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Collateral Damage: Racial Logics of Property in the Adjudication of the U.S. Foreclosure Crisis

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ABSTRACT

This paper assesses the relationship between law, race, and property through the legal regimes shaping post-crisis claims of racial harm linked to the U.S. subprime mortgage market. Drawing on theories of legal form linking capitalism, property, and race, I detail how racially exploitative practices through the subprime mortgage depended on transformation of a specific legal instrument – collateral - that tied the pledge of real property as security for a loan to financial market abstractions of liquidity and yield. Then, through close analysis of a recent set of mass lawsuits filed by the cities of Cleveland, Baltimore, and Miami against large subprime lenders seeking restitution for discriminatory lending practices, I examine how collateral's legal form has patterned a "politics of redress" within court adjudication. This illuminates two novel aspects of the racial logic of property linked to mass foreclosures in Black and Brown neighborhoods. On the one hand, focusing on collateral has enabled municipalities to link disparate properties/neighborhoods into cognizable legal actions against lenders, effectively territorializing claims for restitution across significant areas of the city. On the other hand, the disposition of these cases demonstrates how plural doctrines of property, contract, and discrimination have produced a recoding of property within which the flow of value to lenders and investors from racially exploitative lending is rendered legally unproblematic.

1. Introduction

This paper seeks to develop a deeper account of law, race, and property, an intersection that has drawn increasing attention from scholars interested in tracing the different historical moments, geographic contexts, and processes of racialization engaged in the constitution of American private property (Bonds, 2019). This emphasis has seemed especially urgent in the aftermath of the 2007–2008 financial crisis. There is now a robust literature on the racialized commodity chains of subprime credit in the United States (Dymski, 2009; Wyly et al., 2009; Immergluck, 2015), an emphasis joined more recently by attention to the "economy of displacement and dispossession" (Akers and Seymour, 2018: 139) that has emerged around mass foreclosures in Black and Brown neighborhoods. Whereas the latter has often focused on how foreclosed properties have become a lucrative new asset class as "single-family rentals" (Fields, 2018; Raymond et al., 2018), scholars have also examined the distributional politics of mass foreclosures through new conflicts over property occupancy and eviction (Roy, 2017), demolition (Rosenman and Walker, 2016), and eminent domain (Christophers and Niedt, 2016). Collectively, this work sees in the lingering effects of bank foreclosures not an endpoint but rather the mutation and consolidation of processes of racialization in housing and credit markets.

I seek to extend these approaches by bringing the legal contestation of mass foreclosures into sharper focus. Taking cues from recent work on law and racial capitalism (Bhandar, 2018), I examine how this contestation has articulated a new racial logic to property – a term I use to refer to a legal "coding" of real property that not only protects asset holders by creating hierarchical claims to wealth (Pistor, 2019), but does so by specifically insulating them from liability for racist lending practices. This engages Bhandar's (Bhandar, 2014; 2018) analysis of property's legal form by updating it for the era of financialization, examining how the instruments that anchor financial commitments to property "[graft], through a host of complex mediations, the forbiddingly impersonal realities of derivative contracts onto the deep and ongoing racial history of property markets and urban geographies" (Bhandar and Toscano, 2015: 8).

I develop this argument through close analysis of court adjudication of claims of racialized injury linked to U.S. subprime lending. Even as the 2008 financial meltdown receded in popular memory, the

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proliferation of foreclosures in Black and Brown neighborhoods spurred a decade-long wave of litigation against banks and mortgage servicers, both by homeowners seeking an affirmative defense to foreclosure and by municipalities seeking restitution for cratering property values and the destabilization of neighborhoods. I examine how the latter claims and their adjudication in federal courts have been anchored by one specific instrument at the center of subprime capital's legal form: the pledge of the home as *collateral* for mortgage debt.

Taken at face value, collateral represents a promise of something of value as security for a loan; "it is, in truth, a method of dealing in property for the purpose of securing payment of a debt" (Glenn, 1938: 356) and thus a critical part of "the legal architecture" of the American mortgage (Keenan, 2018: 155). The limited scholarship on collateral is likely due to its mundane nature; while essential to the expulsive logic of financial capital (Sassen, 2014), it is "created by paper documents" (Keenan, 2018: 155) and seems commonplace when examined up-close. At the same time, collateral has been foregrounded in recent work by geographers and sociologists examining how property appraisal linked the racial character of property (its occupancy and its neighborhood context) to predictions of appreciation or decline in property values (Howell and Korver-Glenn, 2018; Zaimi, 2020). These calculative techniques placed collateral at the center of a racial logic of *financial security*, making it simultaneously a means to render racialized property commensurate with other financial assets – through abstractions of risk and value – while deepening "a dialectic in which forms of humanity are separated (made 'distinct') so that they may be 'interconnected' in terms that feed capital" (Melamed, 2015: 78). This approach to collateral extends the study of race and property beyond strict attention to who occupies or possesses housing to encompass the legal authorization of exploitative practices and structures, part of the "spatial allocations of power" through law that Boddie (2010: 401) refers to as "racial territoriality.".

I pick up this emphasis on property's instrumentation by examining the legal work of collateral at a different moment in its life: at the end of the commodity chain of mortgage capital, after a lender or servicer has exercised their security interest to repossess a home. This follows the anthropologist William Pietz in theorizing collateral as a "material consideration": a pledge of something of value that functions "solely as an instrument to create the social fact of legal liability" (Pietz, 2002: 36). Whereas that liability is conventionally understood from the lender's perspective as the right to recoup capital extended to a homeowner, closer examination of legal contestations over mass foreclosures demonstrates that lenders' exercise of their security interest materializes an intersecting set of legal relations linked to exploitative loans in Black and Brown neighborhoods. This opens forensic analysis of how a "politics of redress" (Polillo, 2022) has functioned in the protracted unwinding of the foreclosure crisis, one that directly links *subprime collateral* – security for an exploitative loan – to legal adjudication of "who owes what to whom" (Ralph, 2015: 8).

There are two dimensions to this analysis that organize the paper. First, I situate the specific features of subprime collateral and how they underpin the racial logic of property at work in the mortgage crisis. This draws methodological inspiration from a long line of legal-geographic scholarship investigating the "grammars" of property, referring to the "structures of language, including the ways that words are arranged, inflected, and imbued with meaning" to construct property regimes (Safransky 2022: 295).[1] At the same time, I take up Orzeck and Hae's (2020: 833) challenge to "give more explicit and concerted attention to structure" within legal geography by revisiting longstanding Marxist perspectives on *legal form*. This theorizes a trajectory to legal development that links shifts in legal doctrine and court interpretation to the changing commodity-form of property, specifically changes facilitating the "convertibility of objects of property into objects of capital and back again" (Maurer, 1999: 366). Here, subprime collateral does more than just secure a creditor's discursive claim to property; it also acts as a key "operation of capital" linking together properties within financial portfolios and ordering geographic spaces according to the "abstract methods and paradigms of valorization" (Mezzadra and Neilson, 2015: 5) immanent to millennial capitalism. This centers how the "predatory inclusion" (Taylor, 2019) of Black and Brown borrowers within the subprime mortgage market was accomplished by making high-risk mortgages commensurable to alternative investment opportunities, resulting in "the articulation of a commodity form of real property in conjunction with a globalized 'economy of difference'" (Bhandar, 2018: 6).

Second, I turn this conceptual framework towards the analysis of three significant lawsuits filed by the cities of Cleveland, Baltimore, and Miami after 2008, all seeking restitution from major banks for the combined effects of mass foreclosures on Black and Brown neighborhoods. Here, Pietz's method of the *forensic profile* focuses attention on how the legal form of subprime collateral shapes "forms of redress and reckoning" (Safransky, 2022: 295) by linking together diverse legal doctrines as protocols for adjudication of claims of injury. Among the few cases involving claims of racialized injury linked to subprime lending to proceed all the way through to judicial decision (including a landmark decision in the Miami case by the Supreme Court of the United States ("SCOTUS")), the three proceedings offer an essential lens into how racialized property has been actively recoded by courts years after the violent dispossession of Black and Brown homeowners. Joining recent work within legal geography and socio-legal studies linking the pragmatics of court processes and judicial interpretation to "the territorialisation of legal regimes" (Jeffrey, 2021: 903; see also de Goede, 2015; Delaney, 1993; Manko, 2022; Strauss, 2017), this analysis reveals some surprising dimensions to the legal work of subprime collateral, uncovering how the security pledge anchors disparate properties in new territorial formations that make possible aggregate claims around racially exploitative lending. At the same time, analysis of court adjudication demonstrates how those claims foundered on questions of how far geographic relations of legal liability extend, as the ease with which different actors within the subprime commodity chain could enforce a security pledge was pitted against increasing legal ambiguity for the spillover effects of mass foreclosures on neighborhoods already structured by decades of predation. This works to reinforce a racial logic to property within which financial exploitation is sustained as a dominant relation, newly re-authorized by the institutional apparatus of the law, with profound implications for the reproduction of racialized geographies.

2. The Forensics of Subprime Collateral

Considering the subprime mortgage as an economic and legal relation requires more than an assessment of the market arrangements that manufactured predatory debt and circulated it through Black and Brown neighborhoods with increasing velocity through the 1990 s (Wyly et al., 2009). In this section, I ask how a focus on a specific legal instrument – collateral – and more broadly on what Marxist scholars call *legal form*, helps reveal the intersecting logics of race and finance at work recoding property in the aftermath of the subprime mortgage crisis.

William Pietz's (2002) forensics of contract offers an initial method for examining the unique features of the legal instrument known as collateral. Pietz notes that Anglo-American contract law has retained the pre-modern notion that an oath or pledge cannot be accepted as legally-binding without a "material consideration" that puts some item of economic value at stake. Collateral is a prime example of such a consideration: it is in essence "paperwork" (Riles, 2010), signed by a borrower at closing, that pledges or "alienates" the property as security for a home

[1] In the context of legal adjudication, this critically involves the discursive mediation between abstract legal norms or concepts and the objects representing "the circumstances of a particular problematic social event that are presented as the facts of a case" (Richland, 2013: 218).

loan. While easily damaged or lost in its paper form, the security pledge stands in for the physicality of the property, allowing lenders and investors to act "as if" collateral always-already references the full "economic value of the promised benefit" (Pietz, 2002: 47). Collateral has correspondingly been described as a legal "time machine" (Keenan, 2019), configured to re-appear (should a borrower default) to facilitate conversion of the pledge back into capital. It thus exists "solely as an instrument to create the social fact of legal liability" by "[enacting] a crucial form of social power: the power to transform a subjective promise into an objective obligation" (Pietz, 2002: 36).

For Pietz, collateral pledges create lifeworlds in need of investigation, acting as "forensic objects … that [connect] the social status of a particular person as property owner to the productive causal processes of the physical world" (Pietz, 2002: 48). A *forensic profile*, then, is a method to examine the world anchored by the material consideration to assess "who owes what to whom" (Ralph, 2015: 8), particularly in relation to the "institutional protocols for determining how injuries should be adjudicated, as well as which forms of difference are salient and how they shape access to capital and to political possibilities" (Ralph and Singhal, 2015: 866). Whereas critical legal and financial scholars are generally familiar with "following the money" (Christophers, 2011), this forensic approach to law, property, and racial capitalism – which calls for the analysis of the home as "the lived material synthesis of the three main axes of modern thought: the juridical, the political, and the economic" (Bhandar and Toscano, 2015: 8) – is less evident within extant research on race and property. I pick up this call through attention to two theorizations of legal development that have fused the instrumentation of property as collateral to abstractions of risk, security, and race. The first examines the deepening link between law and the commodity-form of property under financialization, specifically within work to enhance the legal convertibility of exploitative mortgages into capital and back again. The second assesses the layering of abstractions of race onto property through political struggles over racial exclusion, resulting in the articulation of the legal subject of the "aggrieved person" empowered to litigate racially exploitative housing practices. These two dimensions to the legal form of subprime collateral generate a distinctive "forensic profile" that, I argue in the second half of the paper, patterns the politics of redress active in contestations over racialized injury linked to mass foreclosure.

2.1 Property's Shifting Legal Form: Collateral and Financial Abstraction

In Marxist theorizations of law, the concept of legal form refers to the instruments used to secure capital's claims to the circulation of commodities, but also to the work of legal doctrine to set standards for form and content that"[give] structure to underlying social relations and actively [contribute] to a new world" (Quastel, 2017: 46). In foundational accounts by Pashukanis (2002 [1924]) and Hunt (1985), legal form centers how bourgeois law systematically organizes the separation of economic (private) and political (public) spheres under capitalism, "rendering invisible (and severely constraining) the ways in which people… relate to one another in ways not confined to commodity relations of ownership and exchange" (Bhandar, 2015: 265). While referencing the very materiality of the law (grounded in specific arrangements of paper documents), the form of law under capitalism also depends on "discursive effects" (Quastel, 2017: 46) that work through a central abstraction: a formally free/equal legal subject, a figure that Pashukanis (2002 [1924]: 114) describes as endowed with the "rare gift" of a "legally-defined will," expressed in the ability to enter into contracts and willfully alienate objects (such as property) under their control.

Engaging this general framework with the analysis of subprime collateral requires connecting the legal instruments and doctrines used to organize exploitative loans with shifting nature of property as a "commodity network" composed of "linked chains whereby material resources are extracted, manufactured into marketable products, distributed, and consumed" (Quastel, 2017: 47). There is a longer history that could be told here tying collateral and the commodity-form of property with the evolving racialization of property and credit markets. During the Great Migration, collateral was key to the ordering of urban space to exclude Black and Brown households from the status/benefits of homeownership, through racially restrictive covenants attached to property deeds (Delaney, 1993), or through land contracts that set the property deed as a title that could only be possessed after enduring years of exploitative payments (Teresa, 2022). Collateral's nature was further re-made during postwar white flight from U.S. central cities, when growing mortgage volumes associated with suburban expansion necessitated the standardization of mortgage documents and security procedures within an emergent national mortgage market (Jensen, 1972; Klaman, 1961). Racial segregation thus pushed the development of the commodity-form of property in both its exploitative and "mainstream" iterations, while simultaneously shaping the "non-traditional borrower" (MacDonald, 1996: 1184) as a racialized subject marked by historic exclusion from housing and credit markets.

A more recent set of changes in the legal form of property mark the "predatory inclusion" (Taylor, 2019) of the subprime mortgage market. Whereas predatory ownership instruments were a feature of postwar housing for Black and Brown homebuyers (Zaimi, 2022), the mass subprime mortgage market marked a break inasmuch it encompassed a set of legal techniques designed to facilitate quick convertibility of exploitative financial instruments into capital and back again. Critical to this process was work through the economic crises of the 1970s and 1980s to ease credit crunches by integrating housing finance into broader capital markets (Ashton and Christophers, 2018). Under the leadership of federal mortgage agencies, the legal instruments of the home mortgage were harmonized across states, with the resulting "conforming mortgage" configuring collateral to "meet, generally, the purchase standards imposed by private institutional mortgage investors" by "[creating a] security which has as its base land yet which will be as freely transferable as stocks and bonds" (Jensen, 1972: 418). While initially this "securitization" reinforced racial privilege by funding only "saleable single-family loans [that] were predominantly 'plain vanilla' – that is, to suburban, white, middle-class borrowers" (MacDonald, 1996: 1184) – by the early 1990 s subprime collateral was expanding within distinct commodity chains funding mortgages to "non-traditional" borrowers marked as poorer credit risks by legacies of discrimination and exclusion (Chiu, 2006; Peterson, 2007).

Closer examination of the instrumentation of the subprime mortgage yields further insights into the links between collateral and the shifting commodity-form of property. While secured through a paper pledge like other mortgages, subprime collateral took on a different legal life within the special purpose vehicles ("SPVs") organized to fund pools of non-traditional mortgages (Levitin, 2013). For each SPV, a pooling and servicing agreement secured investors' stakes by collectivizing property collateral, bolstering it by adding "credit enhancements" (such as third-party guarantees), and then netting pooled interest payments (revenues) against delinquencies and defaults (claims against collateral) to distribute returns (Ambrose et al., 2019). Financial pricing models allowed SPV sponsors to assess how different exploitative loan characteristics in the pool (such as high loan-to-value or debt-to-income ratios) changed the statistical probability of borrower default (Straka, 2000). SPVs could then be optimized to include *more* loans with those terms to enhance profits, with PSAs restructuring cashflows into distinct tiers that offered even higher rates of return to investors willing to accept greater exposure to default losses from the pool (Hardin, 2021). Local property prices, the traditional basis for assessing collateral, played a subordinate role in the production of new exploitative loans in this model; instead, "the mortgaged house is an abstract and temporary object, used to extract and construct financial value in the world of securitisation until it is sold" (Keenan, 2019: 297).

Together, these changes mark a deepening link between the legal instrumentation of collateral and the commodity-form of property as it

"evolves to support a burgeoning network of finance capital" (Bhandar, 2015: 212). By enhancing the legal convertibility of exploitative loan terms into capital and back again, subprime collateral articulated a new racial logic to property as high-cost loans to Black and Brown homeowners and homebuyers emerged as a systemic edge of the U.S. financial markets from the mid-1990 s onwards.

2.2. *"Aggrieved Persons" and Legal Abstractions of Racial Equality*

This account of legal form provides some critical insights into the grammars of property and the way they pattern the "forms of redress and reckoning" (Safransky, 2022: 295) available to contest racially exploitative practices.[2] Legal contestations over subprime lending have often engaged doctrines of contract, focusing on specific questions of disclosure and fraud linked to exploitative loan terms and asking whether standards of consent and conscionability were present to the degree required by the legal abstraction of the consensual transaction (Ashton, 2018; de Goede, 2015).

Nevertheless, intensifying links between subprime collateral and global finance circuits represent only one dimension to the racial logic of property operating through the foreclosure crisis and its aftermath. Critics of the concept of legal form have emphasized how law is underdetermined relative to the articulation of property's social forms (Bhandar, 2018; Hunt, 1985; Jessop, 1990; Quastel, 2017), necessitating a broader appraisal of "the framework for sovereignty in which [a] given capital network is enmeshed" (Ralph, 2015: 9). From this perspective, subprime collateral has also been shaped by external conflicts between institutions or social forces "as they struggle over the creation and practice of law" (Hunt, 1985: 29); these include intersecting yet often contradictory doctrines regarding civil rights, banking and credit, and consumer protection, "each [with] its own scope, its own logic, and its own criteria for what is to be governed, as well as its own rules for how to govern" (Strauss, 2017: 141). While a full accounting of these intersections is beyond the scope of this paper, one critical doctrinal area links exploitative lending practices with juridical contestations over property in Black and Brown neighborhoods: fair housing.

As situated within a constitutional order of individual rights, the legal form of real property has subjected collateral to modern notions of disclosure, due process, and protections from search and seizure. These inhere to the homeowner/buyer according to the liberal logic of the rule of law and its protection of the "privileged subject of Euro-American urban citizenship: the home-owning nuclear family household" (Valverde, 2015: 20). Political and legal struggles over the exclusionary nature of those privileges, or the "predatory" nature of the inclusion of Black and Brown owners (Taylor, 2019), have helped forge a distinct political status for collateral through legislation and court adjudication. Notably, the federal Fair Housing Act of 1968 ("FHA") sought to expand housing opportunities by prohibiting discrimination in real estate-related transactions (Sidney, 2003). As one SCOTUS decision characterized it, "Congress meant for the FHA to be a big solution to a big problem—housing segregation generated by intentional racial discrimination" (City of Miami v. Wells Fargo & Co., 2019: 73). However, FHA followed other civil rights legislation of the 1960s in eschewing direct public enforcement as the means to achieve that solution; instead, the Act extended private rights-of-action as means of redress for individuals or groups claiming to have been harmed by discriminatory housing practices by banks, realty firms, insurance companies, or others. By empowering claimants as "private attorneys general" in their search for restitution from racism, this positioned housing collateral within a "litigation state" (Farhang, 2010: 14) that increasingly depended on mass class-action lawsuits (Ashton, 2018).

This shaped the legal form of subprime collateral through a different kind of legal abstraction: that of the "aggrieved person" who, having experienced injury due to racial discrimination in housing, was authorized through FHA to employ courts to seek redress. While this has "effectively [conferred] upon private litigants and their lawyers the same investigatory powers as federal agencies to compel sworn testimony and to disgorge documents" (Farhang, 2010: 8), it has also anchored the adjudication of claims of racial harm within civil law doctrines of procedure, standing, evidence, and proof. As the legal scholar Cheryl Harris has argued, this abstraction replaced overt white privilege within the law with "a more subtle form," one in which "the status quo of substantive disadvantage was ratified as an accepted and acceptable baseline" (Harris, 1993: 1753) against which legal contestations must be configured.

3. Adjudicating Collateral: Cleveland, Baltimore, and Miami

The dramatic events of the 2008 financial crisis were followed by a decade-long process wherein questions of liability for exploitative lending and mass foreclosures were taken up and contested in courts and other legal-political venues. This has provided a multiplicity of vantage points from which to examine how the legal forms of subprime collateral have worked to articulate or foreclose liability for racialized injury. In the remainder of this paper, I focus on one such vantage point: litigation by municipalities over the proliferation of foreclosed properties linked to racially exploitative lending. This takes subprime collateral to its terminal point, where a lender or servicer has used the courts (or other legal process) to exercise the security pledge and repossess ownership of the property. Unlike collateral's self-presentation as an instrument for the seamless conversion of financial claims into capital (Riles, 2010), the massive scale of foreclosures and the post-2008 collapse of U.S. housing markets led to large portfolios of vacant, bank-owned property alongside growing claims of responsibility for neighborhood destabilization and diminished property values (Apgar et al., 2005). Since then, numerous cities have pursued litigation as a strategy to recoup lost tax revenue, including Baltimore, Birmingham, Cleveland, Cook County (Chicago), Los Angeles, Memphis, Miami, and Oakland.

Three court cases form the basis for the empirical analysis of the paper. The first was filed in 2008 by the City of Cleveland against Deutsche Bank and 20 other financial firms, claiming that racially exploitative subprime mortgages were a public nuisance that had resulted in economic losses to the city. The second, *City of Baltimore v. Wells Fargo, also* filed in 2008, claimed that the bank's targeting of Black homeowners for high-cost loans, a process known as "reverse redlining," had resulted in precipitous declines in property values (and property tax collections) in the city's Black neighborhoods. A third case, filed by the City of Miami in 2014 against Bank of America and Wells Fargo, similarly claimed that discriminatory lending practices had been harmful to the city; this case was taken up by SCOTUS in 2016, one of the few cases involving racially exploitative lending practices to reach the highest level of the U.S. judicial system.

These cases are necessarily complex, both in the financial practices they detail and in their engagement of a wide range of legal questions. They also mostly address early, procedural questions regarding the standing of the city-plaintiffs to sue; none of the cases advanced to the trial stage where detailed evidence of racial harm was weighed by a jury. Nevertheless, they engage Pietz's forensic method by combining legal questions regarding whether loans targeted predatory terms to Black and Brown owners with attention to what legal scholar Elise Boddie (2010) calls "racial territoriality." While she uses that term to refer to law's inability to acknowledge spatial relations that reinforce racial subordination in public spaces, we can usefully extend it to two sets of geographic relations constitutive of subprime collateral: on the one

[2] Safransky (2022: 298) notes that redress, "[as] a verb… denotes 'to set right: remedy,' 'to make up for: compensate'; 'to remove the cause of (a grievance or complaint); 'to exact reparation for: avenge.'" Here, I use the term in the straightforward manner posed by the US rules of civil procedure, which offer successful plaintiffs injunctive relief from harmful practices along with damages for material losses and suffering.

hand, *horizontal* relations involving the spillover effects of racially exploitative lending practices and foreclosures on surrounding properties and neighborhoods; and, on the other hand, how law organizes *vertical* relations of liability between properties and the commodity chains of exploitative capital. While each case invoked these questions in different ways, together they established important legal precedents, working through ambiguities posed by the novelty of mass subprime foreclosures to "[bind] the reasoning offered in individual decisions into the institutional arrangements of the administration of justice" (Dorsett and McVeigh, 2012: 68). In the sections that follow, I analyze the development of each case through the adjudication process, using detailed reading of court filings, opinions, and decisions at different stages of the proceedings to map the diverse doctrinal pathways that facilitated or denied each city's claim. The results demonstrate how, within these rear-guard assessments of legal liability for racially exploitative lending, the legal form of collateral functions as something more than just mundane paperwork or "ideologized obfuscations" (Pietz, 2002: 35); rather, it works to re-establish, or "recode", the terms by which racially exploitative lending practices are attached to the juridical and political order.

3.1. the Formative Work of Collateral: Enabling Collective Claims

The discussion of legal form earlier in the paper highlighted how the security pledge has evolved to facilitate the pooling of claims to property within the SPVs characteristic of mortgage securitization. Whereas the exercise of that pledge through foreclosure proceedings normally appears as an *individual*, contractual matter between a borrower and lender or servicer – an effect of what Blomley (2004: 2) calls the "ownership model" of exclusive property possession – close examination of the three cases reveals how this pooling has enabled new *collective* claims of racially exploitative practices against banks. This formative work has two distinct dimensions linked to racial territoriality: the first involving doctrines of real property that facilitate the aggregation of claims based on territorial links between parcels; and a second involving new forms of legal agency for cities based on the legal subject of the "aggrieved person".

First, collateral's embeddedness in real property doctrine links it to concepts that acknowledge horizontal relations between adjacent properties; these have been employed to aggregate mass claims against subprime lenders. Public nuisance has been one legal theory used to draw direct connections between subprime mortgages recorded on large groups of properties, the lenders issuing them, and the neighborhood destabilization associated with concentrated foreclosures. A "capacious and rather fuzzy category" (Valverde, 2011: 292), nuisance enables civil action where a property "in relation to its existing use, constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment" (Johnson, 2008: 1191). Commonly used against specific *owners* for neglectful behavior, the doctrine has also been extended to purveyors of *instruments* (such as handguns, or in this case home mortgages) linked to harmful outcomes (Lind, 2011). It was the claim that the subprime mortgage deed was such an instrument that grounded the City of Cleveland's 2008 lawsuit against nearly-two dozen large lenders and servicers. Citing the defendant banks' targeting of the city's "large African-American population," Cleveland linked "proliferating toxic sub-prime mortgages" issued between 2002 and 2006 to over 15,000 foreclosures and an aggregate decline in property values of $462 million (City of Cleveland v. Deutsche Bank et al., 2008: 22,25–26). In a subsequent filing, the City expanded the link between the mortgage deed and exploitative financial practices to implicate issuers of mortgage-backed securities, who "financ[ed], purchas[ed], and pool[ed]… vast amounts of these loans" for sale to the city's Black residents (City of Cleveland v. Ameriquest Mortg. Sec., Inc., 2010: 499).

A second doctrinal track used to link disparate properties through collateral has been the legal theory of *disparate impact*. As articulated in interpretations of the Fair Housing Act (Johnson, 2014), disparate impact challenges "any uniform policy or practice that disadvantages minority applicants and does not further a legitimate business purpose" (White, 2018: 418). Class-action litigation over exploitative loan practices has often been impeded by questions of whether plaintiffs shared common injury by such a uniform policy or practice; courts have interpreted minor differences in loan terms (such as whether a loan was underwritten by a bank employee or a mortgage broker) as invoking separate questions of law that individualize the assessment of injury (Ashton, 2018). Within municipal litigation over mass foreclosures, however, the common features of the security pledge and its exercise through foreclosure has overcome those differences to facilitate the aggregation of claims regarding racial targeting of exploitative loans. It was on this basis that the City of Baltimore gained standing as an "aggrieved person" against Wells Fargo, citing economic losses related to 30,000 + vacant, foreclosed homes linked to the deliberate targeting of "abusive" subprime loans to Black neighborhoods (Mayor and City Council of Baltimore v. Wells Fargo Bank, 2008).

Further, the collateral pledge has extra significance as a means of binding together racially harmful practices over the lifespan of a loan. In its defense against the City of Miami's complaint, Bank of America argued that the city's claims should be rejected as the statute of limitations under FHA expired shortly after each original mortgage contract was signed, most over a decade earlier. This relied on the legal theory that parties to a consensual contract should only need a limited period to identify and cure defects (City of Miami v. Bank of America, 2015). However, the ongoing presence of a security pledge transformed the discrete act of signing a mortgage contract into a "continuing violation" by virtue of "'the continued enforcement of a discriminatory policy'" manifested in the final act of foreclosure; this "allows a plaintiff to 'sue on otherwise time-barred claims as long as one act of discrimination has occurred'" (ibid.: 44) during the period the security pledge was active.

Within these doctrinal interpretations, the security pledge draws together disparate parcels of property across space and time to enable larger claims regarding racial harm, shifting the underlying legal analysis of property relations to produce "an alternative theory of recovery to cities that have seen neighborhoods comprised of minorities ravaged by predatory subprime loans" (Johnson, 2008: 1198). This legal work performed by subprime collateral offers a counterpoint to scholarly perspectives emphasizing the disjuncture between the "global-ness" of the mortgage as financial claim (pooled into mortgage-backed securities) and the inherent locality of the collateral (residential property) securing that claim (Gotham, 2009). Whereas the commodity chains producing subprime collateral may at first glance seem to enhance the "distance between the actors initiating and enabling financializing projects and the often-violent impacts of their projects on the ground" (Fields and Raymond, 2021: 2), they also produce new, concrete territorial formations and new forms of political agency within the time-spaces of collateral.

3.2. Resolving Liability: Subprime Mortgages as Nuisance

Nevertheless, these three cases had limited success in generating redress for the city-plaintiffs. Baltimore's claim succeeded by forcing Wells Fargo Financial to settle for a nominal payout rather than risk trial by jury, whereas Cleveland's case was rejected "with prejudice" in 2009. Miami's claims were partially validated by the U.S. Supreme Court in 2017, but only by significantly altering the legal basis for analyzing bank liability; Miami subsequently withdrew its case in 2020. In the analysis that follows, I examine how adjudication of claims linked to subprime collateral worked to recode geographic relations of exploitation as legally unproblematic.

The rejection of the City of Cleveland's public nuisance lawsuit is emblematic of this recoding. In upholding dismissal of the City's case, a federal Appeals Court ruled that the case was without merit and "[failed] as a matter of law" (City of Cleveland v. Ameriquest Mortg.

Securities, 2009: 520). One key reason for this failure was rooted in the constructs of harm or injury that flow from nuisance doctrine. The City did not claim that the practices leading to mass foreclosures were illegal, simply that the subprime mortgage deed was a harmful instrument that had destabilized Black and Brown neighborhoods along with the city's tax base. For the Appeals Court, this meant that subprime mortgage lending was not "inherently injurious," but rather became so through negligence.

By this reasoning, Cleveland's claims offered only two pathways for recognition of injury: losses would have to involve either "tangible physical harm to persons or property," or be rooted in an agreement between the parties, with the plaintiff showing that contractual obligations or duties were breached in a way that caused economic loss. With no systematic evidence that mass foreclosures were causing physical harm to adjacent properties, this left "little dispute that these damages are purely economic in nature" (ibid.: 525). As notions of economic loss not involving physical damage derive from contract law, the Court reasoned that "compensation necessitates an analysis of the damages which were within the contemplation of the parties when framing their agreement" (ibid.: 523). The City had not been a direct party to the "material consideration" pledged as collateral; it was instead drawn into relation to subprime collateral through a shared interest in property as the basis for tax revenue. By the Court's reasoning, this meant it could not claim to have been harmed: "…a plaintiff who has suffered only economic loss due to another's negligence has not been injured in a manner which is legally cognizable or compensable" (ibid.: 521–22). Thus, even as subprime collateral tied exploitative loan instruments to the destabilization of Cleveland's Black neighborhoods, the legal form of the mortgage grounded a strict construction of economic harm linking nuisance to an individual, consensual transaction between lender and borrower.

3.3. Aggrieved Persons and the 'Traceability' of Racialized Injury: Baltimore and Miami

Where Cleveland's nuisance claims foundered, Baltimore and Miami succeeded in generating standing against Wells Fargo/Bank of America by claiming to be "aggrieved persons" under the federal Fair Housing Act. Previous SCOTUS decisions held the federal Fair Housing Act to be "analogous to tort," referring to the common law concept allowing an individual to sue for remedy from injury or loss (White, 2018). The sole requirement to sue under FHA is "'that the plaintiff allege that as a result of the defendant's actions he has suffered "a distinct and palpable injury"'" related to a discriminatory housing practice (White, 2018: 428). With this grounding, Baltimore and Miami were able to avoid narrow tests of contract that confounded the City of Cleveland.

However, the common law foundations of fair housing doctrine posed new hurdles that significantly reshaped the legal questions at play in these two cases. The defendant banks raised constitutional challenges to the two cities' claims, pushing judges to assess bank liability at the limits of the sovereign jurisdiction of the legal system. Specifically, Article III of the U.S. Constitution restricts the jurisdiction of courts to "cases and controversies" defined according to a specific test: a plaintiff must plausibly allege "an 'injury in fact' that is 'fairly traceable' to the defendant's conduct and "that is likely to be redressed by a favorable judicial decision'" (Bank of America v. City of Miami, 2017: 1302). Whereas the nature of the "injury in fact" linked to mass foreclosures was clear enough, the standard of "fairly traceable" required that Baltimore and Miami grapple with how to make bank liability for racially exploitative lending practices cognizable under the law.

3.3.1. from 'Hedgehogs' to 'Foxes': City of Baltimore v. Wells Fargo Financial

The first of the two cases, *City of Baltimore v. Wells Fargo*, illustrates how court interpretation of geographic relations of liability worked to narrow the analysis of racialized injury. Baltimore's 2008 complaint cited tens of thousands of vacant, foreclosed homes and implicated Wells Fargo Financial – the largest subprime lender active in the city – for its allegedly discriminatory practice of targeting high-cost loans to Black neighborhoods. The complaint was swiftly dismissed by the District Court for Maryland, which noted only 163 foreclosed properties attributable to the bank in majority-Black neighborhoods; this "demonstrates the implausibility of any alleged causal connection between Wells Fargo's alleged reverse redlining activities and the generalized type of damages claimed by the City" (Mayor & City Council of Baltimore v. Wells Fargo Bank, 2010: 850).

It took two further attempts to generate a satisfactory complaint showing how neighborhood spillovers from foreclosure were "fairly traceable" to Wells' lending practices. A first attempt traced direct, horizontal links between collateralized and neighboring properties, identifying specific foreclosed homes where Black occupants had received subprime loans from the bank, then drawing a two-block radius around each where impacts on surrounding home values was most acute. The Court rejected this definition as still too broad; it included *all* Wells Fargo foreclosures in the delineated areas, ignoring whether the property became vacant because of reasons other than unsustainable loan terms (such as borrower negligence). Baltimore then filed an amended complaint that addressed this "but for" problem by further reducing the scope to properties formerly occupied by two specific groups: first, Black homebuyers whose credit profile qualified them for "prime" loans but who were instead steered into higher-cost subprime loans by Wells Fargo; and, second, incumbent homeowners who were otherwise unqualified for *any* loan, but who were approved for a high-cost refinance loan by the bank. This solidified the constitutional challenge for "traceability" of the causal chain between the bank's wielding of property as collateral for exploitative loans, subsequent disruptions to property occupancy, and economic losses to the City from diminished property tax collections (Mayor & City Council of Baltimore v. Wells Fargo Bank, 2011a). However, it significantly narrowed the spatial relations of liability, focusing on only a small number of properties surrounding homes with direct links to two loan products within the bank's much larger commodity chain of exploitative credit.

Even as this articulation of traceability allowed the case to proceed beyond the initial dismissal stage, the City then faced the arduous test of proving bank liability against the complex set of facts surrounding specific mortgage contracts signed on individual properties. As the judge noted in a 2011 opinion, "this case is no longer a 'macro' one, focusing upon systemic issues, but a 'micro' one, focusing upon specific borrowers and properties… it is time for counsel and the parties to be 'foxes,' rather than 'hedgehogs'"[3]:

> "The bottom line is… if the individual circumstances of the borrowers and/or properties in question would have led to foreclosure despite the allegedly unfavorable terms of the loans… [the City of Baltimore] cannot prevail in this lawsuit" (Mayor & City Council of Baltimore v. Wells Fargo Bank, 2011b: 2).

In other words, "traceability" demands that plaintiffs account for factors *within* the mortgage contract that might otherwise explain whether foreclosure was purely due to exploitative loan terms; this pits the expansive geographies of racial targeting against the legal abstractions of the contractual subject and the consensual agreement. While the early stages of the case focused primarily on procedural questions, it is likely that a trial focused on the extent of bank liability would have hinged on these individualized questions linked to the original pledge of each property as collateral, such as borrowers' overall indebtedness and spending habits. In this way, *Baltimore v. Wells Fargo* offers a an important analytic lens into the narrow forms of racial territoriality

[3] Isaiah Berlin attributes this comparison to the Greek poet Archilochus: "'The fox knows many things, but the hedgehog knows one big thing'" (Berlin, 1953: 1).

emerging from court adjudication and its effects on contestation of exploitative lending practices. Rather than engage in an arduous and costly trial process, the City and Wells Fargo instead began negotiations, reaching a settlement in July 2012. Admitting no legal liability, the bank agreed to pay $7.5 million to the City of Baltimore for homebuyer assistance and foreclosure-related initiatives, and it further committed $425 million for new home mortgages in Baltimore over the following five years (City of Baltimore, 2012).

3.3.2. from 'Foreseeability' to 'Some Direct Relation': City of Miami v. Bank of America

Even as Baltimore settled its case with Wells Fargo for a nominal cash payout, the underlying legal questions over how "far" liability for racialized harm could be construed remained unresolved. It was only in 2016, when the U.S. Supreme Court heard arguments in *Bank of America Corp. et al. v. City of Miami*, that the question of links between racially discriminatory lending practices and liability for concentrated foreclosures received sustained review. The federal District Court for Florida had initially dismissed Miami's claims, siding with Bank of America and Wells Fargo in determining that Miami had failed to meet the "fairly traceable" standard despite a statistical analysis linking the bank's discriminatory lending practices to increased foreclosures and declining property values. In effect, the Court effectively argued that the "life-world" of the security pledge involved too many links for effective assessment of liability; the "independent actions of [a] multitude of non-parties break the causal chain" and "thwart the City's ability to trace a foreclosure to Defendants' activity" (City of Miami v. Bank of America Corp., 2014: 9–10).

Upon appeal, the 11th Circuit Court overturned this decision, holding that the judge had erred in his overly conservative treatment of the question of traceability. The Fair Housing Act's common law foundations meant determination of the bank's liability was to be "governed by tort rules," which demanded new tests of whether the city's injuries were traceable, or "proximately caused," by the banks' conduct (*City of Miami v. Bank of America Corp.*, 2015: 3,33). A first test, the focus of the 11th Circuit appeal, invoked the common law concept of "foreseeability": to adequately plead traceability, the defendant banks "must have been reasonably able to foresee the kind of harm that was actually suffered by the plaintiff" (ibid.: 39). The City of Miami argued that, based on the analytical tools widely available at the time, the connections between the banks' racially exploitative lending practices borrowers and premature foreclosures and their neighborhood effects were easily foreseeable. The 11th Circuit Court agreed, reasoning that "under this standard, the City has made an adequate showing" of traceability, specifically by providing statistical models of foreclosure probability that "'raise the pleadings above the speculative level'" (ibid.: 39–40).

Bank of America further appealed this reversal to the U.S. Supreme Court, which heard the case in November 2016. In a 5–4 decision issued the following May, SCOTUS affirmed that the City's financial injuries appeared directly linked to the "zone of interests" targeted by FHA, specifically citing "…'intentionally targeted predatory practices at African-American and Latino neighborhoods'" (*Bank of America et al. v. City of Miami*, 2017: 1304). However, SCOTUS rejected the 11th Circuit Court's reasoning in assessing Bank of America's liability for these practices solely on the standard of foreseeability, arguing it is too loose a standard. Writing for the majority, SCOTUS Judge Breyer directly referenced the notion that geographic relations of liability emanating from subprime collateral could be far-reaching:

> "In the context of the FHA, foreseeability alone does not ensure the close connection that proximate cause requires. The housing market is interconnected with economic and social life. A violation of the FHA may, therefore, 'be expected to cause ripples of harm to flow' far beyond the defendant's misconduct. Nothing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel. And entertaining suits to recover damages for any foreseeable result of an FHA violation would risk 'massive and complex damages litigation'" (ibid.: 1306).

Instead, drawing on jurisprudence from other federal statutes with common law foundations, SCOTUS elaborated that the legal substance of "fairly traceable" required an additional test, namely that the city demonstrate "'*some direct relation* between the injury asserted and the injurious conduct alleged'" (ibid.: 1299, emphasis added). The "some direct relation" standard analyzes "whether the injury is 'surely attributable' to the statutory violation" (*City of Miami v. Bank of America Corp. et al.*, 2019: 1275). This does not require proving that the challenged conduct was the sole cause of the plaintiff's injury; rather, it demands the defendants' challenged conduct be demonstrably '"a substantial factor in the sequence of responsible causation'" (*City of Miami v. Bank of America Corp.*, 2015: 40), with that sequence maintaining the legal integrity of the statutory injury throughout.

SCOTUS did not elaborate what this standard should look like. Instead, it remanded the case back to the 11th Circuit for a second review under these new guidelines. In a dissenting opinion, SCOTUS Justice Clarence Thomas tried to anticipate what that review might find, arguing that analysis of "some direct relation" generally does not "'go beyond the first step'… in the chain of causation between the injurious conduct and its asserted injuries" (*Bank of America et al. v. City of Miami*, 2017: 1311). By contrast, he counted no less than five steps between the pledge of property as security for an exploitative loan and the harm experienced by the city – an "attenuated chain of causation" in which, he argued, "Miami's asserted injuries are too remote from the injurious conduct it has alleged" (ibid.: 1311–12). By Justice Thomas' reasoning, the standards of traceability could support only the sparest constructions of racial territoriality – likely bound to individual parcels as determined by the direct contractual relation between a borrower and their lender.

With this new SCOTUS standard regarding bank liability, the case was taken up once more by the 11th Circuit Court in a May 2019 decision. At first blush, the decision reads favorably to Miami's claims, holding that the City had adequately demonstrated "some direct relation between the injury asserted and the injurious conduct alleged'' (City of Miami v. Wells Fargo Co., 2019: 1263). The three-judge panel rejected Justice Thomas' argument that directness be limited to one step in a causal chain, labeling it a "wooden" application of the rule (ibid.: 1275); by such a strict analysis, they reasoned, a harmed homeowner would have no recourse upon losing their home to a predatory loan "since the foreclosure only occurs after the homeowner takes the independent step of failing to make payments" on that loan (ibid.: 1276). Rather, "relation" should be understood as "'the mode in which one thing or entity stands to another, itself, or others,' or 'a logical bond'" (ibid.: 1272) that potentially admits intervening causal steps or third parties. In the Court's eyes, collateral functions as just such a logical bond, with the exercise of the security pledge through foreclosure "restarting" the step count in a way that generates an essential continuity between predatory conduct and racialized injury.

> "…if the Banks' predatory lending practices injured homeowners and led to foreclosures on a massive scale, these injuries inflicted on multiple homeowners in the same city must almost surely have injured the City as well" (ibid.: 1277).

Nevertheless, the decision evidenced an overt concern with limiting the geographic reach of liability for racially exploitative lending to "keep the floodgates closed" from wider claims (ibid.: 1291). There are two dimensions to this concern evident in the Court's reasoning. First, while Miami was not a party to the original contract or "material consideration," its claims succeeded *only* because it had a collateral-like claim to each foreclosed property, in the form of the sovereign power to levy taxes and seize property for non-payment. While adjacent homeowners were surely also harmed by declining property values due to concentrated foreclosures, their interests were not grounded in such a recognizable legal instrument, and the Court indicated this would result

in the rejection of claims to "common" injuries. It offered the analogy of neighborhood businesses to show how its reading of directness would limit the reach of bank liability:

> "The City will necessarily be harmed as soon as the foreclosures occur… The causal chain for the grocer is longer, more attenuated, and more of a problem for proximate cause analysis because there is a powerful discontinuity between the foreclosures and the grocer's loss of profits…" (ibid.: 1290).

Second, the 11th Circuit Court signaled that whereas Miami's showing of "some direct relation" was plausible enough to survive the banks' motion to dismiss, the city would face the arduous task of *proving* causation through "a battle of experts" (ibid.: 1283) should the case come to trial. While the Court favorably referenced the power of hedonic regression to "'ascertain the amount of [the City's] damage attributable to the violation, as distinct from other, independent, factors'" (ibid.: 1284), such a battle would clearly require that the City be prepared to prove liability on a property-by-property basis. Put differently, having validated *conceptual* bank liability for racially exploitative lending, the Court signaled that determining the actual *magnitude* of that liability against new legal tests of directness would return Miami to the grounds by which its claims were initially rejected: the need to statistically isolate the marginal effects of the bank's lending practices against the weight of "independent factors" ranging from "a historic drop in home prices and a global recession" to "the decisions and actions of third parties… [and] competing sellers, and uninterested buyers" (City of Miami v. Bank of America Corp., 2014: 9–10).

Here, it is useful to link this detailed analysis of the Miami case to earlier arguments regarding legal form. Even as the standardization of collateral facilitated the linking of properties within subprime mortgage portfolios, the security pledge makes each mortgage contract seem a unique event bounded in time and space. In the terms posed by the test of "some direct relation," this has the effect of rendering the aggregate effects of exploitative lending across hundreds of such properties into "independent" factors that appear to operate externally to each contract. This indemnifies individual lenders such as Wells Fargo and Bank of America by allowing the collective rush to target exploitative loans at Black and Brown neighborhoods to appear as externalities, adding additional sources of discontinuity to the statistical analysis necessary to prove directness.

The Court hinted that a way forward would be for Miami to significantly reduce the scope of claims to just that cohort of borrowers who both received a predatory loan and were also denied the opportunity to re-pledge their collateral by refinancing into a lower-cost loan (City of Miami v. Wells Fargo Co., 2019: 1277). This strategy would generate the kind of direct relation that could survive testing by hedonic regression modeling; however, in so doing it reconstructs geographic relations in liability in two ways favorable to defendant banks: first, it dramatically reduces the number of properties against which claims of injury can proceed; and, second, it effectively pushes all remaining properties into a nebulous legal zone where the banks bear conceptual liability for racially exploitative lending, but the possibility of redress founders on the evidentiary ambiguities of "directness.".

Having found Miami's claims of injury plausible, the 11th Circuit Court gave the City the green light to proceed with its complaint against Bank of America and Wells Fargo. However, in January 2020 the City of Miami dropped its case and the district court ordered it dismissed the following day (Bank of America Corp. v. City of Miami, 2020). Wells Fargo announced that the "dismissal was initiated by the City and is not related to a settlement, and Wells Fargo is providing nothing in exchange" (Wack, 2020: 1). While the City provided no explanation for its decision, it is likely that the erosion of the scope of the case through the application of the "some direct relation" standard resulted in a scope of redress that could not justify the costs of a lengthy trial.

4. Conclusion

This analysis of subprime collateral joins other critical geographic scholarship in locating how racial logics operate through the instrumentation of property, logics that extend beyond occupancy and possession to institutionalize racial difference in housing and credit markets (Akers and Seymour, 2018; Teresa, 2022; Zaimi, 2020). As an instrument central to the evolving commodity-forms of (financialized) property, subprime collateral grants lenders and servicers "reach" (Allen, 2011), lubricating the commodity chains of racially exploitative lending by facilitating conversion of the security pledge from a "material consideration" – a piece of paper – into a flow of capital that sustains portfolio earnings for global investors. The forensic profile of subprime collateral in the three cases analyzed here demonstrates that reach is not necessarily-one-way; the exercise of the security pledge through foreclosure opens lenders to wide-ranging potential liability for racially exploitative lending practices, generating a "politics of redress" (Polillo, 2022) out of the wider "prevailing institutional arrangements and articulations of sovereignty" within which the instruments of subprime capital are enmeshed (Ralph and Singhal, 2019: 866).

Nevertheless, comparing the position of collateral in white neighborhoods places this politics of redress into starker perspective. Anxious to avoid the destabilizing effects of mass foreclosures on the wider banking system after 2008, federal programs offered eligible borrowers a premium on their collateral to allow them refinance into low-cost loans; however, the eligibility criteria did not admit loans owned by the high-risk mortgage portfolios characteristic of subprime credit (Immergluck, 2015). Rather, borrowers and communities targeted for exploitative loans were forced into protracted litigation to attempt to secure some form of redress, litigation in which the intersecting work of legal abstractions – of the consensual contract and the "aggrieved person" – performed critical work protecting the commodity chains of subprime credit from liability for exploitative practices. This resulted in new legal constructions of racial territoriality, ones in which the mass displacement and neighborhood destabilization accompanying the foreclosure crisis are re-inscribed in the law as a "spatial allocation of power" (Boddie, 2010). Operating in the background of the mortgage transaction, then, collateral comes to function as "a critical area of social contestation in which processes of racialization are intensely present but in which they are also frequently 'disappeared'" (Bhandar and Toscano, 2015: 8).

This forensic account of subprime collateral further engages and extends a growing body of work seeing in the 2007–2008 financial crisis not the endpoint to financialized modes of racial exploitation but their reconstitution and magnification (Bonds, 2019; Byrd et al., 2018; Christophers and Niedt, 2016; Fields and Raymond, 2021). Law has been central to this moment of reconstitution, with scholars interrogating multiple intersecting legal threads articulating new racialized property regimes. This has included new insights into the role of administrative law and emergency banking interventions in shaping racial territoriality – for instance, through the dumping of vacant, abandoned properties by large financial institutions, which provided further fuel for exploitative contract-for-deed arrangements that now cluster in the same neighborhoods targeted by subprime lenders (Akers and Seymour, 2018; Teresa, 2022). While the cases examined here represent just one dimension of this emergent property regime, the findings join this larger body of scholarship by examining how "innovative legal spaces" form new configurations of racial territoriality, ones that "shift legal and regulatory risk" (Teresa, 2022: 40) back onto borrowers and neighborhoods and perpetuate racialized dispossession and displacement as key ontologies and "thematic forms" for U.S. cities (Dantzler, 2021).

More broadly, centering the legal work of instruments such as subprime collateral offers a way to extend geographers' understanding of the ongoing articulation of racial capitalism as "an institutionalized social order in which racialized *political* subjection plays a constitutive role" (Fraser, 2016: 166, emphasis added). While grounded in the

targeting of exploitative loans as the latest "'con [game]' developed to exploit black people's desperate search for housing" (Jenkins, 2021: 495), the lifeworld of the security pledge exceeds an economic logic of exploitative credit organized around occupancy and possession. Rather, subprime collateral works as a political marker inscribing racial logics onto space, both through the work of appraisal inscribing property with abstractions of risk and value (Zaimi, 2020), and through the work of collateral's legal form in reinforcing unequal geographic relations of liability. While courts often explicitly recognize the conceptual viability of claims of racial discrimination against exploitative lending practices, it was the transformation of *political* questions of responsibility for racialized injury into *legal* tests of "traceability" that marked the recoding of property through the three cases examined here. As Fraser (2016: 172) notes, this pushes scholars interested in legal-geographic analysis of racial capitalism to consider "the joint, intertwined dynamics of 'economy' and 'polity,'" specifically through instruments that function as "[points] where a hierarchy of political statuses meets an amalgamation of disparate mechanisms of accumulation.".

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The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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