
Response

The Social and Cultural Aspects of Climate Change Winners

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INTRODUCTION

In *The Political Economy of Climate Change Winners*, Professor J.B. Ruhl does the academic and policy debate over climate change much benefit by raising the issue of climate change winners.¹ As he acknowledges, discussing the fact that some—perhaps many—people will benefit from climate change, at least in the short run, is often considered distasteful or politically incorrect.² Nevertheless, every major cultural shift, geopolitical event, and natural disaster—and climate change rationally can be compared to all three—has created both winners and losers, regardless of how happy observers might be about that fact.³ During the eighteenth century’s French Revolution, heads rolled and nobles fled, but many others came to power as a result, Robespierre and Napoleon among them.⁴ Similar sto-

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1. J.B. Ruhl, *The Political Economy of Climate Change Winners*, 97 MINN. L. REV. 206, 207 (2012).

2. *See id.* at 209.

3. *See id.* at 232; *see also* A GLOBALIZING WORLD? CULTURE, ECONOMICS, POLITICS 90–96 (David Held ed., 2d ed. 2004) (discussing how the cultural shift toward globalization has created winners and losers); Frédéric Bozo, “Winners” and “Losers”: France, the United States, and the End of the Cold War, 33 DIPLOMATIC HISTORY 927, 927–31 (2009) (reviewing history’s attempts to define winners and losers after the Cold War); Joseph Scanlon, *Winners and Losers: Some Thoughts About the Political Economy of Disaster*, 6 INT’L J. MASS EMERGENCIES & DISASTERS 47, 47–50 (1988) (discussing theories that suggest that natural disasters can have winners and losers).

4. *See, e.g.*, WILLIAM J. DUIKER & JACKSON J. SPEILVOGEL, WORLD HISTORY 532–40 (6th ed. 2010) (providing a general background on the rise and fall of both Robespierre and Napoleon).

ries could be told about the twentieth century's Communist revolutions in Russia and China.⁵

Beyond political figures, moreover, societies have long recognized that wars also produce private winners and private losers beyond the soldiers on the battlefields.⁶ However, whether those private winners get labeled “war profiteers”⁷ or “war heroes”⁸ depends as much on cultural constructions of their meaning and public relations as on actual differences in their motives and actions. To use an example from the American Revolutionary War, the difference between a privateer and a pirate is often in the eye of the person writing the history books.⁹

To expect that climate change will be different is sheer folly. Climate change is altering the basic conditions of the most fundamental physical, chemical, and biological processes that support life on earth, including human societies and the ecosystems upon which they depend (collectively, socio-ecological systems or SESs).¹⁰ As Professor Ruhl aptly describes, some localities will generally profit from these shifts even as others (arguably most, especially as climate change progresses) become steadily or abruptly worse off.¹¹ Similarly, even within communities that are generally worse off because of climate change, some individuals and businesses are still likely to benefit—again, at least in the short run.¹² Climate change winners,

5. See generally S.A. SMITH, *REVOLUTION AND THE PEOPLE IN RUSSIA AND CHINA: A COMPARATIVE HISTORY 192–235* (2008) (providing a background of the Communist revolutions in Russia and China).

6. See Ruhl, *supra* note 1, at 252 (briefly noting that some people will attempt to benefit from wars).

7. For a recent example of such labeling, see Ryan, *The 25 Most Vicious Iraq War Profiteers*, BUS. PUNDIT (July 22, 2008, 5:02 PM), <http://www.businesspundit.com/the-25-most-vicious-iraq-war-profiteers/>.

8. See, e.g., Fred Andrews, *American Industry as War Hero*, N.Y. TIMES, June 2, 2012, at BU5, available at http://www.nytimes.com/2012/06/03/business/in-freedoms-forge-us-industry-as-war-hero-review.html?_r=0 (reviewing ARTHUR HERMAN, *FREEDOM'S FORGE* (2012), which argues that American business and industry won World War II).

9. See, e.g., Jesse Lemisch, *Privateering, the American Revolution, and the Rules of War: The United States Was Born in “Terrorism” and Piracy*, GEO. MASON U. HIST. NEWS NETWORK (Aug. 19, 2002, 7:11 PM), <http://hnn.us/articles/915.html>.

10. See Robin Kundis Craig, “Stationarity Is Dead”—Long Live Transformation: *Five Principles for Climate Change Adaptation Law*, 34 HARV. ENVTL. L. REV. 9, 10–14, 23–27 (2010).

11. See Ruhl, *supra* note 1, at 207–08.

12. *Id.* at 259–60.

in other words, will emerge at all scales—nations, regions, communities, businesses and industries, and individuals.¹³

Professor Ruhl quite consciously limits the focus of his analysis primarily to individuals and, to a lesser degree, businesses and industries.¹⁴ Moreover, he also consciously chooses to focus on the *direct* implications of *self-defining* climate change winners for *climate change policy* itself.¹⁵ I highlight these choices not because I find fault with them but instead merely to point out that Professor Ruhl has deliberately chosen to limit the contours of his examination, a completely rational decision in light of the fact that his is the critical first foray into this controversial subject.

Moreover, I agree with Professor Ruhl's recommendations for climate change law and policy. Climate change mitigation efforts cannot afford to be held hostage by the—I'm betting—comparatively small percentage of (let's not forget to emphasize) relatively short-term climate change winners, at the expense of what will likely be *billions* more people who will be losing their homes, water, food, economic productivity, political stability, cultural identity, health, and lives as a consequence of climate change impacts. Nor should we forget, as Professor Ruhl also notes, that too much indulging of climate change winners could come at the expense of ultimately disastrous long-term consequences for the planet as a whole—the consequences that are predicted if humans do not change course with respect to climate change mitigation.¹⁶ Similarly, Professor Ruhl is quite right to suggest that policymakers should try to do everything possible to harness the energy and capital (economic and political) that climate change winners are likely to generate in favor of beneficial “no regrets” climate change adaptation strategies.¹⁷ As several scholars, including myself, have emphasized, climate change adaptation is a much different legal and policy problem than climate change mitigation.¹⁸

13. *Id.* at 213.

14. *See, e.g., id.* at 231 (using the term “climate change winner” to refer to “people and businesses”).

15. *Id.* at 241.

16. *See id.* at 257–69 (making recommendations for climate change mitigation policies).

17. *See id.* at 269–72 (detailing recommendations for climate change adaptation policies).

18. *See* Craig, *supra* note 10, at 15–18, 28–40; *see also, e.g.,* Daniel H. Cole, *Climate Change, Adaptation, and Development*, 26 UCLA J. ENVTL. L. & POL'Y 1, 2–3, 7–9 (2008) (comparing mitigation and adaptation as economic

Climate change mitigation has a known, if politically excruciating, solution—reduce the total concentrations of greenhouse gases in the atmosphere by reducing anthropogenic emissions of those gases.¹⁹ It also has a limited number of potential policy vehicles for achieving those goals: command-and-control regulation of greenhouse gas emissions; cap-and-trade programs for greenhouse gas emissions; carbon taxes; geoengineering efforts (probably the most controversial of the options); or some combination thereof.²⁰ Climate change adaptation, in contrast, requires continually evolving strategies to cope with continually changing locally and regionally specific socio-ecological conditions.²¹ Colorado's adaptation measures for dealing with pine beetle infestations²² will not help Floridians coping with sea-level rise and saltwater intrusion into critical aquifers used for water supply.²³ Indeed, even adaptation strategies for sea-level rise will need to vary from location to location, depending on how fast the sea is rising, the exact combination of sea-level rise, pre-existing climate change impacts (permafrost melting in Alaska, changing ocean currents in Oregon, more severe

problems); Holly Doremus, *Adapting to Climate Change with Law that Bends Without Breaking*, 2 SAN DIEGO J. CLIMATE & ENERGY L. 45, 60–66 (2010) (comparing mitigation and adaptation law and politics); Victor B. Flatt, *Adapting Laws for a Changing World: A Systemic Approach to Climate Change Adaptation*, 64 FLA. L. REV. 269, 270–74 (2012) (discussing many of the differences in approach between climate change mitigation and climate change adaptation); Margaux J. Hall & David C. Weiss, *Avoiding Adaptation Apartheid: Climate Change Adaptation and Human Rights Law*, 37 YALE J. INT'L L. 309, 319–25 (2012) (distinguishing adaptation responses from mitigation responses in the context of human rights); J.B. Ruhl, *Climate Change Adaptation and the Structural Transformation of Environmental Law*, 40 ENVTL. L. 363, 365–76 (2010) (providing a brief history of adaptation and mitigation policy focuses in the United States); Robert R.M. Verchick & Abby Hall, *Adapting to Climate Change While Planning for Disaster: Footholds, Rope Lines, and the Iowa Floods*, 2011 BYU L. REV. 2203, 2209–10 (distinguishing adaptation and mitigation).

19. See Craig, *supra* note 10, at 28 (characterizing climate change mitigation as a relatively simple legal problem, albeit quite challenging politically).

20. See *id.*

21. See *id.* at 71–72.

22. See generally D.A. LEATHERMAN ET AL., COLO. STATE UNIV., MOUNTAIN PINE BEETLE (2007), available at <http://www.ext.colostate.edu/pubs/insect/05528.pdf> (discussing effects of and control measures for the pine beetle).

23. See generally Ryan Wiedenman, *Adaptive Response Planning for Sea-Level Rise and Saltwater Intrusion in Miami-Dade County* (Spring 2010) (unpublished M.S. thesis, Florida State University), available at http://www.coss.fsu.edu/durp/sites/coss.fsu.edu/durp/files/DIR_Weidenman_woAppendix.pdf (discussing adaptation measures for sea-level rise and saltwater intrusion).

storms in the Gulf of Mexico), and the number of immediately vulnerable coastal amenities in a particular location (village stability, energy infrastructure, water supply, fish stocks, coral reefs, navigation).²⁴

Thus, I do not disagree with Professor Ruhl's initial focus on climate change policy or his analysis of the likely tendencies of self-defining climate change "winners" and policy responses to them. Nevertheless, there are social and cultural dimensions that will shape the phenomenon of climate change "winners," and the social meaning of being a climate change beneficiary is likely to vary from context to context or place to place. Moreover, as social-meaning scholars have long recognized, these social and cultural constructions are equally likely to influence law and policy—and, indeed, will probably have broad legal and political influence.²⁵ As Lawrence Lessig recognized in 1995 (in a very different context), the process of social construction and the construction of social meaning are the sources of "real" social orthodoxy—the constructions and meanings that law either works from or acts to change.²⁶

Recognition of social construction in the context of climate change beneficiaries adds two important additional considerations when evaluating the issue of climate change winners. First, as noted, Professor Ruhl assumes that climate change "winners" will be, in the most important legal sense, largely

24. See generally Robin Kundis Craig, *A Public Health Perspective on Sea-Level Rise: Starting Points for Climate Change Adaptation*, 15 WIDENER L. REV. 521, 522–24 (2010) (discussing the need for adaptive management strategies for sea-level rise in part because of its unpredictability).

25. See, e.g., Neal Devins, *Social Meaning and School Vouchers*, 42 WM. & MARY L. REV. 919, 920, 921–58 (2001) (discussing how changing social meaning can alter constitutional analysis in the context of school vouchers); Rosanna Lillian Langer, Dissertation Abstract, *Law and Social Meaning: Defining Rights and Wrongs Through Administrative Processing*, 42 OSGOODE HALL L.J. 701, 706–07 (2004) (examining how the various social meanings of alleged violations of Canadian domestic human rights laws get sorted out legally in administrative processes); Andrew E. Taslitz, *A Feminist Fourth Amendment?: Consent, Care, Privacy, and Social Meaning in Ferguson v. City of Charleston*, 9 DUKE J. GENDER L. & POL'Y 1, 4, 62–77 (2002) (arguing that the U.S. Supreme Court incorporated a feminist approach into the social meaning of urine testing of pregnant women by concluding that such testing was an ordinary criminal search requiring probable cause and a warrant rather than a routine administrative search).

26. See Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943, 946–47 (1995).

self-defining.²⁷ However, inevitably, the social meaning of climate change beneficiaries will also be socially constructed. Moreover, because climate change is new and because, in the United States at least, governments have been slow to create and implement climate change policies,²⁸ those social constructions of the various categories of climate change beneficiaries are likely to substantially influence how people within those categories are treated legally. As a result, what it will mean—socially, culturally, politically, and legally—to be a climate change beneficiary will almost certainly not be within the complete (or even substantial) control of the individual beneficiaries themselves. There are, after all, many ways to “win”—as a result of blind, dumb luck; Pyrrhically; through innate talent; by cheating; by successfully eliminating (through legitimate competition or Mafia-style) one’s opponents or competitors; through hard work and determination; or by successfully exploiting others. Likely, the reader had different visceral reactions to each entry on this list. Similarly, how a particular community perceives, constructs, and categorizes climate change beneficiaries could have social, political, and legal ramifications that ripple far beyond climate change policy. As such, the first issue that this Essay explores is the wide variety of potential social constructions of climate change beneficiaries and the potential ramifications of those classifications.

Professor Ruhl’s excellent article also implicitly assumes that all persons and entities are venturing into the climate change era with roughly equivalent social and political statuses.²⁹ But, of course, that’s not true. Thus, the second issue that this Essay ponders is: What happens to climate change and other policies if the culturally defined “wrong” people emerge as climate change “winners”? Of course, the social reactions and constructed social meanings will not be, at least not entirely and probably not substantially, the kind of direct and conscious policy choices that Professor Ruhl advocates. They are also not the same kind of rational and self-serving political motivations that Professor Ruhl reasonably posits for self-identifying climate change winners.³⁰ Nevertheless, these cultural reactions

27. See Ruhl, *supra* note 1, at 235 (“What we should care about . . . are people and businesses *who believe they are better off* economically as a result of climate change.” (emphasis added)).

28. See Craig, *supra* note 10, at 27.

29. See Ruhl, *supra* note 1, at 232–35.

30. See *id.* at 242–47 (laying out his assumptions regarding how such self-identifying winners will act).

to and constructions of climate change beneficiaries are likely to become political forces in their own right, rational or irrational as they may be. They may also, under the right circumstances, lead to extra-legal movements, riots, deals, protests, marches, sit-ins, non-governmental organization (NGO) creations, vigilantism, or, in short, the whole gamut of American responses to unpopular, outrageous, or “unfair” socioeconomic circumstances and change. We do not have to look backwards very far to identify the abilities of these impulses to influence politics and law; the 2007–2008 mortgage³¹ and 2008–2009 financial³² crises prompted not only policy and legal responses but also the Tea Party³³ and the Occupy Wall Street³⁴ movements/protests, underscoring one of the biggest cultural-political divides in U.S. history.³⁵

I. SOCIAL CONSTRUCTIONS OF CLIMATE CHANGE WINNERS

So, what are some of the possible social constructions of climate change winners? Let’s start with the group that is probably most likely to slip under the cultural/political radar—

31. See, e.g., Raymond H. Brescia, *Capital in Chaos: The Subprime Mortgage Crisis and the Social Capital Response*, 56 CLEV. ST. L. REV. 271, 282–300 (2008) (discussing the history of the subprime mortgage crisis).

32. See, e.g., Sewell Chan, *Financial Crisis Was Avoidable, Inquiry Finds*, N.Y. TIMES, Jan. 25, 2011, at A1, available at <http://www.nytimes.com/2011/01/26/business/economy/26inquiry.html> (discussing many of the causes of the financial crisis).

33. See, e.g., *About Us*, TEA PARTY, <http://teaparty.org/about-us/> (last visited Mar. 4, 2013) (describing the party’s principles). While the Tea Party itself traces its origins to the original Boston Tea Party in the American Revolution, *id.*, most commentators date the Tea Party’s modern creation to February 2009 and Rick Santelli’s rant against the American Recovery and Reinvestment Act. E.g., Jared A. Goldstein, *Can Popular Constitutionalism Survive the Tea Party Movement?*, 105 NW. U. L. REV. 1807, 1813 (2011) (“[T]he movement began on February 19, 2009, when financial analyst Rick Santelli denounced an Obama Administration proposal”); Ryan D. Murphy, *Tea Party Constitutionalism: Does the “Astroturf” Have Roots in the History of the Constitution?*, 40 HASTINGS CONST. L.Q. 187, 187 (2012) (“On February 19, 2009, the Tea Party was born.”).

34. See, e.g., *About*, OCCUPYWALLSTREET, <http://occupywallst.org/about/> (last visited Mar. 4, 2013) (describing the goals of the movement).

35. See, e.g., David Horsey, *America’s Political Divide Is Turning into a Chasm*, L.A. TIMES (June 6, 2012), <http://articles.latimes.com/2012/jun/06/nation/la-na-tt-political-divide-20120605> (“When it comes to American politics, the stark distinctions are actually increasing.”).

Professor Ruhl's passive climate change winners,³⁶ who may cause no cultural or political ripples at all. The farmer who does a bit better because of warming temperatures may not be perceptually all that different from a farmer who has a bumper crop during (and because of) an El Niño or La Niña climate event.³⁷ Similarly, the farmer who changes crops in response to changing climatic conditions and water supply may not be all that different from a farmer who switched to growing corn for ethanol in response to government subsidies.³⁸ The farmer is still a farmer, the changes she made are "natural"—what any rational human being would do—and nobody seems directly harmed by those choices.

More interesting will be the emerging cultural constructions of the "big splash" climate change beneficiaries—the people and entities who are *obviously* and, in some sense, non-passively benefitting from climate change's impacts.³⁹ First, of course, the relevant communities might basically agree with the beneficiaries that they are, in fact, climate change "winners." If so, the social meaning of being a climate change beneficiary will likely reinforce those beneficiaries' self-identifications as positive "winners" and, logically, those winners' attitudes about climate change policy—the issue upon which Professor Ruhl focuses.

Even so, however, "winners" come in several flavors. For example, climate change winners might be culturally constructed as "just lucky," on par with lottery or slot machine winners. Even though "just lucky" is at base a positive social construction, it carries with it an implication of lack of desert or moral justification: "lucky" climate change "winners" didn't particularly deserve the benefits they got, even if they can't be blamed for how they came to benefit. As such, a "just lucky" social construction could easily have political and legal consequences, particularly with respect to governments' willingness

36. See Ruhl, *supra* note 1, at 228 (describing passive climate change winners).

37. See NOAA's *El Niño Page*, NOAA, <http://www.elnino.noaa.gov/> (last visited Mar. 4, 2013) (briefly describing the impacts of the two phases of the oscillation).

38. Bloomberg View, *Nearly Half of Corn Devoted to Fuel Production Despite Historic Drought*, HUFFINGTON POST (Aug. 18, 2012, 12:53 PM), http://www.huffingtonpost.com/2012/08/17/ethanol-mandate_n_1799046.html (detailing the history of ethanol subsidies' effects on crop planting).

39. See Ruhl, *supra* note 1, at 228–31 (describing a variety of these non-passive winners).

to engage in wealth or benefit redistribution. As *Forbes* has pointed out, the federal government is more than happy to tax lump-sum lottery winnings at the highest possible income tax rate, while only seven states do *not* tax them—and five of those don't have a state income tax in the first place.⁴⁰ In the 2012 presidential election campaigns, the two candidates' tax policies were vigorously and widely debated.⁴¹ Neither candidate, however, debated whether truly “just lucky” winners—lottery winners, successful gamblers—should be taxed. Instead, the most contested tax debates are often focused on categories of wealth generation that resonate through multiple social constructions which, in turn, generate a multiplicity of social meanings that affect the appropriateness of greater or lesser taxation, such as transfers of wealthy estates to younger generations and capital gains.⁴² Are estate taxes double-dipping “death taxes” or a fair contribution to society from “undeserving trust fund brats”? Are capital gains taxes too low, allowing the already wealthy to generate income without “really” working, or are they unfair burdens on the capitalists who drive the economic well-being of our society? Whichever way the reader comes out on these debates, the debates themselves would be much more intelligible if we all acknowledged that there are at least two social constructions of the people involved and their activities—embedded social meanings that inform the perceptions of fairness and reasonableness that underlie the formation of tax policy.

Similarly, even if climate change beneficiaries are socially constructed as “winners,” exactly *how* they are constructed will probably influence what is expected of them, both legally and socially. “Just lucky” climate change beneficiaries should expect to pay more taxes, rationally or irrationally, than “diligent, hardworking visionaries” who had the foresight to make

40. Janet Novack, *How Much Tax Will You Owe On \$640 Million Jackpot?*, FORBES (Mar. 30, 2012, 12:17 PM), <http://www.forbes.com/sites/janetnovack/2012/03/30/how-much-tax-will-you-owe-on-540-million-jackpot/>.

41. See, e.g., Toni Nitti, *Tax Aspects of the Obama-Romney Debate, Round 2*, FORBES (Oct. 17, 2012, 1:26 AM), <http://www.forbes.com/sites/anthonymitti/2012/10/17/reactions-to-the-obama-romney-debate-round-2/>.

42. See, e.g., Eduardo Porter, *The Great American Tax Debate*, N.Y. TIMES, Sept. 18, 2012, at B1, available at <http://www.nytimes.com/2012/09/19/business/the-great-american-tax-debate.html> (highlighting the disagreement in America on whether the wealthy pay appropriate tax rates); Scott Horsley, *Paris Hilton vs. Death Tax: A Lesser-Known Fiscal Debate*, NPR (Dec. 11, 2012, 5:34 PM), <http://www.npr.org/blogs/itsallpolitics/2012/12/11/166989049/paris-hilton-tax-vs-death-tax-a-lesser-known-fiscal-debate>.

“shrewd” (however risky at the time) choices and investments. Conversely, irresponsible behavior may be more widely tolerated from people who receive climate change “windfalls” than from people who become constructed as “community leaders in climate change,” from whom community service and philanthropy are likely to be expected.

More important for this Essay, however, is the likelihood that at least some climate change beneficiaries may find themselves socially constructed to be social, political, and, ultimately, legal “losers.” Equally important, such social constructions of beneficiaries as “bad,” “unfair,” or even “criminal” may often turn on cultural/political happenstance, unpredictable in advance, rather than on rational policy choices. As noted, whether someone is a “pirate” or a “privateer” may depend entirely on the exact cultural/political context from which that person’s actions are judged rather than on a rational categorization of the activities themselves—but the legal consequences for the person being so categorized still can be enormous (death⁴³ versus lucrative rewards⁴⁴).

To complicate such negative social constructions even further, persons profiting from social and economic circumstances can resonate through several cultural valences simultaneously: The “captains of industry” in nineteenth century America were also “robber barons.”⁴⁵ Indeed, modern literature’s fascination with the “anti-hero” consciously plays with the ambiguity and fluidity of many social constructions.⁴⁶ It is important to re-

43. See, e.g., *Ex parte Gordon*, 66 U.S. 503, 504–05, 1 Black 503, 504–05 (1860) (denying writ of certiorari to Gordon, who was convicted of piracy and sentenced to death).

44. See, e.g., Aaron D. Simowitz, *The Original Understanding of the Capture Clause*, 59 DEPAUL L. REV. 121, 132–33 (2009) (discussing the profits and rewards of privateers).

45. Indeed, this double resonation is so engrained in the story of American history that it is taught as such to schoolchildren. See, e.g., Nat’l Endowment for the Humanities, *The Industrial Age in America: Robber Barons and Captains of Industry*, EDSITEMENT!, <http://edsitement.neh.gov/lesson-plan/industrial-age-america-robber-barons-and-captains-industry> (last visited Mar. 4, 2013).

46. As one perhaps particularly apt example, in Alan Moore’s and Dave Gibbons’s graphic novel (now also a movie) *Watchmen*, Adrian Veidt is both the out-in-the-public superhero and the engineer of a fake global threat. See ALAN MOORE & DAVE GIBBONS, *WATCHMEN* (1986). Veidt causes the deaths of thousands (including, indirectly, the enigmatic but uncompromising Rorschach, who seeks to expose the truth even though he knows Armageddon will ensue), from which he methodically earns a fortune while simultaneously uniting the planet in peace. See *id.*

member, however, that such cultural ambiguity can still foster legal developments: The abuses on the “robber baron” side of the nineteenth century industrialists and monopolists led to widespread legal reforms, from antitrust laws to worker protection laws to food purity laws.⁴⁷

So, what kinds of climate change beneficiaries might end up being the “bad” (as culturally constructed) climate change “winners”? If other contexts are any indication, one large subset of this group will be people or entities that are perceived as winning at the unfair expense of others. Water politics, for example, might end up being a particularly fertile breeding ground for “bad” climate change “winners.” Stresses on water supply are one of the most commonly predicted impacts of climate change; water is an absolute necessity for life and comfort but water supply deals have always had a dark underbelly—see *Chinatown*.⁴⁸ Will the companies that champion desalination be respected as savvy entrepreneurs or climate change’s version of robber barons? What if water entrepreneurs in the West manage to negotiate deals and/or legislation to move Great Lakes and Mississippi River water across the Continental Divide: Will they be saviors or thieves? Or a little bit of both?

Geoengineers—especially the unsanctioned ones—are another potential category of “bad” climate change beneficiaries. Consider, for example, *The New York Times*’s front-page story on October 18, 2012, about California businessman Russ George, who “chartered a fishing boat in July, loaded it with 100 tons of iron dust and cruised through Pacific waters off western Canada, spewing his cargo into the sea in an ecological experiment that has outraged scientists and government officials.”⁴⁹ Although scientists and both the Canadian and United States governments condemned the “experiment,” Mr. George reported to the *Times* that

his team scattered iron dust several hundred miles west of the islands of Haida Gwaii, in northern British Columbia, in exchange for \$2.5 million from a native Canadian group. The iron spawned the growth of enormous amounts of plankton, which Mr. George, a former fisheries and forestry worker, said might allow the project to meet one of its

47. See, e.g., 3 CLASS IN AMERICA 706–07 (Robert E. Weir ed., 2007) (noting some of the many laws passed to correct robber baron abuses).

48. CHINATOWN (Paramount Pictures 1974).

49. Henry Fountain, *A Rogue Climate Experiment Outrages Scientists*, N.Y. TIMES, Oct. 18, 2012, at A1, available at http://www.nytimes.com/2012/10/19/science/earth/iron-dumping-experiment-in-pacific-alarms-marine-experts.html?_r=0.

goals: aiding the recovery of the local salmon fishery for the native Haida.⁵⁰

Whether Mr. George and the native Haida group should be considered misguided rogues, noble visionaries, or outright criminals is an open question, but both were clearly seeking to undo some of the impacts of climate change (ocean absorption of carbon dioxide) for their own benefit.⁵¹ Moreover, it seems clear that the social meaning that Mr. George and the native Haida gave to the iron fertilization experiment differs from both the social construction that scientists are imposing on it and the legal significance that the affected governments are seeking to establish under both domestic and international law.⁵²

II. SOCIAL AND CULTURAL RESPONSES TO CLIMATE CHANGE WINNERS

Now let's consider, beyond the social construction problem, how cultural responses to climate change beneficiaries might also resonate (probably badly) with existing and sometimes barely suppressed social tensions and divisions—tensions centered around political affiliation, social values, race, ethnicity, social status, economic status, education, religion, and property ownership. Or, as I put my question originally, what if the “wrong” people visibly benefit from climate change?

I enter this discussion with one very important disclaimer: I have *no* preconceived ideas of who the “wrong” people might end up being, and in fact, I would predict that the “wrong” people will constitute different subgroups at different times and places. The point is, rather, that we have existing social tensions that: (1) we have no reason to expect will disappear any time soon; and (2) can be sparked periodically and often unexpectedly into social unrest and violence. Remember Rodney King.⁵³ We would be fools not to recognize that various aspects of climate change impacts and climate change adaptation could often resonate—again, probably badly—with those pre-existing

50. *Id.*

51. *See id.*

52. *See id.*

53. Rodney King was the victim of a brutal beating at the hands of Los Angeles police officers in 1991, and videos of the beating led to violent urban riots across southern California. Joe Mozingo & Phil Willon, *Rodney King Dies at 47; Victim of Brutal Beating Became Reluctant Symbol of Race Relations*, L.A. TIMES (June 17, 2012), <http://articles.latimes.com/2012/jun/17/local/la-me-0618-rodney-king-20120618>. Mr. King died in June 2012. *Id.*

tensions and prejudices. Disasters such as Hurricane Katrina and Hurricane Sandy show us the many facets of human responses to bad situations, from heroism to selfless sharing to desperation-driven mercy killings and abandonments to selfish hoarding to violence to institutional neglect to “forgetting” of certain, generally disadvantaged or minority, populations.⁵⁴ Climate change impacts will inevitably prompt a similar range of human responses.

This recognition, too, should be part of the legal and policy reaction to the fact that there will be climate change “winners.” Certainly, as Professor Ruhl argues, climate change beneficiaries should not be able to claim property rights to support their “winner” status.⁵⁵ Conversely, they shouldn’t become the victims of hate crimes sparked by that status, either. Maybe we already have the mechanisms and laws in place to deal adequately with social unrest sparked by identification of certain groups as “unfair” or “undeserved” climate change winners—but that’s not a conclusion we should reach without at least a tad more thought. What happens, for example, if poor/minority/unpopular communities currently situated on subcoastal properties become waterfront owners as a result of sea level rise and storm destruction of the former coast line? Will their neighbors—especially the displaced former owners of coastal property—peacefully allow them that new and at least temporarily profitable status, or will there be calls for coastal property re-distribution? Or will the social meaning of owning coastal property have changed by then from a sign of wealth and luxury to being stuck with continual expense and inundation? Conversely, what if new entrepreneurial responses to climate change impacts end up visibly concentrating extreme wealth in the hands of a few while the surrounding community suffers in climate change-induced abject poverty?

Neither law nor policy can possibly anticipate all of the specific social and cultural reactions to climate change beneficiaries. However, they *can* anticipate that climate change impacts are likely to be destabilizing in at least some times and places and that such destabilizations will likely be destructive

54. See, e.g., *Hurricane Sandy: 3 Tales of Incredible Heroism*, WEEK (Oct. 30, 2012), <http://theweek.com/article/index/235600/hurricane-sandy-3-tales-of-incredible-heroism>; Trymaine Lee, *Rumor to Fact in Tales of Post-Katrina Violence*, N.Y. TIMES, Aug. 26, 2010, at A9, available at <http://www.nytimes.com/2010/08/27/us/27racial.html?pagewanted=all>.

55. See Ruhl, *supra* note 1, at 272–73.

more often than they are creative.⁵⁶ Similarly, law and policy can anticipate that at least some climate change beneficiaries will be socially constructed to be “undeserving,” “exploitative,” “bad actors,” or “criminal.” These social meanings may be neither fair nor legally accurate—or they may be both, depending on what exactly the beneficiaries were doing to benefit from climate change and how closely law hews to socially constructed meanings.

At the very least, therefore, we should be thinking about the adequacy and bent of community leadership in the communities most likely to be particularly and predictably vulnerable to the destabilizing pressures of climate change impacts, based on some combination of existing tensions, destabilizing forces, and severe and socially disorienting climate change impacts. It’s also probably worth starting to think about climate change adaptation assistance programs, climate change insurance regulation, climate change windfall taxation, and climate change crimes. On the last subject, for example, it will undoubtedly be difficult to define “climate change profiteering” specifically enough to satisfy the demands of due process, although at least we have the examples of war profiteering⁵⁷ and securities profiteering⁵⁸ to build on. I have no doubts, however, that climate change profiteering will occur in the eyes of many, regardless of whether such conduct is merely socially constructed to be morally offensive or actually made legally criminal.

CONCLUSION

In drawing attention to climate change “winners,” Professor Ruhl has opened legal, political, and social cans of worms that implicate far more than just American climate change policy. As Americans construct various groups of climate change beneficiaries as “winners,” “bad actors,” “natural,” “lucky,” “undeserving,” “entrepreneurial,” “visionary,” “heroic,” “exploitative,” “offensive,” “rogue,” “unjust,” “unfair,” or “criminal,” those constructions will resonate in social interactions, in cultural identity, in community stability, in political debate, and, ulti-

56. See Rymn J. Parsons, *Climate Change: The Hottest Issue in Security Studies?*, 1 RISKS, HAZARDS & CRISIS PUB. POL’Y 87, 101–06 (2010).

57. See Renegotiation Act of 1951, 50 U.S.C. app. §§ 1211–1217 (1970) (§§ 1211–1217 omitted from 2006 U.S. Code); *United States v. Bethlehem Steel Corp.*, 315 U.S. 289, 337 (1942).

58. See 15 U.S.C. § 78p(b) (2006) (regulating profits from the purchase and sale of securities).

mately, in law. Perhaps some would prefer not to wrestle with these complexities, and there are good, pragmatic reasons that Professor Ruhl begins with largely socially acontextual assumptions about how self-defined climate change “winners” will behave.

Again, Professor Ruhl’s recommendations for U.S. climate change policies are sound. Nevertheless, it is also important to remember that climate change beneficiaries will not, in fact, emerge acontextually; rather, their social meaning and political and legal significance will be determined to a significant extent through social construction, an intensely contextual and hence difficult-to-predict process. The point here is not to try to impose precision on that process or to fix the outcomes, but rather simply to emphasize two points. First, these social constructions and classifications of climate change beneficiaries are likely to generate significant political and legal responses—more, probably, than Professor Ruhl’s initial exhortation to recognize that climate change beneficiaries will exist in the first place. Second, these social constructions are likely—in at least some places and at least some times—to resonate in destabilizing ways with pre-existing social tensions and cultural fracture lines.

Because climate change “winners” in many circumstances may be more visible than the masses who are more invisibly “muddling through” whatever climate change adaptation becomes necessary, climate change “winners” run the distinct risk of becoming cultural lightning rods, for better or for worse. In thinking about climate change beneficiaries, therefore, we need to consider which kinds of beneficiaries the law should be seeking to constrain—and which kinds the law might need to protect.