
Keith and the Good City

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Keith Aoki was one of those rare people whose energy — inclusive, curious, and above all positive — filled the room as soon as he entered it. That same energy runs through the article he wrote that made the sharpest impression on me: *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification* (“*Race, Space, and Place*”).¹ The article is an intellectual history of urban planning in the United States. It focuses on how architectural visions of the “good” city shaped our environment over the last hundred-plus years. It uses this lens to treat as similar the two most conspicuous phases of urban revitalization in the last half century — urban renewal and gentrification. This approach is surprising because gentrification is, in key respects, so different from urban renewal. But Keith emphasizes what they share in common. By doing so, he manages to flip (or at least recast) the way that the post-urban renewal story of urban revitalization is usually told. As a way of honoring Keith’s work, I want to use these pages to highlight his insight and to suggest how it illuminates a key constitutional decision — the Supreme Court’s ruling on eminent domain in *Kelo v. City of New London*.²

Let’s begin with urban renewal. It would be an understatement to say that urban renewal has a bad name. That is not because urban renewal failed to get anything done; urban renewal was wildly successful in certain respects. Those who lament living in a time of governmental gridlock should be nostalgic for urban renewal. Whole city neighborhoods were razed and refashioned within single mayoral

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¹ Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699, 699-701 (1993).

² 545 U.S. 469, 472-73 (2005).

terms. Longstanding communities were relocated with shocking speed. New “downtowns” suddenly emerged. Public officials completed a host of the kind of large infrastructure projects that now seem beyond reach. New highway arteries were sited and built with amazing efficiency — even if (and sometimes precisely because) they ripped through the heart of the city. Urban renewal was a period of tremendous public-directed construction.³

The logic behind urban renewal was simple. Inspired by the high modernist architectural vision, urban planners took aim at a city of the past. It needed to be wiped away. The existing urban landscape was diseased, blighted, and dangerous. Its time had come and gone. What was needed was a world made new. There was a decidedly utopian cast to the whole project. Dramatic, shocking change was demanded. The city of the future could be created only if the city of the past could be condemned.⁴

The fact that rapid, sweeping change occurred during urban renewal is now recognized as the problem. Urban renewal worked because urban democracy was on the wane. That is part of what makes this period so tragic. The city is supposedly a unique site for democracy. Other levels of government are more remote and less diverse. They cannot provide the opportunities for democratic exercise that cities can. This is why Frederick Howe long ago called the city the hope of democracy.⁵ And yet, thanks to urban renewal, the city came to be seen as a unique location for the swift and decisive exercise of unaccountable public power, with all the predictably negative and unjust consequences that unchecked public authority begets.

On one standard account, cities were not democratic agents during urban renewal. Instead, they were the staging ground for a peculiarly stark kind of crony capitalism. Powerful interests captured city hall and remade the urban environment for their own gain, even as they touted their desire to serve the public interest.⁶ Or, on another view, cities became home to a kind of urban authoritarianism. Robert Moses, not Harold Washington, was the symbolic city leader of this era.⁷ It

³ Aoki, *supra* note 1, at 765-72; David J. Barron, *The Community Economic Development Movement: A Metropolitan Perspective*, 56 STAN. L. REV. 701, 706-09 (2003).

⁴ JAMES C. SCOTT, SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED 103-46 (1998); Aoki, *supra* note 1, at 775-81.

⁵ FREDERIC CLEMSON HOWE, THE CITY, THE HOPE OF DEMOCRACY 300-04 (1905).

⁶ BERNARD J. FRIEDEN & LNEE B. SAGALYN, DOWNTOWN INC.: HOW AMERICA REBUILDS CITIES 22-54, 156-61 (1989); JOHN R. LOGAN & KARVEY L. MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 167-69, 175 (1987).

⁷ See ROBERT A. CARO, THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW

was the development bureaucracy, not neighborhood democracy, which controlled the city. Either way, the slashing central artery, rising from the condemned land where affordable apartments and stable low-income communities once stood, became urban renewal's lasting monument.

Urban renewal did not live up to its promise. In spite of — and some would say because of — relentless efforts to remake cities relevant for the metropolitan future, the city sealed its own destruction. Urban center after urban center hollowed out following the most intensive efforts at renewal. For every new highway that shot through the city center to ensure the city's continued relevance, a dozen or so suburban developments sprung up on the other end. Urban renewal did less to save the central city than to make it easier for a new generation of metropolitan residents to settle on the urban fringe. Cities lost huge proportions of their population in these decades. In short, urban renewal was a period of unusually concerted governmental action to plan for the future and to save urbanism by doing so. Yet, it failed miserably, inflicting a great deal of harm on a great number of people — often people who were the least positioned to resist.⁸

Against this background, the gentrification of urban areas from the late 1980s through the 1990s was a striking development. Gentrification seemed to bring about the kind of “renewal” that urban renewal itself failed to deliver. Gentrification did so, moreover, through a process that, at least upon first glance, looks dramatically different from urban renewal.

As we have seen, urban renewal was a government-driven process through and through. City, state and federal bureaucracies engineered the change. They coordinated to generate the public financing that made it possible to use the power of eminent domain, in concert with private developers, to reconfigure the urban landscape. Urban renewal relied upon the concerted exercise of public power to drive people out of their homes even though they could have afforded to stay under prevailing market conditions. It did so under a plan for the future that aimed to free the city from the grip of the blighted past that was holding it back.

Gentrification, by contrast, is often portrayed, as a much more organic phenomenon. Individual private actors came to revalue and invest in long-forgotten urban spaces. To be sure, gentrification also resulted in the displacement of long-term residents. But they left not

YORK 18-20 (1975).

⁸ See Aoki, *supra* note 1, at 765-72; Barron, *supra* note 3, at 706-09.

because the government ordered them out but because they could not afford to remain in place. Gentrification's displacing force, in other words, is often presented as if it were a byproduct of private "choice," rather than public compulsion. In that respect, gentrification seems like a process that happened in spite of the government and not because of it. It was not a plan. It was what happened when planning stopped.⁹

There is another way in which the phenomena of gentrification and urban renewal differ, and it has to do with the politics of development and the way those politics challenged the high modernist urban vision on which urban renewal rested. During urban renewal's heyday, affected communities lacked access to the kind of decision making power that would have permitted them to wage a sustained political campaign against the government directed redevelopment process. In fact, that process was often led by government agencies that stood at a remove from direct popular control. Gentrification, by contrast, followed Jane Jacobs's now famous critique of the type of redevelopment associated with urban renewal.¹⁰ That critique took on the high modernist conception of the good city and gave rise to an upsurge in neighborhood organizing efforts to "preserve" the city that urban renewal — and the high modernists — intentionally sought to raze.

Thus, while urban renewal relied on the view that the city had to be remade, even if current residents disagreed, gentrification arose out of the success of a political effort to reclaim the city of the past and to preserve it. The preservationist movement's rallying cry was out with the new and in with the old — the exposed brick wall, the beaux arts façade, the row house. Anything that smacked of an urban past that the contemporary, sanitized, and suburbanized world had bypassed suddenly possessed "value." Gentrification revitalized the city while seeming to honor this revaluing of the city of old. It did not depend on an urban vision that was utopian in outlook, or futurist in orientation.

But if it is easy to see how urban renewal differed from gentrification, there are also ways in which the two phenomena were similar. Like urban renewal, gentrification was, in important respects, not really a means of preserving the past.¹¹ The repurposing of the old inevitably makes it new. The Jacobs critique may have saved the city of old, but only long enough to make it ripe for gentrification.

⁹ Aoki, *supra* note 1, at 814-15.

¹⁰ See generally JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1992) (presenting Jane Jacobs's critique of the redevelopment that is associated with urban renewal).

¹¹ *Id.*

Gentrification, then, like urban renewal, was not at root a preservationist movement. It, too, aimed at transforming the city. And, indeed, high modernist impulses could be combined with the Jacobs critique quite easily. The South Street Seaport and Quincy Market are testaments to the way that the organic developmental vision Jacobs championed could be refashioned to facilitate redevelopment. Such redevelopment projects mimicked the neighborhoods of the past, but in the end they, too, created out of whole cloth a new place of contemporary commerce.¹²

One can see, then, how, for all their differences, it would be quite possible to describe gentrification and urban renewal as if they were similar phenomena. One would need only to emphasize the displacement of low-income residents that each phenomenon brought about. And one could add that, in each process, predictably powerful interests won and poor and minority communities lost, with the result that old communities were transformed into newly useable ones.

Interestingly, though, Keith did not describe the relationship between urban renewal and gentrification in this way. His decision not to do so is what makes his history of the intellectual roots of these two phenomena so provocative. If Keith had focused only on these similarities between urban renewal and gentrification, his article would have inevitably suggested that urban planning is a futile activity. His narrative would have indicated that demographics, economics, and even politics operate at a scale well beyond the city limits and thus that city planning is not only hopeless, but self-defeating. On such an account, it might seem as if cities would be wise to leave well enough alone and to wait for the gentry — if they will come. After all, what other alternative could there be? Whether the city plans (urban renewal) or simply lets the market work its magic (gentrification), the city is in the end dependent upon developers and purchasers with the wealth to remake the city. And those actors will either choose to remake it or they won't, no matter how much the city plans.

Keith, however, was too optimistic to tell such a story. Instead, he emphasized a different way in which urban renewal and gentrification were similar phenomena. Keith suggested that both urban renewal and gentrification arose from self-consciously developed intellectual visions of the good city. He acknowledges that each of these urban visions was being fashioned in conjunction with economic and political developments at the time. But he contends that they also

¹² M. Christine Boyer, *Cities for Sale: Merchandising History at South Street Seaport*, in *VARIATIONS ON A THEME PARK 3*, 181-204 (Michael Sorkin ed., 1992).

represented well reticulated frames to guide human action that were rooted in distinctive intellectual visions of the urban.

Urban renewal reflected a high modernist conception of the good city. Gentrification reflected a post-modern one. But for that very reason, Keith suggested gentrification was “planned” in much the way that urban renewal was. Larger ideas and notions of the good city were being “produced” during both eras, he reminds us, resulting in certain (albeit distinct) notions of city development that were then expressed in the specific forms that first, urban renewal and then, gentrification took. Desires for certain kinds of urban space were not simply revealed, but produced, as Keith’s article helps us see.¹³

In this way, Keith’s account challenges the public/private–planned/unplanned divide that might seem to underlie the shift from urban renewal to gentrification. To see the point, consider how gentrification was itself a consequence of public action consciously aimed at producing a certain kind of city. As we saw, urban renewal came to an end in part because of democratic opposition. But telling the story this way — that Jacobs and her followers stopped the government from acting — is misleading. That way of telling the story leaves out what kind of city that Jacobs and her supporters sought. They did more than stop the government in its tracks. They helped change the kind of actions the city took by helping to change views about what was valuable about a city.

“Eyes on the street.” Density. Community. Diversity of types. Mixed uses. Respect for the organic and emergent properties of urban neighborhoods. These criteria became the new standards for evaluating developments, and they did more than set forth a case for the government letting the development market work freely. These criteria became the watchwords that spurred the city to take new actions that would not only protect but also promote a certain kind of urban vision.

Where the high modernists used eminent domain to take a “blighted” property, their opponents fought for historic preservation laws to protect an “old” one. This rethinking of the urban future occurred, as Keith showed, within an intellectual context in which the post-modern sensibility in urban architecture was making the high modernist aesthetic seem remarkably dated. Gentrification, then, was every bit an intellectual planning project as its opposite had been. It could even be a public one that could mimic the means and methods of urban renewal itself. As I have already suggested, even large-scale

¹³ Aoki, *supra* note 1, at 818-29.

public projects that required the exercise of public power could be reformulated to incorporate aspects of the post-modern urbanist vision. These projects would even win support to the extent they did so. Perhaps the new demolitions would need to be justified in service of new developments that looked different from Government Center in Boston, with its windswept plaza and concrete edifices. Perhaps they would need to gesture towards the marketplaces of old, with cobblestone streets and small proprietors (candy stores, food courts, boutiques) inhabiting repurposed buildings that once sold staples.¹⁴ But precisely for that reason, they would be the product of conscious, planned action, and not the byproduct of the invisible hand at work.

In short, Keith's history suggests that there is no escape from planning. There are only choices to be made about how best to do it, and those choices can matter a great deal when it comes to the kind of city that one wants to help build. In that respect, Keith's intellectual history is a plea for planners to be attentive to the kind of social world their plans will create, and it is a plea to citizens to recognize the planning that even their critiques of planning may facilitate.

And that brings us to *Kelo*.¹⁵

Keith's analysis provides a helpful lens for re-examining that case, which is one of the more famous — and for many, infamous — constitutional cases in the history of local government law. With Keith's help, we can now see that *Kelo* concerned more than a debate about the limits of governmental planning power. It also concerned a debate about whether a legal tool developed to facilitate urban renewal's high modernist conception of the city could be used to serve the post-modern form of urbanism that undergirded gentrification.

At the time the Court decided *Kelo*, there was already a precedent that seemed to authorize the use of eminent domain at issue in New London, Connecticut. The case was *Berman v. Parker*.¹⁶ In quite sweeping terms, the Supreme Court had held, in the midst of urban renewal, that the constitutional requirement that a "taking" be for a "public use" did not prevent the government from appropriating private land for future private development. The Court explained in that case that "public use" meant "public purpose."¹⁷ On that basis, *Berman* upheld a large-scale exercise of the eminent domain power to

¹⁴ Aoki, *supra* note 1, at 791-97; M. Christine Boyer, *Cities for Sale: Merchandising History at South Street Seaport*, in VARIATIONS ON A THEME PARK, *supra* note 13 at 3, 181-84, 200-01, 204.

¹⁵ *Kelo v. City of New London*, 545 U.S. 469, 469 (2005).

¹⁶ *Berman v. Parker*, 348 U.S. 26, 32-34 (1954).

¹⁷ *Id.*

literally pave the way for a classic, high modernist urban renewal project in southwest Washington, D.C. The city would look entirely new — ordered, legible, and futuristic. This project would visibly demonstrate that the past had been overcome.

Berman had survived for decades without provoking much of a backlash. But in retrospect, the Court's decision to frame the issue in terms consistent with the high modernist vision that predominated at the time may explain the absence of criticism. At the time *Berman* was decided, there was a widely shared sense that redevelopment was necessary because the existing urban environment needed to be erased. Consistent with this logic, the critical legal trigger for the exercise of eminent domain was the concept of blight. The government used eminent domain to remove blight. Once the blighted city had been razed, the government had accomplished its purpose. In such a conception of the situation, the government was not transferring property from one private party to another when it used eminent domain to demolish existing structures and literally pave the way for new private development on that site. Instead, the government was performing a public act by enabling the city to start over — to erase its blighted past so that new people could come onto the scene and build the city of the future. To be sure, that new development would likely be carried out by private parties. But within the planning logic of urban renewal, on which *Berman* rested, the city was not transferring property from party A to party B so much as it was shifting it from the past to the future. The city was eradicating a problem. The logic of high modernism, in other words, obscured the notion of a direct transfer from the public to the private sector. The notion that the government was simply transferring property from one private party to another in order to improve the land's value — the kind of transfer that seems hardest to square with the logic of the "public use" constraint in the first place — was overwhelmed by the notion that the city was stamping out an evil that had been done to the land and starting over by returning the land to its natural state.

Now that the high modernist vision has faded from view, in part due to the attack on it so effectively waged by Jacobs and others, *Berman's* logic no longer seems so clear. The notion that "blight" might just be a proxy for "improvement" as perceived by some private speculators, working hand in glove with those in city hall (or worse, with some unaccountable development authority, established to be immune to democratic control), is hard to dismiss. Consequently, a claim of blight does not resonate as it once did. Nor is "blight" any longer really thought to be the only problem, or even the real problem, that a city wants to address. The problem is rather economic stagnation and

the steady decline in economic prospects within urban centers. The solution is growth and development through reinvigoration of private market development — in short, gentrification. Or, at least it has been the solution, as Keith showed in his article, since at least the 1980s.

Not surprisingly, then, in *Kelo*, the New London Development Corporation (“NLDC”) did not speak in terms of blight in defending its planned expropriation. The area targeted was economically distressed, but that did not mean that it was a blight upon the city. Indeed, virtually the whole city could have been classified as economically distressed. In accord with Keith’s observations about shifts in planning visions over time, the NLDC eschewed the rhetoric of high modernist planning theory and with it the logic of urban renewal. Instead, it focused on the need to kick start gentrification.

Consider, in this regard, the centerpiece of the redevelopment project the NLDC championed. The plan was to build a park around a Coast Guard Museum. The development would, in this way, in fine post-modern fashion, pay homage to the military installation that had once occupied the site, as well as the city’s coastal history more generally. But, of course, the plan’s return to history was intended to serve a broader economic goal. The NLDC was not preserving the past for its own sake, as, say, the government does when it condemns private property to transform a former battlefield into a national historic site. The NLDC sought to repurpose the site to create a space that would attract private development. An old part of the city would be rendered newly attractive, both to wealthier residents and tourists, as well as private employers chasing an elusive creative class. The city was not seeking to stamp out a dangerous blight on its landscape. There was no argument that the existing urban landscape was in need of erasure. Rather, the logic of the taking was distinct. A portion of the city had been lost or forgotten. That portion of the city was not realizing its full potential as a place of economic value. It needed to be enlivened. It could then be gentrified, in accord with the workings of the private market. In that way, an economically distressed community could enjoy greater prosperity.

With the intellectual planning context of *Kelo* so understood, it is hardly surprising that the NLDC claimed to have no pre-existing commitments as to what exactly would replace the modest, unblighted homes that would be taken in the plots surrounding the museum and parkland. In fact, the NLDC presented the lack of any such commitments as a constitutional virtue. And so did the Court.¹⁸

¹⁸ *Kelo v. City of New London*, 545 U.S. 469, 484-88 (2005).

Precisely because there was no public/private development deal already in place, the government could claim it was not in cahoots with speculators, secretly instantiating some pre-cooked utopian vision of the urban future. This was not urban renewal all over again. It was merely a case of the government facilitating the gentrification process. Some critics contested that claim. After all, the development authority had been in discussion with a major pharmaceutical company and was planning a hotel and conference center. But let us grant that the NLDC had no advance idea of just how the private development would play out. The NLDC approach to eminent domain still raises difficult questions. With the high modernist vision delegitimized, how can a governmental taking aimed simply at inducing gentrification be anything other than the redistribution of property from one set of private actors — current residents — to some new favored class — the gentrifiers? And if eminent domain is only a transfer, than how can it be said to serve a public rather than a private purpose?

The Court was aware of these concerns in deciding *Kelo*. The Court tried to contain the logic of public use as public purpose to guard against the idea that all government-sanctioned forced transfers of property are lawful so long as those forced to give up their land are justly compensated. The decision suggests that a simple transfer of property from one low valued property to another higher valued one is not itself a public purpose. In a crucial footnote, the Court cited to a case suggesting that one low value drug store cannot simply be condemned so that the property may then be sold to a more prominent chain¹⁹ — an implicit answer to the dissent's contention that the majority has authorized every Motel 6 to be condemned and handed over to the Ritz Corporation.²⁰

Further, the Court suggested that the New London taking was “public” because it was carried out in the context of an overall land use plan; it was not a one-off trade in which the extraction of greater economic value was the sole urban goal.²¹ Implicitly, the Court suggested that unplanned improvement is to be left to the private market. The government cannot intervene to make gentrification happen at the expense of an existing property owner, unless it is expropriating that property as part of a broader land use plan for the city.

But, important as *Kelo's* limits may be, we are still left with questions. Taking only the facts of *Kelo* itself, once the high modernist

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*; see also *id.* at 490 (Kennedy, J., concurring).

vision has been rejected, what is the plan that can make a forced property transfer sufficiently public? Without a theory of the good city beyond economic development to support the governmental action, there seems to be no logic to explain why the taking of these homes fulfills a legitimate public objective. After all, no urban vision explains how the existing homes are harming the city or how the planned private development is anything other than just that — private development. Further, the more the public purpose test remains unmoored from the high modernist logic that undergirded the foundational precedent in *Berman*, the more the test seems to be just a means of facilitating gentrification. The test for that reason becomes vulnerable to the critique that the only public purpose that could legitimate the taking is the desire to permit wealthier investors to take what they cannot buy. And yet if economic improvement alone is the public purpose, what limits are there on compensated forced transfers that take from the middle-class and give to the wealthy?

For all of these reasons, I expect Keith would have found little to celebrate in the NLDC's anti-plan plan. But I also doubt that Keith would have found comfort in either of the dissenting positions. He would not agree with Justice O'Connor's suggestion that urban renewal projects are constitutional, while uses of eminent domain that reject the logic of high modernism are not. Keith's key point, after all, was that the high modernist vision of the city was only one vision of a public plan, and that opponents of that vision need not place their faith in the operation of the "private" development market. They could plan as well. Yet, Justice O'Connor in her dissent seemed to be limiting the "public purpose" justification *Berman* recognized to only those takings aimed at promoting private development that sought to eradicate blight.²² Nor do I think Keith's article invites us to embrace Justice Thomas's more stark call for a rejection of the "public purpose" reading of the takings clause altogether. Justice Thomas's approach would suggest that the city could act only in ways that seem antithetical to the more organic, post-modern form of development that came in urban renewal's wake. And yet, Keith plainly saw a role for public planning, aided by the power of eminent domain, in bringing about the post-modern city. The key was to make that exercise in anti-urban renewal-style planning a self-conscious and democratic effort to redefine the city's future.

Consider, in this regard, another exercise of eminent domain. Its lawfulness, like the exercise of eminent domain in *Kelo*, depends on a

²² *Id.* at 494 (O'Connor, J., dissenting).

rejection of the high modernist logic that permeates Justice O'Connor's dissent. This exercise of eminent domain's lawfulness also depends, as was true of the taking in *Kelo*, on rejecting the anti-planning instinct that runs through Justice Thomas's dissent. Yet this exercise of eminent domain is also a form of development that aims to check rather than to kick-start gentrification. It is one rooted in community participation, rather than bureaucratic decree. The example I have in mind is the exercise of eminent domain in the early 1980s by the Dudley Street Neighborhood Initiative.

In that example, a community development organization became frustrated with the sorry state of the surrounding urban landscape. Absentee landlords, arson, and the like had left Boston's Dudley Street neighborhood in a terrible state. Community activists involved in founding the Dudley Street community organization, however, had little use for the high modernists. In fact, when a foundation came to tout a plan for "renewal," they would have none of it. Their goal was to remake the city and to reclaim it for themselves. This goal required the exercise of public power, and eminent domain. It also involved the repurposing of current uses and the involvement of private investment. But it required a plan that would not simply open the city up for speculation. Instead, such a plan required a mix of public and private power that would bring about a particular vision of the Dudley Street community as a stable place, rooted in the lives of its residents and all their diversity, a place where people could improve their lives in place. In this respect, the Dudley street plan was a challenge to both urban renewal and gentrification.²³

How, then, to bring it about? The Dudley Street Neighborhood Initiative had learned enough from urban renewal to distrust the public redevelopment bureaucracy. The organization sought, and secured, a delegation of the city's eminent domain power to itself. This effort was, in that sense, a truly private exercise of public domain — more so, even then in *Kelo* itself. And yet, this effort also resulted in an exercise of eminent domain that promoted a particular public vision of the urban future. The initiative engaged in a consciously planned effort to remake the city, not simply to enhance its economic prospects. Most significantly, the initiative carried out this plan through the engagement of the community rather than its ouster.

I do not know if Keith would agree that the Dudley Street example represents the kind of public planning that his article contemplates.

²³ PETER MEDOFF & HOLLY SKLAR, *STREETS OF HOPE: THE FALL AND RISE OF AN URBAN NEIGHBORHOOD* 1, 17 (1999); WILLIAM E. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY* 1, 13 (2002).

There are certainly reasons to be concerned. Just what makes a private community group more representative — more democratic — than the elected government of the city? Aren't there dangers in fragmenting the city into ever smaller communities and entrusting them with such consequential planning authority? Isn't that a recipe for the kind of NIMBYism that advocates of a more diverse and inclusive city, like Keith, opposed?

These are questions I know Keith would have asked. I wish he were still around to answer them. But I doubt that Keith would have taken comfort in permitting the Supreme Court to arbitrate among competing visions of the good city on the hope that the Court would constitutionalize only his favored approach to development. Such choices, after all, are ones cities are supposed to make for themselves, and Keith very much believed in local self-governance. It would be odd to think of the Supreme Court as the planner in chief, and that is another lesson one can take from Keith's article. In the search for the "good" city, the people themselves must take the lead. Their failure to do so, Keith reminded us, no less than efforts to prevent them from doing so, rarely leads to its discovery.