on an analysis of whether the New London project was or was not a public good, and the *Kelo* petitioners' primary argument was for "a clear, bright-line rule that the trickle-down benefits of successful business do not make private business a public use."[70] In the alternative, they argued that "there must at least be a reasonable certainty that the condemnations will result in those public benefits."[71] This test would ask courts to "look at plans and timelines to see if there is a reasonably foreseeable use of the property and to look at standards and restrictions in contracts, statutes, and other documentation to see if they assure a substantial likelihood of the purported public benefits."[72] The "reasonable certainty" approach would ask courts to engage in a basis economic analysis, and three Connecticut Supreme Court justices seemed to support it.[73] Indeed, other courts hearing Takings Clause cases have questioned whether a "public" economic benefit is sufficient to justify the "public *purpose*" predicate of eminent domain.[74]

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65. *See* David Nakamura, *Council Approves Altered Stadium Deal*, WASH. POST, Dec. 15, 2004, at A1; David Nakamura, *Council Backs Waterfront Stadium*, WASH. POST, Dec. 1, 2004, at A1 (reporting that supporters of the stadium plan "said a new stadium would spur economic development that would generate additional money for city projects").

66. Berman v. Parker, 348 U.S. 26, 33-34 (1954).

67. *See* Petitioners' Brief, *supra* note 9, at 49 (arguing that if the Supreme Court allowed the condemnations, "private business development will itself be a public use").

68. Transcript of Oral Argument, Kelo v. City of New London, 125 S. Ct. 2655 (2005) (No. 04-108), 2005 WL 529436, at *10, *12 (Feb. 22, 2005).

69. *See supra* notes 15-18.

70. Petitioners' Brief, *supra* note 9, at 27.

71. *Id.*

72. *Id.* at 37.

73. Kelo v. City of New London, 843 A.2d 500, 587-88 (Conn. 2004) (Zarella, J., joined by Sullivan, C.J., and Katz, J., concurring in part and dissenting in part); *cf.* Poletown Neighborhood Council v. City of Detroit, 304 N.W.2d 455, 459-60 (Mich. 1981) ("Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with heightened scrutiny the claim that the public interest is the predominant interest being advanced.").

74. Daniels v. Area Plan Comm'n, 306 F.3d 445, 464-65 n.19 (7th Cir. 2002) (holding that replacing residential uses with commercial ones did not bear substantial relation to a public purpose because the condemnation "only benefits the public if [the private party] benefits first, and . . . if the commercial development is completed and successful . . . ."); Ga. Dep't of Transp. v. Jasper County, 586 S.E.2d 853, 856 (S.C. 2003) (holding that even a substantial "projected economic benefit" cannot justify a "condemnation"); Baycol, Inc. v. Downtown Dev. Auth., 315 So. 2d 451, 457 (Fla. 1975) (holding that a "'public [economic] benefit' is not synonymous with 'public purpose' as a predicate

Public finance principles also played a role in another recent high-profile Takings case: *County of Wayne v. Hathcock*,[75] decided as *Kelo* was making its way to the Supreme Court. In *Hathcock*, the Michigan Supreme Court overruled its notorious decision in *Poletown Neighborhood Council v. City of Detroit*, another "economic development" case in which the court had upheld the condemnations of nearly 4000 homes so that General Motors could build a new factory.[76] The *Hathcock* court—which would still allow seizures of land for private parties under certain limited circumstances[77]—made it clear that the "'economic development' rationale would validate practically any exercise of the power of eminent domain on behalf of a private entity."[78] In doing so, the *Hathcock* court echoed the oft-cited argument of the *Poletown* dissent that "[a]ny business enterprise produces benefits to society at large."[79]

III. THE CHANGING "PUBLIC" ROLE OF HOTELS IN NEW HAVEN

Although their main argument was that economic development is simply not a public use, the *Kelo* petitioners also argued—and Justice Stevens, speaking for himself, agreed[80]—that public finance principles did not justify New London's massive public investment in its "urban village." But it will be years before the total costs and benefits of the New London project can be accurately assessed. Large public investments pay off, if at all, over time. How, then, to assess the economic accuracy of the *Kelo* petitioners' claims?

This Note attempts to do so by analyzing the history of similar projects in a similar context: hotel development projects in New Haven. This Part recounts the history of New Haven's most prominent downtown hotels, applying public finance theory and concluding that hotels are unlikely to yield the kinds of benefits that would justify significant government investment through use of eminent domain or large direct subsidies.

A. The Hotel Taft: Private Investment in a "Public House"

By the mid-1800s, New Haven was a major center of commerce and trade,

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which can justify eminent domain").

75. 684 N.W.2d 765 (Mich. 2004).

76. 304 N.W.2d 455 (Mich. 1981). The Connecticut Supreme Court, in rejecting the *Kelo* petitioners' claims, relied heavily on *Poletown*, which was overruled by *Hathcock* just months later. *See Kelo*, 843 A.2d at 528 n.39 (describing *Poletown* as a "landmark case"). *See generally* Symposium, *The Death of Poletown*, 2004 MICH. ST. L. REV. 837 (2004).

77. *Hathcock*, 684 N.W.2d at 781-83.

78. *Id.* at 786.

79. 304 N.W.2d at 464 (Fitzgerald, J., dissenting). In fact, as described in Part II, *supra*, a business's provision of goods to paying customers is *not* a benefit to society at large in the sense of being a positive externality, because the costs and benefits of the transaction are captured by the parties to the transaction.

80. Greenhouse, *supra* note 20.

and supported a growing number of "public houses." New Haven's first major commercial hotel, the Tontine, was incorporated in 1824 and constructed on the eastern side of the New Haven Green just blocks from where the Park Plaza and Taft buildings are located today.[81] As New Haven grew and prospered in the nineteenth century, the Tontine faced stiff competition. By 1884, there were twenty-eight hotels in New Haven, of which eight were located within the downtown Nine Squares area.[82]

The story of the Hotel Taft begins on the southwest corner of the New Haven Green, on the same plot of land where Captain John Miles operated New Haven's premier "ordinary," or tavern, in colonial times.[83] Here, at the corner of Chapel and College Streets, and catty-corner to the oldest part of Yale's campus, Seth Moseley opened the New Haven House—predecessor of the Hotel Taft—in the late 1800s.[84] By the beginning of the twentieth century, the New Haven House had eclipsed its older competitor, the Tontine Hotel, and had established itself as the premier hotel in New Haven and perhaps in all of Connecticut. The New Haven House took full advantage of its location in the heart of New Haven, establishing a special relationship with its university neighbor,[85] which had conveyed the land to Moseley in the first place.[86]

By the early 1900s, the stage was set for expansion, and the city seemed ready to support a larger downtown hotel.[87] Tipping Moseley's hand, the *Evening Register* noted, "It is manifest that [the New Haven House's] present site is best adapted to a representative hotel," and expressed satisfaction that the project was in the hands of a New Haven family rather than "theorists."[88] Rather than pointing to any need for political support, the *Register* noted that

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81. *See* Christina Baker, The Tontine Hotel 1825-1913 (undated) (unpublished manuscript, on file with the New Haven Colony Historical Society). Heralding what would later become a trend in New Haven hotel finance, the Tontine was funded through an unusual approach known as a "Tontine" scheme. *Id.* at 2 (describing the terms of the scheme).

82. Floyd M. Shumway & Richard Hegel, *New Haven in 1884*, J. NEW HAVEN COLONY HIST. SOC'Y, Winter 1984, at 8 ("A half dozen of these [hotels], however, were among the eight local establishments considered of major importance, so that not surprisingly the downtown area dominated the innkeeping field.").

83. ARNOLD GUYOT DANA, NEW HAVEN, OLD AND NEW, at bk. 92, p. 11 (unpublished collection, on file with the New Haven Colony Historical Society).

84. Marjorie F. Hayward, The Owners of the Property on the S.E. Corner of Chapel and College Streets Search of Records (1940) (unpublished manuscript, reproduced in DANA, *supra* note 83, at reel 1, bk. 2, p. 13); *see also* Joseph Blocher, Public Houses, Public Goods, and Public Works: Hotel Development in New Haven 20-27 (2004) (unpublished manuscript, on file with the New Haven Colony Historical Society) (describing the role of the Moseley family in the development of the Hotel Taft).

85. *See* C. Deming, Reminiscences of the New Haven House (undated) (reproduced in part in DANA, *supra* note 83, at bk. 92, p. 18).

86. DANA, *supra* note 83, at reel 1, bk. 2, p. 13 (citing 1867 New Haven Land Records 226-91); *id.* at bk. 92, p. 18.

87. *See, e.g.*, *A Dream Made Real*, NEW HAVEN EVENING REG., Jan. 6, 1909, at 6; *The New Haven House*, MORNING J.-COURIER, Nov. 30, 1908, at 3.

88. *Moseley After a Big Plot; 106 Feet More on Chapel; 60 on College*, NEW HAVEN EVENING REG., Dec. 1, 1908, at 1.

"[t]o all appearances [the hotel's] success depends on whether sufficient New Haven capital can be secured to build the right sort of a hotel."[89] The paper's comments seemed to reflect a general feeling that the privately funded hotel would itself generate spillover "public" benefits for the entire town.

Within a month of the *Register* story, a plan was in place and a new hotel—which would become the Hotel Taft—was on its way to being built on the historic site where the New Haven House—and, well before it, Captain Smith's "ordinary"—had stood.[90] The New Haven Hotel Company was incorporated at Hartford on September 23, 1909, with a capital stock of $1,000,000.

The Taft's design allowed the hotel to play a role as a social and business center. The main floor was to be a grand lobby, connected with College Street by a broad entrance. The bottom floor was given over to the kitchen, a rathskeller, a billiard room, a barber shop, and other service shops. In addition to these stores, the building would house a druggist, a news stand, florists, and other small services. These show how the owners of the Taft were able to internalize some of the profits of the hotel's spillover business—a classic "positive externality" of a hotel.[91] By leasing these prime retail locations to local shopowners, the owners of the Taft could directly recoup some of the profits of the hotel's spillover benefits, thus "internalizing" what would otherwise have been an externality.

Perhaps because the Taft's owners could count on internalizing these positive externalities, their project does not appear to have relied on any direct state subsidy or use of eminent domain. The only politicians directly connected to the project were former Senator (and Yale football hero) Frank S. Butterworth, who participated as a private investor, and former President William Howard Taft, who agreed to have the hotel named after him.[92]

To raise the funds necessary to build the new hotel, the newly incorporated New Haven Hotel Company needed to sell nearly half a million dollars of stock—no small sum in 1909. To meet the challenge, the company's backers turned, not to New Haven's local government, and not to publicly minded citizen donors, but rather to the city's private investors. In a glossy prospectus, the company informed potential investors that income from the traveling public and Yale University social and athletic affairs would suffice to make the hotel

89. *Hope Renewed*, NEW HAVEN EVENING REG., Aug. 25, 1909, at 6.

90. *New Hotel Co. Organized; Officers Elected Today; Enterprise Well Started*, EVENING LEADER, Sept. 24, 1909, at 1.

91. For an explanation of internalizing externalities, see *infra* Section IV.A.

92. William Howard Taft lived in the eponymous hotel for six years when working as a law professor at Yale. Stanley J. Venoit, *History Repeats Itself: Luxury Hotel Staff Rushed To Stage Glittering Opening—The Taft, 1912*, NEW HAVEN REG., Oct. 6, 1966, at 1 (comparing coverage of the Park Plaza's opening to that of the Hotel Taft fifty years earlier). Some sources, however, report that "the Taft bears the name of Horace D. Taft, a brother of the former President. Horace was head of the Taft School and a large stockholder in the hotel corporation." *Id.*; *see also* Randall Beach, *The Taft as Symbol of Urban Woe*, N.Y. TIMES, Apr. 11, 1993, § 13 (Conn.), at 1.

profitable.[93] To support this rhetoric, the prospectus included a projected financial statement.[94]

Construction was completed quickly. The Hotel Taft opened for business on December 30, 1912, and the optimistic projections of the hotel's backers apparently held true. For decades after its founding, the Taft thrived along with New Haven.[95] Yale became, and would remain, the hotel's strongest customer. Even as the Taft closed many decades later, Taft Manager Emory Lancer would reminisce that "Yale and the Taft have always had a close association. Dates and anything special that went on at Yale was held at the Taft . . . Anything."[96] Frances Howard, a front desk clerk, added: "New Haven without the Taft . . . I mean, New Haven and the Taft sort of go together—and Yale."[97] Yale's relationship with New Haven's hotels was to become a constant, though sometimes troubled, theme.[98]

The *New Haven Register* further suggested that, in addition to serving private demand and even providing some spillover benefits (some of which, as stated above, were soon internalized by the hotel), the Taft would provide public benefits in the form of prestige and aesthetic enjoyment for the town. The newspaper said that the hotel "should receive good encouragement from all New Haven, and if the Chamber of Commerce can legitimately help, it could hardly sponsor a better public improvement than an imposing hotel overlooking a prominent corner of the green. It would be a distinct addition to the City Beautiful scheme."[99]

The Taft achieved considerable success even as the hotel industry across the nation was suffering. The industry suffered from the beginning of World War I until after the end of the Depression.[100] New Haven was not exempt from these struggles.[101] The worst was yet to come for many downtown hotels, as during the next few decades the rise of the roadside motel struck yet another

93. New Haven Hotel Co., Investment Statement and Brochure (undated) (on file with the New Haven Colony Historical Society).

94. *Id.*

95. The Tontine, New Haven's old standard-bearer, was demolished in 1913. Baker, *supra* note 81, at 10.

96. Alex E. Harris, *Twilight of the Taft*, YALE ALUMNI MAG., Oct. 1971, at 16, 19 (ellipsis in original).

97. *Id.* at 17 (ellipsis in original).

98. *See infra* Section IV.B.

99. *Hope Renewed*, *supra* note 89, at 6. The City Beautiful movement was an influential turn-of-the-century urban theory that stressed the importance of monumental public works to combat urban decay.

100. JOHN A. JAKLE ET AL., THE MOTEL IN AMERICA 26, 30 (1996) ("By 1932, 80 percent of all hotel mortgages were in default, and 32 percent of the nation's hotels could not even cover property taxes from revenues.").

101. DANA, *supra* note 83, at bk. 92, p. 140. ("Nothing indicates better the stagnation that has overtaken New Haven than the fact that during the quarter of a century preceding 1939 not a single new hotel of any eminence had been constructed in the city and that, within a short period, bankruptcy or voluntary re-organization were necessary for every one of the leading hotels of the city.").

crippling blow. The ease of car travel, combined with the growth of the interstate highway system, tax code revision and other federal legislation,[102] sparked a massive motel boom[103] that changed the landscape of public accommodation and caused the collapse of many downtown hotels. Nevertheless, despite the Depression and the rise of the motor lodge, the Taft did quite well. A review of monthly operations reports from the Taft's accounting firm, Horwath & Horwath,[104] show occupation rates rising more or less steadily from 83.3 percent in January 1944 to 87.3 percent in 1948.[105] The Taft continued to succeed even as the motel revolution was killing off other downtown hotels.

The Hotel Taft was both a public and private success. While keeping occupancy rates high, it also provided public goods to the city: prestige, beauty, a meeting place, a site for Yale events, and a generator of spillover business. Most importantly, the Taft managed to do all this in the face of trying economic circumstances and without government support.

B. Kelo*'s Ancestor: The Taft Fights City Hall*

Throughout the 1950s, New Haven Mayor Richard Lee[106] and Development Administrator Ed Logue conceived and began to implement a massive, federally funded urban redevelopment project just two blocks from the Taft.[107] The centerpiece of the Church Street Redevelopment Project, as the initiative came to be called, was a mall and adjoining 300-room hotel.

The Project was a massive change in the city's vision of hotels as public goods. Ever since the early colonial days, any positive externalities generated by hotels in New Haven—spillover benefits to local businesses, contributions to town prestige, or increase in social capital—had been a function of their success as private ventures, which success had in turn been at least partially a function of the city's own economic health. By entering the hotel business through the Church Street Redevelopment Project, the city government attempted to change the equation: City leaders hoped that the production of a hotel would in itself create spillover benefits. Rather than responding to market

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102. JAKLE ET AL., *supra* note 100, at 45, 52.

103. *See generally* JAKLE ET AL., *supra* note 100.

104. Albert Pick-Barth Companies, a hotel investment group, referred to Howarth & Howarth as "leading accountants in the hotel field." ALBERT PICK-BARTH COS., HOTEL PLANNING AND OUTFITTING 21 (C. Stanley Taylor & Vincent R. Bliss eds., 1928).

105. Horwath & Horwath, Chart Prepared for Litigation in *Cathedral Estates Inc. v. Taft Realty Inc.* (undated) (on file with the New Haven Colony Historical Society, MSS B22, Box 5, Folder A).

106. First elected in 1953, Lee oversaw a massive urban renewal program during his eight terms as mayor, securing approximately $450 million in federal funds for his projects. Elwood, *supra* note 4, at 143.

107. For general information on Lee's administration, see TALBOT, *supra* note 4; and WOLFINGER, *supra* note 4.

demand for a hotel, they were hoping to create that market, and in the process, generate positive externalities.[108]

In June 1956, Mayor Lee described this motivation, voicing his suspicions about the ability of private enterprise to take care of itself: "Private enterprise, interested in new commercial investment, has fled from this area out along our arterial streets. In this way, our central business district has been decentralized, and spread out in a way which is neither economic nor efficient as far as business is concerned."[109] In Lee's mind, there was no answer besides government intervention:

> I regret to say, but I am afraid we must all acknowledge . . . that the solution of this problem cannot be dealt with effectively by the ordinary operations of private enterprise without the aids provided by the Redevelopment Law. However, I want to stress that this is a partnership program with private enterprise.[110]

In fact, despite the mayor's assertions, the "ordinary operations of private enterprise" had apparently determined that New Haven—which was losing factory jobs and people at an alarming rate—was simply not a good target for profitable hotel investment. The Taft, which remained the city's flagship hotel, had vacancy rates of thirty percent.[111] Excess demand sufficient to support the city's planned 300-room hotel did not appear to exist.

Undaunted by lack of demand, the city pushed on with its development plans, and the Taft management responded with arguments based on the same public finance principles described in Part II of this Note and invoked by the *Kelo* petitioners. Leo Sherman, the Taft Realty Company's lawyer, pointed out in a letter to Albert Cole, administrator of the federal agency that would bankroll Lee's project, that the Taft paid more than $60,000 in annual property taxes and employed more than two hundred people, and had invested more than $500,000 in renovation costs over the past five years alone.[112] Sherman suggested that these were massive benefits to the City of New Haven, but that they were threatened by New Haven's redevelopment plan, which had as its "*principal item*" a new 300-room hotel on "the most prominent and choicest spot in the City of New Haven, the obtaining of which would be impossible if it were not for the condemnation power of the City of New Haven."[113] With the

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108. *See* SANDERS, *supra* note 39, at 2 (referring to this as the "if you build it, they will come" rationale of public investment); Anthon, *supra* note 44, at 533.

109. Richard C. Lee, Mayor, New Haven, Conn., Remarks at a Public Hearing of the Agency at the Hearing Room of the Hall of Records (June 28, 1957) (on file with Yale University Manuscripts and Archives, Group Number 1814, Box 365).

110. *Id.*

111. Letter from Leo E. Sherman to Albert W. Cole, Adm'r, Fed. Hous. & Home Fin. Agency, at 4 (Oct. 9, 1957) (on file with Yale University Manuscripts and Archives, Group Number 959, Series V, Box 73, Folder 617).

112. *Id.* at 1.

113. *Id.* That "spot" was on the Green just two blocks east of the Taft, though after a decade of political maneuvering the hotel was ultimately constructed a half block south of the Green on Temple Street.

Taft already running below capacity, "a new hotel being erected as a part of an urban redevelopment plan will be able to exist only on what has been termed commercial cannibalism; it will simply feed on what is already there and inevitably destroy the old business and quite likely have great difficultly in maintaining itself."[114] Sherman, it turned out, was more accurate in his business assessments than he was successful in his legal arguments.

Development Administrator Ed Logue responded on behalf of the city. He argued to Administrator Cole that Sherman's letter had some "amazing implications. [Sherman] seems to believe that re-uses which might compete with existing businesses or facilities should be barred."[115] Logue claimed that "[o]ver 1,000 people were questioned" about "the major problems and needs" of the downtown area, and that sixty-one percent had said that a new hotel was needed.[116] Logue also attributed Yale's withdrawal of business to the University's dissatisfaction with the Taft's facilities, and argued that Sherman had misstated the range of banquet facilities available at the Taft.[117] In November, Cole responded directly to Taft lawyer Leo Sherman, reaffirming the Regional Administrator's position that the Housing and Home Finance Agency was interested only in the "reasonableness" of a proposed development, and that the findings of the local redevelopment agency would suffice to demonstrate the soundness of the hotel "from a planning point of view" and of the "potential market" for the development.[118] The stage was set for litigation.

Nearly forty-five years before the *Kelo* plaintiffs filed their own ill-fated petition, the Taft filed a complaint in the U.S. District Court in Connecticut seeking to enjoin federal funding of Mayor Lee's hotel project.[119] And just as the *Kelo* plaintiffs would later do,[120] the Taft argued that the city's planned development would fail to provide public benefits. Sherman alleged that the city's decision to proceed with the hotel project was "arbitrary and capricious"[121] and that the Regional Administrator's decision "does not and cannot represent a reasonable exercise of judgment on his part"[122] because no

114. *Id.* at 4.

115. Draft Letter from Ed Logue, Dev. Adm'r, to Albert W. Cole (Oct. 11, 1957) (on file with Yale University Manuscripts and Archives, Group Number 959, Series V, Box 73, Folder 617).

116. *Id. But see* ALBERT PICK-BARTH COS., *supra* note 104, at 11 ("What the community thinks it wants and what it will really use *on a paying basis* are usually two utterly different pictures.").

117. Draft Letter from Ed Logue, *supra* note 115.

118. Letter from Albert W. Cole to Leo E. Sherman (Nov. 20, 1957) (on file with Yale University Manuscripts and Archives, Group Number 959, Series V, Box 73, Folder 617).

119. Plaintiff's Complaint, Taft Hotel Corp. v. Hous. & Home Fin. Agency, 162 F. Supp. 538 (D. Conn. 1958) (No. 7130) [hereinafter Plaintiff's Complaint].

120. Petitioners' Brief, *supra* note 9, at 30.

121. Plaintiff's Complaint, *supra* note 119, para. 15, at 7a.

122. *Id.* para. 16, at 8a.

accurate assessment of the need for the hotel had ever been made.[123] Second, the complaint alleged that the Federal Housing Act declared a congressional intent that barred the use of funding for a hotel.[124]

The government responded by challenging both the jurisdiction of the court and the Taft's standing to sue,[125] arguing that any economic injury suffered by the Taft as a result of the construction was not legally actionable.[126] Even assuming that the Taft would suffer in its business as a result of the new hotel construction, the government argued, "it is *damnum absque injuria* [damage without injury]. The plaintiff has no right, statutory or otherwise, to protection from competition."[127] Moreover, "the statute contains no semblance of a requirement that the Housing Administrator make such a determination [of economic feasibility], and there is no statutory prohibition or congressional policy against hotels."[128]

The district court held against the Taft on both grounds. After holding that the suit was barred by improper service,[129] Judge Robert Anderson found that the Taft lacked standing to bring the action in the first place: "The plaintiff has no standing to bring this action either as a taxpayer or as one who claims that a new hotel in the City of New Haven would be a potential source of economic injury to it through unreasonable competition."[130] The Second Circuit upheld Judge Anderson's decision,[131] and the United States Supreme Court declined to hear the case.[132] New Haven Mayor Richard Lee called the litigation "a great victory for redevelopment" and proclaimed that the way was "now clear for the City and the Redevelopment Agency to proceed in accordance with the needs of the entire city and the downtown area."[133] The Church Street litigation demonstrates both the inability of local politicians to accurately assess the

123. *Id.* para. 14, at 6a. Similarly, the *Kelo* plaintiffs argued that eminent domain for development purposes could only be justified when the expected benefits were reasonably certain. Petitioners' Brief, *supra* note 9, at 36; Reply Brief of Petitioners at 10, Kelo v. City of New London, 125 S. Ct. 2655 (2005) (No. 04-108).

124. Plaintiff's Complaint, *supra* note 119, para. 20, at 9a.

125. Motion to Dismiss Complaint, Taft Hotel Corp. v. Hous. & Home Fin. Agency, 162 F. Supp. 538 (D. Conn. 1958) (No. 7130) (filed Apr., 1958).

126. *Id.*

127. *Id.* at 5.

128. *Id.* at 7.

129. Taft Hotel Corp. v. Hous. & Home Fin. Agency, 162 F. Supp. 538, 539 (D. Conn. 1958).

130. *Id.* (citing Ala. Power v. Ickes, 302 U.S. 464 (1938); Kan. City Power & Light Co. v. McKay, 225 F.2d 924 (D.C. Cir. 1955)).

131. *Court Denies Stay Motion on City Grant*, NEW HAVEN REG., June 10, 1958, at 27.

132. *High Court Rejects Plea on Taft Suit*, NEW HAVEN REG., Apr. 21, 1959, at 1.

133. *Id.* At around the same time, the city reached a million-dollar settlement with Church Street jeweler Jacob Savitt, who had refused to sell his store to the city. *See* Bahr Corp. v. O'Brion, 146 Conn. 237 (1959); *Church St. Project Faces Court Test*, NEW HAVEN REG., July 25, 1957, at 1; *City Reaches Accord with Savitt*, NEW HAVEN EVENING REG., Apr. 20, 1959, at 1; *Looking About with the New Havener*, INFO, May 1959; *The Real Story of Church St. Redevelopment*, NEW HAVEN REG., Oct. 2, 1959, at 1; Press Release, City of New Haven, Settlement Reached with Savitt and the Bahr Corporation (undated) (on file with the author).

public benefits of redevelopment projects, and the unwillingness of the federal courts to second-guess those assessments.

C. *The Park Plaza: Public Hotel Development*

Like New London in *Kelo*, New Haven had clearly won a significant victory in the *Taft* litigation. As New London in 2005 found itself free of constitutional constraints on its taking, New Haven in 1958 found itself free to pursue its own hotel project. Though arguments about the lack of positive externalities had not carried the day in either case, these arguments continued to play a major role in the projects themselves. Mayor Lee foresaw large spillover benefits from the new hotel,[134] and clearly believed that the hotel was of crucial importance to the success of the Church Street Redevelopment Project.[135] The history of the Church Street Redevelopment Project hotel—first known as the Park Plaza and now part of the Omni chain—provides an example of how city government's involvement with the hotel business often imposes substantial costs without providing corresponding public benefits. This history should sound a cautionary tone to local governments who now find themselves empowered, in the wake of *Kelo*, to pursue similar hotel projects.

After receiving the green light from the federal courts, Mayor Lee and Administrator Logue began looking for a developer to run the Church Street Redevelopment Project. They eventually settled on New York real estate mogul Roger Stevens, whose proposed plan that would encompass the entire Project area, including the cornerstone projects of the hotel and mall. The city embraced this "big picture" planning.[136] In a letter to Stevens, Mayor Lee would later describe his vision of the hotel, saying that he could not "accept the idea of the use of the word motel or motor hotel which has the same connotation as motel," but that the image of a motor-friendly hotel was still a crucial piece of his plans for the city:

> We have sold this idea of a downtown hotel for four years. If there is any magic left in Church Street, it is the hotel—the glamour of a new hostelry, suitable public rooms, large banquet facilities, etc. Any intimation of any change would cause consternation and fear and additional unhappiness.[137]

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134. Letter from Richard Lee, Mayor, New Haven, Conn., to Ben West, Mayor, Nashville, Tenn. (Feb. 8, 1960) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Box 36, Folder 789). ("With the new Sheraton, I firmly believe there will be a great influx of convention business into our city. We don't really have any as of now. And most important, the location of the hotel on the Green will add another element of real strength to our historic center.").

135. Letter from Richard Lee to Roger Stevens (Dec. 12, 1961) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 46, Folder 940).

136. *See* Richard C. Lee Papers (on file with Yale University Manuscripts and Archives, Box 12, Folder 315) (including dozens of letters from architects, engineers, and developers); *see also* TALBOT, *supra* note 4, at 118 ("Rather than check those two [Lee and Logue] with conservative business judgments, Stevens actually swelled their thinking with his entrepreneurial showmanship.").

137. Letter from Richard Lee, *supra* note 135.

Clearly, the Mayor foresaw large spillover benefits from the hotel.[138]

The financial structure of the resulting deal was fundamentally different from that of the Taft fifty years earlier. The city planned to execute a loan and grant contract under which New Haven would assume one-third of the net Church Street Redevelopment Project cost, a cost it planned to meet through two major approaches. First, "provision of non-cash grants-in-aid including parking structures . . . and construction of Church Street Extension, the installation of a new storm water sewer system, the donation of land to the project and street improvement." Second, and only if necessary, cash grants-in-aid would make up the difference between the non-cash grants and one-third the cost of the project.[139] Of course, the city's power of eminent domain relieved the parties from having to engage in the kind of parcel-by-parcel land consolidation the Moseley clan achieved in setting up the Taft in 1909.

Although the city provided eminent domain, loans, and cash grants-in-aid, which gave substantial economic benefits to the hotel's developers, the city's involvement also entailed substantial costs and annoyances. These costs—since they were paid by the public—chipped away at any net positive externalities the Church Street Redevelopment Project could have generated. The city's micromanagement of decisions—which ranged from the size of the banquet facilities[140] to the location of special lavatories in the banquet hall[141]—added delays and costs to the Project from the very beginning.

In January 1959, the City Plan Commission rejected Church Street developer Roger Stevens' plans for the Park Plaza hotel, arguing that the hotel lobby shown in the plans was not adequately connected to the planned department store,[142] and suggesting that rather than destroying the mall, "we believe consideration might be given to relocating the hotel further south in the project."[143] Stevens responded to the city—his nominal development *partner*—through his lawyer, William Keenan of Cravath, Swaine & Moore.[144] According to Keenan, the city's unexpected rejection of Stevens's planned

138. Letter from Richard Lee, *supra* note 134.

139. Redevelopment and Renewal Plan for the Church Street Project Area 34 (June 1, 1957) (on file with Yale University Manuscripts and Archives, Series V, Box 73, Folder 612).

140. *See, e.g.*, Letter from Richard Lee to Roger L. Stevens (Feb. 11, 1959) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Series V, Box 105).

141. Letter from Lawrence F. Percival, Assistant to the President, Sheraton Hotels, to Richard Lee (Nov. 12, 1958) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Box 12, Folder 322).

142. Written Opinion of the City Plan Commission Concerning Preliminary Plans and Specifications Submitted by the Stevens-New Haven Development Co., Inc., at 6 (Jan. 14, 1959) (on file with Yale University Manuscripts and Archives, Ed Logue Papers, Series V, Box 105, Folder 1054).

143. *Id.* at 7. This suggestion was ultimately adopted, locating the hotel on Temple Street rather than Chapel Street.

144. Letter from William V. Keenan, Cravath, Swaine & Moore, to Harold Grabino, New Haven Redev. Agency (Jan. 27, 1959) (on file with Yale University Manuscripts and Archives, Ed Logue Papers, Series V, Box 105, Folder 1054).

location—and especially the "chief departure," the proposed relocation of the hotel—effectively sunk the months of negotiations with the Sheraton Corporation of America, which had up until then "shown *considerable interest* in taking over the operation of the hotel to be included in the project."[145] Sheraton, Keenan said, "expressed the feeling that they should not give the project any further consideration until they can be assured that they are working on a final Site Plan."[146] Keenan then warned Logue, "Mr. Stevens and his associates would be quite content to withdraw from the project and allow the City and the Agency to turn over the redevelopment of Blocks A, B, C and D to another redeveloper."[147]

Logue responded in equally strong terms, arguing that it was Stevens's responsibility to develop the site, and that the city's obligation was only to turn over "a cleared site in accordance with the contract."[148] Logue reserved his strongest objection for the phrase "considerable interest" as used in relation to the Sheraton: "The phrase 'considerable interest' is not our understanding at all, nor that of the people of New Haven."[149] Clearly, Logue considered the Sheraton's involvement to be a done deal, and expected that the hotel chain would be amenable to the city's changing demands. Strong language aside, Logue also laid the groundwork for a solution by pointing out that the City Plan Commission was serving only as a consultant and had "no authority to impose solutions on anyone."[150] The Sheraton, Logue wrote, was "mislead [sic] and misinformed" if it was told that the Commission spoke for the city.[151] In retrospect, though, Keenan's confusion was probably understandable. After all, when Thomas Appleby of the New Haven Redevelopment Agency wrote to Stevens in January to reject the plans and specifications, he enclosed the opinion of the City Plan Commission which, he said, "has been adopted by the Redevelopment Agency as its grounds for disapproval."[152] The inclusion of the Commission's opinion along with the city's rejection, pointing to that opinion as "grounds" for the rejection, certainly seemed to indicate that the Commission spoke for the city. Perhaps fed up with the pace and content of

145. *Id.* at 1 (emphasis added). Interestingly, the Sheraton hotel chain had earlier planned to build a 450-room twenty-story hotel on the corner of Church and Wall Streets, two blocks north of the Green, on property leased from the Knights of Columbus and the Harwel Corporation. *$5,000,000 Hotel To Be Erected Here*, NEW HAVEN EVENING REG., Oct. 16, 1953, at 1.

146. Letter from William V. Keenan, *supra* note 144, at 2.

147. *Id.* at 3.

148. Letter from Ed Logue to Bill Keenan (Feb. 2, 1959) (on file with Yale University Manuscripts and Archives, Ed Logue Papers, Series V, Box 105, Folder 1054).

149. *Id.* at 4.

150. *Id.*

151. *Id.*

152. Letter from L. Thomas Appleby, Acting Exec. Dir., New Haven Redev. Agency, to Roger Stevens (Jan. 15, 1959) (on file with Yale University Manuscripts and Archives, Ed Logue Papers, Box 365).

these negotiations, Sheraton quietly withdrew from the project sometime in the early 1960s.[153]

Not until February 1963, more than five years after the hotel plan was announced, did the city, the Church Street developer, and the hotel development syndicate—composed of the Gilbane Building Company of Providence and John McShain, Inc., of Philadelphia—reach an agreement on the structure of the hotel project.[154] In comparison, the Taft project went from announcement to opening in less than half that time.[155] As for the Church Street Redevelopment Project, the costs and delays of the public-private agreement immediately became apparent. In November 1964, John McShain returned from a trip to Europe to discover that in the six months since the March agreement, the hotel had not yet begun to take shape. He wrote to Mayor Lee to express his displeasure:

> It was shocking for me to note that we have literally done no work on our new hotel building. . . . Since the day we had our meeting, I have started and completed three big building projects, one larger than our proposed hotel. I understand we have encountered unlimited problems with your various departments, and I am hopeful by now all the technicalities have been solved and we can proceed to erect the project. So many of my friends have told me how desperately New Haven needs a hotel, and it seems outrageous that we should be faced with these continuous delays.[156]

Mayor Lee, by now a master of redevelopment politics, was not about to back down. He responded, "[t]o put it mildly, I was extremely distressed to receive your letter."[157] The mayor indicated that the city was also disappointed in Gilbane and McShain's performance, and intimated that his cooperation was contingent on certain deliverances from the developers.[158]

Just a week later, it was obvious that Mayor Lee had followed up this terse reply with a dose of his considerable personal and political charm. McShain wrote on November 25 to thank the mayor for a "delightful meeting in your office yesterday," and even apologized for having "burdened" the mayor with "our problems."[159] McShain proclaimed that the hotel would be ready for

153. The author's review of Mayor Lee and Administrator Logue's voluminous personal papers revealed no explanation for why or how Sheraton abandoned the hotel. In any case, the Sheraton would return to the project in 1971, years after it re-opened. Walter Dudar, *Park Plaza Now Part of Sheraton*, NEW HAVEN REG., Oct. 7, 1971, at 34.

154. Remarks of Richard C. Lee (undated, early 1964) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 67, Folder 1294).

155. *See supra* notes 90-95.

156. Letter from John McShain, President, John McShain, Inc., to Richard C. Lee (Nov. 17, 1964) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers Group Number 318, Series I, Box 67, Folder 1297).

157. Letter from Richard Lee to John McShain (Nov. 18, 1964) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 67, Folder 1297).

158. *Id.*

159. Letter from John McShain to Richard Lee (Nov. 25, 1964) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 67, Folder 1297).

opening in the spring of 1966.[160] The Mayor responded on November 27 with effusive enthusiasm: "You are the best thing which ever happened to New Haven—after me, of course! Between the two of us we will make this town sing. Our dedication day? Spring of 1966."[161] Taking advantage of this personal relationship, Lee was also able to prevail on McShain to include a rooftop dining lounge in the hotel project,[162] an idea that the Mayor had been pushing as early as August 1963.[163]

The city's involvement in the hotel's design and construction extended to the choice of building materials, a decision that the mayor used to his political advantage. In one representative exchange, Mayor Lee suggested in strong terms that the hotel use locks produced by the Sargent Company, a prominent New Haven firm. The mayor claimed, "I am not being a bit political or parochial when I say to you I want very much to have every effort made to accommodate their products."[164] The Mayor had previously received a letter from the Sargent Company asking for his intervention, and he made no attempt to hide his motivation for complying. As he told Gilbane, "One of the Sargents is a former Mayor of New Haven (a Democrat, I might add), and in every way they are a very real asset to our community life."[165] Gilbane responded by affixing a statement of jobs Gilbane had given to Sargent in the past, totaling $215,000 of business, and saying that Sargent would be given an opportunity to bid on the hotel project as well.[166] This did not satisfy Mayor Lee:

> I did not ask to have Sargent given an opportunity to quote on the new hotel in New Haven. . . . My question is will you use their products in your new hotel? I want to see this done. I hope very much it will be done. I shall be more than happy to discuss this with John McShain if you think this is necessary.[167]

For his efforts, the Mayor received a thankful letter from the president of Sargent Company two days later.[168]

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160. *Id.*

161. Letter from Richard Lee to John McShain (Nov. 27, 1964) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 67, Folder 1297).

162. Letter from John McShain to Richard Lee (Dec. 7, 1964) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 67, Folder 1297).

163. Letter from Thomas Gilbane, Gilbane Building Co., to Melvin J. Adams, Exec. Dir., New Haven Redev. Agency (Aug. 3, 1964) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 67, Folder 1297).

164. Letter from Richard Lee to Thomas Gilbane, Gilbane Building Co. (Jan. 19, 1965) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 75, Folder 1406).

165. *Id.*

166. Letter from Thomas F. Gilbane to Richard Lee (Jan. 21, 1965) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 75, Folder 1406).

167. Letter from Richard Lee to Thomas Gilbane (Jan. 25, 1965) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers Group Number 318, Series I, Box 75, Folder 1406).

168. Letter from Herman R. Giese, President, Sargent & Co., to Richard C. Lee (Jan. 27, 1965) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 75, Folder 1406) ("Just a note to let you know how grateful I am for your wonderful assistance with Gilbane.").

Sargent was not the only beneficiary of the Mayor's interventions. In March, Mayor Lee wrote again to Thomas Gilbane, this time requesting that "every consideration be given to the Fox Company of New Haven."[169] Jim Vlock of the Fox Steel Company—who would later, as an alderman, play a major role in the Taft's redevelopment—followed this up with his own letter to Thomas Gilbane.[170] The letter was prominently carbon copied to Mayor Lee.[171] These political favors added costs to the hotel project, detracting from any public benefits that could have been provided and giving shape to the fear later expressed by urban development expert Jane Jacobs in her *Kelo* amicus brief: "There is no reason to believe that genuine economic benefits will be the true determinant of condemnation decisions, and much reason to conclude that decisions will be driven by the political influence of private interests that benefits from them."[172]

As the Park Plaza grew from rumor to reality, the Taft was fighting for its life. The city began to refuse the Taft's annual operating license based on relatively minor infractions such as chipped paint.[173] The city, which had not only arranged but had also provided financing for the Park Plaza, now refused to do so for the Taft.[174] The combination of this reserve with the active intervention on behalf of the Park Plaza was devastating for the Taft. In 1971, with the Park Plaza's long-delayed opening almost at hand, Taft Manager Emery Lancer estimated the cost of renovation at "three or four million dollars."[175] Given the state-subsidized competition from the Park Plaza, this price tag was simply out of the question. Lancer gave up the struggle for a rooming license in 1973, and the Taft shut its doors to guests. Over the next few decades the building would be the subject of further city-guided redevelopment projects.[176] These projects floundered as well, and the Taft

169. Letter from Thomas F. Gilbane to Richard C. Lee (Mar. 18, 1965) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 75, Folder 1406) (responding to and quoting the mayor's letter of March 12, 1965).

170. Letter from Jim Vlock, Fox Steel Co., to Gilbane Building Co. (Apr. 28, 1965) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 75, Folder 1406).

171. *Id.; see also* Letter from Richard Lee to Thomas Gilbane (May 26, 1965) (on file with Yale University Manuscripts and Archives, Richard C. Lee Papers, Group Number 318, Series I, Box 75, Folder 1406) (informing Gilbane that Sam Rottman, a Connecticut mattress manufacturer, "does an outstanding job and I am sure that his product would be a credit to the hotel").

172. Brief of Jane Jacobs as Amicus Curiae in Support of Petitioners at 19, Kelo v. City of New London, 125 S. Ct. 2655 (2005).

173. Letter from Edward P. McMahon, Assistant Dir., Bureau of Envtl. Health, to Emery Lancer (June 11, 1970) (on file with Yale University Manuscripts and Archives, Group Number 1814, Box 695).

174. Letter from Melvin Adams to Sam Kaplan (Dec. 5, 1966) (on file with Yale University Manuscripts and Archives Collection, Group Number 1814, Box 695) ("I don't think we should do any more work with [Taft Manager] Mr. [Emery] Lancer re: the Taft Hotel. Certainly we should not spend our time helping him to arrange his financing. If he can't do that, then he can't do anything.").

175. Harris, *supra* note 96, at 17.

176. *See, e.g.*, New Haven City Plan Comm'n, Advisory Report No. 837/6: Rehabilitation of the

wound up back in private hands in the 1980s, though it has never been re-opened as a hotel.[177]

The newly named Park Plaza,[178] back in the possession of the Sheraton hotel chain, was apparently unable to capitalize on the Taft's closing. Although the Park Plaza took on massive debt[179] and scraped through the 1980s,[180] by 1993, no amount of public funding could keep it afloat. At that point, the FDIC had a $3,800,000 claim against the hotel, and—somewhat ironically, given the city's role in bringing the hotel to New Haven—it owed $840,600 in municipal taxes. In June 1993, the owners of the Park Plaza filed for Chapter 11 bankruptcy protection from creditors to stave off foreclosure by the FDIC and buy more time to attract new investors.[181] For the first time since the Tontine's construction in 1824, New Haven was without a major downtown hotel.

After more than a year of wrangling and consideration of competing proposals,[182] the city eventually blessed a development bid from Baltimore-based developer David Cordish.[183] Cordish's proposal—which reportedly called for $17 million in state redevelopment aid[184]—was accepted by the city over a proposal from Yale, which was itself the hotel's biggest would-be customer.[185] In return for its investment, the city expected the new hotel to create 250 jobs and to generate about $270,000 a year in taxes.[186] Yale University, likely the new hotel's largest customer, remained skeptical of the Cordish plan and confident that its own plan for a hotel and conference center at 900 Chapel could be successful.[187] Without the city's cooperation, Yale's plan was a nonstarter. Two more years went by—approximately the same

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Taft Hotel (July 5, 1979) (on file with Yale University Manuscripts and Archives, Group Number 1814, Box 695); New Haven Redev. Agency Public Hearings (Jan. 7, 1975) (on file with Yale University Manuscripts and Archives, Group Number 1814, Box 695).

177. In 1985, New Haven real estate developer Joel Schiavone paid $750,000 to take over as general partner in the Taft. Beach, *supra* note 92.

178. The Park Plaza became a franchised unit of the Sheraton chain in 1971. Dudar, *supra* note 153; Fred Gross, *Sheraton Chain Reported Talking with Park Plaza*, MORNING J.-COURIER, Aug. 24, 1971, at 1.

179. *Hotel Tax Issue Raised*, MORNING J.-COURIER, Jan. 30, 1975.

180. *Park Plaza Files for Bankruptcy Shield*, NEW HAVEN REG., June 10, 1993, at 45.

181. *Id.*

182. One notable proposal came from an investment group fronted by the World Plan Executive Council, the Maharishi Mahesh Yogi's investment group, which reportedly did not ask for any public financing at all. Paul Bass, *A Sound of Silence*, NEW HAVEN ADVOC., June 6, 1996, at 5. The city apparently found this proposal to be even less attractive than Yale's. John DeStefano, Jr., Letter to the Editor, *Downtown Hotel Project Is Vital to City*, NEW HAVEN REG., Dec. 29, 1996, at C2 ("Finally, you may remember—and we certainly won't forget—that it was the Maharishi Mahesh Yogi who forced our hand when he announced that he planned to buy the Park Plaza Hotel.").

183. Chris Capot, *Park Plaza Finds Buyer*, NEW HAVEN REG., June 28, 1994, at A1.

184. *Id.*

185. *See infra* Section IV.B.

186. Chris Capot, *Park Plaza Renovation Begins*, NEW HAVEN REG., Nov. 21, 1995, at D3.

187. Capot, *supra* note 183; Laura Smith et al., *FORUM: It's Time for Yale To Back Renovation of Park Plaza by Commercial Owners*, NEW HAVEN REG., Aug. 7, 1994, at B3.

amount of time it had taken for the Taft to go from announcement to opening—and New Haven still did not have a downtown hotel. The Park Plaza had not opened, nor even been renovated, and in July 1996, the *New Haven Register* called on Mayor DeStefano to drop the Park Plaza project and take another look at the Yale plan.[188] The Mayor, however, was having none of it.[189] He argued that "as a matter of economics, there is only room for one such hotel in New Haven."[190] The Mayor also intimated that the success or failure of the hotel was not the only consideration weighing in favor of David Cordish. The Park Plaza, on top of being a functioning hotel, was also expected to be "an important linchpin in sparking a renaissance for the Temple/Crown Street corridor."[191] In addition to these development-related considerations, the Omni's opening was delayed by a protracted and bitter battle with the Hotel and Restaurant Workers Union.[192] It finally opened its doors in 1998,[193] five years after the Park Plaza had declared bankruptcy.

IV. ANALYSIS: PUBLIC PROVISION OF HOTELS

Part II of this Note set out general principles of public finance theory, and Part III showed how, in New Haven, those principles were trumped by political concerns, and how public overinvestment in hotels failed to provide public benefits, while crippling the industry itself. This Part attempts to distill generalizable lessons from New Haven's experience: first, that hotels have internalized any externalities they once produced; second, that hotels should respond to private demand, rather than trying to create it; and finally, that cities investing in hotels are likely—as New Haven did—to overestimate benefits and underestimate costs. However, this does not mean that, theoretically, hotels are never worthy of public support. The Part concludes with a brief discussion of the limited degree in which subsidies might arguably be justifiable.

A. *Hotels Have Internalized Their Externalities*

As the discussion of public finance in Part III suggests, government intervention can potentially be justified when externalities are present, that is,

188. Editorial, *Mayor Should Drop Park Plaza Project*, NEW HAVEN REG., July 14, 1996, at B2.

189. John DeStefano, Jr., Letter to the Editor, *City Gained Almost $1 Million by Agreement with Cordish*, NEW HAVEN REG., July 21, 1996, at B2.

190. *Id.* ("[M]y administration made a determination that two hotels, the Park Plaza and a second next door at 900 Chapel St., proposed by Yale University, made no sense.")

191. DeStefano, *supra* note 189.

192. Mark Zaretsky, *Dinner Moved in Labor Dispute*, NEW HAVEN REG., Oct. 8, 1997, at A1; Mark Zaretsky, *Employees Glad To Have Hotel Jobs*, NEW HAVEN REG., Jan. 13, 1998, at A9; Mark Zaretsky, *Omni to City: Butt Out on Union Battle*, NEW HAVEN REG., Jan. 29, 1998, at A1; Mark Zaretsky, *Omni Hotel, Union To Start Bargaining*, NEW HAVEN REG., Feb. 10, 1999, at A3.

193. Mark Zaretsky, *Protestors Greet Omni Opening*, NEW HAVEN REG., Jan. 13, 1998, at A1.

when existing costs and benefits are not captured by prices.[194] When those effects *are* captured by prices, however, then the costs and benefits of an activity, good, or service have been "internalized" by the parties to the transaction[195] and no government intervention is justified. In the modern era, hotels have for the most part done exactly that, turning public benefits into paid services.

The hotels' own treatment of the concept of "public" illustrates this change. The management of New Haven's Hotel Taft, for example, worked actively to connect its own profitability to the hotel's potential as a "public space." Clearly drawing on his own personal connection to the Taft and to the New Haven community,[196] Taft Manager Craig LaVin—who was raised in New Haven and attended Yale—announced plans to make the Taft a "'real community center' while also appealing to the traveling public."[197] LaVin stressed the importance of an area where patrons could get coffee, doughnuts, egg sandwiches and hamburgers.[198] Decades later, the Park Plaza's manager would echo LaVin's language in describing his own hotel's "public" orientation: "In general, my objective is to make the Park Plaza a community hotel, a community center. It's ideal for this concept because of its facilities and location."[199] The Park Plaza was still sounding its focus on "public" services in 1978, pointing to such amenities as a health club with membership open to the community, a ballroom, a restaurant and lounge "with a 'disco' flavor," and a game room. "We want to bring the hotel into the community and let them enjoy it," the Plaza's manager explained.[200]

These "community" services, however, were generally offered only to paying customers, and thus the benefits were internalized by the parties to the transaction. Bringing members of the community into a hotel where they can pay for services is not the same as creating positive externalities. In economic terms, it is exactly the opposite: By providing priced services to the public, the hotel owners were simply doing good business. No clearer statement of this can be found than in Jakle's history of the motel, which claims that by the turn of the century, "[p]rofits came primarily from a hotel's public spaces, and, accordingly, guest rooms functioned primarily to guarantee business in dining rooms, coffee shops, and rented meeting spaces."[201] Hotel owners had internalized their ventures' externalities, and by doing so, obviated the need for

194. HYMAN, *supra* note 53, at 101.

195. *Id.*

196. *See Craig LaVin Returning as Taft Manager*, NEW HAVEN REG., Sept. 2, 1945, at 8.

197. *Id.*

198. *Id.*

199. Walter Dudar, *Park Plaza's New Manager Was Bus Boy 40 Years Ago*, NEW HAVEN REG., Nov. 9, 1970, at 22.

200. Dick Conrad, *Park Plaza Gets New Management*, MORNING J.-COURIER, June 2, 1978, at 9C.

201. JAKLE ET AL., *supra* note 100, at 26.

government involvement.

B. *Hotel Development Should Reflect Private Demand*

Public finance theory begins from the proposition that the competitive private market is the ideal arrangement for the provision of goods. "With consumer sovereignty as the underlying principle, public policy pursues the same goal as the competitive market system, broadly speaking, the well-being of society expressed through the preferences of its individual citizens."[202] Conceptually, this means that consumers' demand for a good (in this case, the hotel and its debatable externalities) must always be the primary measure of value.

Though it is often difficult to determine accurately the content and strength of consumer preference, New Haven had a unique opportunity to do so. The demand for hotels was concentrated almost entirely in a single consumer, Yale University, which had already made the strength and content of its preferences known. Yale was and is by far the largest consumer of hotel and conference business in the City of New Haven, and is well aware of its need for hotel and conference space. Yale had been deeply involved in New Haven's hotel history for hundreds of years, from its sale of the Goodyear Mansion to the Moseley clan in 1867[203]—a transaction which led to the construction of the New Haven House and Hotel Taft—to its offer to buy and redevelop the then-defunct Taft one hundred years later.[204] Convention planners, too, have long recognized that Yale represents the best chance for a downtown New Haven hotel to draw major conventions.[205] The Park Plaza's successor, the Omni Hotel, has done its best to build a special relationship with the University, even securing an agreement from Yale—whose own proposal for a hotel had been soundly rejected—to add its name to the hotel's title, which now reads in full: "The Omni at Yale." Because Yale was and is by far the largest customer of hotel space in New Haven, the University rather than the city should have been allowed to take the lead in guiding the development of hotels.

Nevertheless, when the University offered its own plan for the development of a downtown hotel at 900 Chapel in the wake of the Park Plaza's demise, the

202. TRESCH, *supra* note 53, at 5.

203. DANA, *supra* note 83, at bk. 92, p. 13.

204. Yale Provost Charles H. Taylor telephoned Mayor Lee to ask what the city's reaction would be if Yale were to purchase the Taft. Letter from Richard Lee, Mayor, New Haven, Conn., to Charles H. Taylor, Jr. (July 21, 1965) (on file with Yale University Manuscripts and Archives, Group Number 1814, Box 695). The proposal was apparently dropped. No further mention of it appears in Mayor Lee's correspondence. Yale nonetheless ended up contributing money to the redevelopment of the Taft, "in recognition of the importance of the project to both the city and Yale." Dan Kaferle, *$350,000 Yale Loan for Taft Renovation*, NEW HAVEN REG., Aug. 16, 1979, at A1.

205. Luther Turmelle, *Suddenly Inn Style: After Years of Scant Hotel Rooms, Region Undergoing a Mini-Boom*, NEW HAVEN REG., Jan. 27, 1998, at D1.

city rejected it.[206] Though no written source confirms as much, it is quite possible that the city rejected the Yale proposal because supporting Yale-associated projects is not politically popular in New Haven,[207] or because politicians—unlike real estate developers—cannot write off empty hotels such as the Park Plaza simply as sunk costs. Pressure from local unions was almost certainly a factor, as the unions were—at least initially—firmly against the Yale proposal.[208] Indeed, Mayor DeStefano made it clear that he thought Yale shouldered some of the blame for the Park Plaza's failure.[209]

By approving Yale's proposal, the city could have saved itself money and ensured that creation of its "public good" would be in line with the private interests necessary for its success. A Yale-supported hotel would have been similar in kind to the financing of the Hotel Taft fifty years earlier: the result of self-interested local investors making an investment with the expectation of some return. If, as public finance theory suggests, a "public" finance project is most effective when it capitalizes on private demand, then such an arrangement would have been ideal.

C. *Public Over-Investment in Hotels Is Costly*

Even if modern hotels can be shown to produce positive externalities, government action might be unable to address them adequately because the degree of public support must still be justified in cost-benefit terms. As Justice Kennedy suggested in his *Kelo* concurrence, development projects which are "intended to confer benefits on particular, favored private entities, and *with only incidental or pretextual public benefits*, are forbidden by the Public Use Clause."[210] Even when the public benefits are large enough to pass this kind of Public Use analysis, they may still be insufficient to justify public investment on policy grounds. The City of New Haven, having wrongly perceived a justification for hotel subsidies, also incorrectly weighed both the costs and the benefits of those subsidies. As a result, the city spent massive amounts of money and over-supplied the hotel market.[211]

New Haven Mayor John DeStefano, remarking in 1996 on the government-sponsored development of a hotel and mall in his city, asked the rhetorical

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206. *See infra* notes 185-192 and accompanying text.

207. *But see* Editorial, *supra* note 188 (arguing that the Mayor should take a second look at Yale's proposal).

208. Smith, *supra* note 187. The unions' support for the hotel was short-lived. *See* Zaretsky, *Dinner Moved in Labor Dispute*, *supra* note 192.

209. Zaretsky, *Dinner Moved in Labor Dispute*, *supra* note 192.

210. Kelo v. City of New London, 125 S. Ct. 2655, 2669 (2005) (Kennedy, J., concurring) (emphasis added).

211. *See also* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 291-317 (1961) (bemoaning the use of "cataclysmic money" poured into major downtown redevelopment projects, rather than being used as an instrument of gradual, complex change).

question, "Simply put, why have one building when you can have two?"[212] The Albert Pick-Barth hoteliers' manual—a guide written for hotel managers and developers—had answered that very question seventy years earlier:

> On the other hand too many hotels develop a condition perhaps worse than too few. If, through a condition of oversupply, the local hotel industry is on a non-paying basis there will certainly follow a situation which is conducive to neither good service nor good impressions. . . .
>
> So the primary requirement of the new commercial hotel is to make certain that its existence is justified.[213]

Gratz and Mintz noted in their 1998 study of urban development that "[d]owntowns have rediscovered the value of hotels to excess."[214] The Albert Pick-Barth manual had made the same point, arguing that the community function of a hotel could easily be "overdone": "What the community thinks it wants and what it will really use *on a paying basis* are usually two utterly different pictures as many a hotel man will testify as he sadly pays the maintained charges on unused ballrooms and private dining rooms."[215]

New Haven also underestimated the *costs* of its own involvement. Some of these costs, such as the burden on taxpayers, are inherent in all publicly financed projects.[216] As Heywood Sanders has pointed out, cities which pledge to back their hotels often end up bound to pour more and more public money into money-losing enterprises.[217] Moreover, over-provision of hotels can artificially lower market rates and drive private hotels out of business, as happened with the Taft,[218] or at least lower their occupancy rates and thus the hotel taxes the city can collect. All of these costs would offset any public gains—in tax or otherwise—from a publicly backed hotel.

Perhaps the costs most crippling to the Park Plaza project, however, were those caused by the city's politically motivated micromanagement of the hotel's design and construction, as described in Section III.C. When Mayor Lee demanded that the hotel use Sargent brand locks because the Sargent family was a major political contributor, or when the entire project was paralyzed

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212. DeStefano, *supra* note 182.

213. ALBERT PICK-BARTH COS., *supra* note 104, at 11; *see also* PAUL GROTH, LIVING DOWNTOWN: THE HISTORY OF RESIDENTIAL HOTELS IN THE UNITED STATES 182 (1994) (noting that urban business and government leaders have felt compelled to establish "state-of-the-art hotel[s]—usually large and more lavish than strictly necessary").

214. ROBERTA BRANDES GRATZ & NORMAN MINTZ, CITIES BACK FROM THE EDGE: NEW LIFE FOR DOWNTOWN 258 (1998).

215. ALBERT PICK-BARTH COS., *supra* note 104, at 11.

216. There is a political economy issue that complicates the cost-benefit analysis here. Today's politicians generally spend tomorrow's taxpayer money, and are thus not immediately politically accountable for that spending. This problem is further compounded where taxpayer money is collected from a different group than is spending it. In this case, state and federal money spent on hotel construction was obviously not totally internalized by the people of New Haven.

217. Sanders, *supra* note 43, at 24.

218. *See supra* Section III.B. *See also* Sanders, *supra* note 43, at 22 (describing similar effects on a private hotel in Sacramento).

because of coordination problems with various city committees, the developers and the city incurred very real costs. By one local hotelier's estimate, the city and its hotels lost $13,000,000 in revenue due to a lack of meeting space between October 1995 and October 1996 alone,[219] a lack of meeting space that was caused at least in part by delays in the public-private partnership. Not least among these management costs were those added by the unpredictability of dealing with local politics, which introduced a very expensive element of risk into the development.

On the other side of the cost-benefit scale, City Hall expected and demanded far too many spillover *benefits* of the Park Plaza. As explained in greater detail above,[220] the positive externalities generated by a modern hotel are likely to be small or nonexistent. Any positive externalities resulting from the hotel project would have been better served by a focus on the hotel's own bottom line. Positive externalities, in the case of modern downtown hotels, are for the most part a by-product of economic success, and public subsidies do not guarantee that success. A 300-room hotel with a negligible occupancy rate produces no spillover benefits, and may in fact impose considerable negative externalities. Like most modern publicly supported convention centers,[221] the Park Plaza Hotel could not even cover its own costs or fill its own rooms, much less generate spillover benefits to the rest of the community. In attempting to engineer broad positive externalities, the city ended up destroying any chance the hotel had to generate even limited benefits.

D. *Hotel Subsidies May Still Be Justified in Certain Limited Circumstances*

This Note does not conclude that modern hotels can never justify public investment. Where positive externalities—which, as stated above, are often overestimated—exceed investment costs, such investment may be economically justifiable.

Colonial-era inns and hotels provide at least one illustrative example of a situation in which subsidies for public houses were justified because of the substantial positive externalities they generated. Recognizing the crucial public importance of local inns and taverns, many American colonies passed laws establishing and supporting them.[222] New Haven was no exception.[223]

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219. Turmelle, *supra* note 205.

220. *See supra* Section IV.A.

221. SANDERS, *supra* note 39, at 15.

222. KYM S. RICE, EARLY AMERICAN TAVERNS: FOR THE ENTERTAINMENT OF FRIENDS AND STRANGERS 23 (1983). The burdens of regulations tended to discourage many potential tavernkeepers. WALTER H. VAN HOESEN, EARLY TAVERNS AND STAGECOACH DAYS IN NEW JERSEY 21 (1976). Nonetheless, the colonies apparently took the innkeeping requirement very seriously, and some towns in the Massachusetts Bay Colony were even cited by the grand jury for failing to comply. RICE, *supra*, at 24.

223. Even with the promise of subsidies, the task was not an easy one. New Haven's government

Beyond their recognizable profit-making activities, inns served a social and political function not unlike that served by more easily identifiable "public" places such as town halls.[224] In many towns across the country, the local inn—forerunner of the modern downtown hotel—was also generally the center of a town's "social capital."[225] As one historian of the American tavern has written, "During this country's early history, taverns played a little-known but vital role as an important center of community life and activity."[226]

In fact, "public houses" were important for the very governance of towns. The public activities in these taverns "ranged from dances and assemblies, educational performances and social conversation to the meetings of public officials, merchants, and judicial bodies."[227] Legislatures often commenced their business in the public houses.[228] Connecticut's own legislature once met regularly at Miles Tavern, which stood in New Haven on the southeast corner of College and Chapel Streets in the seventeenth century—the same spot as the Taft would occupy two centuries later.[229] People came to taverns like the Miles to read newspapers, talk politics, draft handbills and political statements, and, in the closing decades of the 1700s, plan Revolution.[230] "Taverns were natural settings for the gatherings of political factions; one historian, in fact, has called the public house 'a political nodule point.'"[231] Indeed, innkeepers often ended up playing the role of public officials:

> The innkeeper or taverner was an intimate of lawyers . . . . To him was referred for settlement any dispute over cards, the price of lottery tickets, or the sale of cattle . . . . Bills of sale and sheriff foreclosures were also matters supposed to be within his knowledge. The inn or tavern keeper was also supposed to be a good judge of human nature, to keep an eye for runaway slaves, to watch out for errant travelers

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> could not prevail with any to keep the ordinary, and therefore desired the town would consider the business and provide some person to keep it that they may be satisfied with. And the town did desire and appoint the magistrates and townsmen, their committee, to take that matter into consideration and to provide a meet person to keep an ordinary, that the town be not destitute, and if the town have any land that is fit for pasturage, they would willing to afford them encouragement.

DANA, *supra* note 83, at bk. 92, p. 4.

224. A.K. Sandoval-Strausz, *Why the Hotel? Liberal Visions, Merchant Capital, Public Space, and the Creation of an American Institution*, 28 BUS. & ECON. HIST. 255, 262 (1999).

225. On social capital, see generally ROBERT PUTNAM, BOWLING ALONE (2000). This Note does not make any novel claims about social capital except to suggest that businesses which create it are generating positive externalities.

226. RICE, *supra* note 222, at 19.

227. *Id.* at 21.

228. *Id.* at 34 ("Until municipal governments had their own headquarters, city officials frequently held their meetings in taverns.").

229. DANA, *supra* note 83, at bk. 92, p. 11.

230. RICE, *supra* note 222, at 122. The Sons of Liberty, to cite one prominent example, planned the Boston Tea Party at the Green Dragon Tavern in Boston. The Tavern currently displays a plaque identifying itself as the Headquarters of the Revolution. As late as the 1840s, the Louisiana Legislature held its sessions in the ballroom of the famed St. Louis hotel in the Creole section of New Orleans. JEFFERSON WILLIAMSON, THE AMERICAN HOTEL 98 (1930).

231. RICE, *supra* note 222, at 121 (citing GARY NASH, THE URBAN CRUCIBLE 87 (1979)).

> who had a bad habit of departing without payment of charges, and to pay respectful attention to ladies on the occasions when they were forced to 'take to the open road.'[232]

The existence of a tavern also made it easier for local authorities to perform their functions of protecting the public safety and the public morals by regulating the sale and use of alcohol and other potentially undesirable activities.[233] To the extent that innkeepers were compensated for these and other "public" services, they of course do not represent externalities, but many of the benefits—such as increases in social capital—flowed well beyond the bounds of a priced transaction. Taverns, inns, and their owners thus played a unique and essential role in the governance of communities, much as a town hall or a local government building might today.[234]

These "public" functions suggest that colonial-era inns and taverns did indeed generate positive externalities, and that public investment in them may have been justified for the time being. As these establishments became self-supporting, however, public subsidies melted away. Hotels that had started as children of local government had become darlings of the market, and local governments chose to let them go. Two hundred years later, local governments are again claiming control.

To a limited degree, a city's involvement in its hotel industry can be justifiable. Modern hotels have not internalized all of their benefits. A large, well-known hotel doubtless continues to confer status on a city,[235] and status is a classic public good. Elizabeth Mills Brown's guide to New Haven architecture alludes to some of the status and social benefits resulting from the Taft's grandeur: "Symbol of the social renascence of New Haven in the era of the City Beautiful, the Taft's great arched windows and well-bred Adamesque detail once touched New Haven with a glow of Ritz-Carlton elegance."[236] Many of these benefits were never internalized by the hotels, including their

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232. VAN HOESEN, *supra* note 222, at 24-25.

233. *Id.* at 17 ("Consideration for the welfare of travelers and the regulating of the sale of intoxicating beverages seemed sufficiently important to the General Assembly not only to counsel but actually to require the opening of some kind of public house in every community."); *see also* WILLIAMSON, *supra* note 230, at 4 ("Our hotels have been, as one writer said, 'the thermometers and barometers of our national civilization,' and have wielded a great influence on the manners and tastes of the country").

234. A tavern known as the "Stadt Herbegh," or City Tavern, actually served as New York's city hall from 1653 through 1699. RICE, *supra* note 222, at 26.

235. *See* RUFUS JARMAN, A BED FOR THE NIGHT: THE STORY OF THE WHEELING BELLBOY E.M. STATLER AND HIS REMARKABLE HOTELS 271 (1952) ("Through the atmosphere they generate and the life that clusters around them, a city's important hotels, more than any other of its enterprises, breathe the personality of that city."); *see also* JAKLE ET AL., *supra* note 100, at 25; WARD MOREHOUSE III, THE WALDORF-ASTORIA: AMERICA'S GILDED DREAM (1991); DAVID SIEFKIN, THE CITY AT THE END OF THE RAINBOW (1976).

236. ELIZABETH MILLS BROWN, NEW HAVEN: A GUIDE TO ARCHITECTURE AND URBAN DESIGN 108 (1976). Brown does not mention the Park Plaza, though she does allude to the "Central Business District." *Id.*

contribution to cities' social capital:

> Indeed, the public could enjoy much in America's hotels without its costing them a cent—the lobby, for example, and even the bar-room. Then, too, there was the fact that America's hotels were the great social centers of the general public, the favorite places for balls, banquets, and other affairs . . . .[237]

Moreover, the spillover business from a successful hotel can arguably provide real economic benefits to its neighbors. For example, despite having to struggle through some rocky opening ceremonies,[238] the Park Plaza did at least arguably have a beneficial effect on some local businesses. Walter Dudar, business editor of the *New Haven Register*, reported that according to "the competition," the "opening of the Park Plaza was the best thing that could have happened to the hotel-motel-restaurant business in this area."[239] The Taft management said—at least publicly—that in the year following the Park Plaza's opening, the Taft's guest room business was running "slightly ahead" of where it had been the year before.[240] The *New Haven Journal-Courier* apparently agreed with the Lee administration that hotels draw tourists as well as serve them, reporting that "[o]utside of the Yale campus, the $7 million hotel is now the city's No. 1 'tourist attraction.'"[241] Throughout the summer of 1967, the Chamber of Commerce announced and promoted a booming convention business.[242]

We should question the size of these proclaimed benefits. Status and prestige, as well as spillover business, are highly dependent on the success of the hotel itself, and the Park Plaza Hotel was not a success. When the initial wave of excitement and boosterism washed over, nothing was left but a failing hotel that did little to raise the district around it. Moreover, even if such benefits do exist to some degree, it is almost impossible to fathom how they could justify the *amount* of money spent to secure them.

The Taft Hotel, on the other hand, did provide public benefits—the "elegance" alluded to by Brown, for example. But the Taft's benefits seemed to derive directly from that hotel's private success. This is likely true of all modern hotels: The positive externalities generated by modern hotels are by-products of private success. Therefore, though hotel-generated externalities can exist, these externalities are not the result of state support.

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237. WILLIAMSON, *supra* note 230, at 9.

238. *See, e.g.*, Walter Dudar, *Hotel WILL Open Friday*, NEW HAVEN REG., Sept. 25, 1966, at 1; Walter Dudar, *Glittering New Hotel Opens*, NEW HAVEN REG., Oct. 1, 1966, at 1; *see also Park Plaza, City Arrange Parking Space*, NEW HAVEN REG., Sept. 28, 1966, at 112.

239. Walter Dudar, *Park Plaza Proves City Business Aid*, NEW HAVEN REG., Oct. 30, 1966, at 1; *see also Midtown Motor Inn Schedules Expansion*, NEW HAVEN REG., Nov. 13, 1966, at 31.

240. Dudar, *Park Plaza Proves City Business Aid*, *supra* note 239.

241. *Dedication Thursday for Park Plaza Hotel*, MORNING J.-COURIER, Oct. 16, 1966, at 6.

242. *City Convention Growth Detailed*, MORNING J.-COURIER, May 19, 1967, at 14 (announcing that more than 19,000 visitors attended twenty-one separate city meetings within the last ninety days); *More Conventions, Attracting 1,000, Listed by Chamber*, MORNING J.-COURIER, July 16, 1967 (listing three more conventions).

CONCLUSION

Kelo made it clear that the Federal Constitution places few limits on the power of local governments to follow their "considered judgment" of what constitutes a public use for takings purposes. This Note suggests that even when such judgments are legally protected from direct judicial oversight, however, local governments should attempt a realistic measure of their projects' expected externalities, and weigh those externalities against the projects' costs. Although the Supreme Court found that such a requirement is not constitutionally compelled, states can adopt the argument of the *Kelo* petitioners that development projects involving use of eminent domain must be accompanied by an analysis of expected public benefits,[243] or perhaps even by a guarantee on the part of the private developer that such benefits will be delivered. The majority opinion itself "emphasize[d] that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power,"[244] and some states—including Connecticut—are already considering such action.[245] In the absence of such state-level action, however, city governments that aggressively use the powers granted by *Kelo* may find themselves supporting failed projects.

New Haven's hotel history does suggest at least one clear lesson for future downtown hotel development: Hotels can be public goods, but only when there is private demand for them. In colonial times, local government's support for inns and taverns was a considered response to the market's failure to provide any public house at all, at a time when inns were essential not just for their positive economic externalities for local businesses, but also for their role as "public institutions" which served as seats of social and political life. In the 1950s, New Haven attempted to reverse this equation by spending millions of government dollars to construct a hotel in the hopes that its existence alone would provide additional spillover benefits. In doing so, the city fundamentally misunderstood the lessons of its own hotel history: Modern hotels do not serve the same public functions as their colonial ancestors. By downplaying the costs of its own involvement, and by exaggerating the desired end result—spillover benefits—rather than focusing on the prerequisite—adequate demand for a hotel—the city misread both history and the market, and ended up destroying a successful private enterprise and replacing it with a struggling public one. Future developers would do well to remember the *Kelo* petitioners' warning: "Economic development projects are uncertain ventures that often do not live up to their original promises."[246]

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243. Kelo v. City of New London, 125 S. Ct. 2655, 2667 (2005) (rejecting such a test).
244. *Id.* at 2668.
245. Easha Anand, *Conn. Communities Dispute* Kelo *Decision*, YALE DAILY NEWS, Oct. 6, 2005.
246. Petitioners' Brief, *supra* note 9, at 34.