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## Hurricane Katrina and Collective Identity: Seeing Through a “Her-storical Lens”

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## HURRICANE KATRINA AND COLLECTIVE IDENTITY: SEEING THROUGH A “HER-STORICAL LENS”

DELESO ALFORD WASHINGTON\*

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### THE HURRICANE THIS TIME<sup>1</sup>

She-

She was named, by those who do not see;  
The counterclockwise motion of shout and dance-  
the release of all that ails both you and me.

She-

She was blamed for her power and might;  
Swelled up from generations living in despair-  
Over-flowing with no evidence of planning or insight.

She-

She was gendered by the historical design of many,  
Marginalized in an Utopian “color-blind” society  
Starving for an intersectional existence in the so-called land of plenty.

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\* J.D., Southern University Law Center, Baton Rouge, LA; LL.M., Georgetown University Law Center, Washington, D.C. This article is written in memory of my grandmother Queen Ann Terry and dedicated to the life and journey of Ms. Milvirtha Hendricks amongst the countless other stories of forced movement—both during and after Hurricane Katrina—that were not televised. I would like to thank the administration, faculty, staff and my first year class (Sections C and F) at Barry University School of Law for their support and encouragement. I would also like to thank my research assistant Nicole V. Johnson for her work ethic. I am grateful for the opportunity to have served on the panel entitled, *Hurricane Katrina: What Have We Learnt?* alongside Olympia Duhart and Rachel Van Cleave at the 2006 Society of American Law Teachers (SALT) Conference. Special thanks to Reginald Oh and Arthur Lee Harris, Esq. for their insightful comments; the *Nova Law Review* editorial board for their support; and my family for their patience.

1. An original, previously unpublished poem written by the author.

She-  
She was called the culprit who wreaked havoc on land to both property  
and man,  
But the water rose and then the levee broke—  
Now who will STAND?

Stand  
Stand in the shadow of righteousness  
Stand UP  
Stand UP;  
Swell  
Swell with the power of purpose  
Swell UP  
Swell UP;  
Rise  
Rise above the walls of silence  
Rise UP  
Rise UP;  
STAND, SWELL and RISE with the  
SPIRIT of our ancestors blowing  
in the hurricane winds . . . THIS TIME

## I. INTRODUCTION

As a native of Louisiana, born and raised in Shreveport, I attended college and law school in Baton Rouge. I, like so many others, experienced Hurricane Katrina through the radio and news media. I watched in utter disbelief as the New Orleans Convention Center and the Superdome (home of the “Bayou Classic,” the rival football game between my alma mater, the Southern University Jaguars and my husband’s alma mater, the Grambling State University Tigers)<sup>2</sup> became overcrowded with people once again—not attending a football game this time, but being watched nonetheless, as they engaged in a struggle to survive amongst chaos, confusion, and despair.

New Orleans is the home of my family members, friends, and associates. It is the bed of Louisiana culture. I knew that New Orleans was located below sea level and the levees were built to prevent that which occurred— heavy flooding resulting in the loss of lives and property. I knew about the construction of New Orleans’ man-made levees as well as the possibility of

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2. State Farm Bayou Classic, The History of the Bayou Classic, [http://www.statefarmbayouclassic.com/history\\_theevent.shtml](http://www.statefarmbayouclassic.com/history_theevent.shtml) (last visited June 14, 2007).

watching the hand of God through natural acts of heavy thunderstorms, floods, and hurricanes. However, as I watched the faces of the people, those very familiar faces who looked a lot like myself, my mother, my father, my brother, my sister, my grandmother, my grandfather, my uncle, my aunts, my cousins, my husband, and my children, I was overcome with chaos, confusion, and despair of a secondary nature (the helpless television-watching kind). I called my uncle living in New Orleans—only to be relieved for him to answer the phone and assure me that he was packing his car to leave New Orleans and join his wife in Lake Charles to “wait the storm out.” And then I remembered a saying that I heard often when loved ones were departing from one another. One person would say, “Alright, see you later,” and the response would be “Alright . . . if the creek don’t rise and the levee don’t break.” Hearing this parting gesture as a child, I was often confused because growing up in “North” Louisiana, I did not fully realize the constant threat that my beloved New Orleans lived under, or more precisely, lived with. But the elders knew, and it had become ingrained in their memory through experience and sustained in the oral tradition through expression. It is my belief that the “saying,” based on past knowledge, was more of a question of “when” it would happen and not “if” it was possible.

In this article, I will address the disaster of Hurricane Katrina from a Critical Race Feminist<sup>3</sup> perspective by exploring collective identity.<sup>4</sup> I will suggest a critical analysis of Hurricane Katrina that requires the use of a “her-storical lens”<sup>5</sup> in order to see “who” and “what” the print and news media disseminated to the public during its onslaught when “[t]he past [came]

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3. See Deleso Alford Washington, “*Every Shut Eye, Ain’t Sleep*”: Exploring the Impact of Crack Cocaine Sentencing and the Illusion of Reproductive Rights for Black Women from a Critical Race Feminist Perspective, 13 AM. U. J. GENDER SOC. POL’Y & L. 123, 126–27 (2005).

[A] Critical Race Feminist Perspective is definitive, yet expansive. It is definitive in that its genesis is rooted in critical legal studies and critical race theory . . . . The expansiveness of CRF is evidenced by the utilization of critical race theorists’ technique of storytelling and narrative analysis to construct alternative social realities.

*Id.* (internal quotations omitted); see also Darren Lenard Hutchinson, *Foreword: Critical Race Histories: In and Out*, 53 AM. U. L. REV. 1187, 1207 (2004) (noting that “[s]everal Critical Race Theorists have utilized narratives in their research, personal or otherwise, and have urged legal theorists to incorporate narrative as a legitimate methodological tool”); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberle Crenshaw et al. eds., 1995); Richard Delgado, *Critical Legal Studies and the Realities of Race: Does the Fundamental Contradiction Have a Corollary?* 23 HARV. C.R.-C.L. REV. 407 (1988).

4. See *infra* Part III.

5. See Washington, *supra* note 3, at 128 (explaining that “[t]he ‘her-storical’ lens enhances one’s ability to see a continuum of race, class, and gender abuse from the past to the present”).

back,”<sup>6</sup> as it did in what is commonly referred to as the Great Flood of 1927.<sup>7</sup> Another example of a recurring “past” lies in the African American particularized experience during the legally sanctioned U.S. slavery regime.<sup>8</sup> This resulted in the dismantling of families and the ultimate search to reunite with loved ones post-Civil War, as seen again during the aftermath of Hurricane Katrina.<sup>9</sup> The familiar parting gesture mentioned earlier suggests a desire to see one another again, but realistically acknowledges that the desire is dependent upon circumstances of natural and man-made<sup>10</sup> barricades, which exemplify yet another saying post-Hurricane Katrina—“Past as Prologue.”<sup>11</sup>

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6. *The Past Comes Back*, in *KATRINA: WHY IT BECAME A MAN-MADE DISASTER; WHERE IT COULD HAPPEN NEXT* 72 (National Geographic special ed.) (Chris Johns ed., 2005) (referencing the “Great Flood of 1927 [heralded as] [o]ne of the worst natural disasters in U.S. history . . . likely [to have] killed more than a thousand people, cost hundreds of millions of dollars in damages, and displaced almost a million people—nearly one percent of the population”). History documents that:

[s]ome of the destruction during the flood was man-made. Hoping to divert water from New Orleans, engineers dynamited a hole in a levee . . . . The resulting gush of water invaded marshlands below the city, displacing 10,000 people . . . . A human flood followed the one caused by nature. African Americans began to migrate northward, never to return south.

*Id.* at 72. See generally JOHN M. BARRY, *RISING TIDE: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* (1997); Lawrence M. Friedman & Joseph Thompson, *Total Disaster and Total Justice: Responses to Man-Made Tragedy*, 53 *DEPAUL L. REV.* 251, 270 (2003) (asserting that the great flood of 1927 “led to a landmark piece of legislation, the 1928 Flood Control Act”).

7. Friedman & Thompson, *supra* note 6, at 269; see also MICHAEL ERIC DYSON, *Great Migrations? in AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA* 75 (David Dante Troutt ed., 2006) [hereinafter DYSON, *Great Migrations?*].

8. See generally DYSON, *Great Migrations? supra* note 7, at 75; Bill Quigley & Maha Zaki, *The Significance of Race: Legislative Racial Discrimination in Louisiana, 1803–1865*, 24 *S.U. L. REV.* 145 (1997) (detailing the status of enslaved Africans in Louisiana); Cheryl I. Harris, *Whitewashing Race: Scapegoating Culture*, 94 *CAL. L. REV.* 907 (2006) (reviewing MICHAEL K. BROWN ET AL., *WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY* (2003)) [hereinafter Harris, *Whitewashing Race*].

9. *KATRINA: STORIES OF RESCUE, RECOVERY AND REBUILDING IN THE EYE OF THE STORM* 80–84 (Susan M. Moyer ed., 2005) (detailing the desperation of family members attempting to locate each other post Hurricane Katrina—with the repeated question on missing evacuees website being “Where are you?”).

10. John P. Manard, Jr., et al., *Katrina’s Tort Litigation: An Imperfect Storm*, 20 *NAT. RESOURCES & ENV’T* 31, 31 (2006) (quoting Pennsylvania Governor Gifford Pinchot’s declaration regarding the Great Flood of 1927, that “[t]his isn’t a natural disaster. It’s a man-made disaster,” referring to the Army Corps of Engineers, who had overall responsibility with respect to the flood protection system’s flawed river control policies).

11. See Symposium, *Through the Eye of Katrina: The Past as Prologue?* Univ. of S. Ala., Dep’t of History, <http://www.southalabama.edu/history/katrina>; Lower Ninth Ward Neighborhood Snapshot, Greater New Orleans Community Data Center,

## II. HURRICANE KATRINA AND GEOGRAPHY

The Hurricane Katrina narrative will be recorded in history as one of America's greatest televised natural tragedies. According to Critical Race Feminist scholar, Adrien K. Wing, "narratives aid in exposing the reality of racism and validate the experiences of people of color."<sup>12</sup> As Professor L. Darnell Weeden put it, "the news media [gave] us information and insight into the tragedies behind Katrina during the critical first week of this disaster by personifying an American failure."<sup>13</sup> We, the public, the listening, watching, helping, praying, sitting, and vicariously experiencing audience, bore witness to the Hurricane Katrina narrative culminating into a "barrage of images in newspapers and on television [that] tested the nation's collective sense of reality"<sup>14</sup> to identify with the characters in the narrative as victims. Despite this fact, during the wake of Hurricane Katrina, the news media ascribed a refugee's identity to the victims and thereby exercised its power to control the level of connection that the viewing public could have with the evacuees.<sup>15</sup>

Michael Eric Dyson vividly describes the Hurricane Katrina narrative as follows:

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<http://gnocdc.org/orleans/8/22/snapshot.html> (last visited June 14, 2007) (Another example of the "Past as Prologue" can be seen in September of 1965 when Hurricane Betsy struck New Orleans leaving eighty percent of the Lower Ninth Ward district under water.). See generally IVOR VAN HEERDEN & MIKE BRYAN, *THE STORM: WHAT WENT WRONG AND WHY DURING HURRICANE KATRINA* (2006).

12. See Adrien K. Wing & Christine A. Willis, *From Theory to Praxis: Black Women, Gangs and Critical Race Feminism*, 11 *LA RAZA L.J.* 1, 3 (1999) (explaining that "[c]ritical race feminism draws from critical legal studies the idea of deconstruction along with the critical analysis of the traditional legal canon").

13. L. Darnell Weeden, *Hurricane Katrina: First Amendment Censorship and the News Media*, 31 *T. MARSHALL L. REV.* 479, 480 (2006). This article provides a critical examination of the role of the news media during Hurricane Katrina. *Id.*

14. MICHAEL ERIC DYSON, *COME HELL OR HIGH WATER: HURRICANE KATRINA AND THE COLOR OF DISASTER 1* (2006) [hereinafter *DYSON, COME HELL OR HIGH WATER*]; Kathleen A. Bergin, *Witness*, 31 *T. MARSHALL L. REV.* 531, 535 (2006) (providing an eyewitness essay which concludes that "race, sex, and class played a role in the government's failure to adequately predict, prevent, and respond to this risk of sexualized violence during Katrina").

15. *DYSON, COME HELL OR HIGH WATER*, *supra* note 14, at 176 (suggesting that the media's act of framing the evacuees at first as refugees caused denunciations by black leaders because it seemed to deny that black folk were citizens of the nation); see ADRIEN KATHERINE WING, *From Wrongs to Rights: Hurricane Katrina from a Global Perspective*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA* 134 (David Dante Trout ed., 2006) (explaining that under international law the evacuees were erroneously referred to as refugees because they did not flee outside their national boundaries). Professor Wing cautions that the proper designation of the evacuees as "internally displaced persons" is important since it has implications for what laws might apply. *Id.*

[M]en and women wading chest-deep in water—when they weren't floating or drowning in the toxic whirlpool the streets of New Orleans had become. When the waters subsided, there were dead bodies strewn on curbsides and wrapped in blankets by fellow sufferers, who provided the perished their only dignity. There were unseemly collages of people silently dying from hunger and thirst—and of folk writhing in pain, or quickly collapsing under the weight of missed medicine for diabetes, high blood pressure, or heart trouble. Photo snaps and film shots captured legions of men and women huddling in groups or hugging corners, crying in wild-eyed desperation for help, for any help, from somebody, anybody, who would listen to their unanswered pleas.<sup>16</sup>

It is without a doubt that the print and televised news media played an integral role in shaping the public sentiment as to the known and unknown “geography” of New Orleans.<sup>17</sup> John P. Manard, Jr. et al. succinctly provide context for the physical geography of New Orleans:

Much of New Orleans sits below sea level. It is bounded on the south by the Mississippi River and on the north by Lake Pontchartrain. To the east is marshland and then the Gulf of Mexico. Running in a north/south direction from the river to the lake, separating New Orleans into eastern and western sections, is the Industrial Canal. The eastern portion of the city is surrounded by two sets of levees and floodwalls (a northern area and a southern area), while the western part of the city is surrounded by a separate set of levees and floodwalls. A “floodwall” in this context is generally what would appear to a layman as a levee, topped with a concrete wall, several feet tall. The concrete wall is poured on top of metal sheet piling that is driven into the ground through the center of the underlying levee. Radiating out to the east from the Industrial Canal are two navigational waterways, the Intracoastal Waterway (separates eastern New Orleans into northern and southern sections) and the Mississippi River Gulf Outlet. Thus, there were three separate leveed pockets. Each flooded for a separate reason.<sup>18</sup>

The aforementioned geographical description of New Orleans is limited to the confinements of a traditional understanding of geography in terms of

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16. DYSON, COME HELL OR HIGH WATER, *supra* note 14, at 1.

17. *See, e.g.*, Weeden, *supra* note 13, at 479–80 (detailing an “incredible symbol of neglect” in the circumstances involving the death of ninety-one year-old, wheelchair bound, Mrs. Ethel Mayo Freeman whose “lifeless body stayed in [the] wheelchair at the New Orleans Convention Center for almost four days”).

18. Manard, Jr. et al., *supra* note 10, at 34.

locale. However, Critical Race Theory scholar, Reginald Oh, extends the notion of geography “[t]o examine and deconstruct the ‘spaces and places’ of a narrative” into a two-part inquiry: “First, a critical analysis examine[s] the geographic scale or setting of a narrative.”<sup>19</sup> Oh suggests that this inquiry poses the two questions: “[W]here does the story take place? . . . [W]here else could [the story] have taken place?”<sup>20</sup> Secondly, Oh proposes that “a critical analysis could examine the movement of people within the spaces . . . in which the narrative unfolds.”<sup>21</sup> According to Oh, the second inquiry focuses upon an understanding of the geographic significance of where people are located because “people’s location at any given time and place can help to disrupt and deconstruct the plot of a legal narrative.”<sup>22</sup> This inquiry essentially asks in-depth questions about the “characters,” such as: Where are they from? “Where are they now? How did they get from there to here?”<sup>23</sup>

In an effort to critically examine the Hurricane Katrina narrative and its geography through the utilization of Oh’s two-prong query, it should be taken into account that the selected narratives of Hurricane Katrina disseminated by the print and news media served not only as attempts to tell the story presented as seen by the news reporter/photographer/syndicated writer/commentator, etc., but also invariably unpacked a historical legacy of “how power operates through and in spaces and places.”<sup>24</sup> For instance, by critically examining the space that was heavily populated with black people in New Orleans’ Lower Ninth Ward, referred to as the “Lower Nine,”<sup>25</sup> with the degree of devastation sustained both pre- and post-Hurricane Katrina, the reality of the connection between geographical location and race is significant. The truth behind the post-Hurricane Katrina mantra echoed by the people most affected, “It’s the levees stupid”<sup>26</sup> sheds an undeniable light on the

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19. Reginald Oh, *Re-Mapping Equal Protection Jurisprudence: A Legal Geography of Race and Affirmative Action*, 53 AM. U. L. REV. 1305, 1316 (2004).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Oh, *supra* note 19, at 1315–16.

25. David Dante Troutt, *Many Thousands Gone, Again*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA* 1, 12 (David Dante Troutt ed. 2006). Troutt categorizes the Lower Ninth as being symptomatic of the geographical isolation on which concentrated poverty feeds. *See id.*

26. Interview with Mitchell F. Crusto, Professor of Law, Loyola University (New Orleans) (Jan. 3, 2007) (interview conducted during the Association of American Law Schools (AALS) 2007 Annual Meeting). For a visual depiction of the mantra, see <http://www.levees.org/downloads/commission.pdf> (man holding a placard with the words, “It’s the levees stupid”).



man-made quality of the disaster. On July 10, 2006, the U.S. Army Corps of Engineers<sup>27</sup> issued a nine-volume draft report consisting of 6,113 pages to Congress which acknowledges that “the levees it built had flaws in their design, construction and maintenance of the 350-mile levee system.”<sup>28</sup>

The greatest impact of the “flaws” by the Army Corp of Engineers fall squarely within an intersecting geographical location of “spaces and places” which is overwhelmingly raced.<sup>29</sup> According to Mollyann Brodie, Vice President of Public Opinion and Media Research for the Kaiser Family Foundation,<sup>30</sup> “[w]hites were hit hard, too, but blacks were disproportionately living in areas that were most flooded . . . . And even before Katrina hit, there were gaps between blacks and whites.”<sup>31</sup> Democratic Party Chairman, Howard Dean, called for the nation to confront the ““ugly truth that

27. See *History of the Lake Pontchartrain and Vicinity Hurricane Protection Project*, Testimony Before the S. Comm. on Env't & Pub. Works, 109th Cong. (2006) (statement of Ann Mittal, Dir. Natural Res. & Env't, GAO) Mittal stated in part, the purpose and history of the Lake Pontchartrain and Vicinity Flood Control Project:

Congress first authorized construction of the Lake Pontchartrain and Vicinity, Louisiana Hurricane Project in the Flood Control Act of 1965 to provide hurricane protection to areas around the lake in the parishes of Orleans, Jefferson, St. Bernard, and St. Charles. Although federally authorized, it was a joint federal, state, and local effort with the federal government paying 70 percent of the costs and the state and local interests paying 30 percent. The Corps was responsible for project design and construction and local interests were responsible for maintenance of levees and flood controls.

*Id.*

28. Diane Grassi, *New Orleans Remains Problematic for Army Corp of Engineers*, MICHNEWS.COM, July 20, 2006, [http://www.michnews.com/artman/publish/article\\_13493.shtml](http://www.michnews.com/artman/publish/article_13493.shtml); Jeremy Caplan, *Katrina Mea Culpa*, TIME.COM, June 4, 2006, <http://www.time.com/printout/0,8816,1200756,00.html>; John Schwartz, *Army Corps Admits Flaw in New Orleans Levees*, N.Y. TIMES, June 1, 2006.

29. See, e.g., Peter Whoriskey, *Katrina Hit Blacks Harder Than Whites, Study Finds*, WASH. POST, May 10, 2007, at A02, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/09/AR2007050902556.html>.

30. See generally, Giving Voice to the People of New Orleans: The Kaiser Post-Katrina Baseline Survey, <http://www.kff.org/kaiserpolls/pomr051007pkg.cfm> (last visited June 14, 2007). The Kaiser Family Foundation study was conducted by:

a team of 41 interviewers [who] visited 456 randomly selected census areas, documented the physical condition of nearly 17,000 housing locations and completed interviews with 1,504 randomly chosen adults living in the four parishes between September and November 2006. The survey's margin of sampling error is plus or minus four percentage points.

*Id.*

31. Whoriskey, *supra* note 29 (quoting Mollyann Brodie, Vice President of Public Opinion and Media Research, Kaiser Family Foundation); see also Michael Grunwald & Susan B. Glasser, WASH. POST, Sept. 21, 2005, at A01, available at <http://levees.org/research/sources/Washingtonpost1.htm> (noting that engineers at Louisiana State University's Hurricane Center agree that 'Katrina's initial surge from the southeast overwhelmed floodwalls along the New Orleans Industrial Canal, flooding the city's Lower Ninth Ward as well as St. Bernard Parish).

skin color, age, and economics played a deadly role in who survived [Hurricane Katrina] and who did not.”<sup>32</sup> According to the Center for Popular Economics (CPE) staff economist John J. Fitzgerald:

No other levee breach in the [United States] has caused such a level of destruction or such an extensive evacuation. Flooding did most of the damage that was done to life and property. The principal victims of the flooding were the poor. Some rich folks lost money, but the poor lost their lives and their homes. The skin color of the victims is striking. They are almost all black and brown folks. They are primarily African-American. New Orleans, like the rest of the South, has continued to color-code its poor.<sup>33</sup>

The answer to Oh’s inquiry of “where else could it have taken place?”<sup>34</sup> will depend on the audiences’ inclination to imagine a “color-blind”<sup>35</sup> frame. A “color-blind” frame would allow one to deny the undeniable sea of black faces clamoring to survive, waiting for somebody to see that assistance was required. Oh’s second inquiry, which explores the movement of the people as the narrative unfolds, would benefit from the use of “her-storical lens”<sup>36</sup>

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32. Dean: *Race Played Role in Katrina Toll*, MSNBC.COM, Sept. 8, 2005, <http://www.msnbc.msn.com/id/9247380/print/1/displaymode/1098> (quoting Howard Dean).

33. John J. Fitzgerald, *Race, Class and Katrina*, ECON-ATROCITY BULLETIN, Sept. 14, 2005 (on file with *Nova Law Review*).

The statistics on New Orleans are informative. The U.S. Census Bureau estimates that in 2004, New Orleans’ population was 20.0% white and 67.9% black. Additionally, New Orleans has a poverty rate of 38%—among the highest in the United States. The 2000 census revealed that 27% of New Orleans households, amounting to approximately 120,000 people, were without privately owned transportation.

*Id.*

34. Oh, *supra* note 19, at 1316.

35. See CHERYL I. HARRIS & DEVON W. CARBADO, *Loot or Find: Fact or Frame? in AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA* 87, 91 (David Dante Troutt ed., 2006) (*defining* color-blindness as the belief that “race is *not* a factor in how we make sense of the world”). For an in depth discussion of the “colorblind” framework and the idea of race and racial framing, see Harris, *Whitewashing Race*, *supra* note 8; PATRICIA J. WILLIAMS, *SEEING A COLOR-BLIND FUTURE: THE PARADOX OF RACE* 3–16 (1998); see generally Taunya Lovell Banks, *Race Talk: Patricia J. Williams’ Seeing a Color-Bind Future: The Paradox of Race*, 20 B.C. THIRD WORLD L.J. 183 (2000); see also Rhonda V. Magee Andrews, *The Third Reconstruction: An Alternative to Race Consciousness and Colorblindness in Post-Slavery America*, 54 ALA. L. REV. 483 (2003); Neil Gotanda, *Failure of the Color-Blind Vision: Race, Ethnicity, and the California Civil Rights Initiative*, 23 HASTINGS CONST. L.Q. 1135 (1996).

36. Washington *supra* note 3; see also Pamela Bridgewater, *Introduction to a Symposium Celebrating the Twentieth Anniversary of the Feminism and Legal Theory Project*, 13 AM. U. J. GENDER SOC. POL’Y & L. 1, 4 (2005) (noting that the concept of “her-storical lens” [is] a feminist device which views historical moments).

as a tool to critically examine the often overlooked issue of black women's lives' both pre- and post-Katrina.

From a Critical Race Feminist perspective, I will add another inquiry that will be addressed in Part IV: Do outsiders (those who reside in a "space and place" other than the character in the narrative) "see" the collective identity of the character or identify with the symbol surrounding the character?

More precisely put, as to the Hurricane Katrina narrative with a "her-storical lens", did the media "see" the elderly black woman photographed with the American flag quilt over her head and shoulders?<sup>37</sup> This inquiry suggests that there is a need to construct an alternative social reality in order to adequately address a legacy of movement at the behest of the government.

### III. IDENTITY AND COLLECTIVE IDENTITY

The contextualization of identity<sup>38</sup> and collective identity<sup>39</sup> are paramount when critically examining the Hurricane Katrina narrative. Professor Wendy B. Scott put it best when she surmised that:

Clearly Hurricane Katrina was an act of God in nature and by law. But not only did Hurricane Katrina give God a stage, it revealed the multiple failures of man—failure to build adequate levee protection for a city, and a region, that is anywhere from 6-12 feet below sea level in a sinking swamp; failure to provide a way of escape during the evacuation for the most vulnerable of our citizens,

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37. See photograph by Eric Gay, AP, World Wide Photos, *on the jacket of AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA* (David Dante Troutt ed., 2006); see also photograph by Alan Chin, GAMMA, Jonathan Alter, *The Other America*, NEWSWEEK, Sept. 19, 2005, at 42. The photograph's caption reads, "Left Behind: An elderly woman awaits evacuation. TV dislikes images of the poor, but they were omnipresent during the coverage of Katrina." *Id.*

38. See generally Cecil J. Hunt, II, *The Color of Perspective: Affirmative Action and the Constitutional Rhetoric of White Innocence*, 11 MICH. J. RACE & L. 477, 502 (2006) (observing that "a claim of personal Whiteness is tantamount to a claim of being innocent of Blackness"); Martha Minnow, *Not Only For Myself: Identity, Politics, and Law*, 75 OR. L. REV. 647, 669 (1996) (noting that "[p]ersonal testimony about oppression displaces analysis of social structures that produce and maintain it."); Angela P. Harris, *Foreward: The Unbearable Lightness of Identity*, 11 BERKELEY WOMEN'S L.J. 207, 210 (1996) (noting that "identity is always contextual" as identified by Mary Coombs' as a general proposition about identity).

39. See generally Jerome McCristal Culp, Jr., *The Woody Allen Blues: "Identity Politics", Race, and the Law*, 51 FLA. L. REV. 511 (1999) (exploring whether "the racial politics of the country—a belief in a notion of community, citizen and law . . . despite . . . best efforts, [includes] Black people inside . . . definitions of citizenship").

the poor, the elderly, the children and the differently-abled; and failure to respect the dignity and safety of those in distress.<sup>40</sup>

The identity of the most vulnerable during Hurricane Katrina revealed that issues of "space," "place," and multiple intersections of being, including race, class, gender, and age, are determinative in evaluating the degree to which one experiences the narrative.<sup>41</sup> The tendency to self-identify with a group that is viewed as similar and to disassociate with a group viewed as otherwise is well-established. For example, the highly contested "finding" of food by a white couple and the "looting" of food by a black male were presented as facts to a narrative,<sup>42</sup> but historically linked to perceptions of race and pathology.<sup>43</sup> The viewer's notion of "citizens" surviving during a national disaster is contextual at best. A Critical Race Feminist approach mandates a critique of the other side of commentary that is unspoken, particularly as to the fate of black women and their bodies during Hurricane Katrina. As Kathleen A. Bergin points out, "[g]overnment officials inexcusably failed to anticipate and prevent hurricane related sexual violence throughout the evacuation and sheltering process"<sup>44</sup> against black women and girls historically not given the benefit of "victim" status.<sup>45</sup> Cheryl I. Harris and Devon W. Carbado remind us of both the historical and "her-storical" identities that no doubt set the stage for "[t]he frames of law and order and black criminality [which] influenced both the exaggeration (overreporting) and the marginalization (underreporting) of violent crimes" perpetuated against black women.<sup>46</sup> The utilization of a "her-storical lens" will aid the audience to see the unspoken as it relates to the "who" and "what" the print and news media disseminated to the public during the wake and aftermath of Hurricane Katrina.

#### IV. IDENTITY AND SYMBOLS

The devastating images of people and destruction during the wake of Hurricane Katrina were seemingly limitless. However, there is a photograph

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40. Wendy B. Scott, Lecture, *From an Act of God to the Failure of Man: Hurricane Katrina and the Economic Recovery of New Orleans*, 51 VILL. L. REV. 581, 581 (2006).

41. See Debra Lyn Bassett, *Distancing Rural Poverty*, 13 GEO. J. ON POVERTY L. & POL'Y 3, 4 (2006) (examining how rural poverty is often discriminated against in light of America's tendency to focus on the urban rather than the rural poverty).

42. HARRIS & CARBADO, *supra* note 35, at 89.

43. See Bassett, *supra* note 40, at 4.

44. Bergin, *supra* note 14, at 554.

45. HARRIS & CARBADO, *supra* note 35, at 100.

46. *Id.* at 101.

of an elderly black woman tightly gripping an American flag quilt around her arms.<sup>47</sup> I witnessed this photograph in magazines and on television. It will be explored in light of the notion of collective identity and the media's act of imputing identity.

From a Critical Race Feminist perspective, I tend to see multiple intersections of being first, and then experience the whole message. However, the Associated Press photographer captured a being—and their collective identity—as clothed in the symbol of an American flag quilt.<sup>48</sup> According to Kenji Yoshino:

Symbols are “socially rooted and socially supported” in a way that individual stories are not; they are by their nature aggregations of desires and meanings that exist within a community. . . . Many symbols, such as the American flag, derive their ability to draw together communities of adherents precisely because they do not force believers to articulate what it is about the symbol that draws them together. Such an articulation doubtless would fracture an otherwise unified community, for the over-determined signifier of the flag accommodates both the nationalism of the xenophobe (America is not like other countries) and the pluralism of the liberal (America is like all other countries).<sup>49</sup>

The Hurricane Katrina narrative of a black elderly woman draped with an American flag quilt effectively silenced her collective identity and spoke volumes to the power of a nationally recognized symbol woven tightly in the psyche of all things American that inherently stand for “freedom” and “justice.”<sup>50</sup> However, through the utilization of a “her-historical lens”, the “space” and “place” of Ms. Milvirtha Hendricks’ narrative are explored beyond the

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47. Pellom McDaniels III, *Caught in the Act: Seeing Photography as a Window to Reality*, 1 HYPHENATION 1, 32 (2006), available at <http://www.emory.edu/HypheNation/Caught%20in%20the%20Act.pdf>.

48. *See id.*

49. *See* Kenji Yoshino, *Suspect Symbols: The Literary Argument for Heightened Scrutiny for Gays*, 96 COLUM. L. REV. 1753, 1770 (1996) (citations omitted).

50. *See* Michelle Burford, *The Tale of a Photograph*, ESSENCE, Dec. 2006, at 142 (photograph of Ms. Milvirtha Hendricks by Associated Press photographer). The column reads, “The Tale of a Photograph: We all saw the photo of the elderly woman draped in an American flag . . . [W]e tell the story behind the picture.” *Id.* *See also* Culp, Jr., *supra* note 39, at 514 (noting that “when we speak of an American identity definitionally, we cannot describe in law and social policy such an identity in a way that includes the ‘other’”).

photograph captured by the Associated Press photographer as she, among others, waited for justice outside of the New Orleans Convention Center.<sup>51</sup>

Her story: Ms. Milvirtha Hendricks moved to New Orleans from Mississippi in 1945 with her now deceased husband.<sup>52</sup> She is the mother of seven children, three of which resided in New Orleans before Hurricane Katrina.<sup>53</sup> During Hurricane Katrina, Ms. Hendricks and her daughter, Beverly, fled from her home in the Lower Ninth Ward to her son's two-story house in East New Orleans.<sup>54</sup> On August 30, 2005, a Coast Guard boat removed Ms. Hendricks, her sister Vivian, and daughter Beverly from the house as they pushed through contaminated water to reach dry ground.<sup>55</sup> After a brief stay in a shelter, they were moved to the Convention Center.<sup>56</sup> Ms. Hendricks' daughter Beverly draped the American flag-printed quilt around her mother's frail arms, and the news media memorialized Ms. Hendricks' narrative.<sup>57</sup> Ms. Hendricks' daughter, Terry, saw her mother's photo on CNN.<sup>58</sup>

As of December 2006, Ms. Hendricks has no memory of the hurricane due to a "downward spiral toward dementia."<sup>59</sup> She now has moved to Texas to live with her daughter.<sup>60</sup>

Ms. Hendricks' Hurricane Katrina narrative has no end. She is quoted as saying, "I really don't know why this happened, but every day I thank God for taking care of me. It's only because of Him that I made it through alive."<sup>61</sup>

Ms. Milvirtha Hendricks is a testament to faith beyond facts or memory. She embodies a collective identity of black women whose geographical "space" and "place" has been navigated by an African American history of migration, both voluntary and forced—one that cannot be captured in a photo while draped in a symbol of freedom and justice after experiencing the truth of this Nation's failure to timely exercise either—once again.

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51. See *id.*; see also Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992) (arguing for the adoption of policies based on what the author refers to as "Racial Realism" which requires the acknowledgment that black people will never gain full equality in this country).

52. *Id.*

53. *Id.*

54. *Id.*

55. Burford, *supra* note 50.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Burford, *supra* note 50.

61. *Id.*

In conclusion, there is an obligation to see the disaster of Hurricane Katrina through a “her-storical lens” so that history shall not be re-cast and memories co-opted by symbols. It is up to those willing to stand up, rise, and swell with the moral conscience necessary to impact the lives of those devastated by the storm; those who will remain resilient in seeking true justice for the Katrina victims and not a mere symbolic representation.<sup>62</sup>

I hope that this article serves as a necessary step in acknowledging the importance of analyzing narratives from a Critical Race Feminist perspective in order to emphasize an alternative social reality beyond symbolism which purports to convey messages of freedom and justice without “seeing” the collective identity deeply embedded in our historical and her-storical legacies.

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62. See generally Mitchell F. Crusto, *The Katrina Fund: Repairing Breaches in Gulf Coast Insurance Levees*, 43 HARV. J. ON LEGIS. 329 (2006) (arguing for a “Katrina Homeowners Compensation Fund to be modeled after the September 11th Fund, which would constitute a federal bailout program to compensate uninsured and under-insured homeowners”); Cain Burdeau, *Army Corps Hit With New Katrina Lawsuit*, FOXNEWS.COM, Feb. 8, 2007, <http://www.foxnews.com/wires/2007Feb08/0,4670,KatrinaFloodLawsuit,00.html> (Federal Judge allowed a team of trial lawyers led by Joseph Bruno to proceed charging the Corps liable for the flooding of eastern New Orleans and suburban St. Bernard Parish by waters from the Mississippi River-Gulf Outlet, a navigation channel known locally as Mr. Go.).