

AT THE INTERSECTION OF THE UNITED STATES' POST-911
IMMIGRATION PRACTICES AND ITS DOMESTIC POLICIES: CAN
KATRINA SERVE AS A CATALYST FOR CHANGE?

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INTRODUCTION

The events surrounding the Katrina disaster in September 2005¹ not only highlighted the race/class based hierarchy existing in the United States, but they also revealed the position of non-whites as “the other” is not a thing of the past in America. A dissection of the discourse surrounding the Katrina disaster showed an underlying commonality between the United States’ immigration and its domestic policies. This commonality is exposed in comments that depicted New Orleans foreign to the United States. Among these statements are: “but this is America”, “New Orleans is a scene from the Third World”, “US Handles the crisis like a third world country” and “bodies floating on water reminiscent of Africa”². It is interesting that individuals were able to make sense of the Federal government’s lack of response to New Orleans’ needs the first four days after the disaster only by likening New Orleans to a foreign territory. These comments, in addition, reveal a rapprochement between the policies affecting non-whites in the United States and those in the rest of the world that should open the doors to a more honest discourse on race/class based American policies.

The perception of non-white immigrants as a suspect class has been heightened since September 11, 2001. Similarly, the events in New Orleans have exposed a hierarchical system based on race and class. If one is to analyze the initial reaction to the stranded poor populace in New Orleans during Katrina, the comments revealed attempts at detaching these disturbing events from what is generally viewed as the authentic American experience. These detachment efforts stem from the fact that generally mainstream Americans prefer to associate the United States with a country where all dreams are possible and where hard work is rewarded. Consequently, it was necessary for a lot of individuals to categorize the New Orleans’ victims of Katrina as “other”, as an inexplicable manifestation of failure amidst the apparent well-oiled machinery that is considered to be the United States.

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¹ Hurricane Katrina one of the most devastating storms in the United States. It displaced Hundreds of thousands and killed hundreds and adversely affected the majority of New Orleans’ Black Population who could not evacuate on time.

² Mukoma Wa Ngugi, *New Orleans and The Third World*, <http://www.countercurrents.org/us-ngugi090905.htm>.

This essay investigates how an analysis of United States' immigration and domestic policies might help further an honest discourse around race and class in America. The essay will demonstrate the ways in which immigration policies have perpetuated a hierarchical race/class based structure, thereby creating a vicious cycle of oppression and subordination. The essay will also attempt to provide suggestions for holding Immigration officials and governmental entities accountable for mistreatment of poor or non-whites individuals. It also offers suggestions as to how to encourage a more honest debate about the affect of race and class on domestic and immigration policies.

PERPETUATION OF A RACE/CLASS BASED HIERARCHICAL STRUCTURE THROUGH AMERICAN IMMIGRATION POLICIES

On November 3, 2004 an uncle of the Haitian writer Edwidge Danticat died while in United States' Immigration Custody in the Krome Detention Center. He arrived in the United States seeking political asylum armed with a multiple-entry visa and a passport.³ Reverend Dantica[t]⁴ had a long history of visiting the United States since the 1970's.⁵ Reverend Danticat was gravely ill and was coming to the United States to seek medical attention. He spoke through a voice box and was in no way threatening. The immigration officers detained Mr. Dantica[t] and confiscated his much needed medicine. It is reported that "the popular Baptist minister died handcuffed to a hospital bed on November 3, five days after federal authorities confiscated his medicine, dismissing them as illegitimate and voodoo-like."⁶ No apology was issued and no sense of obligation felt by the immigration officers or the government.⁷

The treatment received by the stranded people in New Orleans strangely resembled the treatment that non-white immigrants, like Reverend Dantica[t], receive when attempting to enter the country. During his detention, Mr. Danticat was stripped of his humanity and treated by the immigration officials as solely an a non-human, an "alien" who was seeking benefits to which he was not entitled. Comparatively, the non-white residents of New Orleans, suffered

³ Democracy Now, Award Winning Novelist Edwidge Danticat Blasts "Discriminatory and Brutal" U.S. Asylum Policy in Death of Uncle, <http://www.democracynow.org/article.pl?sid=04/12/01/1536230&mode=thread&tid=25>

⁴ Reverend's Dantica's name as apparently not spelled the same way as her niece, Edwidge Danticat.

⁵ *Id.*

⁶ . Leslie Casimir, A death in Custody: Homeland Security Officials Investigate treatment of novelist Edwidge Danticat's Uncle, Who Died Seeking Asylum, http://www.findarticles.com/p/articles/mi_m0HST/is_2_7/ai_n12937368

⁷ Nalo Hopkinson, *Writer Edwidge Dantica's Dead in custody of U.S. Immigration*, <http://www.sff.net/people/nalo/writing/2005/01/writer-edwidge-danticats-uncle-dead-in.html>.

from a similar treatment in the first four days of the crisis. Overnight, New Orleans metamorphosed from one of the most cherished city of the United States to being described as “third world-like”. Time and time again commentators marveled that such misery could was indeed taking place in America. President Bush himself used words that seemed to depict New Orleans as a foreign country. At various points, he described New Orleans as a “devastated country”⁸ and referred to residents of New Orleans as “the people in this part of the world.”⁹ During Katrina, the truth about the hierarchy of race and class in America was revealed to the world. Commentators marveled at the New Orleans occurrence, but only a few were willing to denounce the event as a perpetuation of the United States race/class based domestic policies. Even fewer were willing to hold the United States accountable for implementing race/class based hierarchical structures that created poor communities like the ones in New Orleans.

The Katrina disaster and Danticat’s story are examples of how Immigration and domestic serve to marginalize people of color. The common thread between immigration and domestic policies is that both serve to protect the interests of some at the expense of others. Unfortunately, the cases all reveal that the interests being protected are often that of the white and rich at the expense of the non-whites and the poor. The result of this dichotomy is a world where one class of people is openly celebrated and granted all available protections and where other unfortunate subclasses of people are either treated as invisible or as suspects.

This last dichotomy was clearly displayed in the events surrounding the Katrina disaster. The stranded New Orleans inhabitants were often portrayed as anomalies and people marveled at the fact that they could have ever lived in such poverty. In fact former First Lady Barbara Bush was even quoted on CNN as remarking that the shelters to which the evacuees were transported probably provided better accommodations than the evacuees might have ever known in their former life. To assume that life in a overcrowded shelter, with no privacy and no possession, would be better than the life the evacuees knew before Katrina denotes a complete de-valorization of them and their lives. The media also contributed to the portrayal of the New Orleans’ residents as “foreign” and “illegal”. The media portrayed the stranded black occupants as suspects by labeling them as looters when they were seen in possession of grocery bags, while describing white occupants as finders when seen in similar situations. In addition, some individuals used the criminal element that is necessarily present in all chaotic circumstances to imply that the New Orleans residents deserved their fate. The commentators did not discuss how American policies have marginalized poor communities.

⁸ Mukoma Wa Ngugi, *New Orleans and The Third World*, <http://www.countercurrents.org/us-ngugi090905.htm>

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Mr. Danticat's experience is an example of how immigrations policies have also served to marginalize non-whites immigrants. Non-White Immigrants are often perceived as suspects, while immigrants from majority white countries have to undergo less scrutiny. While national security and border protections are necessary goals, they should not be implemented via unequal and disparate practices. Increasingly, it seems that the need for protection in the United States has translated into a need for protection against non-whites, who are generally perceived as potential threats or viewed as potentially harboring anti-Americans sentiments. The Patriots Act¹⁰ further helped to crystallize discriminatory policies inherent in American immigration policies. The racial profiling elements present in the implementation of Patriots' Act has been addressed in legal scholarship¹¹, but very few have denounced that the Patriots' Act role in helping to concretize the hierarchy of whites' status as first world class worthy of privilege and in need of protections against "second" and "third world" non-whites.

This categorization was not of course created only after September 11, 2001. Stories of harassment and cruel treatments received by non-whites at Immigration borders and by immigration agencies abound not only in the United States but also in order predominantly white countries. Many non-whites can recount stories of having been detained in the immigration offices the US under suspicion of being a fraud despite having all the requisite papers for entry. These unnecessary detentions consist of hours, sometimes days of grueling questioning, nerve-racking waiting periods and abusive physical searches.

The cases of the Haitian Immigrants seeking asylum in the 1990's are perfect examples of the United States exclusion of non-whites. In the 1990's, the United States refused to grant political refugee status to Haitians fleeing the mass killings occurring in Haiti after the overthrow of Aristide. During the same period, the United States granted asylum to Russians and other members of the former soviet unions. The Haitians who attempted to obtain asylum were detained in abusive conditions at Guantanamo Bay before being finally deported home.¹² The grant of asylum to white Cubans at the time also demonstrated that the race/class based hierarchical structure is sometimes applied to make distinctions between certain non-whites and blacks.

¹⁰ Patriot Act PL 107-56(HR 3162) (10/26/01).

¹¹ See Raquel Aldana-Pindell, *The 9/11 'National Security' Cases: Three Principles guiding Judges Decision-Making*, 81 Or.L.Rev.985(2002). See also Ira L. Podheiser A *Summary of the Changes in Immigration Policies and Practices After the Terrorist Attacks of September 11, 2001: The Patriot Act and Other Measure*, 63 U. Pitt L.Rev. 873 (2002).

¹² *Haitian Center Council v. Chris Sale, Immigration and Naturalization Service*, 823 F. Supp. 1028 (1993), June 8 1993, (Ins Action Violates Due Process And Haitians Had a Protected Liberty Interest.) .

A discussion of immigration policy necessitates an analysis of how these policies reduce the civil liberties of immigrants. For example, on August 12, 2002, the Justice department issued a regulations that required men residing the United States on temporarily visas from 25 predominantly Muslim countries (and north Korea) to “meet special registration requirements”.¹³ The Rule required Selected immigrants to report to government officials 30 days after arrival, every 12 month after arrival, after every change of address or school and prior to leaving the country. These men were interrogated, fingerprinted and photographed. This legislation did not result in location of terrorists. Instead, it allowed for easier deportation of nationals from the named countries on non-terrorist charges. The list of countries to which this regulation applies encompasses mainly national non-white countries and almost no predominantly white country. The requirement made being a non-white and Muslim immigrant a crime thereby making them a suspect class without any further evidence.¹⁴ In addition, the broad powers awarded to the Attorney General via Section 411 of The Patriot Act allowed for the certification of individuals as threats to Security upon reasonable Grounds to be determined by the Attorney General. Under Section 411 of The Patriot Act, once certified detention is mandatory with no prior notice of arrest and no other recourse than a Habeas corpus Motion and a motion For Reconsideration. Under Section 411 of The Patriot Act, the Attorney General is also able to expand the range of organizations or groups designated as a threat to national Security.¹⁵

The persons who have been most adversely affected by these new rules are non-whites. A person who is not fully aware of the obligation to register or who, as all immigrants do, regularly send money home might be certified as threat and detained under the vague guise of security even though there is no actual facts showing a national threat or risk of flight. Stories abound where immigrant have lost their businesses and been forced out of the countries because of vague allegations of financing terrorist organization because virtue of having sent money home to their families. Since Section 412 of the Patriots’ s Act does not require to limit certification or detention to persons who are believed to be dangerous or a flight risk, vague accusations of terrorist

¹³ (67 Fed. Reg.155, August 2002).

¹⁴ National Security Entry-Exit Registration System, NSEERS.

¹⁵ Shirin Sinnar, *Patriotic or Unconstitutional? The Mandatory Detentions of Aliens Under the USA Patriot Act*, *Stanford Law Review*, 55 *Stan. L. Rev.* 1419 (April 2003); See Raquel Aldana-Pindell, *The 9/11 ‘National Security’ Cases: Three Principles guiding Judges Decision-Making*, 81 *Or.L.Rev.*985(2002). See also Ira L. Podheiser A *Summary of the Changes in Immigration Policies and Practices After the Terrorist Attacks of September 11, 2001: The Patriot Act and Other Measure*, 63 *U. Pitt L.Rev.* 873 (2002)

involvement is often enough to destroy an immigrant's dream of a better life in America.¹⁶ The Patriot Act help to further deepen the disparity between the treatment given to whites in immigration practices and that given to non-whites.

POTENTIAL FOR REFORMS IN IMMIGRATION PRACTICES

While each sovereign nation must protect its borders, the need for protection does not mandate that the policies be applied unjustly to specific groups of people. Changes in immigration practices and policies might be triggered by a more concentrated focus on the experiences of non-white immigrants under post-9/11 immigration policies. The constitutional challenges presented by academic scholars against The Patriot Act, and the works started by Supreme Court in *Zadvydas v. Davis* (2001)¹⁷ and *Rasul v. Bush*¹⁸ have started this process. In addition to these types of challenges, however, stories highlighting the disparity in treatments between whites and non-whites should collected and should be compiled and disseminated nationally and worldwide. Such revelations might cause a greater numbers of Americans citizens to protest these measures and demand that Immigrants be treated with the same procedural protections and same treatment at the borders. Once individuals realize that stories like that of Reverend Danticat and the tortures of Abu Graib are not isolated incidents but rather common practices, they might be motivated to move to action. Compiling these stories might also force the leaders of countries to bargain for more equal treatment of their nationals. In other instances, private citizens might be able to help dismantle the veil of fear around immigration issues by bringing these stories in mass to news papers, web-blogs and courts in the form of law suits, thereby pushing the courts to continue the work they have started in *Rasul*¹⁹ and *Zadvydas*.²⁰

Additionally, there is a need for higher requirements when determining probable cause under Sections 411 and 412 of The Patriot Act. A new standard should require specific facts proving terrorist activities. As it stands the

¹⁶ Id.

¹⁷ *Zadvydas v. Davis* (2001) (recognizing unlawful indefinite detention as unconstitutional under the Fifth Amendment Right to due Process, applicable to aliens present in the US regardless of the lawfulness of their presence).

¹⁸ *Rasul v. Bush*, 124 S.Ct. 2686 (2004) (conferring District ct. jurisdiction to hear Guantanamo Bay's alien's Habeas Corpus cases).

¹⁹ *Rasul v. Bush*, 124 S.Ct. 2686 (2004) (conferring District ct. jurisdiction to hear Guantanamo Bay's alien's Habeas Corpus cases).

²⁰ *Zadvydas v. Davis* (2001) (recognizing unlawful indefinite detention as unconstitutional under the Fifth Amendment Right to due Process, applicable to aliens present in the US regardless of the lawfulness of their presence).

Attorney General's subjective standard is sufficient to detain a suspect. The proposed standard would require the Attorney's General's objective "reasonable interpretation" of threat and would mandate that all detention procedures be highly scrutinized for possible violations of the immigrants' recognized Due Process rights.²¹ In addition, there is a need for a more consistent waiver of immunity against governmental officials and entities who physically and legally violate the rights of immigrants in the US without just cause.

The people in the United States are better placed and have the most resources to force the US government to terminate the unequal treatment received by non-white immigrants in America. The government officials from the immigrant home country often have little bargaining with the United States. Accepting the unjust detention of immigrants of color under the guise of security would legitimizing all unequal treatments based on race and discredits the work accomplished by the Civil Rights Movement. Not protesting the unequal implementation of immigration policies in the United States sends the message that disparate treatment of non-whites in the rest of the world is acceptable.

African Americans have a utilitarian reason to protest the unequal implementation of immigration. As the Katrina disaster has shown, these policies if maintained set the tone for domestic treatment of African Americans and other non-whites in the United States. Additionally, African-Americans should also be concerned that these sweeping and unequal applications of these policies might, one day, infringe on their freedom of association and rights to privacy. As members of a suspect class, African Americans are often scrutinized for speaking against the status quo. They have historically been vocal about their dissatisfaction with United States' domestic and global policies and consequently, are at risk under subjective policies promoting National Security. Thus, an alliance between immigrants and African Americans would provide a stronger task force against these unfair immigration policies. The Katrina disaster revealed a need to hold authorities accountable for the ways in which decisions adversely impact the poor, disenfranchised non-white communities. That task extends beyond accountability for treatment of non-whites residents of the United States and should include accountability for treatment of non-white immigrants as well because every mistreatment of a non-white immigrant is a statement of that a non-whites' worth is minimal.

Finally, Americans in general have a vested interest in lobbying against discriminatory immigration policies. These policies' implementations have had a detrimental effect on the international image of the United States in the past few years. While world respect and acceptance, might not seem like a valid concern for the United States now, a good international image should be reasonably cultivated, if only out of self interest, in case of future needs for international coalition building arise.

²¹ *Id.*

KATRINA, A POTENTIAL CATALYST FOR CHANGING THE RACE/CLASS DISCOURSE

The Katrina disaster highlighted the racial disparity present in the United States in a way that has not been done in a long time. Perhaps not since the Civil Rights Movement has Americans been called to question their perception of African Americans and poor individuals. In the aftermath, of the Katrina disaster, it is appropriate to determine whether the race/class discourse commenced during the disaster can be used productively.

An honest dialogue about the effect of race and class on the lives of Americans would reveal that the majority of Americans are affected on some level by disparate policies. Consequently, there might be a vested interest for groups to ally themselves not only along racial lines, but also economic lines and commonalities. Applying Derrick Bell's "interest convergence theory,"²² many white Americans might now find that their interest for governmental transparency and efficiency converge with non-whites' interest in not being treated unequally. Katrina should also reveal many white Americans have a vested interests in making sure that economic measures benefit a larger group of Americans rather than a small number. Finally, white Americans also have a vested interest in making sure that security measures are not targeting certain groups in a discriminatory manner but are instead narrowly tailored to provide protection without any abuses of power. If discriminatory application of policies were to be maintained, the discriminatory application to one day directly affect white Americans as well.

New Orleans demonstrated that a huge number of the American population lives well below the poverty level and that, more than ever, race and class are tightly linked. In the surge of generosity that followed the disaster, one hopes that the old tendency to view the victims of poverty as irresponsible, lazy and deserving of their fate will now be seen as flawed. Post Katrina discussions of poverty should center on the elements that contribute to the disenfranchisement of the poor and on how they can be defeated.

The Katrina disaster is similar to the revelation that occurred at the release of Jacob Riis' *HOW THE OTHER HALF LIVES*²³ at the turn of the twentieth century. Like Riis' book, Katrina exposed issues that have been evaded, masked or avoided for a long time. It provided an outlet for individuals to investigate the ways racial constraints still manifest themselves in today's society. Over Forty years after the Civil Rights Movement, the Katrina disaster should trigger studies geared toward understanding all the ways in which race and class interconnect. In addition, inquiries should also investigate how reach

²² Derrick Bell Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, *Critical Race Theory: The Key Writings that Formed the Movement*, 20, (Crenshaw, Gotenda, Peller, Thomas, New Press, 1995).

²³ Jacob Riis, "How The Other Half Lives" (A book of photographs about the atrocious conditions in the city and slums).

a balance between free trade and placing a higher burden on industries for providing adequate wages and benefits to employees.

Finally, in this era of globalization, the Katrina disaster connected not only people, but also countries and governments in an unprecedented way. In the wake of Katrina, many countries donated money and resources to the United States. A number of poor countries along with rivals of the United States, such as Cuba, gave money or offered help to the United States. This cause a role reversal that hopefully will cause Americans to realize that the hierarchy promoted by Immigration and International policies should be re-evaluated. During, Katrina, international leaders put a halt on their personal feelings about the United States as a superpower and connected with Americans on a human level. These actions indicate the possibility of mending some strained international relationships through communication rather than harsh immigration policies.

CONCLUSION

The openness and generosity resulting from the Katrina disaster will hopefully help erode the stigmatization of non-whites as suspects and dangerous. Such stigmatization manifests itself in both immigration and domestic policies and creates a badge of inferiority for non-whites. The de-humanization that results from being detained and abused is paralyzing and fosters resentment. Stereotyping of poor blacks as criminal or lazy has the same chilling effect. It creates a vicious cycle where the victim is blamed and the victim feels disempowered. As a consequence, the actual cause of the economic inadequacy is never explored, thus never leading to a re-evaluation of the policies and regulations that might contribute to certain groups' poverty. Despite this pattern, one is hopeful that the Katrina disaster will help break the cycle. Breaking the cycle of blame will help raise the consciousness of the nation so to motivate individuals to deal with these issues of race and class more honestly and productively.