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## Natural Is Not in It: Disaster, Race, and the Built Environment

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# BOOK REVIEW

## NATURAL IS NOT IN IT: DISASTER, RACE, AND THE BUILT ENVIRONMENT

*Review of* AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA Edited by David Dante Troutt. New York: New Press. 2006. Pp. xxvii, 164. \$22.95.

THOMAS W. JOO\*

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*“Civilisation passed us by, we belonged to geography, not history, so we escaped.”*<sup>1</sup>

So says the nineteenth-century Russian political activist Alexander Herzen, as fictionally depicted in Tom Stoppard’s play, *The Coast of Utopia*. The Herzen character, exhausted and betrayed in his quest for a political utopia, believes Russia’s remote location and unique characteristics isolate it from the Western pattern of political development. He obviously had a point, as Russia’s eventual revolution, led by peasants and intellectuals, differed fundamentally from the bourgeois revolutions of the West. But his choice of metaphor invokes a common false dichotomy between our physical situation—Geography—and the human forces we call History. In fact, we all belong to *both* Geography and History, and the two together determine the shape of our civilization. Indeed, *Geography is History*.<sup>2</sup> First, our environment is largely a *built* environment. Not only our buildings and roads, but also much of what we consider “nature,” are shaped by human choices.<sup>3</sup> Second, the locations of

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\*Professor, UC Davis School of Law. I presented some of the material in this essay at the Section on Minority Groups Meeting at the 2007 Association of American Law Schools Annual Meeting in response to presentations by some of AFTER THE STORM’s contributing authors. I would like to thank Tanya Hernandez for inviting me to take part in that discussion and Kevin Johnson and Keith Aoki for their insightful comments on earlier drafts of this paper. This paper was supported by a grant from the UC Davis School of Law.

<sup>1</sup>TOM STOPPARD, SHIPWRECK: THE COAST OF UTOPIA PART II 103 (2002) (emphasis added).

<sup>2</sup>While my point is that the “natural” is actually “historical,” Stoppard seems to suggest, just as plausibly, that “history” can also be seen as “natural.” The three parts of *The Coast of Utopia* are entitled *Voyage*, *Shipwreck*, and *Salvage*, suggesting a metaphor of history as a sea. TOM STOPPARD, VOYAGE: THE COAST OF UTOPIA PART I (2002); TOM STOPPARD, SHIPWRECK: THE COAST OF UTOPIA PART II (2002); TOM STOPPARD, SALVAGE: THE COAST OF UTOPIA PART III (2002).

<sup>3</sup>In fact, the geography of Thomas More’s *Utopia*, to which Stoppard alludes, was a human construct:

[T]his was no island at first, but a part of the continent. Utopus that conquered it . . . brought the rude and uncivilized inhabitants into such a good government, and to that

most, if not all, people are also determined by human agency, not just chance “natural” occurrence.

Hurricane Katrina violently thrust these two truths into our national consciousness. The disaster was exacerbated, if not caused, by the way we have made and remade places and the way we have assigned people to those places. The reconstruction of the Gulf Coast must be mindful of this history. Some argue for government leadership, while others argue that rebuilding should be left to supposedly “natural” market forces. The latter argument ignores a third important truth about “natural” forces: that markets, no less than governments, are human institutions, and a market-driven approach, like a government-led approach, constitutes a moral choice, not a neutral, “natural” course.

Editor David Troutt has assembled a fascinating and wide-ranging collection of essays on the Katrina disaster in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA*. The contributing authors, primarily (though not exclusively) law professors, put the disaster into a larger context of American law and politics. While the authors’ concerns and opinions are diverse, the interaction between human choice and the “natural” is a consistent theme running through the background of the book.

### I. CHOICES SHAPE PLACES

As many have noted, the disaster was not a “natural” one. Most commentators who make this point refer to the lack of pre-disaster readiness and the tardy and ineffectual post-disaster response. But the human influence goes deeper: the flooding itself was in large part the “unnatural” result of human alterations of geography.<sup>4</sup> In the New Orleans region, as in many places along the Mississippi and other major rivers, “unnatural” levees hold back waters that “naturally” flooded their banks regularly. And even to the extent that flooding is a “natural” phenomenon, the existence of a city on a flood plain is not. Moreover, some of the New Orleans area’s susceptibility to flooding is the direct result of very specific human alterations of the environment. Long before the storm struck, development practices ensured that a destructive hurricane would have an aggravated impact.

In *Race, Space and Place*, his seminal work on law and architecture, Keith Aoki analyzed the development of the American built environment.<sup>5</sup> By the late nineteenth century, it became clear that technology and capitalism, despite their

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measure of politeness, that they now far excel all the rest of mankind; having soon subdued them, he designed to separate them from the continent, and to bring the sea quite round them. To accomplish this, he ordered a deep channel to be dug fifteen miles long. . . . And his neighbors who at first laughed at the folly of the undertaking, no sooner saw it brought to perfection than they were struck with admiration and terror.

THOMAS MORE, *UTOPIA* (Yale Univ. Press 2001) (1516).

<sup>4</sup>Environmental historian Ari Kelman made this argument about the 1927 flood in a book published shortly before Katrina struck, *ARI KELMAN, A RIVER AND ITS CITY: THE NATURE OF LANDSCAPE IN NEW ORLEANS 187-89* (2003), and later applied the argument explicitly to Katrina in a new preface to the book. *ARI KELMAN, A RIVER AND ITS CITY: THE NATURE OF LANDSCAPE IN NEW ORLEANS* xviii (2006 ed.).

<sup>5</sup>Keith Aoki, *Race, Space and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699 (1993).

obvious benefits, had also degraded the quality of life for many people. Architectural modernism originally purported to reapply technology to social goals—to use the tools and products of capitalism to reform the cruel conditions caused by capitalism. But, Aoki argues, modernism soon lost touch with this mission. Instead, it degenerated into dogmatic insistence on technological solutions and became a mere tool of the oppression it had tried to ameliorate. For example, simplified, economical construction, originally intended to enhance aesthetics and affordability, degenerated into a profit-enhancing device. Suburbanization, conceived as an escape from grim industrial cities, became a tool for race- and class-based segregation.

New Orleans exemplifies the rise and fall of modernist idealism Aoki describes. In the early twentieth century, the city began large-scale draining of the surrounding wetlands, or “backswamp.” The city originally drained the backswamp for a “modernist” social purpose—to improve sanitation. But the draining also dramatically increased the amount of land available for development.<sup>6</sup> Development was not only irrelevant to the original social goal of sanitation, but also created tragic new social ills. The backswamp had been a kind of giant sponge that served as nature’s system for absorbing excess water.<sup>7</sup> Thus, developing the backswamp not only put new human settlements in harm’s way, but also exposed existing parts of the city to increased flood danger.

New Orleans long tried to contain the Mississippi River with levees alone, despite frequent arguments for reservoirs and spillways to accommodate the river’s overflow and replace the backswamp’s drainage function. Local leaders and citizens rejected such projects for decades because they would require the sacrifice of developed or developable land.<sup>8</sup> The disastrous 1927 flood finally showed that levees could not contain the river. As the river rose during the flood, a group of New Orleanians used explosives to destroy a downriver levee. This reduced pressure on the levees in the city, but wiped out farms and the fur-trapping industry downriver.<sup>9</sup>

Having dramatically conceded their inability to contain the river, New Orleanians finally approved the first spillway project. The legal fate of the project illustrates how land-use law encouraged the containment approach by increasing the costs and legal impediments associated with alternative river-management projects. Louisiana retains elements of the civil law from its French heritage. The civil law imposes a servitude on riparian property: that is, the government may appropriate private property along a riverbank for public use without compensation. In 1896, the Supreme Court affirmed this rule and held that it applies to the public construction of levees, which are of course built on riverbanks.<sup>10</sup> Spillways (and reservoirs), however, direct water beyond the existing riverbank, submerging property not subject to the riparian servitude. Thus, when the Army Corps of Engineers finally began building a spillway in 1929, a court required the Corps to compensate the

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<sup>6</sup>See KELMAN, *supra* note 4, at 154-55.

<sup>7</sup>See *id.*, at 159-60.

<sup>8</sup>See *id.*, at 165.

<sup>9</sup>See *id.*, at 173-86.

<sup>10</sup>Eldridge v. Trezevant, 160 U.S. 452 (1806), *cited in* KELMAN, *supra* note 4, at 166-68.

affected landowners.<sup>11</sup>

Environmental historian Ari Kelman cites the insistence on controlling the river as evidence of an “imperial” attitude toward nature.<sup>12</sup> Writing specifically about New Orleans and Katrina, Kelman uses the even more striking metaphor of “segregation.”<sup>13</sup> These metaphors capture how modernism’s dogmatic faith in the power of technology led it far from its original professed goal of social betterment. The river is the heart of New Orleans in two ways. First, the city exists because its location on the river allowed it to control trade and transport. Second, the river was, originally, physically integrated into the land that became the city—its waters are not naturally confined to a channel, but spread out over the land. Nonetheless, humans have done their best to segregate river from city, water from land, by literally walling them off from one another, with levees, railroad tracks, warehouses, and a 12-foot high floodwall.<sup>14</sup>

In Aoki’s story of architecture and law, postmodern architecture and urban design eventually rejected modernist dogma, but elected not to revive its lost social agenda.<sup>15</sup> Rejecting modernism’s exclusive focus on the new, postmodern “gentrification” and “revitalization” incorporated selected aesthetic elements of the old city,<sup>16</sup> while ignoring historical and social context and excising unappealing or unprofitable elements, such as low-income housing and poor urban dwellers.<sup>17</sup> While modernist urban planning can be seen as a failed experiment in the socially transformative power of technology, the postmodern approach seems to gladly concede (and thereby contribute to) the impossibility of social transformation in a world where the market, not social conscience, controls most development decisions.

Some in New Orleans see Katrina as a jumpstart to a new round of post-modern urban gentrification, erasing urban decay and restoring valuable quaintness. David Troutt, in his contribution to *AFTER THE STORM*, refers to this vision as “Disney on

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<sup>11</sup>*Kincaid v. United States*, 37 F. 2d 602 (D. La. 1929), *aff’d*, 49 F.2d 768 (5th Cir. 1931), *rev’d on other grounds*, *Hurley v. Kincaid*, 285 U.S. 95 (1932). As it happened, the 1929 spillway project was not a complete departure from the containment approach. It diverted the water into Lake Pontchartrain, itself contained by levees. Those levees, or the concrete flood walls built atop them, failed during Hurricane Katrina. Michael Grunwald & Susan B. Glasser, *Experts Say Faulty Levees Caused Much of Flooding*, Wash. Post, Sept. 21, 2005, at A1.

<sup>12</sup>KELMAN, *supra* note 4, at 191. Environmental historians often use the term “imperial” to describe the view that nature must be conquered and altered to serve human needs. *See, e.g.*, DONALD WORSTER, *NATURE’S ECONOMY: A HISTORY OF ECOLOGICAL IDEAS* 76 (2d ed., Cambridge Univ. Press 1994) (1977). The analogy between environmental manipulation and imperialism is apparently quite old: recall that More’s Utopus carved Utopia into an island after conquering and “civilizing” its people. *See* MORE, *supra* note 3, at 53.

<sup>13</sup>Ari Kelman, *In the Shadow of Disaster*, in *UNNATURAL DISASTER: THE NATION ON HURRICANE KATRINA* 190 (Betsy Reed ed., 2006).

<sup>14</sup>*See id.* at 187, 189-90; *see also* KELMAN, *supra* note 4, at 200.

<sup>15</sup>Aoki, *supra* note 5, at 791.

<sup>16</sup>*Id.* at 700, 809.

<sup>17</sup>*See id.* at 794, 809.

the Mississippi.”<sup>18</sup> Some politicians have even celebrated the fact that Katrina “cleaned up” New Orleans by destroying public housing and displacing its poor, black residents. Indeed, the destruction of flood-prone parts of New Orleans raised the value of already desirable homes located on dry ground. In a convenient reversal from the historic practice of draining land for development, some also propose allowing flooded parts of the city to return to wetland status for flood control purposes.<sup>19</sup> Of course poor people would most likely see their homes sacrificed under such a plan.

## II. CHOICES ASSIGN PEOPLE TO PLACES

Kelman’s segregation metaphor obviously alludes to the region’s ugly racial history. The consistent policy of “containing” the river evokes an even older and uglier aspect of racial history: human captivity under slavery. Failed attempts to hold the river captive eventually resulted in it imprisoning and killing many descendants of slaves in their own homes and in their own city. In a further irony, for many former New Orleanians, “emancipation” from the disaster has turned into exile: while some evacuees are wooed back, others—mostly poor African Americans—are discouraged or prevented from returning.

Slavery in the Americas is an especially vicious example of the second truth about Geography and History: that History assigns us our geographical locations. This function of History is a fundamental and sobering theme of the African-American experience. Human forces, not chance, brought enslaved Africans to America, and have caused African Americans to live disproportionately in undesirable and even dangerous locations in America. Katrina had a wildly disproportionate effect on African Americans because New Orleans is a majority-black city (in part because of the suburbanization described by Aoki) and because so many of those black residents are (or were) poor people living in flood-prone places.

*The Station*, Anthony Farley’s contribution to *AFTER THE STORM*, ruminates on the role of History and what future it might produce. As Farley points out, even before “modernism” shifted from social to capitalist goals, the slave trade quite deliberately employed “modern” technology not to make the world a better place, but specifically to make life better for *some* at the expense of others.<sup>20</sup> Farley argues that Katrina can be traced to the “original accumulation.”<sup>21</sup> The competition-based logic of market capitalism argues that the industrious accumulate property while the lazy do not. But even under its own terms, that theory cannot explain the pre-capitalist distribution of property that was indispensable to capitalism: the fact that some people owned property while others owned only their labor and their bodies. That

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<sup>18</sup>David Dante Troutt, *Many Thousands Gone, Again*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA* 3, 7 (David Dante Troutt ed., 2006).

<sup>19</sup>See Kelman, *supra* note 13, at 192.

<sup>20</sup>See Anthony Paul Farley, *The Station*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA*, *supra* note 18, at 147, 148-49.

<sup>21</sup>*Id.* at 151.

distribution—what Marx called the “original accumulation”—came about through violent acts such as conquest and slavery.<sup>22</sup>

This description of capitalism’s violent genesis is typically viewed today as a radical critique of our society. But the moral distastefulness of our past is no excuse for denying it. And none other than Chief Justice Marshall, writing about the same time as Marx, concurred in Marx’s description of the original accumulation. Marshall had the opposite opinion of its normative significance, however. In *Johnson v. M’Intosh*,<sup>23</sup> his 1823 opinion that remains a staple of the law school property course, Marshall proclaimed that the European conquest of the native population initiated *and justified* all legal claims to real property in the United States. He wrote, “The title by conquest is acquired and maintained by force. The conqueror prescribes its limits.”<sup>24</sup>

American racism and black poverty, so central to the Katrina tragedy, were and are shaped by slavery. And, slavery was a key factor in building capitalism in America and particularly in New Orleans. The slave trade generated much of the capital used to finance more respectable enterprises, and after Emancipation, former slaves added considerably to the supply of unpropertied labor necessary to capitalism.

After emancipation, capitalism contributed to residential segregation in New Orleans. Martha Mahoney has convincingly argued that the cause of segregation was not market forces alone, but the interaction between government and markets.<sup>25</sup> New Orleans was a fairly racially integrated city until the mid-twentieth century. Rich and poor lived side by side, crammed onto a relatively small amount of high and dry ground. Had this situation continued, racially disparate urban poverty would hardly have gone away, but Katrina might not have wrought such racially disparate devastation and displacement, simply because fewer people—specifically, fewer poor, black people—would have resided in the flood path. The damage would have been limited and would have been more balanced in its racial effects.

As noted above, as the purpose of swamp drainage shifted from sanitation to development, residences sprung up in harm’s way. Mahoney identifies a confluence of legal and economic forces during the twentieth century that limited black residential mobility and led to a largely black and highly segregated city. Blacks had far fewer opportunities than whites to move up and out of undesirable housing. New Deal policies segregated public housing projects and encouraged segregation in privately owned housing. The Federal Housing Authority (FHA), established by the New Deal to insure private mortgage loans, made home ownership more affordable, but primarily for whites purchasing in white neighborhoods. The FHA disfavored private loans in minority or integrated neighborhoods, and even in white developments abutting black ones. Indeed, the FHA actively supported racially

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<sup>22</sup>KARL MARX: *CAPITAL*, 371-77 (Friedrich Engels ed., 2d ed., Encyclopedia Britannica 1990) (1952).

<sup>23</sup>*Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 543 (1823).

<sup>24</sup>*Id.* at 589.

<sup>25</sup>Martha Mahoney, *Law and Racial Geography: Public Housing and the Economy in New Orleans*, 42 *STAN. L. REV.* 1251 (1990).

restrictive covenants and zoning. These policies influenced the housing market by effectively subsidizing the construction of all-white housing developments.<sup>26</sup>

Beginning in the 1960s, whites slowly moved out of New Orleans, and jobs went with them. African American residents could not follow because their mobility was constrained by both law and market forces. In addition to the FHA policies described above, Mahoney points out the importance of limited employment opportunities. While black poverty is often blamed for housing segregation, Mahoney points out that segregation can contribute to poverty as well. The segregated federal housing projects built in New Orleans in the 1930s, '40s, and '50s were often located in remote areas far from job opportunities in the central city and waterfront.<sup>27</sup> By the time blacks replaced departing whites in the downtown area, job opportunities had moved to the white suburbs.<sup>28</sup> That is, a vicious circle kept blacks in less desirable locations: residential segregation limited access to jobs, and lack of jobs (combined with outright discrimination and the effects of FHA policies described above) prevented blacks from breaking out of segregated residence patterns.

The long history of residential segregation in New Orleans and elsewhere did not just lower the quality of life of the black and poor; it raised it for others. By its very nature the practice of confining poor minorities to the inner city has meant the suburbs have become, and remained, white and affluent. As David Troutt puts it, "one may never talk honestly about the American ideal of middle-class life without talking about its antithesis in ghettos. The one made the other and historically depended on it for its existence."

Just before Katrina struck, Amtrak trains fled New Orleans without passengers; no trains returned to evacuate the city. Anthony Farley sees a metaphor in this anecdote: African Americans who seek racial justice via American law, he argues, insist on waiting in a metaphorical station for a train that will never arrive. He explains this insistence using the language of psychoanalysis: the "trauma" of slavery is so unbearable, he contends, that blacks block out the memory that the Republic was built on slavery. Instead of acknowledging that the existing order holds no hope for them, blacks build a false recollection, or "screen memory . . . of a kindly Founding Father welcoming them to the Promised Land."<sup>29</sup>

Although Farley argues that the original accumulation led to Katrina, he also glimpses in Katrina a vision of an emancipated post-capitalist society. In the immediate aftermath of the disaster,

[f]ree associations of blacks gathered to take food and water from stores and distribute them to those who were thirsty and hungry. . . . Some, not all, but enough, began working out new forms of cooperation and direct action to provide examples of a new time, began doing something that constituted a strike, not yet general, against the spectacle, and, more important, began working through the trauma of the original

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<sup>26</sup>See *id.* at 1258.

<sup>27</sup>See *id.* at 1277-79.

<sup>28</sup>See *id.* at 1279-80.

<sup>29</sup>Farley, *supra* note 20, at 156.



accumulation . . . . It is possible to turn away from the altar of self-sacrifice that is the station and by mutual aid end the repetition of the primal scene of accumulation.<sup>30</sup>

Consistent with his rejection of the legitimacy of law, and especially of property, Farley writes approvingly of what some would condemn as “looting.” But the concepts of “crime” and “looting” in the aftermath of the storm can be deconstructed and questioned even without rejecting the legitimacy of property. Much of the country professed to be horrified by the incidence of “crime” in New Orleans in the aftermath of Katrina. That New Orleans is an overwhelmingly black city fed into the existing tendency to associate “street crime” with blacks, if not to expect it of them. White neighborhoods and even the black mayor of nearby Baton Rouge turned their backs on displaced poor black people for fear of a supposed invasion of “thugs and looters.”<sup>31</sup>

The incidence and seriousness of crime seems to have been greatly overstated at the time, due at least in part to racist assumptions about blacks and the black population of New Orleans.<sup>32</sup> Moreover, even though some degree of “crime” certainly occurred, the public failure to prevent the disaster and protect its victims was similarly violent and unjust. These failures of government never received the moral condemnation that goes with the label “crime.”<sup>33</sup> Indeed, the government’s treatment of Katrina victims may in fact constitute “crimes” under international law: some government conduct may have violated legal obligations of the United States to its own citizens under international human rights treaties.<sup>34</sup>

The Katrina disaster raises not only obvious issues of racial injustice, but also the question of whether a racialized discourse offers any solutions. John Valery White rejects abstract discussion of Katrina as a symbol of America’s racial problems. Rather, he insists upon—and provides—an analysis of how specific issues of local racial politics are preventing the rebuilding of New Orleans. New Orleans needs low wage workers, White argues, but has not welcomed them back because of racial politics. In the 1950s, New Orleans was the largest and most economically vital city in the South. Since the 1970s, however, New Orleans has lost industry and population and suffered from high crime rates and failing schools. Around the same time, New Orleans shifted rapidly from a Jim Crow city to one dominated by black voters and led by black politicians. White argues that some New Orleans “elites”

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<sup>30</sup>*Id.* at 158.

<sup>31</sup>John Valery White, *The Persistence of Race Politics and the Restraint of Recovery in Katrina’s Wake*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA*, *supra* note 18, at 41, 41(quoting Mayor Melvin “Kip” Holden).

<sup>32</sup>See Cheryl I. Harris & Devon W. Carbado, *Loot or Find: Fact or Frame?*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA*, *supra* note 18, at 87, 87-90, 95.

<sup>33</sup>See Kathryn Russell-Brown, *While Visions of Deviance Danced in Their Heads*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA*, *supra* note 18, at 111, 114-18.

<sup>34</sup>Adrienne Katherine Wing, *From Wrongs to Rights: Hurricane Katrina from a Global Perspective*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA*, *supra* note 18, at 127, 133.

blame the decline of the city on this demographic and political change. They also see the post-Katrina exodus as a chance to reverse these changes, and thus resist the return of the city's poor black residents. White argues that FEMA trailer villages should logically be located on the North Shore of Lake Pontchartrain, the dry ground most convenient to the city, to allow low wage workers to provide labor to rebuild and revitalize. But the North Shore parishes are "white flight" communities unwilling to house the workers they depend upon. This resistance affects politicians of both parties. Although Democratic politicians need the black vote, they are also increasingly having to compete with Republicans for white votes, as is the case elsewhere in the South. This is especially true in the wake of Katrina, as so many black voters have been displaced.

Like most public discussion about Katrina, White's essay, and *AFTER THE STORM*, generally focuses almost exclusively on New Orleans. This specific focus is perhaps appropriate for such a slim volume, but the collection could have benefited from some analysis of the storm's effects on non-urban areas of the Gulf Coast. Further, in issues of race, the book focuses entirely on blacks and whites. It does not address issues facing the large Latino or Southeast Asian populations of the Gulf Coast. Of course it's hardly surprising that the "black intellectuals" of the book's title would focus on African Americans. But issues of race and class in post-Katrina New Orleans involve people of other colors, and, moreover, the future of the African American community is linked to that of other communities of color.<sup>35</sup>

White briefly mentions the phenomenon of contractors employing "transient labor from around the country as well as from Mexico and Central America."<sup>36</sup> He notes that these laborers have put up with "austere conditions": indeed, some have been relegated to tent cities and shantytowns.<sup>37</sup> White argues that this is an unsustainable way to fulfill the region's labor requirements. This is probably true, but it will persist for the foreseeable future as the rebuilding effort drags on, and thus cries out for further analysis.

The absence of the immigrant labor story from *AFTER THE STORM* can be at least partly excused by the book's publication in 2006, so soon after the disaster: most of the essays were surely completed well before rebuilding had gotten underway in earnest. But the Latino presence in the region did not begin with the rebuilding effort: even before Katrina struck, the region was said to have the country's largest Honduran immigrant population (140,000).<sup>38</sup> The Gulf Coast is also home to many Asian immigrants: the population of one small town near Mobile, Alabama is reportedly one-third Asian.<sup>39</sup> Moreover, the story of immigrants in the region cannot

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<sup>35</sup>See Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. 99, 105-07 (2007).

<sup>36</sup>White, *supra* note 31, at 48.

<sup>37</sup>Keith Plocek, *Shortchanged: Houston-based Immigrants Who Flock to New Orleans Can Get All the Jobs They Want. Getting Paid is a Lot Harder*, HOUS. PRESS, February 9, 2006, available at <http://houstonpress.com/2006-02-09/news/shortchanged/> (describing the laborers' poor living and working conditions).

<sup>38</sup>*Id.*

<sup>39</sup>Grace Kao, *Where are the Asian and Hispanic Victims of Katrina? A Metaphor for Invisible Minorities in Contemporary Racial Discourse*, 3 DUBOIS REV.: SOC. SCI. RES. ON

be neatly separated from that of African Americans. Friction between African-Americans and immigrants is hardly a new phenomenon, and the post-Katrina influx of immigrant labor did not come as a surprise. In October 2005, just weeks after the storm, New Orleans Mayor Ray Nagin asked a group of local business leaders, ‘How do I ensure that New Orleans is not overrun by Mexican workers?’<sup>40</sup>

Minority scholars and activists are, understandably, hesitant to discuss tensions among communities of color. But the issue must be confronted, or at least acknowledged, as relations among communities of color are likely to be a major issue in the region in the coming years. Moreover, any analysis of race in our society must include this issue, because conflicts between communities of color tend to take for granted and even strengthen the existing system of racial hierarchy. That is, conflict between the black and Latino communities is not independent of the subordination of blacks (or Latinos) under white supremacy; it is intimately related to it. As Lisa Ikemoto has argued, conflicts among racially subordinated groups tend to take the form of jockeying for position within a white-dominated racial hierarchy rather than challenging the existence of racial hierarchy.<sup>41</sup> For example, conflict between African Americans and Korean Americans in Los Angeles came to national attention in 1992 when civil unrest followed the acquittal of police officers charged with beating Rodney King. Some African Americans expressed nativist views, racializing and subordinating Korean immigrants as insufficiently American. At the same time, some Korean Americans implied that they were more American than blacks by portraying themselves as representatives of the “American dream” of rags-to-riches entrepreneurship.<sup>42</sup> Many African Americans express similar nativist resentment of Latino immigrants, while many Latinos harbor anti-black racist views, as post-Katrina tensions have indicated.<sup>43</sup>

Both these rhetorical strategies take for granted, and reinforce, the idea that groups that are “less American” deserve subordination with respect to groups that are “more American.” Moreover, this discourse reinforces the white-supremacist assumptions of the American racial order, for while minority groups have to compete for “American” status, the “American” status of whites goes unquestioned and is thus implicitly ratified and legitimated.<sup>44</sup>

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RACE 223, 224 (2006) (citing Roy Hoffman, *Bayou’s Asian-Americans Try to Recover—We’ll Get by*, MOBILE REG., Sept. 12, 2005.).

<sup>40</sup>Kevin Johnson, *Troops May Stay on in New Orleans*, USA TODAY, Oct. 7, 2005, at 1A; Peter Pae, *Immigrants Rush to New Orleans as Contractors Fight for Workers*, L.A. TIMES, Oct. 10, 2005, at C1.

<sup>41</sup>See Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed “Los Angeles,”* 66 S. CAL. L. REV. 1581, 1585-90 (1993).

<sup>42</sup>*Id.* at 1588-90.

<sup>43</sup>See Johnson & Hing, *supra* note 35, at 107-08; see also Tanya Katerí Hernández, *Latino Inter-Ethnic Employment Discrimination and the “Diversity” Defense*, 42 HARV. C.R.-C.L.L. REV. 259, 315-316 (2007) (“[G]roups of color can be complicit and even active agents in discrimination against other groups of color.”).

<sup>44</sup>See Ikemoto, *supra* note 41, at 1585-90.

## III. CHOICES, ECONOMIC INTERESTS, AND MARKETS

Like John White, Adolph Reed blasts the failure of racial discourse to produce results. In his brief, but provocative contribution, *The Real Divide*, Adolph Reed argues against blaming the Katrina tragedy on “racism.”<sup>45</sup> Indeed, he argues more broadly that, “As a political strategy, exposing racism is wrongheaded and at best an utter waste of time.”<sup>46</sup> Arguments like Reed’s are bound to be misinterpreted, and perhaps even exploited in bad faith by those who would deny the salience of race. Reed, however, is no denier. His critique is not that charges of racism are unfounded, but that they are unproductive.<sup>47</sup>

According to Reed, “racism” is a vague and abstract charge that “requires subordinating the discrete features of a political situation to the overarching political goal of asserting the persistence and power of racism as an abstraction.”<sup>48</sup> So-called “liberals” who blame a social problem on the persistence of “racism” absolve themselves of responsibility to seek a solution, because there is no solution “beyond exhorting people not to be racist.”<sup>49</sup>

Reed, then, rejects the charge of “racism” because it suggests an intractable problem that allows us to throw up our hands and do nothing. Farley’s analysis of racism, however, does not allow this. On the contrary, it demands that we do too much. Farley argues that the role of racial slavery in establishing our political-economic-legal order renders that order illegitimate. Complete rejection of the existing order follows an abstract moral logic, but it is obviously far more than most of us are willing to do. Farley’s exhortation is, nonetheless, useful in that it demands that we explain why we are unwilling to upend the existing order. We must ask ourselves to what extent we are motivated by a commitment to greater justice and to what extent by fear or false consciousness.

Rather than helplessly awaiting the end of racism in some distant future, Reed advocates a trans-racial coalition for economic justice now. Instead of condemning government inaction as racist, he argues, we should build political support for those devastated by Katrina by pointing out that they do not suffer from a uniquely “black” condition. Those devastated by the disaster, Reed argues, are merely extreme cases of the same precarious economic situation of many middle- and working-class Americans of all races.<sup>50</sup> Indeed, increasing numbers of middle-class families would

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<sup>45</sup>Adolph L. Reed Jr., *The Real Divide*, in AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA, *supra* note 18, at 63, 63-67.

<sup>46</sup>*Id.* at 64.

<sup>47</sup>*Id.*

<sup>48</sup>*Id.* at 65.

<sup>49</sup>*Id.*

<sup>50</sup>Reed, *supra* note 45, at 67; *cf.* Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 827-28 (2007) (arguing that white voters would be more likely to support tax credits for the poor if they understood that the working poor who benefit from such policies are primarily white).

be unable to survive a major economic setback, such as job loss or illness—or a flood.<sup>51</sup>

My home region, the Central Valley of northern and central California, illustrates this point. Like the New Orleans area, much of the valley was originally inhospitable to permanent settlement because rivers flooded the surrounding plains every winter. When white people came to farm and settle the area 150 years ago, their solution was to build a hodgepodge of levees, largely with imported Chinese labor.<sup>52</sup> In February 2007, the U.S. Army Corps of Engineers released a list of 122 levees nationwide with “unacceptable maintenance inspection ratings.”<sup>53</sup> Thirty-seven of these levees were in California, mostly in rural parts of the Central Valley, but also near the Valley cities of Stockton, Fairfield, and Vacaville.<sup>54</sup>

In suburban Sacramento and other areas, the real estate boom of the last decade increased residential construction in flood-prone areas that depend upon levees for protection. One such area, the Natomas basin of northern Sacramento, is said to have a greater than three percent chance of flooding in any given year,<sup>55</sup> yet only about one quarter of Natomas homeowners had flood insurance as of January 2007.<sup>56</sup> FEMA has announced that holders of federally-backed mortgages in Natomas will be required to purchase flood insurance beginning in December 2008.<sup>57</sup> The cost of such insurance, currently about \$769 per year for \$250,000 of coverage, is expected to nearly double.<sup>58</sup> The flood-prone areas are not impoverished areas, but many of these areas are comprised of “starter homes.” The recent surge in foreclosures in California<sup>59</sup> suggests that many of these new homeowners are in precarious financial situations. Many of them entered the home-owning class through volatile subprime

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<sup>51</sup>See Elizabeth Warren, *The New Economics of the American Family*, 12 AM. BANKR. INST. L. REV. 1 (2004) (arguing that the modern two-income family is at financial risk).

<sup>52</sup>See ROBERT KELLEY, *BATTLING THE INLAND SEA: AMERICAN POLITICAL CULTURE, PUBLIC POLICY, AND THE SACRAMENTO VALLEY 1850-1986* 111-54, 178 (1989).

<sup>53</sup>U.S. Army Corps of Engineers, News Release, U.S. Army Corps of Engineers Provides Locations of Unacceptably Maintained Levees (Feb. 1, 2007), <http://www.hq.usace.army.mil/cepa/releases/leveesafety.htm>; accord U.S. Army Corps of Engineers Levees of Maintenance Concern (Feb. 1, 2007), <http://www.hq.usace.army.mil/cepa/releases/leveelist.pdf> [hereinafter Maintenance Concern] (setting forth the 122 nationwide levees needing repairs).

<sup>54</sup>See Beverley Lumpkin, *Corps of Engineers Lists 122 Levees at Risk Across U.S.*, EVANSVILLE COURIER & PRESS, Feb. 2, 2007, at A6; see also Deb Kollars & Matt Weiser, *Corps: Lots of Levees Risky Survey says California has the Most Problems; Critics Fire Back*, SACRAMENTO BEE, Feb. 2, 2007, at B1; see also Maintenance Concern, *supra* note 53.

<sup>55</sup>See Mary Lynne Vellinga & Matt Weiser, *Levee Report Shocks City*, SACRAMENTO BEE, Jan. 16, 2008.

<sup>56</sup>See Matt Weiser, *Natomas faces flood mandate: FEMA to Require Policies for Holders of U.S.-backed Loans*, SACRAMENTO BEE, Jan. 4, 2007.

<sup>57</sup>See Vellinga & Weiser, *supra* note 55.

<sup>58</sup>See *id.*

<sup>59</sup>See Carolyn Said, *State Seeks Ways to Relieve Homeowner Misery*, SAN FRANCISCO CHRONICLE, August 22, 2007, at C1 (reporting that foreclosures in July 2007 had increased 289% over the previous July in California and had nearly doubled nationwide.)

mortgages whose payments suddenly turned onerous as the subprime lending industry collapsed in 2007.<sup>60</sup> They stand to be physically and economically devastated by a flood. Even in the absence of a disaster, they now face the added burden of flood insurance payments and very likely an additional dramatic decline in their property values. Many of these homeowners are likely to be newcomers to California and to the middle class, who are also more likely to be immigrants and people of color.

Reed's likening of Katrina victims and the precariously-poised middle class, then, is compelling and timely. However, it is far from clear that underscoring this point will lead the middle class into solidarity with the working class and underclass. Would our society (or more specifically, its relatively privileged, white voters) award greater dignity to the "unraced" poor than it currently does to the "raced" poor? Just as some whites invoke "scurrilous" victim-blaming stereotypes about blacks to justify inaction on racial inequality, the middle and upper classes may invoke—and perhaps genuinely, if unfairly, believe—similar stereotypes about the poor. Indeed, our "free market" economic ideology suggests that poverty (unlike racism) is not injustice, but the just desert of the lazy and stupid. Furthermore, even in the absence of irrational class prejudice, a rationally self-interested middle class may demand only that it be better protected from falling into poverty, not that the poor be raised up.

In his essay, John White also finds potential for class unity in the convergence between middle and working class interests. As he points out, the city's economy cannot function without low-wage workers. This is an important and fundamental insight for the rebuilding of the city. A new New Orleans without access to an unskilled labor force will be a failure. But a city's interest in a low-wage labor supply converges only with the interests of the working poor; not with the interests of the very poorest, who do not or cannot work.<sup>61</sup> As David Troutt points out, the prevailing logic of local government is to write off those who consume more in social services than they contribute to the economy.<sup>62</sup> Of course, providing for the very poorest may be in the interest of the more privileged classes in the long run. It may over time reduce crime, urban blight, civil unrest, and a host of other ills. But this argument is nothing new, and it has not produced an aggressive antipoverty policy in the recent past. Moreover, the Katrina diaspora has given New Orleans the uniquely tempting opportunity to avoid the social and economic cost of poverty by unloading it onto other communities that have received the displaced.

A class-based approach to social justice rhetoric has its weaknesses, but Reed is unfortunately correct that the dominant race-based framing has proven unproductive time and again. Whether racism is persistent or not, a post-racial strategy may be necessary on purely pragmatic grounds. But I doubt that any strategy for social

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<sup>60</sup>*See id.*

<sup>61</sup>White certainly does not pretend otherwise, as he himself distinguishes between the working poor and the nonworking poor. *See* White, *supra* note 31, at 47.

<sup>62</sup>Troutt, *supra* note 18, at 24. White argues that the conventional wisdom abuses this concept in that it underestimates the number of *working* poor among the city's poor. White, *supra* note 31, at 47. But whatever the numbers of the nonworking poor, they cannot be said to serve the city's material self-interest.

justice can depend entirely on interest convergence.<sup>63</sup> Sometimes there is an immediate win-win solution, a perfect convergence of self-interest, an invisible hand that lifts up all. But not always.

Where we can find interest convergence, answers are both satisfying and politically easy to sell. But a lack of selfish justifications is no excuse. In his essay, Troutt refers to shared destinies and converging interests, but his main concern is society's moral duty to treat all fairly. Market-led reconstruction, he recognizes, will have harsh results for the displaced poor and black residents of New Orleans. Thus, he argues that public expenditures on residential rebuilding should be limited to projects that invite a mix of races and incomes. Such limitations may entail financial sacrifices in the form of lower profits for developers, lower property tax receipts for local governments, and increased social services costs. But these costs are the price of racial and economic justice.

More generally, as Troutt so elegantly puts it, "It was love that brought us to those funerals after all, not shame."<sup>64</sup> That is, remedial action after Katrina should be undertaken willingly out of respect for the human dignity of those lost in the disaster—and, I would add, of those who survived. Reed, for all his hard-nosed realism about race, makes a similar appeal to compassion in hoping that sympathy will bring the middle class to support the poor. And even White's interest-convergence argument is motivated not by self-interest, but by moral indignation about the slandering and exclusion of the poor.

Compassion is similarly critical among disadvantaged minority groups. As noted above, the reconstruction of the Gulf Coast appears to have triggered tensions between African Americans and Latino immigrants.<sup>65</sup> Tensions of this type tend to express themselves in a manner that reinforces existing racial hierarchy.<sup>66</sup> Thus, unifying and refusing to play the game of racial competition can generate benefits for all people of color.<sup>67</sup> The hard truth, however, is that it can impose costs as well.<sup>68</sup>

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<sup>63</sup>I doubt that Reed or White thinks so either; as noted above, Reed's theory depends in part on empathy across class and race lines, and White purports only to address issues of the working poor.

<sup>64</sup>Troutt, *supra* note 18, at 24.

<sup>65</sup>See *supra* notes 40-44 and accompanying text.

<sup>66</sup>See Ikemoto, *supra* note 41, at 1585-90.

<sup>67</sup>*Cf.* Gabriel J. Chin et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, a Policy Analysis of Affirmative Action*, 4 UCLA ASIAN PAC. AM. L.J. 129, 134 (1996) (The authors argue that Asian Americans should support affirmative action because it "moves us toward a more just society that benefits all Americans.").

<sup>68</sup>A group of Asian American scholars, arguing that Asian Americans should support affirmative action, "concede that there are costs, at times painful ones, to affirmative action. For instance, some marginal candidates will lose out to those helped by affirmative action." *Id.* at 136. This cost is imposed not only on "marginal" white candidates, but on any marginal candidates who are placed in a racial group not considered to be underrepresented or disadvantaged. See, e.g., Jacques Steinberg, *Not All of Them Are Pre-Med*, N.Y. TIMES, February 2, 2003, § 4, at 3 (observing that affirmative action programs in college admissions typically do not apply to Asian Americans, although some ethnic groups within the "Asian American" umbrella, such as Filipino-Americans, may in fact be underrepresented or disadvantaged).

*But* neither costs nor benefits should be determinative. The members of any given racial group (including whites) have a moral duty to oppose racial injustice against all other groups, regardless of the costs or benefits to one's own group.<sup>69</sup> Furthermore, they must admit that refusing to do so for selfish reasons constitutes a moral compromise, not an excuse. African Americans (and all Americans) have a duty to oppose the exploitation of Latino labor in Gulf Coast reconstruction work, just as Latinos (and all Americans) have a duty to speak out against the government's neglect and exclusion of Katrina's black victims.

Committing the future to the invisible hand of self-interest is tempting for the best of reasons—because it may yield a win-win solution in which one can “do well by doing good.” But it can also be appealing for the worst of reasons—because it purports to make hard, costly choices unnecessary by replacing subjective moral judgment with “natural” market forces.<sup>70</sup> This belief in moral neutrality is a fallacy. Whatever its virtues (and flaws), a society ordered by self-interest alone is no more “natural” than the Katrina disaster itself: it is a matter of choice, not chance.

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<sup>69</sup>Thus, for example, while affirmative action may indeed benefit Asian Americans, *whether or not it does*, the redress of historical wrongs against African Americans and their current underrepresentation presents an independent moral argument why Asian Americans should support affirmative action.

<sup>70</sup>See Thomas W. Joo, *Race, Corporate Law, and Shareholder Value*, 54 J. LEGAL. EDUC. 351, 363-64 (2004).