

# Testing O'Connor and Thomas: Does the Use of Eminent Domain Target Poor and Minority Communities?

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## Abstract

In dissenting from the US Supreme Court's 2005 *Kelo* decision upholding the use of eminent domain for private-to-private transfers of property, Justices O'Connor and Thomas asserted, based on the history of urban renewal, that eminent domain for private development would disproportionately hurt poor and minority communities. This study uses US census data and a sample of redevelopment project areas using or identified for the use of eminent domain to test the assertions of Justices O'Connor and Thomas. Results reveal that such project areas are, in fact, disproportionately populated by those who are poor, minority and less educated.

## Introduction

In arguably one of the most reviled decisions in recent history, the US Supreme Court on 23 June 2005 upheld in the *Kelo* decision the government's use of eminent domain to take private homes from their owners and transfer them to another private party as part of a larger private economic development project (Stevens, 2005). Prior to the post-World-War-II era, the power of eminent domain had been limited to taking property for schools, roads and other unambiguous public uses. It had gradually expanded, but the *Kelo*

decision marked the first time the US Supreme Court approved eminent domain with the sole justification of economic development (Kmiec, 2007).

The expansion of the understanding of 'public use' began in earnest in the Court's 1954 decision in *Berman v. Parker*, which upheld the constitutionality of urban renewal, a massive effort by federal, state and local governments to 'revitalise' urban areas by removing slums and eliminating blight. The *Berman* case arose in south-west Washington, DC, in a poor, largely minority area. The US Congress granted various government

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agencies the ability to acquire tracts of land through eminent domain for the purposes of slum and blight clearance and economic redevelopment, including the resale of the land to private developers. A department-store owner in the area objected to his non-blighted property being taken and turned over to another private party (Bullock, 2004; Powell, 2006).

Before *Berman*, with few exceptions, private property could only be taken through eminent domain for public uses. In *Berman*, however, the Court transformed the words ‘public use’ to mean ‘public purpose’, thereby broadening the definition (Bullock, 2004; Kotlyarevskaya, 2006). The purported public purpose underlying the takings in *Berman* was the removal of blight, but slum clearance efforts of the 1950s and 1960s led to the demolition and destruction of many communities. Moreover, in the words of the time, urban renewal more often than not meant ‘Negro removal’. Over time, some state courts expanded the *Berman* rationale even further by declaring that the ‘public benefit’ of increased tax revenue justified the private-to-private transfer of property through eminent domain. Consequently, governments began using eminent domain to turn over homes and businesses to other private parties whom the government believed would produce more tax revenue (Bullock, 2004).

Such were the facts in New London, Connecticut, where city officials approved an economic development plan that was projected to add jobs, increase tax revenue and revitalise the local economy. Included in the plan was the redevelopment of a residential area populated by properties, such as that owned by Susette Kelo, that were neither sub-standard nor deemed ‘blighted’. The properties were condemned simply because they were located in the planned redevelopment area. The city’s actions were upheld by the narrowly divided US Supreme Court in *Kelo*, which said that promoting

economic development is a function of the government and provides a legitimate public purpose for private-to-private transfer of property.

The dissenters, who included Justices O’Connor, Thomas and Scalia, and Chief Justice Rehnquist, obviously believed that the ruling would have sweeping impacts on the use of eminent domain. In a strongly worded dissent, Justice O’Connor pilloried the majority decision

Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e. given to an owner who will use it in a way that the legislature deems more beneficial to the public—in the process. To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings “for public use” is to wash out any distinction between private and public use of property—and thereby effectively to delete the words “for public use” from the Takings Clause of the Fifth Amendment (O’Connor, 2005, pp. 1–2).

Justice O’Connor also pointed to dire implications ratified in the majority’s decision

Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result (O’Connor, 2005, pp. 12–13).

Justice Thomas also dissented, noting that

Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose

to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities (Thomas, 2005, p. 17).

He went on to cite the work of Frieden and Sagalyn (1989), Pritchett (2003) and Wylie (1989) on the disastrous effects of urban redevelopment in the mid 20th century on minority communities, concluding

Regrettably, the predictable consequence of the Court's decision will be to exacerbate these effects (Thomas, 2005, p. 19).

For urban affairs scholars, the assertions of Justices O'Connor and Thomas represent a familiar refrain. For years, researchers have noted the trend in urban redevelopment strategies to attract wealthier middle classes back to the inner city, resulting in the replacement or succession of one population with another (Lees, 2003). This literature routinely focuses on three main ways in which replacement and/or succession occur: urban renewal, gentrification and incumbent upgrading (Goodman and Monti, 1999). All of these, to various degrees, are generally considered by some scholars to be detrimental to the interests of urban working and lower-class people (Anderson, 1990; Gans, 1962).

Urban renewal generally refers to a set of redevelopment policies and projects first implemented shortly after World War II to 'revitalise' significant parts of central cities in the US using eminent domain to acquire properties, displace residents and replace existing homes and businesses with new development. Gentrification generally describes a process by which middle- and upper-middle-income people gain control, through market means rather than state-forced displacement, of an area that had fallen on hard times and had effectively been ceded to the less well-to-do (London *et al.*, 1986, p. 369; Smith, 1998; Smith and Williams, 1986). Some authors

note that, although at one time governments may have been hesitant to play a direct role in gentrification, they now take a more active part as a catalyst in the process (Hackworth and Smith, 2001; Smith, 2002). Incumbent upgrading refers to an 'evolutionary' process of neighbourhood change in which later generations of long-term area residents rehabilitate the existing housing stock (Beauregard, 1985; Cicin-Sain, 1980; Downs, 1981; Gans, 1962; Palen and London, 1984; Palen and Nachmias, 1984; Saltman, 1990a, 1990b; Taub *et al.*, 1984). Since urban renewal and gentrification are most illustrative for the issue at hand, incumbent upgrading will not be addressed herein. Urban renewal and gentrification, unlike incumbent upgrading, also provide the necessary context for the two primary findings from our research. Specifically, contemporary use of eminent domain in redevelopment closely aligns with some gentrification scholars' description of the rise of the state in catalysing third-wave gentrification and assertions that this use of eminent domain disproportionately affects those who are poor and minority.

### Urban Renewal

Urban renewal of the 1950s and 1960s involved the physical levelling of 'blighted' areas and the wholesale displacement of existing populations from areas within central cities. People typically were moved to make room for downtown commercial development activities, more upscale residents or both (Boyer, 1986; Goodman and Monti, 1999; Gotham, 2001; Jacobs, 1961; Maskovsky, 2006; Solnit and Schwartzberg, 2000; Wilson, 1987). Demographically, these displaced populations were disproportionately from ethnic or minority communities, including Blacks in San Francisco, Chicago and New York (Gelfand, 1975; Hirsch, 1983), Italians in Boston (Gans, 1962) and Latinos in Los Angeles (Hines, 1982). And as numerous analyses demonstrate, these same populations

were also more likely to be low-income (Goetz, 2000; Goodman and Monti, 1999; Jargowsky, 1996, 2003; Kraus, 2004; Massey and Denton, 1993; Wilson, 1996) or urban poor (Gotham, 2001).

This is particularly relevant since urban renewal programmes destroyed thousands more housing units than they replaced and dislocated tens of thousands of small businesses and residents (Friedland, 1982; Keating, 2000; Kleniewski, 1984; Weiss, 1980). Indeed, Mushkatel and Nakhleh (1978) note that, from 1949 to 1963, urban renewal displaced an estimated 177 000 families and another 66 000 individuals. Unfortunately, precise numbers are not available and these data have been criticised for their conservatism—that is, underestimating the proportion of African Americans affected. Nevertheless, what is known of the race of 118 128 of the families relocated during this time-period, is that 78 per cent were non-White. Moreover, only 48 000 new housing units were constructed during the same period and only 20 000 of those constituted low-cost housing (Mushkatel and Nakhleh, 1978).

### Gentrification

After the urban renewal period came three ‘waves’ of gentrification (Hackworth and Smith, 2001).<sup>1</sup> In addition to national economic cycles, the waves are generally distinguished by two characteristics—state involvement and extent. ‘First-wave’ gentrification spanned the 1960s and early 1970s and included significant state involvement in sporadic efforts localised in large north-eastern cities in the US. ‘Second-wave’ gentrification surged from the late 1970s to the early 1990s. Unlike urban renewal and ‘first-wave’ gentrification, however, governments encouraged private market gentrification rather than orchestrating it directly (Hackworth and Smith, 2001). Although the extent of gentrification within cities remained relatively small, the ‘second

wave’ saw a broader diversity of cities experiencing gentrification, as public officials looked on it enthusiastically as a viable means of revitalisation and increased tax revenue in challenging economic conditions and periods of federal divestment from direct urban involvement (Beauregard, 1985; Lang, 1982).

Following a recessionary stalling of gentrification in the early 1990s, a ‘third wave’ emerged with the added dynamic of developer participation early in the gentrification process and increased government involvement (as compared with the ‘second wave’) in public–private partnerships (Hackworth and Smith, 2001). Indeed, where the state was hesitant to involve itself directly in ‘second-wave’ gentrification, Newman and Wyly (2006), Smith (2006) and others see the state as much more aggressive now in its direction of gentrification, through detailed planning, the choice of developers and fiscal and regulatory policy, sharply distinguishing it from ‘second-wave gentrification’ (Smith, 2002; Wacquant, 2008). ‘Third-wave’ gentrification also differs from the other waves in its extent. Where the first two waves traditionally took more of a patchwork quality rather than encompassing entire neighbourhoods (London *et al.*, 1986), Smith (2002) and others (Wacquant, 2008) assert that the ‘third-wave’ gentrification often subsumes entire neighbourhoods or more in redevelopment projects implemented by private national and international developers. However, whatever the wave, the motivation for governments (at least in the US; see Uitermark *et al.*, 2007, for motivations in other countries) remains the same—increased tax revenues.

### Eminent Domain

Some of the same dynamics also describe contemporary redevelopment projects that utilise eminent domain, such as what was at issue in the *Kelo* case. Like ‘third wave’ gentrification, state actors seek to realise increased

tax revenue by transforming areas which they see as economically 'underperforming' into revenue-maximising districts. To do so, states create public-private partnerships early in the planning process with private development firms. And like 'third-wave' gentrification, these projects are often large enough to take in entire neighbourhoods or more.

The projects appear to differ from 'third-wave' gentrification, however, in two important and related ways. First, scholars appeared reluctant, apart from just a few recent examples (Porter and Barber, 2006; Uitermark and Duyvendak, 2007), to identify eminent domain unequivocally as one of the functions of increased state involvement in 'third-wave' gentrification. Secondly, although gentrification, by definition, describes processes focused on "the rehabilitation of working-class and derelict housing and the consequent transformation of an area into a middle-class neighborhood" (Smith and Williams, 1986, p. 1) with a particular focus on 'rent gaps' and the displacement of renters rather than owner-occupied units (Beauregard, 1985; Marcuse, 1986; Smith and LeFaivre, 1984), neither may necessarily be so in redevelopment projects using eminent domain.<sup>2</sup> Rather, current redevelopment projects using eminent domain often appear to include owner-occupied units from a wider demographic distribution.

The notion that states would use eminent domain to take properties in stable neighbourhoods populated by middle-class residents to some would seem to defy logic. Since contemporary eminent domain for private development is largely oriented towards improving the local tax-base, the most attractive way to do so is to remove the low tax-revenue-yielding use and change it to a high tax-revenue one. Thus, the bigger difference in revenue yield provides a more attractive prospect for eminent domain. Removing minority residents in the process,

who tend to be poorer than Whites, can then be said to be mere chance rather than design, and the social implications are rationalised away. Using this logic, it appears irrational to pursue areas inhabited by the middle class or the wealthy.

Yet, such 'irrational' takings are occurring and for reasons entirely rational to state actors and private developers. Although middle-income neighbourhoods may yield more in tax revenue compared with low-income neighbourhoods, neither type of neighbourhood yields nearly as much in tax revenue as compared with redevelopment projects, if completed, that produce upscale retail shopping, restaurants and high-end multi-family units. Therefore, the distinction between low-income and middle-income neighbourhoods to state actors and private developers is irrelevant; the important distinction is between existing use and projected use.

This is illustrated in the neighbourhood in question in the *Kelo* case, which differed in several important ways from areas typically affected by gentrification or envisioned as in need of 'renewal'. Table 1 includes demographic census data comparing the *Kelo* neighbourhood with the United States, Connecticut and the project areas used in this research. As indicated, the *Kelo* neighbourhood housed more poor, minority, renters and those less educated compared with the United States and Connecticut, but not so when compared with the project areas in this report. Another example comes from Lake Zurich, IL, a small community of about 18 000 residents. With a population of only 7 per cent minority, 8 per cent with less than a high school diploma and 0.3 per cent at or below poverty, the project area in Lake Zurich looks nothing like the typical project areas in this report. Yet, in 2004, city officials adopted a plan that called for the use of eminent domain on behalf of a private developer to remake the 36-acre downtown area, known

for its Swiss-Alps-themed buildings, into contemporary restaurants, shops and condominiums (Krishnamurthy, 2005; S. B. Friedman and Company, n. d.; Tsouderos, 2005). In fact, neighbourhoods affected by eminent domain are not exclusively those populated by residents who are poor, minority or less educated. Of the 184 project areas from this study, 19 are more accurately described as White, middle-class neighbourhoods; they are 1.5 standard deviations below the mean for minority, poverty and less than a high school education.

Finally, some authors question the entire proposition of disproportional effects of current uses of eminent domain. They acknowledge that redevelopment of the 1950s and 1960s

had disproportionate impacts on minorities and poor inner-city neighborhoods. However, changes in cultural values and legal rules, as well as gains in political power by minorities, offer greater protection to urban communities, many of whose residents are the primary beneficiaries of economic redevelopment efforts (Dreher and Echeverria, 2006, p. 2).

Taken together, it may be, then, that the contemporary use of eminent domain for private development may not disproportionately impact poor, minority and less educated populations, thereby differentiating it from 'third-wave' gentrification and, more importantly, undermining O'Connor and Thomas' assertions. To find out, we undertook this research to discern the demographic profiles of those living in areas targeted by eminent domain for private development, as in the *Kelo* case and in so many cities across the country (Berliner, 2003, 2006). In so doing, we sought to answer some general questions, such as: are the assertions of Justices O'Connor and Thomas valid? Does the contemporary use of eminent domain for private-to-private transfer disproportionately affect poor, minority or other less politically powerful populations?

## Methods

To examine these general questions, we began with a specific research question: is there a statistically significant difference in the

**Table 1.** Demographic characteristics of the *Kelo* neighbourhood, the US, Connecticut and project areas from this research

	US	CT	<i>Kelo</i> neighbourhood	Project areas in this research
Percentage minority	30	22	42	58
Percentage less than high school diploma	19	16	23	34
Percentage high school diploma only	28	28	48	28
Percentage some college	40	37	42	22
Percentage BA	15	18	6	9
Percentage MA	5	9	6	3
Percentage professional degree	1	2	3	1
Percentage doctorate	0.9	0.9	2	1
Median household income (US\$)	41 994	53 935	34 757	18 935
Percentage poverty	12	7	18	25
Percentage renters	33	33	66	58

demographic profiles of those living in areas under threat of eminent domain for private development compared with surrounding communities? In light of the previous discussion, eminent domain was defined as the private-to-private transfer of property to achieve a public purpose (economic redevelopment), as opposed to a strict public use, the latter of which would include the acquisition and holding of private property by the government for a clear public use, such as the construction of a school or public road.

Limiting the scope to eminent domain for private-to-private transfers of property rather than including all uses of eminent domain (i.e. including clear public use) is important for at least two reasons. First, it more accurately represents the circumstances at the centre of the *Kelo* case, where the Court decided on and Justices O'Connor and Thomas commented on eminent domain only for private-to-private transfers of property. Secondly, it more accurately reflects the dynamics at work when states condemn and take property to transfer to private developers, who typically demolish existing stock and replace it with high-end residential units, restaurants, retail stores and the like.

### Sample

The sample includes 184 areas targeted by eminent domain for private development (called project areas hereafter) and their surrounding communities, a sample size similar to, although larger than, other research of this kind (Bostic and Martin, 2003). These project areas were zones within a municipality for which the use of eminent domain, as defined earlier, was designated and publicly

announced. The project areas vary in size from several blocks to those encompassing multiple neighbourhoods. Likewise, the communities in which these project areas reside range in size from small cities (such as Lawnside, NJ, population 2724) to large metropolitan areas (such as New York City, population 8 008 278). In all cases, the surrounding cities or communities included the municipality in which the project area was located. Table 2 includes population statistics for the project areas and surrounding communities.

The sample was drawn from a database containing 800 areas, encompassing both businesses and residences, for which eminent domain has been designated. The database was constructed as part of a larger research project focusing on eminent domain areas active from 2003 to 2007. The areas were identified by searching Lexis-Nexis for all media stories in all 50 US states in which eminent domain (as defined earlier) was designated and announced for project areas. The Lexis-Nexis search was supplemented by data collected from individual city websites and Freedom of Information Act requests made to cities. This process resulted in 43 states being represented in the database. To be sure, this is not technically a representative sample. Lexis-Nexis does not catalogue every newspaper in the US (generally lacking coverage of newspapers in small communities) and reporters may choose to write about some projects while ignoring others. Nevertheless, the database still provides a useful tool from which to gather project areas for this study, particularly since no other database of its kind exists presently. Although not

**Table 2.** Population statistics for project areas and surrounding cities

	<i>M</i>	<i>SD</i>	<i>Minimum</i>	<i>Maximum</i>
Project areas	1 182	767	109	7 987
Surrounding communities	285 951	903 518	2 724	8 008 278

representative from a sampling perspective, the database was built to be as comprehensive as possible. In fact, the goal was not to create a sample of eminent domain projects across the US, but a population. Because of the aforementioned limitations, the database does not quite meet the parameters of a population. However, its shortcoming is that of undercounting the extent of eminent domain use generally.

Projects from the database included in the study's sample were limited only to threatened (affected) residences, which equalled a total of 348. That sample was then narrowed again to 184 (or 53 per cent of project areas with residences) by including only those with project maps, which ensured a more accurate alignment between project areas and census block groups, as described later. This process yielded projects in 25 states (CA, CO, CT, FL, GA, IA, IL, IN, KY, KS, MD, MO, NE, NJ, NY, OH, OK, OR, PA, RI, TN, TX, UT, VA, WA) and the District of Columbia, which means that the sample represented all major regions of the country (West: five states; South: six states; Midwest: seven states; East: seven states) and states of various sizes and demographics.

The presence of a project map also means that the sample contains only project areas that are in a comparably advanced stage of development. Although cities announce plans for redevelopment and declare their intention of using eminent domain, that redevelopment can sometimes languish for years with little action. Whereas, cities that go to the expense of drawing up development plans with detailed maps, and other related procedures, are generally more committed to realising their plans. Therefore, the threat of eminent domain for those living in said areas is beyond question.

## Data

The data include, for each project area and surrounding city, percentages of the following:

minority residents, children and senior citizens, renters and owners, education levels and poverty. Median income was also included.<sup>3</sup> All of these have been examined in other research on urban renewal (Bostic and Martin, 2003; Danziger and Gottschaik, 1987; Dluhy *et al.*, 2002; Goetz, 2000). Percentage minority represents all ethnic/minority groups other than White. Percentage children includes children younger than 18, while senior citizens includes those 65 and older. The renter/owner percentages represent those living in occupied housing units. Education levels were aggregated into seven categories: less than a high school diploma, high school diploma, some college, bachelor's degree, master's degree, professional degree and doctorate. Poverty status was measured using the federal government's official poverty definition.

Similar to other studies in this genre (Bostic and Martin, 2003; Goodman and Monti, 1999), the data were collected from the SF-3 Census 2000 sample dataset, which includes detailed population and housing data collected from a 1-in-6 sample and weighted to represent the total population. Data for the project areas were constructed using the lowest level possible from the sample data—the block group, which is an area encompassing multiple census blocks. Project areas were identified in the census data with an address from within the project area. Using the address, the specific block group was identified for each project area.<sup>4</sup> Appropriate block-group data were then collected for each project area.

## Analyses

Differences between project areas and surrounding communities were measured using independent samples t-tests. Because of the substantial differences in group sizes (i.e. project area populations versus community populations), data were tested for unequal variance using Levene's (1960) test for equality of variances. Results reveal large

and statistically significant Levene values ( $p < 0.05$ ) for all variables measured herein. Therefore, the t-test results include those where equal variance was not assumed.

## Results

Table 3 includes the project area and surrounding community descriptive statistics for all the variables measured herein, and Table 4 includes the t-test results for each variable. As indicated in Table 3, eminent domain project areas include a greater percentage of minority residents (58 per cent) compared with their surrounding communities (45 per cent). The percentages of children and senior citizens are nearly equal between the project areas and the communities.

Turning to levels of education, residents of project areas are less educated than those living in the surrounding communities. A greater percentage of those in project areas (34 per cent) hold less than a high school diploma than the surrounding cities (24 per cent) and a consistently greater percentage of those in surrounding communities hold various levels of college degrees compared with the project areas.

Given the relationship between education and income, it is not surprising to find that median incomes in project areas are less (\$18 935.71) than the surrounding communities (\$23 113.46) and that a greater percentage of those in project areas (25 per cent) live at or below poverty levels compared with surrounding cities (16 per cent). Finally, a greater percentage of residents in project areas rent their homes (58 per cent), compared with residents in surrounding cities (45 per cent).

Of these comparisons, Table 4 reveals all but three of these differences are statistically significant. Specifically, the differences in percentages of children, senior citizens and those with a high school diploma are not statistically significant. However, residents in project areas are significantly more likely to be minorities, less well off, less educated and live in rented housing.

## Discussion/Conclusion

This study has sought to test the assertions made by Justices O'Connor and Thomas about the uneven effects of eminent domain for private-to-private transfers of property

**Table 3.** Descriptive statistics for project areas and surrounding communities

	<i>M</i>		<i>SD</i>	
	<i>Project area</i>	<i>Community</i>	<i>Project area</i>	<i>Community</i>
Percentage Minority	0.58	0.45	0.35	0.26
Percentage children	0.25	0.26	0.10	0.03
Percentage senior citizens	0.13	0.12	0.09	3.00
Percentage less than high school diploma	0.34	0.24	0.17	0.10
Percentage high school diploma	0.28	0.28	0.10	0.06
Percentage some college	0.22	0.25	0.09	0.05
Percentage bachelor's degree	0.09	0.13	0.08	0.06
Percentage master's degree	0.03	0.05	0.05	0.02
Percentage professional degree	0.01	0.02	0.02	0.01
Percentage doctorate	0.01	0.01	0.01	0.01
Median income (US\$)	18 935.71	23 113.46	7 320.64	5 348.81
Percentage poverty	0.25	0.16	0.16	0.07
Percentage renters	0.58	0.45	0.25	0.12

**Table 4.** T-test results for project area and surrounding community differences

	<i>t</i>	<i>p</i>
Percentage minority	4.004	0.000
Percentage children	-0.649	0.517
Percentage senior citizens	0.238	0.812
Percentage less than high school diploma	6.579	0.000
Percentage high school diploma	0.286	0.775
Percentage some college	-4.122	0.000
Percentage BA	-5.814	0.000
Percentage MA	-3.007	0.003
Percentage professional degree	-4.814	0.000
Median income (US\$)	-6.226	0.000
Percentage poverty	6.327	0.000
Percentage renter-occupied	6.433	0.000

for economic development. Specifically, the Justices opined that such use of eminent domain disproportionately hurts poor, minority and other historically disenfranchised community members. Results appear to confirm those judicial contentions. Compared with those in surrounding communities, significantly more residents in areas targeted by eminent domain are ethnic or racial minorities, have completed significantly less education and live on significantly less income. Further, significantly more of them rent their homes and live at or below the federal poverty line compared with those in the surrounding communities. Such findings contradict the assertions of authors who deny such effects (Dreher and Echeverria, 2006) and are consistent with related literature illustrating the disproportionate effects of redevelopment on minorities and the poor (Gans, 1962; Gelfand, 1975; Goetz, 2000; Goodman and Monti, 1999; Gotham, 2001; Hines, 1982; Hirsch, 1983; Kraus, 2004; Massey and Denton, 1993; Wilson, 1996).

For contemporary gentrification scholars, these findings may also lend support to a link between redevelopment using eminent domain and recent expanded definitions of 'third-wave' gentrification that include much broader redifferentiations of cultural,

social and economic landscapes (Porter and Barber, 2006; Smith, 2002) built around consumptive pursuits such as tourism, culture and entertainment in the form of upscale shops, restaurants and housing (Hannigan, 1998; Judd and Fainstein, 1999)—what Zukin (1982, 1991, 1995, 1998) and others call 'post-modern cities' (Bassett, 1993; Kearns and Philo, 1993; Reichl, 1999; Scott, 2000; Smith, 1996).

To be sure, however, this study's methods were designed to examine eminent domain specifically, not gentrification or the relationship between them. Therefore, drawing firm conclusions about such relationships will require further work.

There also remain the exacerbating effects of eminent domain for private development discussed by Justice Thomas. That is, when poor residents are displaced as a result of eminent domain, they bear a costly economic burden even those with middle incomes find difficult to shoulder (Bostic and Martin, 2003). Moreover, some

'urban renewal' programs provide some compensation for the properties they take, but no compensation is possible for the subjective value of these lands to the individuals displaced and the indignity inflicted by uprooting them from their homes (Thomas, 2005, p. 17).

Authors such as Newman and Wyly (2006), Powell (2006) and Fullilove (2005, 2007) concur with Justice Thomas's assertion. They write that displacement often elicits negative emotional and health reactions due to the loss of neighbourhoods where residents held strong attachments to friends, neighbours, churches and local small businesses. Such displaced residents further find it difficult to replicate critical community networks and culture. Finally, the powerlessness they experience in the process also can negatively affect their well-being. Research into the effects of powerlessness reveals distinct emotional, psychological and physiological implications for those who perceive a lack of control over their personal circumstances (Armstrong-Stassen, 1994, 2005; Jackson *et al.*, 2006; McCubbin, 2001).

Despite such effects, however, eminent domain remains strongly supported by city leaders. Speaking before the US Congress on behalf of the National League of Cities, Bart Peterson, mayor of Indianapolis, argued that

the availability of eminent domain has probably led to more job creation and homeownership opportunities than any other economic development tool. If that tool vanishes, the redevelopment experienced in many communities in recent years would literally come to a complete halt. Absent redevelopment, I believe that we would have fewer people becoming homeowners, which means fewer participants in what the Bush Administration calls an 'ownership society' (Peterson, 2005, p. 6).

And former Riviera Beach, Florida, Mayor Michael Brown, while embroiled in a fight to condemn and take modest beach-front homes for conversion into luxury condominiums, said of eminent domain, "If we don't use this power, cities will die" (Price, 2005, p. A1).

Even among some scholars, eminent domain enjoys support. Dreher and Echeverria, while denying its disproportionate effects, write that

Eminent domain and public-private partnerships appear to be valuable tools for achieving urban redevelopment goals. ... In addition, cities receive significant benefits from being able to draw upon private developers' skills and access to capital in pursuing modern mixed-use redevelopment projects (Dreher and Echeverria, 2006, p. 2).

And before the New York State Assembly, Echeverria (2005, pp. 5-6) testified that

eminent domain power, despite its sometimes serious impacts on individual property owners and communities, remains an essential governmental power which, judiciously deployed, can serve important public goals. ... Looking at the issue from a broader perspective, without the eminent domain power, more intensively developed states (such as New York), would be at a competitive disadvantage relative to other states and regions of the country that are less intensively developed (Echeverria, 2005, pp. 5-6).

Yet, as the results herein indicate, the disproportionate effects of eminent domain cannot be dismissed as an unreal cost while extolling the virtues of the state's use of the significant power of eminent domain. Indeed, eminent domain appears to function as a 'reverse Robin Hood' (Brigham, 2006), where post-modern neighbourhoods are built at the very real expense of some of society's most vulnerable citizens (Fullilove, 2005, 2007; Newman and Wyly, 2006; Powell, 2006). Writing of 'third-wave' gentrification, Wacquant (2008, p. 203) concluded that "We must give pride of place to the state as generator of sociospatial inequality". And despite rhetorical flourishes about the 'celebration of diversity' and 'new diverse hometowns' that government officials and redevelopment leaders use when discussing contemporary redevelopment projects (Maskovsky, 2006), it seems that Wacquant's conclusion also applies to the use of eminent domain for private development.

## Notes

1. Hackworth and Smith's article focuses on gentrification in New York, but their discussion of waves of gentrification is generalised beyond just New York.
2. The dynamic of displacement in gentrification is disputed among scholars. Specifically, Hartman (1979) concludes that displacement is a feature of gentrification, while Freeman and Braconi (2002, 2004) and Freeman (2005) present evidence to the contrary. Assuming the latter, this would represent another way in which contemporary redevelopment using eminent domain and 'third-wave' gentrification differ.
3. The high concentration of poverty in predominantly minority neighbourhoods could lead one to argue that the variables of race and income (and poverty) largely overlap. To conflate fully the variables of race and class, however, provides a misleading picture of urban political and social relations, and scholars have successfully disentangled the effects of race and class on urban residential development (Massey and Denton, 1987, 1988, 1993).
4. In some cases, project areas were smaller than block groups, potentially creating a situation whereby the project area demographics would not be accurately measured, similar to criticism posed by others about the use of census data for research of this kind (Bostic and Martin, 2003). To test for that possibility, we duplicated the analyses herein using block-level data for overlapping variables from the 100 per cent census data. Variables in this study that were common between 100 per cent census and sample datasets include race, age and owner versus renter. Both descriptive and statistical results proved nearly identical, indicating that smaller project areas are sufficiently represented by block groups.

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