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# Property Lessons in August Wilson's *The Piano Lesson* and the Wake of Hurricane Katrina

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**PROPERTY LESSONS IN AUGUST WILSON'S *THE PIANO***  
***LESSON AND THE WAKE OF HURRICANE KATRINA***

RACHEL A. VAN CLEAVE\*

At 6:00 a.m. on August 29, 2005, category four Hurricane Katrina hit New Orleans, Louisiana.<sup>1</sup> Katrina caused damage throughout the Gulf Coast, in Mississippi, Louisiana, and Alabama.<sup>2</sup> Without discounting the damage, injury, and death wreaked upon the entire Gulf Coast, the Lower Ninth Ward section of New Orleans was nearly completely destroyed by Katrina, the break of the levees, and by Hurricane Rita, which struck only two weeks later.<sup>3</sup> The Lower Ninth Ward, often referred to as the Lower Nine,<sup>4</sup> has been at the center of the controversial question of whether to rebuild. On the one hand, it is

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1. *All Things Considered: New Orleans Swims in Katrina's Wake*, (NPR radio broadcast Aug. 29, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4822522>.

2. William Yardley & Abby Goodnough, *Storm and Crisis: The Overview*, N.Y. TIMES, Sept. 21, 2005, at A1.

3. *Weekend Edition: New Flooding Hits New Orleans' Ninth Ward*, (NPR radio broadcast Sept. 24, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4862137>.

4. Greater New Orleans Community Data Center, Lower Ninth Ward Neighborhood Snapshot, <http://www.gnocdc.org/orleans/8/22/snapshot.html> (last visited Aug. 29, 2006).

one of the lowest lying points in New Orleans;<sup>5</sup> indeed, it was originally a cypress swamp, and many people are concerned that to rebuild would be “negligent homicide” because residents would once again be vulnerable to injury and death from hurricanes.<sup>6</sup> On the other hand, the Lower Nine has historic importance for both its inhabitants and for the rest of the country. For example, this “area was the lower portion of plantations that stretched from the river to [Lake Pontchartrain]” and, after Emancipation, it was an area where a number of social organizations sought to aid the struggling freedmen.<sup>7</sup> Before Katrina and Rita struck, the population of the Lower Nine was 98.3% African-American.<sup>8</sup> It was a “mostly African American New Orleans enclave” whose inhabitants worked in restaurants, hotels, and bars, “mak[ing] the tourist industry function.”<sup>9</sup> Nearly 60% of the homes of the Lower Nine were owner-occupied, and many of these homes were handed down over generations of families.<sup>10</sup> This New Orleans district also has been home to the historic “shotgun” houses, and other architectural “gems.”<sup>11</sup>

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5. *But see* Gwen Filosa, *Group Lays Foundation to Rebuild Lower 9th*, TIMES-PICAYUNE (New Orleans), May 1, 2006, Metro, at 1 (quoting Louisiana State University geologist Roy Dokka who stated that the Lower Ninth Ward is not the lowest-lying land, but that it is “typical New Orleans. It’s similar to Kenner and Metairie.”).

6. Ceci Connolly, *9th Ward: History, Yes, but a Future?* WASH. POST, Oct. 3, 2005, at A01 (quoting Russell Henderson, founder of Rebuilding Louisiana Coalition).

7. *Brief History of the New Orleans 9th Ward*, FINALCALL.COM NEWS, Mar. 19, 2006, [http://www.finalcall.com/artman/publish/printer\\_2517.shtml](http://www.finalcall.com/artman/publish/printer_2517.shtml).

8. Deborah Sontag, *Delery Street: Where Hope Lives*, N.Y. TIMES, Oct. 12, 2005, at A1 (referring to the 2000 Census).

9. Roberta Brandes Gratz, *In New Orleans’ Mud, A Ward Determined Not to Slip Away*, in COLLECTED ESSAYS—ELM STREET WRITERS GROUP (Michigan Land Institute 2005), <http://www.mlui.org/growthmanagement/fullarticle.asp?fileid=16934>.

10. *Id.* More specifically, home ownership by African Americans in the Lower Ninth Ward is 57%, compared to a nationwide home ownership rate for African Americans of 49%. Peter Wagner & Susan Edwards, *New Orleans by the Numbers*, DOLLARS & SENSE, Mar.-Apr. 2006, at 54, 54 (reproducing data from the U.S. Census), available at <http://www.dollarsandsense.org/archives/2006/0306wagneredwards.html>.

11. S. Frederick Starr, *A Sad Day, Too, for Architecture*, N.Y. TIMES, Sept. 1, 2005, at F1; Connolly, *supra* note 6. *See also* Greg Allen, *Something Else That Was*

In the history of this country, the African-American community has suffered multiple relocations. These include the forced relocation from Africa to be pressed into slavery, and the “constructive” relocation involved in the Great Migration North before and during the Great Depression.<sup>12</sup> Katrina and Rita have forced yet another dispersion of this community.<sup>13</sup> Those who survived Katrina and Rita were evacuated and found shelter in locations as close to New Orleans as Houston, Texas,<sup>14</sup> and as far away as Oakland, California.<sup>15</sup>

The country is now engaged in a dialogue over what the future of New Orleans, and the Lower Nine in particular, should look like. Given this historical context, it is important to recognize and appreciate the depth and significance of people’s connection to their property in considering the question of whether to rebuild. As public officials contemplate the future of the Lower Nine, it is enlightening to examine the issues of property, history, community, and identity explored in the plays of August Wilson, and in particular the lessons from *The Piano Lesson*.

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*Lost in New Orleans*, NPR, REPORTER’S NOTEBOOK, Sept. 8, 2006, <http://www.npr.org/templates/story/story.php?storyId=4837626> (discussing the blending of cultures found in the music, cuisine, architecture, and speech in New Orleans, and expressing concern about the fate of the Lower Ninth). A “shotgun” house is

one room wide, one story tall and several rooms deep (usually three or more) and has its primary entrance in the gable end. Its perpendicular alignment breaks with the usual Euro-American pattern, in which the gables are on the sides and the entrance is on the facade or long side. Although gable-entry houses occur in some parts of central Africa, the shotgun house is a New World hybrid that developed in the West Indies and entered the United States via New Orleans in the early 19th century.

John Michael Vlack, *Afro-Americans*, in AMERICA’S ARCHITECTURAL ROOTS: ETHNIC GROUPS THAT BUILT AMERICA 43 (Dell Upton ed., 1986). See also JIM KEMP, AMERICAN VERNACULAR: REGIONAL INFLUENCES IN ARCHITECTURE AND INTERIOR DESIGN 86 (1987).

12. See *infra* notes 115-116 and accompanying text.

13. See David Dante Troutt, *Many Thousands Gone, Again*, in AFTER THE STORM 3 (David Dante Troutt ed., 2006).

14. See Jason Spencer, *Hurricane Aftermath: Disaster Relief*, HOUSTON CHRON., Oct. 2, 2005, at B12.

15. See Michelle Maitre, *Evacuees Give Thanks for Area’s Assistance*, OAKLAND TRIB., Mar. 2, 2006, at A4.

I have been teaching first-year Property since 1996, and every year I have assigned August Wilson's play, *The Piano Lesson*. Every year I have re-read the play and come away from each class discussion with new thoughts and insights about property and about the African-American experience. I have often jotted down ideas for a paper I wanted to write about this play. At one point, I asked a student research assistant to search for law review articles discussing the play. When that was not fruitful, I asked him to search other types of journals for discussions of *The Piano Lesson*. When he returned to my office with a stack of books and articles about August Wilson and his various works, I felt as if an entirely new world had been opened to me. Once I decided to start putting my ideas about *The Piano Lesson* together in writing, I realized the magnitude of my daunting task; I could never do justice to the lessons in the play. The more I read August Wilson's works, in particular those that make up his ten-play opus depicting the life and history of African Americans in each decade of the twentieth century,<sup>16</sup> and the more I read about Wilson, the playwright, the more I came to appreciate the complexities, subtleties, contradictions, conflicts and depth he depicts in his subjects and characters. I have come to the conclusion that this is the salient *property* lesson of *The Piano Lesson*:<sup>17</sup> property is deep, subtle, complex, and full of conflict and contradiction.<sup>18</sup> By the word "property," I do not

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16. *A Dream Not Deferred: August Wilson's Century of Theatre*, PERFORMANCES MAG., 2004/2005 Season, at 6-7, available at [http://www.taperahmanson.com/download/RADIO\\_INRWRP\\_FINAL.pdf](http://www.taperahmanson.com/download/RADIO_INRWRP_FINAL.pdf) (listing the ten plays: *Radio Golf* (2005), covering the 1990s; *Gem of the Ocean* (2004), covering the 1900s; *Jitney* (2003), covering the 1970s; *King Hedley II* (2001), covering the 1980s; *Seven Guitars* (1996), covering the 1940s; *Two Trains Running* (1992), covering the 1960s; *The Piano Lesson* (1990), covering the 1930s; *Joe Turner's Come and Gone* (1988), covering the 1910s; *Fences* (1986), covering the 1950s; and *Ma Rainey's Black Bottom* (1984), covering the 1920s). See also Sarah B. Hood, *August Wilson 1945-2005*, SUITE101, Mar. 15, 2006, [http://playwrights.suite101.com/print\\_article.cfm/AugustWilson](http://playwrights.suite101.com/print_article.cfm/AugustWilson).

17. Others have discussed a number of lessons in Wilson's works. E.g., SANDRA G. SHANNON, *THE DRAMATIC VISION OF AUGUST WILSON* 144 (1995) (describing "Wilson as Teacher" in chapter six); Missy Dehn Kubitschek, *August Wilson's Gender Lessons*, in *MAY ALL YOUR FENCES HAVE GATES: ESSAYS ON THE DRAMA OF AUGUST WILSON* 183 (Alan Nadel ed., 1994).

18. For other examples of the contradictions in property law exemplified artistically, see Jane B. Baron, *Property and "No Property,"* 42 HOUS. L. REV. 1425, 1438-43 (2006) (defining the category "no property" by examining the novel *Prop-*

refer to the doctrine and the rules, but rather the theories, assumptions, histories, and biases upon which the doctrine and the rules have traditionally been based. This essay discusses a variety of lessons about property that *The Piano Lesson* offers and attempts to peel away some of the complex layers embedded in the play.

This analysis reveals that *The Piano Lesson* has important lessons that are still relevant today. After the devastation wreaked by Hurricanes Katrina and Rita, residents of the Lower Ninth Ward of New Orleans struggle to rebuild their community. Yet, their efforts are being threatened by the possibility that the Lower Ninth Ward will be closed to construction and by those who seek to profit from this tragedy by buying up as much property as they can.<sup>19</sup> In light of the present tragedy, *The Piano Lesson* teaches us to understand the magnitude of the tragedy beyond the loss of tangible property: the loss of history and community and the potential loss of identity. The failure to recognize and address these concerns in a meaningful way risks generating, or perhaps perpetuating, the type of alienation and desperation that slavery and this country's Antebellum policies wreaked on the African-American community.

### I. A FAMILY LEGACY

Although set in 1936 Pittsburgh, *The Piano Lesson*<sup>20</sup> goes back three generations to trace the history of the Charles family and the significance of a piano that is at the center of a bitter dispute between

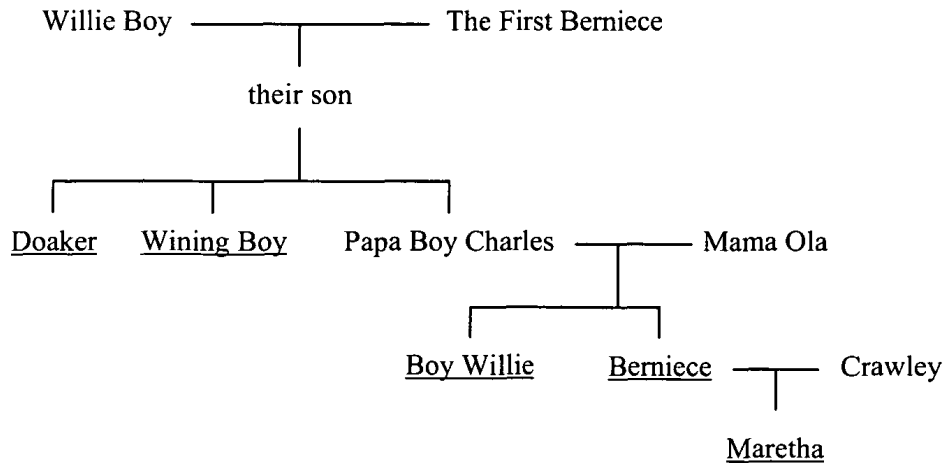
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erty by Valerie Martin); Joseph William Singer, Essay, *Rent*, 39 B.C. L. REV. 1, 33 (1997) (discussing the "paradoxes of property" in the musical *Rent*).

19. See Gary Rivlin, *Speculator: Après Le Deluge, Moi*, N.Y. TIMES, Mar. 5, 2006, § 6, at 68 (describing the strategies of Patrick Quinn "to realize his dream of becoming the Donald Trump of the Gulf Coast," which included buying up destroyed property and giving people forty-eight hours to accept his offer).

20. AUGUST WILSON, *THE PIANO LESSON* (1990). I was first exposed to *The Piano Lesson* at a Society of American Law Teachers Teaching Conference held at Santa Clara University School of Law in the early 1990s. In a concurrent breakout group, Property and Wills and Trusts professors discussed their teaching methods. One professor talked about how she used the portion of the play in which Doaker explains the history of the piano and why Berniece refuses to sell it. When I learned I was to teach property at Texas Tech University School of Law, I read the entire play and decided to assign it to my students.

two siblings, Berniece and Boy Willie Charles.<sup>21</sup> The Charles family tree is set out below.<sup>22</sup>



Originally, Willie Boy, the First Berniece, and their son were owned by Robert Sutter.<sup>23</sup> Sutter wanted to acquire a piano as a gift for his wife, Miss Ophelia, but he did not have any cash.<sup>24</sup> Consequently, Sutter traded the First Berniece and her son, “one full grown and one half grown [slave],” for the piano.<sup>25</sup> After awhile, Miss Ophelia missed her two house slaves who had been traded for the piano and stopped playing on it, taking “ill to bed” when Sutter was unable to reverse the trade.<sup>26</sup> Sutter then told Willie Boy, “a worker of wood,” to carve the faces of the house slaves onto the piano.<sup>27</sup> As Doaker, uncle of Berniece and Boy Willie, recounts, “Only thing . . . he didn’t stop there. He carved all this.”<sup>28</sup> Willie Boy carved the history of the Charles family all over the piano: births, marriages, and

21. KIM PEREIRA, *AUGUST WILSON AND THE AFRICAN-AMERICAN ODYSSEY* 87 (1995).

22. I have noted the people who are living during the time the play takes place by underlining their names. See generally JESSE DUKEMINIER ET AL., *WILLS, TRUSTS, AND ESTATES* 73 (7th ed. 2005) (using this format of family tree).

23. WILSON, *supra* note 20, at 42.

24. *Id.*

25. *Id.*

26. *Id.* at 43.

27. *Id.* at 43-44.

28. *Id.* at 44 (ellipsis in original).

deaths.<sup>29</sup> Wilson describes the piano at the beginning of the play: “On the legs of the piano, carved in the manner of African sculpture, are mask-like figures resembling totems. The carvings are rendered with a grace and power of invention that lifts them out of the realm of craftsmanship and into the realm of art.”<sup>30</sup>

After the literal emancipation of the family from slavery, Papa Boy Charles, the father of Berniece and Boy Willie, became obsessed with retrieving the piano and thus freeing the family figuratively from the Sutters’ control.<sup>31</sup> Doaker quotes his brother, “Say it was the story of our whole family and as long as Sutter still had it . . . he had us. Say we was still in slavery.”<sup>32</sup> On July 4, 1911, Papa Boy Charles and his brothers, Doaker and Wining Boy, went to the Sutter house while the Sutter family was at the Fourth of July picnic and took the piano.<sup>33</sup> Doaker and Wining Boy took the piano to some of their family living in another county, and Papa Boy Charles tried to flee by jumping into a boxcar of the “Yellow Dog train”<sup>34</sup> with four “hobos.”<sup>35</sup> The sheriff and Sutter tracked Papa Boy Charles, the brother who did not have the piano, and stopped the train.<sup>36</sup> When they did not find the piano, they burned the boxcar and everyone in it.<sup>37</sup> Shortly thereafter, the white men involved in the deaths began to “fall in their wells.”<sup>38</sup> The rumor was that the “Ghosts of the Yellow Dog” were pushing them into their wells.<sup>39</sup>

Twenty-five years later, in 1936, we find the fourth generation, Boy Willie and Berniece, in Pittsburgh. We learn that Berniece and her daughter Maretha moved North shortly after Berniece’s husband

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29. *Id.*

30. *Id.* at “The Setting.”

31. *Id.* at 45.

32. *Id.*

33. *Id.*

34. JOHN M. BARRY, *RIISING TIDE: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* 101 (1997) (explaining that “the yellow dog” came from blues songs and referred to the color of the Yazoo & Mississippi Valley Railroad trains).

35. WILSON, *supra* note 20, at 45.

36. *Id.*

37. *Id.*

38. *Id.* at 45-46.

39. *Id.* at 46.



Crawley was killed. She and Maretha share a house with Berniece's uncle Doaker.<sup>40</sup> Boy Willie has remained in Mississippi, but the play begins with Boy Willie and his friend Lymon appearing at Berniece and Uncle Doaker's door early one morning.<sup>41</sup> The other uncle, Winning Boy, arrives at the house shortly after Boy Willie and Lymon.<sup>42</sup> Berniece and Boy Willie's father died retrieving the piano, and these two siblings must decide what to do with their legacy.<sup>43</sup>

## II. PROPERTY LESSONS

The range of property lessons in *The Piano Lesson* runs a broad gamut: definitions of ownership, fungible value versus personal value, history as property, property as identity, and most obviously, the tragedy of treating people as property. At the center of the play is the conflict between a brother and sister, Boy Willie and Berniece, common owners of the piano over which they disagree. At a very superficial level, their conflict can be compared to other conflicts between co-owners of property: when one seeks to sell or lease and the other refuses to agree,<sup>44</sup> when one seeks to have possession and exclude the other,<sup>45</sup> or when the excluded co-owner claims entitlement to the rental value of the property.<sup>46</sup> Boy Willie wants to sell the piano to

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40. *Id.* at 1-3.

41. *Id.* at 1-2.

42. *Id.* at 7.

43. In an interview, Wilson said about *The Piano Lesson*, "The real issue is the piano, the legacy. How are you going to use it?" Devon Boan, *Call-and-Response: Parallel "Slave Narrative" in August Wilson's The Piano Lesson*, 32 AFR. AM. REV. 263, 263 (1998) (citing Hilary DeVries, *A Song in Search of Itself*, AM. THEATRE, Jan. 1987, at 22, 25).

44. See, e.g., *Carr v. Deking*, 765 P.2d 40 (Wash. Ct. App. 1988), reproduced and edited in JOSEPH WILLIAM SINGER, PROPERTY LAW: RULES, POLICIES, AND PRACTICES 580 (4th ed. 2006) (describing where a son unsuccessfully challenged lease agreement entered into by father of property held jointly).

45. See, e.g., JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 369 (5th ed. 2002) (citing *In re Estate of McDowell*, 345 N.Y.S.2d 828 (Sur. Ct. 1973) (concerning a dispute between two brothers over possession of deceased father's old rocking chair)).

46. See, e.g., *Olivas v. Olivas*, 780 P.2d 640 (N.M. Ct. App. 1989), reproduced and edited in SINGER, *supra* note 44, at 576 (after divorce decree, former husband claimed entitlement to rent for the period of time when former wife was in sole possession of jointly owned home).

buy the land that their ancestors worked as slaves and sharecroppers, while Berniece refuses to sell this family heirloom. However, the dispute over the piano threatens to tear the family apart. Every scene with Berniece and Boy Willie present is full of anger and resentment between the siblings. Berniece complains about “all that noise” Boy Willie brings with him.<sup>47</sup> They argue over how Berniece is raising her daughter, Maretha,<sup>48</sup> about Boy Willie bringing strange women into Berniece’s house late at night,<sup>49</sup> and regarding Boy Willie’s responsibility for the death of Berniece’s husband, Crawley.<sup>50</sup> As Kim Pereira explained, “[b]y feuding bitterly over the piano, [Berniece and Boy Willie] have repudiated its essential function—to keep this family together.”<sup>51</sup> The dispute over the piano, which is really about the value of legacy and heritage, poisons their relationship.

The unifying function of the piano is based on the many ways in which it symbolizes the history and the freedom of the Charles family. The carvings of the family history on the piano by Willie Boy represent an act of resistance and a figurative reunion of a family literally torn apart by slavery.<sup>52</sup> Papa Boy Charles’ obsession with retrieving the piano is driven by a need to figuratively liberate the family from slavery even once they are literally free. Boy Willie’s determination to sell the piano once again threatens family unity.

To say that Boy Willie and Berniece are common owners of the piano is to state a conclusion that arguably rests on shaky ground, according to traditional property doctrine. The piano was originally “bought” by Robert Sutter, the owner of Berniece and Boy Willie’s

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47. WILSON, *supra* note 20, at 4.

48. *Id.* at 90-91. When Berniece tells Maretha she wouldn’t have to comb her hair with hair grease if Maretha was a boy, Boy Willie snaps, “Don’t you tell that girl that. . . . Telling her you wished she was a boy. How’s that gonna make her feel?” *Id.* at 90. Boy Willie chastises Berniece for not telling Maretha the story about the piano. *Id.* at 91.

49. *Id.* at 74-75.

50. *Id.* at 52. Berniece tells Boy Willie, “You killed Crawley just as sure as if you pulled the trigger.” *Id.*

51. PEREIRA, *supra* note 21, at 101.

52. See Alan Nadel, *Boundaries, Logistics, and Identity: The Property of Metaphor in Fences and Joe Turner’s Come and Gone*, in MAY ALL YOUR FENCES HAVE GATES, *supra* note 17, at 86, 88 (discussing the use of the figurative and the literal in Wilson’s work).

grandfather and great-grandfather.<sup>53</sup> Robert Sutter traded Berniece and Boy Willie's grandfather and great-grandmother for the piano to make a gift to his wife, Miss Ophelia.<sup>54</sup> Since the law recognized ownership of people, this trade provided an accepted basis for ownership of the object traded for the person. Indeed, in the play, Robert Sutter's ghost comes to the home shared by Doaker and Berniece to reclaim the piano,<sup>55</sup> calling into question Boy Willie and Berniece's ownership of the piano. Aside from any claims the Sutter family might have to the piano, Doaker and Wining Boy may have a claim as well. They are both grandsons of Willie Boy, who carved the family history onto the piano, and could, therefore, claim inheritance rights superior to those of Boy Willie and Berniece. In addition, their grandmother and father were sold for the piano,<sup>56</sup> and they, along with Boy Charles, were involved in retrieving the piano from the Sutter home.<sup>57</sup> Yet, except for one exchange quickly resolved by Doaker,<sup>58</sup> it is clear Doaker and Wining Boy do not doubt that Boy Willie and Berniece "own" the piano based on their father's sacrifice of his life for it. Thus, the play also raises questions about definitions of ownership and about which definitions of ownership prevail and for whom.

A number of property casebooks begin with *Johnson v. M'Intosh*, in which the United States advanced a Eurocentric definition of property.<sup>59</sup> Chief Justice Marshall concluded that the Native Americans, although present when the Europeans "discovered" America, had established merely a "right of occupancy" of the land, not title.<sup>60</sup> He re-

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53. WILSON, *supra* note 20, at 42-43.

54. *Id.* at 42.

55. *Id.* at 13 (Sutter's ghost first appears); *id.* at 15 (Boy Willie, speaking of Sutter's ghost, states, "Sutter was looking for that piano.").

56. *Id.* at 43.

57. *Id.* at 45.

58. Wining Boy begins to object to Boy Willie's plan to sell the piano and responds to Boy Willie's assertion, "This my daddy's piano," with the claim "He ain't took it by himself. Me and Doaker helped him." *Id.* at 49. But the fact that Papa Boy Charles was the only one of the three to die over the piano's retrieval confirms Boy Willie's claim. *Id.*

59. *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823). See, e.g., SINGER, *supra* note 44, at 4; DUKEMINIER & KRIER, *supra* note 45, at 3.

60. See LINDSAY G. ROBERTSON, CONQUEST BY LAW: HOW THE DISCOVERY OF AMERICA DISPOSSESSED INDIGENOUS PEOPLES OF THEIR LANDS 99-100 (2005) (discussing the litigation and opinion in *Johnson v. M'Intosh* and its historical context).

lied, in part, on a definition of ownership that requires productive use of property. Marshall stated that “[t]o leave [the Indians] in possession of their country, was to leave the country a wilderness.”<sup>61</sup> The agricultural use by the Europeans was clearly preferred to leaving the country an uncultivated wilderness.<sup>62</sup> This definition of ownership therefore marginalized the spiritual relationship that many Native-American tribes had with the land. As one tribal leader has stated, “This high country is our religion.”<sup>63</sup> Many tribes did not consider land a commodity to be bought and sold;<sup>64</sup> thus, use was not exclusive, but overlapping.<sup>65</sup> Nonetheless, the dominant discourse of productive use, and even exploitative use, of land has prevailed.<sup>66</sup> This Western preference for productive use of property lends support to the theory of ownership based on rewarding labor.<sup>67</sup> Indeed, the settlers

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61. *Johnson*, 21 U.S. at 590.

62. Marshall described the right of occupancy as “sacred.” SINGER, *supra* note 44, at 13-14 (quoting *Mitchel v. United States*, 34 U.S. 711, 746 (1835)). Nonetheless, the Court ignored the experience of many Native-American tribes and their use of property that squarely fit within this definition of property ownership. HOWARD ZINN, *A PEOPLE’S HISTORY OF THE UNITED STATES, 1492-PRESENT* 18-21 (2003) (describing a number of tribes that lived in settled communities beginning about 1,000 years before Christ and, in particular, discussing the Iroquois communities).

63. SINGER, *supra* note 44, at xlvi (quoting Robert Jim, Chairman of the Yakima Nation, in SHARON O’BRIEN, *AMERICAN TRIBAL GOVERNMENTS* 217 (1989)).

64. *Id.* (“National Indian Youth Council in 1961 explained: ‘The land is our spiritual mother whom we can no easier sell than our physical mother.’” (quoting SHARON O’BRIEN, *AMERICAN INDIAN TRIBAL GOVERNMENTS* 86 (1989))).

65. *Id.*

66. *See Kelo v. City of New London*, 125 S. Ct. 2655, 2665-66 (2005) (rejecting the notion that city could transfer “citizen A’s property to citizen B *for the sole reason* that citizen B will put the property to a more productive use,” but holding that city could constitutionally use eminent domain authority to transfer property from citizen owner-occupiers to commercial developer to promote economic development through job creation and increased tax revenue) (emphasis added).

67. *See, e.g., Int’l News Serv. v. Associated Press*, 248 U.S. 215 (1918) (recognizing that “the right to acquire property by honest labor or the conduct of a lawful business is as much entitled to protection as the right to guard property already acquired”); SINGER, *supra* note 44, at xlvi (“John Locke argued that labor is the foundation of property. ‘Whatsoever then he removes out of the state that nature has provided and left it in, he has mixed his labor with, and joined to it something that is his own, and thereby makes it his property.’” (quoting JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* 17-18 (Bobbs-Merrill 1952) (1690))).

were rewarded for making use of the land when they were eventually granted title, even if they were originally on the land as squatters, that is, trespassers.<sup>68</sup>

Yet, both history and *The Piano Lesson* illustrate that the productive use theory of property has not been applied objectively. As to recently freed African Americans, the Lockean labor theory of property would have entitled them to some of the land that they and their ancestors had worked as slaves. As Leon Litwack has explained, “To apportion the large landed estates among those who had worked them and who had already expended years of uncompensated toil made such eminent sense to the ex-slave.”<sup>69</sup> In fact, General Sherman issued an order that certain land was to be seized and forty acres distributed to each former slave.<sup>70</sup> Yet, that was not to be.<sup>71</sup> Instead, federal troops were called in to back up the claims of the former slave-owners, and freedmen were told to work hard and “accumulate the savings to purchase land” because this would give them “greater personal satisfaction from having earned it in this manner.”<sup>72</sup> Thus abandoned by the law and by the government, the newly freed slaves were left to fend for themselves.

In the aftermath of Katrina, a number of commentators and Lower Nine residents have expressed a belief that federal and state agencies imposed different standards for implementing recovery, relief, and rebuilding efforts—one for the more affluent and white sections of New Orleans and another for the poorer and African-American neighborhoods.<sup>73</sup> Obstacles to rebuilding have confronted a number of

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68. JAMES WILLARD HURST, *LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES* (1956), reprinted in SINGER, *supra* note 44, at 25-26.

69. LEON LITWACK, *BEEN IN THE STORM SO LONG: THE AFTERMATH OF SLAVERY* (1980), reprinted in SINGER, *supra* note 44, at 26, 27.

70. LERONE BENNETT, JR., *BEFORE THE MAYFLOWER: A HISTORY OF BLACK AMERICA* 474 (6th ed. 1993).

71. *Id.* at 476. Andrew Johnson sought to reverse the order, and on September 3, 1865, a United States Army commander in South Carolina ordered the Freedman’s Bureau to stop seizing land abandoned by former slave owners. *Id.*

72. LITWACK, *supra*, note 69, at 28.

73. See, e.g. MICHAEL ERIC DYSON, *COME HELL OR HIGH WATER: HURRICANE KATRINA AND THE COLOR OF DISASTER* (2006). See also Howard Witt, *New Orleans’ Hardest-Hit are Key Voters*, CHI. TRIB., Apr. 16, 2006, at 4 (quoting University of New Orleans political scientist, Susan Howell, “What Katrina has done is in-

neighborhoods, but none more than the Lower Nine. The city of New Orleans locked out Lower Nine residents for more than eight months.<sup>74</sup> New Orleans designated the Lower Nine a “delayed recovery area,” which meant a delay in restoring services such as trash pickup, electricity, and water.<sup>75</sup> Further, Lower Nine residents did not receive FEMA trailers until June 2006, nine months after Katrina.<sup>76</sup> Reminiscent of advice given to freed slaves, Lower Nine residents have been told that they just need to work hard and persevere to recover from this devastating disaster.<sup>77</sup>

### III. ECONOMICS OR PERSONHOOD

Boy Willie’s objective in *The Piano Lesson* is to come up with the funds to purchase Sutter’s land that his ancestors worked as slaves.<sup>78</sup> The fact that his ancestors worked the land does not give him any property interest in the land, not even a priority right to buy the land. When Boy Willie states that a Sutter descendant is “waiting on me” to sell the land, Wining Boy reminds Boy Willie, “You know as well as I

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creased racial polarization”).

74. Gwen Filosa, *City Opens a Section of Lower 9th Ward*, TIMES-PICAYUNE (New Orleans), May 9, 2006, National, at 1; Gwen Filosa, *Urban Pioneer: Despite Overwhelming Odds, One Lower 9th Ward Resident Has Taken Rebuilding into his Own Hands*, TIMES-PICAYUNE (New Orleans), Feb. 12, 2006, Metro, at 1.

75. Michelle Krupa, *Evacuees Want to be Told Whether to Rebuild*, TIMES-PICAYUNE (New Orleans), Mar. 26, 2006, Metro, at 1. See also Gwen Filosa, *Ten Bid for Seat on City Council District E; Post-Katrina Issues Dominate the Contest*, TIMES-PICAYUNE (New Orleans), Apr. 6, 2006, Metro, at 1 (describing efforts of some of the council candidates to restore electricity and potable water seven months after Katrina struck). By contrast, after flooding in the Netherlands, rebuilding efforts gave priority to areas that flooded the most. Michelle Krupa, *Land Use is Pivotal Issue in Mayor’s Race*, TIMES-PICAYUNE (New Orleans), Apr. 15, 2006, National, at 1 (quoting mayoral candidate Rev. Tom Watson, who visited the Netherlands to observe rebuilding).

76. Gwen Filosa, *The Long Wait: People Rebuilding in the Hardest-Hit Parts of the Lower 9th Just Received their Trailers in June*, TIMES-PICAYUNE (New Orleans), July 5, 2006, National, at 1.

77. Saul Sarabia, Univ. of California, Los Angeles, Address at the Western Law Professors of Color Conference at California Western School of Law (Mar. 31, 2006) (speaking based on his meetings and discussions with New Orleans’ evacuees).

78. WILSON, *supra* note 20, at 9.

know the man gonna sell the land to the first one walk up and hand him the money.”<sup>79</sup> Wining Boy cautions Boy Willie that Sutter’s promise does not mean much and is not, in any event, enforceable.<sup>80</sup>

Another example of the biased application of this definition of ownership is the labor of Boy Willie and Berniece’s great-grandfather, the worker of wood. As Doaker explains, “See, everything my granddaddy made Mr. Sutter owned because he owned him.”<sup>81</sup> Thus, *The Piano Lesson* reflects the historical justification of deviation from the Lockean labor theory by the pretense that some people could own other people, thus ascribing their labor to the owner, a theory that the law backed.<sup>82</sup>

Despite the selective application of this theory of ownership, it is a theory that Boy Willie validates when he discusses his reasons for wanting to sell the piano to purchase the land. Boy Willie explains:

I get Sutter’s land and I can go down and cash in the crop and get my seed. As long as I got the land and the seed then I’m alright. I can always get me a little something else. Cause that land give back to you. I can make me another crop and cash that in. I still got the land and the seed. But that piano don’t put out nothing else. You ain’t got nothing working for you.<sup>83</sup>

For Boy Willie, land ownership will help him achieve economic independence, security, and freedom from dominant white society. Boy Willie acknowledges that if Berniece were using the piano, by giving lessons for example, he would see the usefulness of that and leave the piano with her.<sup>84</sup>

Wining Boy voices skepticism that Boy Willie’s pursuit will amount to success.<sup>85</sup> In his story of the berries, Wining Boy empha-

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79. *Id.* at 36.

80. *Id.*

81. *Id.* at 43.

82. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857). For a compelling, albeit disturbing, examination of the effects of slavery on the owned and the owners, see VALERIE MARTIN, *PROPERTY* (2003). See also WALTER JOHNSON, *SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET 19-21* (1999) (describing the “chattel principle” that defined the lives of slaves and potential slaves).

83. WILSON, *supra* note 20, at 51.

84. *Id.*

85. See *id.* at 36-38.

sizes the power imbalance between whites and blacks. He recounts:

Now you take and eat some berries. They taste real good to you. So you say I'm gonna get me a whole pot of these berries and cook them up to make a pie or whatever. But you ain't looked to see them berries is sitting in the white fellow's yard. Ain't got no fence around them. You figure anybody want something they'd fence it in. Alright. Now the white man come along and say that's my land. Therefore everything that grow on it belong to me. . . .

. . . [After you buy the land, the white man] come to you and say, "John, you own the land. It's all yours now. But them is my berries . . . You got the land . . . but them berries, I'm gonna keep them. They mine." And he go and fix it with the law that them is his berries. Now that's the difference between the colored man and the white man. The colored man can't fix nothing with the law.<sup>86</sup>

Wining Boy's story questions whether Boy Willie would in fact own the land even if he paid for it, since "for all practical purposes it would still belong to the white man, who has the law on his side."<sup>87</sup> Doaker also expresses skepticism about the wisdom of Boy Willie's objective, stating, "That land ain't worth nothing no more. The smart white man's up here in these cities. He cut the land loose and step back watch you and the dumb white man argue over it."<sup>88</sup> Doaker's comments express a deep distrust of any action by whites that may appear beneficial to blacks. Both Doaker and Wining Boy believe that land ownership will not completely free Boy Willie from the power wielded by the dominant white society. Boy Willie's response to Wining Boy's vignette also reflects distrust of the law based on law's indeterminacy. He states, "I don't go by what the law say. The law's liable to say anything. I go by if it's right or not."<sup>89</sup> These exchanges

86. *Id.* at 38 (final ellipsis in original).

87. PEREIRA, *supra* note 21, at 94.

88. WILSON, *supra* note 20, at 36. In another scene, Wilson hints at the beginnings of a shift from the importance of land to the value of education. Doaker explains that the Sutter land is for sale because one of the Sutter boys "left down there and come North to school." *Id.* at 29.

89. *Id.* at 38-39. This response reflects a concern about the injustice of the law similar to that of Mrs. Hale in Susan Glaspell's, *A Jury of Her Peers*, when she states, "The law is the law and a bad stove is a bad stove." SUSAN GLASPELL, *A JURY OF HER PEERS* 28-29 (Creative Educ. 1993) (1917). See Lillian Schanfield,



demonstrate a belief that legal rules and norms lack objectivity, a belief that has a basis in history and must not be ignored or dismissed. They also highlight the relative lack of power the freed slaves and their descendants have, even if they are able to acquire property.

Boy Willie's adoption of an economic and instrumentalist view of the value of property is contrasted with Berniece's stance that is based on intangible personhood interests.<sup>90</sup> In response to Boy Willie's reasons for selling the piano, Berniece states, "Money can't buy what that piano cost. You can't sell your soul for money. It won't go with the buyer. It'll shrivel and shrink to know that you ain't taken on to it."<sup>91</sup> Berniece bases the non-fungible value of the piano in large part on the fact that her father sacrificed his life for it and left her mother a lonely widow. Berniece talks about the blood and tears with which Mama Ola polished the piano every day after Papa Boy Charles died.<sup>92</sup> Thus, as a former student of mine observed, Boy Willie embodies the Economic Man, while Berniece is an example of the Literary Woman.<sup>93</sup> The Robin West article to which my former student referred focuses on the literary voice and insight that the law and literature movement can provide to help lawyers retain their humanity.<sup>94</sup> Indeed, West's concern that lawyers may lose their humanity parallels Berniece's fear for the family's soul if Boy Willie sells the piano. This same dichotomy applies to these different definitions of property. That is, the Literary Woman understands Margaret Radin's "intuitive view" that

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*The Case of the Battered Wife: Susan Glaspell's "Trifles" and "A Jury of Her Peers,"* 5 CIRCLES BUFF. WOMEN'S J.L. & SOC. POL'Y 69, 81 (describing how a bad stove symbolizes "failure, anxiety, frustration [and] shame" to a woman in the early twentieth century).

90. See MARGARET JANE RADIN, REINTERPRETING PROPERTY 37 (1993).

91. WILSON, *supra* note 20, at 50.

92. *Id.* at 52.

93. Jill Pennington, Texas Tech University School of Law (J.D., 1998), referring to Robin West, *Economic Man and Literary Woman: One Contrast*, 39 MERCER L. REV. 867, 869, 873 (1988) (contrasting the Economic Man's inability "to make 'intersubjective comparisons of utility'" with the Literary Woman's ability to empathize with others, even those whose experiences are far removed from our own). I have often assigned West's article with *The Piano Lesson* to my Property students.

94. West, *supra* note 93, at 874. *But see* Jane B. Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 YALE L.J. 1059, 1071-73 (1999) (questioning whether there is a law and literature "movement").

some objects are “closely bound up with personhood” and cannot be replaced.<sup>95</sup> Economic Man, on the other hand, understands the value of property in economic and instrumentalist terms. However, as with most dichotomies, the issues are much more complex for the theorists and for Berniece and Boy Willie.

Brother and sister are both conflicted about the value of the piano. Boy Willie emphasizes the economic value of the piano and how that will provide him with the means of establishing his economic independence, and states, “I ain’t gonna be no fool about no sentimental value.”<sup>96</sup> Yet, Boy Willie chastises his sister for not telling her own daughter, Maretha, about the history of the piano.<sup>97</sup> He states that Berniece should not act “[l]ike that [piano]’s something to be ashamed of.”<sup>98</sup> Instead, Boy Willie says that they ought to have a party every year on the anniversary of when Papa Boy Charles retrieved the piano.<sup>99</sup> He explains, “That way [Maretha] know where she at in the world.”<sup>100</sup> These statements exemplify Boy Willie’s understanding of the important role the piano has played in the history of his family and his pride for that history. They also exhibit Boy Willie’s understanding of the need to embrace history, heritage, and family. Yet, Boy Willie perseveres in his efforts to sell the piano until the very end of the play.<sup>101</sup>

However, Boy Willie is motivated not only by instrumentalist views, but also by the symbolic power of owning the land his ancestors worked as slaves and then as sharecroppers after Emancipation. His ancestors invested labor, blood, and tears in the cultivation of Sutter’s land, and acquiring legal title to this land is another way to protect personhood by preserving the Charles family history and identity, in addition to furthering Boy Willie’s economic independence and security.

Berniece is similarly conflicted. On the one hand, she refuses to

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95. RADIN, *supra* note 90, at 36-37.

96. WILSON, *supra* note 20, at 51.

97. *Id.* at 90.

98. *Id.* at 90-91.

99. *Id.* at 91. It is telling that Boy Willie would see no other reason to throw a party on the Fourth of July, the day Papa Boy Charles took the piano from Sutter. After all, independence did not extend to enslaved African Americans.

100. *Id.*

101. *See id.* at 103, 108.

let Boy Willie sell the piano, yet she also refuses to play on it. Berniece explains to Avery, her suitor after Crawley's death:

I was only playing [the piano] for [my mother]. When my daddy died seem like all her life went into that piano. She . . . say when I played on it she could hear my daddy talking to her. I used to think them pictures came alive and walked through the house. Sometimes late at night I could hear my mama talking to them.<sup>102</sup>

To Berniece, the piano is too powerful a reminder of the pain and death it represents; it "is both legacy and taboo."<sup>103</sup> While she deeply appreciates the non-fungible or personal value of the piano to the family, she does not want Maretha to be burdened by that history. However, she wants Maretha to learn the piano and to be a school-teacher,<sup>104</sup> thus recognizing the economic utility of the piano as well.

While the piano represents human sacrifice that is personal to Berniece, she is also disdainful of the piano for the pain it has caused her family. After describing how Mama Ola polished the piano every day with blood and tears, Berniece asks Boy Willie, "You always talking about your daddy but you ain't never stopped to look at what this foolishness cost your mama. Seventeen years' worth of cold nights and an empty bed. For what? For a piano? For a piece of wood? To get even with somebody?"<sup>105</sup> Berniece's feelings toward and about the piano reflect another paradox of property ownership. The piano symbolizes the oppression and sacrifice of the Charles family that continues to burden Berniece. At the same time, the piano embodies the family history and freedom from oppression.

Inextricably entwined with the dispute between Bernice and Boy Willie and their individual struggles are notions of history and identity as property. To recognize history and identity as property is to recognize the impossibility of placing objective values on these.

Residents of the Lower Nine face a similar economics and personhood dichotomy when deciding whether to return and rebuild or pursue opportunities elsewhere. Louisiana's proposed "The Road

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102. *Id.* at 70.

103. PEREIRA, *supra* note 21, at 90 (quoting Mei-Ling Ching, *Two Notes on August Wilson: Wrestling Against History*, THEATER, Summer/Fall 1988, at 70, 71).

104. WILSON, *supra* note 20, at 70.

105. *Id.* at 52.

Home” would provide up to \$150,000, depending upon the pre-Katrina value of the home, to owners who rebuild and then occupy their homes.<sup>106</sup> Insurance proceeds and FEMA payments would be deducted from this amount.<sup>107</sup> As one Lower Nine resident explained, his house was worth about \$50,000, but it would take at least \$100,000 to rebuild.<sup>108</sup> Thus, people face the dilemma of going into debt to rebuild or taking a reduced amount in the form of a buyout, permanently relocating elsewhere, and going into debt to purchase other property.<sup>109</sup> Some residents of the Lower Nine have found that they have greater economic opportunities where they have relocated and face the dilemma of whether to forgo those opportunities for the possibility that their neighborhood will be restored.<sup>110</sup> Individuals who have decided to rebuild in the Lower Nine must bear the full risk that they will be surrounded by abandoned homes and stores, because others are not able, or decide not to rebuild. Rather than confronting the fate of the Lower Nine as a collective issue, New Orleans Mayor Nagin has told residents that the decision is up to each individual resident.<sup>111</sup> A senior fellow at the Urban Land Institute has described the rebuilding efforts of individual property owners as “nothing more than leaps of faith” that there will eventually be a neighborhood around

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106. Gwen Filosa & Laura Maggi, “Road Home” Brings Blanco to N.O., *TIMES-PICAYUNE* (New Orleans), Apr. 13, 2006, Metro, at 1 (describing Governor Blanco’s plan for distributing Federal relief money).

107. *Id.*

108. *Id.* (quoting Steven Ringo, a Lower Nine resident).

109. *Id.* Under “The Road Home” plan, property owners who opt for a buyout would receive 60% of the pre-Katrina value of their property up to the grant limit of \$150,000. Homeowners who did not have insurance are penalized with a 30% reduction in their grant package. A buyout is not an attractive option for Lower Nine resident Randy Peters. He estimates that the pre-Katrina value of his home, which he has owned for 15 years, is \$130,000. After deductions for insurance and FEMA money he has received, the plan would net him \$10,000. *Id.* Residents’ financial problems are increased because the average price of homes in New Orleans has increased about 20% over pre-Katrina prices. Greg Thomas, *Home Prices Take Off After Katrina*, *TIMES-PICAYUNE* (New Orleans), Feb. 19, 2006, National, at 1.

110. Deborah Sontag, *Delery Street: Destiny Interrupted*, N.Y. *TIMES*, Nov. 12, 2005, at A9 (describing how Lower Nine resident Shantel Reddick who obtained a job with a sheriff’s office in Houston that pays better than her former position with the Orleans Parish sheriff’s department).

111. Bruce Egger, *Nagin Accepts BNOB Blueprint*, *TIMES-PICAYUNE* (New Orleans), Mar. 21, 2006, National, at 1.

them.<sup>112</sup> The delay in allowing Lower Nine residents to begin rebuilding and the delay in restoring services to the Lower Nine are similar to the lack of tools and the lack of other means freed slaves and their descendants faced. In addition, the delay in issuing a plan for rebuilding and for restoring services risks amounting to neglect of these residents.

#### IV. HISTORY LESSONS

Just as the law and legal jurisprudence grapple with issues of objectivity and bias, so too does the discipline of history. John Timpane, in *Filling Time: Reading History in the Drama of August Wilson*, asks, “Do the excluded and the empowered read history differently?”<sup>113</sup> Wilson sets *The Piano Lesson* in 1936 Pittsburgh,<sup>114</sup> toward the end of the Great Depression, as the country was beginning to stabilize,<sup>115</sup> and toward the end of the Great Migration North when “several thousand blacks had settled in the northern industrial belt.”<sup>116</sup> Blacks continued to struggle with discrimination and poverty in both the North and the South, attempting to succeed while negotiating the rules and standards of the dominant white discourse. Berniece cleans “house for some bigshot down there at the steel mill.”<sup>117</sup> She must leave early in the morning to get out to Squirrel Hill or risk losing the cost of transportation.<sup>118</sup> As Doaker explains, “They don’t like you to come late. You

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112. Gwen Filosa, *Experts Excoriate Recovery Leaders*, TIMES-PICAYUNE (New Orleans), July 29, 2006, National, at 1.

113. John Timpane, *Filling the Time: Reading History in the Drama of August Wilson*, in MAY ALL YOUR FENCES HAVE GATES, *supra* note 17, at 67, 67.

114. The year is gleaned from doing the math with the years Doaker uses in his telling of the story of the Charles family and the piano. WILSON, *supra* note 20, at 44-45. Wilson’s ten plays chronicling African-American life in the twentieth century take place in or around Pittsburgh, “all unfolding within a few city blocks.” *A Dream Not Deferred*, *supra* note 16, at 6.

115. PEREIRA, *supra* note 21, at 86.

116. *Id.* at 87. See also MARY ELLEN SNODGRASS, AUGUST WILSON: A LITERARY COMPANION 92-94 (2004) (describing the role of the Great Migration in many of Wilson’s plays); SHANNON, *supra* note 17, at 160-61 (“The Great Migration is at its peak during the time of *The Piano Lesson*.”).

117. WILSON, *supra* note 20, at 58.

118. *Id.*

come late they won't give you your carfare."<sup>119</sup>

Lymon, who is Boy Willie's friend and who was with Boy Willie when Crawley was shot and killed, seeks to get out from under harsh application of the law in the South. He came North with Boy Willie to escape "certain reincarceration at the notorious prison camp known as Parchman Farm."<sup>120</sup> After being arrested, Lymon was fined \$100.<sup>121</sup> Lymon explains that a white man named Stovall "come and paid my hundred dollars and the judge say I got to work for him to pay him back his hundred dollars. I told them I'd rather take my thirty days but they wouldn't let me do that."<sup>122</sup> So, Lymon ran off, and decided to stay up North.<sup>123</sup> Lymon's situation and the existence of a place like Parchman Farm come close to continued literal enslavement.<sup>124</sup> Economic dependency on white society and other vestiges of slavery confront other characters as well.

Boy Willie talks about watching his father, presumably while Papa Boy Charles was a sharecropper:

Many is the time I looked at my daddy and seen him staring off at his hands. I got a little older I know what he was thinking. He was sitting there saying, "I got these big old hands but what I'm gonna do with them? Best I can do is make a fifty-acre crop for Mr. Stovall. Got these big old hands capable of doing anything. I can take and build something with these hands. But where's the tools? All I got is these hands. Unless I go out here and kill me somebody and take what they got . . . it's a long row to hoe for me to get something of my own. So what I'm gonna do with these big old

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119. *Id.*

120. SHANNON, *supra* note 17, at 153. *See also* Snodgrass, *supra* note 116, at 149 ("When populist pressures ended the merchandizing of prison labor, penal farming, a form of convict bondage similar to medieval fiefdoms, took its place.")

121. WILSON, *supra* note 20, at 37.

122. *Id.*

123. *Id.*

124. SNODGRASS, *supra* note 116, at 149 (describing Parchman's Farm as "an historic two-thousand-acre penal plantation created by [Mississippi] Governor James Kimble Vardaman and operated by inmate labor"). *See also* WILLIAM BANKS TAYLOR, *DOWN ON PARCHMAN FARM* (1999); DAVID M. OSHINSKY, "WORSE THAN SLAVERY": PARCHMAN'S FARM AND THE ORDEAL OF JIM CROW JUSTICE (1997).

hands?"<sup>125</sup>

Perhaps it is this frustration that led Papa Boy Charles to carry out the figurative emancipation of his family by taking the piano, since he was unable to achieve literal freedom from economic dependence. Just as Sutter owned Willie Boy's woodcarving craft, so too did the white man own Papa Boy Charles' labor by denying him the tools he needed to achieve economic independence. Boy Willie's description of his father poignantly illustrates the situation of a person who lacks property and therefore lacks power. A person without property lacks power in a general sense, but even more importantly, a person without property also lacks power over his or her own destiny and is therefore subject to the power of those who have property.

Other characters face this same dilemma. Avery, Berniece's suitor, works as an elevator operator in a skyscraper, a stable job with a pension plan and an annual Thanksgiving turkey.<sup>126</sup> Yet, Avery wants to be a preacher with his own congregation, and therefore must "kowtow to the white officials at the local bank where he hopes to secure a loan."<sup>127</sup> While Avery has the vision of preacher life, he does not have the economic means to accomplish this on his own. Avery's situation again reveals the position of those who have skills, talents, and ambitions, but lack the means to advance themselves very much. Doaker works as a full-time railroad cook, which "for black men in the 1930s [was] the most reliable and best-paying job available."<sup>128</sup> Despite this degree of security, Doaker, and other black Pullman porters, "catered to the all-white passengers' every need"<sup>129</sup> and were thus at risk of running afoul of white expectations of how a black porter should behave. As Shannon explains, "Since the supply of black railroad employees was originally tapped from slave labor, there was a lingering tendency among the white passengers . . . to act like masters."<sup>130</sup> Doaker must have learned to negotiate this treatment since he

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125. WILSON, *supra* note 20, at 91 (ellipsis in original). Through Willie Boy, Wilson then asks—seemingly to the reader and the audience—"What would you do?" *Id.*

126. SHANNON, *supra* note 17, at 155; WILSON, *supra* note 20, at 23.

127. SHANNON, *supra* note 17, at 155.

128. *Id.* at 156.

129. *Id.* at 157.

130. *Id.*

states that he has been working for the railroad for twenty-seven years.<sup>131</sup>

The characters of *The Piano Lesson* thus embody Timpane's answer to his own question, "The excluded and the empowered *do* read history differently. Indeed, they cannot but do so."<sup>132</sup> As Alan Nadel elaborates,

While the principles fought for in and established by [the Civil War]—most notably, that the United States would not be a slaveholding nation—cannot, I think, be underestimated, the failure of the nation to address adequately the implications of Emancipation and to institutionalize the human rights of black Americans, gives the Civil War a different position and significance in black American history than in the dominant historical narratives of white America.<sup>133</sup>

Since the burdens and negative consequences of this societal neglect following Emancipation have been borne by African Americans, it makes sense that they would have a different view of this history. Wilson seeks to validate this perspective on history by including uses of African traditions. As Morales explains, "Wilson frames history in his plays from a perspective antithetical to the secular views of history in the West, especially positivist conceptions of history that presume historical objectivity and scientific method."<sup>134</sup>

The question Wilson raises in *The Piano Lesson*, as well as other plays, is what to do with that history? As Nadel states, "Berniece . . . wants to hide from history and Boy Willie wants to get rid of it."<sup>135</sup> Should they sell the piano to buy land or claim it as part of their personhood and humanity? Of course, phrased this way, the answer is obvious. But both Berniece and Boy Willie must learn for themselves how to come to a "reconciliation with their past."<sup>136</sup> Once they claim

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131. WILSON, *supra* note 20, at 18.

132. Timpane, *supra* note 113, at 81.

133. Nadel, *supra* note 52, at 99.

134. Michael Morales, *Ghosts on the Piano: August Wilson and the Representation of Black American History*, in MAY ALL YOUR FENCES HAVE GATES, *supra* note 17, at 105, 112.

135. Alan Nadel, *Introduction* to MAY ALL YOUR FENCES HAVE GATES, *supra* note 17, at 1, 3.

136. PEREIRA, *supra* note 21, at 96.



their history as their own, rather than as constructed by white America, they are able to realize self-actualization and a sense of identity. Hence, history is personal, non-fungible property that is “sacred to personal autonomy.”<sup>137</sup> The “sacred”<sup>138</sup> piano represents that history of literal and figurative enslavement. When they confront and come to terms with their history and their legacy, Boy Willie and Bernice claim their identity.

In the final scene of the play, Sutter’s ghost appears at the top of the staircase while Avery seeks to exorcise it from the house.<sup>139</sup> Boy Willie dashes up the stairs to fight Sutter.<sup>140</sup> Wilson describes the battle: “It is a life-and-death struggle fraught with perils and faultless terror.”<sup>141</sup> Throughout the play, it appears that Berniece’s resistance to selling the piano is the obstacle that Boy Willie must overcome to achieve independence and self-actualization. Yet, at the end, the reader and Boy Willie realize that the real obstacle is the “ghost of the white man.”<sup>142</sup> Although Boy Willie fights valiantly, it is not enough. While the battle between Boy Willie and Sutter’s ghost rages upstairs,

It is in this moment, from somewhere old, that BERNIECE realizes what she must do. She crosses to the piano. She begins to play. The song is found piece by piece. It is an old urge to song that is both a commandment and a plea. With each repetition it gains strength. It is intended as an exorcism and a dressing for battle. A rustle of wind blowing across two continents.<sup>143</sup>

Berniece begins to sing, calling on the family ancestors for help.<sup>144</sup> Suddenly the noise upstairs stops and Boy Willie calls out, “Come on,

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137. RADIN, *supra* note 90, at 35.

138. A number of literary scholars describe the piano as “sacred.” *See, e.g.,* Morales, *supra*, note 134, at 108 (discussing the “sacral properties” the piano obtains due to the blood sacrifices, both literal and figurative, that were made over it).

139. WILSON, *supra* note 20, at 103-06.

140. *Id.* at 106.

141. *Id.*

142. SHANNON, *supra* note 17, at 161. *See also* Pereira, *supra* note 21, at 101 (“As long as this is a house divided, [Boy Willie and Berniece] will be enslaved by the destructive elements of their past and their former owner who will not leave.”).

143. WILSON, *supra* note 20, at 106.

144. *Id.* at 107.

Sutter! Come back, Sutter!”<sup>145</sup> When Sutter’s ghost leaves, Berniece and Boy Willie learn that they must combine their efforts and together preserve their history, legacy, and identity. The play abruptly ends with Boy Willie and Wining Boy going back to the South.<sup>146</sup> As he leaves, Boy Willie cautions his sister, “Hey Berniece . . . if you and Maretha don’t keep playing on that piano . . . ain’t no telling . . . me and Sutter both liable to be back.”<sup>147</sup>

As Boan explains, Boy Willie is forced “into acquiring his freedom and self-realization in the emotional realm, not the economic one, by confronting Sutter’s ghost, not [by] buying his land.”<sup>148</sup> Radin might say that Boy Willie’s identity is bound up with the personal property of his family history, not in the fungible monetary value of the land.<sup>149</sup> Wilson uses a battle that is both literal and figurative in this final scene to emphasize the difficult choice faced by African Americans: should they alienate their history in order to improve their economic status?<sup>150</sup> Throughout the play, there is reference to a white man who is going around buying musical instruments from blacks.<sup>151</sup> This is one example of the economy created after slavery, one “constructed out of a dual historical perspective that marginalized the victims of slavery while it valorized the practitioners; it is an economy in which black labor becomes the property that allows white society to deny blacks their human rights.”<sup>152</sup> By buying the piano, the white man would once again own not only Willie Boy’s labor, but also the Charles family history and identity.

Indeed, the notion of Boy Willie’s alienation of the piano raises

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145. *Id.*

146. *Id.* at 108.

147. *Id.*

148. Boan, *supra* note 43, at 264.

149. *See supra* notes 90-95 and accompanying text.

150. Boan, *supra* note 43, at 266.

151. WILSON, *supra* note 20, at 11, 26.

152. Nadel, *supra* note 52, at 100 (describing how in the aftermath of slavery, the slave-catcher became the “people finder” in Wilson’s play, *Joe Turner’s Come and Gone*). *See also* JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* 235 (7th ed. 1994) (describing how the “use of black labor [after Emancipation] had the curious effect of making it more difficult for black workers to achieve security and respectability in the world of labor”).

what Radin calls the “double meaning of the word ‘alienation’”: “contract-alienation” and “estrangement-alienation.”<sup>153</sup> Radin would likely conclude that the rhetoric of the market is not appropriate as to the piano because this “good” is “particularly important for personhood.”<sup>154</sup> Once we recognize that the Charles family history is property, its alienation reflects the alienation and estrangement of the Charles family; sale of the piano would break the link to the Charles ancestors.

Wilson has explored this dilemma in other plays. Troy Maxson, a baseball player in *Fences*, and Ma Rainey, a popular singer in *Ma Rainey’s Black Bottom*, sacrifice themselves at the same time that they create “expanded opportunities for other people like them.”<sup>155</sup> These two characters do not learn the lesson that Boy Willie and Berniece learn in *The Piano Lesson*, the “importance of ancestral linkage to the South, and by extension, to Africa.”<sup>156</sup> Only by embracing this heritage can they achieve full freedom. As Morales explains, “the transmission of history becomes a binding ritual through which [Wilson’s] characters obtain an empowering self-knowledge, a tangible sense of their own self-worth and identity that gives them the strength to manage the future on their own terms.”<sup>157</sup>

However, the conclusion that Boy Willie must preserve the piano in order to embrace his history and identity is less convincing when we consider how Wilson initially ended *The Piano Lesson*. Wilson originally left the fate of the piano an open question. He explained, “To me [what happened to the piano] wasn’t important. The important thing to me was Boy Willie’s willingness to engage the ghost in battle. Once you have that moment, then for me the play was over.”<sup>158</sup> Shannon explains that this is consistent with “Wilson’s emphasis as a playwright, which is more on provoking thought than on providing solutions.”<sup>159</sup> Director Lloyd Richards<sup>160</sup> was able to convince Wilson

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153. RADIN, *supra* note 90, at 191, 199.

154. *Id.* at 200.

155. Timpane, *supra*, note 113, at 67.

156. SHANNON, *supra* note 17, at 147.

157. Morales, *supra*, note 134, at 106.

158. SHANNON, *supra* note 17, at 149.

159. *Id.* at 150.

160. Lloyd Richards was also an icon in modern American theater. In 1957, he directed *A Raisin in the Sun* and directed and collaborated on a number of other Wil-

to answer this obvious question for the audience (“what happens to the piano?”) to ensure that the main lesson of the play came through.<sup>161</sup> Therefore, despite the powerful importance of the piano, it would be incorrect to conclude that Wilson found the piano’s value outweighed the symbolic and personhood interests in ownership of land worked by the Charles’ family as slaves and sharecroppers. It is too simplistic to view the conflict in dichotomous terms of either the piano or the land. Ownership of land, and a home in particular, can have powerful historical value and value for identity.

#### V. ECONOMICS AND PERSONHOOD

Other plays by Wilson emphasize the importance of African-American ownership of land to achieve both economic and personhood goals. Troy Maxson’s home in *Fences* represents how he has provided for his wife Rose and their son Cory “by the sweat of [his] brow” and challenges Cory to “go on and be a man and get [his] own house.”<sup>162</sup> However, Troy’s sense of achievement is bittersweet. The money he used for the down payment was the \$3,000 the United States Government paid to Troy’s brother who “got half his head blown off” fighting in World War II, leaving him mentally ill.<sup>163</sup> Thus, Troy’s symbol of success is also a constant reminder of his brother’s heartbreaking sacrifice.

Similarly, in *Joe Turner’s Come and Gone*, Seth Holly’s property has personhood value because he inherited it from his father, it is his home, and it is a source of income because he rents out rooms. It is “the site on which he is the *subject with* property rights, not the *object of* property rights.”<sup>164</sup> Seth is not willing to risk this by using his property as collateral for a loan that would allow him to set up his own pot-making business.<sup>165</sup> Thus, he remains dependent upon a peddler for the raw materials needed to make the pots and for the sale of the

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son plays. He died on his eighty-seventh birthday in 2006. Campbell Robertson, *Lloyd Richards, Theater Director and Cultivator of Playwrights, Is Dead at 87*, N.Y. TIMES, July 1, 2006, at C10.

161. SHANNON, *supra* note 17, at 149-50.

162. AUGUST WILSON, *FENCES* 84-85 (1986).

163. *Id.* at 27.

164. Nadel, *supra* note 52, at 98.

165. AUGUST WILSON, *JOE TURNER’S COME AND GONE* 3 (1988).

products.<sup>166</sup> While Seth's home is his legacy from his ancestors, his opportunities to obtain greater economic value from it and thus, greater economic independence, are limited. The homes in these plays represent a degree of independence, achievement, and security for Troy and Seth and thus, their significance is based on both economic and personhood values. However, these attributes are bound up with reminders of how fragile and paradoxical ownership is, either due to how it came about, as with the tragic injury of Troy's brother, or because it attracts those who would exploit, such as the banker who could foreclose on it or the peddler who controls the supply and demand of pots and thus controls Seth.<sup>167</sup> Home ownership provides security for Seth and Troy, but it nonetheless makes them subject to power wielded by others.

In Wilson's last play,<sup>168</sup> *Radio Golf*,<sup>169</sup> he revisits the question of "how to preserve the past while still moving forward."<sup>170</sup> Set in 1997 in the Hill District of Pittsburgh, *Radio Golf* depicts the endeavors of two college roommates to redevelop this community by razing the existing structures and building "gleaming new houses, apartments, and commercial space."<sup>171</sup> A conflict develops when the Elder Joseph Barlow asserts ownership of 1839 Wylie, a dilapidated house slated for demolition, and refuses an offer of \$10,000 that would allow the redevelopment to go forward.<sup>172</sup> In addition to being an important as-

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166. Nadel, *supra* note 52, at 97.

167. The peddler in *Joe Turner's Come and Gone* is also known as a "People Finder" who charges \$1.00 to locate family and friends who were separated during and after slavery. Pereira describes this as exorbitant when compared to the \$2.00 charged by Seth for room and board for one night. PEREIRA, *supra* note 21, at 58-59.

168. Charles Isherwood, *August Wilson, Theater's Poet of Black America, Is Dead at 60*, N.Y. TIMES, Oct. 3, 2005, at A1.

169. This play has not yet been published. My description of it is based on reviews of and playbills from productions of the play.

170. Robbie Wachs, *Seattle Review: Radio Golf*, BROADWAY WORLD, Jan. 27, 2006, <http://www.broadwayworld.com/viewcolumn.cfm?id=7137>.

171. HILLY HICKS, JR., DISCOVERY GUIDE: AUGUST WILSON'S *RADIO GOLF 3* (2005), available at [http://www.taperahmanson.com/download/Radio\\_webguide-FINALrev.pdf](http://www.taperahmanson.com/download/Radio_webguide-FINALrev.pdf).

172. John Lahr, *The Final Installment of August Wilson's Masterwork*, NEW YORKER, May 16, 2005, at 93, available at [http://www.newyorker.com/printables/critics/050516crth\\_theatre](http://www.newyorker.com/printables/critics/050516crth_theatre).

set to Joseph Barlow, the house has symbolic significance as well. This was the home of Aunt Esther in Wilson's *Gem of the Ocean*.<sup>173</sup> Aunt Esther is "a mystical character who is the repository of all black tradition."<sup>174</sup> This home has personal value to Joseph as the place where he and his ancestors were raised and lived. In addition, the home on Wylie Street represents the history and identity of the Hill District community.

Of course, there are paradoxes in the play. On the one hand, one goal of the redevelopment is to attract people and businesses back to this impoverished area. On the other hand, the entrepreneurs seek to accomplish this by destroying what exists, because this will realize the greatest profit. Destroying the structures will destroy the community, since the likely result is gentrification rather than a return of the previous owners and businesses.<sup>175</sup> In the end, one of the partners, Hammond, declares, "I figured it out! It's not about redevelopment, it's about preserving what's here and building on that."<sup>176</sup> He plans to build the new development around 1839 Wylie and thus preserve the old structure. While this resolution seems simplistic, Wilson highlights the poignancy of the dilemma and how its resolution requires dramatic transformations of not just one person, but of many. Unfortunately, Hammond's epiphany-inspired solution costs him his friends, his business partner, and his wife, making it unlikely that he will be able to succeed on his own.<sup>177</sup>

*The Piano Lesson* and Wilson's other plays analyze the dilemma of finding an appropriate balance between economic and personhood values, rather than presenting the issue in stark dichotomous terms. It is simply not possible to separate out economic independence from personhood interests; Boy Willie's quest for such independence is inextricably tied to his heritage and to his personal identity. It is not until Boy Willie and Berniece combine their efforts to rid themselves of the "white man's ghost" that they fully appreciate the significance and the appropriate positioning of their heritage thus enabling them to suc-

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173. AUGUST WILSON, *GEM OF THE OCEAN* (2004).

174. Lahr, *supra* note 172.

175. *Radio Golf*, Huntington Theatre, Boston (Sept. 8, 2006) (including commercial space for Whole Foods and Starbucks in the redevelopment plan).

176. *Id.* (quoting AUGUST WILSON, *RADIO GOLF* (2005)).

177. *Id.*

ceed. This type of collaboration, absent in *Radio Golf*, will likely doom Hammond's efforts to achieve a similar balance.

#### VI. CONCLUSION—LESSONS IN THE AFTERMATH OF KATRINA

A dilemma similar to that in Wilson's plays exists in the aftermath of Katrina, Rita, and the breach of the levees. One proposal is to compensate the owners for their property and not allow rebuilding.<sup>178</sup> This raises a concern similar to that expressed by Berniece in *The Piano Lesson*—"You can't sell your soul for money"<sup>179</sup>—that is, money cannot replace the history and community that existed in the Lower Nine. In addition, there is fear of speculation. One resident expressed concern that she will be "offered \$5,000 for [her home] that is resold for \$500,000."<sup>180</sup> This distrust must be acknowledged and addressed by those involved in the decision-making process.

Lower Nine residents have expressed frustration that they were not allowed to return to their homes sooner to start rebuilding. As Charles Reddick explained, "We need to get back to work. We got all the skills right in this family. We got roofers, welders, electricians, carpenters," but the Reddick family was unable to access the property they owned.<sup>181</sup> While the Reddicks have achieved more economic independence than Boy Willie, who was struggling to acquire property, they have not begun to rebuild because the National Guard sealed off the Lower Nine.<sup>182</sup> However, Reddick has been able to begin work on the homes of other people whose New Orleans' neighborhoods have been opened.<sup>183</sup> The aftermath of Katrina has left many African Americans, particularly those from the Lower Nine, vulnerable to decisions by governmental agencies that have not adequately addressed their concerns and fears. One resident expressed his anguish over this treatment, stating, "They're treating us like we're al-

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178. Connolly, *supra* note 6.

179. WILSON, *supra* note 20, at 50.

180. Connolly, *supra* note 6.

181. Sontag, *supra* note 8.

182. Deborah Sontag, *Delery Street: Access Denied*, N.Y. TIMES, Oct. 24, 2005, at A1.

183. Deborah Sontag, *Delery Street: The Next Step*, N.Y. TIMES, Jan. 9, 2006, at A1.

ready dead.”<sup>184</sup> This failure and neglect poses a risk of leaving lasting effects similar to those that remained long after Emancipation, as described by Nadel.<sup>185</sup>

In addition to the individual personhood value of homes lost, the aftermath of Katrina requires an appreciation for the value of community and identity. Deborah Sontag’s series in the *New York Times*, *Delery Street*, tracking families who had lived on this street, depicts the deep sense of history and community in the Lower Nine. She describes the residences and residents of Delery Street: “compact houses on tidy tracts divided by chain-link fences. Property had not changed hands there for several decades, and families made up of tradesmen, professionals, retirees, and students were linked by a shared history that began around the time the last storm, [Hurricane Betsy,] ravaged their neighborhood, . . . in 1965.”<sup>186</sup> The shared history goes back even farther to when, after Emancipation, this was the only area of New Orleans poor blacks and white immigrants could afford to live.<sup>187</sup> The geographic isolation of the Lower Nine “fostered the development of local institutions from innumerable churches to civic groups.”<sup>188</sup> The residents became politically active in their efforts to secure services such as sewage systems and schools.<sup>189</sup>

Sontag’s series also illustrates how the residents shared the responsibility of child rearing.<sup>190</sup> Interviewees talked about playing football in the streets while being “overseen by Miss Evelyn, a neighbor who was authorized by their parents to administer ‘chastisements and whuppings.’”<sup>191</sup> Gratz depicts this aspect of community as

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184. Sontag, *supra* note 182.

185. See *supra* notes 133, 152 and accompanying text. See also John M. Broder, *Storm and Crisis: Racial Tension*, N.Y. TIMES, Sept. 5, 2005, at A9 (describing the belief expressed around the country that federal relief efforts after Katrina struck were woefully insufficient because the vast majority of the hurricane’s victims were black); ROD AMIS, KATRINA AND THE LOST CITY OF NEW ORLEANS 5, 33 (2005) (describing New Orleans as the “American Haiti,” implying a high degree of neglect of the city except for efforts to encourage tourism).

186. Sontag, *supra* note 8.

187. DYSON, *supra* note 73, at 10-11.

188. *Id.* (quoting Juliette Landphair, historian at the University of Richmond).

189. *Id.*

190. *Id.*

191. *Id.* (quoting Howard Bryant, Jr. and Charles Reddick, residents of Delery



well.<sup>192</sup> Lower Nine resident Betty Lewis described how her mother, twelve aunts and uncles, and nineteen cousins owned homes at different times within blocks of each other.<sup>193</sup> Lewis stated that growing up one “couldn’t get in trouble in this neighborhood without someone telling your mom. In front of whoever’s house you were at lunch time is where you went in to eat.”<sup>194</sup> Indeed, a number of residents chose to remain in the Lower Nine when they had the means to relocate to other neighborhoods, including Fats Domino.<sup>195</sup> As one resident explained, “These were the people I knew and trusted.”<sup>196</sup> As Gratz states of the Lower Nine residents, “[They] understand the authentic connectivity that made their neighborhood work, the kind of physical, social and economic co-mingling that so many Americans desire, but which actually existed in the Lower Ninth.”<sup>197</sup>

An appropriate and successful approach to fate of the Lower Nine requires an understanding of the complexities of the situation. It is too simplistic and dismissive to tell these residents that the choice is theirs—rebuild or take the buyout money—because this does not take into account the importance of history, heritage, and community. Such an approach also places the full burden of the future of the Lower Nine on individuals who are willing to risk being the first on their block to rebuild, and perhaps to be the only ones for a significant amount of time. Residents face remarkable uncertainty about the future of the levees, about the city’s commitment to restoring essential services, and about the plans of other residents. Decision makers should endeavor to ensure that residents are in a position to make realistic choices about their future and to construct plans that take into account more than the dollar value of property.

Wilson’s plays teach that it is of paramount importance to recognize and preserve property interests in the form of connections, heritage, and history and how these are central to the identities of the

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Street, New Orleans).

192. Gratz, *supra* note 9.

193. *Id.*

194. *Id.*

195. *Id.*

196. Sontag, *supra* note 8 (quoting Willie Calhoun, who had lived a few doors down from his mother’s home).

197. Gratz, *supra* note 9.

Lower Nine residents. Such recognition is essential to preventing the separation, estrangement, and desperation that slavery and Antebellum policies inflicted on the African-American community. By bringing to life the struggles faced by African Americans throughout the twentieth century, Wilson's plays also teach that these struggles are critical components of American history, and it behooves us all to learn from the lessons of his plays and from the lessons of history.