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Martin Luther King, Jr. Lecture

FROM AN ACT OF GOD TO THE FAILURE OF MAN: HURRICANE KATRINA AND THE ECONOMIC RECOVERY OF NEW ORLEANS

WENDY B. SCOTT*

LIKE Dr. Martin Luther King, Jr., and some of you here today, I am a devout Christian, which means that I believe in the Gospel of Jesus Christ and redemption through faith. I begin the lecture with this declaration because, more than anything else, this has been a spiritual journey for me and my husband and for many of the New Orleanians now scattered abroad. Today I can truly say that, despite what it looks like, I am blessed. I am surer than ever that I am God's child. Many of the things I have heard and thanked God for over the years in my prayers have come to have new meaning in the wake of Hurricane Katrina—blessed with a reasonable portion of health and strength, shelter in the time of a storm, gratitude for food on my table, clothes on my back.

Many of you are familiar with the biblical story of the three young men who were thrown into a furnace because they would not bow down to the god of Babylon.¹ The Babylonian King was amazed when he looked into the fiery furnace and saw God in the furnace with the three young men. My husband wrote a sermon that he calls his "Katrina Sermon," based on that story entitled "Necessary Furnaces." He analogized the furnace in the biblical story to the trials and tribulations that we all encounter in life.

The sermon also concluded that furnaces give God a stage from which to resolve the trials brought on by the furnace. Clearly Hurricane Katrina was an act of God in nature and by law. But not only did Hurricane Katrina give God a stage, it revealed the multiple failures of man—failure to build adequate levee protection for a city, and a region, that is anywhere from 6-12 feet below sea level in a sinking swamp; failure to provide a way of escape during the evacuation for the most vulnerable of our citizens, the poor, the elderly, the children and the differently-abled; and failure to respect the dignity and safety of those in distress. For example, one town mayor—who is now being sued for civil rights violations—

* Professor of Law, Tulane Law School. I thank my friend and colleague, Professor Ruth Gordon (Villanova), for extending the invitation to deliver the Martin Luther King, Jr. Lecture in my home town of Philadelphia. I also extend thanks to my parents, Wendell and Eliza Brown, my sister, Stephanie B. Wilson and my cousin N. Watson Brown and his wife Sonya for attending the lecture. I commend and thank Joseph Skocilich, and other editors of the Law Review, for their diligence and patience.

1. See *Daniel* 3:1-30 (King James).

ordered the police to bar people trying to escape New Orleans across the Mississippi River Bridge, which separates the east and west bank side of New Orleans, from entering the City of Gretna.² As a result, hundreds of people, mostly women and children, were left on the bridge for nearly a day. A personal friend and fellow church member found herself, and her three children, among that group left stranded on the bridge.

What are the spiritual lessons learned from being thrown into the furnace? First and foremost, I am learning to trust God more and more, whatever my circumstances. Before I turn to more substantive matters, indulge me as I share a few entries from my Katrina Diary that flow from the depth of a spirit in the furnace.

August: First Entry in Houston (Wednesday or Thursday):

Hurricane Katrina's devastation revealed that Black people in the South have not recovered from the positional degradation of slavery. Images reminiscent of the Third World, refugees in the most impoverished countries. Families transported on slave planes, separated from families to destinations unknown. New Orleans is not the French Quarters, Mardi Gras and Jazz Fest . . .

September 16, 2005:

We evacuated NOLA on Sunday morning, August 28, 2005 around 4:30 or 5:00 a.m. Today is Friday, September 16, 2005. This has been the longest 19 days of my life. More has happened to me, my family, my fellow New Orleanians than will ever be told or remembered. But God has been visible to those who believe. Testing our metal and proving His worthiness of praise. The first scripture that came to my mind was *Philippians 4:10-14*.³ The first

2. The eye witness account of this event reports that Gretna police fired their weapons overhead as the evacuees from New Orleans crossed over the Crescent City Connection to the West Bank of the city. When questioned by those bold enough to approach the police line, the officers responded that they did not want the West Bank to become like New Orleans or the Superdome. "These were code words . . . for if you are poor and black, you are not crossing the Mississippi River and you are not getting out of New Orleans." Shaun Waterman, *Cops Trapped Survivors in New Orleans*, WASH. TIMES, Sept. 9, 2005, available at www.Washtimes.com/upi/20050908-112433-4907r.htm.

3. I am very happy in the Lord that you have shown your care for me again. You continue to care about me, but there was no way for you to show it. I am not telling you this because I need anything. I have learned to be satisfied with the things I have and with everything that happens. I know how to live when I am poor, and I know how to live when I have plenty. I have learned the secret of being happy at any time in everything that happens, when I have enough to eat and when I go hungry, when I have more than I need and when I do not have enough. I can do all things through Christ, because he gives me strength. But it was good that you helped me when I needed it.

Philippians 4:10-14 (New Century Version).

Word God showed me was in *Jeremiah* 29:14.⁴

September 21, 2005:

My breakdown came today, Wednesday, September 21st. Homeless. Lost track of time. No community that is familiar. Culture shock. Green Acres.⁵ No idea where I will be next. Now what? . . . My breakthrough came today, Wednesday, September 21st. This is my home now. God blessed me with an exceedingly abundantly above situation. Help me to relax, refresh, regroup in this time of respite.

September 25, 2005:

Imagine leaving your home early one morning, not knowing that you would never return to your home or your life the way it was. This was our experience and the experience of the hundreds of thousands of citizens—and second class citizens—who left New Orleans in the wake of Hurricane Katrina.

Because of Hurricanes Katrina and Rita, but more so because of the catalogue of failures that have accompanied them, this has been an emotional roller coaster for all of us in the Gulf Region—gratitude for having escaped, guilt for not having called to offer a friend a ride out of town, guilt for being safe and dry while friends were enduring life in the Superdome with their children, anger for the way those left behind were treated, depression, elation, fear, hopelessness and disappointment. But, in the midst of all these failures and emotions, the national outpouring of love and support from family and friends, like many of you in this audience, has brought light and hope to the darkest of times. And so I thank you on behalf of the many people, who, like my family, have been the beneficiaries of your kindness.

Now I will take a closer look at New Orleans, or as the indigenous call her “NOLA,” and apply my thoughts on the importance of protecting wealth and the right to accumulate wealth in a predominantly African American city. The rest of my remarks will focus on one aspect of the recovery—the need to protect and promote wealth accumulation in a predominantly African American city and to develop a more economically diverse population in the Gulf Coast region.

4. “I will let you find me,” says the LORD. “And I will bring you back from your captivity. I forced you to leave this place, but I will gather you from all the nations, from the places I have sent you as captives,” says the LORD. And I will bring you back to this place.

Jeremiah 29:14 (New Century Version).

5. We initially evacuated to Houston and eventually ended up in Carrollton, Georgia, a small town I have never heard of. The town warmly received over two hundred New Orleans evacuees, housing many families in a dormitory on the campus of University of West Georgia while they awaited permanent housing.

Building wealth is the American way. Wealth can be defined as “the total extent . . . of an individual’s accumulated assets and access to resources,” “the net value of assets (e.g., ownership of stocks, money in the bank, real estate, business ownership, etc.) less debt held at one time,” or “anything of economic value bought, sold, stocked for future disposition, or invested to bring an economic return.”⁶ When we use wealth as an indicator of race-based material disparity, it captures the historical legacy of no wages and low wages, the legal and structural prohibitions on owning and inheriting property and personal and organizational racism. While income among African Americans has increased over time, an increase in income alone is inadequate to grow wealth.⁷

Race jurisprudence has focused primarily on rectifying the unconstitutional denial of first generation civil and political rights, such as voting and access to both public education and public accommodations. I submit, however, that the importance of vindicating these rights has masked and insulated from legal scrutiny the economic disenfranchisement intended by the exclusion of African Americans from the social, political and economic mainstream. In other words, one of the ultimate effects of slavery, segregation and discrimination was to prevent African Americans from competing against white Americans in the enterprise of accumulating wealth. Constitutional protection of entrepreneurial freedoms—the ability to enter into and enforce contracts, to pursue a trade or profession, to acquire, possess and convey property—ensures that the law does not unduly burden or interfere with these primary means of obtaining wealth. Yet, African Americans have been systematically denied the protection of their entrepreneurial freedoms.

Evidence abounds to show that race is the most significant variable associated with the maldistribution of wealth in America. Racialized state policies and court sanctioned “economic detours” away from the open market have cemented blacks to the bottom of the economic hierarchy. Inherited poverty and economic scarcity have deeply entrenched racial inequality into the social and economic structures of the nation.⁸ New Orleans is a perfect case study of entrenched racial inequality effecting wealth distribution.

6. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 30 (1995).

7. *See id.* at 29-32 (discussing differences between wealth and income and asserting that “[a]n investigation of wealth,” not income, is necessary to understand “racial differences in well being”).

8. *See id.* at 12-13 (“[W]ealth inequality has been structured over many generations through the same systematic barriers that have hampered blacks throughout their history in American society: slavery, Jim Crow, so-called de jure discrimination, and institutionalized racism.”).

Before Katrina, tourism was the number one revenue-generating industry in New Orleans.⁹ Of the nine billion dollars flowing into Louisiana each year, five billion dollars passed through New Orleans and then into private hands. In addition to tourism, NOLA was responsible for receiving 18.5 percent of U.S. imports and for shipping almost thirty percent of U.S. exports.¹⁰ Tourism and shipping kept the economy brisk, but generated more for private business than public coffers. The regressive tax system—high sales tax, low property and business taxes—had the effect of burdening the consumer more than the property and business owner.

When the vitality of the pre-Katrina New Orleans economy is juxtaposed against the material conditions of the majority of African Americans the results of inherited poverty and economic scarcity among blacks becomes evident. 32.5 percent of Louisiana's population is African American; 66-70 percent of NOLA's population is African American.¹¹ About 1/3 of NOLA's African American population lived in poverty;¹² this number approached close to 50 percent when the working poor are included.

In Louisiana, there were 40,252 black-owned businesses (banks, restaurants, art galleries or churches) that together generated over \$1.9 billion in sales and collectively employed almost 22,000 people. It is projected that most of these businesses will not reopen.¹³ Even before Hurricane Katrina, the primarily white Louisiana Associated General Contractors brought several lawsuits to dismantle the City of New Orleans Minority Business Enterprise programs. These programs flourished briefly in the 1990s, and successfully included minority and women-owned businesses as subcontractors for the Aviation Board and the Sewerage and Water Board.¹⁴ Consequently, black business leaders were constantly frustrated while seeking involvement in the city's economic development.

So now, you might ask, "Why do so many African Americans want to go back? What makes New Orleans unique?" Intangibles, like the culture, history and thought, the music, the slow "big easy" way of life and the strong spiritual traditions made NOLA a good place to live. But, as the

9. Keisha-Gaye Anderson, *New Orleans' Spice*, 34 BLACK ENTERPRISE 9, 136 (2004) ("Tourism is one of the city's biggest industries, bringing in over \$2 billion a year—a quarter of that from Mardi Gras alone.")

10. See Alan Hughes et al., *Blown Away by Katrina*, 36 BLACK ENTERPRISE 4, 149 (2005) (reporting on economic impact of Hurricane Katrina).

11. See *id.* at 149 (2005) (discussing economic impact of Katrina); U.S. Census Bureau, Louisiana Quick Facts, <http://quickfacts.census.gov/qfd/states/22000.html> (last visited May 21, 2006) (providing demographic information).

12. See Hughes, *supra* note 10, at 150 (outlining demographic of New Orleans).

13. See *id.* at 150, 154 (acknowledging economic impact of Katrina).

14. See Shiela Grisset & Mark Schleifstein, *Morial May Suspend City Contracts; He Lashes Back at Court's Affirmative-Action Ruling*, TIMES-PICAYUNE (New Orleans), Nov. 23, 1996, at A1 ("Louisiana Associated General Contractors, . . . a trade association made up primarily of white members, took the New Orleans Aviation Board to court this year. The contractors . . . sued to stop a program ensuring minority and women-owned businesses a share of all state-financed contracts at the airport.")

world saw, the material conditions, racism and class division made living in New Orleans difficult for everyone.

Slavery still matters. The socioeconomic system in NOLA resembled a pyramid—blacks at the bottom holding up a small racially diverse middle class and the remnants of a white aristocracy. Katrina revealed that blacks have not fully recovered from the positional degradation of slavery. Poverty, and the attendant young-black-male on black-male crime, unemployment and an education system with deeply entrenched inadequacies plague a city already drowning under the weight of inequality.

New Orleanians are basically asking the federal and state governments to provide financial subsidies towards recovery so citizens can return and rebuild. This requires government protection of the most coveted, sought after thing in America—wealth.

Scholars and commentators suggest that courts should not hear constitutional challenges to the denial of economic rights. Justices on the Court, from Oliver Wendell Holmes, Jr. to Potter Stewart, have even declared that the Constitution does not embody a particular economic theory.¹⁵ On the other hand, a fundamental goal in the formation of America's constitutional government was the protection of private economic interest in property and other forms of wealth—including the slavery business.¹⁶ Whether it was the pre-New Deal *Lochner* liberty of contract doctrine or the creation of the welfare state during the New Deal era, court decisions have either affirmed or disavowed legislative visions of economic theory.¹⁷ The current administration's *laissez faire*, "*Lochneresque*" tax and other economic policies are premised on promoting regulations that protect and enforce private property and contract rights.¹⁸ And, un-

15. See *Dandridge v. Williams*, 397 U.S. 474, 484 (1970) ("For this court to approve the invalidation of state economic . . . regulation as 'overreaching' would be far too reminiscent of an era when the Court thought the Fourteenth Amendment gave it power to strike down laws 'because [it was] . . . out of harmony with a particular school of thought.'") (citation omitted); *Lochner v. New York*, 198 U.S. 45, 75-76 (1905) (Holmes, J., dissenting) ("[A] Constitution is not intended to embody a particular economic theory . . ."); see also Wendy B. Scott, "CSI" After *Grutter v. Bollinger: Searching for Evidence to Construct the Accumulation of Wealth and Economic Diversity As Compelling State Interests*, 13 TEMP. POL. & CIV. RTS. L. REV. 927, 940-43 (2004) (discussing Holmes's and Stewart's views on constitutional embodiment of economic theory).

16. See CLAUD ANDERSON, *POWERNOMICS: THE NATIONAL PLAN TO EMPOWER BLACK AMERICA* 3, 15 (2001) ("The Constitution was conceived as a socioeconomic covenant for those who already had power, wealth and nearly unlimited rights."); Scott, *supra* note 15, at 941 (discussing constitutional embodiment of economic theory).

17. See Scott, *supra* note 15, at 941 (discussing cases).

18. "The private sector is the primary source of competition and innovation, whereas the government [through its regulatory activities] enforces property rights and contracts, the necessary foundation for competitive private enterprise." U.S.

fortunately, in New Orleans today, in the midst of the largest natural and national disaster of our time, the market goes unregulated. Rents, in a city with one of the highest rates of poverty in American, have skyrocketed to levels similar to cities like New York and San Francisco. Well founded concern exists that eminent domain will occur in favor of commercial developers (with accompanying tax breaks) while the single family home owner is left to negotiate their own deal with private interest, unaided by legislative protections against market forces. This is especially of concern in light of the 2005 Supreme Court decision, *Kelo v. City of New London*.¹⁹ In *Kelo*, the Court upheld the right of local governments to condemn private property for “economic development,” with a definition of “public benefit” favorable to commercial business development.²⁰

In *United Steelworkers v. Weber*,²¹ the Supreme Court stressed that the integration of black citizens into mainstream American society cannot be achieved without addressing their current economic plight.²² Therefore, modern constitutional law should address the obvious injuries to the entrepreneurial freedom of black Americans that were caused by the laws, public policies and private business practices that sustained slavery and suppresses post-slavery wealth accumulation among black citizens even to this day. And, a foundation does exist from which we can re-envision affirmative action and other government attempts to ameliorate the adverse economic effects of race discrimination as affirmative economic regulation intended to promote wealth accumulation and economic diversity.

First, a growing body of social science research supports the constitutional claim that the intentional and state-sponsored denial of entrepreneurial freedoms, which provide access to avenues of wealth accumulation, has resulted in unconstitutional race discrimination. Moreover, the growing body of scholarship on reparations also provides evidence of the devastating impact of race on the accumulation of wealth. Recent unjust enrichment lawsuits allege that insurance companies and other businesses knowingly, systematically and intentionally assisted in the immoral deprivation of the life and liberty of our ancestors, wrongfully converting slave labor and services to their own benefit.²³ Although such claims of unjust enrichment have been largely unsuccessful, several courts

GOV'T PRINTING OFFICE, ECONOMIC REPORT OF THE PRESIDENT 135 (2003), available at http://www.gpoaccess.gov/usbudget/fy04/pdf/2003_erp.pdf.

19. 125 S. Ct. 2655 (2005).

20. See *id.* at 2665 (“Clearly, there is no basis for exempting economic development from our traditionally broad understanding of public purpose.”).

21. 443 U.S. 193 (1979).

22. See *id.* at 202-04 (discussing legislative history of Civil Rights Act of 1964).

23. See Lewis Beale, *Seeking Justice for Slavery's Sins*, L.A. TIMES, Apr. 22, 2002, at 1 (discussing Farmer-Paellmann's class-action lawsuit seeking reparations from three American companies who profited from slave trade); James Cox, *Special Report: Activists Challenge Corporations That They Say Are Tied to Slavery*, USA TODAY, Feb. 21, 2002, at 1A (detailing reparations movement against American companies who profited from slavery and noting numerous large companies as violators).

have recently ordered restitution for black farmers and African American victims of industry-wide insurance company fraud that impaired the ability of many African American families to accumulate wealth in the form of land and inheritance.

Finally, recent cases challenging education and employment discrimination provide further evidence of the kind of obstacles to fair competition faced by blacks in government, private, domestic and international markets. For instance, *Brown v. Board of Education*²⁴ and *Grutter v. Bollinger*²⁵ involved the right of African American students to invest in and develop human capital by gaining access to education. Historically, the major cases brought to challenge affirmative action have involved government efforts to improve the economic status of black business owners,²⁶ to open private employment opportunities and union membership,²⁷ and to provide protection to black professionals.²⁸

Clearly, in order for the black businesses and families to have any chance of accumulating (or re-accumulating) wealth from the infusion of private and public money into the Gulf Coast region during the rebuilding efforts, government intervention in the market (via federal agencies like the SBA, HUD or FEMA) will be necessary. And, under current constitutional standards, characterizing this type of government intervention as affirmative economic regulation would subject it to less than strict scrutiny, the standard normally required when race is a motivating factor.²⁹

The executive branch under Presidents Kennedy, Johnson and Nixon devised affirmative action in the public sector to create economic opportunity during a time of urban uprising.³⁰ One effect of affirmative action

24. 349 U.S. 294 (1955).

25. 539 U.S. 306 (2003).

26. See *Adarand v. Mineta*, 534 U.S. 103 (2001) (dismissing case of nonminority contractor's equal protection challenge to Department of Transportation's race-based programs); *City of Richmond v. Croson*, 488 U.S. 469, 477-78 (1989) (reviewing city plan which required that certain dollar amount of city construction contracts be awarded to minority businesses); *Fullilove v. Klutznick*, 448 U.S. 448, 453 (1980) (questioning plan that provided minority business owners with certain percent of local public works projects).

27. See *Sheet Metal Workers' Int'l Ass'n v. Equal Employment Opportunity Comm'n*, 478 U.S. 421 (1986) (upholding affirmative action plan for labor union); *United Steelworkers v. Weber*, 443 U.S. 193, 197 (1979) (addressing quota requirement for minority workers in on-the-job training program).

28. See *Grutter*, 539 U.S. at 311-17 (addressing affirmative action in law school admission process); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 269-70 (1986) (reviewing school board's preferential layoffs of minority employees); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 269-74 (1978) (discussing medical school's policy of setting aside certain seats for disadvantaged minority students).

29. See *Scott*, *supra* note 15, at 953-54 ("Deference to governmental regulation of the marketplace also suggests that race-based economic regulation should be subject to no more than intermediate scrutiny.").

30. See PETER H. SCHUCK, *DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE* 169 (2003) (discussing political beginnings of affirmative action); *Scott*, *supra* note 15, at 936 n.62 (discussing history of term "affirmative action").

was to grow and integrate the black middle class into the mainstream economy, which in turn spurred home ownership and the development of black businesses. I contend that, during the Hurricane Katrina recovery process, the federal, state and local government has an affirmative constitutional obligation to: (1) eradicate state and private discrimination that hinders the ability of African Americans and other racial minorities to accumulate wealth, and (2) regulate the economic markets to ensure the return of middle and upper income African Americans.

Government action to protect the entrepreneurial freedom of African Americans in the Gulf Coast region would be more akin to economic regulation than racial preference. Therefore, if challenged in court, economic regulation would be subjected to a more deferential standard of review. The Supreme Court decisions in *Grutter, Metro Broadcasting, Inc v. Federal Communications Commission*³¹ and *Fullilove v. Klutznick*³² provide precedent for utilizing this standard of deference in cases that could be seen as encouraging the accumulation of wealth and economic diversity.³³ Applying less than strict scrutiny allows for the corrective, regulatory intent of affirmative action and diversity initiatives to be properly distinguished from the racial preference policies of the separate-but-equal era line of cases that were struck down under the strict scrutiny standard, starting with *Loving v. Virginia*.³⁴ Applying a deferential standard of review also recognizes the expertise of Congress to determine when market intervention is needed to correct or prevent race-based market failure.

Commentators predict that the prospect for reducing the wealth gap between blacks and whites is bleak if a substantial number of African Americans under age 35 do not become homeowners.³⁵ Home ownership provides a fundamental foundation for accumulating wealth. In fact, the only thing that most working-class people have to pass on to their children is a home.

31. 497 U.S. 547 (1990).

32. 448 U.S. 448 (1980).

33. See *Grutter*, 539 U.S. at 343-44 (noting goal of diversity in higher education is constitutional); *Metro Broadcasting*, 497 U.S. at 600 (holding that diversity of viewpoint in broadcasting is permissible constitutional goal); *Fullilove*, 448 U.S. at 451 (upholding program assuring fixed percent of local public works contracts go to ethnic and racial minorities and noting "the continuing effort to achieve the goal of equality of economic opportunity").

34. 388 U.S. 1, 8 (1967) (striking down statute prohibiting interracial marriage).

35. See Angela D. James, *Black Homeownership: Housing and Black Americans Under 35*, in STATE OF BLACK AMERICA 2001, at 115, 116 (Nat'l Urban League, 2001) ("[T]he importance of [young African-Americans] being able to buy a home at this age, in terms of individuals accumulating family assets, and in terms of establishing a standard of living and an overall sense of well being, can't be overstated.").

At least 50 percent of the residents of the Lower Ninth Ward owned their homes.³⁶ In New Orleans East an even greater percentage of African Americans owned homes, ranging in value from \$100,000 to \$1 million. Therefore, one thing we must watch out for as the recovery process continues are speculators buying up what the government has declared as “abandoned” property, stripping many homeowners of their property.

Many of the early pictures of flooded neighborhoods were taken in the “lower” Ninth Ward. Blacks built a substantial number of the homes in the Ninth Ward as they “migrated” to New Orleans from Mississippi and rural Louisiana. In fact, my husband’s father and brothers, along with their wives and children, moved from rural St. Joe, Louisiana to the “upper” Ninth Ward.³⁷ There they started a church (Law Street Baptist) and built six to ten homes (in the area of Louisa and Law Streets) for themselves and other families. So, why has the Ninth Ward found itself in the eye of the storm as the battle over resettlement versus eminent domain rages? Because it sits close to the wharf and could readily become prime commercial property.³⁸

Before I conclude, it is worth considering the economic uncertainty after Katrina and some issues that will have to be addressed. It is estimated that it will cost \$250 billion to rebuild the city. The mayor has said that the city’s greatest needs are levy protection, housing (including foreclosure relief for homeowners) and recreating a friendly environment for returning businesses and residents.³⁹ Katrina’s impact will most likely slow the growth of the U.S. Gross Domestic Product and of the U.S. job mar-

36. Leslie Williams, *Rebound Predicted for Lower 9th Ward; Boosters Plot Strategy for Hard-Hit Area*, TIMES-PICTAYUNE (New Orleans), Oct. 21, 2005, at 1 (quoting Louisiana state representative Charmaine Marchand that 54% of Lower Ninth Ward residents are homeowners).

37. “Upper” and “lower” are used to indicate that one part of the ward is further below sea level than the other. “Uptown” New Orleans is actually a few feet above sea level and did not experience the devastation of flooding.

38. See Hughes, *supra* note 10, at 150 (discussing incentive for rebuilding efforts to shift focus).

Displacement following natural disasters has happened before, although never on such a massive scale. . . . [H]urricane-related destruction in Florida and other Gulf Coast communities in the past has been quickly followed by an inrush of real estate developers, many of whom aren’t interested in building low-cost or affordable housing. There’s little money in that. They want to build luxury condos, rentals or upscale homes, which dramatically escalates land values.

Id.

39. See *Levees and Homes Top Priorities on Governor Blanco’s Recovery Agenda* (Mar. 7, 2006), available at <http://www.gov.state.la.us/index.cfm?md=nnwsroom&tmp=detail&articleID=1708> (explaining governor’s testimony before U.S. Senate Committee on Appropriations).

ket.⁴⁰ It is estimated that 400,000 people will lose their jobs.⁴¹ Thousands of black homeowners, primarily the middle and working class of New Orleans East and the residents of the Ninth Ward, will be displaced. Rebuilding NOLA will undoubtedly give the national economy a boost. It is estimated that only one half of the city's original population of over 400,000 people will have returned by 2008. It is also predicted that the population of New Orleans after the city is rebuilt will go from being 70 percent black to anywhere from 40 to 60 percent black.⁴² Furthermore, it is predicted that living in NOLA will be difficult for poor and low income African Americans.

Unfortunately, President Bush's multi-billion dollar reconstruction plan involves the suspension of wage regulations⁴³ and affirmative action.⁴⁴ This trend away from affirmative economic policies raises many issues that must be grappled with if African Americans are going to protect their wealth—primarily property—from post-Katrina loss. Will black business people be involved in the rebuilding? Will they benefit from the influx of money that will be filtered into the city during the rebuilding process? Will the displaced market, previously characterized by predominantly black businesses that were frequented by predominantly black customers, return?⁴⁵ Will, as the National Urban League and other civil rights organizations have proposed, the government require set-asides or other still-legal affirmative action programs?⁴⁶ Will the federal government provide the funds needed to rebuild in light of the current budget crisis? Will black residents be the beneficiaries of jobs? Will the rate of home ownership among African Americans return to, or surpass, the pre-

40. See Hughes, *supra* note 10, at 149 (“[O]ver the next year, Katrina’s impact on the U.S. economy could result in slower growth of the Gross Domestic Product (the nation’s production of goods and services) by 0.5% to 1%, and slower job growth—a loss of about 20,000 jobs a month.”).

41. See *id.* at 149 (citing Congressional Budget Office report).

42. See *id.* at 150 (“There’s likely to be a significant change in New Orleans’s demographics. Many suspect that after rebuilding, it will no longer boast such a large black population.”).

43. The White House suspended the 1931 Davis-Bacon Act, which requires firms working under government contracts to pay “locally prevailing wages” to workers and relaxed proof of citizen requirements to encourage the influx of immigrant workers.

44. See Ira Katznelson, *New Deal, Raw Deal*, WASH. POST, Sept. 27, 2005, at A23; Ron Walters, *The New Betrayal*, LOUISIANA WKLY., Oct. 3, 2005, available at www.louisianaweekly.com/weekly/nwes/articlegate.pl20051003i.

45. See Hughes, *supra* note 10, at 152 (“[B]lack businesses—particularly smaller ones—are predominantly patronized by black people. Fewer blacks in a newly built New Orleans brings into question the future of black business there.”).

46. See Marc H. Morial, Remarks on Katrina at Georgetown University Law Center (Nat’l Urban League Oct. 12, 2005), available at <http://www.law.georgetown.edu/new/documents/Katrinaaddress.pdf>.

Katrina levels? Will the vast majority of displaced New Orleanians return? The answer to this question depends on who you talk to in this tale of three cities—white uptown residents who resettled relatively soon after the Hurricanes Katrina and Rita; displaced predominantly black homeowners in historic Gentilly, the lower Ninth Ward and New Orleans East; or the significant numbers of displaced black renters.

This brings us to the final question: How does wealth accumulation and economic diversity help (or hurt) what had clearly become a permanent underclass in NOLA? The social issues that plague the underclass—unemployment, poor housing, lack of educational opportunity and crime—may resist a strictly economic approach. Should the eradication of poverty constitute a compelling state interest in the wealthiest nation in the world? What is the role of the black middle class in attacking the problems of poor and impoverished blacks? Would removing barriers to wealth accumulation and marketplace diversity have some measurable community-wide benefits that would positively impact the problems of the entrenched underclass? These and other questions must be grappled with and resolved by New Orleans and the nation over the next several years.

I believe Dr. King would have supported affirmative economic regulation to protect the property rights and entrepreneurial freedoms of African Americans on the Gulf Coast as he turned from his social and civil rights agenda to his broader agenda of economic empowerment for the poor and people of color. As we seek to resolve the many, seemingly unanswerable questions that face New Orleans as a city and America as a nation, we must remember the words spoken by Dr. King in Oslo, when he accepted his Nobel Peace Prize over 40 years ago. Dr. King said, “with an abiding faith in America and an audacious faith in the future of mankind. I refuse to accept despair as the final response to the ambiguities of history.”⁴⁷

Ladies and Gentlemen, colleagues and students, family, friends and neighbors: We are America. New Orleanians are your neighbors and we are each others keepers. Thank you.

47. *Id.* (quoting Martin Luther King, Jr., Nobel Peace Prize Acceptance Speech in Oslo, Norway (Dec. 10, 1964), available at <http://nobelprize.org/peace/laureates/1964/king-acceptance.html>).