

# RACE AS A SET OF SYMBOLIC RESOURCES: MOBILIZATION IN THE POLITICS OF EMINENT DOMAIN

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The vociferous public backlash against a 2005 U.S. Supreme Court decision about property seemed to have little to do with race. The Court's decision to allow the City of New London, Connecticut's use of eminent domain sparked nearly universal outrage. News editorials<sup>1</sup> and public-opinion polls<sup>2</sup> reported that the rancor at *Kelo v. New London*<sup>3</sup> was mostly inspired by property-rights commitments and rarely mentioned race at all.

Eminent domain is the term for U.S. governments' powers to force "private property" away from its owners for "public use," and provide "just compensation" in return (quotes from the U.S. Constitution's Fifth Amendment). A public debate following *Kelo* focused mostly on whether economic development was a "public use" that legitimately justified eminent domain, since the taken properties would be handed over to new private owners. After the *Kelo* decision, almost every state in the country (43 states, all but one within 2 years of the decision)<sup>4</sup> reformed its eminent-domain laws, to prevent or severely limit this kind of property taking. As they addressed *Kelo* and the subsequent legal reforms, journalists, pundits, attorneys, or justices talked a great deal about government's duty to protect property but seldom addressed race explicitly.

Though rarely spoken of directly, race – whiteness in particular - had symbolic power in mobilizing public support for the New London property owners. "The plaintiffs in the *Kelo* case were white, middle-class people, which explains a good bit of the political hysteria behind the decision," testified law professor Peter Byrne in front of the U.S. Civil Rights Commission in 2011. Susette Kelo's whiteness signaled to a white audience that, "this could have happened to me." Representatives from the libertarian law firm

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1 Reflecting public sentiment (or creating it), four of five newspaper editorials voiced opposition to the Court's decision. Sagalyn 2008, Positioning Politics.

2 The disapproval rating was between 80 and 90 percent in different polls. Nadler et al. 2008, pp. 298.

3 *Kelo v. New London*, 545 U.S. 469 (2005).

4 Gold and Sagalyn 2011, The Use and Abuse of Blight in Eminent Domain.

that argued *Kelo*, the Institute for Justice, used Susette's story to mobilize public anger over its Court loss. Its website featured a photograph of white Susette standing in front of her well-cared for, pretty, pink house. She represented the ideal, white homeowner who deserves government respect. The nationally syndicated *Parade* magazine invited readers to its cover story with a photograph of a white husband, wife, and two kids in front of their home with the bold headline "Will the Government Take Your Home?" implying, to whomever might identify with the family on the cover, that they too could be at risk.<sup>5</sup> Many other cases that subsequently grabbed national attention as "eminent domain abuse" foregrounded white plaintiffs. For a majority white audience across the United States, the whiteness of these victims signaled that any other responsible white homeowners might also be at risk for condemnation for a city's economic development plans. That a majority American audience would feel vulnerable was something relatively new. In the past, eminent domain for urban redevelopment had been publicized as a primarily black issue.

Historically, eminent domain for urban redevelopment had targeted African Americans.<sup>6</sup> Most dramatically, the "urban renewal program" of the 1949 Federal Housing Act funded local authorities to use eminent domain for massive "slum clearances," which demolished hundreds of thousands of homes and businesses and displaced over a million people. Researchers and activists quickly declared the program a failure, especially for African Americans. Rather than solve the post-war housing problem, it exacerbated it by causing a net loss of housing of between 50 and 75 percent.<sup>7</sup> By some estimates, between 60 and 80 percent of those displaced were African American.<sup>8</sup> A black property owner was the last plaintiff to take the issue to the Supreme Court, 50 years before *Kelo*. In *Berman v. Parker*, the Court ruled in favor of the Washington D.C. government by permitting the condemnation of a black-owned business for "blight removal," was decided in 1954, as the civil rights movement rapidly gained force.<sup>9</sup> Indeed, in the 1950s and 1960s, outside of the courts, Americans fought eminent domain largely out of a sense of racial justice for African Americans. In popular discussions, James Baldwin's term "Negro removal" easily caught on to replace the official name from federal law, "urban renewal," and the phrase broadcast the racially disproportionate encounters with eminent domain.<sup>10</sup> President Johnson's Kerner Commission reported in 1968 that grievances against urban renewal programs helped cause the unrest and rioting sweeping across the country.<sup>11</sup> This chapter is about the symbolic power of race in recent conflicts over eminent domain.

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5 Flynn 2006, *Across the Country, Americans Fight to Protect their Property*.

6 Hilary Shelton of the NAACP told the US Civil Rights Commission that "Although nobody knows the exact numbers of people displaced by eminent domain across the nation, everyone seems to agree that eminent domain disproportionately affects African Americans." *The Civil Rights Implications of Eminent Domain Abuse*.

7 Greer 1966, pp. 56.

8 Frieden and Sagalyn 1989, *Downtown, In*, pp. 28. Fullilove 2004, *Root shock*. Gans 1966, *The Failure of Urban Renewal*, pp. 539. Wilhelm and Powell 1975, *Who Needs the Negro?* pp. 119.

9 *Berman v. Parker*, 348 U.S. 26 (1954).

10 Morgenthau 1963, James Baldwin.

11 U.S. National Advisory Commission on Civil Disorders 1968, pp. 81-2.

A commitment to racial equality motivated many historically black organizations to lend their support to the white plaintiffs in *Kelo* and to the cause of property rights. The National Association for the Advancement of Colored People (NAACP), the Southern Christian Leadership Conference (SCLC), and other racial justice organizations<sup>12</sup> submitted an amicus curiae brief supporting the *Kelo* plaintiffs. They lambasted eminent domain's legacy of racial injustice. Even conservative Justice Clarence Thomas wrote a dissent in *Kelo* arguing that to prevent poor, African-American communities from the disproportionate suffering they would surely endure under the permissive majority opinion, there needed to be a greater judicial check on local eminent-domain powers. Although the blackness of potential eminent-domain victims was not part of the main narrative in the post-*Kelo* backlash, for at least some prominent leaders, blackness was an important symbol.

This chapter specifically investigates the symbolic power of blackness in contemporary public mobilizations around eminent domain that affect black owners, by all accounts a much more common occurrence than eminent domain affecting white property owners (when used for urban redevelopment). In the post-civil rights era, blackness cannot be understood simply as an analytical distinction, explaining who is disadvantaged or even how certain people become disadvantaged in real-estate politics. I argue that in public fights over real property, race can and should be understood as a complicated symbolic tool available to many different parties involved in real-estate fights. Race - blackness in particular - serves as a multi-valent symbolic resource accessible for different kinds of power. I demonstrate that by understanding race as a symbolic resource and by differentiating different ways it is used, we can see what we otherwise might not: how typically disadvantaged people use race to combat racial inequalities.

We are most familiar with the way that Americans deploy blackness, consciously or not, in ways that create disadvantage. They associate undesirable characteristics with blackness, in employment and housing, and as a result, often deny resources to otherwise qualified people. We should distinguish this use of race that serves domination from the way that racial-justice organizations have deployed blackness as an indicator of the need to remedy such domination. Critics have used race to signal, for instance, the application of a policy in ways that systematically disadvantages black people. Indeed, they use race to signal domination, and by doing so, they turn it on its head.

By signaling racial domination in an era when remedies to discrimination are expected, Americans mobilize resistance to government power. Black faces, when targeted by eminent domain, can signal worries about racial discrimination, and thus the need and willingness to resist and redirect government action as well as available institutional resources to fight it. In addition, blackness can signify shared interests or understandings, and thus blackness can be a valuable though potentially problematic symbol of who can represent constituents to government. I use this chapter to explicate these complicated and conflicting ways that people deploy blackness in racialized conflicts over real estate. Blackness is not just a means for causing disadvantage. When citizens are besieged by government power, their blackness can also indicate that government power should be resisted, that there are

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12 Brief of Amici Curiae NAACP et. al. *Kelo v. New London*, 2005.

resources to resist it, and that common interests are at stake. Whether or not it is explicitly addressed, blackness can be a potent symbolic tool in property politics.

In this paper, I discuss how my in-depth study of a local conflict over eminent domain led me to distinguish three forms of the symbolic power of blackness, and I reflect on their importance to the present-day context. I present the symbolic power of blackness through an empirical study that exposed its many forms to me. I examine how blackness mattered in a mostly African-American, South Philadelphia neighborhood struggle over eminent domain in the late 1990s and early 2000s. I learned about what happened in the Jefferson Square neighborhood through my larger investigation of eminent domain in Philadelphia.<sup>13</sup> To understand what happened in this neighborhood, I conducted an exhaustive analysis of archival records and interviews. I examined most internal files related to this project at the City of Philadelphia Redevelopment Authority (the agency with eminent-domain power), the Office of the Mayor's Neighborhood Transformation Initiative, and the Philadelphia City Planning Commission, as well as public records from several other government agencies, residents' and activists' clippings, and news reporting. Archives provided evidence directly from the period of interest, but I needed to speak with the people who had produced these archives to find out about events that were not preserved in writing and to understand motivations behind written communications. I conducted over 30 in-person interviews with individuals closely involved in this case: government officials, condemnees (those who lost property) and their neighbors, and community-organization leaders. The interviews primarily uncovered respondents' perceptions, recalled shortly following the neighborhood's development. When possible, I confirmed the reliability of information by cross-checking interviewees' responses with each other and against archival evidence. Next, I share what these archives and interviews demonstrated about the symbolic power of blackness.

### **The Case: Eminent Domain in Jefferson Square**

In early 1998, mostly African-American residents of a South Philadelphia neighborhood got wind of a government plan to displace them. Their white District City Councilman, white hospital owners, and white leaders of neighboring community organizations had written up a "Jefferson Square Revitalization Plan." Government would move residents to make way for new housing and an expanded hospital parking lot. About five square blocks had remained a particularly stubborn host to deteriorating and dangerous houses, vacant lots, and illegal activity, despite signs of new investment in neighboring areas. The Plan's advocates hoped that new construction, together with significant housing rehabilitation, would attract middle-class homebuyers to invest in a struggling neighborhood.

Residents were enraged, and they fought to prevent their forced removal. Over the following two years, they made phone calls, knocked on doors, and enlisted government officials, business owners, and community professionals to their cause. By the middle of 1999, Councilman Frank DiCicco withdrew his bill for the use of eminent domain. He publicly acknowledged that he needed to listen to the residents resisting his plans.

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13 Becher 2009, *Valuing Property*. Becher Forthcoming 2014, *The Use and Abuse of Eminent Domain*.

By the end of 1999, Jefferson-Square-area residents and Councilman DiCicco had signed an agreement for the neighborhood's redevelopment, a plan that differed significantly from the one proposed earlier. The same residents would have to move. But homeowners could remain in the project's footprint, at no new cost to them. If they wished, they would trade their old houses for new ones. The construction would be staged so that they would give up their existing houses only after their new ones were ready. They would take on no new financial burdens. If necessary to cover the purchase price, displaced residents would receive loans that paid themselves off over 15 years. Once this agreement between the Councilman and resident spokespeople was reached, the Councilman re-proposed a bill for the use of eminent domain, and it passed. In 2004, homeowners who took this relocation deal moved, and when they spoke with me a few years later, they told me they generally approved of the project's outcome.

The residents who fought their Councilman and won these concessions displayed an unusual amount of power. They did not stop government from using eminent domain, but they dramatically changed how it would be used, for what purpose, and how compensation would be arranged. They did all of this without taking their case to court. Race figured centrally in the power they initially felt against them, since blackness made these residents more likely to end up in the bulldozer's path in the first place. However, blackness also helped them develop the power they used to control their future. Race motivated them and others to fight back and to speak for community interests.

## **Racial domination**

In the beginning of the saga over Jefferson Square, racial domination seemed blatant. In the early 1990s, several power brokers came together to plan a comeback for a section of the neighborhood just south of Jefferson Square Park and north of Mt. Sinai hospital. The people planning for the area's "revitalization" were predominantly white. Though the neighborhoods around Jefferson Square Park were racially mixed, the area to be razed was predominantly black.

It appeared likely that race had directly influenced politicians' and other white leaders' early decisions to plan for resident removal. Put simply, they did not seem to think that these African-American homes deserved the same kind of protection that they might typically afford to white, middle-class homes. Councilman DiCicco and his primary assistant on this project, Jeremy Newberg, formed their initial ideas about these houses from drive-bys and paper records and perhaps from combining that information with assumptions about the poor, black people they saw on the streets. The community members I interviewed figured that the officials imagined the neighborhood to be dominated by slumlords and drug dealers or just people who would not care if they held on to their neighborhood or moved to another. Residents suspected that these white men had assumed that residents had extremely little invested in the place precisely because those residents were black.<sup>14</sup>

Thus, it was thought that blackness signaled to outside power players that residents were less-than-full homeowners. Having title to their homes did not suggest, as it might for white homeowners, devotion to their home or neighborhood. It may not have been obvious to outsiders that black, in comparison to

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14 Confidential Interviews, July 1, 2007, July 30, 2007, January 29, 2009, February 2, 2009.

white, residents had sunk time, money, emotions, and more into their homes and wanted to keep them. The Councilman's willingness to drastically reconstruct this area may have stemmed partly from his misguided imagination of what those blocks meant to the people who lived on them.

Whether or not people in power used race to form assumptions about the meaning of homeownership, it is clear that the use of problematic building conditions to draw the government bulldozer statistically disadvantages African-American residents, leaving them more at risk of eminent domain. That is, the stronger likelihood that African Americans will be poor and live in housing of poor conditions make them more likely to face a government that threatens drastic measures for redevelopment. Blight – poor, unsanitary, and unsafe conditions of a neighborhood's built environment – legally justifies a local government's power to use eminent domain.<sup>15</sup> Such a measure is hardly race-neutral, though formally it may appear to be. In part, because blackness is associated with individual, family, and neighborhood poverty, African-American urban residents are more likely than others to end in the path of the wrecking ball. In this South Philadelphia conflict, no one argued that the targeted houses were in good condition. (Note this important difference from the *Kelo* case and many others covered in the national press.) Roofs were deteriorating; windows were broken; walls were disintegrating; and conditions just seemed to worsen. African-American residents knew that their blackness had helped the neighborhood deteriorate, in ways that they could not control, and thus made them vulnerable to demolition. Many Jefferson Square residents had arrived in the 1960s and early 1970s, just as the neighborhood began a slow deterioration, and they watched jobs at the nearby docks disappear and white neighbors move away. Often, as old residents left, no one moved in to replace them, leaving behind vacant houses to deteriorate or often be demolished. Many residents and community leaders expressed full awareness of the variety of racialized causes for the neighborhood's decline, from discrimination in employment, housing, and loans to government's provision of neighborhood services.<sup>16</sup>

## **Racial remedies**

Although the racial domination that endangered Jefferson Square's homeowners created an immense burden, awareness of that disadvantage also created opportunities for amelioration. Widespread intolerance of discrimination makes it possible to treat it as a deviant behavior that should be resisted. Americans generally share a belief that *racial domination should not happen*, whether or not they think that it does. The fact that it is even possible for many pundits and intellectuals to seriously consider the idea of a post-racial era exposes this state of affairs. When official and private disavowals of discrimination are so pervasive, race can become a signal that motivates people to fight for equal treatment, especially of African Americans in real estate. I use the term *racial remedies* to refer to the use of race to gain access to resources dedicated to ameliorating or reducing problems caused by

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15 Urban Redevelopment Law 35 Pa. Cons. Stat. § 1701 (2013). Eminent Domain Code in 26 Pa. Cons. Stat. § 1-101 (2013), repealed 2006. Somin 2007, Is Post-Kelo Eminent Domain Reform Bad for the Poor? Gold and Sagalyn 2011, The Use and Abuse of Blight in Eminent Domain. Pritchett 2003, The 'Public Menace' of Blight.

16 Confidential Interviews, January 29, 2009, February 26, 2009.

perceived racial domination. Residents of Jefferson Square understood that race contributed to their problems, and they reacted.

African Americans living in the eye of the coming storm in Philadelphia and their neighbors saw the redevelopment plans as racially tinged, in the ways I described above. Residents reported to me that when they heard Councilman DiCicco say that he was hoping the redevelopment would make the area attractive for the middle-class people who had left, they heard him saying he wanted to use government power to replace them – poor blacks – with white middle-class families from the suburbs.<sup>17</sup> It seemed suspicious at best that the blocks targeted were more heavily populated by African Americans than others. Though they suspected the Councilman might get away with his plan, they were incensed, and they knew many people around them would be incredulous. The injustice of pushing black people, in particular, out seemed all too obvious and wrong, and residents and others resisted.

Residents turned blackness to their advantage by experiencing it as a motivation to fight. In part, they felt compelled to resist attempts to disadvantage them, in this most dramatic, racialized manner. Decades earlier, government had forced them and many other African Americans out of Philadelphia's downtown neighborhood called Old City, partially through eminent domain and partially through increased prices. In fact, some of Jefferson Square's most vocal African-American homeowners had been forced, decades earlier, out of their downtown apartments by renewal projects.<sup>18</sup> But things were supposed to be better. Now, many families owned their homes; they did not just rent. Some African Americans who moved to Jefferson Square during the 60s and 70s had become impressed with racial coexistence in daily living, even while the racial composition was gradually shifting. Now, government at least made efforts to avoid racial discrimination, in appearance if not in reality. Thus, Councilman DiCicco's announcement that he wanted to bring the middle class that had fled the neighborhood back seemed particularly brazen in a neighborhood with this seemingly successful, mixed racial history and at a time when blatant racial discrimination was less acceptable. Indignation over what appeared to be racial discrimination angered many affected residents, but it may have played an even more important role in mobilizing unaffected outsiders to devote energy to helping them.

Indeed, widespread intolerance for racial discrimination mobilized allies. The support of several white neighbors and professionals with formal education and political connections proved vital to the residents' successful organization of political power. White and black Philadelphians became involved, in part, because of their own anger at what they perceived as unacceptable and contestable racial domination. Residents formed a new organization, the St. John's Leadership Team, named after the church where they met. The leaders claim that the assistance of the white preacher there, as well as a white settlement-house worker, white neighbors, and a white lawyer were crucial to their organizing strategies and wins. The lawyer, a lead attorney at Community Legal Services, made the decision to offer his expertise to the residents negotiating with their Councilman. He too thought that the original Jefferson Square plan was patently unfair to residents, and he suspected race to have made them

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17 Confidential Interviews, February 2, 2009, January 29, 2009.

18 Confidential Interview, February 2, 2009.

vulnerable to such a blatant abuse of power. (The same attorney, in another conflict-ridden case in North Philadelphia targeting Puerto Rican residents, sensed no such racial injustice and declined to become involved.)<sup>19</sup> Thus, the appearance of racial discrimination mobilized people who had knowledge, experience, and access to institutions to support seemingly disenfranchised African Americans.

Residents secured power by signaling that they had access to tangible resources for rectifying racial discrimination. In the most obvious example, the attorney I just mentioned took advantage of anti-discrimination law. He knew that he could make a case that the government's targeting of this area violated federal anti-discrimination laws, and he could threaten to test the argument in court. He told me that he kept anti-discrimination law "in his back pocket." He intended to file a class-action discrimination suit if negotiations with the Councilman did not develop an agreeable solution, and he probably let the Councilperson know this.<sup>20</sup> He was drawing on just some of the many material resources, often legal and administrative, to fight racial domination available in a post-civil-rights era. Countless local and national advocacy organizations have formed to fight racial discrimination and poverty, and numerous anti-discrimination laws and policies regulate real-estate financing and sales and public-housing administration. The attorney for Jefferson Square residents never had to make good on his threat to actually pursue litigation because an agreement was eventually reached, but the law made him and those for whom he advocated feel empowered.

In addition, Councilman DiCicco and his assistant Newberg may have decided to cooperate to avoid the impression, personally or publicly, that they were racially discriminatory. At first, they were incensed by the suggestion that their acts were racially biased and denied the accusation. But, eventually, the charge might have also made them want to work harder to make things right, either to repair their reputations or to soothe their own consciences. Residents believe that they saw the Councilman change as he got to know them, and he certainly later showed a great deal of pride in figuring out how to work out a solution with them.<sup>21</sup> Newberg, the housing expert behind the plan, was the son of civil-rights activists and fancied himself a community organizer who liked to build housing.<sup>22</sup> He also displayed significant satisfaction in having quieted a racialized showdown against his design.<sup>23</sup> DiCicco and Newberg seemed motivated to work with, not just against, residents so that they would avoid the public impression that they acted in racially discriminatory ways.

## **Racial Representation**

The public faces of St. John's Leadership Team, the organization advocating for Jefferson Square's residents, were of an African-American woman and her African-American daughter. Although they had significant assistance from white professionals and neighbors, black women took the stage to speak

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19 Irv Ackelsberg, Interview, July 27, 2007.

20 Ibid.

21 Confidential Interviews, August 1, 2007, February 2, 2009, January 29, 2009.

22 Jeremy Newberg, Interview, June 12, 2006.

23 Frank DiCicco. Phone Communication, June 1, 2009.

publicly about what they demanded and deserved. These women represented a larger group of mostly black residents. In the public spectacle of a City Council hearing or newspaper article, their blackness may have served an important purpose by suggesting that they legitimately spoke for others. When deciding whom to follow or listen to, residents and politicians relied on blackness as a symbol of authentic representation of a mostly black group of residents. Race could suggest a shared set of interests or understandings. The power to speak for a group is always subject to contestation. In the Jefferson-Square conflict, race signaled true representation of others, but the authenticity of this signal was never assured.

Early on, residents relied on African Americans for leadership and professional support. Initially, several African-American men claimed leadership by appealing to a common race in a neighborhood with a racialized history. They explicitly claimed a racial connection in the understanding of and fight against politicians committing racial injustices. They claimed that their race gave them a solid grounding from which to speak for other black people. Residents told me that early on they were much more likely to trust black than white leaders. They assumed that a race in common meant a common voice. The black preacher of the closest church with a predominantly African-American congregation took a guiding role. A few more African-American men who had grown up and out of the neighborhood offered direction as well. Eventually, however, the targeted residents who would lead the struggle and negotiate the deal with the Councilman rejected these men as leaders.

In time, some residents worried that racial signals of representation might have led them astray by making them too willing to follow black leadership. Residents eventually exposed the appearance of racial solidarity as a façade for the pursuit of hidden, and competing, interests. Strident rhetoric about racial injustice started to look insincere when purported spokespeople changed positions on the project and advised residents to go along with the original displacement plan. Residents decided that these leaders were actually community and race traitors, acting on their own interests, for renovation grants and construction contracts, rather than the interests of the residents to be displaced. A group of women laughed uproariously when they recalled for me the day one of their family members screamed out, at the church packed with people waiting for a meeting about the redevelopment, loudly and clearly to the preacher who they felt had betrayed them. She called his name, got his attention, and then yelled, “Judas! Judas!” Residents accused the preacher of false authenticity and regretted that they trusted the preacher and other black male leaders too easily and too quickly because they were black and had strong neighborhood ties.<sup>24</sup>

Residents later lamented their initial hesitation in accepting the overtures of assistance from white professionals. Residents who led the negotiations with the Councilman expressed regret that they took so long to accept the help of the white preacher of St. John’s Church and the white community organizer. They demurred, they said, because the organizers were white. They would later attribute

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24 Confidential Interviews, January 29, 2009, February 2, 2009. On the advice of a community organizer working with them, they had also read a novel about eminent domain set in an African-American Philadelphia neighborhood decades earlier, and that novel portrayed such leaders and suspicions of them: McKinney-Whetstone 1996, *Tumbling*.

their unexpected ability to wield political power largely to the assistance of this pair of white community organizers. Initially, whiteness signaled a lack of authenticity for representation, a lack of ability to speak in or act in black residents' interests. Although these white organizers strongly guided how the collective voice developed, they explicitly avoided representing the group, since they felt the group needed grassroots leadership.

## **The Theory: Race as a Set of Symbolic Resources**

### **Creating and rectifying racial inequalities**

Race is a symbolic resource in the sense that it is both a sign and material reality, but not an essential character of a person.<sup>25</sup> The use of race as a resource for domination, for systematic advantage and exclusion, is perhaps the most familiar understanding of race as symbolic power. As a tool for domination, race can be a resource that allows people and institutions to ensure unequal outcomes. Whether race is deployed in direct, individual discrimination, statistical discrimination, institutional discrimination, or some other form of differentiation, persistent inequalities in benefits and harms betray racial domination at work. Race has often served as domination in the well-known ways that mostly white elite and middle-class citizens try to reshape cities as they wish, often at the expense of poorer black residents.

The evidence reveals eminent domain for urban redevelopment to be an intensely discriminatory process, putting blacks at risk far more often than any other racial or ethnic group. Studies of urban renewal policies in the 1950s and 60s uncovered astonishing numbers of racial disparities in displacement<sup>26</sup> as well as evidence of direct intentions of racial displacement or prejudice in policy-making.<sup>27</sup> Though little reliable evidence on current-day practice has been collected, my own comprehensive research of recent Philadelphia practice showed stark differences between those neighborhoods where property has been taken and those safe from eminent domain. Those targeted were almost exclusively neighborhoods of majority low-income, African-American, and Latino residents.<sup>28</sup> Because of the long history and current practice of subjecting black urbanites to eminent

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25 On symbolic power generally, see Bourdieu Nice 2001, *Masculine domination*. On race as a form of symbolic capital, see Weiss 2010, *Racist Symbolic Capital*.

26 See note 8.

27 Frieden and Sagalyn 1989, *Downtown, Inc.* pp. 28-9. Pritchett 2003, *The 'Public Menace' of Blight*.

28 In Philadelphia between 1992 and 2007, the average neighborhood where eminent-domain was used for private redevelopment was eleven percent white, seventy-eight percent black, two percent Asian, and ten percent other whereas the average city neighborhood was forty percent white, forty-nine percent black, four percent Asian, and eight percent Other. Ethnically, the average eminent domain neighborhood was twelve percent Hispanic compared to nine percent for neighborhoods city wide. Becher 2009, *Valuing Property*.

domain, race remains salient as a marker of domination, particularly when black residents are the targets.<sup>29</sup>

American policy-makers and researchers have consistently publicized the trenchant white advantages and black disadvantages in residential real estate more generally. African Americans are consistently less likely than white Americans to own homes, and the homes they do own have much lower financial value, even among families of similar income and education levels. Moreover, disparities in home values account for most of the racial differences in wealth, and those differences are persistent and large. It even makes sense to think of the pattern this way: when an owner is marked as black rather than white, her or his house's value and thus family wealth fall. Neighborhood disadvantage only exacerbates individual disadvantage; segregation by race and class concentrates poverty all too often in predominantly African-American neighborhoods, with detrimental effects on the residents' access to safe streets, personal networks, schools, and businesses.<sup>30</sup> Legal scholars have proposed that the political geography of race – the tight connection between racial segregation and life chances – be called an intersection of race and neighborhood.<sup>31</sup>

Racial inequalities in real estate emerge and endure through various mechanisms, any of which we can consider a form of race used symbolically, in the service of domination. Banks systematically disadvantage African-American homebuyers through racial discrimination of individuals and entire neighborhoods in lending and foreclosure.<sup>32</sup> Governments write and enforce building and zoning codes; spend on infrastructure, housing, and services; govern geographically designated public schools; and maintain public parks, recreation, and transportation all in ways that create racial disadvantage most dramatically for black residents.<sup>33</sup> Individual homeowners use race to decide where to move, and these decisions, once aggregated, significantly impact neighborhood value.<sup>34</sup> Repeated practices of racial domination in residential real estate abound, whether in the form individual or institutional racism, government policies, or bank, real-estate-agent, or homebuyer practices.

And yet, American officials and citizens have deployed racial symbols to institute and enforce policies to stop discrimination as well. Mobilizing explicit anti-discrimination policies and allies in collective struggles around racial-justice norms - these forms of resistance which I have called racial resistance - have become a crucial force in a post-civil-rights era. However, in much of public-policy-making and

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29 Fullilove 2007, *Eminent Domain and African Americans*.

30 For early reports on racial segregation, DuBois 2007 [1899], *The Philadelphia negro* and Frazier 1939, *The Negro family in the United States*, and Drake and Cayton 1962 [1945], *Black metropolis*. Prominent later studies include Wilson 1987, *The truly disadvantaged* and Massey and Denton 1993, *American apartheid*.

31 Ford 1995, *The Boundaries of Race: Political Geography in Legal Analysis*.

32 For one review of the empirical literature on discrimination see Mitchell, Malpezzi, and Green 2009-10, *Forced Sale Risk: Class, Race, and the 'Double Discount'*.

33 Frug 1999, *City making*. Logan and Molotch 1987, *Urban fortunes*.

34 Massey and Denton 1993, *American apartheid*.

public debates about neighborhoods and housing, race is deployed to signify a common interest that can be much more ambiguous.

### **Beyond resistance to voice**

As the Jefferson-Square story above illustrates, race can confer the authority of a collective voice. Race can signal one's ability to lead or represent others in clarifying desires and opportunities. One's race can indicate that someone who wants to speak for a group identifies with and shares interests and experiences. Blackness may suggest that someone knows, for example, what it means to face racial discrimination and neighborhood poverty, to experience residential segregation, or to share a particular cultural heritage. Someone's blackness can signal an individual's familiarity with what it means for any or all of the characteristics of the racialized American experience to overlap.

This expected shared experience, because of a common racial background, can suggest that someone of the same race speaks accurately about not only what others have experienced in the past but also what they need, want, and deserve in the future. Thus racial identification can allow people to assume leadership roles for racialized constituencies, for instance as Jefferson-Square's black residents followed black leaders early in the conflict. Think also of how a black identity may help politicians win elections in predominantly black districts and how it may be an unstated prerequisite for the leadership of African-American advocacy organizations such as the NAACP. These positions are not formally reserved for anyone of a particular racial marking, but race can send strong messages about who should speak for racialized constituencies. In politics over real estate, a signal of racial authenticity can bestow upon certain people or groups the image of speaking with an organized voice, for a community of people. For racial representation to allow someone to assume a leadership role, an audience must sense that race signals similarity, like-mindedness, and trust that someone will act in others' best interests.

In fact, the idea that race matters to representation pushes us to think of the significance of race beyond a simple dialectic between domination and resistance. The idea of racial representation moves us think of how race matters, not as a marker through which individuals experience advantage or disadvantage (racial domination) or resist or find protection from the same (racial remedies), but as a signal of shared experience and interest. The assumption of a leadership role creates openings for expanded power, not only in imposing or resisting racial domination directly, but also in developing broad agendas, policies, and solutions.

Any symbol one uses to suggest that a leader truly speaks for a group is always subject to challenge as misleading if and when constituents disagree with a leader's positions on specific issues. As a unifying and simplifying characteristic, any particular symbol, including race, can hide variation among the interests of different black individuals and groups. One commonly known tension in debates about real estate stems from differences between the interests of black middle-class and poor black homeowners. The former may claim to speak for the latter and try to minimize the appearance of difference. In other words, race can provide a veneer of authentic representation that allows someone to usurp the role of representative, but differences within a racial group may threaten to expose the veneer. Using race as

representation can help distinguish a collective voice, but it can also breed a healthy suspicion of misguidance or disingenuousness.

## **Conclusion**

Consider again how whiteness mattered to the public conflict over *Kelo*, a conflict that put white homeowners in the limelight. One might think that the lack of explicit discussion about Susette Kelo's race, and her whiteness, allowed her experience to represent that of the universal homeowner. It is likely that members of the Institute for Justice pushing the case would claim that Susette Kelo represented all homeowners. However, there are certainly reasons to be suspicious of a claim that the white homeowner could signal all homeowners. The persistent racial inequalities in residential real estate should make us suspect that a white woman standing in front of a well-kept pink house could not represent experiences common to many black homeowners, especially those inhabiting some of the nation's poorest neighborhoods.

Imagining that Susette Kelo's problem was race-blind led many to advocate for race-neutral legal reforms in *Kelo*'s wake. Most significantly, many thought that restricting eminent-domain powers to truly blighted neighborhoods would stop what was commonly called "eminent-domain abuse." However, as a few legal scholars have argued, such restrictions would only further increase eminent domain used for private redevelopment against poor, and mostly black, residential neighborhoods.<sup>35</sup> This kind of race-blind policy promises to create more racial inequality. Perhaps this is also why the NAACP's testimony to the U.S. Commission on Civil Rights, six years following the *Kelo* decision, emphasized that minority communities need additional protections against the burdens of eminent domain.<sup>36</sup> For wisdom about how those protections emerge (or fail to emerge), we need to look at the more common cases of African Americans faced with eminent domain, as I have done in this chapter.

The history of Jefferson Square suggests that when governments use their power over property in ways that clearly disadvantage African-American residents, they may invite organized resistance. And, when such resistance begins to form, it has particularly strong symbolic resources to draw on in a post-civil-rights era. Such organization will not always happen, but if and when it does, it might follow a similarly complicated trajectory to the one observed here. Much of that complexity arises from appeals and challenges to the authenticity of claims to represent others' interests. In South Philadelphia, African-American residents used their blackness to motivate resistance and organize across races for a collective voice. Once secured, they used that collective voice to speak the language of universal rights as homeowners. Blackness became a symbol of domination, then of remedies for that domination, and finally of representation of a homeowner's right to speak for the neighborhood's future.

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35 Dana 2006, *The Law and Expressive Meaning of Condemning the Poor After Kelo*. Frug and Barron 2005, *Make Eminent Domain Fair for All*. Dana 2007, *Why the Blight Distinction in Post-Kelo Reform Does Matter*.

36 *The Civil Rights Implications of Eminent Domain Abuse* 2011.

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