The Sorcerer's Apprentice: A Potential Misappropriation of Power in the Implementation of Community Development Block Grants

Phyliss V Craig-Taylor
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“Good! The sorcerer, my old master left me here alone today!
Now his spirits, for a change, my own wishes shall obey!
Having memorized what to say and do, with my powers of will,
I can do some witching, too!”¹

Prof. Phyliss Craig-Taylor†

I. Introduction

Inevitably, in any catastrophic event, a massive loss of equity,

¹ Johann Wolfgang von Goethe, The Sorcerer’s Apprentice, ABOUT.COM: GERMAN LANGUAGE, http://german.about.com/library/blgzauberl.htm (Bridgitte Dubiel trans., 1797). This poem has a number of iterations but one consistent theme threads through each version. The sorcerer leaves his workshop and his apprentice stays behind and attempts to use magical powers to complete his assigned work. His lack of understanding of the power of magic and all of the cascading effects of using the magic created unanticipated problems far worse than the initial task he was assigned by his master.

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wealth and income potential occurs. The pre-existing inequality in wealth resources and insurance protection between racial groups and class groups is exacerbated and becomes hyper-exaggerated in a natural disaster. For the economically advantaged segments of the community, the wealth and income loss in natural disasters, while painful, will be temporary. For significant numbers of the economically disadvantaged segments of the community these losses will render long-term or permanent damage. Examining these situations under the microscopic lens of race and class, an inequitable pattern emerges in the economically disadvantaged communities that suffer long term and permanent impact. In short, the notion of colorblind as well as classless systems and institutions remains an elusive myth in our society.

In a compelling and disturbing manner, the approach to redevelopment in post-Mississippi after Hurricane Katrina demonstrates the extent to which systems of discrimination still endure, despite laws, which are supposed to prohibit direct discrimination. This erosion of wealth emasculates and defeats the promise envisioned in the adoption of anti-discrimination laws in this country. They, instead, highlight a growing need for public policy debates and political discourse over the continued erosion of citizenship and the expanding absence of government protection for those without wealth and a disproportionate number of people of color.²

Local, state and federal government assistance programs and regulatory policies are pivotal factors in determining who will recover from natural disasters. Historically, the governmental responses were clouded by class and racial bias. In post-catastrophic disaster situations, the hyper-exaggeration of racial and class groups combined with governmental aid bias leads to what I characterize as "assetless" or "asset-poor" permanent displacement of populations, neighborhoods and social networks.

This paper explores the specific implications of this theory in the case of post-Katrina recovery for people of color and lower economic class groups within communities in the Mississippi Gulf Coast region. Part One of this paper explores the historic discrimination encountered by people of color that has shaped the current inequalities of wealth and property ownership. In addition, this section highlights the historic pattern of racial discrimination in post-catastrophic events. There is a specific focus on the disparity of wealth and property ownership between African-Americans and European Americans. The second part of the paper applies and analyzes the impact of my theory of "assetless displacement" for people of color in the context of the current post-Katrina recovery efforts.4

"[P]ower always follows property."5

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\text{\textsuperscript{3}} \text{Id.} \\
\text{\textsuperscript{4}} \text{Avis A. Jones-DeWeever \& Heidi Hartmann,} \textit{Abandoned Before the Storms: The Glaring Disaster of Gender and Race Disparities in the Gulf, in} \textit{There Is No Such Thing as a Natural Disaster: Race, Class \& Hurricane Katrina} 85, 85-87 \text{ (Chester Hartman \& Gregory D. Squires eds., 2006).} \\
\text{\textsuperscript{5}} \text{See generally Richard Hofstadter,} \textit{The American Political Tradition and the Men Who Made It} (Alfred A. Knopf 1973) (1948).
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II. Historical Roots for Discrimination in Asset Accumulation

There is a contrived and old continuing powerful intersection between race and class that fundamentally impacts the development of law and policy in the United States. The government plays a key role in shaping the direction, development and implementation of regulatory laws and policies. As the governing body of a civilized society, the people have surrendered and entrusted certain necessary powers to the government. This act of entrustment is founded on the premise that the government will act in the best interest of the entire commonwealth. Therefore, the government becomes the legitimate or recognized authority in society. In this position of responsibility and authority, the government can organize and determine the access different groups of people have to governmental and other societal resources in either a positive or negative manner.

By illustration, the government can proactively generate policies that attack problems of poverty and racism. Conversely, by failing to

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6 Wheary, supra note 2.


8 See e.g., Home Mortgage Disclosure Act of 1975, 12 U.S.C. 2801 (1975),
act or acting in a discriminatory manner the government can erode the progress of certain population groups. The public discourse within governmental circles may not directly reflect discriminatory attitudes that designate certain populations as inferior. Nonetheless, that derogatory sentiment can be effectively conveyed in the spirit of the laws and the ensuing application of those laws. That application process results in the implementation of policies that produce a damaging and disparate impact on certain population groups.

Being mindful of this reality, the response to the Katrina catastrophe and the policies developed and implemented, in its wake, require careful scrutiny and critique. There is a vital need to determine if the immediate response or non-response as well as the subsequent policies and regulations adopted for future application, have produced inequitable treatment based on race and/or class. Looking ahead to the 20th century, the noted scholar and social commentator, Dr. W.E.B. Du Bois opined that America’s struggle would be one of the color-line.9 Recovery programs in the wake of Hurricane Katrina highlight the accuracy of Dr. Dubois statement. While race as a determinate of class disadvantage was a predominant issue in the 20th century, it also continues as a prevailing problematic

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issue in the 21st century.\textsuperscript{10}

To further complicate matters, in our national history, race has been inextricably intertwined with class to become a vexing joint dilemma for American society. Slavery, for example was an economic system based on class. Through the invidious enslavement process, the wealthy land-owners controlled the lives of their slaves and the members of the lower class of that general society. Class and race became inextricably linked as African-Americans comprised the slave population.\textsuperscript{11}

At stake were not only the prospects for conversion, but the types of treatment to be accorded to them. The expropriation of property, the denial of political rights, the introduction of slavery and other forms of coercive labor, as well as outright extermination, all presupposed a worldview which distinguished Europeans - children of God, human beings, etc. - from "others." Such a worldview was needed to explain why some should be "free" and others enslaved, why some had rights to land and property while others did not.\textsuperscript{12}

Examining the historical and contemporary role of property in our society provides additional instructive insight into the dual barriers of race and class. In our society, property ownership has significant historical underpinnings for our republican vision of

\textsuperscript{10} Wheary, \textit{supra} note 2, at 6-9.


\textsuperscript{12} \textit{Id.} at 58. \textit{See also} Johnson \textit{v. McIntosh}, 21 U.S. 543, 574-82 (1823) (discussing the Eurocentric Christian-based view of the European powers towards Native American "occupants" of North and South America).
Correspondingly, providing assistance and creating an equal opportunity to acquire, regain and retain the value of property for citizens should be deemed an essential right. The historical analysis reveals an abandonment of this principle and a pattern of flagrant discrimination against African-Americans in the valuation of property by the real estate industry. Language in real estate industry publications included a discriminatory perspective toward different racial classifications, for example:

It is a matter of common observation that the purchase of property by certain racial types is very likely to diminish the value of other property in the section . . .

The prospective buyer might be . . . a colored man of means who was giving his children a college education and thought they were entitled to live among whites . . .

No matter what the motive or character of the would-be purchaser, if the deal would instigate a form of blight, then certainly the well-meaning broker must work against its consummation.

A realtor should never be instrumental in introducing into a

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13 See Omi, supra note 11, at 58.

14 For example, Lockean theory of private property creation based on one’s labor was not supported by the human slave labor in the 16th through 19th centuries, whereby the “fruits of the labor” (property ownership) flowed not to the laborer but to the slave owner. John Locke, Two Treatises of Government 160 (1689).


16 Id. at 155 (quoting Ernest McKinley Fisher, Principles of Real Estate Practice 116 (1924).

17 Id. at 156 (quoting National Community Relations Advisory Council, Equality of Opportunity in Housing, 15 (1952).
neighborhood . . . members of any race . . . whose presence will clearly be detrimental to property values in the neighborhood. 18

The colored people certainly have a right to life, liberty, and the pursuit of happiness, but they must recognize the economic disturbance which their presence in a white neighborhood causes, and forego their desire to split off from the established district where the rest of their race lives. 19

The rule of property value was framed around the "100% American community". 20 This concept, with its "racist theory of value", drove the property valuation analysis and "became part of the unwritten official policy in government appraisals." 21 As background context, in the 1920's, Homer Hoyt an economist wrote a publication that embraced and endorsed a racist theory that relegated African-Americans to an inferior status. 22 This publication was expansively utilized in the real estate industry. 23 The widespread belief in the inferiority of African-Americans severely limited their opportunities for investment in property of every type, which also stunted their ability to accumulate wealth.

Any standard which purports to be, and is then accepted as an

18 Id. (quoting NATHAN WILLIAM MACCHESNEY, THE PRINCIPLES OF REAL ESTATE LAW 586 (Macmillan 1927)).

19 Id. at 159 (quoting STANLEY L. McMICHAEL & R.F. BINGHAM, CITY GROWTH AND VALUES 181-82 (1923)).

20 ABRAM., supra note 15, at 158.

21 Id.

22 HOMER HOYT, THE STRUCTURE AND GROWTH OF RESIDENTIAL NEIGHBORHOODS IN AMERICAN CITIES 62 (Federal Housing Administration 1939).

23 TREVOR M. KOLLMANN, THE IMPACT OF AFRICAN AMERICAN MIGRATION ON HOUSING IN NEW YORK CITY NEIGHBORHOODS DURING THE GREAT DEPRESSION 2 (University of Arizona Nov. 9, 2010) www.u.arizona.edu/~kollmann/kollmann.pdf.
“objective” and “scientific” designation carries greater weight. Therefore, a false thesis can appear and then later become a decisive factor in decision-making. One such thesis appeared in Hoyt’s writings. He asserted, first, that a negative impact on property values occurred when a “colored family” moved into a neighborhood and second, that upon achieving an American standard of living the impact on property values increased for all ethnic groups except Mexicans and African-Americans. Hoyt even ranked thirteen “races and nationalities” based on his perception on how each group depressed property values. European nationalities were at the top of the hierarchy and Negroes at the bottom:

1. English, Germans, Scotch, Irish, Scandinavians
2. North Italians
3. Bohemians or Czechoslovakians
4. Poles
5. Lithuanians
6. Greeks
7. Russian Jews of the Lower Class
8. South Italians
9. Negroes
10. Mexicans

As reflected in the formation of many communities with single ethnic group representation, the impact of Hoyt’s theories was extensive and pervasive property owners were lead to believe that single ethnic communities protected their property values against the

24 See Homer Hoyt, One Hundred Years of Land Values in Chicago 314 (The University of Chicago Press 1933).
25 Id. at 316.
26 Id.
subsequent depression caused by the incursion of less desirable ethnic groups.²⁷

Thus, not only were African-Americans limited in their opportunities to buy and sell residential real estate, but the value of the real estate they could purchase was sharply constrained by racist theory and practice.²⁸ Furthermore, this racial disparity theory persisted to haunt and impede an equitable approach to disaster relief efforts throughout the twenty and twenty-first centuries. A close examination of the history of disaster relief, in Mississippi, up to and including the post-Katrina response strikingly verifies that the goal of becoming a classless and colorblind society remains an unachieved myth in the 21st century United States.

III. The Mississippi Way

In Mississippi, there exists a distinct historical pattern of racial discrimination towards and disparate impact upon African-American populations in post-catastrophic events.²⁹ During and after the great flood of 1927, African-Americans were subject to horrendous discriminatory treatment.³⁰ Thousands of African-Americans were forced to stay on a thin strip of levee for months following the flood.³¹ To compound this oppressive treatment, these people were forced into unpaid labor, reinforcing the levee to provide protection for European-American owned property.³² Subject to threats of

²⁷ See Kollman, supra note 23, at 3.
²⁸ See id.
²⁹ See John M. Barry, Rising Tide: the Great Mississippi Flood of 1927 and How It Changed America 312 (Simon & Schuster 1997).
³⁰ Id.
³¹ Id.
³² Id. at 314.
violence, they were entrapped in servitude. In the wake of the flood, thousands of African-Americans lost everything they had acquired and received negligible, if any compensation. In essence they were forced back into quasi-slavery status and treated as the property of the large land-owners in the area.

In 1969, the Mississippi Gulf Coast experienced a hurricane of significant force. Hurricane Camille had devastating winds of 200 miles per hour and generated waves of up to thirty feet. In Mississippi it was estimated that approximately 4,000 houses were lost and 12,000 homes suffered major damage. While the government's response, overall, was slow and very limited, the most severe and damaging impact from the hurricane was inflicted upon poor and African-American households. The post-Camille response appears eerily similar to the post-Katrina response that recently occurred. For example, of the 617 disaster loans the Small Business Administration paid out after Hurricane Camille, 97% of the loans went to European-Americans. The average loan made to European-Americans was $8,919 dollars. In bleak contrast, the average loan made to African-Americans was less than half that amount, only $3,797 dollars.

The few African-American homeowners who possessed insurance were forced to accept less than equitable settlements because they lacked the resources necessary to challenge the insurance

33 Id. at 316.
34 See generally BARRY, supra note 29.
36 Id. at 7.
37 Id. at 1, 15.
38 Id. at 26.
39 Id. at 18.
companies' decisions. Discriminatory distribution polices by the American Red Cross and other relevant federal departments, especially by the Department of Housing and Urban Development, restricted the ability of African-Americans to rebuild. The Civil Rights laws that were passed in 1964 to protect the rights of African-Americans were abandoned, while as "European-Americans Only" polices regarding educational aid and economic development opportunities were maintained and dominated governmental aid distribution.

**IV. Theory of Assetless Displacement**

Wealth and stability in our society is determined by a consideration of income and asset accumulation (which includes property ownership). The aforementioned historical discrimination is reflected in the contemporary financial realities of American families. Economic Policy Institute's "Basic Family Budget Calculator" indicates that the 2004 "national median basic needs budget ... for a two-parent, two-child household was $39,984." The 2004 "national median basic needs budget ... was $38,136 in New Orleans, and $33,636 in Biloxi, Mississippi." However, in 2004, the median household income declined again "for the fifth year in a row . . . ."

Today, an appreciably large number of families in the United

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40 *Id.* at 29.
41 Hoyt, *supra* note 24, at 329-34.
42 *Id.*
44 *Id.*
45 *Id.*
States are experiencing a challenge just to stay on the margin,\textsuperscript{46} with families of color representing a disproportionate number of these families.\textsuperscript{47} The occurrence of Katrina and the disparities of treatment throughout the relief effort became yet another means of deepening the inequality and poverty of certain groups of citizens.\textsuperscript{48} The opportunities for expansion of wealth and profit for the wealthy and corporate community are plentiful. Yet by disturbing comparison, a person in the middle or lower class is easily placed at risk of losing their small asset accumulation. This danger can be magnified with the occurrence of a natural disaster.

Class status can be defined by more than just the amount of money a person makes; it is also can be defined by the level of economic security a person has. These inequities, in asset accumulation, are also seen through the disparate treatment among different racial groups. By illustration, one of the most devastated areas in New Orleans was the Ninth Ward which had a largely African-American population.\textsuperscript{49} While suffering the worst blows from Katrina, it has been woefully neglected in the hurricane relief efforts.\textsuperscript{50} In order to dissect the Katrina dilemma though the lens of race and class one must step back and ask some fundamental questions. For example: “Why are so many people of color poor?” The National Urban League report of Wealth and class indicates that the divide between people of color and European-Americans is

\textsuperscript{46} See id.www.oxfamamerica.org/whatwedo/emergencies/hurricane_katrina
\textsuperscript{47} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Id.
Multi-disciplinary contemporary scholars are engaged in an on-going discourse about the distribution of income and wealth for the different racial and ethnic groups in this country. Report after report highlight the same alarming pattern—that the dream of equality pursuant to the enactment of the Civil Rights Act is more of an illusion than a reality.

Instead of measurable progress, the country is plagued by a deepening racial/class divide. By the standard and limited measure of income, racial inequality is readily apparent. In 1984, the typical African-American family makes seventy-seven cents for every dollar earned by the typical white household. Apart from this annual income disparity, the wealth divide is even more substantial.

The most optimistic analysis suggest that the black median net worth ratio is .10, meaning blacks have control of ten cents for every dollar of net worth that whites possess. Other estimates indicate that the ratio is closer to seven cents . . . . Isolating the period and dynamics of the past decade a little more closely, the racial wealth gap grew by $14,316 between 1966 and 2002.

52 Id.
54 MELVIN L. OLIVER & THOMAS M. SHAPIRO, PREFACE TO BLACK WEALTH WHITE WEALTH 2 (Taylor & Francis Group, LLC 2006).
55 Id. at 25.
56 Id.
In 2001, the median household net worth of the typical European-American family was $121,000. In stark contrast, the median household net worth for the typical African-American family was $19,000. In other words, there is a $102,000 dollars net worth or asset deficit that arises from belonging to African-American households in comparison to European-American households.

These disparities are apparent in every category of asset accumulation. Home ownership and annual income are central variables in determining asset accumulation. In a recent report, it was noted that the typical African-American household had 54 cents of income and 12 cents of wealth for every corresponding dollar in the typical European-American household. Hispanics had 62 cents of income and 4 cents of wealth compared to European-Americans.

In his study on homeownership, Professor Lance Freeman of Columbia University explained that while 49.1% of African-American owned homes in 2004, which was the highest rate ever of homeownership for African-Americans, that number was 25% less than the homeownership rates among European-Americans. Furthermore African-American homeowners had significantly less

57 Id.
58 Id.
60 Id.
equity in their homes than European-Americans. This was the result of African-Americans only being able to purchase less expensive houses at considerably higher interest rates compared to European-Americans.

The 2006 National Urban Leagues' report, *The State of Black America*, documented the median net worth of the average African-American family as $6,166.64. This figure is ten times less than the net worth of the average White family, which is $67,000. This discrepancy is attributed primarily to the difference in home ownership and income. Nearly 50% of African-Americans own their homes. In contrast, more than over 70% of Whites own their homes. Equally revealing is the fact that mortgage and home improvement financing denial rates for African-Americans is twice that of denial rates for Whites. In the transportation category, there is another disparity between African-Americans and Whites. According to the National Urban League's press release on the report, "[m]ost importantly, the index value for Reliance Upon Public Transportation was 0.25." The low index number means that nearly four times as many blacks rely more heavily on public transportation.

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62 Id.

63 Id. (noting that African-Americans pay an average of six-tenths of a percentage point higher than their White counterparts which for example, amounts to $28,000 over the course of a 30 year, $200,000 mortgage).


65 Id.

66 Id.

67 Id.

68 Id.

69 The State of Black America 2006, supra note 64.
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systems than whites.\textsuperscript{70}

In a professed "classless" society, the myth asserts that success is determined solely by one's intelligence and determination. This paper contends that, in reality, these differences are based on historical processes of domination and subordination, as well as economic exploitation. Without a historical view, the economic disparities defy comprehension or are subject to manipulation and distortion. Reminiscent of this discriminatory mode of thought, in post-catastrophic disasters such as Hurricane Katrina, the policies and regulations adopted by the government and the courts essentially provide a discriminatory paradigm for the valuation of people. This is accomplished by establishing a framework that allows some to retain their property and wealth while others are excluded. A privilege system is implanted which differentially advantages and disadvantages groups depending on their social location.

Contemporary evidence of an extension of this discriminatory approach is shown in policies that produce "red-lining", which is a type of discriminatory mortgage lending\textsuperscript{71}, as well as real estate block busting\textsuperscript{72} and steering\textsuperscript{73}. These cumulatively serve to impair the ability of people of color and economically disadvantaged groups to accumulate assets, while advantaging European-Americans. While discrimination based on race and ethnicity is unconstitutional, wealth substitutes as an invisible yet effective distinction for disparate

\textsuperscript{70} Id.


\textsuperscript{72} Kentucky Legislature, \textit{Blockbusting}, KENTUCKY LEGISLATIVE RESEARCH COMMISSION, www.lrc.ky.gov/KRS/344-00/380.PDF.

treatment of racial groups and economically disadvantaged persons. The power of this distinction to influence and determine policy is demonstrated in catastrophic recovery support programs. Demographic attributes such as race and economic class are an effective manner of analyzing who will and who will not be made whole by recovery and disaster relief programs. In reality, racial hierarchy and class stratification remain ingrained in the foundation of American culture. Underlying beliefs regarding the inferiority of certain groups, allows a "blame the victim" syndrome to develop. The previously mentioned historical derogatory references to race and class instituted the foundation for establishing and perpetuating discriminatory views of race and class.

Issues of race and class become especially problematic in the context of asset and property accumulation. For example, home ownership as a means to generate wealth and enhance one's social location or economic class is deeply rooted in the history of this country. "The success of the American experiment rested on the property-holding success of many individuals." Property ownership was exalted as essential to full participation of American citizens.

76 "The availability of millions of acres of land in the new nation and the initially small freeholder population gave rise to a series of legislative and legal decisions, which encouraged and promoted the ownership of homesteads . . . ." PHYLISS CRAIG-TAYLOR, To Be Free: Liberty, Citizenship, Property and Race, 14 HARV. BLACKLETTER L.J. 45, 50 (1998). The belief that property ownership was an integral link to liberty of action and freedom fueled advocacy for a wider distribution of property. A belief by the founders of this country that "if America were to become like Europe, with a mass of propertyless workers and peasants, liberty would fall with equality and authority concentrated in the hands of a few [and it] would turn into tyranny." Id. at 49 (quoting John Blum, et. Al., The National Experience Part I
Property ownership has become a primary tool for wealth accumulation for people of color.\(^7\) Inherited wealth, essentially unearned income, as well as other assets contribute substantially to the wealth building capacity of European-Americans.\(^7\) The smaller inter-generational transfers between groups of color and European-Americans create a multiplier effect over time. Thus, as the wealth disparity between groups of color and European-Americans expands, the loss of large amounts of property within groups of color raises considerable reason for concern.\(^7\)

The documented gap between the property ownership of people of color and the European Americans in the population is steadily widening.\(^8\) This becomes exaggerated in times of catastrophes such as Katrina, as those with wealth and insurance find the government\(^8\) and the private insurance companies\(^8\) providing the resources to


\(^8\) The gap has remained significantly large over the years and increased by .5 percentage points between 1990 and 2000. Joe T. Darden, supra note 83.

\(^8\) See Andre L. Smith, The Internal Revenue Code Don't Care about Poor, Black People, in HURRICANE KATRINA: AMERICA'S UNNATURAL DISASTER 81, 81-86 (Jeremy I. Levitt & Matthew C. Whitaker eds. 2009) (discussing how legislation regarding tax relief passed by Congress following the disaster favored those least in need of aid, those that owned property).

\(^8\) See Mitchell F. Crusto, Letters from a Native Son, in HURRICANE KATRINA: AMERICA'S UNNATURAL DISASTER 23, 33 (Jeremy I. Levitt & Matthew C. Whitaker
facilitate their recovery. By comparison, those with less wealth and greater need are not given required resource support. They face the unenviable and distressing plight of struggling for themselves. They absorb the full extent of their loss in wealth and property. Arguably, government recovery efforts should provide an equalizing remedy to address this disparity in impact as these programs are funded by taxpayer dollars. Instead, they are designed in a manner which cruelly reinforces the wealth difference.

What occurs in post-catastrophic disasters such as the aftermath of Katrina can be descriptively termed "asset-less" or "asset-poor" permanent displacement of whole populations, social networks and communities. This phenomenon is in direct contradiction to prior efforts in this country to promote asset/wealth accumulation. Such displacement perpetuates economic class and racial bias. There is a clear disparate impact on people of color in disasters where there are racially diverse populations.\(^8\) The historic evidence of previous disasters tends to support this racialized approach to recovery efforts.\(^4\)

**V. The Mississippi Recovery Plan Post-Katrina**

When analyzing the details of governmental disaster assistance programs, a prevailing pattern emerges. The particular way the government structured the disaster relief programs tilts the benefits in


\(^4\) Rahim, *supra* note 48.
favor of some and disadvantages others with economic assets that were damaged and/or destroyed.\textsuperscript{85} For example, in Mississippi the Governor sought and obtained waivers from the Department of Housing and Urban Development in the multi-billion dollar Community Development Block Grant Package.\textsuperscript{86} That action detrimentally impacted the opportunity for the poor and citizens of color to recover the value of their damaged or destroyed assets.\textsuperscript{87} These waivers included removing the income cap for the program to allow wealthier property owners to participate and dropping altogether the 50\% requirement which earmarked half of the funds for low and moderate income households.\textsuperscript{88} These actions combined to produce disastrous results for property owners who did not sustain initial surge damage as the water slowly made its way further inland.\textsuperscript{89}

Thousands of households including a significant number of African-American households were denied any assistance in the

\textsuperscript{85} See generally, Robert B. Olshanksy, How Do Communities Recover From Disaster?: A Review of Current Knowledge and an Agenda for Future Research, Address at the 46\textsuperscript{th} Annual Conference of Collegiate Schools of Planning (October 27, 2005); Michael K. Lindell and Carla Prater, Assessing Community Impacts of Natural Disasters, 4 Natural Hazards Review 176 (2003); MARY COMERIO, DISASTER HITS HOME: NEW POLICY FOR URBAN HOUSING RECOVERY (Univ. of California Press 1998); Mark Bernstein et al., REBUILDING HOUSING ALONG THE MISSISSIPPI GULF COAST: IDEAS FOR ENSURING AN ADEQUATE SUPPLY OF AFFORDABLE HOUSING (RAND Corp. 2006).

\textsuperscript{86} Mike Stuckey, Feds OK Mississippi's Katrina grant diversion, MSNBC.COM (Jan. 25, 2008) http://www.msnbc.msn.com/id/22805282/ns/us_news-life/.

\textsuperscript{87} Id.


\textsuperscript{89} See Stuckey, supra note 86.
Governor's program for relief. Households were described as "undeserving" because they did not buy or keep active property insurance policies on their property. The designation of undeserving was attributed to this group of households without any analysis of the facts and unique situations faced by this group of homeowners outside the surge area. As many African-Americans did not own beachfront property but lived in communities that were impacted by the effects of the storm, this particular condition added a variable that was troubling.

Thousands of low and moderate income property owners of color, including business and homeowners, are subject to significant pressures and face daunting hurdles to redevelopment and recovery. Many of these homeowners suffered total devastation of all their


91 Jon Hanson & Kathleen Hanson, The Blame Frame: Justifying (Racial) Injustice in America, 41 HARV. C.R.-C.L. L. REV. 413, 465 (2006) (quoting public relations specialists who made remarks that attributed the poverty revealed after Hurricane Katrina to "bad choices" and depicted them as undeserving of the nation's generosity and sympathy).

92 See id.


94 See generally id. (providing a general discussion on the failure of Mississippi's programs to timely and adequately restore homes, rental units and businesses). See also KEVIN F. McCARTHY & MARK HANSON, POST-KATRINA RECOVERY OF THE HOUSING MARKET ALONG THE MISSISSIPPI GULF COAST 47-63 (2008) (analyzing the problems facing recovery and discussing issues concerning construction, financing and affordable housing).
property and possessions in Hurricane Katrina. Many of these homeowners suffered total devastation of all their property and possessions in Hurricane Katrina. It is estimated that approximately 5,000 households in Mississippi still require aid in repairing their residences or securing permanent housing. Of these households, African Americans outnumber whites two to one.

Many lower-income African-American households in coastal Mississippi suffered exclusively wind damage and were disqualified from receiving government funds. Concentrated areas with unrepaired damage lay north of the railroad tracks which served as a levee holding back the surge but not the forceful winds caused by the hurricane. This disproportionate burden of damages with regard to African-American communities was due to "Mississippi's classic southern pattern of residential segregation." Several of these residences were of older construction with more deferred maintenance and increased vulnerability to severe windstorm damage.

95 A poll taken by CNN reported that 53% of black respondents reported losing everything as compared to 19% whites. CNN.com, Poll: Effects of Katrina Differ by Race, Storm Affected Black New Orleans Residents More Than Whites (Feb. 27, 2006) http://www.cnn.com/2006/US/02/27/katrina.poll/index.html.

96 Id.


98 Id.

99 Id.

100 Id.

101 Id.
than most other residences. Some of these persons found themselves in the unenviable position of being under-insured. Others faced the even more distressing fate of having no insurance coverage. Even those who felt they had insurance came to realize that their insurance coverage may not include flood coverage. Without government programs designed specifically to assist this population, they are left to suffer an overwhelming and paralyzing loss in assets and wealth. The composition of this group is significantly African-American.

This lack of governmental assistance in Mississippi highlights an intentional decision to limit the ability of a segment of homeowners to rebuild their homes and retain their accumulated assets. The ultimate discriminatory and debasing impact is to force that population to potentially lose their assets or sell their property for a considerable loss. Moreover, it signals a revision of government policy that in fact cruelly impedes asset accumulation for African-Americans, instead of promoting equal access to property and wealth accumulation for all


103 The majority of homes in the three most southern coastal counties were built before 1980 and will cost more to replace or repair than their insured value. Id. at 68.


105 Id. (noting that over 60% of the East Biloxi, Mississippi households in the flood zone did not have flood insurance).

106 Id. at 16 (noting that the East Biloxi, Mississippi area already had a 24% poverty rate which was 10% higher than the city's poverty rate and a significantly lower average median household income).

107 Id. (referencing the U.S. Census of 2000 as reporting that 32% of the East Biloxi, Mississippi area was African-American).
citizens. This generates the discriminatory impact of systematically protecting the wealth of a privileged segment of society, at the expense of African-American and other economically disadvantaged groups.\textsuperscript{108} All groups are expected to contribute to the wealth of the country through the payment of taxes in proportion to their income.\textsuperscript{109} Paradoxically, in the instance of natural disasters, those with less wealth receive comparatively reduced consideration for assistance while those with more wealth receive more consideration for assistance from government-tax funded redevelopment programs.\textsuperscript{110} Therefore, the practical effect is the absence of an equalizing remedy for those with less wealth.

\textbf{VI. FEMA Redevelopment Guidelines}

This inequitable paradox is further demonstrated by the manner in which FEMA adopts redevelopment guidelines. An essential element in post-Katrina disaster reconstruction was the establishment of new mitigation frameworks to provide incentives for private insurance companies.\textsuperscript{111} In the case of flooding, the Federal Flood

\textsuperscript{108} See The Mississippi Center for Justice, \textit{Hurricane Katrina: Has Mississippi Fallen Further Behind? Trends and Challenges in Mississippi's Disaster Recovery} 5, 11 (Aug. 29, 2009) http://www.mscenterforjustice.org/glomer/upload_repo/docs/k+4%20report-Sept-rev.pdf (discussing how Mississippi’s focus was on restoring wealthier homeowners while placing a much lower priority on the state’s most vulnerable populations).

\textsuperscript{109} 26 C.F.R. § 1.1-1 (2008).

\textsuperscript{110} See Stuckey, supra note 86(discussing the approval of $600 million in grant money to be used for Port redevelopment and no additional funds for homeowners).

Insurance Program issues new insurance policies and reinsures existing policyholders.\(^\text{112}\) In the coastal areas of Mississippi, this involves the re-designation and regulation of flood plains.\(^\text{113}\)

The new proposed FEMA regulations include flood elevation guidelines for rebuilding.\(^\text{114}\) Many argue the guidelines impose an undue burden on some to rebuild. The elderly and the disabled are deeply impacted by the new elevation requirements to rebuild at 18 feet or higher. The cost is prohibitive for building-up at the higher elevation. For the disabled and the elderly to reasonably enjoy the benefit of their property, installation of an elevator is required. Rebuilding at the higher elevation and the additional cost of installing an elevator potentially places such a substantial burden on many of the homeowners in this group who must then relocate to other areas of the country.\(^\text{115}\) Without government funding to rebuild to new elevation standards, safety is juxtaposed to cost which forces migration. This forced relocation and its inequitable impact should not be an acceptable part of a plan funded by taxpayer dollars. Although there were some minimum mitigation funds available, the qualifications to receive the funds were also restrictive and the pool of funds was very low.\(^\text{116}\) The cost and resources to challenge the

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\(^\text{112}\) The “NFIP”, the National Flood Insurance Program, has been underwriting flood risk since 1968 because most residential policies exclude coverage for flooding. Id. at 1, 4.


\(^\text{115}\) Id.

\(^\text{116}\) See U.S. GEN. ACCOUNTING OFFICE, DISASTER ASSISTANCE: FEDERAL
FEMA elevations requirements is significant. FEMA has an appeals process in place but the process requires substantial resources to pursue a challenge. The rebuilding costs escalate if the homeowner chooses to comply with the FEMA guidelines. This cost escalation is far more expensive than many of the affected people can afford. Their only option is to opt out of the FEMA flood insurance process and look to the open market for private insurance.

The decision-making process for revising flood regulations does not grant non-property owners standing or voice in the deliberations. Consequently, the fate and welfare of thousands of

ASSISTANCE FOR PERMANENT HOUSING PRIMARILY BENEFITTED HOMEOWNERS; OPPORTUNITIES EXIST TO BETTER TARGET RENTAL HOUSING NEEDS 12, 31-38, 52-53 (2010) available at http://www.msceniferjustice.org/glamor/upload_repo/docs/GAO%20Report.pdf (explaining that state agencies had the authority to determine the distribution of funds and discussing the obstacles property owners faced in receiving funds, for example, the requirement of flood only or wind only damage, the requirement to show clear title of land possession, the complexity of and significant delay in processing applications, and the limitation of funds). See also KEVIN F. MCCARTHY & MARK HANSON, supra note 99, at 54-55 (discussing the restrictions on receiving grant money to rebuild).


118 Fed. Reserve Bank of Atlanta, supra note 114 ("FEMA's new recommendation for Biloxi, for example, increased the base elevation for construction from 13 feet to 18 feet above the ground, and some elevation extend as high as 27 feet, depending on the location of the property. Estimates for elevating an 800 square-foot-home by 12 feet range from $20,000-$50,000, dramatically increasing the cost of rebuilding and severely limiting the number of people who can afford it").


120 See generally Sheila Crowley, Where is Home? Housing for Low-Income People After the 2005 Hurricanes, in THERE IS NO SUCH THING AS A NATURAL DISASTER: RACE, CLASS & HURRICANE KATRINA 121, 139-42 (Chester Hartman & Gregory D. Squires eds., 2006) (noting that decisions about rebuilding exist at every government level).
non-property owning households are subject to decisions made by rental property owners and government officials. Those decisions are the controlling variables in determining the ability of the voiceless non-property owning households to return to their home communities. Given the number of public housing units destroyed in addition to those that were waiting for housing prior to Hurricane Katrina, it is reported that Mississippi programs will leave housing needs unmet by approximately 28,000 units.\textsuperscript{121} Roughly between 6,300 and 7,500 households that occupied small rental sites and suffered major to severe damage will expect their landlord not to repair or rebuild where their homes once occupied.\textsuperscript{122} The cost to cover this need was reported to be approximately $250 million.\textsuperscript{123}

Low to moderate income property owners and prior renters from the coastal areas are essentially having their property rights and liberties expropriated against their will without any viable due process opportunity to be heard. Their choices of whether to rebuild or to return to their communities are eliminated or severely constrained by the controlling government policy.\textsuperscript{124} Property owners, who cannot

\textit{See also} Lolita Buckner Innis, \textit{A Domestic Right of Return?: Race, Rights and Residency in New Orleans in the Aftermath of Hurricane Katrina}, 27 B.C. THIRD WORLD L.J. 325, 334-335 (2007) (noting that while U.S. Law protects the freedom of movement, the laws provide no right of return to persons displaced from their previous habitation).


\textsuperscript{122} \textit{Id.} at 5.

\textsuperscript{123} \textit{Id.}

\textsuperscript{124} \textit{See MDA Clarifies Grant Application Procedure For Homeowners Who Sold Their Homes, HANCOCK COUNTY RELIEF} (Oct. 25, 2006) http://hancockcountyrelief.blogspot.com/2006/10/ms-development-authority-office.html (To qualify for Mississippi Development Authority's (MDA) Homeowner
receive any government relief assistance outside of loans offered to small business owners through the Small Business Administration, find themselves paying a mortgage on an unlivable home site. Some few find other resources including aid from charitable organizations to rebuild while living in “toxic” FEMA trailers. Simultaneously, others attempt to sell their property at a loss and others accept the unfortunate reality of foreclosure.

In addition, the issues associated with ownership inside of heir property also have a profound impact. In other words, problematic heir property matters arise that dramatically influence and obstruct the ability of potentially qualified homeowners to negotiate a grant for assistance. In particular, homeowners must “attach a covenant to their damage property.” The covenant requires homeowners to “[o]btain and maintain flood insurance on their property . . . rebuild or repair their homes in accordance with all applicable building codes and local ordinances, and [i]f rebuilding, do so in accordance with FEMA advisory flood elevations”).

125 The Small Business Administration offers loans to homeowners who have suffered a property loss following a declared disaster. U.S. Small Business Administration, Disaster Assistance http://www.sba.gov/services/disasterassistance/ (last visited Dec. 17, 2010). See also KEVIN F. McCARTHY & MARK HANSON, supra note 105, at 55-56 (describing the loans available through the SBA and their limitations).


127 Mississippi’s delinquency rate is one of the highest in the country at 12.04% compared to 4.82% of all loans nationally. Mississippi Economic Policy Center, National Crisis Hits Home: Addressing Mississippi’s Mortgage Foreclosures 2 (2008) http://www.mscenterforjustice.org/glomer/upload_repo/docs/MEPC_Foreclosure.pdf.
assistance. Because the heir property ownership is fractured into many divisions based on intestate succession, there is not a single owner or even a group of clearly designated owners. Without a deed or other instrument clearly identifying the owner or owners, the family members in possession of the property are without the proof needed to establish their entitlement to the available grant funds. The appeals process for many property owners would prove particularly onerous and cost prohibitive.

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129 Id. at 740-41.

130 Seth Fiegerman, Five Years After Katrina, Still Homeless, NEWSWEEK, Aug. 23, 2010, http://www.newsweek.com/2010/08/23/5-years-after-katrina-still-homeless.html (describing one family’s story of not being able to obtain funds because they could not prove they owned the land their mobile home rested on as it was informally passed through family members).

131 See 42 U.S.C § 4104(b)-(g) (2010). See, e.g. City of Biloxi v. Guiffrida, 608 F. Supp. 927, 931 (S.D. Miss. 1985); Reardon v. Krimm, 541 F. Supp. 187, 189 (D. Kan. 1982); City of Trenton v. Fed. Emergency Mgmt., 545 F. Supp. 13, 17 (E.D. Mich. 1981). (Timeline for the FEMA Appeals Process is triggered when the FEMA Director must provide notice to the local government of Proposed Based Flood Elevations (BFE). FEMA must publish the flood elevations determinations in a prominent local newspaper at least twice during the ten-day period following the identification to the local government. Appellants must file administrative appeals within ninety days after FEMA’s second publication in a local newspaper. FEMA will issue a final determination within a reasonable amount of time. Appellants aggrieved by the final decision may appeal to U.S. District Court within sixty days of the final determination. Appellants must have completed the administrative appeal process to be able to appeal to the district court. Evidence required includes ability to show incorrect methodology was used by FEMA, or an expert to develop and provide documentation of superiority of alternative methodology and study using the alternative methods).
VII. The Role of Private Insurance

The private market based disaster insurance system creates significant problems for homeowners to overcome in their efforts to rebuild on the Mississippi Gulf Coast. A number of major insurers were accused of intentionally low-balling damage estimates as they established contested casualty findings on properties. Such practices lead to very depressed proposed pay-outs to homeowners. Even with rising profit levels, many insurance companies denied claims and engaged in trickery to avoid paying claims to policyholders. "After doing everything that they could to deny claims, the insurance industry's next step was to cancel or threaten to cancel homeowner policies." The threats and pull-outs occurred even though the property casualty insurance industry experienced increased profits during 2006 of 44%. In dollars, this amounted to a surplus of 60 billion dollars ultimately reaching 487 billion dollars. Decisions by a number of insurers to stop writing policies for homes on the Gulf Coast added significant pressure on the Mississippi State Fund as the insurer of last resort. This pressure leads to an increase...

133 Id.
135 Id.
136 Id. at 7.
137 Id at 7.
138 Id.
in premiums by the State Insurance Fund.\(^{139}\) "The Mississippi Windstorm Underwriting Association, the state's wind [damage insurance] pool, increased its rates 90 percent for single-family homes and 286 percent for commercial property."\(^{140}\)

In addition, the increased cost of insurance presents those on fixed income with an array of other difficult and dispiriting choices. By illustration, some of the elderly living on the Gulf Coast reported facing the untenable choice of accepting a lower payout from an insurance claim and just not returning to the area due to the high cost associated with rebuilding and insurance.\(^{141}\) Some elderly homeowners may have retired the mortgage debt on their homes. Nonetheless, they could sadly face losing their homes and their equity if a disaster or catastrophic event occurs. When this is combined with the historic discrimination that is experienced by the poor and African–American homeowners, these groups are left under-insured or without insurance at all.\(^{142}\)

\(^{139}\) "Homeowners in Mississippi's coastal counties who can't find a private insurer can turn to the state's wind-insurance pool, where rates are as much as 90 percent higher than commercial insurance." Payback: State Farm Writes Off Mississippi, (Feb. 15, 2007), http://www.consumeraffairs.com/news04/2007/02/state_farm_ms.html.


VIII. Cumulative Impacts

With a declining number of insurers and escalating policy costs post-Katrina, the option to secure private insurance in the market is now out of the financially-viable reach for many. This dramatically impacts the nature of the rebuilding process and essentially defines who can rebuild. Without other feasible options in place, the Mississippi State Recovery Plan combined with federal regulations limits the opportunity to rebuild and redevelop to those with the greatest financial resources. It is foreseeable that this in all likelihood will dramatically alter the face of the coast in the future. In short, diverse communities comprised of all income levels, the elderly and disabled individual homeowners may become historic relics along the Mississippi coast. The face of the coast will feature luxury condominiums replacing individual home-owners. Concurrently, hotels will predictably emerge in places where private ownership has previously sustained itself for generations.

This approach embodies significant practical and legal barriers for resource poor property owners in the impacted areas. The inadequate allocation of recovery funds dedicated to rebuild rental units; the cost of the appeals process to challenge Base Flood Elevations and the rising cost of acquiring private insurance effectively provide insurmountable hurdles for low income and many African-American property owners. More specifically, the failure to provide any money for assistance to low income renters who need relief and the failure to provide funds to homeowners with only wind damage discriminates against the low income, elderly and disabled.

143 Chriszt, supra note 140.
144 See Chu, supra note 119.
145 Fed. Reserve Bank of Atlanta, supra note 114.
These exclusions define who is entitled to return and rebuild in the area.

The burden placed on low-income people to challenge the Governor’s Recovery Plan and the proposed new FEMA regulations is so onerous that it is in fact illusory. The plan provides the illusion of assistance while the true opportunity to recover remains out of reach for many who need the most assistance. Without the ability to bring forth the necessary resources to defend themselves, they are left with a nightmare instead of seeing their dreams for having their lives made whole realized. Lacking special accommodation or the formation of an office staffed with highly qualified and determined advocates to represent these citizens throughout the process, their due process rights are deeply undermined if not completely emasculated. The already under-funded and resource starved local advocacy and legal service programs are continually stressed beyond capacity. These resource-starved organizations would likely not be able to absorb the growing need for services that this crisis created. In order to protect the due process rights of the low income, disabled and poor, new advocacy offices and resources are needed. Without this, the redevelop opportunities are only available based on wealth qualifications.

In light of the historical importance of property ownership, any mechanism that disproportionately impedes the access of a group of citizens necessitates an institutionalized countervailing force to insure an adequate stabilizing opportunity to redress violated rights and interest. Instead of receiving this type of protection, landowners in these regulated areas face almost insurmountable odds, if they attempt to challenge the constitutionality of floodplain regulations. Courts at all levels broadly and repeatedly uphold the general validity of
floodplain regulations. This is the controlling judicial pattern despite a United States Supreme Court case, which held that other types of regulations imposed on real property might be unconstitutional in certain circumstances. It is clearly established that landowners may attack the constitutionality of regulations as applied to his or her property, even where regulations are valid in general. However, even in the case where one landowner is successful in challenging a regulation, a decision that regulations are unconstitutional as applied to that specific property will not determine unconstitutionality as applied to any other properties. This essentially limits the controlling precedential value of the ruling in other cases.

When critically examining whether floodplains regulations are in fact a taking of private property, courts may seek to adjudge a

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146 See City of Wenatchee v. U.S., 526 F. Supp 439, 443 (E.D. Wash. 1981). The plaintiffs argued that their Fifth Amendment due process rights were violated. The court stated “the agency sanctions did not foreclose other non-federal sources of funds for insurance”. Id. at 441. In Town of Falmouth v. Hunter, plaintiff alleged that flood elevations were unsupported by scientific data and were an arbitrary determination. 427 F. Supp 26, 28 (D. Mass. 1976). The court found no violation of due process and that plaintiff failed to prove that private insurance was unavailable. Id. at 30-31; see also Texas landowners Rights Association v. Harris, 453 F. Supp. 1025 (D.C. Cir. 1978). Plaintiffs asserted their fifth and fourteenth amendment rights were violated. Id. at 1031. Court concluded any deprivation of property that did occur would be insubstantial when compared to the procedures “protecting that interest.” Id. at 1032.

147 For example, the Supreme Court held that South Carolina beach protection regulations which denied all economic use of lands (i.e. a coastal setback line) could be invalid as applied to this specific property. See Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1031 (1992).


149 Id. at 1072 n.7.

150 See generally id.
complete loss of all "reasonable" economic use of the property.\textsuperscript{151} This is likely to transpire in cases where the landowner purchased the land prior to adoption of the regulation in question.\textsuperscript{152} Without the provision of resources to redevelop, or the possibility to transfer development rights to other comparable property outside the regulated floodplain, I argue a quasi-taking or the moral equivalent of a taking occurs and property loss is unavoidable. The lack of resources to satisfy building restrictions sets in motion an intractable potential for loss. Loss of land due to foreclosure, bankruptcy or the inability to redevelop the property due to a lack of resources should arguably meet this standard. However, in cases where people are forced to sell their land at a loss to recoup any potential value, the forced sale, which occurs at a loss, destroys their opportunity to argue a successful case under the current takings test. Thus the sale at a loss becomes the evidence that all "reasonable" economic use of the property is not loss due to the regulation. This presents an unfair conundrum.

\textbf{IX. Proposals for Reform}

The cumulative impact of all of these factors coupled with the high cost of rebuilding to new code requirements culminates in the adding of the private insurance industry to the list of contributing causes of wealth loss by the elderly and African-American

\textsuperscript{151} Compensation is categorically required where a "regulation denies all economically beneficial or productive use of the land." \textit{Id.} at 1015 (citing Agins v. Tiburon, 447 U.S. 255, 260 (1980)).

\textsuperscript{152} \textit{See generally id.} (Lucas purchased two residential lots on the South Carolina coast with the intent to build homes, two years later the state legislature passed a law that barred Lucas from building any permanent structures on the lots). \textit{See also} Palazzolo v. Rhode Island, 533 U.S. 606 (2001).
homeowners on the Mississippi Coast. The current system of market based disaster insurance is disproportionately and adversely slanted against and disfavors the limited-asset and limited income property owners. These historic problems in the insurance industry have lead to repeated calls for Congress to legislatively mandate a new national disaster insurance program to replace the hodge-podge public and private insurance system currently in place. Legislative proposals include a variety of universal publicly funded national disaster insurance programs. In light of the frequency of natural disasters, the projected potential for future disasters and the continuous failures of the current insurance systems, I propose the adoption of a form of affordable natural disaster insurance. This insurance should offer homeowners guaranteed protection of their assets with a swift and equitable claims settlement process. The insurance industry is regulated by the government. There has been

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153 Among households headed by persons age 65 or older who were likely displaced by the storm, 70% are estimated to have owned their own home — an ownership rate higher than any other age group. Among aged homeowners likely displaced by the storm, over 70% had lived in their homes for over 20 years, and 47% over 30 years, in the year 2000. Among likely displaced aged renters, an estimated 55% had lived in their rental units for over 20 years, and 36% over 30 years, based on 2000 Census data.


155 Id.

156 Id. at 7.
a prevailing pattern of a governmental failure to act in the face of mounting evidence indicating that the insurance industry historically places profit over the well-being of property owners.\textsuperscript{157} This reality combined with an understanding of who loses the most in this equation, indicates a disconcerting and offensive complicity on the part of the government in this discriminatory process. This results in the same consequences as an unlawful and discriminatory taking of the property and assets of the impacted groups without payment of just compensation.

\textbf{X. Conclusion}

Liberty and property in this country are inseparable and ingrained as fundamentally sacred rights. Property rights afford the bases for security and contribute to prosperity and wealth. Property is much more than just the land and buildings. Virtually everything in our lives is deemed a form of property. Property has become a predominate medium through which we define ourselves.

The history of disaster relief in Mississippi evidences a repeating pattern of discrimination against African-Americans and other low income residents along the Gulf coast. From the disaster of 1927 and continuing through the recovery efforts post-Katrina, this segment of the population has suffered discriminatory infringements that caused land loss and resulting wealth loss.\textsuperscript{158} The Recovery Plan adopted in

\begin{itemize}
\item \textsuperscript{157} See generally, \textit{Id.}
\item \textsuperscript{158} See Michael P. Powers, \textit{A Matter of Choice, in There is No Such Thing as a Natural Disaster: Race, Class & Hurricane Katrina} 13, 18-21 (Chester Hartman & Gregory D. Squires eds., 2006) (discussing the discrimination that occurred following the flood and recovery effort that kept African-Americans in a perpetual cycle of debt and dependence). See The Mississippi Center for Justice, \textit{supra} note 118, at 11 (discussing how Mississippi placed a low priority on the state’s most vulnerable populations that suffered a loss).
\end{itemize}
Mississippi post-Katrina adds to this historical pattern.

By using color-blind language that appears neutral on its face, the Governor's Recovery Relief Program in Mississippi limited the access and equal provision of resources to those he deemed "undeserving". This language when decoded produced compounded devastating consequences for those who survived Hurricane Katrina. Their immediate misery was cruelly exacerbated by unresponsive, insensitive and ill-conceived exclusionary actions by government officials. This is also graphically illustrated by the onerous burden and rising cost of meeting the requirements under the proposed FEMA Based Flood Elevation. Due to the demographics of the impacted areas, the disturbing impact is that many homeowners and residents who are struggling to obtain assets and accumulate a modest level of wealth find themselves excluded from any real benefit under the current recovery plans. Although they escaped physical death during Katrina, they will suffer a devastating economic death, a symbolic death for their dream of economic independence and strength that is derived from the ownership of productive property, homes and financial stability. Government policy or inaction should not reduce people to a state of poverty or move them further into poverty. Instead, a republican form of government composed of representatives of the people should serve to protect the basic property rights of the populous or at a minimum avoid doing

159 See supra text accompanying note 95.
160 Id.
161 See generally THERE IS NO SUCH THING AS A NATURAL DISASTER: RACE, CLASS & HURRICANE KATRINA 129-55 (Chester Hartman & Gregory D. Squires eds., 2006) (providing an overview and outlining the faultiness of each program initiated as part of the government's response to the housing disaster).
162 See Fed. Reserve Bank of Atlanta, supra note 114.
163 Id.
discriminatory harm on a race and class basis.\textsuperscript{164} This fundamental expectation is the right of all citizens\textsuperscript{165} - a right due protection by the courts and the rest of the legal system. The protection of basic property rights should not disappear in the event of a disaster. The failure of government to act consistent with this basic protection represents an incongruity in the system. Before a disaster, citizens should receive protection through the administration of a national disaster insurance program. Post-disaster the equitable protection should evidence itself in the fair administration of all disaster recovery plans. Without this, the challenge of recovery in disaster is the sole burden of the individual.

More specifically, this challenge may prove too overwhelming for many as they struggle with how to rebuild and reestablish stable homes for themselves and their families. Without affordable housing, workers that are needed cannot return. In the recovery process, renters face the overbearing and oppressive reality of having no property rights. As are the homeowners who did not receive recovery funds, this population is at the mercy of the Mississippi government to allocate the recovery funds in an equitable manner to include all residents who have lost homes, their personal assets or their place to live even if renting. When the Mississippi government provides no resources for renters to recover and fails to rebuild or provide adequate resources for rebuilding rental units, the state indirectly deems this population as unwelcome to return. This is a shocking omission, since many of the renters were employed before Katrina and contributed to the tax base which is now funding the recovery

\textsuperscript{164} U.S. Const. art IV, § 4.

\textsuperscript{165} "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside... nor shall any State deprive any person of life, liberty, or property, without due process of law...." U.S. Const. amend. XIV, § 1.
I acknowledge that the plaintiffs, who did manage to bring lawsuits challenging FEMA elevation requirements as violations of the fourteenth and fifth amendments, did not receive favorable rulings in the courts. Nonetheless, I assert, that if the usage or even partial reasonable usage is impeded by government action or inaction, this is tantamount to a taking of property without payment of just compensation as it eliminates all reasonable value from the property. In the alternative, any value that may be realized from the property is derived from a forced sale. This forced transfer of property from the low income, elderly and disabled property owners to those with wealth only serves to widen an already expanding gap between the rich and the poor in our country.

The lack of adequate access to redevelopment and recovery funds combined with the proposed revisions to FEMA Flood Plain Maps present exceptionally formidable, if not insurmountable, obstacles for many poor people of color to overcome in an attempt to rebuild their property and asset base. Essentially, these actions amount to a seizure of their property by forcing them to sell to those who have the resources to rebuild and can afford to purchase the property at a reduced value.

The end result is an inequitable and discriminatory impact on people of color as well as other low-income communities and reallocation of wealth potential from low income property owners to those with more wealth and access to resources. A failure to manage the potential for instability that results from the deepening structural imbalances in growth and wealth distribution is short-sighted and dangerous to our entire society.

166 See cases cited supra notes 146 and 147.
In a compelling and disturbing manner, the approach to redevelopment in post-Katrina Mississippi demonstrates the extent to which systems of discrimination still endure, despite laws which prohibit direct discrimination. There is still an imperative prevailing need to develop a holistic strategy for dismantling or deconstructing the myth of equitable government protection in natural disaster without regard to race or class. The media attention to the inequities following the hurricane was disappointingly brief and fleeting. As a nation, we should undertake a careful analysis to exact instructive lessons learned from the racial and class inequities arising from Katrina. From this tragedy, we have the opportunity to enact new laws and regulations for disaster relief.

By doing so our nation could infuse equity and fairness as operative values in disaster assistance programs designed to help restore and maintain property ownership. This action would demonstratively inject concrete and visible meaning to “life, liberty and pursuit of happiness” for all citizens unencumbered by limitations of race and economic class. Shall we choose to exhibit leadership or continue to suffer as a nation from the dual burdens of race and class? Our collective actions will provide the answer.