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Afro America and the Third World in the Wake of Hurricane Katrina

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Introduction

Hurricane Katrina struck New Orleans on August 29, 2005, and both the storm and its aftermath were unimaginable.[1] This essay will consider the natural and unnatural disaster that was hurricane Katrina, as well as the disastrous human response that followed. The fundamental objective, however is to explore the discourse that emerged in the aftermath of this tragedy. As the victims of Katrina were labeled "refugees," New Orleans was likened to a Third World country, and African Americans responded in

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[1] It was entirely feasible to conceive of a Category 3 hurricane striking the city of New Orleans, and that the levies that protect the City might fail; indeed both scenarios were widely acknowledged by civil authorities at the state, federal and local levels. What no one could envision was the utter incompetence at all levels of government in the aftermath of a *foreseeable* disaster; and above all the response of the federal government, which almost everyone immediately grasped was the only entity with sufficient resources to manage such a monumental catastrophe. *See*, text and notes, *infra* note 134.

outrage to what they perceived as decidedly pejorative terminology.[2] Having written extensively about the Third World from multiple perspectives,[3] this author found the ensuing negative discourse particularly painful and troublesome, especially when it came from African-Americans. Hence this essay seeks to unpack such terms as Third World and refugee, and to begin to untangle the long and complex history of the African American engagement with the largely colored Third World, including the sometimes thorny and contradictory relationship between our African and American identities.

Let us begin with the catalyst. When the now infamous Hurricane Katrina made landfall near the Louisiana - Mississippi border; it had sustained winds of 120 mph,[4] and unquestionably caused great damage to

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[2] The definitions of refugee and Third World are multifaceted and rooted in complex histories. Refugee has a distinctly international definition and arose in the aftermath of the Nazi Holocaust against European Jews. *See*, 1951 Convention Relating to the Status of Refugees, text and notes, *infra* 116. The term Third World emerged in the 1950s as colonies and protectorates, populated largely by people of color, became nations and sought a distinct identity from the First (Western, Capitalist) and Second (Communist) worlds. *See* text and notes, *infra* for a more detailed history.

[3] *See e.g., Climate Change and the Poorest Nations: Further Reflections on Global Inequality;* 78 U. COLO. L. REV. 1559 (2007); *Contemplating the WTO from the Margins,* 17 BERKELEY LA RAZA L.J. 95 (2006); *Sub-Saharan Africa and the Brave New World of the WTO Multilateral Trade Regime,* 8 BERKELEY J. AFR.-AM. L. & POL'Y 79 (2006); *Deconstructing Development,* 22 WIS. INT'L L.J. 1 (2004);*Racing U.S. Foreign Policy,* 17 NAT'L BLACK L.J. 1 (2003); *Critical Race Theory and International Law: Convergence and Divergence,* 45 VILL. L. REV. 827 (2000) and 94 AM. SOC'Y INT'L L. PROC. 260 (2000); *Growing Constitutions,* 1 U. Pa. J. Const. L. 528 (1999); *Saving Failed States: Sometimes a Neocolonialist Notion,* 12 AM. U. J. INT'L L. & POL'Y 903 (1997) and 91 AM. SOC'Y INT'L L. PROC. 420 (1997);*Some Legal Problems with Trusteeship,* 28 CORNELL INT'L L.J. 301 (1995).

[4] Sherrie Armstrong Tomlinson, Note, *No New Orleans Left Behind: An Examination of the Disparate Impact of Hurricane Katrina on Minorities,* 38 CONN. L. REV. 1153 (2006). This was actually the third time Katrina hit land. Katrina initially crossed southern Florida as a mild Category 1 hurricane on August 25, 2005, after which it returned to sea, where it strengthened to a Category 5 hurricane. It weakened to a Category 3 hurricane prior to touching down in southeast Louisiana on the morning of August 29, 2005, although the extreme southern portions of Louisiana may have experienced Category 4 winds, because Katrina was in the process of weakening as it approached the coast. This was followed by its third landfall on the Louisiana – Mississippi border that same day. New Orleans was spared the brunt of the storm because it faced the winds to the west of the storm's eye, which was the weaker part of the hurricane. Estimates by Texas Tech University put sustained winds in the city at 61-68 knots, or 70-78 mph. The top gust recorded in eastern New Orleans was 107 knots, or 123 mph. Hence, the winds that caused the damage to New Orleans were likely below Category 3 strength. Richard D. Knabb, Jamie R. Rhome and Daniel P. Brown, Tropical Cyclone Report: Hurricane Katrina 23-30 at 8 (Dec. 20, 2005),

the areas it struck. Nonetheless, the true disaster arose when the levees that were to protect New Orleans from storms and hurricanes gave way and the waters rushed in. New Orleans was engulfed by the waters of Lake Pontchartrain, and with incredible swiftness, a unique, historic, and, at least by North American standards, old city[5] was literally submerged.[6] Footage of the inundated city was startling, indeed astonishing, for great cities are rarely so completely destroyed in one swift stroke.[7] Yet, the images that were to follow proved to be just as shocking, leading to another tragedy

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available at http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf [hereinafter *Tropical Cyclone Report*].

[5] New Orleans and its surroundings are home to distinctive cultures including Creoles, a people of mixed Spanish and French descent, and Cajuns, who are originally of French descent but migrated to the area from Canada. *See,* The Creole City, http://www.neworleansonline.com/neworleans/multicultural/multiculturalhistory/creole.ht ml (last visited August 15, 2008). New Orleans is also home to the first Black neighborhood in the United States, which was created by free Black immigrants and Creole slaves. *See* Arnold R. Hirsch & Joseph Logsdon, The People and Culture of New Orleans, http://www.neworleansonline.com/neworleans/history/people.html (last visited August 15, 2008). New Orleans also enjoyed a wide variety of architectural styles found throughout different parts of the city. Cemeteries, which are above ground, are called cities of the dead, and museums reflect the diverse cultures and languages of the people who called New Orleans home. *See Id.* And then there is Mardi Gras, the famous New Orleans celebration held on Fat Tuesday each year. *See* Arthur Hardy, *History of Mardi Gras, available at*
http://www.neworleansonline.com/neworleans/mardigras/mardigrashistory/mghistory.html (last visited August 15, 2008). Jazz was born from the blues, evolving out of a history of misery suffered by African Americans. It now resonates proudly throughout the world. *See* Clyde Adrian Woods, *Do You Know What It Means to Miss New Orleans?: Katrina, Trap Economics, and the Rebirth of the Blues,* 57.4 AMERICAN QUARTERLY 1005, 1008-09 (2005) (describing events in New Orleans from perspective of blues tradition).

[6] 80% of the City was flooded with waters rising to depths of up to 20 feet in some places. *See* Tomlinson, *supra* note 4 at 1158. The floods trapped people in their attics as they tried to evacuate vertically by moving to the upper stories of their homes. Tragically, some people drowned when they could not reach their roofs. Tom Davis, Chairman, *A Failure of Initiative: Final Report of the Select Bipartisan Committee To Investigate The Preparation For And Response To Hurricane Katrina,* 89 (Feb. 15 2006), *available at* http://gpoaccess.gov/katrinareport.pdf [hereinafter *A Failure of Initiative*].

[7] Of course, other Great cities have faced disaster. For example, in 1755, an earthquake measuring 8.7 on the Richter scale, a tsunami and ensuing fire devastated Lisbon, Portugal, leading to a dramatic shift of power in Europe. *See* Stefan Lovgren, *Great Portugal Quake May Have a Sequel, Study Says,* NATIONAL GEOGRAPHIC NEWS (Aug. 30, 2004), *available at* http://news.nationalgeographic.com/news/2004/08/0830_040830_portugal_quake.html. The 1906 San Francisco earthquake leveled most of the city and ignited a massive fire that destroyed what was left. *See* Kenneth Chang, *The Ground Shook, a City Fell, And the Lessons Still Resound,* N.Y. TIMES (Apr. 11, 2006), *available at* ttp://query.nytimes.com/gst/fullpage.html?res=9507E3D91E30F932A25757C0A9609C8B 63.

with far reaching consequences.[8] To our collective shock, we witnessed thousands of our fellow citizens stranded in a completely flooded city and in dire situations. They were marooned on rooftops and trapped in a filthy, uninhabitable convention center and sports arena. Decomposing bodies scattered the streets, and the flood waters were awash with disease, pollution and oil from nearby refineries.[9] Thousands of people, who were overwhelmingly African American and observably impoverished, desperately needed elementary necessities, such as- food, shelter, water and rudimentary sanitation,- and most of those in need were.[10] Just as remarkably, the Federal government appeared to be overwhelmed, powerless, inept and utterly incompetent.

As these images persisted, most of the public recoiled and outrage rapidly set in. The amateurish incompetence demonstrated by the Federal Emergency Management Agency (FEMA) seemed indefensible and unacceptable.[11] It was the manifestation of an ineptitude and ineffectiveness

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[8] While hurricane Katrina was a natural phenomenon, the flood that inundated New Orleans in its wake was not. The levies that were to shield the City from Lake Pontchartrain were meant to protect against a storm with a central barometric pressure of 27.6 Hg (inches of mercury), 100 mph winds and a storm surge of 11.2-13 feet. These parameters would roughly correspond to the pressure of a Category 4 hurricane, the wind speed of a Category 2 hurricane, and the storm surge of a Category 3 hurricane. A Failure of Initiative, *supra* note 4, at 89. However, since Katrina was a Category 5 storm at one point, water collected near its center, making its surge higher than that of a storm that only reached Category 3. The result was that the surge off Lake Borne, which is near New Orleans, was 18-24 feet. *Id.* at 93. Additionally, the track of the storm caused winds to push water up some of the levees, forcing water levels even higher. *Id.* at 94. These stressors were placed upon a poorly maintained levee system with existing weaknesses. Recognizing this, the Army Corp of Engineers had long planned for the eventuality of removing water from a flooded New Orleans. *Id.* at 90. *See also* John McQuaid, *Katrina Trapped City in Double Disasters*, NEW ORLEANS TIMES PICAYUNE, Sept. 7, 2005, Hurricane Katrina: Special Coverage Section (describing two different floods that inundated city). This deadly recipe has led one author to conclude that, while Katrina was a natural disaster, the failing levees and subsequent floods were manmade. Louise K. Comfort, *Fragility in Disaster Response: Hurricane Katrina, 29 August 2005*, Vol. 3, No. 3 FORUM 1, 4 (2005).
[9] Miranda Welbourne, Note, *The Environmental Justice Movement's Response To Hurricane Katrina, A Critique: Problems Faced, Successes, Failures and the State of the Movement One Year Later*, 32 THURGOOD MARSHALL L. REV. 125 (2006).
[10] Tomlinson, *supra* note 4, at 1153; Wendy B. Scott, *From An Act of God to the Failure of Man: Hurricane Katrina and the Economic Recovery of New Orleans*, 51 VILL. L. REV. 581, 584-85 (exploring poverty of African-Americans in spite of city's cash flow); Elisabeth Bumiller, *Gulf Coast Isn't the Only Thing Left in Tatters; Bush's Status With Blacks Takes a Hit*, N.Y. TIMES, Sept. 12, 2005, § A at 17.
[11] Paul Krugman, *Tragedy in Black and White*, N.Y. TIMES, Sept. 19, 2005, § A, at p. 25; Eric Lipton, Christopher Drew, Scott Shane, and David Rohde, *Storm and Crisis: Government Assistance; Breakdowns Marked Path From Hurricane to Anarchy*, N.Y.

that most thought did not exist in the powerful, exceptional United States of America, a nation that views itself as setting and defining international standards. Nonetheless, we seemed to be witnessing a full-blown disintegration of that competence in dreadfully stark terms.[12] Evidently, Americans expected the federal government to be present and proficient during natural disasters, and attempts to lay the blame on local and state

TIMES, Sept. 11, 2005, at 11; Molly Ivins, *FEMA, Our Man-made Disaster Area*, FORT WORTH STAR-TELEGRAM. Sept. 11, 2005, at E4; Larry Eichel, *Delay, Hesitation, Despair and Disaster*, FORT WORTH STAR-TELEGRAM. Sept. 11, 2005, at A24; Diane Carman, *U.S. Leaders Flunking Disasters 101*, DENVER POST, Sept. 11, 2005, at C01; *2001-2005 Dealing With Disaster: Emergency Network Worse Today*, DAYTONA NEWS-JOURNAL (FL.), Sept. 11, 2005, at 01B; Andrew Martin, Cam Simpson and Frank James, *Best-Laid Plans Did Little to Help New Orleans*, DAILY PRESS (Newport News, VA.), Sept. 11, 2005, at A1; *Unprepared Again: Will We Learn Enough To Be Ready For the Next Disaster?*, CHARLOTTE OBSERVER (N.C.), Sept. 11, 2005, at 2P; Alan Judd and Teresa Borden, *Hurricane Katrina: Odyssey Shows FEMA's Disarray; Futile Trek: Georgians Sent to Mississippi, Dallas, Galveston, Houston*, ATLANTA J. AND CONST., Sept. 11, 2005, at A1; *Actions Added human Cost, Hesitancy in Response May Have Led to More Deaths*, ABERDEEN AMERICAN NEWS (S.D.), Sept. 11, 2005, at A1; *Failure at FEMA: Michael Brown Makes an Appropriate Exit*, AKRON BEACON J. (Ohio), Sept. 13, 2005, at B3; Susan B. Glasser and Josh White, *Homeland Security Agency in Flux; Ill-Prepared to Handle Katrina*, WASH. POST, Sept. 4, 2005; Joanne M. Nigg, John Barnshaw, and Manuel R. Torres, *Hurricane Katrina and the Flooding of New Orleans: Emergent Issues in Sheltering and Temporary Housing*, 604 ANNALS AM. ACAD. POL. & SOC. SCI. 113 (2006) [hereinafter *Hurricane Katrina and the Flooding of New Orleans*]; Kathleen Tierney, Christine Bevc and Erica Kuligowski, *Metaphors Matter: Disaster Myths, Media Frames, and Their Consequences in Hurricane Katrina*, 604 ANNALS AAPSS 57 (2006) [hereinafter *Metaphors Matter*]; William L. Waugh, The Political Costs of Failure in the Katrina and Rita Disasters, 604 ANNALS AAPSS 10 (2006); Arnold M. Howitt and Herman B. Leonard, *Katrina and the Core Challenges of Disaster Response*, 30 FLETCHER F. WORLD AFFAIRS 215 (2006); Donald F. Kettle, *Is the Worst Yet to Come?* 604 ANNALS AAPSS 273 (2006); Welbourne, *supra* note 7, at 125; Jonathan P. Hook and Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 CAL. W. L. REV. 21 (2006); Brenda Muñiz, *In the Eye of the Storm: How the Government and Private Response to Hurricane Katrina Failed Latinos*, NATIONAL COUNCIL OF LA RAZA, Feb. 28, 2006; Comfort, *supra* note 6, at 4.

[12] At the Tenth annual LatCrit Conference, one commentator noted that people in her country sensed that perhaps America was not so all knowing and her country was not so unintelligent. Ruth Gordon, *Contemplating the WTO from the Margins*, 17 BERK. LA RAZA L.J. 95, 107 n. 39 (2006) [hereinafter *Contemplating the WTO from the Margins*]. The American role of setting the standard that all other nations are to follow, is rapidly eroding in a global economy. See, Parag Khana, The Shrinking American Empire, New York Times Magazine (April 2008); PARAG KHANA, THE SECOND WORLD (RANDOM HOUSE 2008)

authorities generally fell on deaf ears.[13] We were shocked and perhaps, somewhat ashamed.

Then again, this scenario seemed vaguely familiar. It is not an entirely unusual sight to see throngs of impoverished, distressed and anguished people of color, especially Black people, pleading for aid. Indeed, such scenes often grace American and international television screens. The dissonance resonated from these people being American citizens. While Americans are accustomed to seeing such images emanating from abroad, it was simply intolerable, indeed outrageous, for American nationals, even the poorest and most overlooked of American citizens, to be treated as this community was being treated. Commentators and reporters quickly discerned these parallels and almost immediately began referring to Katrina's victims as "refugees,[14] and New Orleans as something out of a Third World country.[15]

In the Black community, these comments were regarded as derogatory in every sense of the word, and a furor rapidly ensued, with the

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[13] The Bush administration tried to place the blame for the inadequate Federal response at the feet of local and state officials, who certainly must shoulder some of the blame. Nonetheless, most Americans immediately realized that devastation on this level was beyond the skill and resources of local authorities, especially authorities in a state and city as poor as Louisiana and its most famous city, New Orleans. Waugh, *supra* note 11, at 16. *See also* Kettle, *supra* note 11; Howitt & Leonard, *supra* note 11, at 217 (explaining Katrina and flooding of New Orleans was unique; normal disaster preparations would not have been sufficient to handle storm).

[14] *Hurricane Katrina Turns 'Refugee' Into Word of the Year*, WASH. POST, December 16, 2005, at C07; Ruth Walker, *Coming to Terms with Katrina's Diaspora*, CHRISTIAN SCIENCE MONITOR, Sept. 21, 2005 at 18; Rosa Brooks, *Our Homegrown Third World*, THE RECORD (Bergen County, N.J.), Sept. 11, 2005, at 5; Robert E. Pierre and Paul Farhi, 'Refugee': A Word of Trouble, Wash. Post, Sept. 7, 2005, at C01; Jocelyn Noveck, *The Use of Word "Refugee" Touches a Nerve*, SEATTLE TIMES, Sept. 7, 2005, at A16; John M. Broder, *Amid Criticism of Federal Efforts, Charges of Racism are Lodged*, N.Y. TIMES, Sept. 5, 2005, § A, at 9; Maria Isabel Medina, *Confronting the Rights Deficit at Home: Is the Nation Prepared in the Aftermath of Katrina? Confronting the Myth of Efficiency*, 43 CAL. W. L. REV. 9 (2006).

[15] *See, e.g.*, Brooks, *supra* note 14, at 5; Pierre & Farhi, *supra* note 14, at C01; Broder, *supra* note 14, at 9 (comparing New Orleans to undeveloped nations and Africa); Richard Bernstein, *The View From Abroad*, N.Y. TIMES, Sept. 4, 2005, § 4, at 5 (referring to Katrina as "a disaster of Third World proportions"), David Carr, *The Pendulum of Reporting On Katrina*, N.Y. TIMES, Sept. 5, 2005, § C, at 1 (explaining news reports that a Third World country had grown inside United States); Claudia Dreifus, *Earth Science Meets Social Science in Study of Disasters*, N.Y. TIMES, Mar. 14, 2006, at F2; Lynne Duke, *Block That Metaphor: What We Mean When We Call New Orleans 'Third World,'* WASH. POST, Oct. 9, 2005, at B01.

loudest objections coming from so-called leaders within this community.[16] Surely their responses were partly an expression of anger and indignation at the inhumane treatment of American citizens on American soil by their own government. Their responses, however, also seemed to be an explicit recognition of how negatively we view the Third World and its peoples. While it is not surprising that the U.S. media and American analysts would share this disparaging stance, it seemed that few, including progressives of color, appreciated or considered the nature of this particularly negative discourse concerning those once regarded as brothers, sisters, and valuable links to the past, present and future.[17] It seemed *African* American solidarity with the people of the Third World had fractured, or at least been transformed in some way, even as some Third World nations offered assistance to Katrina's victims.[18]

As a child of the "black and proud" generation that endeavored to celebrate its African roots, and as a scholar who writes about and celebrates the Third World, these remarks had a particular resonance, prompting this essay. It will consider Black America's disengagement with the now denigrated Third World, and why they might join in the belief that "Third World" is a derogatory term,[19] as well as how "refugee" managed to acquire such a negative connotation, in the United States.[20] "Third World,"

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[16] *See, e.g.*, Broder, *supra* note 14, at 9, Noveck, *supra* note 14, at A16 (referring to Jesse Jackson and Members of Congressional Black Caucus); Walker, *supra* note 14, at 18.

[17] MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES (1994) at 38-40. Black Power has been an international concept, affecting the continent of Africa and the African Diaspora. During the early twentieth century, two movements attempted to unify American Blacks through recognition of a common connection with Blacks around the world. For example, both the Pan-African movement led by W.E.B. Dubois and the Universal Negro Improvement Association led by Marcus Garvey, identified a common suffering by Black people the world over. Cultural nationalism emerged in the 1920s with the Harlem Renaissance, which focused on a shared Black culture, rather than colonialism or monetary exploitation. In the 1960s and 1970s a revised cultural nationalism appeared that also accentuated lifestyle choices, such as clothing, hair, language and art.

[18] Poor nations, including Honduras, Jamaica, Colombia, the Dominican Republic and El Salvador, promised help for Katrina's refugees. See Farah Stockman, *U.S. Sends Mixed Signals on Accepting Aid From Abroad,* BOSTON GLOBE, Sept. 2, 2005, at A31.

[19] Ruth E. Gordon and Jon H. Sylvester, *Deconstructing Development*, 22 WIS. INT'L L.J. 1, 79 (2004) (discussing "Third World" as pejorative term); Ruth Gordon, *Critical Race Theory and International Law: Convergence and Divergence*, 45 VILL. L. REV. 827, 834 (2000) [hereinafter *Critical Race Theory and International Law: Convergence and Divergence*].

[20] Jan Freeman, *Gimme Shelter*, BOSTON GLOBE, SEPT. 11, 2005, at E3; Walker, *supra* note 14, at 18; Steven O'Brien (letter to the editor), *Aftermath of Hurricane Katrina*, IRISH TIMES, Sept. 17, 2005, at 15 (posting letter from Steven O'Brien, Public Information

"refugee," "underdeveloped," "undeveloped" and currently, "developing," frequently substitute for "Black," "colored," "impoverished," "downtrodden" and, indisputably and incontestably, "inferior."[21] Such terms habitually signify gloomy, shadowy, and quite terrible places where even the darkest and most cast-off Americans are not members. Hopefully, the discourse that emerged in the aftermath of Katrina[22] can assist in exploring how race plays out in images of the Third World and of the so-called underdeveloped and impoverished. Furthermore, it may help us ponder how African Americans are situated within this cauldron.

Part I discusses the catastrophe that arose from the collision of Hurricane Katrina, failed levees, race, poverty, and extraordinarily poor disaster planning and response capabilities. Part II turns to the discourse that emerged in the immediate aftermath of Katrina, addressing reactions in general and then turning to those from the Black community. Part III explores such terms as "refugee," "Third World," and "underdeveloped" within the broader legal, political, and social setting from both an international and national perspective. More particularly, it situates African Americans within this paradigm, both historically and in contemporary discourse. Indeed, African Americans have been part of, and separate from, movements and dialogues with other people of color, reflecting their dual status as Americans and as colored people. Part IV concludes by pondering how our awareness of these troubling views might assist in beginning to alter our perceptions of ourselves and of the "other" and realize commonalities rather than differences with our Third World compatriots who also are dispossessed.[23]

Officer for United Nations High Commissioner for Refugees, asking media to not use "refugee" when describing suffering in New Orleans).

[21] *See* Gordon & Sylvester, *supra* note 17, at 2-6.

[22] It is peculiarly American because the poor response to these particular victims is part of a long history of an inadequate response to the plight of poor and colored people in the aftermath of natural and manmade disasters. Dayna Bowen Matthew, *Disastrous Disasters: Restoring Civil Rights Protections for the Victims of the State in Natural Disasters*, 2 J. HEALTH & BIOMED. L. 213; Woods, *supra* note 3(discussing government attempts to retain Black citizens in Arkansas, Louisiana, and Mississippi after devastating floods); Dreifus, *supra* note 15, at F2 (noting that disasters tend to accentuate existing social problems between rich and poor, giving rise to more deaths in poor populations).

[23] In discussing my thoughts for this essay with colleagues and friends, they sometimes had the impression, at least initially, that perhaps I was being critical of the victims of Katrina. It must be clarified that this is certainly not the case nor is it part of my analysis in any sense. Indeed, this sojourn is more about the utter disregard and disrespect for impoverished people throughout the world, people who are, more often than not, colored people. This sad appraisal includes the wounded of Katrina.

Part I: Katrina and Its Aftermath

A. Natural and Unnatural Disaster[24]

Katrina struck the United States three times, first striking Florida on August 23, 2005 as a Category 1 hurricane, packing winds of more than 75 miles per hour,[25] before moving into the warm waters of the Gulf of

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[24] The following account is only a summary of the events surrounding hurricane Katrina, the disaster that followed in its aftermath, the implications of literally losing New Orleans and the displacement of its hundreds of thousands of citizens. A full account of these subjects is beyond the scope of this paper. The literature on Katrina is voluminous and growing. There are numerous chronicles from a variety of disciplines and perspectives. For instance, disaster planning and assistance is a field of study that has generated its own extensive literature. *See, e.g.,* Havidán Rodríguez, Joseph Trainor and Enrico L. Quarantelli, *Rising to the Challenges of a Catastrophe: The Emergent and Prosocial Behavior Following Hurricane Katrina,* 604 ANNALS AM. ACAD. POL. & SOC. SCI. 82 (2006); Linda B. Bourque, Judith M. Siegel, Megumi Kano and Michele M. Wood, *Weathering the Storm: The Impact of Hurricanes on Physical and Mental Health,* 604 ANNALS AM. ACAD. POL. & SOC. SCI. 129 (2006) [hereinafter *Weathering the Storm*]; *Metaphors Matter, supra* note 11; *Hurricane Katrina and the Flooding of New Orleans, supra* note 11. Similarly, the legal community has addressed the legal ramifications of Katrina and its aftermath. *See, e.g.,* Mark Davis, *A Whole New Ballgame: Coastal Restoration, Storm Protection, And The Legal Landscape After Katrina,* 68 LA. L. REV. 419 (2008); Rob Wilcox, *Housing In Post-Katrina New Orleans: Legal Rights And Recourses For Displaced African-American Residents,* 2 NW J. L. & SOC. POL'Y 105 (2007); Aileen M. Marty, M.D., FACP, *Hurricane Katrina: A Deadly Warning Mandating Improvement To The National Response To Disasters,* presented at *Symposium: After The Tempest: How The Legal Community Recovers From Disasters,* 31 NOVA L. REV. 423 (2007); Eloisa C. Rodriguez-Dod, *Evaluating Katrina: A Snapshot Of Renters' Rights Following Disasters,* presented at *Symposium: After The Tempest: How The Legal Community Recovers From Disasters,* 31 NOVA L. REV. 467 (2007); *Hurricane Katrina Symposium: Reshaping the Legal Landscape of the Gulf South,* 81 Tul. L. Rev. 955 (2007); Meera Adya, Monica K. Miller, Julie A. Singer, Rebecca M. Thomas, Joshua B. Padilla, *Cultural Differences In Perceptions Of The Government And The Legal System: Hurricane Katrina Highlights What Has Been There All Along,* 8 J. L. & SOC. CHALLENGES 27 (2006);

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> "On August 23, 2005, the National Weather Service began tracking a tropical depression, which would become Hurricane Katrina. On August 25, Katrina made landfall in South Florida as a Category 1 storm, with sustained winds over 75 mph. It took seven hours for the storm to cross Florida, dropping as much as 15 inches of rain in some parts of South Florida, causing some home damage and extensive power outages. Once the storm reached the Gulf of Mexico, it intensified and sped up, achieving Category 3 status with sustained wind speeds exceeding 111 mph on August 26. . . . On August 28, one day before its second landfall, Katrina became a Category 5 hurricane, with wind speeds in excess of 150 mph. However, as the storm moved into shallower waters closer to

Mexico.[26] The storm continued to grow stronger as it headed back towards the United States, this time in the direction of Louisiana and Mississippi. Local and federal officials began taking emergency measures, such as declaring impending disaster areas, ordering FEMA and Homeland Security to begin preparations and dispatching National Guard troops.[27] The Mayor of New Orleans, Raymond Nagin, first ordered a voluntary evacuation. Residents of low-lying areas were encouraged to leave, although, as the authorities knew, many lacked the resources to comply.[28] By August 28, the day before Katrina struck, it had strengthened to a Category 5 storm with winds in excess of 150 miles per hour. Federal officials were briefed on the possibility that the levees protecting New Orleans would fall,[29] which could

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land, wind speeds decreased such that Katrina was downgraded to a Category 4 hurricane. Katrina eventually made landfall in Southeastern Louisiana with sustained winds over 125 mph at the eye of the storm, and wind gusts over 100 mph in the City of New Orleans, just west of the eye of the storm. Katrina also brought with it rainfall exceeding 8-10 inches over much of the storm's path."

Respond Act of 2006 House Report No. 109-519(II) December 8, 2006 H.R. REP. 109-519(II).

[26] Hurricane Katrina may have been the catalyst for a more engaged and informed discussion within the United States regarding Global Warming. In the immediate aftermath of the storm, the media, as well as average Americans, began to acknowledge what people in most other nations have recognized for some time, namely that human beings have warmed the climate to a potentially dangerous extent. Dreifus, *supra* note 15; *Earth Science Meets Social Science in Study of Disasters*, N.Y. TIMES, Mar. 14, 2006, at F2; Nahal Toosi, *Gore Says Storms Warn of Global Warming*, TIMES UNION (Albany, N.Y.), Sept. 18, 2005 at D6; Melinda Smith, *Is Global Warming Causing Increased Severe Weather?*, U.S. FEDERAL NEWS, Sept. 20, 2005; James Janega, *Gulf's Hurricane Alley Bowls Over Experts: Global Warming Shares the Blame, Some Say*, CHI. TRIB, Sept. 24, 2005, at 7; Joseph E. Stiglitz, *Lessons From 'Black Tsunami'*, BUSINESS DAY (S. Afr.), Sept. 19, 2005, at 9. Of course, no single weather event, including Katrina can be attributed to Global Warming. See e.g., Elizabeth Kolbert, Storm Warmings, The New Yorker, September 19, 2005 at p. 35; James Janega, *Gulf's Hurricane Alley Bowls Over Experts: Global Warming Shares the Blame, Some Say*, CHI. TRIB, Sept. 24, 2005 at 7 (explaining difficulty in finding a single cause for as complex a phenomena as a hurricane).

[27] Tomlinson, *supra* note 4, at 1156-59; A Failure of Initiative, *supra* note 4, at 59 (summarizing events before Katrina struck); *Homeland Security Prepping For Dangerous Hurricane Katrina Residents In Path Of Storm 'Must Take Action Now'*. US FEDERAL NEWS, Aug. 28, 2005.

[28] Tomlinson, *supra* note 4, at 1156; A Failure of Initiative, *supra* note 4, at 109 (explaining Mayor Nagin was concerned that ordering evacuation on Saturday might result in city liability to local businesses); Bruce Nolan, *Katrina Takes Aim*, NEW ORLEANS TIMES-PICAYUNE, Aug. 28, 2005, at 1.

[29] Michael Chertoff, Secretary of the Department of Homeland Security, was briefed on this possibility, as well as the reality of a possible storm surge of as much as 16 feet that would overflow the city's levees. Tomlinson, *supra* note 4, at 1156. At 10:00 AM on

lead to catastrophic disaster.[30] The Mayor ordered a mandatory evacuation on August 28[31] and announced that Regional Transit Authority buses would pick up people at twelve locations around New Orleans and take them to safe havens, such as the New Orleans Superdome.[32]

Katrina finally made landfall on Monday, August 29 as a Category 3 hurricane, with maximum sustained winds of 121 miles per hour, measuring 400 miles wide, with a 30-mile wide eye.[33] At first, the city and the nation breathed a sigh of relief, believing the levees had weathered the storm.[34]

Sunday, August 28, the National Weather Service issued the following warning: "Devastating damage expected . . . Most of the area will be uninhabitable for weeks . . . perhaps longer. All gabled roofs will fail . . . leaving those homes severely damaged or destroyed . . . Water shortages will make *human suffering incredible by modern standards.*" A Failure of Initiative, *supra* note 4, at 108 (emphasis added). Katrina was expected to be a Category 4 storm, which was more intense than the levees were designed to handle, resulting in catastrophic flooding. The congressional investigation into Katrina concluded that, based on those facts alone, the Secretary of Homeland Security, Michael Chertoff, should have taken action before the storm hit. *Id.* at 133-34.

[30] The governor of Louisiana, Kathleen Blanco, went to President Bush with these concerns and requested that he declare a major disaster for the State of Louisiana. Tomlinson, *supra* note 4, at 1157; A Failure of Initiative, *supra* note 4, at 134.

[31] Christine Hauser and Thomas J. Lueck, *Mandatory Evacuation Ordered for New Orleans as Storm Nears*, N. Y. TIMES, AUG. 28, 2005 available at http://www.nytimes.com/2005/08/28/national/29katrinacnd.html.

[32] Tomlinson, *supra* note 4, at 1157. FEMA sent food, water and other supplies to Georgia, Texas and Alabama, while the "National Weather Service predicted that the levees in New Orleans could be overtopped with storm surge." Id. If Mayor Nagin had declared a mandatory evacuation sooner, he would have had additional time to commandeer the necessary resources to evacuate the entire population of New Orleans. Because of his vacillation, however, these procedures were never fully implemented. A Failure of Initiative, *supra* note 4, at 109. This course of action called for providing public transportation to those who needed it, acknowledging that 100,000 citizens did not have access to personal modes of transportation. *Id.* at 113. Consequently, people were taken to the Superdome rather than actually being evacuated; indeed, 70,000 people remained in the City to be rescued from the ensuing flood. *Id.* at 111.

[33] A Failure of Initiative, *supra* note 4, at 71. By August 27, the storm reached Category 3. By August 28, it had doubled in size and was a Category 5 hurricane, with maximum sustained winds of 175 MPH. Katrina made landfall for the second time on August 29, at which time it was a Category 3 hurricane with sustained winds of 125 mph. After moving over southeastern Louisiana, it made its third landing, at Category 3 intensity, with sustained winds of 120 mph. *Climate of 2005: Summary of Hurricane Katrina*, NATIONAL CLIMATIC DATA CENTER, *available at* http://www.ncdc.noaa.gov/oa/climate/research/2005/katrina.html (last accessed 2/28/2008).

[34] Indeed, this author remembers images of a dry New Orleans immediately after the storm, and the collective relief of those who understood its topography and the potential disaster presented by the storm. In the late 1990s, as we drove through communities that used to be wetlands, a New Orleanian explained that New Orleans was like a bowl and when it rained,

The levees were designed by the Army Corp of Engineers to withstand a Category 3 hurricane; thus, once Katrina made landfall, many thought the worst was over. [35] Alas, the Ninth Ward, a predominantly Black area, soon began to flood as the levees were penetrated and floodwaters soon reached between 6 and 8 feet.[36] Within days, 80% of the city was under water and, in some areas, the city was beneath as much as 20 feet of water.[37]

Katrina, was a hurricane whose strength and path could not be controlled by human forces - it was undoubtedly a natural disaster. The flooding of New Orleans, however, was very much a manmade tragedy, and it caused a tremendous loss of life while destroying countless others. Indeed, in terms of lost lives and property, Katrina is the largest natural disaster in U.S. history, surpassing even the 1906 San Francisco earthquake, and the ensuing firestorm.[38] Like San Francisco, which first suffered an earthquake that begat a devastating fire, New Orleans experienced two distinct disasters, wind and water damage caused by hurricane Katrina and then flooding sparked by several levee breaks.[39] Unlike 1906 San Francisco, however, New Orleans' vulnerabilities were predicted and well known and it is here that the man-made component of the disaster exacerbated an already problematic situation.

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that bowl filled with water. Understanding this geography made the importance of the levees all the more palpable to this observer. Dao, *supra* note 24, at 1. Comfort, *supra* note 6, at 4 (stating officials thought worst was over); Muñiz, *supra* note 1, at 1 (telling story of woman cleaning up after storm, before the advent of rising floodwaters).

[35] New Orleans, which is about seven feet below sea level and is built on soft soil, is protected by pumps and levees designed in the 1920s and 1930s. Over time, they were not maintained and the Army Corps of Engineers suspected they would not be able to protect against a Category 3 storm. *See* Comfort, *supra* note 6, at 3.

[36] McQuaid, *supra* note 8 at 99 (describing two different forms of flooding and failure of officials to deal with second wave of flooding that resulted in people being trapped in flooded areas). The storm surge in Eastern New Orleans was estimated to be between fifteen and nineteen feet. *Tropical Cyclone Report, supra* note 4, at 9.

[37] Tomlinson, *supra* note 4, at 1158; A Failure of Initiative, *supra* note 4 at 94. There were reports of 17th Street Canal leaks months before Katrina struck, and other levees were known to have problems. Minding the levee system fell on a collection of local agencies that constantly quarreled with each other, thus preventing necessary repairs and improvements. A Failure of Initiative, *supra* note 4, at 92. *See also Tropical Cyclone Report, supra* note 4, at 9.

[38] Almost 1500 people lost their lives, at least 300,000 homes were destroyed or rendered uninhabitable and losses have been estimated at 125-150 billion dollars. Medina*, supra* note 14, at 11. The floodwaters left the land covered in a layer of sediment containing *E. Coli* bacteria and a mix of chemicals and heavy metals. Rachael Moshman & John Hardenbergh, *The Color of Katrina: A Proposal to Allow Disparate Impact Environmental Claims*, 6 SUSTAINABLE DEV. L. & POL'Y 15, 15 (2006).

[39] Waugh, *supra* note 11 at 13. The full costs of Katrina are yet to be calculated. Id. A powerful earthquake shook San Francisco and sparked enormous fires.

B. Prelude to Catastrophe

Professor Isabel Medina, who was one of the thousands who fled New Orleans in the wake of Katrina, has opined that, "natural disasters do not discriminate on the basis of race, color, gender or wealth and in this regard, Katrina was no different from any other natural disaster."[40] Yet, much of what transpired before and in the aftermath of the storm was a direct result of human acts and omissions, and had much to do with race, color, and impoverishment; indeed it has been characterized as a blatant violation of human rights.[41] It began with the abject poverty that characterized many quarters of pre-Katrina New Orleans. Certainly, the total disregard of "basic human rights such as education; sufficient sustenance; a healthy and secure environment; and access to health care, housing and decent employment"[42] are entirely human choices that foreshadowed the devastating impact of Katrina on the indigent residents of New Orleans. Nearly a fifth of the population most affected by Katrina, lived in poverty before the storm, and many residing in the hardest hit areas were African Americans.[43]

The failures and cruel indifference to the needs and well-being of the impoverished, mostly Black, residents of New Orleans before and in the wake of Katrina, was and continues to be so enormous and so overwhelming that it is difficult to know where to begin. Indeed, a complete discussion is beyond the scope of this paper. Instead the focus will be one of the more direct injuries, the poorly maintained levee system. Low-lying

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[40] Medina, *supra* note 14 at 11. Professor Isabel Medina is a professor of Law at Loyola School of Law New Orleans. She notes that the waters from breaches of the Industrial Canal flooded the Ninth Ward, a predominantly poor Black area of the city, St Bernard Parish, a predominantly white area, and New Orleans East. Breaches at the 17th Street Canal and the London Avenue Canal flooded and devastated predominantly white, middle-class and wealthy parts of the city – the Lakeview area, parts of Old Metairie and parts of uptown New Orleans, as well as financially, racially and ethnically diverse parts of the city, such as Broadmoor, Gentily and Mid-City. Medina, *supra* note 14, at 11.

[41] Susan Sirkin, *The Debacle of Hurricane Katrina: A Human Rights Response*, 30 FLETCHER F. WORLD AFFAIRS 223 (2006).

[42] The chronic illnesses of the poor, both white and Black, and of the unattended – asthma, diabetes, heart disease and hypertension – left many people in increased jeopardy after the hurricane. Sirkin, *supra* note 41 at 225.

[43] Sirkin, *supra* note 41 at 225. She notes that local charity hospitals struggled without any means of communication or electricity, while at the neighboring private hospital patients were rushed by helicopter to safety.

areas of the city[44] were the most dependent on the network of concrete walls and levees whose purpose was to contain the waters around New Orleans. Yet, despite the perilous vulnerability confronting poor neighborhoods, the levees were inadequately maintained by local authorities who had no functioning warning system in place in the event of a breach.[45] More disturbingly, since the problems identified with the levee systems developed over decades, there were numerous opportunities to address them and to regulate development along the coast to mitigate wind damage and surges from large storms.[46]

Moreover, the perils a major storm posed to the residents of New Orleans were very well known because they had been discussed and described in numerous government reports, media accounts and academic studies.[47] Indeed, federal, state and local emergency management authorities concluded a training exercise a year earlier on a similar disaster, which verified a potentially catastrophic outcome in the event of a major hurricane.[48] Thus, the scale and type of catastrophe that could result from a

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[44] This would include the parishes around Lake Ponchartrain, including Orleans, Plaquemines and St. Banard. Matthew, *supra* note 20, at 218.

[45] Matthew, *supra* note 22, at 218. There was too little investment to ensure that the levees were strong enough to survive major storms. Waugh, *supra* note 11 at 13. *See also* Comfort, *supra* note 8, at 4.

[46] Waugh, *supra* note 11 at 13. Waugh notes that the risk was acknowledged periodically as residents were told to keep axes in their attics to cut their way through roofs if their homes were flooded. He notes that Hurricane Camille left its mark in 1969, thus affording many opportunities to address vulnerabilities. Yet little was done. Id. Matthew, *supra* note 22, at 220.

[47] Waugh, *supra* note 11 at 13 (noting that risks were outlined in October 2001 National Geographic story); *Weathering the Storm, supra* note 24, at 139 (noting 2002 newspaper articles warning of inadequate roads and possible evacuation problems). A Failure of Initiative, *supra* note 4, at 81.

[48] The government had prior notice of this type of storm and of the inadequacy of their plans. In July 2004, FEMA sponsored a simulation termed "Hurricane Pam," which assumed a Category 3 storm that exceeded New Orleans' levees, trapped hundreds of thousands in the New Orleans area, and destroyed buildings, phones, sewers and 97% of all communications to the city. It was attended by Louisiana, Mississippi and federal officials, giving agencies a chance to simulate what they would do if a Category 3 hurricane, eerily similar to Katrina, hit New Orleans directly. It was assumed that 300,000 people would be left in the city, many buildings would be destroyed, sewer systems would be down, communications would be almost completely inoperative, 60,000 people would die and many more would be injured, and a huge flood would leave parts of Louisiana uninhabitable for over a year. A Failure of Initiative, *supra* note 4, at 81. Out of this exercise grew the Southeast Louisiana Catastrophic Hurricane Plan, which is credited with the successful evacuation of 1.2 million Louisiana residents in the 48 hours preceding Katrina's landfall. This same plan also revealed that Louisiana's poorest citizens would not be served by existing evacuation and rescue procedures. It demonstrated that in areas where

major hurricane was hardly a surprise.[49] Nonetheless, pre-storm planning was extraordinarily poor,[50] and the evacuation, while successful in many respects, may have been ordered too late.[51] There were inadequate preparations to evacuate the poorest residents of New Orleans,[52] even though local, state and federal officials knew that New Orleans could flood

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the median income was below $27,200 a year, evacuation plans were substandard to those for the general population. Yet, the plans were not changed. Matthew, *supra* note 22, at 218; Comfort, *supra* note 8, at 3. Although Secretary Chertoff of the Department of Homeland Security knew federal resources would be needed according to the Hurricane Pam scenario, he did not declare the storm an incident of national significance, which would have immediately made federal aid more readily available. *Hurricane Katrina and the Flooding of New Orleans, supra* note 11 at 123; A Failure of Initiative, *supra* note 4, at 113 (finding New Orleans did not make plans to evacuate those without cars, despite knowledge that evacuation was preferable to sheltering). Unfortunately, state and local governments had not fully addressed the issues learned from the simulation when Katrina struck, including formulating plans to evacuate those who did not have the means to evacuate themselves. A second simulation scheduled for August 2005 was abandoned due to lack of funding. *Id.* at 82. Thus, when Katrina hit, adequate plans had yet to be formulated.

[49] Waugh, *supra* note 11 at 13.

[50] No organization consistently monitored the condition of the levees, and no communication system was in place in the event that power and cell phone towers were disabled. Comfort, *supra* note 8, at 3-4.

[51] When a mandatory evacuation was finally announced on Saturday, August 27, it was too late to evacuate residents who were without transportation, and thus they were left behind to face the storm. Comfort, *supra* note 8, at 3. Still, 80% of the population of New Orleans was evacuated; a remarkable feat that would have been viewed as a great success if the levees had held and the remaining residents were not trapped in their homes and shelters by floods. *Hurricane Katrina and the Flooding of New Orleans, supra* note 11, at 119. Louisiana's plans for contra-flow traffic, where highways were closed to two-way traffic so that all lanes could be used to depart from the dangerous areas, were successful, even if mandatory evacuation orders were issued later than they should have been. A Failure of Initiative, *supra* note 4, at 107-08.

[52] Although initial evacuation plans included using school and municipal buses for evacuations, there were no plans to coordinate the agencies that would operate the buses. The established procedures relied on utilizing personal transportation to evacuate most of the population. *Hurricane Katrina and the Flooding of New Orleans, supra* note 11, at 114-15. After Hurricane George in 1998, the New Orleans Times-Picayune ran a series on potential evacuation problems and also expressed doubt that the levees could hold. Medina, *supra* note 14, at 18. Additionally, because the storm inundated the city at the end of the month, many citizens on fixed incomes, such as Social Security, had already depleted their funds for the month and could not afford to buy gas, especially given the existing high gas prices. Thus, without government assistance, they could not evacuate themselves. A Failure of Initiative, *supra* note 4, at 106. Besides being financially unable to evacuate, some did not even have enough money to make a fifty-cent phone call to relatives for help. Will Haygood, *Living Paycheck to Paycheck Made Leaving Impossible*, WASH. POST, Sept. 4, 2005, at A33.

in the aftermath of a major hurricane and many of its most impoverished residents would be unable to escape on their own.[53] Still, few concrete plans emerged to deal with what all knew could be a dangerous and tragic turn of events.[54] Given the extraordinarily poor pre-storm planning, it is not surprising that the actual response to the disaster was deplorable.

C. The Aftermath

Once Katrina struck and the city was under water, government agencies of all kinds and at all levels, independently and collectively, failed the citizens of New Orleans.[55] Local authorities made poor decisions regarding mass evacuations and mass sheltering.[56] Local emergency management and response agencies were quickly overwhelmed, and often consigned to saving themselves or releasing personnel to save their own families.[57] In many cases, local systems and agencies simply fell apart.[58] At

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[53] Nearly three in five poor Black households in New Orleans lacked a vehicle. Sirkin, *supra* note 41 at 225. Mississippi and Louisiana have some of the highest rates of poverty in the United States. Not surprisingly, New Orleans, situated in one of the poorest states in the nation, had a disproportionate number of citizens living below the poverty line. Woods, *supra* note 3, at 1010. "Approximately 36.6 percent of Black Louisianans and 34.9 percent of Black Mississippians are considered impoverished." Blacks made up approximately sixty-six percent of the population of New Orleans and about one-third of them lived in poverty. Scott, *supra* note 8, at 584-85.

[54] The evacuation plans were unquestionably inadequate. School buses sat idle for lack of drivers, stranding tens of thousands who were totally dependent on the government for transportation out of harm's way, for shelter once they were evacuated, and for medical care during their displacement. A Failure of Initiative, *supra* note 4, at 119. None of these needs were addressed or met.

[55] Stephen M. Griffin, Stop Federalism Before it Kills Again: Reflections on Hurricane Katrina, 21 ST. JOHN'S J. OF LEGAL COMMENTARY 527 (2007).

[56] The New Orleans evacuation order afforded residents little time to abandon the city, and several hundred school buses were flooded rather than used for evacuation. The municipal workers responsible for operating pump stations were evacuated rather than left at their posts to handle possible levee breaks. The city's emergency plan, to the extent there was a plan, was never implemented and local officials must share some of the responsibility for the poorly maintained levees. Waugh, *supra* note 11 at 13; Comfort, *supra* note 8, at 4 (discussing how neglect of levees contributed to disaster); *Hurricane Katrina and the Flooding of New Orleans, supra* note 11, at 115 (noting lack of drivers prevented buses from being used for evacuations).

[57] Waugh, *supra* note 11 at 14. New Orleans had to abandon its Emergency Operation Center because City Hall flooded and lost power. The headquarters of the Louisiana National Guard, located in Jackson Barracks inside of New Orleans, had to abandon their headquarters "at the most inopportune time," leading to delays in responding to the disaster. A Failure of Initiative, *supra* note 4, at 185.

the state level, officials were slow to realize the scale of the disaster, and state resources were not deployed as quickly as they probably should have been.[59] State and local emergency management programs were inept at evacuating residents, sheltering and feeding those that remained, conducting search and rescue operations, or initiating a recovery effort.[60] Federal authorities were slow to respond to state requests for aid and were criticized for their reactive posture as they waited for requests for assistance.[61] Moreover, once authorities finally realized that the situation was critical, federal agencies were exceedingly slow to deliver assistance and were visibly disorganized, and patently incompetent.

"Poor implementation of emergency plans, poor communication and poor decision processes were evident in the lack of congruence between conditions on the ground in the disaster areas and local, state and national

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[58] Waugh, *supra* note 11. The police department's headquarters was also flooded, severely limiting the department's command and control functions. A Failure of Initiative, *supra* note 4, at 185.

[59] National Guard troops and the state police were not deployed quickly enough, nor were state rescue and relief operations. This left first responders on their own. Questions have also been raised as to whether National Guard deployments to Iraq and Afghanistan left state agencies shorthanded. Waugh, *supra* note 11. *See also* Bryan Bender, *Guard Feels Strain From Wars*, ALBANY TIMES UNION (N.Y.), Sept. 2, 2005, at A7 (explaining guard has less personnel and equipment at its disposal); Jean Heller, *Q&A: Hurricane Katrina*, ST. PETERSBURG TIMES (Fl.), Sept. 3, 2005, at A7 (listing some equipment sent to Iraq which could have helped in relief efforts); Rupert Cornwell, *Hurricane Katrina: The Questions a Shocked America is Asking Its President*, INDEPENDENT (U.K.), Sept. 3, 2005, at 2 (questioning how United States could conquer Iraq and its twenty-five million residents in three weeks, yet fail to rescue twenty-five thousand people in one of its own cities).

[60] Waugh, *supra* note 11 at 20. *A Failure of Initiative, supra* note 4, at 185.

[61] Despite warnings of the looming disaster, the Department of Homeland Security waited for state government to request aid, rather than proactively assisting state and local officials. The Governor of Louisiana requested assistance before the levees broke, indeed before the storm hit, but aid did not arrive for days. Once federal officials realized the need to act, they were slow to rescue those trapped in their homes and at hospitals, slow to recover bodies and slow to deliver trailers to the disaster area. Waugh *supra* note 11 at 14; *see also* John R. Nolon, *Katrina's Lament: Reconstructing Federalism*, 23 PACE ENVTL. L. REV. 987, 989-90 (2006) (providing federal government's reasons for not acting sooner after failure of state and local agencies); David L. Feinberg, Note, *Hurricane Katrina and the Public Health-Based Argument for Greater Federal Involvement in Disaster Preparedness and Response*, 13 VA. J. SOC. POL'Y & L. 596, 622 (2006) (stating need for lower threshold allowing a more rapid federal response); Hook & Miller, *supra* note 11, at 49 (stating no plans were made to address how poor persons without access to phones would register with FEMA).

decision making."[62] Consequently, thousands of victims were not rescued and received no relief for more than a week after the storms passed. Without doubt, the residents of New Orleans expected help to materialize soon after the storm passed, to bring water, food, tents and other necessities. When this did not transpire, FEMA Director Michael Brown became the most prominent symbol of a botched response, but profound failures were evident from City Hall to the White House.[63] At a minimum, the citizens of New Orleans, who could not evacuate by their own means, needed some branch of government to provide transportation out of the vicinity and adequate lodging.[64] Instead, transportation was non-existent, and people were sent to three "shelters of last resort" throughout the city, the most infamous of which was a sports arena, the New Orleans Superdome.[65] To state that the conditions in the shelters were horrendous is an understatement. Power and sanitation were non-existent,[66] food was

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[62] Waugh, *supra* note 11 at 11. When the Department of Homeland Security took control of the federal emergency response program, it adopted policies to respond to security threats, instead of natural, industrial or chemical disasters, even though these will undoubtedly occur much more often. Furthermore, the inexperience of personnel at all levels prevented the system from responding to the rapidly changing demands of Katrina. Comfort, *supra* note 8, at 2. New Orleans' Mayor, Ray Nagin, voiced the frustration of many residents and state and local relief workers when he accused the federal government of having no clue as to what was happening in the city and of failing to render assistance. *Hurricane Katrina and the Flooding of New Orleans*, *supra* note 11, at 125. *See also* Kettle, *supra* note 11, at 278.

[63] Waugh, *supra* note 11. Waugh notes that both Brown and his predecessor James Lee Witt had warned that FEMA was no longer able to handle major disasters because of budget cuts and personnel losses. Moreover, the critical link between the federal government and state and local emergency management offices was inoperative, whereas FEMA's past strength had been its collaborative relationships with state and local officials and its focus on building local capacities to manage hazards and disasters. The Department of Homeland Security, which FEMA became part of in 2003, appeared to have a different orientation towards public involvement and a different perception of its role in responding to catastrophic disasters. *Id.* at 11-12. *See also* Comfort, *supra* note 8, at 2; *Hurricane Katrina and the Flooding of New Orleans*, *supra* note 11, at 121; Richard T. Sylves, *President Bush and Hurricane Katrina: A Presidential Leadership Study*, 604 ANNALS AM. ACAD. POL. & SOC. SCI. 26, 31 (2006).

[64] Matthew, *supra* note 22, at 246.

[65] The other infamous "shelters of last resort" were the New Orleans Convention Center and a highway intersection called the Cloverleaf. Matthew, *supra* note 22, at 219.

[66] Matthew, *supra* note 22, at 220. One can only imagine the conditions. This author can recall a toilet in Zanzibar, Tanzania that was essentially a hole in the ground. It was as simple as such a facility can be, but it was immaculate and private. Compare this to a toilet, which is supposed to flush, but does not, and there are literally thousands of people using it. Having witnessed such a situation on a drastically smaller scale, I can safely say that one would wish for the hole in the ground. In the Superdome, the stench and temperatures became so unbearable that many people elected to stand outside in the heat and the sun. *A*

insufficient[67] and temperatures were intolerable. Corpses floated in the streets of New Orleans, and people waded through dreadfully polluted waters in flooded neighborhoods,[68] foraging for the bare necessities of life.[69]

The failure to provide transportation and appropriate evacuation for so many storm victims, the shameful Superdome and Convention Center debacles, and the utter abandonment of tens of thousands of dispossessed victims has as much to do with human rights as with inadequate humanitarian planning and responses.[70] Certainly, the Katrina catastrophe was due to economic disparity, even as the storm struck multiple areas of the city.[71] The affluent, indeed all those with resources, generally managed to escape while those without the means were unable to flee, and were caught in the cauldron that followed.[72] While the poor and dispossessed were the ultimate victims of governmental incompetence, the face of poverty in New Orleans, as in much of the United States, divides along racial lines. Hence, even as the government failed poor White, Vietnamese and Latino residents,[73] the desperate face much of America and the world

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Failure of Initiative, supra note 4, at 117. Conditions at the Superdome were still better than at the Convention Center, which was not an official shelter and therefore did not have any food or water, and evacuees were not screened for weapons upon arrival. *Id.* at 118.

[67] There were reports of some food at the Superdome, but not enough and none at the Convention Center. *A Failure of Initiative, supra* note 4 at 117-19.

[68] Moshman & Hardenbergh, *supra* note 36 (discussing environmental hazards posed by floodwaters and in aftermath of flood); Feinberg, *supra* note 59, at 603 (discussing problems resulting from contaminated floodwaters); Nolon, *supra* note 59, at 988 (discussing potential components of flood runoff).

[69] Blake Bertangna, Comment, *'Standing' Up for the Environment: The Ability of Plaintiffs to Establish Legal Standing to Redress Injuries Caused by Global Warming,* 2006 Brigham Young University Law Review 415 (2006).

[70] Sirkin, *supra* note 41.

[71] Breaches from the Industrial Canal levee flooded the Ninth Ward and New Orleans East, predominately Black areas, and St. Bernard Parish, a predominantly white area, while the 17th Street Canal and London Avenue Canal breaches flooded predominately white neighborhoods. Medina, *supra* note 14, at 11. Black neighborhoods, such as the Ninth Ward and New Orleans East, were built on swamplands and experienced more devastating floodwaters than white neighborhoods that generally are on higher, more expensive ground. Dao, *supra* note 24, at 1. 98.3% of the residents of the Ninth Ward were Black. Rachel A. Van Cleave, *Property Lessons in August Wilson's* The Piano Lessons *and the Wake of Hurricane Katrina,* 43 CAL. W. L. REV. 97, 98 (2006).

[72] Medina, *supra* note 14, at 12; Comfort, *supra* note 8, at 3; Matthew, *supra* note 22, at 246; Welbourne, *supra* note 7, at 126; Stiglitz, *supra* note 24, at 9.

[73] Although the face of poverty is primarily Black, there are also impoverished white, Vietnamese, and Latino communities. Medina, *supra* note 14, at 12; Hook & Miller, *supra* note 11, at 35 (noting hurdles Vietnamese people face in recovering); Muñiz, *supra* note 9, at 12 (focusing on problems Latinos confront and mentioning plight of Vietnamese); *A*

beheld was an African American visage, and[74] the images were horrendous. The airwaves and the internet ran relentless pictures of African Americans stranded in waist deep water or trying to survive at an uninhabitable superdome. [75]

Professor Bowen Matthew has compellingly demonstrated that, while natural disasters are inevitable and beyond the force of man, their aftermath is frequently human created and driven.[76] The deadly consequences of Katrina were acts of man, not God, beginning with the human rights failures towards the Black community that preceded the storm,[77] the failure to make plans to protect them in the event of a foreseeable natural disaster, and the humanitarian crisis that resulted from the entirely unacceptable response afterwards. Professor Bowen has chronicled the regularity of discriminatory and disparate treatment of minority communities in the wake of natural and unnatural disasters; it seems it is part of the American landscape.[78] Thus, perhaps the shock over

Failure of Initiative, supra note 4, at 445 ("Nearly 50,000 Vietnamese fisherman in Louisiana and the oldest community of Filipino shrimpers in the North America were displaced by the storm.").

[74] The European Community was slow to respond to the unfolding disaster because they could not believe that the United States, one of the richest nations in the world, would allow a natural disaster to cause such monumental suffering. They also perceived that the distress was being experienced mostly by African-Americans. Bernstein, *supra* note 13, at 5. 42.9% of people in the South live in communities where at least 20% of the population lives below the poverty line; this is the highest concentration in the nation. Alemayehu Bishaw, *Areas With Concentrated Poverty: 1999*, Census 2000 Special Report, July 2005, at 5, *available at* http://www.census.gov/prod/2005pubs/censr-16.pdf. According to a recent report from the Brookings Institution, in New Orleans, "no less than 84 percent of the city's poor population was Black." Gwen Filosa, *Report Blames Racial, Class Divisions: New Orleans Left Its Black People, Poor at Risk*, NEW ORLEANS TIMES PICAYUNE, Oct. 13, 2005, at 2. *See, e.g.*, Ahati N. N. Toure, *Reflections On Paradigms In Power: Imperialism And Americanization As A Modal Relationship Explaining The Treatment Of Afrikans In The United States After Hurricane Katrina*, 31 T. MARSHALL L. REV. 427 (2005); Moshman & Hardenbergh, *supra* note 36; Matthew, *supra* note 22; Tomlinson, *supra* note 4, at 1157.

[75] There were images of mothers with their babies begging for food, and people begging and pleading for assistance. Welbourne, *supra* note 7, at 126.

[76] Matthew, *supra* note 22, at 218.

[77] This includes the right to economic and social justice, which guarantees the right to adequate shelter, medical care, education, employment and other indicia of such rights. However, the American government refuses to recognize these human rights as legal rights. Sirkin, *supra* note 41 at 224.

[78] Matthew, *supra* note 22, at 213. This fascinating account discusses the disregard, and then removal, of San Francisco's Chinese population after the 1906 earthquake. The great Okeechobee Flood and hurricane struck Florida in 1928, killing 4,000 people, including over 2,500 Black migrant workers who had no means of escape and whose deaths remained

how Katrina's victims were treated was misplaced. Indeed, if not for the sheer enormity of the crisis and twenty-four hour news coverage, perhaps this tragedy would also have been lost to history. Still, the aftermath of Katrina was thought to be, and, indeed was larger and worse than any such disaster witnessed in the modern era. We were stunned, we were perplexed, and we were angry.

Part II: Embarrassment, Disbelief and the Emergence of a Disturbing Discourse

As one commentator noted, "Hurricane Katrina cast stark and embarrassing awareness on a side of the United States that most Americans do not care to confront."[79] This oft-ignored reality is the absolute poverty and stark inequality that molds and shapes the underbelly of American society, a fragment that Katrina focused a glaring and unrelenting spotlight upon. This "other America" was plastered across American and international monitors of all types, and quickly became the *only* news story in America, with the most dramatic, disquieting and fairly shocking images of African American poverty and disenfranchisement in at least a generation.[80] The outrage at this nonstop spectacle built to a crescendo, as even members of the media stepped out of their purportedly neutral roles to demand that the government, especially the federal government,[81] do

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uncounted until quite recently. Hurricanes Camille and Hugo were also instances of Black residents receiving unequal treatment in evacuation, shelter and other disaster related assistance, as well as more long-term disaster relief. There are similar instances of disparate treatment in the aftermath of natural disasters. Class has also determined disaster relief measures, as treatment of poor people during the dust bowl era demonstrates; entire towns, communities and farms of mostly poor farmers were destroyed. Matthew, *supra* note 22, at 220-225.

[79] Sirkin, *supra* note 41 at 223.

[80] L. Darnell Weeden, *Hurricane Katrina: First Amendment Censorship and the News Media*, 31 T. MARSHALL L. REV. 479, 488-89 (2005-2006) (discussing how poor segment of New Orleans was exposed through press coverage).

[81] Although disaster assistance in the United States is structured around a tiered system that begins at the local level, it was apparent that this tragedy was well beyond state and local governmental capacities. Most commentators, reporters and indeed the average citizen, immediately realized that the scale of the disaster demanded an intensive and coordinated national response. The Stafford Act of 1988 guides when the president can declare a disaster, although new guidelines have been established through FEMA and Department of Homeland Security policies. Sylves, *supra* note 17, at 29. The federal government has methods of interjecting itself into disaster relief efforts, rather than waiting for state or local governments to pull it in. The federal government, however, failed to take the appropriate steps to activate the system. *A Failure of Initiative, supra* note 4, at 136. The Secretary of Homeland Security neglected to take these steps even though predictions for the impact of

something, anything, to help these people.[82] Certainly part of the very negative reaction was the assumption that a nation as wealthy and resourceful as the United States would be ready, willing and able to respond effectively to the needs of its citizens in the face of a natural disaster of whatever size, even one on the scale of the flooding of New Orleans.[83] Hence, many recoiled at the sheer incompetence of the U.S. government as embodied in FEMA,[84] and were especially troubled and alarmed at its ineptitude, given the September 11, 2001 attacks on U.S. soil that graphically highlighted the need to quickly respond to emergencies.[85]

Katrina met the criteria for initiating the federal response. *Id.* at 137 (listing criteria for invoking Catastrophic Incident Annex allowing federal government to act without request from state and local officials). Currently, federal disaster relief for rebuilding is funded by the federal government, but state and local governments determine how the funds are spent, with no federal review or requirements. Justine M. Cannon, *Accountability in Reconstruction: The Need For Federal Involvement in Post-disaster Reconstruction to Protect Housing Interests of Poor and Minority Residents*, 47 SANTA CLARA L. REV. 93, 112 (2007). If minority interests are not represented within state and local governments, these interests may be ignored as New Orleans is rebuilt. *Id.* Cannon proposes that funding should be conditioned on a comprehensive plan that includes the interests of minorities and is approved by the federal government. *Id.* at 118-19.

[82] Carr, *supra* note 13, at 1 (describing many media members' reactions to situation in New Orleans); Scott Collins, *Anchors, Show Hosts Take a Confrontational Stance*, HOUSTON CHRONICLE, Sept. 3, 2005, at A20 (giving examples of media figures such as Ted Koppel and Anderson Cooper demanding better response from federal government). This author recalls many such indignant calls for immediate action as commentators explicitly stated that they were stepping outside their usual impartial role, in the wake of a calamity that clearly was not being adequately addressed.

[83] Even the limited cursory research for this essay, however, makes one wonder if there is much basis in fact for this assumption. The field of disaster relief studies is comprised of scholars who theorize and extensively analyze natural and unnatural disasters. In examining their assessment of the Katrina catastrophe and more general U.S. readiness for a natural or human induced disaster, this author wonders if our nation may be grievously ill prepared.

[84] President Bush's approval rating plummeted into the 30% range and thus far has not truly recovered. Bumiller, *supra* note 8, at 17 (explaining dissatisfaction among Blacks with Bush, including Kayne West's comment that "George Bush doesn't care about Black people"); Michael A. Fletcher and Richard Morin, *Bush's Approval Rating Hits New Low*, WASH. POST, Sept. 16, 2005; Will Lester, *Crises Pound Bush Job Rating*, TIMES UNION (Albany, N.Y.), Sept. 11, 2005, at A8. *See also* Sylves, *supra* note 17. Congress soon held hearings, and the head of FEMA, Michael Brown, was forced to resign, although many thought he was simply the scapegoat for a succession of governmental failures and general incompetence. *A Failure of Initiative, supra* note 4, at 184 (describing multiple failures of multiple government agencies). *Metaphors Matter, supra* note 9, at 69.

[85] Many speculated that this was the first federal response to a multiple-leveled disaster rising to the level of the coordinated attacks of September 11, 2001. Katrina took days to make landfall. The nation watched as it rambled towards the Gulf Coast, thus giving the government time to frame an appropriate response. Presumably, a terrorist assault would

African Americans, however, quickly concluded that perhaps the shocking level of governmental ineffectiveness was attributable to the race of those in need of assistance. Although white Americans generally disagreed, many African Americans believed the grossly inadequate response was due to racism, pure and simple.[86] They sensed that if whiteWhite people were in such desperate straits, the response would be dramatically different; and indeed, it did seem there was a different reaction to distressed whiteWhite communities in similar straits. [87]

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come without warning, and, as the events of September 11 demonstrated, such an attack could be massive and calamitous.

[86] It seemed African Americans had been transformed into just another group of Black people. One essayist in Uganda even opined that the failure to aid Blacks in New Orleans exposed the American policy to not help Black people anywhere. Woods, *supra* note 4, at 1005-06 (quoting Vukoni Lupa-Lasaga). *See also* Broder, *supra* note 14, at 9 (discussing Black perspectives); Bumiller, *supra* note 8, at 17; Krugman, *supra* note 11, at 25 (comparing perspectives). One Washington Post-ABC News Poll revealed that among Blacks, 63% believed racial inequity was the cause of the problems with hurricane relief while 70% of whites did not think racial discrimination was the cause. Duke, *supra* note 13, at B01. Many cited the disparate disaster response beyond New Orleans and Mississippi where more of the victims were white. One particularly disturbing incident took place on the Crescent-City Connection Bridge connecting New Orleans to the city of Gretna, on the other side of the Mississippi. A group of about 200 mostly African American people, including some in wheelchairs, on crutches, and in strollers, crossed the bridge believing there were evacuation buses in Gretna. The Gretna Police department prevented them from entering the town. The police, using shotguns to hold back the unarmed evacuees, offered no explanation except that they did not want "any Superdomes" in their city. The group then camped out on the bridge, but the police returned, pointing guns at them and confiscating food and water. While troubling, these events were not completely unexpected, given a long history of racism in the Gretna Police Department. When the police department was thrust into authority without the normal checks on their powers, this latent racism emerged and was on display in all its viciousness. *A Failure of Initiative*, *supra* note 4, 457-58. *See also* Rebecca Eaton, Comment, *Escape Denied: The Gretna Bridge and the Government's Armed Blockade in the Wake of Katrina*, 13 TEX. WESLEYAN L. REV. 127 (2006).

[87] The response was uniformly incompetent, but the level of incompetence varied and was the most overwhelming and caused the most harm in New Orleans. Bumiller, *supra* note 8, at 17 (explaining President Bush's praise of Mississippi's and Alabama's white governors while he did not even meet with Blacks from New Orleans). After it was revealed that Senator Trent Lott had lost his house in Mississippi, President Bush promised that he would have a wonderful new house and he looked forward to sitting with him on his front porch. Matthew Cooper, *Dipping His Toe Into Disaster*, TIME, Vol. 116, Sept 12, 2005 at 51. This comment was viewed as incredibly insensitive towards the many poor and displaced persons, many of whom were still trapped in New Orleans. *Id.* The rebuilding after the storm has also been marked by disparities, even within New Orleans. Predominantly white neighborhoods began rebuilding in September 2005 while the Ninth Ward was opened in December 2005; it was only to allow residents to salvage their

Nonetheless, despite the indignation and anger, the images themselves somehow seemed vaguely familiar, even if somewhat askew. They were reminiscent of depictions of Third World countries, where misery and disorder seem to be almost commonplace, indeed very nearly expected.[88] Hence, it was not that such disturbing events do not take place; indeed at times they seem to be almost routine. Instead, the discordance and shock seemed to stem from it occurring in the United States of America.[89] Members of the press have regularly shared and perpetuated negative perceptions of the Third World, and, not surprisingly, they began to refer to the scenes emanating from New Orleans as akin to something out of a Third World country. They also began to refer to Katrina's victims as refugees, causing the term to take on a new life that encompassed a range of derogatory implications.[90] The reaction from the black community was swift and vociferous; to put it mildly, another hell broke loose, as an

belongings. Cannon, *supra* note 79, at 106. The delay in restoring the Ninth Ward and the unavailability of trailers for Ninth Ward residents until nine months after the storm led commentators and residents to believe that there were different recovery strategies for affluent, white areas versus poor, Black communities. Van Cleave, *supra* note 69, at 108-09. New Orleans continues to try to rebuild with mixed success and with insufficient government assistance. See e.g. The State of New Orleans: An Update Amy Liu, Nigel Holmes, NYT, August 28, 2007; An Update on the State of New Orleans, Amy Liu Nigel Holmes, NYT, August 28, 2007.

[88] Of course, this too is distorted. The media chooses to present and emphasize certain kinds of images, while ignoring others. Although visits to nations in the global South reveals a great deal of poverty, there are also numerous people living their lives both within and outside of poverty's grasp, and living with a great deal of dignity even as they struggle for a better life. Gordon & Sylvester, *supra* note 17, at 77. The media also fails to account for Western involvement in the South's tribulations and marginality, a complicity this author has thoroughly documented and explored. Ruth Gordon, *Saving Failed States: Sometimes A Neocolonialist Notion*, 12 AM. U. J. INT'L L. & POL'Y 903, 962 (1997) [hereinafter *Saving Failed States*]; *Critical Race Theory and International Law: Convergence and Divergence*, *supra* note 86, at 835; Ruth Gordon, *Racing U.S. Foreign Policy*, 17 NAT'L BLACK L.J. 1, 11, (2002-2004); *Contemplating the WTO from the Margins*, *supra* note 10, at 106.

[89] Bertangna, *supra* note 67.

[90] The term "refugee" has a long history and was widely used long before Katrina struck New Orleans. It was not until it was associated with specific images of Black people displaced by the storm, and with references to Africa and the Third World, that it began to be perceived in such a markedly disapproving manner. Tom Jackson, *Enumerating Blessings After Katrina's Miss*, TAMPA TRIB., Aug. 27, 2005, at 1 (referring to those in shelters as refugees); Gary Nurenberg, *U.S. Gulf Coast Braces for Hurricane Katrina; Five-Hour Wait to Enter Superdome Shelter; Evacuees Stuck in Traffic Near Biloxi; Bush Declares Emergency Before Storm Hits - Part 1*, (CNN News television broadcast Aug. 28, 2005) (2005 WLNR 13581945) (describing as refugees people arriving by plane in Washington from New Orleans before Katrina) http://transcripts.cnn.com/TRANSCRIPTS/0508/28/bn.09.html.

enormous debate exploded.[91] The Reverend Jesse Jackson declared that "[i]t is racist to call American citizens refugees," and the National Association of Black Journalists appealed to news organizations to proscribe employing the word with respect to Katrina's victims.[92] President Bush also took offense, claiming that those fleeing the ravages of Katrina were Americans, not refugees.[93] Others contended that "refugee" has a very specific meaning making its application to Katrina's victims inappropriate. It refers only to those that have crossed an international border and thus "internally displaced persons" might be a more appropriate term.[94]

A debate soon erupted between and within news organizations over whether it was appropriate to refer to Katrina's wounded as "refugees." As one journalist put it, "a few days after Katrina struck, refugees woke up to find that the term had become a slur."[95] Many news outlets decided to discontinue using the word "refugee" and replaced it with "victim" or "evacuee."[96] One person involved in making this determination noted, "[g]iven what we're dealing with, there was a sense with the word 'refugee', that it somehow made these United States citizens, people who live in Louisiana and Mississippi, into aliens or foreigners or something less than they are."[97] Evidently, whatever one meant by refugees, it was something less than American citizens could be, and thus, even fleeing, poor, desperate Black Americans could not occupy that particular space. Other media outlets, however, continued to characterize Katrina's victims as refugees, observing that[98] "[s]everal hundred thousand people have been uprooted from their homes and communities and forced to seek refuge in more than 30 different states across America. Until such time as they are able to take up new lives in their new communities or return to their former

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[91] Global Language Monitor, a non-profit organization, termed "refugee" the word of the year, noting that it was used five times more often than any other word to describe those who were left homeless after Katrina. *Hurricane Katrina Turns 'Refugee' Into Word of the Year, supra* note 12, at C07.

[92] Walker, *supra* note 14, at 18.

[93] Brendan Buhler, *World Watch*, LA TIMES, Sept. 11, 2005 at M2. Clearly, being American and being a refugee were mutually exclusive in the President's mind.

[94] Walker, *supra* note 144 at 18.

[95] Freeman, *supra* note 18, at E3.

[96] Pierre & Farhi, *supra* note 14, at C01. News organizations that abandoned the use of the word included The Seattle Times, The Washington Post, The Miami Herald, the Boston Globe and CNN. Jocelyn Norveck, *The Use of Word 'Refugee' Touches a Nerve*, SEATTLE TIMES, Sept. 7, 2005.

[97] Pierre & Farhi, *supra* note 14, at C01. This statement was made by a vice president of MSNBC, who was commenting on why they decided to change their terminology. *Id.*

[98] The New York Times and the Associated Press both continued to use the term refugee. Norveck, *supra* note 94.

homes, they will be refugees."[99] This more benign view of refugee may have been technically correct, if the phrase is taken out of an international legal context.[100] Yet, the term was not applied to those on the Mississippi coast, or to white refugees displaced by Katrina.[101] Could it be refugees are only impoverished, wretched *people of color* who appear to be abandoned by their government?

The term "refugee" was also intertwined with "Third World," for it seemed that the Third World was where one found refugees. For example, one man interviewed outside the Baton Rouge Convention center, that housed 5,000 displaced residents, objected to being called a refugee. He stated, "[t]he image I have in my mind is people in a Third World country, the babies in Africa that have all the flies and are starving to death . . . That's not me. I'm a law-abiding citizen who's working every day and paying taxes."[102] This distressed, dislodged, and quite unfortunate gentleman was not alone. It seemed many saw refugees as inhabitants of the Third World [103] who were the ultimate wretched "other."[104]

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[99] The Executive Editor of the Associated Presses defended the decision with this statement. Norveck, *supra* note 94.

[100] The dictionary definition of refugee is "one that flees; especially: a person who flees to a foreign country or power to escape danger or persecution." MERRIAM WEBSTER DICTIONARY, 11TH COLLEGIATE EDITION. According to the Encyclopedia of Public International Law, there is no single accepted definition of refugee among all states, as many states use the term loosely, so as to help only those persons the state decides it wants to help. However, international agreements employ "refugee" to describe "the status of persons who have had to leave their home States in order to take refuge in another country." While refugee was used to describe anyone forced to leave their home and seek refuge elsewhere, the contemporary legal use of refugee only pertains to its international connotations. Refugee, ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 72 (Vol. 4 2000).

[101] Actually, the phrase "refugee" has been used to refer to disaster victims in past American emergencies. Those displaced during the Dust Bowl were referred to as "Dust Bowl refugees." "Refugee" has also been used to describe people displaced by wildfires, floods and even theoretical future disasters. Freeman, *supra* note 18, at E3. For example, "refugee" was used to describe inhabitants displaced by Hurricane Andrew. Buhler, *supra* note 91, at 2.

[102] Pierre & Farhi, *supra* note 14, at C01. The interviewee was Mr. Tyrone McKnight.

[103] Scott, *supra* note 8, at 582 (revealing author's own use of references to "Third World" and "refugees"); Brooks, *supra* note 14, at O05 (claiming America's poor experience Third World conditions everyday).

[104] The "other" represents people that are seen as different, and therefore less human and less deserving. Viewed as being less developed and inferior, the "other" is often understood as being people of color from low-income, unindustrialized countries. Because they are perceived as inferior, they are thought to be in need of help from the more advanced, Western world. Typically, this view has been used to justify the need for development and Western domination to guide that development, since the "other" is not entirely capable of self-governance . See *Racing U.S. Foreign Policy*, *supra* note 86, at 8-9; *Contemplating the*

"Third World" indicated an America that could not take care of its citizens, situating them within the same echelon as the people of the Third World. America seemed too much like the incompetent, ill advised and always colored governments that could not provide for their own. Although these remarks came from Blacks, whiteWhites, rich and poor alike, the one common denominator was they were all by Americans.[105] It seemed that the underlying subtext was America is above that dark, inferior space called the Third World. I have long contended that "Third World" has become a pejorative term.[106] It seems to be a location that is beneath *all of us*, as Black leaders,[107] people of color,[108] and even progressives appeared to articulate in the wake of Katrina.[109] It seems our view of self is intimately bound to being American, that we all subscribe to some version of American exceptionalism, and that we assume all Americans are superior to all others. Even Black Americans, at their lowest position, are not part of that Third World "other" who is too poor and backward, to be part of the American standard of somehow being exceptional . The American exceptionalism[110] that many around the world find offensive, was apparent,

WTO from the Margins, supra note 10, at 106; *Critical Race Theory and International Law: Convergence and Divergence, supra* note 86, at 831; Gordon & Sylvester, *supra* note 17, at 79-80; *Saving Failed States, supra* note 86. Thus, being called refugees and conjuring up images of the Third World made Katrina's victims feel as if they were being called inferior and something less than ordinary American citizens.

[105] It seemed those in the Third World had a different view. One scholar noted that Katrina made them realize that perhaps we Americans were not so smart and they of the Third World were not so stupid. *See Contemplating the WTO From the Margins, supra* note 10, at 107 n. 39.

[106] *Critical Race Theory and International Law: Convergence and Divergence, supra* note 86, at 834.

[107] Broder, *supra* note 14, at 9 (discussing Al Sharpton's view of refugees as being less than citizens); *Hurricane Katrina Turns 'Refugee' Into Word of the Year, supra* note 12, at C07 (discussing Jesse Jackson's thoughts on "refugee"); *A Failure of Initiative, supra* note 4, at 446-47 ("Thus the use of the term 'refugee' to describe survivors may have served to create confusion in the minds of casual observers of television reports, by equating them with, for example, Haitian refugees seeking asylum in the United States . . . .")

[108] Scott, supra note 8, at 582; Duke, *supra* note 13, at B01.

[109] Krugman, *supra* note 11, at 25; Charles Bowden, *Exodus: Coyotes, Pollos, and the Promised Van.*, MOTHER JONES, Vol. 31, Issue 5, at p. 36 (using "Third World" as reference to immigration problems and New Orleans after Katrina); Michael Tisserand, *Living Like a Refugee*, THE NATION, Sept. 19, 2005, web exclusive article, *available at* http://www.thenation.com/doc/20050919/tisserand.

[110] A poll by the General Social Survey of the National Opinion Research Center showed that 40% of respondents thought that "America is a better country than most other countries." It is this pride of believing Americans are superior to others around the world that made the scenes from New Orleans, which Americans connected to poor Third World countries, so disconcerting and upsetting. Duke, *supra* note 13, at B01.

and appeared to be stridently asserted along all rungs of the American economic, political, racial and social hierarchy. Surely, Third World solidarity was never monolithic and the Black American connection to it has always been complex.[111] Nonetheless Katrina proved that such solidarity was now most definitely a thing of the past, or at least on hiatus.[112] Surely this merits some appraisal, for this current state of affairs has not always reflected how Black America viewed itself within the broader international community.

Part III: Defining the Third World, Defining Refugees

The terms "Third World" and "refugee" possess significant connotations, perspectives and long, rich histories that transcend the way they were used and debated during the post-Katrina debacle. Parts of this chronicle are legal, as in the case of "refugee," while other aspects are part of the political and social fabric of the search for inclusion and justice, a

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[111] Cary Fraser, *An American Dilemma*, in BRENDA GAYLE PLUMMER, WINDOW ON FREEDOM RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS 1945-1988 (2003) 134-136 (discussing link some Black Americans experienced with Bandung Conference, as Afro-Asian conference that would make Third World a force in international politics). *See also,* Gerald Horne, Race from Power: U.S. Foreign Policy and the General Crisis of White Supremacy in BRENDA GAYLE PLUMMER, WINDOW ON FREEDOM RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS 1945-1988 (2003) 45 (explaining how Cold War altered Black nationalist views of white supremacy as international struggle and instead narrowed international focus to crusade against Communism).

[112] Pan-Africanism and cultural nationalism were movements that attempted to unite American Blacks with their brethren in the African Diaspora. At the heart of Pan-Africanism was an idea of a kind of distinct, albeit dispersed, Black nation; that colonialism exploited Black people throughout the world; and that the fate of Black people in America was tied to the exploitation of Black people in Africa. Cultural nationalism focused on the common culture shared by Black populations throughout the Diaspora. OMI & WINANT, *supra* note 15, at 38-40; Sam Fulwood III, *To Blacks, Powell Is A Hero And Source Of Controversy*, L.A. Times, Feb. 19, 1991, at A8 (describing Black American identification with people of Third World and uneasiness over Colin Powell's use of force against Third World nations). It should be noted that some African Americans did not acknowledge connections with people of color in other parts of the world. Professor Plumber notes, and this author concurs, that this view eroded their view of themselves and their humanity, because it ignored that they were suffering from similar forms of exploitation, as people of color residing abroad. Brenda Gayle Plummer, WINDOW ON FREEDOM RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS 1945-1988, 3, 12 (2003). Moreover, at times, Black Americans have refused to be categorized with other minorities in the United States, perhaps contributing to the black/white binary and the notion of America as a nation of two races, Black and white. *See* Juan F. Perea, *The Black/White Binary paradigm of Race: The "Normal Science" of American Racial Thought*, 10 LA RAZA L.J. 127 (1998).

struggle that is also at the center of the African American experience. This part will explore the meaning of both "Third World" and "refugee," detailing a small part of their complex histories as well as how these terms have evolved from expressions of compassion, solidarity and liberation to terms of disdain.

A. Defining Refugees

For a definition of "refugee," one need look no further than a dictionary, where it is defined as "*one that flees*, especially a person who flees to a foreign country or power to escape danger or persecution."[113] Under this definition, perhaps victims of Katrina could be characterized as "one who flees", in that they fled the ravages of their destroyed homes and city. Yet, as the remainder of this definition clarifies, "one who flees" only begins the discussion, since "refugee" also has a particularly international connotation. "Refugee" is also defined in international conventions[114] that emerged from the lowest depths of man's inhumanity to other men, women and children: the Nazi holocaust against the Jewish people.[115] From these ashes, the discernible need for nations to provide refuge, became apparent. Hence, in the wake of the Holocaust, and the widespread refusal by most nations to accept its victims, the international community created certain rights for refugees, and enshrined them in the 1951 Convention relating to the Status of Refugees.[116] The Refugee Convention defines "refugee" (in part) as:

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[113] Merriam Webster Dictionary, 2003, version 3.1.

[114] Refugee is defined in international conventions and those coming within this definition are to accorded certain rights and privileges. Convention Relating to the Status of Refugees, July 28, 1951, art. I(A)(2), 189 U.N.T.S. 150 [hereinafter *Convention*]. The 1967 Protocol Relating to the Status of Refugees extended the definition. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter *Protocol*]. The Convention and Protocol are available at http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf. http://www.unhcr.org/basics/BASICS/420cc0432.html. The United States formally adopted the 1951 Refugee Convention and the 1967 Protocol through treaty 90-27

[115] Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L. J. 201, 210-212 (2001). *See also* Keith D. Nunes, *Detentions Of Political, Racial and Religious Persecutees And Dissenters: Asylum and Human Dignity*, 16 N.Y. L. SCH. J. HUM. RTS. 811, 896-897 (2000) (concluding modern human rights law was developed in response to refugee problems of the Holocaust). *See* ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 73-74 (Vol. 4 2000) (providing brief history of term refugee).

[116] Conventions, July 28, 1951, art. I(A)(2), 189 U.N.T.S. 150. This instrument is the key legal document in defining who is a refugee, their rights and the legal obligations of states. The 1967 Protocol removed geographical and temporal restrictions from the Convention.

> any person who . . . owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.[117]

According to this definition, the victims of Hurricane Katrina obviously were not refugees. They were not outside the country of their nationality, and they were not legally disabled from availing themselves of the protection of their country of nationality, the United States. While African Americans overwhelmingly believed that the sluggish pace of assistance was due to the color of the sufferers, no one claimed that these victims had somehow lost their nationality or were in fact being purposely persecuted because of their race. The Refugee Convention was meant to protect people who are fleeing from their home of origin and seeking asylum in foreign lands,, such as Jewish populations residing in Germany and Nazi occupied territories during the Second World War while parallel genocides and other human rights tragedies have repeatedly occurred in the post World War II era,[118] such was not the case in New Orleans in September 2005.[119]

Protocol, Jan. 31, 1967, 606 U.N.T.S. 267 Art. 1, sec. 2. The Convention and the Protocol are available together at http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf.

[117] Convention, *supra* note 112, at Art. 1, Sec. A, 2.

[118] *See e.g.*, John Hall, *In The Shadow Of The Khmer Rouge Tribunal: The Domestic Trials Of Nuon Paet, Chhouk Rin And Sam Bith, And The Search For Judicial Legitimacy In Cambodia,* 20 COLUM. J. ASIAN L. 235, 241-242 (2006) (discussing atrocities in Cambodia), Paul J. Magnarella, *The Background and Causes of the Genocide In Rwanda,* 3 J. INT'L CRIM. JUST. 801, 815-816 (2005) (describing genocide in Rwanda); M. Rafiqul Islam, *The Sudanese Darfur Crisis and Internally Displaced Persons In International Law: The Least Protection For the Most Vulnerable,* 18 INT'L J. REFUGEE L. 354, 356-357 (2006) (describing situation in Darfur); Sanja Kutnjak Ivkovic, *Justice By the International Criminal Tribunal for the Former Yugoslavia,* 37 STAN. J. INT'L L. 255, 257-58 (2001) (describing human rights abuses as result of war in former Yugoslavia).

[119]Larkin M. Moore, *Stranded Again: The Inadequacy of Federal Plans to Rebuild an Affordable New Orleans After Hurricane Katrina,* 27 B.C. Third World L.J. 227 (2007) (concluding that they were like refugees); Erin Ryan, *Federalism and the Tug of War Within: Seeking Checks and Balance in the Interjurisdictional Gray Area,* 66 Md. L. Rev. 503, 532 (2007) (explaining response was heralded a 'national disgrace'); Michael Greenberger, *Yes, Virginia: The President Can Deploy Federal Troops to Prevent the Loss of a Major American City From a Devastating National Disaster,* 26 Miss. C. L. Rev. 107 112 (2006) (describing Superdome as shelter of last resort for refugees); Brooke Havard, *Seeking Protection: Recognition of Environmentally Displaced Persons Under International Human Rights Law,* 18 Vill. Envtl. L.J. 65, 66 (2008) (discussing

Thus, perhaps objections to media designations of Katrina victims as refugees were legitimate given its roots in international dispersion. This is so even if internally displaced persons[120] including victims of past U.S. natural disasters have been termed refugees.[121] Nevertheless, even if the use of "refugee" was technically inaccurate, should that make it a derogatory term?[122] The Office of the United Nations High Commissioner for Refugees (UNHCR),[123] expressed dismay that refugees or the word 'refugee' could be viewed pejoratively.[124] War,[125] political strife,[126]

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environmental refugee); Ben Depoorter, *Horizontal Political Externalities: The Supply and Demand of Disaster Management*, 56 Duke L.J. 101, 111 (2006) (describing conditions for refugees).

[120] George E. Edwards, *International Human Rights Law Violations Before, During, And After Hurricane Katrina: An International Law Framework For Analysis*, 31 THURGOOD MARSHALL L. REV. 353, 367 (2006) (asserting that internally displaced persons is more accurate than refugee under international law). *See also* Dao, *supra* note 24, at 1; *America Humbled*, LOS ANGELES TIMES, Sept. 4, 2005, at 4 (suggesting that international definition for those displaced by Katrina is internally displaced persons).

[121] See Medina, *supra* note 14 at 19.

[122] Pierre & Farhi, *supra* note 14, at C01; Noveck, *supra* note 14, at A16; Walker, *supra* note 14, at 18.

[123] The United National General Assembly created the Office of the United Nations High Commissioner for Refugees to address the difficulties refugees around the world confront.

> 'The Office of the United Nations High Commissioner for Refugees was established on December 14, 1950 by the United Nations General Assembly. The agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country. In more than five decades, the agency has helped an estimated 50 million people restart their lives. Today, a staff of around 6,689 people in 116 countries continues to help 20.8 million persons.'

The UN Refugee Agency: Basic Facts, available at www.unhcr.org/basics.html

[124] *See* Farah Stockman, *U.S. Sends Mixed Signals on Accepting Aid From Abroad*, BOSTON GLOBE, Sept. 2, 2005, at A31.

[125] Nir Rosen, *The Flight From Iraq*, N.Y. TIMES, May 13, 2007, § 6 at 33 (detailing experiences of refugees from war in Iraq); Ivkovic, *supra* note 116, at 257-58 (describing plight of refugees from war in former Yugoslavia).

[126] Stephen H. Legomsky, *Secondary Refugee Movements and the Return Of Asylum Seekers To Third Countries: The Meaning Of Effective Protection*, 15 INT'L J. REFUGEE L. 567, 589-92 (discussing asylum situations around world); Michele R. Piston and John J. Hoeffner, *Rules Are Made To Be Broken: How the Process Of Expedited Removal Fails Asylum Seekers*, 20 GEO. IMMIGR. L. J. 167 (discussing asylum rules in United States and problems with identifying genuine refugees), Abraham Cooper, *Toxic Indifference to North Korea*, Wash. Post, Mar. 26, 2005, at A15 (describing North Korean refugees).

genocide[127] and natural disasters[128] have produced refugees. It is indeed troubling that people already burdened with horrific circumstances would now be plagued with yet another encumbrance that somehow renders them even more undesirable.

While Americans dislocated by natural disasters have been labeled refugees before,[129] this situation seemed different. In the aftermath of Katrina, "refugee" had taken on the same undertones as Third World.[130] Images of refugees fleeing the worst forms of hate and oppression were being replaced with images of Third World, people fleeing their plight as the despised colored of the world. Third World and refugee are now intertwined and are elements of a similar concept, representing people that are either pitied or ignored, and almost always believed to be inferior and incompetent. The American government's measures in the aftermath of Katrina was so inadequate and the victims so distraught, so hapless and so Black; that the response seemed too familiar in circumstance where it should not have.[131]

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[127] Magnarella, *supra* note 116, at 815-816 (describing genocide in Rwanda); Islam, *supra* note 116, at 356-357 (describing situation in Darfur); Ivkovic, *supra* note 116, at 257-58 (describing human rights abuses as result of war in former Yugoslavia). Indeed, the refugee convention was the product of the world's extraordinarily callous response to the Holocaust. Mutua, *supra* note 113, at 210-212. *See also* Nunes, *supra* note 113, at 896-897 (concluding modern human rights law developed in response to refugee problems of Holocaust).

[128] Sunil Jagtiani, *Focus on Tsunami Overlooks Sri Lanka's War Refugees*, CHRISTIAN SCIENCE MONITOR, Jan. 4, 2006, at 10 (discussing Sri Lankan war refugees forgotten in wake of tsunami); Sean Salai, *Hurricane Refugees Miss Deadline: Deportation of 77,000 Central Americans Seen Unlikely*; WASH. POST, July 5, 2002, at A06 (describing 100,000 Honduran and 5,000 Nicaraguan refugees' status verification after fleeing from Hurricane Mitch in 1998); Rachel L. Swarns, *Mozambique Floods Recede, But New Dangers Rush In*, N.Y. TIMES, Mar. 6, 2000, at A3 (describing effects of major flooding, though refugee is used to also describe internally displaced persons).

[129] *See Supra* Note 94. Freeman, *supra* note 18; Buhler, *supra* note 91, at 2.

[130] Brooks, *supra* note 14, at 5; Pierre & Farhi, *supra* note 14, at C01; Broder, *supra* note 14, at 9 (comparing New Orleans to undeveloped nations and Africa); Duke, *supra* note 13, at B01.

[131] The victims were not just African American, but were generally dark hued African Americans, as are a disproportionate number of poor Black people in the United States. Commentators have studied the persistence of what is known as colorism, meaning the different experiences of African Americans with darker skin tones and African physical features, as opposed to those with lighter skin and more European features. Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705, 1713 (1999-2000). Studies have demonstrated that lighter-skinned Blacks are, on average, more educated, have more professional and technical jobs and are generally better off economically than Black Americans with darker skin tones. *Id.* at 1718-22. Moreover, both Blacks and whites discriminate based on skin hues. Trina Jones, *Shades of Brown: The Law of Skin Color*, 49

B. Constructing the Third World

In its purest form, the phrase "Third World" designated those countries that were not aligned with either the West as embodied by the U.S. and its allies, nor the former Soviet Union and its satellites. It was an important element of the "non-aligned movement,"[132] and also encompassed broader connotations and undercurrents. Indeed, the concepts at the core of a Third World ultimately emerged from the demands of

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DUKE L. J. 1487, 1498 (1999-2000) (explaining colorism can operate intraracially, such as when Black social clubs deny membership to Blacks who are too dark, or interracially, when other racial groups discriminate among Black people based on racial hues)

> Here, the argument is that Blacks with lighter skin tones are superior to Blacks with darker skin tones because of the formers White ancestry; lighter-skinned Blacks, however, are nonetheless inferior to Whites because their heritage is not completely White. Thus, a White person might view a lighter-skinned Black person as preferable to a darker-skinned Black person because of her allegedly closer connection to Whiteness. The infusion of White blood also may lead Whites to conclude that lighter-skinned Blacks are more intelligent and capable than darker-skinned Black people.

Id. at 1527. Especially troubling, are efforts to establish a colorblind society where classifying people as Black and white is eliminated and instead people are permitted to identify themselves as mixed-race. *Id.* at 1521. Removing the markers of Black and white will not eliminate discrimination, but will replace the label of race with the visual signal of skin color, while maintaining the current structure of racism. *Id.* at 1524. Also, identifying as mixed-race may permit lighter skinned persons to further distinguish themselves from dark-skinned Blacks and help create a modern buffer class that will only serve to maintain and reinforce white supremacy while keeping darker-skinned Black people at the bottom of the social and economic hierarchy. *Id.* at 1526. *See* Tanya Katerí Hernández, *"Multiracial" Discourse: Racial Classification in an Era of Color-Blind Jurisprudence*, 57 MD. L. REV. 97 (1998) (explaining history of colorism in Brazil and Latin American, and warning that colorblindness and utilization of multiracial designations on census forms could create such a society in America). Historically in Louisiana, and especially in New Orleans, racial mixing was tolerated, and the mulatto class enjoyed a higher status than those who were only "Black." Jones, *supra* note 129, at 1506-07. This "buffer class" gave whites another group of people to maintain control over Blacks while preventing more people from enjoying the full privileges of being white. *Id.* at 1508. Perhaps it is the continued practice of both interracial and intraracial colorism that resulted in the majority of Katrina refugees, mostly the poor of New Orleans, to be dark-skinned.

[132]Politician and economist Alfred Sauvy, was the first person to use the term "Third World," utilizing it in 1952 to designate countries that were not aligned with either the dominant First World economic powers of the West, nor the Soviet Union and its satellites that were referred to as the Second World. KEY CONCEPTS IN POST-COLONIAL STUDIES at 231 (Bill Ashcroft, Gareth Griffiths, Helen Tiffin, eds.) [hereinafter *Key Concepts In Post-Colonial Studies*]. *See also* VIJAY PRASHAD, THE DARKER NATIONS, A PEOPLE'S HISTORY OF THE THIRD WORLD at 10-12.

colonial people for liberation, equality, and political, social, and economic justice.[133]

The principles that racial discrimination and colonialism should end, and that there should be some kind of unity among people of color, were subjects of international movements and conferences since the first Pan-African conference in 1900.[134] It was in the aftermath of the Second World War, however, that the momentum for decolonization built to a crescendo.[135] When the Asian-Africa Conference, more famously known as the Bandung Conference, convened in 1955,[136] the Non-Aligned Movement was born, and the concept of a Third World began to congeal.[137] The

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[133] This struggle has been widespread and far-reaching. *See, e.g. Saving Failed States* (describing widespread deterioration in the quest for social, economic and political parity); Basil Davidson, *The Black Man's Burden: Africa and the Curse of the Nation-State* (1992). After the 1917 Russian Revolution, the demands of colonial peoples took on a new character. The Bolsheviks convened conferences that demonstrated their willingness to exploit anti-colonial struggles. For example, in 1920, the Congress of the Peoples of the East was convened at Baku, Azerbaijan and Congresses for the Advancement of the Oppressed Peoples were held in Paris in 1920 and London in 1923. In 1924, the League against Imperialism organized the first Congress of the Oppressed People in Moscow, and then a second in 1927.

[134] In 1920, the first Pan-African Conference was convened in London. It was an effort by people of color to discuss their situation and to unite against the European Power that seemed to be sweeping the world. The Congress rejected the view that Black people were inferior, avowing that with guidance they could become self-ruling, modern societies. BRENDA GAYLE PLUMMER, RISING WIND BLACK AMERICANS AND U.S. FOREIGN AFFAIRS (1996) p. 14. Japan called for an end to racial discrimination in international relations at the Versailles Peace Conference where the short-lived League of Nations was established. Its calls to include anti race discrimination language in the founding documents of the League were roundly ignored. Ruth Gordon, Mandates, ENCYCLOPEDIA OF INTERNATIONAL LAW. Self-determination for some Slavic populations in Eastern Europe became part of international discourse, while the possibility of some form of self-determination for African and other colonial peoples lurked beneath such concepts as mandates and later, trusteeship. Id.

[135] The Second World War proved to be a watershed for self-determination, and sounded the death knell for colonialism. *See generally, Saving Failed States.* Months before India's independence in 1947, 25 countries accepted Nehru's invitation to an Asian Relations Conference that was held in New Delhi. GILBERT RIST, THE HISTORY OF DEVELOPMENT (1997) p. 81.

[136] Hoping to develop a common "development" policy, the governments of Burma, Ceylon, India, Indonesia and Pakistan met in Bandung, Indonesia in 1955. The conference took place against the backdrop of an increasingly polarizing Cold War, and many participants were allied with a particular side, while others tried, with some difficulty, to remain neutral. RIST, *supra* note 133, at 81.

[137] Other conference participants included: Afghanistan, Cambodia, the People's Republic of China, Egypt, Ethiopia, the Gold Coast (Ghana), Iran, Iraq, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Pakistan, the Philippines, Saudi Arabia, Siam (Thailand), Sudan,

Conference itself could not be characterized as radical,[138] but the idea of a Third World unquestionably was. Indeed, the mostly colored two-thirds of humanity that did not live in the First or Second worlds was already being classified as underdeveloped and in dire need of assistance from their former colonizers to survive and prosper.[139] The idea of formerly colonial subjects being independent sovereign entities and joining in political solidarity to act on the international stage was an unmistakable break from a world dominated by European nations. Scholars commonly view the Bandung Conference as the launching pad for Third World demands; where the countries of the South resolved to distance themselves from the big powers that seemed determined to continue to dominate them.[140] Hence, the expression "Third World" began as a celebration of solidarity, and of independence from the then warring capitalist (always First) and the

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Turkey, North and South Vietnam, and Yemen. Most African nations were still colonies; neither Ghana nor Sudan was independent at the time. RIST, *supra* note 133, at 82.

[138] The nations gathered at Bandung were not revolutionary governments or movements that sought to transform the international system; indeed, they only sought to be admitted to a system that had previously denied them full membership. *See* RIST, *supra* note 133, at 82. Rist notes that for the most part, the conference communiqué did not stray beyond the rudiments of the UN Charter, including such provisions as respect for human rights, sovereignty and territorial integrity, racial and sovereign equality and non-interference in the internal affairs of sovereign states. Other, even more conventional objectives included the right of national and collective self-defense; abstaining from acts or treaties of aggression and the use of force; the peaceful settlement of disputes; international cooperation based on mutual interests; and respect for justice and international obligations. Id.

[139] Many in the First World viewed the broad swath of humankind existing outside both ideological camps, "as poor, overly fecund, profligate and worthless." Images of poverty, natural disasters, famines and droughts flooded western television and magazines, helping to create and foster these beliefs, which simultaneously resulted in pity and revulsion. It created the impression that these communities could not exist, no less prosper, without the assistance of their former colonial masters. It was also implied, without much thought or analysis, that former colonial masters were blameless when it came to this sad state of affairs, and thus the inhabitants of former colonies had no one to blame but themselves for their pitiful state. Suddenly, hunger and impoverishment were caused by evils such as overpopulation, rather than imperialism. PRASHAD, *supra* note 130, at 8-9.

[140] These objectives were complex, difficult and not always fully realized. For example, the Conference's final communiqués strongly condemned colonialism, declaring that colonialism amounted to a denial of the fundamental rights of man and constituted a means of cultural suppression. Rist notes that internal colonialism in the USSR was also condemned and, since many of the participating countries were also members of U.S. dominated military alliances this language did not necessarily displease the U.S. Egyptian President Gamal Abdel Nasser attempted to regain a broader, more radical initiative in late 1957 by organizing an Afro-Asian Solidarity Conference (a people's Bandung). See RIST, *supra* note 133.

communist (former Second) worlds.[141] It was a declaration of self-determination by people of color throughout the world, who sought to end the oppression emanating from both the First and Second worlds.

At some indiscernible point, however, this expression of hope and solidarity became a surrogate for something dismal and reviled.[142] As Professor Keith Aoiki has opined, the Third World has come to be defined "in terms of a certain set of images that include poverty, squalor, corruption, violence, calamities and disasters, irrational local fundamentalisms, bad smell, garbage, filth, technological backwardness or simply lack of modernity."[143] "Third World" is even used less often in post-colonial discourse due to a sense that it has become a disparaging term.[144] Perhaps even more troubling, the phrase "Fourth world" is gaining traction as a means to designate the most marginalized people in the international system; who are also designated as the "least developed."[145]

Professor Anne Orford maintains that "intervention narratives regularly produce images of the people who live in nations targeted for humanitarian intervention as starving, powerless, suffering, abused and helpless victims, often women and children in need of rescue or

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[141] Gordon & Sylvester, *supra* note 17, at 2. "Third World" was initially an ideological category and a political strategy connoting nonalignment with both worlds. It also signifies a particular geographic region, namely the nations of the South, as well as regions and peoples formerly subjected to colonialism. *Id.* at fn 3.

[142] Third World images "became a journalistic cliché invoking ideas of poverty, disease and war and often featuring pictures of emaciated African or Asian figures, emphasizing the increasing racialization of the concept in its popular (Western) usage. The term was also used as a general metaphor for any unindustrialized society or social condition anywhere: Third World conditions, Third World educational standards, etc., reinforcing the pejorative stereotyping of approximately two-thirds of the member nations of the UN who were classified as Third World countries. As obvious economic differentials began to emerge within this group, some economists introduced the term Fourth World to designate the lowest group of nations on the economic scale. KEY CONCEPTS IN POST-COLONIAL STUDIES, *supra* note 130, at 231.

[143] Gordon & Sylvester, *supra* note17, at 2 (citing Keith Aoki, *Space Invaders: Critical Geography, the 'Third World' in International Law and Critical Race Theory*, 45 Vill. L. Rev. 913, 925 (2000).

[144] This is especially true for U.S. theorists who have also tended to avoid the term anti-colonialism; this has been criticized as leading to a de-politicization of the decolonization project. KEY CONCEPTS IN POST-COLONIAL STUDIES, *supra* note 130, at 232.

[145] For example, Fourth World is being used to designate pre-settler indigenous communities whose economic status and oppressed condition purportedly, places them in an even more marginalized position in the international social and political hierarchy, than other post-colonial peoples. KEY CONCEPTS IN POST-COLONIAL STUDIES, *supra* note 130, at 232; *Contemplating the WTO from the Margins, supra* note 1, at 107.

salvation."[146] Moreover, the Third World is overwhelmingly populated by people of color, who are often viewed as incompetent and rather hopeless, in many contexts.[147] It is evident that this exceedingly negative vision is held by the American media and thus it was entirely predictable that the images emanating from New Orleans would evoke visions of the "Third World" and find its way into newspaper, magazine and television reports.[148] Even more surprising, was that Black Americans so readily adopted this highly negative viewpoint, especially the same Black Americans that championed the designation African American. [149] In the meantime, our brethren in the Third World, some of whom were quite impoverished, were offering to render assistance.[150]

Surely, this posture has not always been the case, as African Americans have often stood in solidarity with the people of the Third World, and were active participants in the international struggle for racial equality and justice.[151] Indeed, African Americans realized the struggle against white supremacy was an international struggle before there was a Third World. When Dr. W. E. B. Dubois observed that the problem of the twentieth century was the problem of the color line, he framed it in an

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[146] ANNE ORFORD, Reading Humanitarian Intervention human Rights and the Use of Force in International Law 174 (2003).
[147] See Ruth Gordon, *Racing U.S. Foreign Policy*, 17 Nat'l Black L. J. 1, 5 (2003) (explaining inequities of international systems ensure defeat of Third World people); Ruth Gordon, *Deconstructing Armed Humanitarian Intervention*, 36 Geo. Wash. Int'l L. Rev. 947, 954 (2004) (explaining invasive and dominant interference with Third World nations).
[148] See Walker, *supra* note 14 (negative use of "refugee"); Weeden, *supra* note 81 (assumption U.S. could handle a natural disaster of any size); Pierre and Farhi, *supra* note 96 (newspapers using the word refugee); *supra* note 100 (dictionary definition of refugee).
[149] "Just as we were called 'colored,' but were not that, and then 'Negro,' but not that, to be called 'Black' is just as baseless . . . to be called 'African-American' has cultural integrity. It puts us in our historical context." Lawrence E. Young, *"African-American" Gaining Acceptance: Debate Over Label for Blacks Takes New Turn*, DALLAS MORNING NEWS, Mar. 5, 1989, at 37A (quoting Rev. Jesse Jackson). *See also* Sheila Grissett, *Name Change Slow to Catch On Among Blacks*, NEW ORLEANS TIMES –PICAYUNE, Feb. 9, 1989, at B3 (describing impact of Jackson's suggestion in New Orleans).
[150] In the days after Katrina, numerous countries offered assistance in an extraordinarily wide variety of forms. Even poor countries, such as Honduras, Jamaica, Colombia, the Dominican Republic and El Salvador offered support. Farah Stockman, *U.S. Sends Mixed Signals on Accepting Aid From Abroad*, BOSTON GLOBE, Sept. 2, 2005, at A31. Offers of assistance included funds from Afghanistan ($100,000); Bahamas ($50,000); Bangladesh (1 million); Djibouti ($50,000); Gabon ($500,000); and Nigeria ($1 million cash). *See* Barbara Slavin, *Some Foreign Attempts to Send U.S. Aid Stymied*, USA TODAY, Sept. 8, 2005, at 10A (concluding foreign countries have responded generously to Hurricane Katrina).
[151] See text and notes, infra.

international context,[152] concluding that the dilemma of color included "the relation of the darker races to the lighter races of men in Asia, Africa, in America and the islands of the sea."[153] Still, Black America's relationship with the Third World has been both broad and multifaceted. A brief survey of this complex link might help us determine how we have arrived at the current peculiar location, at this particular time.

Part IV: African American Encounters with the Third World – A Preliminary Inquiry[154]

On some level, the destinies of Black Americans and the larger Third World have always been intertwined. With the exception of Native Americans, America is a nation of immigrants, meaning all Americans began their journey as Americans from an international location.[155] The Black American voyage, however, was always stained by the odious institution of slavery and suffered under the oppressive weight of race and racism.[156] Caucasians viewed Black Africans as lesser human beings, which

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[152] Gerald Horne, *Race from Power, U.S. Foreign Policy and the General Crisis of White Supremacy, in* WINDOW ON FREEDOM RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS 1945-1988 at 45, 45,48 (Brenda Gayle Plummer ed., 2003).

[153] *Id.* (quoting Dr. W.E.B Dubois).

[154] The following analysis is undoubtedly cursory and incomplete. It draws heavily on the brilliant work of Dr. Brenda Gayle Plummer, Gerald Horne and other historians, and their books and articles are highly recommended for further insights and information. *See, e.g.,* PLUMMER, *supra* note 131; Horne, *supra* note 153.

[155] See BRENDA GAYLE PLUMMER, RISING WIND: BLACK AMERICANS AND U.S. FOREIGN AFFAIRS, 1935-1960 at 9 (1996) (explaining American liberty, opportunity, and abundance produced new white men and women from the bitterness and oppressions of the immigrant past).See Brenda Gayle Plummer, *Rising Wind: Black Americans and U.S. Foreign Affairs, 1935-1960* at 9 (1996) (explaining "American liberty, opportunity, and abundance produced new white

[156] There is some debate as to whether the first Africans in America were legally free, albeit extremely oppressed, or whether they were slaves. The first record of slaves being purchased was in Jamestown in 1619. Jonathan A. Bush, *The First Slave (And Why He Matters)*, 18 CARDOZO L. R. 599, 600-01 (1996). Before there was a formal system of slavery, many African Americans worked as indentured servants, although discrimination and custom made it exceedingly difficult to escape servitude. *Id.* at 602-05. Some have drawn analogies between the assimilation of European immigrants and the assimilation of former Black slaves and other immigrant racial minorities. European immigrants could assimilate more easily, being white, while Black people, Native Americans, Latinos and Asian Americans could not escape their racial identities. OMI & WINANT, *supra* note 15, at 16. With the advent of legislation mandating some form of equal opportunity, however flawed, advocates of the immigrant analogy thought racial minorities would be able to

justified their enslavement by both Europeans and Americans.[157] Hence, even as abolitionists pressed to eradicate slavery, the racial question

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assimilate as other immigrants had managed to do. *Id.* at 19. Being unable to escape racism, however, racial minorities have joined to insist upon group rights and recognition. *Id.* at 20. For a penetrating and comprehensive legal analysis of African Americans in pre-colonial and colonial America, see HENRY J. RICHARDSON III, THE ORIGINS OF AFRICAN-AMERICAN INTERESTS IN INTERNATIONAL LAW (CAROLINA ACADEMIC PRESS 2008).

[157] White supremacy has been 'justified' for a multiplicity of reasons, perhaps beginning with European Christians scorning Muslims and Jews. OMI & WINANT, supra note 17, at 61. As Europeans explored the world and "discovered" non-white peoples. They often viewed them as "Others" who were not entitled to the same rights as the children of God and therefore could be exploited, as was the case in the newly "discovered" Americas. *Id.* at 61-62; Ruth Gordon, *Some Legal Problems with Trusteeship*, 28 Cornell Int'l L.J. 301 (1995); ANTONY ANGHIE, THE THIRD WORLD AND INTERNATIONAL ORDER: LAW, POLITICS, AND GLOBALIZATION 65 (2003). When Enlightenment thinking postulated that all men possessed natural rights, science became the tool to rationalize a "natural basis of racial hierarchy," which could be utilized to justify racial exploitation. *Id.* at 63. Biological theories were eventually rejected, although they continue to be raised from time to time. *Id.* at 65; See e.g., the infamous RICHARD J. HERNSTEIN & CHARLES A. MURRAY, THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE (1994) (resurrecting the theory of biological inferiority). For additional discussion of "the Other," *see* Sub-Sahara Africa, *supra* note 155. Racial inferiority was also used to justify the subsequent colonization of the African continent, whose inhabitants were deemed uncivilized and thus in need of European civilization. Thus, colonial exploitation was justified as part of the White man's burden. *See, Saving Failed States, supra* note 1 at 930-935; *Racing U.S. Foreign Policy, supra* note 1; *Critical Race Theory and International Law: Convergence and Divergence, supra* note 86; *Growing Constitutions,* supra note 1; Ruth Gordon, *Sub-Saharan Africa and the Brave New World of the WTO Multilateral Trade Regime,* 8 BERKELEY J. AFR.-AM. L & POL'Y 79,__(2006) [hereinafter *Sub-Saharan Africa and the Brave New World of the WTO Multilateral Trade Regime];* Contemplating the WTO from the Margins, supra note 1; Gordon & Sylvester, *supra* note 17, at 79Whitewhite peoples. They often viewed them as "Others" who were not entitled to the same rights as the children of God and therefore could be exploited, as was the case in the newly "discovered" Americas. *Id.* at 61-62; Ruth Gordon, *Some Legal Problems with Trusteeship,* 28 Cornell Int'l L.J. 301 (1995); Antony Anghie, *The Third World and International Order: Law, Politics, and Globalization* (2003). When Enlightenment thinking postulated that all men possessed natural rights, science became the tool to rationalize a "natural basis of racial hierarchy," which could be utilized to justify racial exploitation. Omni & Winant at 63. Biological theories were eventually rejected, although they continue to be raised from time to time. *Id.* at 65; See e.g., the infamous Richard J. Hernstein and Charles A. Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (1994) (resurrecting the theory of biological inferiority). Social Darwinism was used to justify conquering island states. PLUMMER, *supra* note 132, at 14. For additional discussion of "the Other," *see supra* note 102. Racial inferiority was also used to justify the subsequent colonization of the African continent, whose inhabitants were deemed uncivilized and thus in need of European civilization. Thus, colonial exploitation was justified as part of the white man's burden. *See, Saving Failed States, supra* note 1 at 930-935; *Racing U.S. Foreign Policy, supra* note 1; *Critical Race Theory and International Law: Convergence*

provoked profound reservations regarding the eventual fate of freed American slaves, whom many deemed unworthy of either full U.S. citizenship or the fruits of American civil, social or political rights. Varying theories emerged regarding what to do with free Blacks in what was considered a 'white' country,[158] and proposals ranged from full citizenship to African repatriation. Indeed, in 1822, 12,000 freed Black Americans founded Liberia on the coast of West Africa, making a limited form of repatriation a reality.[159]

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and Divergence, supra note 86; *Growing Constitutions,* supra note 1; Ruth Gordon, *Sub-Saharan Africa and the Brave New World of the WTO Multilateral Trade Regime,* 8 BERKELEY J. AFR.-AM. L & POL'Y 79 (2006) [hereinafter *Sub-Saharan Africa and the Brave New World of the WTO Multilateral Trade Regime]; Contemplating the WTO from the Margins,* supra note 1; Gordon & Sylvester, *supra* note 17, at 79.

[158]On America as a white country, see REGINALD HORSMAN, RACE AND MANIFEST DESTINY THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM (1981).On America as a white country, see REGINALD HORSMAN, RACE AND MANIFEST DESTINY THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM (HARVARD UNIVERSITY PRESS 1981).

[159] Established in December 1816, the American Colonization Society (ACS) believed Black removal was the best option for managing Black liberty, sending its first emigrants to Sierra Leone in January 1820. CLAUDE A. CLEGG III, THE PRICE OF LIBERTY: AFRICAN AMERICANS AND THE MAKING OF LIBERIA_(2004). In 1822, the American government helped to establish a West African "settlement for African 'recaptives' from transatlantic slave ships." *Id.* at 37. The colony was later named "Liberia," which denotes "a settlement of persons made free." *Id.* at 53. The ACS continued to promote this view throughout its existence and when slaves were given the choice of slavery or freedom in Liberia, naturally most chose freedom, although many free Black people considered America home, even as they were denied its full promise. Following a precipitous decline throughout the 1840s, emigration surged in the 1850s fueled by the 1850Law enacted by Congress in 1850 contributed to this course as many former slaves to fear their tenuous status as free people. , Coupled with the growing hostility toward emancipated African-Americans and fear of capture and re-enslavement, some chose freedom in Liberia, despite the risk of disease and possible death. *Id.* Nonetheless, the majority of African Americans opposed the white-controlled colonization movement, believing themselves to be Americans and that repatriating free blacks and former slaves would encourage the continuation of slavery. THE PRICE OF LIBERTY: AFRICAN AMERICANS AND THE MAKING OF LIBERIA; CLAUDE A. CLEGG III. Established in December 1816, the American Colonization Society (ACS) believed Black removal was the best option for managing Black liberty. The organization sent its first emigrants to Sierra Leone in January 1820. In 1822, the American government helped to establish a West African "settlement for African 'recaptives' from transatlantic slave ships." *Id.* at 37. The colony was later named "Liberia," which denotes "a settlement of persons made free." *Id.* at 52. The ACS continued to promote this view throughout its existence and when slaves were given the choice of slavery or freedom in Liberia, most of course chose freedom, although many free Black people considered America home, even if they were denied its full promise. Following a precipitous decline throughout the 1840s, emigration surged in the 1850s. The Fugitive Slave Law enacted by Congress in 1850 contributed to this course as many former slaves feared that their tenuous status as free people, coupled with the growing hostility toward emancipated African-Americans, might

Still, these considerations did not take place in a vacuum and were often colored and influenced by the position of Black people internationally. For example, the penchant for African repatriation came amidst the "international slave trade and a global economy where mercantilism had begun yielding ground to free trade."[160] The movement that might broadly be described as Pan-Africanism[161] can be traced to mid-19th century Black repatriation movements led by Martin Delaney, Alexander Cromwell, and Edward Wilmot Blyden, among others, and can be linked to a broader Third World milieu.[162]

Imperialism escalated at the end of the 19th century as European powers relentlessly pursued the total domination of Africa. In turn, Pan-Africanism expanded to include lobbying for colonial reform.[163]

In the early 20th century Marcus Garvey, a native of Jamaica, founded the Universal Negro Improvement Association[164] which, inter alia,

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lead to capture and re-enslavement. Hence, they chose freedom in Liberia, despite the risk of disease and possible death. *Id.* Nonetheless, if is fair to say that the majority of African Americans opposed the white-controlled colonization movement, believing themselves to be Americans and that repatriating free blacks and former slaves would encourage the continuation of slavery. *Id.*

[160] PLUMMER, *supra* note 132. PLUMMER, supra note 131, at 12. For example, Paul Cuffee sought African emigration in conjunction with brisk commerce between Africans and the Black communities of the diaspora. *See* RICHARDSON, *supra* note 157 (for an exhaustive history and analysis of African-American claims and appeals to international law).

[161] Pan Africanism evoked the idea that the concept of nation could "take on another meaning, a sense of shared culture and subjectivity and spiritual essence that stretched across the divisions of nations as political entities." ANIA LOOMBA, COLONIALISM/POSTCOLONIALISM 211 (2d ed. 1998).

[162] OMI & WINANT, supra note 17, at 36. There were various repatriation movements, which had varying degrees of success. For example, by the end of the 19th century, ACS had settled roughly 16,000 African Americans in Liberia, with the last wave of emigration lasting from around 1871-1893. 200 colonists founded the settlements of Arthington and Brewerville in 1870, and from the late 1870s onward, Arthington and Brewerville were the leading centers of production for Liberian coffee, the bulk of which was sold in the United States. Clegg, *supra* note 160, at 210-12, 262-65.

[163] By 1900, Pan-Africanism expanded. W.E.B. Dubois focused on lobbying for colonial reform, launching a moral appeal for an end to colonial abuses, such as those perpetuated in the Congo by King Leopold of Belgium. PLUMMER, supra note 131. A series of international Pan-African conferences were held in Europe and the U.S. from 1900 to 1945, most organized by W.E.B. Dubois. Primarily oriented toward the decolonization of Africa, some scholars contend that they had relatively little domestic impact in the United States. *See also* DAVID LEVERING LEWIS, 1868-1919 W.E.B. DUBOIS: BIOGRAPHY OF RACE 500 (1994). Africa was formally divided among the colonial powers, with American approval, at a Conference in Berlin in 1885. PLUMMER, supra note 131. *See also Saving Failed States, supra* note 1, at fn 144.

advocated Black emigration to Africa, and economic development of the continent.[165] This movement lasted from 1916 until 1927, and emerged against a backdrop of fragmenting imperialism; emerging nationalist movements in Asia; and central and eastern European minorities clamoring for territorial recognition, political autonomy, and language rights.[166] Indeed the aftermath of the First World War was a time of rising international aspirations for people of color, as Japan pressed for inclusion into international society; colonies pressed for an end to colonialism, or at a minimum, more self-government;[167] and the right to self-determination was

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[164] The UNIA was one of the major proponents of Pan-Africanism. To Garvey, Africa existed not only on the continent, but also among the Diaspora, creating a "racial empire" that linked the fates of Blacks throughout the world. He called for an end to racial exploitation of Africans around the world, and believed if Black people in America were economically strong, they could survive as leaders and examples for Black people around the world. OMI & WINANT, supra note 17, at 38-39.

[165] Marcus Garvey sought a combined program of emigration, in conjunction with economic development that was manifestly independent of white control. PLUMMER, supra note 131, at 12.

[166] PLUMMER, supra note 131, at 12.

[167] PLUMMER, supra note 131, at 16-21. At the end of First World War, organizations were created solely to influence the Versailles Peace Conference. In the United States, the National Race Congress elected a representative to the Conference, and organizations were established, such as the International League of Darker Peoples and the NAACP, among others. These organizations raised the critical question of racial discrimination, which had taken on renewed vigor after the experiences and lessons gained in fighting the war. President Woodrow Wilson, however, attempted to quash Black voices and conceal the profound racial prejudice and discrimination that characterized the United States. The State Department refused to issue passports to some Black Americans attempting to attend international conferences, including the Pan-African Congress, a Congress convened to foster ideas for Versailles. See H. F. Worley & C. G. Contee, *The Worley Report on the Pan-African Congress of 1919*, The Journal of Negro History, Apr., 1970, at 140-143. The 1919 Pan-African Congress concentrated on such issues as preserving indigenous languages and territories, preventing the economic exploitation of native people, and focusing colonial powers on ruling in the interests of colonial populations rather than for the economic benefit of the home country. The Conference urged international supervision and colonial administration of former German colonies, presuming that these peoples were not ready for self-rule. The UNIA also attempted to petition the Versailles Conference, calling for a universal end to racial discrimination; self-determination for all colonies with people of African descent; and proportional representation for Black nations in any world government. Although the UNIA and future Pan-African Congresses attempted to influence the League of Nations regarding the interests of Black persons around the globe, the League was not responsive to their requests. See ROBERT A. HILL ET AL. EDS., THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS, VOL. IX: AFRICA FOR THE AFRICANS JUNE 1921-DECEMBER 1922 at 3 (1995). *See generally* Clarence G. Contee, *Dubois, the NAACP, and the Pan-African Congress of 1919,* The Journal of Negro History, Jan., 1972, at 13-28.

introduced on the international stage.[168] Within this milieu, the UNIA achieved unprecedented success and, at the height of its popularity in the 1920s, had millions of followers. [169]

Like its repatriation forerunners, the UNIA message was profoundly international with Africa at its core. Africa was more than a continent, for it "lived in a Diaspora that slavery had conferred on its inhabitants and their descendents, which linked the destinies of Blacks throughout the world."[170] The liberation and reconstruction of the African homeland allowed Black people to overcome the racial oppression that had sustained colonialism, consequently enabling Black Americans to return home.[171] This largely American movement,[172] with considerable international overtones, was also one of the founding pillars of modern Pan-Africanism and remained a crucial source for later Black Nationalist voices, such as W.E.B. Dubois, George Padmore, and C.L.R. James.[173]

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[168] Fueled by its victory over Russia, Japan tried to include 'the racial equality of nations' in the League of Nations Charter. America opposed the resolution, fearing that the racial inequality and legal segregation within its own borders would be accentuated and become a topic of discussion. The International League of Darker Peoples was created in 1919 to support Japan's attempts to gain recognition of racial and national equality, which was a joint effort of people of Japanese and African descent. Horne, *supra* note 153 at 50-53. African countries pointed to the crumbled empires of Eastern Europe and the ensuing demands for autonomy as signifying why and how European nations might relinquish their control over African peoples. PLUMMER, supra note 131, at 15.

[169] The UNIA represented the pinnacle of Black political mobilization until the civil rights and Black Power movements of the 1960s. OMI & WINANT, supra note 17. At its height, the UNIA had millions of members. There were over 1,100 chapters in over 40 countries. Universal Negro Improvement Association and African Communities League, *History* http://www.unia-acl.org/info/historic.htm. (last visited Feb. 19, 2009).

[170] OMI & WINANT, supra note 17.

[171] OMI & WINANT, supra note 17. Garvey sought to unite Black people throughout the world, in a movement for the redemption of Africa, which he envisioned as a racial empire. Omi and Winant note that Booker T. Washington's ideas on promoting separate economic development influenced Garvey. Garvey went beyond Washington, however, in denouncing the exploitation of Africa and African labor throughout the world. He also perceived the Black population of the U.S. in a broader sense than Washington's self-help terms. He saw Black Americans as the vanguard for Africa's redemption and believed that if American Blacks were strong economically, they would be able to redeem Africa and establish a worldwide fraternity of Black people.

[172] The UNIA had chapters in more than 40 countries. Universal Negro Improvement Association and African Communities League, *supra* note 170.

[173] George Padmore, born in Trinidad and a proponent of Pan-Africanism, helped Dubois plan the 1945 Pan-African Congress. He voiced the yearnings of Africans and West Indians for independence, as colonial subjects sought to cut ties with their ruling colonial powers, and racially oppressed peoples desired reparations for their injury. PLUMMER, supra note 131 at 154-56. Padmore joined with C.L.R. James, among others, to form the International

Without doubt, the Second World War materially and profoundly altered the world in many ways. The foremost colonial powers, Great Britain and France, were greatly weakened. Nationalism had been ignited and was on the rise across the colored world.[174] People of color were demanding and gaining freedom from colonial and other forms of domination. Black soldiers returned home from the War to face the very same discrimination, racial segregation, and lynching that they had left. Having served abroad, their views were invariably influenced by a more international perspective and materialized amidst colored stirrings for freedom sounding around the world. Black Americans began making more adamant demands for civil rights, at first by way of the courts and federal government, and then by literally taking it to the streets.[175]

African Service Bureau in 1937, which voiced aspirations for independence, especially in Ethiopia. DAVIDSON, *supra* note 130, at 77.

[174] Britain and France intended to retain their colonial possessions after the war and had to be convinced, and sometimes forced to relinquish them. DAVIDSON, *supra* note 131, at 80. The United States, which was now a superpower, wanted European nations to give up their colonies, and hoped the States that emerged would align with the United States, rather than the USSR, which had similar hopes. *Id.* 80-81. Corporations pressed for opening colonial possessions to trade and more particularly to penetration by multinational companies. *Id.* at 98-100. In addition, raw material hungry mother countries ended the war in debt to their colonial posts, which were simultaneously calling for greater freedom. PLUMMER, supra note 131, at 89-90. *See generally* JOHN HARGREAVES, DECOLONIZATION IN AFRICA 90-120 (2d. ed. 1996) (detailing rationales and circumstances in European countries as they moved towards granting political independence to their colonies).

Nationalism was the driving force behind the African and Asian fight for independence. The Atlantic Charter of 1941 was an agreement between President Roosevelt and Winston Churchill, which promised that after the Allies won the War, they would "respect the right of all peoples to choose the form of government under which they live. DAVIDSON, *supra* note 131 at 66. Churchill believed this agreement only pertained to European nations, but Roosevelt insisted it applied to everyone, including the peoples residing in colonies. Regardless, once African leaders heard about the Charter, and came to understand that the War was a war for freedom, they began to expect independence at its conclusion. *Id.* In the meantime, American Blacks had begun to seriously "rethink their place in U.S. society." *Window on Freedom* at 4. Black people who served in the military or were employed at home as part of the war effort,, had a new perspective and saw their wartime experiences as a sign of the possibilities for change in the United States. A *Negro Digest* poll demonstrated that while their readers did not expect an end to racism, they did expect a more equitable country after the War ended. PLUMMER, supra note 131, at 85-87. They called for a "Double V," victory against fascism abroad and against racism at home. Mary Dudziak, *Desegregation as a Cold War Imperative*, 41 Stan. L. Rev. 61, 72 (1988).

[175] For example, on the legal fight for desegregation of the public schools, *see*, RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (2004). For a discussion of the Civil Rights demonstrations of 1955-65, *see* David Benjamin Oppenheimer, *Kennedy, King,*

Black Americans also took their struggle to the international community, continuing and building upon a tradition that began with the founding of the League of Nations, in 1919.[176] As nations gathered to found the United Nations, the NAACP and other civil rights organizations sought to attend with the intention of enlightening the world to the conditions confronting Black people in the United States. Black American activists brought petitions concerning American Apartheid before the UN; although they were never officially acted upon, they placed America's peculiar "dilemma" at the center of the international stage.[177] Indeed, as America turned to fighting communism, it had to face a fundamental contradiction as it positioned itself as a beacon of "freedom and democracy" against the "darkness of communism." America's Black population was being lynched, discriminated against, segregated and treated as second-class citizens, making the guiding *light* of democracy seem rather faint and the palpable hypocrisy undeniable.[178] Black Americans utilized an international platform to make this critical point, as did the Soviet Union. Amazingly, opponents of civil rights, and especially Southern whites, then contended that the civil rights struggle was anti-American communist plot. In an age of rampant anti-communism this tactic stifled Black internationalism somewhat, albeit never entirely.[179] Eventually, the travesty of an American democracy that encompassed Apartheid became so untenable internationally that it played a substantial role in federal support for terminating legal segregation. Thus, as Black Americans required *Brown v.*

Shuttlesworth and Walker: The Events Leading to the Introduction of the Civil Rights Act of 1964, 29 U.S.F. L. Rev. 645, 646-70 (1995).

[176] See, *supra* note 155, on petitions to League.

[177] Even as America welcomed diplomats from all over the world to San Francisco in 1945, these envoys encountered accounts of American discrimination. Paul Gordon Lauren, *Seen From the Outside, in* WINDOW ON FREEDOM RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS 1945-1988 at 24-37 (Brenda Gayle Plummer ed., 2003). Race riots and Ku Klux Klan stories made headlines and foreign delegations to the United States took notice. *Id.* Jim Crow laws and lynchings sparked international criticism as foreign newspapers questioned how the United States could be the leader of the 'free world' while oppressing over 13,000,000 citizens of its own citizenry. *Id.* The NAACP, primarily through the efforts of Dr. W.E.B. Dubois, prepared a 155-page report and petition to the United Nations to focus international attention on basic human rights that were being denied to America's Black nationals. The Soviet Union used it as fodder for anti-American propaganda, and Attorney General Tom Clark stated that the United States had been "humiliated." *Id.* at 29-30.

[178] Dudziak, *supra* note 131, at 80-93.

[179] Horne, *supra* note 153 at 59 (noting "[t]he Cold War took its toll on African Americans, forcibly diminishing internationalist – if not race-conscious – thinking").

Board of Education and its progeny for simple justice, America desired it for international credibility.[180]

As colored nations began to emerge in the aftermath of the Second World War,[181] and the idea that they might identify and organize as such culminated at the Bandung conference in 1956,[182] this conference was also a beacon of hope for Black Americans. Many understood the profound implications of this event.[183] As African nations began to obtain independence in 1957, they too joined this emergent alliance.[184] While fledgling Black nations were claiming their voices on the international stage,[185] the civil rights struggle in the United States was gaining

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[180] Dudziak, *supra* note 131, at 65.

[181] Independence movements in Asia, such as the movement in India, inspired African nations to call for independence. HARGREAVES, *supra* note 175, at 121. British recognition of African independence began with Egypt, a neo-colony that became totally independent in 1952. DAVIDSON, *supra* note 130, at 110-12. Sudan's independence followed in 1956 when British and Egyptian troops withdrew from the territory. *Id.* at 113. France also slowly moved towards political independence for its colonies. Although often opposed by French colonial governments and settler communities, France adopted a new constitution that gave Africans more power within its colonies and shifted towards more equality between French settlers and native populations. As it became clear that it could no longer maintain control of its colonial empire, France began to grant independence to its colonies in 1960, although all but Guinea had to accept indirect control. *Id.* at 122-30. Other European powers such as Belgium, Portugal and Spain, also began to grant their colonies independence after the Second World War. *Id.* at 155-61. For a list of African independence dates, *see* DAVIDSON, *supra* note 130, at 283-85.

[182] The U.S. initially tried to prevent and then attempted to pacify this conference. Fraser, *supra* note 108, at 115.

[183] Fraser, *supra* note 108, at 133-37. House Representative Adam Clayton Powell Jr. from the 22nd Congressional District, which included Harlem, believed the Bandung Conference would be "one of the most important events of the twentieth century" and a chance for America to show its commitment to *Brown v. Board of Education* and a new racial order. *Id.* at 134. Richard Wright, an African-America writer who had immigrated to Europe, attended the Conference and although he did not represent any government, he sensed it was beyond traditional political culture and was instead a meeting of pure ideology and real people. Wright wrote about a mechanic in Los Angeles who exhausted his and his wife's life savings, obtained press credentials and attended the Conference because he was stirred by the premise of a meeting of all the colored nations on Earth. *Id.* at 135. Paul Robeson, W.E.B. Dubois and Roy Wilkins supported the Conference, while Dr. Martin Luther King Jr. noted the vital link between race policies in America and international events. King pointed to events around the world in such places as Asia and Africa as a sign of a new world order. *Id.*

[184] *See generally* HARGREAVES, *supra* note 175.

[185] The results of the Bandung Conference were summed up in its Final Communiqué. FINAL COMMUNIQUÉ OF THE ASIAN-AFRICAN CONFERENCE (Apr. 24, 1955), http://www.iss.org.za/AF/RegOrg/unity_to_union/pdfs/asiaafrica/bandung55.pdf.. A new cultural consciousness also arose among the attendees of the Bandung Conference,

momentum, and these dual struggles nourished and were inspired by each other. Black leaders in the United States, such as Malcolm X[186] sought the support of the leaders of emerging African nations.[187] At the same time, these nations were stirred and encouraged by the non-violent revolution led by countless American civil rights advocates, while the most famous of these advocates, Dr. Martin Luther King, Jr. looked to Mahatma Gandhi for inspiration.[188]

The 1960s and 1970s brought forth a host of newly independent nations that were led and populated by people of color who raised escalating voices calling for economic justice. There were demands to exercise Permanent Sovereignty Over Natural Resources, for a New International Economic Order and for a Charter of Economic Rights and Duties of States.[189] At about the same time, a new and more strident notion of Black Nationalism materialized in the United States, and the ideas of Malcolm X, Kwame Nkrumah, Frantz Fanon and later Amilcar Cabral and Walter Rodney found a revitalized saliency.[190] The viewpoints and

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recognizing the shared history of colonial subordination. PLUMMER, supra note 131, at 253. *See also Racing U.S. Foreign Policy, supra* note 2, at 8.

[186] Pan-Africanism in the United States was bolstered when Malcolm X left the Nation of Islam and formed the Organization of Afro-American Unity. Malcolm made a series of trips to Africa, endeavoring to enlist the support of African governments to denounce U.S. racism at the United Nations; this dramatically stimulated Black interest in African issues. OMI & WINANT, *supra* note 17, at 39.

[187] OMI & WINANT, supra note 17, at 39.

[188] John Robert Lewis, *The King Legacy*, 30 Vt. L. Rev. 349, 353 (2006).

[189] National sovereignty over natural resources has been repeatedly affirmed by U.N. resolutions. G.A. Res. 1803/XVII, U.N. DOC. A/RES/1803/XVII (Jan. 1, 1963) (declaring that all nations should have control over the natural resources within their borders and calling for codification to protect these rights); *see also* G.A. Res. 1720/XVI, U.N. DOC. A/RES/1720/XVI (Jan. 1, 1962); G.A. Res. 2158/XXI, U.N. DOC. A/RES/2158/XXI (Jan. 1, 1967); G.A. Res. 2386/XXIII, U.N. DOC. A/RES/2386/XXIII (Jan. 1, Year 1969); G.A. Res. 2692/XXV, U.N. DOC. A/RES/2692/XXV (Jan. 1, 1971); G.A. Res. 3016/XXVII, U.N. DOC. A/RES/3016/XXVII (Jan. 1, 1973).Third World nations called for a new economic order that would end the injustice of the international economic system and halt the expanding disparity between rich and poor nations. *See* G.A. Res. 3201/S-VI, U.N. DOC. A/RES/3201/S-VI (Jan. 1, 1974) (declaring a new international economic order); G.A. Res. 3202/S-VI, U.N. DOC. A/RES/3202/S-VI (Jan. 1, 1974) (detailing Programme of Action to establish new international economic order).The Charter of Economic Rights and Duties of States sought to promote international economic cooperation. *See* G.A. Res. 3281/XXIX, U.N. DOC. A/RES/3281/XXIX (Jan. 1, 1975).

[190] Pan-Africanism enjoyed a renewed resurgence in the early 1970s, albeit in a weakened form. OMI & WINANT, supra note 17, at 38 (noting that by 1970s, it was fractured movement where reference point of Africa had become symbolic. They also note that part of the illusion was the belief that U.S. political reference points could be subordinated to African ones). Pan-Africanism coincided with the core of the "Black power" movement,

perceptions of modern Nationalists in the United States and on the African continent were undoubtedly linked. For example, African leaders observed the triumph of Black American demands for social and economic equality, and Black Americans proudly beheld the emergence of their brothers and sisters from the oppression of colonialism to independence and sovereignty over their lands, resources, and people. Indeed, the international link was profound, for it helped Black Americans connect the "forms of oppression faced by Black people in myriad societies, with colonial exploitation and the underdevelopment of Africa."[191] Some even asserted that perhaps "Black identity conferred membership in a single worldwide Black nation-the African Diaspora itself."[192]

This relationship and bond have continued and can be observed in the political, cultural and social life of Black Americans, beginning with their self-characterization as *African* Americans. For example, the now annual celebration of Kwanzaa, which is inspired by African traditions; and African inspired hairstyles and dress. Politically, it can be observed in the successful struggle to end Apartheid, which in the United States was led by African Americans,[193] as well as African American lobbying for African interests, such as the African Growth and Opportunity Act.[194] Furthermore, Black Americans have held divergent positions on matters of American foreign policy, such as the first Gulf War in Iraq, [195] while some African nations have recently taken up the cause of reparations for colonialism, borrowing from the Black American quest for reparations for American slavery.[196]

Given this exceptional history, how did African Americans arrive at a location where they would abjure any connection to the Third World or to

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and accelerated the latter's expansion throughout the United States. OMI & WINANT, supra note 17, at 39.

[191] OMI & WINANT, supra note 17.

[192] OMI & WINANT, supra note 17, at 39. Pan-Africanism expanded Black American consciousness by "rescaling questions of racial justice to global dimensions, thereby creating the space necessary to holistically assess U.S. behavior in the international arena." PLUMMER, supra note 131, at 12.

[193] *See, e.g.,* RANDALL ROBINSON, DEFENDING THE SPIRIT: A BLACK LIFE IN AMERICA, 125-65 (1998).

[194] African Growth and Opportunity Act, §§ 3701-06, 19 U.S.C.A. §3701 (2000). African American leaders were in favor of this flawed Act, for all the right reasons. For a discussion of the African Growth and Opportunity Act, see *Contemplating the WTO from the Margins, supra* note 3, at 98 n. 13.

[195] Henry Richardson, The Gulf Crisis and African-American Interests Under International Law, 87 AM. J. INT'L L. 42 (1993).

[196] Gordon & Sylvester, *supra* note 19, at 65-66.

refugees, seeking instead to couple demands to be treated justly, with severance from the larger colored world? Part of the explanation can be found in the other side of the African American engagement with the South, and especially that part of the South that is African. The other branch entails Black Americans embracing American exceptionalism and the Anglo-Saxon culture in which Black Americans live and has subsisted alongside the solidarity narrative. It is very much the opposing aspect of this quite glorious story.

It commenced with the first repatriation movement, for as Black Americans settled on the West Coast of Africa, founding Liberia, they were also determined to rule Liberia and increasingly came to scorn the indigenous population whom they were resolved to dominate and dislodge.[197] Moreover, supporters of rather familiar domestic liberation ideologies often held surprising views regarding Black people residing beyond American shores.. For example, while early Black integrationists sought the full integration of Black Americans into American society, they had a less obliging attitude when it came to non-American Black people. Some Black separatists espoused conveying European civilization to the natives.[198] The mid-19th century forerunners of pan-Africanism who desired repatriation to Africa, Haiti and other locations in the Third World, believed that bringing civilization to these places was necessary and thought that American Negroes could be an integral part of this mission.[199] Some, such as Alexander Cromwell and Edward Blyden, were missionaries themselves, who helped build churches and schools to assimilate indigenous peoples; they played similar roles to their white American counterparts in their relations with Africans, whom they often viewed as "ignorant, benighted, besotted, filthy and in need of Christianity and civilization."[200] Delaney would proclaim "Africa for the African race and Black men to rule them;" he and his contemporaries viewed Africans as "religiously and socially

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[197] BASIL DAVIDSON, THE BLACK MAN'S BURDEN 245 (1992); *See* DAVIDSON, *supra* note 130 at 105.
[198] For instance, Frederick Douglass, a celebrated Black American abolitionist, favored complete racial integration for Blacks within the United States, but as the U.S. foreign minister to Haiti, he opposed U.S. interference in Haitian affairs. PLUMMER, supra note 131, at 11. Conversely, James Theodore Holly was a separatist who supported the repatriation of Black Americans to Haiti, but also thought it advisable to encourage the introduction of Anglo-Saxon culture and encouraged Protestant missions to Haiti. PLUMMER, supra note 131, at 11.
[199] BLACK MAN'S BURDEN, *Supra* note 198 at 245.
[200] LEWIS, *supra* note 164, at 162-165.

primitive and always sexually scandalous" and in need of Anglo-Saxon uplift that could be provided by superior American Negroes.[201]

As the victors of the First World War gathered at Versailles and self-determination became a new force for freedom, Europeans and Americans did not intend to apply such lofty ideas to people of color, who were deemed uncivilized and incapable of self-government.[202] While this ideology was undoubtedly racist, it is significant that Dr. Dubois countered it by "positing a civilizing role for African Americans in Africa."[203] On this front, Dr. Dubois was in harmony with Marcus Garvey and the UNIA, for even as the UNIA sought Black American repatriation and African economic development, the organization also petitioned the League of Nations for a mandate to rule South West Africa (Namibia), believing the UNIA could civilize uncivilized Africans.[204]

Hence, Black Americans have a long history of judging Africans as uncivilized, and viewing themselves as civilized and competent to aid in the civilization project because they were American. A sense of Black American superiority remained consistent in the relationship between Black Americans and Africans. Even in the face of American racism and an awareness of Black American- African unity, Black Americans frequently reflected the values and predispositions of the larger culture in which they existed For example, Black American duality can also be observed in the concept of a talented tenth, a small group of Blacks capable of moving the race forward. It was premised on the idea that a select group of American Negroes could uplift all Black people, perpetuating the perception of a civilized American Negro versus Negroes in Africa and other parts of the African Diaspora who were manifestly African and therefore inferior.

Although Black Americans have yearned for international racial inclusion and unity, they have been unable to escape their profound Americanism and the belief that their American identity, by definition, sets them apart from, and above, all others even the 'Other' that is the rest of the colored world.[205]

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[201] *Id.*

[202] *Saving Failed States, supra* note 3, at 934.

[203] OMI & WINANT, *supra* note 17, at 38-39. Dr. Dubois believed in centralizing the race effort, in recognition of a racial front, and that amelioration of the lot of Africans would improve the conditions of colored peoples throughout the world. (Better attributed to Booker T. Washington).

[204] "Civilized Negroes" Pan-African Petitions To the League of Nations, Mekondjo Kaapanda, (discussing petitions sent to League of Nations Permanent Mandates Commission for control of South West Africa) (paper forthcoming).

[205] Some of the social distance between Black Americans and Africans is grounded in cultural differences that transcend race, for race is not always the primary marker once one

In a similarly cruel vein, Africans have sometimes adopted the views of the larger American culture and consequently perceived Black Americans as inferior.[206] Hence, the relationship has been both glorious and ignoble, complex, difficult, and sometimes painful.

Conclusion

Perhaps the current distance between Black Americans and the Third World should not be surprising. "Third World" has indeed become a pejorative term and given the current general disengagement from the international arena Black Americans have not sufficiently questioned or studied this development. African states are generally powerless within the international community and are portrayed as being in a collective, endless and constant state of crisis, characterized by war, famine, debt, corruption, and abject poverty. Devoid of a historic, economic, social, or political context, this alleged condition appears to be due to African ineptitude. This assumption is compounded by racism and long-held core beliefs about the incompetence and inferiority of Black people in general. While most African countries are quite impoverished and unfortunately mired in enormous debt,[207] the other purported markers are more limited and circumscribed. Not every African state is at war or in crisis. Moreover, when placed in a broader historical context, the current state of affairs surely cannot be attributed solely to incompetence, and certainly, it is not because of race.[208] Still, perhaps Black Americans would prefer to avoid

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leaves America. It may also stem from a practice that has become common among immigrant communities – viewing American Blacks as inferior and as part of the underbelly of American society. Some African immigrants have not been immune from this odious practice, and Black Americans in cities with large African populations have responded in kind. *See* Tanya Katerí Hernández, *Multiracial Matrix: The Role of Race ideology in the Enforcement of Antidiscrimination Laws, A United States-Latin America Comparison*, 87 CORNELL L. REV. 1093, 1152-53 (2002).(explaining Puerto Ricans view all Black Puerto Ricans as foreigners, angering native Black Puerto Ricans against Dominican and Haitian immigrants). As African immigrants tend to have darker skin, they may also be subjected to the practice of colorism. *See* supra note 38.

[206] For one very personal account of the complex relationship between Africans and African Americans, see, GODFREY MWAKIKAGILE, RELATIONS BETWEEN AFRICANS AND AFRICAN AMERICANS: MISCONCEPTIONS, MYTHS AND REALITIES (2d. ed. 2006).

[207] *See generally* http://www.africaaction.org/campaign_new/debt.php.

[208] This author has written extensively on this subject. *See e.g. Deconstructing Development*, *supra* note 3 at 1; *Saving Failed States*, *supra* note 1, at 908-09, 926, 934 (rejecting traditional justifications for mandates and trusteeships that native, colored peoples are inferior and need to be ruled over); *Racing U.S. Foreign Policy*, *supra* note 3, at 7 (noting that economic rights, not race, is at center of discussion). *See also Critical*

being associated with what appears to be a hopeless morass; the association just hits too close to home.

But *African* Americans must remain connected, and not only as saviors, patronizing an 'abject other'. Although profound cultural differences and distances exist between African Americans and Africans generally (with perhaps the exception of South Africa), the forces at the root of our oppressions have been and remain linked, and at its core is the matter of race. Just as the "international community," which is led by the United States of America somehow manages not to take any meaningful steps to end genocide in Darfur,[209] race made it easier to leave the mostly Black victims of Katrina stranded for days on end. Black people just are not perceived as important enough. Race is why so many poor New Orleanians also happened to be Black and why the economic, social and civil distance between poor New Orleanians and their more prosperous neighbors was so expansive and broad. Race is why those who were simply trying to stay alive in the aftermath of Katrina would be characterized as looters if they were Black, and helping their families if they were whiteWhite.

These same assumptions are on display internationally. They are seen in the fates of the people who have been exploited in a horrendous manner, beginning with their initial encounters with Europeans and continuing to the present day. They have been enslaved, colonized, looted, economically exploited, subject to the vagaries of the development industry, and politically and economically subjugated in every sense of the term. Presently, the results of that exploitation are portrayed as somehow being solely due to their ineptitude, with racism making this conclusion seem almost natural.

Such exploitation does not remove all vestiges of agency from Sub Saharan Africans people or those in the Diaspora of New Orleans. It is only to say that the discussion often erases or belittles history, and this exclusion is influenced and shaped by race. When one is assumed incapable and incompetent, no deeper explanation is necessary. These same assumptions accompany American views of domestic poverty and perceptions of African

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Race Theory and International Law: Convergence and Divergence, supra note 86, at 831-33 (2000); *Growing Constitutions, supra* note 3; *Sub-Saharan Africa and the Brave New World of the WTO Multilateral Trade Regime, supra* note 3; *Contemplating the WTO from the Margins, supra* note 3.

[209] For background on the genocide in Darfur, Sudan see Islam, *supra* note 115, at 356-357; Heather Cash, Note, *Security Council Resolution 1593 and Conflicting Principles of International Law: How the Future of the International Criminal Court is at Stake*, 45 BRANDEIS L.J. 573 (2007).

American 'deficits'. Black Americans are disproportionately poor because they are inferior and unable to compete, not because of segregation, racism and a history of profound oppression.

But we cannot fall into this trap. Racial subjugation and racism, rather than racial inferiority are at the heart of the despair on display in New Orleans and in those myriad images of the Third World. In this respect, perhaps Du Bois and others were correct - we will live or die together, whether we like it or not. African Americans must build and re-build their deep-rooted connections with their Third World comrades and understand the joint roots of different, but very much connected oppressions.