

## CASE STUDY

### STATEGRAFT: FACILITATING PREDATORY TAKINGS BY EMINENT DOMAIN

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The concept of stategraft, as described in Professor Atuahene's groundbreaking article, frames a new theory of corruption centered on criminal and predacious state action involving the transfer of personal property by government actors to the State, through means that violate controlling laws and contravene individuals' human and civil rights.<sup>1</sup> While Professor Atuahene's article introduces the concept of stategraft in the context of inflated property tax assessments, the theory is alienable and it offers a frame for corrupt and criminal conduct by state actors that enriches public coffers by other means and in other contexts. The litigation in Peoplestown, a historically Black neighborhood in Atlanta, Georgia, illustrates the operation of stategraft through the exploitative use of eminent domain to facilitate gentrification of a vulnerable community of legacy residents, under the guise of engineering efforts that purportedly addressed area flooding.<sup>2</sup>

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1. Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U. L. REV. 1, 3 (2023).

2. *Atlanta v. Washington*, No. 2016-CV-282032, 2022 Ga. Super. LEXIS 4894 (Ga. Super. Ct. May 13, 2022). Cliff Albright, *Gentrification is Sweeping Through America. Here Are the People Fighting Back*, THE GUARDIAN (Nov. 10, 2017, 5:00 AM), <https://www.theguardian.com/us-news/2017/nov/10/atlanta-super-gentrification-eminent-domain> [https://perma.cc/5VTZ-PDC6]; Jaclynn Ashly, *The Black residents fighting Atlanta to stay in their homes*, ALJAZEERA (Nov. 30, 2020), <https://www.aljazeera.com/features/2020/11/30/atlanta-gentrification> [https://perma.cc/RV7B-96V4]; Cliff Albright, *Gentrification Comes to Atlanta's Last Working Class Neighborhood*, ATLANTA BLACK STAR (Nov. 10, 2017), <https://atlantablackstar.com/2017/11/10/gentrification-comes-atlantas-last-working-class-black-neighborhood/> [https://perma.cc/N3XW-85Q7]. Importantly, flooding in Peoplestown and surrounding neighborhoods in Atlanta is often attributed to over-development and poor maintenance of an overwhelmed and outdated stormwater sewage

In 2012, stormwater and raw sewage flooded several homes on a block in Peoplestown.<sup>3</sup> Recurrent flooding destroyed homes and personal property and nine affected families on a Peoplestown block of twenty-seven homes filed suit against the City of Atlanta. In settlement negotiations with these plaintiffs, the City made clear its intention to use eminent domain to take the entire block of homes, including the majority of homes that did not flood. The City successfully settled the cases with the plaintiffs and convinced other residents on the block, who were not parties to the lawsuit, to sell their homes to the City against the backdrop of the eminent domain threat. The City advanced persistent flooding as a justification for a project that would replace homes with Japanese-themed parks and ponds, complete with tree-lined walking paths, a waterfall, and an educational kiosk/gazebo.<sup>4</sup>

In 2016, the City of Atlanta filed four separate lawsuits against the Peoplestown residents who refused to sell their homes to the City, including the author of this article.<sup>5</sup> In the course of the litigation, which spanned six years, evidence surfaced that confirmed the City did not have engineering data to support its exercise of the extraordinary power of eminent domain.<sup>6</sup> A 2013 email authored by a former City of Atlanta engineer who was the project manager for the park and pond project informed, “Did you also inform Commissioner Macrina that the present modeling results do not validate the need for a retention pond in Peoplestown? The take away [sic] is that the City doesn’t have the

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system, the correction of which has been used to justify displacement of legacy residents of those communities. *Id.*

3. Sophia Choi, *City Meets With Peoplestown Residents to Solve Flooding Problem*, WSB-TV 2 ATLANTA (July 14, 2012, 12:12 PM), <https://www.wsbtv.com/news/local/city-meets-peoplestown-residents-solve-flooding-pr/242120611/> [<https://perma.cc/BDD7-MG8H>].

4. *Peoplestown Water Management Project Displaces Some Metro Atlanta Residents*, GEORGIA STATE SIGNAL (Oct. 21, 2015), <https://georgiastatesignal.com/peoplestown-water-management-project-displaces-some-metro-atlanta-residents/> [<https://perma.cc/T6AN-B8HQ>].

5. The City of Atlanta used the most draconian method of condemnation, the declaration of takings method. The City took legal title to the homes, removed the names of the residents from the deeds, and placed an amount representing the City’s assessment of the value of the homes in escrow with Fulton County Superior Court. GA. CODE ANN. § 32-3-6 (2023). This aggressive exercise of eminent domain is only appropriate when an exigency requires it; however, to date (eight years after the condemnation) the stormwater-vanity project the City advanced as justification for its actions has not even started.

6. *Peoplestown Residents Return to Court to Challenge City’s Use of Eminent Domain*, MICHIGAN CHRONICLE (Oct. 29, 2018), <https://michiganchronicle.com/peoplestown-residents-return-to-court-to-challenge-citys-use-of-eminent-domain/> [<https://perma.cc/LH9Y-JDHW>]; Nathalie Pozo, *Peoplestown Residents Fighting the City of Atlanta, Present New Evidence in Court*, FOX 5 ATLANTA (Aug. 25, 2017), <https://www.fox5atlanta.com/news/peoplestown-residents-fighting-the-city-of-atlanta-present-new-evidence-in-court> [<https://perma.cc/P9D8-JC4C>].

technical data to support the proposed land acquisition and proposed design underway.”<sup>7</sup> Notwithstanding incontrovertible evidence that the City’s motivations for taking residents’ homes were groundless, the litigation continued. After ten years of city-wide public resistance, the City paid historic settlements to the residents without ever producing engineering data supporting the takings.<sup>8</sup>

Because “[s]tategraft places the focus where it belongs, which is on the actual theft [of property] and its impact on vulnerable populations,” the theory provides the perfect framework for examining the predatory and racialized use of eminent domain and its foreseeable and harmful consequences.<sup>9</sup> This course of action accurately describes how environmental projects (like flood mitigation initiatives) are advanced by government officials to justify replacing Black and brown faces with green spaces through the use of eminent domain. These projects, which in some states include economic development projects designed to enrich private individuals and companies, are under some state laws presumed to satisfy eminent domain’s public purpose requirement and condemnees find efforts to resist the taking of their property frustrated by tight deadlines for filing responsive pleadings, limited discovery, and

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7. Thomas Wheatly, *The Peoplestown Flood Fight Rages On*, AXIOS ATLANTA (Nov. 2, 2021), <https://www.axios.com/local/atlanta/2021/11/02/atlanta-peoplestown-flood-fight-kasim-reed> [<https://perma.cc/D8LB-S8ET>]. After writing and sending her revelatory email, Kimberly Parmer was promoted to a position in the Department of Watershed overseeing all project managers, and she testified under oath that she was never provided the modeling required to sign off on the project. *Id.* Despite a stellar employment history, spanning 7 years with the City, she was fired one-month before the ordinance was presented to the Atlanta City Council authorizing then-Mayor Kasim Reed to exercise eminent domain. *Id.*; Press Release, United States Attorney’s Office for the Northern District of Georgia, Former City of Atlanta Official Sentenced for Accepting Bribes (Feb. 24, 2023) (on file with author). In October 2022, a jury found former City of Atlanta Department of Watershed Commissioner JoAnn Macrina guilty of conspiracy and federal program bribery for actions that took place at the time she was overseeing the Peoplestown project. *Id.*; *City Utilities Committee* (ATL 26 television broadcast Sept. 24, 2019) (on file with the author).

8. Tammy Joyner, *A Renewed Hope for the Embattled Residents of Peoplestown*, CAPITAL B ATLANTA (Jan. 30, 2022), <https://atlanta.capitalbnews.org/a-renewed-hope-for-the-embattled-residents-of-peoplestown/> [<https://perma.cc/GQ3T-GRBM>]; J.D. Capelouto & Wilborn P. Nobles III, *Atlanta ends longstanding Peoplestown housing, flooding dispute*, ATLANTA JOURNAL CONSTITUTION (Aug. 17, 2022), <https://www.ajc.com/news/atlanta-news/atlanta-ends-longstanding-peoplestown-housing-flooding-dispute/GLPNNICKBFAQJDA4BUYRMS4JUE/> [<https://perma.cc/U72X-HJRX>]; Mark Lannaman, *The Conclusion to the Peoplestown Decade of Resistance*, Saporta Report (Sept. 9, 2022, 8:51 AM), <https://saportareport.com/the-conclusion-to-peoplestown-decade-of-resistance/sections/reports/mark-lannaman/> [<https://perma.cc/4KRB-WPNQ>].

9. Atuahene, *supra* note 1, at 8.

evidentiary obstacles that are expensive and challenging to clear.<sup>10</sup> Accordingly, vulnerable individuals and communities, like Peopletown and its residents, are likely to be targets of stategraft in the eminent domain context.

Augmenting stategraft in the form of legal procedural and substantive limits designed to frustrate property owners' efforts to resist takings and corrupt and illegal action by state actors, is a shift in federal policies and funding that facilitates and incentivizes the use of eminent domain by cities and counties. The taking of homes in Peopletown in 2016 aligned with a new federal policy announced by the U.S. Army Corps of Engineers ("USACE") in 2015. In what can accurately be characterized as a Faustian bargain, USACE policy changed local governments' federally funded buyout programs in flood-prone areas from entirely voluntary to mandating that local governments' funded acquisition efforts include the use of eminent domain.<sup>11</sup> This policy will continue to render communities like Peopletown and its residents vulnerable to federally sanctioned, funded, and locally implemented stategraft.<sup>12</sup>

The historical use of eminent domain is fraught with examples of the dispossession and displacement of vulnerable people and communities.<sup>13</sup> Given predatory use of state and federal laws and corrupt and criminal action by government officials, the past is probably prologue.

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10. Jeff Amy, *Eminent Domain Case Involving Georgia Railroad Could Have Widespread Property Law Implications*, AP NEWS (Nov. 27, 2023), <https://apnews.com/article/georgia-sandersville-railroad-eminent-domain-property-rights-29d921c8f33dd3a916c325543b4d121d> [https://perma.cc/QRH6-T7RM].

11. U.S. Army Corps of Eng'rs, No. PB 2016-01 Clarification of Existing Policy for USACE Participation in Nonstructural Flood Risk Management and Coastal Storm Damage Reduction Measures (2015). The relevant provision of the regulation provides, "In order to have a complete plan, the ability to use eminent domain must be retained and a condition of an implementable project. A 100-percent voluntary plan for acquisition, relocation and permanent evacuation is not considered a complete plan and is not acceptable for USACE participation." *Id.*

12. Christopher Flavelle, *Trump Administration Presses Cities to Evict Homeowners From Flood Zones*, N.Y. TIMES (Mar. 11, 2020), <https://www.nytimes.com/2020/03/11/climate/government-land-eviction-floods.html> [https://perma.cc/Z8ZL-R89P].

13. Daryl Fairweather, *The Moral Dilemma of Eminent Domain*, FORBES (Aug. 9, 2023, 8:38 AM), <https://www.forbes.com/sites/darylfairweather/2023/08/09/the-moral-dilemma-of-eminent-domain/?sh=72741d6341d0> [https://perma.cc/EZ8K-S8WR].