In recent years the subject of property rights has been transformed from an obscure backwater of largely academic concern into a vibrant topic of public debate and scholarly dialogue. Issues pertaining to property rights now appear on the front pages of newspapers. The constitutional protection afforded property owners—historically a central concern of the federal judiciary—has regained a bit of its former status. A series of Supreme Court decisions, starting with *Nollan v. California Coastal Comm'n,* 483 U.S. 825 (1987), has been an important catalyst in reopening the long-dormant discussion about the place of property rights in American society.

CAN THE "DESPOTIC POWER" BE TAMED?

Reconsidering the Public Use Limitation on Eminent Domain

By James W. Ely Jr.

Private Interests vs. Public Good

Inevitably there is tension between the right of individuals to enjoy private property and the right of the community to achieve legitimate social goals. Some of the most contested topics in property law today relate to the Fifth Amendment command: "nor shall private property be taken for public use, without just compensation." The doctrine of regulatory takings—the principle that regulation of property use may be so severe as to amount in effect to a taking of that property for which compensation is required—is the subject of an extensive literature. In recent years, however, controversy over regulatory takings has been rivaled by outrage over aggressive exercise of the eminent domain power to acquire private property. Assaults on the use of eminent domain have become almost a cottage industry, with articles and editorials appearing in newspapers and journals of opinion. Organizations interested in protecting the rights of property owners have entered the fray with gusto.

Private property has, of course, historically been taken to provide public facilities, such as roads, parks, and military installations. By the mid-twentieth century, however, courts started to uphold the extension of eminent domain into new fields. They sustained the acquisition of rundown or blighted land for the purpose of urban renewal. More recently, government has used the power of eminent domain to promote economic development in a variety of ways, including as a tool to lure new business to an area. Such actions increasingly involve the taking of one person's property for the benefit of private developers that will presumably use the land in a manner consonant with a scheme for economically desirable activity. The perception that eminent domain often entails the use of governmental power to acquire property for essentially private advantage fuels much of the current dispute. A further source of aggravation is the charge that resort to eminent domain is frequently initiated by powerful and politically well-connected interests that have the ear of local officials. Rightly or wrongly, many individual property owners—homeowners and small business operators—see themselves as victims of governmental abuse. Opposition to the use of eminent domain has consequently grown more intense, resulting in numerous court challenges. Public outcry has sometimes forced officials to abandon projects requiring the acquisition of property.

For their part, local officials insist that property taken under eminent domain for economic development serves a public purpose. They point to the desirability of economic growth, which they hope will generate new jobs and increase tax revenue. This hope justifies in their minds the taking of private property to expand manufacturing plants or malls or to upgrade the urban landscape by constructing high-priced housing.

As this pattern of takings suggests, eminent domain is one of the most intrusive powers of government. It requires that individual owners relinquish their property without their consent. The dispute over the scope of this broad power directly implicates the "public use" limitation in the Takings Clause and equivalent provisions in state constitutions. At root is the question of how far the perceived needs of the public should be able to trump the rights of individual owners.

Not surprisingly, the growing controversy over the exercise of eminent domain power has received considerable scholarly comment. A number of scholars have urged courts to put teeth into the Public Use Clause of the Fifth Amendment as a substantive restraint on governmental takings of property. Thus, Richard A. Epstein has argued: "At a minimum the public use requirement is a strict limitation upon the power of government to take private property." RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN 162 (1985). Epstein and others maintain that courts should strike down exercises of eminent domain that are private in nature and not for public use. On the other hand, most scholars, following the reigning interpretation of the Takings Clause, have virtually read the public use requirement out of the Constitution. According to this view, the appropriation of property is a matter for legislative determination, and whatever the lawmakers decide to do satisfies the public use test. Hence, any remedy for oppressive takings must be found in the political process not in judicial scrutiny.

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Thomas Gianni

A History of Controversy

A historical perspective may cast some light on the current public use debate. It is important to recall that eminent domain has long been controversial. In 1795 Justice William Patterson, who had been a member of the constitutional convention, described eminent domain as the "despotic power," but recognized that such authority was an essential element of government. *VanHorne's Lessee v. Dorrance*, 2 U.S. 304, 311 (1795). In fact, property has been taken by government throughout American history, starting in the colonial era. Use of eminent domain by colonial governments was modest by modern standards, but certain important trends can be detected. First, property was acquired to promote the economic growth of the community. Colonial mill acts, for example, allowed the proprietors of water-powered grist mills, upon the payment of compensation, to erect a dam across a stream and flood neighboring land. Virginia and Maryland lawmakers sought to encourage iron production by extending eminent domain power to the owners of iron works. Second, lawmakers delegated eminent domain to private entrepreneurs—mill and iron works operators—whose activities were seen as benefiting society as a whole.

State and federal courts in the antebellum era repeatedly sustained acts empowering railroads to appropriate private property.

The years following the Revolution produced important changes in the law governing eminent domain. States began to utilize eminent domain for projects of a more extensive character. In the 1780s lawmakers empowered private canal corporations to take land. Meantime, the Northwest Ordinance of 1787 foreshadowed the Fifth Amendment Takings Clause with a provision declaring that just compensation must be paid "should the public exigencies make it necessary for common preservation to take any person's property." Consistent with the general purpose of the Bill of Rights, the Takings Clause was designed to safeguard individuals against the potentially overbearing power of the new national government. The framers of the Constitution and Bill of Rights believed that security of property rights was necessary for the enjoyment of individual liberty. It is scarcely a surprise, therefore, that they sought to restrict the exercise of eminent domain by imposing the public use and just compensation requirements. The Supreme Court has recently reminded us that the Takings Clause is an integral part of the Bill of Rights and should not be "relegated to the status of a poor relation." *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994). It would thus seem that the public use limitation should be construed in light of the larger constitutional goal of protecting ownership of private property.

Still, even if we can agree that the public use standard was intended to place substantive restraints on eminent domain, it remains necessary to examine the extent of this restriction. How should we define public use? The Takings Clause was little debated at the time of its ratification, but nothing indicates that the framers envisioned a departure from settled practice with respect to governmental acquisition of property. Given the colonial experience, one cannot reasonably formulate a categorical rule that private property could never be taken for developmental purposes.

The Supreme Court gave no guidance on these matters for nearly a century. In *Barron v. City of Baltimore*, 32 U.S. 243 (1833), the Court ruled that the Bill of Rights, including the Fifth Amendment, restricted the federal government and did not apply to the states. The federal government, however, was slow to exercise directly the power of eminent domain. Indeed, Congress did not generally authorize the condemnation of property in federal courts until after the Civil War. The practice of the federal government was to appropriate property by relying on eminent domain proceedings in state courts under state law. Consequently, the Supreme Court did not squarely address the use of eminent domain until 1875. Under these circumstances attempts to define the scope of public use took place largely in the states and only secondarily in the federal courts.

Two lines of authority emerged early in our history. It was frequently asserted that it was an illegitimate use of governmental authority to take property from one person for the private benefit of another. In *Calder v. Bull*, 3 U.S. 386, 388 (1798), Justice Samuel Chase articulated this view when he declared: "a law that takes property from A, and gives it to B" would be "contrary to the great first principles of the social compact" and "cannot be considered a rightful exercise of legislative authority." Similarly, Justice Joseph Story explained in 1829: "We know of no case, in which a legislative act to transfer the property of A. to B. without his consent, has ever been held a constitutional exercise of legislative power in any state in the union." *Wilkinson v. Leland*, 27 U.S. 627, 658 (1829). The ban on such private transfers was initially explained in terms of natural justice, but later it was grounded in the Due Process Clauses of federal and state constitutions. Judges and commentators frequently repeated the maxim that legislation transferring property from one private person to another, even with payment of compensation, constituted a deprivation of property without due process of law. In the leading case of *Missouri Pac. Ry. v. Nebraska*, 164 U.S. 403, 417 (1896), the Supreme Court ruled that the "taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another" violated the Due Process Clause of the Fourteenth Amendment. In time this principle, developed under the due process rubric, was assimilated into takings

jurisprudence. Courts have generally agreed that the public use requirement prevents the exercise of eminent domain for purely private takings. "The right of eminent domain," the Supreme Court declared as early as 1873, "nowhere justifies taking property for a private use." *Olcott v. The Supervisors*, 83 U.S. 678, 694 (1872).

A second line of decisions, however, has gradually diminished the significance of the public use limitation. After the War of 1812 Americans turned much of their attention to promoting economic development. Inevitably there was a trade-off to be made between existing property rights and the need for technological innovation, and the eminent domain power was often at the heart of the conflict. The widely shared dream of a national market could be realized only with improved internal transportation. Accordingly, state legislatures commonly granted canal, turnpike, and railroad companies the authority to exercise eminent domain. This delegation in turn compelled courts to give systematic attention to the taking of property for government-sponsored projects.

The history of railroading is particularly instructive. State and federal courts in the antebellum era repeatedly sustained acts empowering railroads to appropriate private property. Rejecting arguments that property was being taken for private gain, they reasoned that railroad companies were carrying out the public purpose of improving transportation. The railroad eminent domain cases established two propositions: (1) that public use was not synonymous with public ownership and (2) that legislators were free to decide whether private enterprise might be a better vehicle than governmental agencies to effectuate the public interest. In other words, the question of public use turns upon the objects to be accomplished rather than the instrument employed to attain them.

Railroads were readily analogized to highways, which obviously represented public use. Moreover, railroads were regarded as common carriers and were therefore obligated to transport persons and goods upon payment of the appropriate charges. Even if the public use requirement meant that the property had to be actually used by the public, appropriation of land by railroads arguably could meet the test. After all, the public could use rail services.

In sustaining the exercise of eminent domain by railroads, however, courts began to conflate public use with the more expansive concept of public interest or public benefit. For example, a New York court explained in 1831 that the power of eminent domain could be utilized "whenever the public interest requires it." *Beekman v. Saratoga & Schenectady R.R. Co.*, 3 Paige's Ch. 45, 71 (N.Y. Ch. 1831). The court added that it was the province of the legislature to determine whether the benefit to the public warranted taking private property.

Thomas M. Cooley, in his classic *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of The American Union* (1868), recognized the contested nature of the public use norm. "There is still room," he observed, "for much difference of opinion as to what is public use." Id. at 531–32. Cooley urged a strict interpretation of public use. He asserted that public use implied possession by the public and that "there could be no protection whatever to private property, if the right of the government to seize and appropriate it could exist for any other use." Id. at 531. According to Cooley, even the fact that land might be better employed to advance the public interest by being put to a different use than that favored by its current owner would not justify invoking eminent domain. Id. at 532–33. Yet courts generally did not accept Cooley's narrow definition of public use.

Emerging New Deal jurisprudence downplayed economic rights and strengthened the regulatory authority of government.

Early takings of private land were primarily related to improved transportation. By the end of the nineteenth century reliance on eminent domain accelerated. State legislatures delegated eminent domain power to utility companies and quasi-public agencies such as irrigation and drainage districts. In a number of states mill acts were expanded to authorize the erection of dams and the overflow of adjacent land to improve water power for manufacturing purposes. In *Head v. Amoskeag Mfg. Co.*, 113 U.S. 9 (1885), the Supreme Court evaded a direct holding as to whether such a taking was for a public use, but ruled that the mill act did not deprive the owners of property without due process. Congress also took a more active role in the acquisition of private land. In 1896 the Supreme Court upheld congressional legislation authorizing condemnation of the Gettysburg battleground as a park. Three years later the Supreme Judicial Court of Massachusetts stated: "The uses which should be deemed public . . . are being enlarged and extended with the progress of the people in education and refinement." *Attorney General v. Williams*, 55 N.E. 77, 78 (Mass. 1899). Commentators also recognized the evolving nature of public use. "No branch of constitutional law," Philip Nichols observed in 1909, "has felt the effect of the mechanical and industrial progress of the last hundred years more than that relating to eminent domain." 1 PHILIP NICHOLS, THE LAW OF EMINENT DOMAIN 134–35 (2d ed. 1917).

The Judicial Perspective

During the chief justiceship of Melville W. Fuller (1888–1910) the Supreme Court first came to grips in a sustained way with the takings question. The Fuller Court gained a deserved reputation as a champion of

property rights and tended to strengthen the protection afforded property owners under the Takings Clause. Strikingly, however, the Fuller Court was reluctant to treat the public use requirement as a significant restraint on the exercise of eminent domain. It upheld the use of eminent domain even when the taking was largely for private advantage and only incidentally for public benefit. Two examples are especially revealing. In *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112 (1896), the Justices heard a challenge to California's irrigation laws on grounds that the water to be procured was not for a public use but aided only certain landowners. Rejecting this argument, the Court majority embraced a generous definition of what makes up a public use: "It is not essential that the entire community, or even any considerable portion thereof, should directly enjoy or participate in an improvement in order to constitute a public use." Id. at 161–62. In reaching this conclusion, the Court stressed that a vast acreage of land would be left arid and worthless unless irrigation was regarded as a public use.

The Fuller Court also sustained the exercise of eminent domain by private individuals when it was deemed necessary for economic development. Many states in the Rocky Mountain region conferred the power of eminent domain upon private persons to obtain rights of way across the land of others for mining or irrigation. This practice passed constitutional muster in *Clark v. Nash*, 198 U.S. 361 (1905), which involved an action by an individual under Utah law to condemn a right of way through land of another for the purpose of irrigation. Recognizing the unique water problems of the arid and mountainous states, the Court ruled that "the use is a public one, although the taking of the right-of-way is for the purpose simply of thereby obtaining the water for an individual." Id. at 369–70. The Court was apparently persuaded that the private property was being taken to create some overall resource benefit for public advantage and not solely for the advantage of another individual. But such an analysis might be understood to legitimate any private takeover of property. Accordingly, the Justices cautioned: "[W]e do not desire to be understood by this decision as approving of the broad proposition that private property may be taken in all cases where the taking may promote the public interest and tend to develop the natural resources of the state." Id. at 369.

Even as the Supreme Court gingerly expanded its reading of public use, one leading authority tried to cabin the taking of private property. John Lewis, in the 1909 edition of his treatise on eminent domain, insisted that the phrase *public use* was intended to restrict the power to take property, and that the definition of public use was a matter for the courts. But Lewis recognized that the words had been given two quite distinct interpretations: (1) that the public, or some portion thereof, must be entitled to use the property taken or (2) that whatever is productive of public advantage justifies the appropriation of property. Lewis was inclined toward the more restrictive construction, reasoning that it accorded with both the common understanding of the words and the purposes for which the property was taken when the federal and first state constitutions were framed. He asked rhetorically: "if the constitution means that private property may be taken for any purpose of public benefit and utility, what limit is there to the power of the legislature?" 1 JOHN LEWIS, A TREATISE ON THE LAW OF EMINENT DOMAIN IN THE UNITED STATES 508 (3d ed. 1909). Lewis expressed concern that such an open-ended standard provided no guidance and threatened the security of private property.

Lewis, however, was rowing against the tide. In short order the Supreme Court explicitly declined to confine the concept of public use to situations in which the public could make actual use of the property taken. Most state courts took a similar path. Not surprisingly, the equation of public use with some asserted public interest opened the way to wider use of eminent domain. Although, as we have seen, courts had long permitted some leeway in applying the public use requirement, the concept of public use steadily lost meaning after the 1930s. This process was part of a larger jurisprudential shift. Emerging New Deal jurisprudence downplayed economic rights and strengthened the regulatory authority of government. Upholding an enlarged scope of eminent domain was part and parcel of the move to affirm governmental power over economic life. A weakened Public Use Clause, therefore, simply reflected the diminished constitutional rights of property owners generally.

The full implications of these developments became apparent in the second half of the twentieth century. In *Berman v. Parker*, 348 U.S. 26 (1954), the Supreme Court upheld the taking of land from one owner for transfer to a private development agency as part of a comprehensive urban renewal plan. The Court then unhelpfully likened the scope of eminent domain to the police power. This observation seemingly confused the extent of regulatory authority with the eminent domain power and has bedeviled analysis of the public use limitation ever since. Stressing judicial restraint, the *Berman* Court declared: "The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one." Id. at 32. Similar themes found expression in *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229 (1984). There the Supreme Court sustained the transfer of fee simple title from a landowner to tenants to alleviate the perceived evil of concentrated land ownership. Rejecting the contention that such a scheme simply amounted to the taking of one person's property for the private benefit of another, the Court was once again highly deferential to a legislative determination of the public purpose justifying eminent domain.

Although state courts were somewhat more inclined to scrutinize the exercise of eminent domain, they largely followed the Supreme Court's permissive path. The Supreme Court of Michigan ignited a firestorm in *Poletown Neighborhood Council v.*

Detroit, 304 N.W.2d 455 (Mich. 1981), when it validated the condemnation of a neighborhood to facilitate construction of a new General Motors plant. The alleged public use was to save jobs and to enhance tax revenue in the Detroit community. To many observers of differing political viewpoints, the *Poletown* case was a poster child for excessive condemnation. In reverse Robin Hood style, it appeared that eminent domain was being used to displace modest homeowners in favor of a powerful corporation. Yet in a sense such criticism was misplaced. *Poletown* was just the logical result of a line of decisions that put virtually no limit on the taking of private property. There is not much solace in this record for those hoping to revitalize the Public Use Clause as a meaningful constraint on the "despotic power" of eminent domain.

Still, there is some recent indication that lower federal and state courts are more willing to review the use of eminent domain to make certain that property is not being taken primarily for private benefit. In 2001 a federal district court in California declared unconstitutional an attempt to condemn property occupied by a discount store to make room for an expansion of a large Costco retail operation. Finding that the public use rationale was just a pretext, the court concluded that the proposed taking was a naked effort to transfer private property from one person to another. *99 Cents Only Stores v. Lancaster Dev. Agency*, 237 F. Supp. 2d 1123, 1129–30 (C.D. Cal. 2001). Similarly, the Supreme Court of Illinois struck down an exercise of eminent domain to acquire the land of a metal recycling center for subsequent conveyance to a privately owned racetrack for expanded parking facilities. *Southwestern Ill. Dev. Auth. v. National City Envtl., LLC*, 768 N.E.2d 1 (Ill. 2002). Emphasizing that the right to condemn property was confined to takings for public use, the court pointed out that to constitute public use there must be something more than incidental public benefit. The court ruled that the taking was intended to further purely private purposes. Significantly, the court also lectured: "The power of eminent domain is to be exercised with restraint, not abandon." Id. at 11. It is, of course, far too soon to determine if these and other similar decisions mark a turning point in the interpretation of public use or if they are merely aberrations based on particular factual circumstances. Although this renewed interest in the public use limitation is a welcome development, there does not appear to be any unifying principle explaining when eminent domain is illegitimate.

Finding the Proper Balance

Obviously the concept of public use has evolved over time, reflecting economic and technological changes and an increased role for government in American life generally. The public use limitation cannot be reduced to a set formula, and views about what use satisfies the requirement are bound to vary. But this is not an excuse for judicial abdication. Courts should weigh the rights of individuals to enjoy their property with the asserted need for the exercise of eminent domain.

A degree of judicial deference to legislative determinations about what constitutes public use is surely appropriate.

The eminent domain power can be tempered to afford greater protection to individual property owners without unduly hampering the ability of government to appropriate property to serve legitimate public interests. To that end, the following propositions are offered to guide construction of the public use limitation.

1. Anglo-American constitutionalism has long stressed the crucial importance of private property. In the mind of the framers respect for property rights was closely linked to the preservation of individual liberty. The Constitution and Bill of Rights were written in large part to strengthen the protection of property rights. The public use language of the Takings Clause should be read in light of this broad commitment to private ownership.
2. At the same time, nothing in the Constitution or Bill of Rights renders property inviolate under any circumstances. Subject to the public use and just compensation requirements, government is free to appropriate property.
3. In the last analysis the question of what constitutes public use is a matter for the judiciary. This has long been the rule, even if in practice it has been drained of much substance. We are dealing with a constitutional standard that is an integral part of the Bill of Rights.
4. A degree of judicial deference to legislative determinations about what constitutes public use is surely appropriate. There is a wide diversity of local conditions and needs across the United States. As the Supreme Court explained in 1896: "what is a public use frequently and largely depends upon the facts and circumstances surrounding the particular subject-matter in regard to which the character of the use is questioned." *Fallbrook Irrigation Dist.*, 164 U.S. at 159–60. It follows that lawmakers must have some discretion in deciding when and for what purpose it is necessary to take property.
5. The fact that eminent domain has been delegated to a private entity, such as a railroad or a utility, or the fact that property is taken for transfer to private parties is not determinative of public use. The inquiry should be

directed to the use to which the subject property will be put, not to the means employed to serve the public interest. In other words, lawmakers are free to decide if a private enterprise can best achieve the public use.

6. Judicial deference, however, should not mean supine surrender to any legislative determination regarding the condemnation of property. Such an attitude is not faithful to the constitutional limit on eminent domain and opens the door for property to be taken for any purpose those with political influence may desire. The very purpose of the Bill of Rights was to safeguard individual rights, including property ownership, from majority control.
7. Government should not be able to compel persons to give up their constitutional right to own a particular property without a compelling justification. In reviewing challenges to the taking of property, therefore, courts should place the burden on the condemnor to make a convincing case for the acquisition. A helpful model would be the Supreme Court's decision in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), in which the Court insisted that a city must demonstrate that exactions imposed on the grant of a building permit relate to the proposed development. Further support for a shift in the burden of proof can be found in the land use field. Some courts have reversed the presumption of constitutionality for a range of local land use controls and required regulators to demonstrate a sufficient reason for their actions. In the same vein, a condemnor should be expected to establish that the public at large will be benefited by the exercise of eminent domain and that less intrusive means of acquiring property are not availing. Generalized statements as to the necessity for a taking, sometimes veering toward mere speculation, should not be regarded as adequate. As Justice Antonin Scalia has pointed out, the Fifth Amendment's "Property Clause" is "more than a pleading requirement" and compliance with it requires "more than an exercise in cleverness and imagination." *Nollan* v. *California Coastal Comm'n*, 483 U.S. 825, 841 (1987).

As a corollary to the seventh proposition, courts should look with particular care at situations in which condemnation is used to benefit specific private interests. Here it would be appropriate for courts to examine the taking with heightened scrutiny to ensure that the public interest is predominant. The fact that a condemnation will be beneficial for a private entity does not *ipso facto* constitute a public use.

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This proposal to shift the burden of proof represents a sea change from the currently prevailing rule. In most jurisdictions the taking is presumed to be for a public use. It is incumbent upon the property owner to show that the taking was improper. This permissive attitude has encouraged condemning agencies to believe that they could take property for pretty much any reason. Reversing the burden of proof could change this.

No doubt this proposal to shift the burden of proof would increase work for the condemnor. It would necessitate a careful study of the proposed taking and the formulation of a plan to justify any particular condemnation. It would cool enthusiasm for dubious uses of eminent domain. It might also make it more difficult for officials to use quick-take procedures whereby title is acquired before legal issues are resolved. In particular, the proposal would prevent the condemnor from acting primarily as an agent—as a "default broker of land" in the words of the Illinois Supreme Court, *Southwestern Ill. Dev.*, 768 N.E. 2d at 10—for a private developer who seeks to avoid transactions in the open real estate market. Moreover, the proposal largely avoids the vexing problem of defining public use, allowing lawmakers reasonably broad latitude in which they can demonstrate that a proposed taking of private property primarily benefits the public. This avenue seems most promising for curbing use of the "despotic power." It gives greater protection to property owners without placing government in a straightjacket.

Is this proposal a magic bullet? Of course not. It addresses the problem in an indirect way. Indeed, one could argue that reliance on presumptions has been a source of confusion in constitutional jurisprudence generally and that presumptions are often used to avoid tackling substantive questions. At root the problem is that differences over the appropriate use of eminent domain cannot be easily resolved. Despite these limitations, the proposal should restore some meaning to the public use limitation and strike a better balance between individual property owners and the perceived needs of the community.

Conclusion

The public use requirement raises fundamental issues that go to the heart of American constitutionalism. What is the place of property rights in the constitutional order? How should we balance the demand for economic growth with the security of private property? Who should ultimately resolve these matters—legislators or judges? In answering these questions, we should be mindful of Justice Oliver Wendell Holmes's admonition that the desire to achieve public goods does not justify constitutional shortcuts. Perhaps then we can tame the "despotic power." ■