

INTRODUCTION

KATRINA: SPIRITUAL MEDICINE FOR POLITICAL COMPLACENCY AND FOR SOCIAL ACTIVISTS WHO ARE SLEEPWALKING

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Numerous articles and commentaries have been written about the human impact of Hurricane Katrina on the lives of people in New Orleans and the Gulf states. Many of those writings have been critical of the federal response to this tragedy and the local and state inadequacy in preparing citizens to evacuate in time. There is much to be gained from these critiques and analyses. Yet there are deeper patterns and lessons that this tragedy reveals. If we do not understand and embrace these deeper concerns then we are condemned to repeat them. This is especially true for the legal profession, which can easily insulate itself from the intractable social dilemmas that we confront. Though there is no new legal theory or rule that could address or reverse the catastrophic series of events that created this human tragedy, there are other challenges that can be gleaned and internalized from it. The more perplexing challenges for lawyers and social activists can best be identified from a spiritual lens that relates to our overall mission and calling. In a book entitled *The Spiritual Revitalization of the Legal Profession: A Search for Sacred Rivers*,¹ I argue that the practice of law is by its nature a spiritual enterprise,² and that social justice work is spiritual behavior.³ Katrina⁴ serves as a powerful ex-

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1. DAVID HALL, *THE SPIRITUAL REVITALIZATION OF THE LEGAL PROFESSION: A SEARCH FOR SACRED RIVERS* (2005).
2. *Id.* at 17–87. Spirituality is defined in the text as consisting of two components. The first aspect is a sincere commitment by the person to live according to the highest values humanly obtainable. The second component is to consistently “search for the sacred,” or the deeper meaning embedded in our lives and actions.
3. *Id.* at 255–62.
4. On August 29, 2005, Hurricane Katrina, a Category Three storm with sustained winds near 120 mph, made landfall in southeast Louisiana and at the Louisiana/Mississippi state line, leaving devastation and catastrophe in its wake. The storm surge caused breaches in several levees in and around New Orleans. As a result, approximately 80% of the city flooded. UNITED STATES DEPT. OF COMMERCE, *HURRICANE KATRINA SERVICE ASSESSMENT REPORT 1* (2006), <http://www.weather.gov/om/assessments/>

ample of both of these points. This Essay builds on that prior work by suggesting that Hurricane Katrina is Spiritual Medicine for Political Complacency and for Social Activists Who Are Sleepwalking.

In a society where religion plays such a dominant role in the life of its members, it is not unusual for individuals to use religious and/or spiritual frameworks and principles to explain or rationalize human tragedy. This was certainly the case in the aftermath of Hurricane Katrina. Some religious leaders and individuals argued when this tragedy occurred that through this horrendous event, God was trying to get our attention.⁵ Others suggested that this was some type of spiritual punishment for the type of lifestyle and activities that New Orleans embraces.⁶ And there were those who felt that this was a spiritual test for the Bush Administration, which it miserably failed.⁷

The most powerful spiritual lesson that this human tragedy revealed in shocking terms is that this society's spiritual mandate to serve the poor,⁸ to seek justice, to create heaven here on earth, is far from our reach. If we thought that poverty, despair and marginal existence was a phenomenon of the past, or of distant underdeveloped countries, this incident demon-

pdfs/Katrina.pdf. The Gulf Coast of Mississippi also sustained massive damage, with officials calculating that approximately 90% of the structures within a half mile of the state's coastline were destroyed. *Mississippi Coast Areas Wiped Out*, CBS NEWS SPECIAL REPORT, Sept. 1, 2005, available at <http://www.cbsnews.com/stories/2005/09/01/katrina/main810916.shtml>. In the aftermath, over 1,800 people died. Oxfam America, Facts and Figures on Hurricanes Katrina and Rita (May 12, 2006), http://www.oxfamamerica.org/whatwedo/emergencies/hurricane_katrina/news_publications/feature_story.2006-06-01.5065416614/?searchterm=katrina. The storm is estimated to have caused \$81.2 billion in damage, making it the most expensive hurricane in U.S. history. UNITED STATES DEPT. OF COMMERCE, HURRICANE KATRINA SERVICE ASSESSMENT REPORT 1, (2006), <http://www.weather.gov/om/assessments/pdfs/Katrina.pdf>.

5. *Religious Conservatives claim Katrina was God's Omen, Punishment for the United States*, MEDIA MATTERS FOR AMERICA, Sept. 13, 2005, <http://mediamatters.org/items/200509130004> ("In the wake of Hurricane Katrina, some religious conservatives have speculated that the storm was sent by God as an omen or as a punishment for America's alleged sins. *Media Matters for America* has documented such statements from three religious conservative media figures: Pat Robertson, Hal Lindsey, and Charles Colson").
6. Andy Sullivan, *Hurricane Was Sign of Divine Wrath, Fundamentalists Say*, REUTERS, Sept. 2, 2005 ("May this act of God cause us all to think about what we tolerate in our city limits," said director of Repent America Michael Marcavage "This happens in our country when we have taken God out of our schools and God out of our, out of society. We don't have a moral standard," said Franklin Graham, head of the evangelical charity Samaritan's Purse).
7. Obery Hendricks, *The Multitude Gathered: Reflections on Katrina*, FAITHFUL DEMOCRATS, Sept. 4, 2006, <http://faithfuldemocrats.com/content/view/114/108/> ("The hurricane itself was an act of God, but the tragedy that followed was the result of the collective actions of a government that simply did not muster the will to meet the storm victims' needs"); see also *Post-Katrina Promises Unfulfilled; On the Gulf Coast, Federal Recovery Effort Makes Halting Progress*, WASH. POST, Jan. 28, 2006.
8. The Torah and Bible are filled with numerous mandates instructing the believer to serve the poor. Service to the poor is often positioned as the true test of one's spiritual sincerity. *Deuteronomy* 15:11 ("For the poor shall never cease out of he land: therefore I command thee, saying, Thou shalt open thine hand wide unto thy brother, to thy poor, and to thy needy, in the land."); *Matthew* 19:21 ("Jesus said unto him, if thou wilt be perfect, go and sell that thou hast, and give to the poor, and thou shalt have treasures in heaven: and come and follow me."); *Luke* 6:20 ("And he lifted up his eyes on his disciples, and said, Blessed be ye poor: for yours is the kingdom of God.").

strated in dramatic fashion that these evils are alive and well in America. We may have pushed them out of sight, and thus out of mind, but they do exist. For some in America, including those who choose to become lawyers, there is this belief that the major social ills of this country have been cured, or at least contained. We have been lulled into believing that we have won the war on poverty by making the poor and the homeless our enemy. Katrina was like a spiritual operation that not only revealed the problems of the patient, but also the weaknesses of the surgeon.

Some law students have been so concerned with the legal battles surrounding affirmative action in higher education⁹ that they forget that there is another social crisis that is not even on the Court's agenda. Katrina dramatically reminds us that there are people languishing in parts of American cities for whom affirmative action will never be an appropriate remedy to this country's long history of racism because they are trapped in social cycles of generational poverty, crime, and self abuse. The legal needs of these individuals¹⁰ and the social conditions that create this generational poverty and despair create the framework wherein lawyers can potentially do their most morally and spiritually compelling work.

The other deep lesson ingrained in the events surrounding Hurricane Katrina is that while it is very morally compelling to respond to a one-time tragedy that stares the country in the face, as many of the people who were impacted by this tragedy revealed, their living conditions were already a tragedy long before Katrina arrived.¹¹ Living a life trapped by poverty, despair, and crime is a tragedy. Sending your children to schools that do not or cannot inspire them to reach their full potential in life is a tragedy.¹² A city in the United States reporting a 40% illiteracy rate and graduating fewer than 50% of Black ninth graders in four years is a trag-

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9. See Debbi Wilgoren & Manny Fernandez, *A Defense Team of Thousands*, WASH. POST, Apr. 2, 2003; Petula Dvorak, *Rally Sets Stage on Affirmative Action Cases*, WASH. POST, Apr. 1, 2003 (reporting on the thousands of people, mostly students, who demonstrated outside the Supreme Court in support of the University of Michigan's affirmative action policy, about which the Court was hearing two high-profile cases, *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Gratz v. Bollinger*, 539 U.S. 244 (2003)).
 10. See DEBORAH L RHODE, *ACCESS TO JUSTICE* (2004) (examining the inadequacy of the poor's access to legal assistance in the United States); see also S. MURALIDHAR, *LAW, POVERTY, AND LEGAL AID: ACCESS TO CRIMINAL JUSTICE* (2004).
 11. The unemployment rate in New Orleans before Hurricane Katrina was 5.5%. Matt Fellowes, Amy Liu & Mia Mabanta, *Katrina Index Monthly Summary of Findings: June 7, 2006*, http://www.brookings.edu/metro/pubs/200606_KatrinaIndexes.pdf. Approximately 20% of New Orleans residents did not have health insurance, compared with a national average of 15%. Jaime Guillet, *Uninsured patients bleed hospital budgets*, NEW ORLEANS CITY BUSINESS, Feb. 12, 2007, available at <http://www.neworleanscitybusiness.com/viewStory.cfm?recID=18173>.
 12. Michael Casserly, *Double Jeopardy*, in *THERE IS NO SUCH THING AS A NATURAL DISASTER* 197, 198–200 (Chester Hartman & Gregory D. Squires eds., 2006) (describing the New Orleans public school system before Katrina, including that 93.4% of the school district's students were African American, and 75% of the city's schools were in academic warning status. The New Orleans public school system enrollment was more than twice as poor and nearly five times as black as that of the average school system in the rest of the country. Most high school students scored at or below 15 on the national ACT exam, which was too low to gain admittance to a competitive college or university).

edy.¹³ The city's poverty rate is double the national average, hovering at nearly 30%.¹⁴ The poverty rate for children is significantly higher at 40% to 50%.¹⁵ Although firm numbers are difficult to pin down, it is estimated that between 66% and 84% of the poor are African American. Nicholas D. Kristof pointed out in his *New York Times* column, "The Larger Shame,"¹⁶ that the Census Bureau recently reported that the number of people living in poverty in the United States increased by 1.1 million people from 2003 to 2004. He further noted that the country experienced a 17% increase in the number of poor people between 2001 and 2005.¹⁷ These are conditions that neither you nor I would ever accept for ourselves, yet millions of people in this country experience it everyday. For them, justice is not a fleeting illusion; it is a total mirage on the deserts they inhabit.

So the challenge for lawyers is to not only provide a few pro bono hours¹⁸ of service to those who are facing a catastrophic loss. The legal profession must ensure that the policies, laws, and social structures that allow poverty and other injustices to remain are reformed and transformed. This challenge lies at the profession's doorstep, because when systemic injustices exist like those revealed in certain areas of New Orleans, then lawyers are no longer the caretakers of a system of justice—they become legal merchants, selling justice to the highest bidder.

It is part of the lawyers' job as the "social engineers"¹⁹ that Charles Hamilton Houston envisioned to develop theories and strategies that will dismantle the social structures that allow a place like the Ninth Ward of New Orleans to exist. Katrina was not just a storm; it was a reminder of a deep social ambivalence that exists in this country: many Americans want a just country, but they want others to create it; many people of faith condemn those who do not adhere to their religious principles, but they fail to embody the religious principles of service and love in social policy. Lawyers, as sacred carriers of the holy flame of justice, must never let its lights fade into oblivion. This light must continue to burn for those who have no light, and for those who have no easy escape from social disasters—natural and man-made.

If lawyers are to fully respond to a human tragedy like Katrina, we must respond with more than our legal skill and knowledge. We must

13. Ron Marr, *The Facts About Katrina*, ACCESS NEWS, Sept. 15, 2005, <http://www.accessnews.com/modules/wfsection/article.php?articleid=5645>.

14. THERE IS NO SUCH THING AS A NATURAL DISASTER 3 (Chester Hartman & Gregory D. Squires eds., 2006).

15. Prior to Katrina, the poverty rate for children 0–5 was 43%, 42.4% for children 6–11, and 36.5% for children 12–17. See *Orleans Parish: Income & Poverty*, GREATER NEW ORLEANS COMMUNITY DATA CENTER, <http://www.gnocdc.org/orleans/income.html> (last visited Apr. 3, 2007).

16. Nicholas D. Kristof, *The Larger Shame*, N.Y. TIMES, Sept. 6, 2005, at A27.

17. *Id.*

18. AMERICAN BAR ASSOCIATION, MODEL RULES OF PROF'L CONDUCT, R. 6.1. (5th ed. 2003) ("Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.").

19. J. Clay Smith, Jr. & E. Desmond Hogan, *A Tribute to Charles Hamilton Houston: Remembered Hero, Forgotten Contribution*, 14 HARV. BLACKLETTER L.J. 1, 15 n.97 (1998) (quoting Houston's "mantra" to his law students: "A lawyer is either a social engineer or a parasite to society.").

respond with our hearts, soul and spirit, and we must respond in a way that will not allow us to forget the social, political, and spiritual lessons that are imbedded in this tragedy. The hidden spiritual message is that the pro bono aspiration imbedded in the rules of legal professional conduct is not a luxury that can be provided only at convenient times. The human suffering that Hurricane Katrina revealed (and created) was a dramatic modern day symbol of the biblical concept of the “least of these.”²⁰ The individuals affected were not the least in terms of human value or human dignity, but the ones who were least able to get out, least able to care for themselves, and for some, least able to defend themselves.²¹ Unless lawyers are consistently and systematically willing to serve the “least of these,” then they are neither fulfilling the true calling of the legal profession nor the religious mandates that rest at the foundation of this democratic society.

Therefore, just as the levees broke in New Orleans, so too must the levees break that surround the hearts of legal professionals. These internal levees that lawyers have created out of emotional distance and rationality separate us from the deep wells of human compassion and social activism. The legal academy and the professional culture help to erect psychological dams that hide or distort the unpleasant realities of the world around us. But Katrina should serve as a sobering breakthrough in the midst of complacency, and as winds of inspiration that motivate lawyers to do more with our legal skills than just satisfy our personal needs. The sacredness of our calling as lawyers requires more than temporary moments of compassion, which we turn off on our way back to our comfortable lives. The greatest devastation of this tragedy will be if we allow it to disappear from our consciousness and social activist agenda the way it has disappeared from our television screens and newspapers. Katrina temporarily touched the hearts of Americans but it is not clear that it will permanently change existing social policies. Katrina captured the nation’s attention, but did not capture the policy directions of the nation.²²

20. *Matthew 25:40.*

21. See Elizabeth Fussell, *Leaving New Orleans: Social Stratification, Networks, and Hurricane Evacuation*, SOCIAL SCIENCE RESEARCH COUNCIL, June 11, 2006, <http://understandingkatrina.ssrc.org/Fussell/> (“New Orleanians’ plans for evacuation were strongly shaped by their income-level, age, access to information, access to private transportation, their physical mobility and health, their occupations and their social networks outside of the city New Orleans is a city in which 27.9 percent of residents live below the poverty line, 11.7 percent are age 65 or older, only 74.7 percent are high school graduates and 27.3 percent of households do not have cars The fact that 67.3 percent of the residents are African-American was only the most visually apparent of all these statistics These statistics alone go far to explain why tens of thousands of the 500,000 residents of New Orleans did not evacuate; in so many ways they were more rooted in place than the average American.”).

22. Although hundreds of bills were introduced in both branches of the U.S. Congress in response to Hurricane Katrina, the few that were enacted into law do not have long-term goals of improving the lives of those most affected by the disaster. See, e.g., Louisiana Katrina Reconstruction Act, S. 1766, 109th Cong. (2005) (addressing job development, provisions for rebuilding and improving schools, appropriating funds for victims of the hurricane, and addressing distribution of other federal benefits such as housing, medical insurance, and health care to victims of the hurricane) (unenacted); Gulf Coast Back to Business and Homes Act of 2006, 109th Cong. (2006) (unenacted);

Rush Limbaugh suggested that this tragedy demonstrated the inadequacy of prior social policies that created a vicious cycle of dependency.²³ Though I reject the classic underlying rationale for this position taken by those who criticize social programs for the poor,²⁴ it presents a sobering point we cannot ignore as we envision and implement social policies for the future. If the goal of the intervention is to merely return the people displaced from the Ninth Ward to their former state of existence with the same social constructs in place,²⁵ then the society has ignored the real spiritual lesson of Hurricane Katrina. If a silver lining exists beyond this cloud of doom, it must be the development of social policies that help transform this and similar communities into vibrant, productive, and self-sustaining entities. This social policy must create more owners of property, must develop skills that people can use to generate income, must create better schools and safer communities.²⁶ “God bless the child that has his/her own”²⁷ is a spiritual axiom that requires that lawyers, social activists, and legislators ensure that the children and adults of New Orleans (and similar communities throughout the world) are equipped with the tools necessary to “get their own.” If education is the proven path to self-sufficiency, then a serious social policy of transformation would require the investment of substantial and unprecedented resources into the educational system in New Orleans. Smaller class sizes, longer school days, higher paid teachers, innovative learning approaches, and parental in-

but see Katrina Emergency Tax Relief Act of 2005, H.R.3768 (2005) (providing a tax exemption for homes destroyed in the storm and other tax breaks to homeowners) (enacted); Gulf Opportunity Zone Act of 2005, H.R. 4440, 109th Cong. (2005) (including the Gulf area as an opportunity zone, which aims to attract business investments by granting tax and other benefits to business owners and other investors in non-residential projects in the area) (enacted).

23. See Jon Hanson & Kathleen Hanson, *The Blame Frame: Justifying (Racial) Injustice in America*, 41 HARV. C.R.-C.L. L. REV. 413, 471 (2006) (quoting Rush Limbaugh on the effect of government social welfare policies on the victims of Katrina: “What we’ve seen in New Orleans is first and foremost the utter failure of generation after generation after generation of the entitlement mentality They had no idea what to do because they’ve been told somebody else was going to fix it.”).
24. That welfare actually harms the poor instead of helping them because they become dependent upon the assistance, which generates a self-fulfilling circular phenomenon that welfare is necessary because it makes recipients dependent upon its existence.
25. In 2000, the Lower Ninth Ward neighborhood of New Orleans was 98.3% African American, one of the most segregated neighborhoods in New Orleans. In 2004, the poverty level in the Lower Ninth Ward was 36.4%, and over 50% of the population of the neighborhood was “not in the labor force.” The neighborhood borders the Mississippi River as well as the Industrial Canal, leaving it especially vulnerable to flooding. New Orleans Planning Initiative—Cornell University, *PHYSICAL, ECONOMIC, AND SOCIAL ATTRIBUTES OF THE NEW ORLEANS NINTH WARD 4-5* (Jan. 18, 2006), available at http://www.crp2.net/outreach/nopi/NOPI_Briefing_Document.pdf.
26. See URBAN PLANNING COMMISSION, *ACTION PLAN FOR NEW ORLEANS: THE NEW AMERICAN CITY* (Jan. 11, 2006), available at <http://www.npr.org/documents/2006/jan/CityPlanningFinalReport.pdf> (outlining a plan by New Orleans officials to rebuild New Orleans); *but see* Ceci Connolly, *9th Ward: History, Yes, but a Future?*, WASH. POST, Oct. 3, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/02/AR2005100201320.html> (discussing the debate surrounding the possibility of not rebuilding the Lower Ninth Ward).
27. BILLIE HOLIDAY, *GOD BLESS THE CHILD* (Columbia Records 1936).

volvement in the learning process must be fundamental to this plan. Yet educational investments without economic investments are limited in their ability to transform lives. The Ninth Ward must become an entrepreneurial incubator where residents are given the training, capital, and institutional support to transform the community from a bed of dependency into a river of ingenuity. The health care systems that service this population must also be upgraded and transformed, and the public housing that merely contains people in states of dependency must be rebuilt as conveyor belts to home ownership.

Achieving the goals outlined above would require billions of dollars and exceptional leadership at the local, state, and national level. The amount of money needed for this plan is staggering, and society traditionally concludes that it cannot afford this type of investment. Yet the amount of money that has been invested in the Iraq War far exceeds what would be needed to fulfill the social and spiritual mandates of Hurricane Katrina. Our social ambivalence about the value of human life allows society to make the investment to support a war, but not to rectify American tragedies such as poverty. If we truly valued the lives that were affected by this storm, then we would develop a social policy that not only rebuilds the levees so that this would never occur again, but would also rebuild the lives of the people so that their nightmares would never return. Lawyers must play a role in advocating for this type of social investment, otherwise our profession will continue to profit from other people's misery.

Embedded in all human tragedies is a blessing or lesson that we must be courageous enough to find. If it merely temporarily wakes us from our social sleepwalking then we have failed the spiritual test and will not realize the lesson. The real challenge that flows from this tragedy is for us to remain awake, and to fulfill the ultimate spiritual calling attached to our lives and to our profession with open eyes and heart.

