

## Articles

# Environmental Justice in the Deep South: A Golden Anniversary Reflection on Stimulus and Change

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### Introduction

THE YEAR 2013 MARKS THE FIFTIETH ANNIVERSARY OF *Letter From Birmingham Jail*, which was written by the late Reverend Dr. Martin Luther King, Jr. (“King”).<sup>1</sup> King wrote the famous letter after his Good Friday arrest in Birmingham, Alabama,<sup>2</sup> protesting against what he often called “the iron feet of oppression.”<sup>3</sup> In responding to fellow

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This Article benefits from the author’s March 2012 participation in the Texas Southern University Thurgood Marshall Law School’s inaugural energy law symposium. A former version of this Article was presented at the symposium hosted by the *Thurgood Marshall Law Review*. The revisions included in this Article celebrate the fiftieth anniversary of the late Reverend Dr. Martin Luther King, Jr.’s *Letter From Birmingham Jail* by incorporating views on theology and environmental justice that resulted from the twentieth century American Civil Rights Movement.

1. See generally MARTIN LUTHER KING, JR., *Letter From Birmingham Jail*, in WHY WE CAN’T WAIT 76–95 (1968) [hereinafter KING, *Letter From Birmingham Jail*]. Because of the letter’s sociopolitical importance, it has been reprinted in numerous places, including law review articles. See, e.g., Martin Luther King, Jr., *Letter From Birmingham Jail*, reprinted in 26 U.C. DAVIS L. REV. 835 (1993).

2. See LESLIE C. GRIFFIN, LAW AND RELIGION: CASES AND MATERIALS 171 (2d ed. 2010).

3. See, e.g., Martin Luther King, Jr., Facing the Challenge of a New Age, Address at the First Annual Institute on Nonviolence and Social Change (Dec. 3, 1956), in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 135, 136 (James M. Washington ed., 1991). In addressing the sociopolitical context in which

clergy who called King's dissident actions "unwise and untimely,"<sup>4</sup> *Letter From Birmingham Jail* was an indictment on the state of injustice in America, especially the Deep South. For King, the twentieth century American Civil Rights Movement ("the Movement") was a response to the legal system's contradiction between ideals of law and justice and the reality of legally sanctioned discrimination against minorities.<sup>5</sup>

Much has changed in the fifty years since King wrote *Letter From Birmingham Jail*. The Movement has continued with an ongoing fight for "environmental justice."<sup>6</sup> Arguably, however, the most significant change in America since King wrote *Letter From Birmingham Jail* has

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King was arrested and subsequently wrote the famous letter, Berkley law professor David Oppenheimer writes that "[i]n Birmingham, he faced the choice of obedience to immoral authority, or disobedience and jail; he chose jail. Behind bars over Easter weekend he wrote his great essay defending non-violent direct action, the *Letter From Birmingham Jail*." David Benjamin Oppenheimer, *Kennedy, King, Shuttlesworth and Walker: The Events Leading to the Introduction of the Civil Rights Act of 1964*, 29 U.S.F. L. REV. 645, 646 (1995).

4. KING, *Letter From Birmingham Jail*, *supra* note 1, at 76.

5. Carlton Waterhouse, *Dr. King's Speech: Surveying the Landscape of Law and Justice in the Speeches, Sermons, and Writings of Dr. Martin Luther King, Jr.*, 30 LAW & INEQ. 91, 99 (2012) [hereinafter Waterhouse, *Dr. King's Speech*].

6. Definitions of "environmental justice" may vary. According to recent scholarship, however, "[e]nvironmental justice is the desire and the demand that poor and oppressed people in the United States and around the world be provided with the protection, consideration, and decision-making authority provided to their wealthier or whiter counterparts locally and globally." Carlton Waterhouse, *Failed Plans and Planned Failures: The Lower Ninth Ward, Hurricane Katrina, and the Continuing Story of Environmental Injustice*, in HURRICANE KATRINA: AMERICA'S UNNATURAL DISASTER 157 (Jeremy I. Levitt & Matthew C. Whitaker eds., 2009) [hereinafter Waterhouse, *Environmental Injustice*]. Moreover, Professor Waterhouse also draws a direct link from the Movement's acts of civil disobedience in the 1960s to the origins of environmental justice in Warren County, North Carolina. *Id.*; see also Carlton Waterhouse, *Abandon All Hope Ye That Enter? Equal Protection, Title VI, and the Divine Comedy of Environmental Justice*, 20 FORDHAM ENVTL. L. REV. 51, 57-59 (2009) (describing the environmental justice movement as originating with direct action tactics and civil rights "campaigns" designed to address the issue of environmental racism). Further, in also attempting to provide a definition to clarify the inherent ambiguity of the term environmental justice, Bob Kuehn, a nationally reputed environmental law professor, writes that:

"Environmental justice" means many things to many people. To local communities feeling overburdened by environmental hazards and left out of the decision-making process, it captures their sense of the unfairness of the development, implementation, and enforcement of environmental laws and policies. To regulated entities facing allegations that they have created or contributed to injustices, environmental justice is an amorphous term that wrongly suggests racial-based or class-based animus or, at the very least, indifference to the public health and welfare of distressed communities. . . . To governmental officials often the target of environmental justice activists' ire, the term may imply that they are executing their responsibilities in a biased or callous manner.

Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 ENVTL. L. REP. 10681, 10681 (2000).

been the election of Barack Obama—the United States’ first Black<sup>7</sup> president—a president elected at the intersection of race and religion.<sup>8</sup> Indeed, the mere opportunity for President Obama to run for president, let alone be elected, was what King’s famous 1963 “I Have A Dream” speech was all about.<sup>9</sup>

The Obama Administration has given significant attention to environmental justice.<sup>10</sup> President Obama’s environmental policy focus

7. Several legal scholars argue “Black” should be capitalized as a proper noun because, similar to Asian and Latino, it denotes a specific cultural group. *See, e.g.,* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988); Neil Gotanda, *A Critique of “Our Constitution is Color-Blind”*, 44 STAN. L. REV. 1, 4 (1991); D. Wendy Greene, *Black Women Can’t Have Blonde Hair . . . in the Workplace*, 14 J. GENDER, RACE & JUST. 405, 405 n.2 (2011). In deference to the advocacy of these scholars, the author hereinafter either uses the terms “African American” or “Black” to denote Americans of African descent.

8. *See generally* Roslyn Satchel Augustine & Jonathan C. Augustine, *Religion, Race and the Fourth Estate: Xenophobia in the Media Ten Years After 9/11*, 1 TENN. J. RACE, GENDER & SOC. JUST. 1, 16–17 & n.34 (2012) (discussing the often awkward juxtaposition of race, law, and religion influenced by American media in the decade following the September 11, 2001 terrorist attacks); Charlton C. Copeland, *God-Talk in the Age of Obama: Theology and Religious Political Engagement*, 86 DENV. U. L. REV. 663, 663 n.6 (2009) (discussing the controversy of then-candidate Obama’s membership in Trinity United Church of Christ and long-term association with its former pastor, Rev. Dr. Jeremiah A. Wright); *see also* Michael Powell, *A Fiery Theology Under Fire*, N.Y. TIMES, May 4, 2008, at 1.

9. *See generally* Martin Luther King, Jr., *I Have a Dream*, Keynote Address at the March on Washington for Jobs and Freedom (Aug. 28, 1963), *available at* <http://abcnews.go.com/Politics/martin-luther-kings-speech-dream-full-text/story?id=14358231>.

10. *See, e.g.,* Press Release, U.S. Env’tl. Prot. Agency, Obama Administration Advances Efforts to Protect Health of U.S. Communities Overburdened by Pollution / Federal Agencies Sign Environmental Justice Memorandum of Understanding (Aug. 4, 2011), *available at* <http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceac8525735900400c27/28420a5ae8467cf5852578e200635712!OpenDocument> (“All too often, low-income, minority and Native Americans live in the shadows of our society’s worst pollution, facing disproportionate health impacts and greater obstacles to economic growth . . . [E]nvironmental justice [is one] . . . of my top priorities for the work of the EPA, and we’re glad to have [the] President[’s] . . . leadership . . .” (internal citations omitted)); *see also* Juliet Eilperin, *Environmental Justice Issues Take Center Stage*, WASH. POST (Nov. 10, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/21/AR2010112103782.html> (“Obama administration officials are looking at hazardous waste storage, toxic air emissions and an array of other contaminants to try to determine whether low-income and minority communities are disproportionately exposed to them.”). Further, under the leadership of Administrator Lisa Jackson, the Environmental Protection Agency (“EPA”) has also released a comprehensive environmental justice strategy plan. *See generally* U.S. ENVTL. PROT. AGENCY, PLAN EJ 2014 (2011) [hereinafter EPA PLAN EJ], *available at* <http://www.epa.gov/environmentaljustice/resources/policy/plan-ej-2014/plan-ej-2011-09.pdf>.

In the fair interest of bi-partisanship, it bears noting that “during George H.W. Bush’s administration, the EPA administrator . . . established the Office of Environmental Equality (under the Clinton Administration it was renamed the Office of Environmental Justice) and produced *Environmental Equality: Reducing Risks for All Communities*, one of the first comprehensive government reports to examine environmental hazards and social equity.”

has included job creation that challenges America to become less dependent on the oil and gas industries of the past and move more toward energy-efficient jobs.<sup>11</sup> Most significantly, however, in proverbially “putting his money where his mouth is,” the President’s challenge came with financial support in the form of the American Recovery and Reinvestment Act of 2009 (“ARRA”),<sup>12</sup> which included significant fiscal allocations to states and/or state agencies charged with job training and development.<sup>13</sup> In Louisiana, that entity is the Louisiana Workforce Commission (“LWC”).<sup>14</sup>

This Article celebrates the fiftieth anniversary of King’s *Letter From Birmingham Jail* by building upon recent scholarship, which argues that the letter remains relevant in contemporary society.<sup>15</sup> This Article, however, moves a step further. In addition to documenting the

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ROBERT D. BULLARD, *THE QUEST FOR ENVIRONMENTAL JUSTICE: HUMAN RIGHTS AND THE POLITICS OF POLLUTION 3* (Robert D. Bullard ed., 2005) (citing U.S. ENVTL. PROT. AGENCY, *ENVIRONMENTAL EQUITY: REDUCING RISKS FOR ALL COMMUNITIES* (1992), available at [http://www.epa.gov/compliance/ej/resources/reports/annual-project-reports/reducing\\_risk\\_com\\_voll.pdf](http://www.epa.gov/compliance/ej/resources/reports/annual-project-reports/reducing_risk_com_voll.pdf)).

11. Address Before a Joint Session of the Congress on the State of the Union, 2011 DAILY COMP. PRES. DOC. 47 (Jan. 25, 2011), available at <http://www.gpo.gov/fdsys/pkg/DCPD-201100047/pdf/DCPD-201100047.pdf>.

12. American Recovery and Reinvestment Act of 2009 (“ARRA”) (a.k.a. “The Stimulus”), Pub. L. No. 111-5, 123 Stat. 115 (2009). The Stimulus was passed by Congress on February 13, 2009 and signed into law by President Obama four days later, on February 17th. *The Recovery Act*, RECOVERY.GOV, [http://www.recovery.gov/About/Pages/The\\_Act.aspx](http://www.recovery.gov/About/Pages/The_Act.aspx) (last visited July 30, 2012).

13. *Id.* § 703, 123 Stat. at 172–73.

14. See generally LA. WORKFORCE COMM’N, <http://www.laworks.net/> (last visited Jan. 28, 2013). Prior to the 2008 Louisiana legislative session, the Louisiana Workforce Commission (“LWC”) was known as the Louisiana Department of Labor. La. Acts 2008, No. 743 (codified as LA. REV. STAT. ANN. § 23:1 (2012)). In an effort to move toward a more business-friendly atmosphere, however, the reform-oriented administration of then-newly elected Governor Bobby Jindal supported legislation to rename the former department the Louisiana Workforce Commission, while also changing some of the agency’s functional operation. *Id.*

According to the Louisiana Division of Administration Office of Statewide Reporting and Accounting Policy, \$1.5 billion from the Stimulus was allocated to Louisiana in fiscal year 2011. Of the state’s total allocation, \$845 million was received by the Louisiana Department of Health and Hospitals, \$367 million received by executive departments, and \$161 million received by the state Department of Education. LA. OFFICE OF STATEWIDE REPORTING AND ACCOUNTING POLICY, POPULAR ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2011, 4 (2011) [hereinafter POPULAR REPORT], available at <http://www.doa.louisiana.gov/OSRAP/library/Publications/PAFR2011.pdf>.

15. See generally Jonathan C. Augustine, *The Theology of Civil Disobedience: The First Amendment, Freedom Riders and Passage of the Voting Rights Act*, 21 S. CAL. INTERDISC. L.J. 255 (2012) [hereinafter Augustine, *The Theology of Civil Disobedience*] (drawing a connection between the dissident acts of civil disobedience during the Movement and the recent acts of civil disobedience in Egypt that led to a democratically elected government).

recent historical correlation between *Letter From Birmingham Jail* and the environmental justice movement, this Article argues the State of Louisiana, a southern state with a documented history of racial issues,<sup>16</sup> is setting the benchmark for a “new” environmental justice movement by implementing ecologically-friendly reforms in the wake of devastation and destruction by building “green communities”<sup>17</sup> and creating “green jobs.”<sup>18</sup> With the assistance of ARRA funds,<sup>19</sup> as well as a \$10 million National Emergency Grant (“NEG”) allocation from the U.S. Department of Labor (“USDOL”) to retain and retool workers

16. See generally Jonathan C. Augustine & Ulysses Gene Thibodeaux, *Forty Years Later: Chronicling the Voting Rights Act of 1965 and its Impact on Louisiana's Judiciary*, 66 LA. L. REV. 453, 478–80 (2006) (discussing some of the South's racial problems in voting such that African-Americans were required to seek governmental intervention by making Equal Protection Clause challenges); see also Jonathan C. Augustine, *Rethinking Shaw v. Reno, the Supreme Court's Benign Race-Related Jurisprudence and Louisiana's Recent Reapportionment: The Argument for Intermediate Scrutiny in Racial Gerrymandering According to the Voting Rights Act*, 29 S.U. L. REV. 151 (2002) (discussing the problem of race in Louisiana, such that the Voting Rights Act remains a necessity to ensure fair and equitable elections).

17. Part of the environmental justice movement addresses the issue of “distributive justice,” disproportionately siting locally undesirable land uses, or “LULUs,” in poor and minority communities. See generally Shelia Foster, *Justice from the Ground Up: Distributive Inequalities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement*, 86 CALIF. L. REV. 775, 788–98 (1998) (discussing distributive justice and process theories of justice); see also Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 YALE L.J. 1383, 1384 & n.2 (1994) (citing studies analyzing the relationship between the socioeconomic characteristics of neighborhoods and the number of LULUs within them). This Article does not attempt to comprehensively address the nuances of distributive justice. For an excellent analysis of distributive justice as part of the environmental justice movement, see Alice Kaswan, *Distributive Justice and the Environment*, 81 N.C. L. REV. 1031 (2003). This Article does show, however, that through environmental advancement, the Deep South is leading a new environmental justice movement. See *infra* Part V.

18. Definitions of “green” may vary, as no commonly accepted definition has emerged. For this Article's purposes, however, “green jobs” are defined as those that have a primary job function wherein more than 50 percent of the employee's time is spent in one or more of seven green activity categories: Renewable Energy; Energy Efficiency; Greenhouse Gas Reduction; Pollution Reduction and Clean-up; Recycling and Waste Reduction; Sustainable Agriculture, Natural Resource Conservation, and Coastal Restoration; and Education, Compliance, Public Awareness and Training Supporting Other Categories. LA. WORKFORCE COMM'N, THE GREENING OF LOUISIANA'S ECONOMY: SUMMARY OF SURVEY RESULTS 1 (2011), [hereinafter SUMMARY RESULTS], available at [http://lwc.laworks.net/sites/LMI/GreenJobs/Reports/Louisiana\\_Survey\\_Results.pdf#Intro](http://lwc.laworks.net/sites/LMI/GreenJobs/Reports/Louisiana_Survey_Results.pdf#Intro).

The usage surge of terms like “green economy” and “green jobs” indicates the direction in which American law and policy are evolving as communities across the United States are intentionally using renewable energy technology, green infrastructure, and recycling and brownfield redevelopment to not only create jobs and improve the economy, but also to make themselves more attractive places to live and work. John C. Dernbach, *Creating the Law of Environmentally Sustainable Economic Development*, 28 PAGE ENVTL. L. REV. 614, 615 (2011) (internal citations omitted).

19. See *supra* notes 15–17 and accompanying text.

for future job industries,<sup>20</sup> Louisiana is leading the South in a new civil rights movement. Indeed, any modern civil rights movement must correlate with economic opportunity for all Americans.<sup>21</sup>

This Article, an interdisciplinary work on law and religion, is organically structured in six parts. Part I provides an introductory overview, highlighting the contrast between “then and now,” while establishing the parameters within which this Article is written. Part II pays tribute to “then” by providing a historical analysis of King’s theology and the conditions in the South in 1963.<sup>22</sup> Part III builds upon Part II, focusing on how the theology that undergirded the Movement naturally progressed into an environmental justice movement.<sup>23</sup> Part IV of this Article looks to Louisiana as a case study, examining its dev-

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20. Press Release, La. Workforce Comm’n, La. Awarded \$10 Million Federal Grant for Oil Spill-Related Re-employment Services Additional \$3.4 Million in Grants Awarded for Other Re-employment Needs (June 30, 2010), *available at* [http://www.laworks.net/PublicRelations/PR\\_PressReleaseDetails.asp?SeqNo=1044&Year=2010&Month=6](http://www.laworks.net/PublicRelations/PR_PressReleaseDetails.asp?SeqNo=1044&Year=2010&Month=6); *see also* LA. WORKFORCE COMM’N, WORKFORCE INVESTMENT ACT PROGRAM YEAR 2010: ANNUAL REPORT 13 (2011), *available at* [http://www.laworks.net/Downloads/WFD/WIAAnnualReport\\_2010.pdf](http://www.laworks.net/Downloads/WFD/WIAAnnualReport_2010.pdf). Further, in issuing the \$10 million NEG funds to the LWC, USDOL’s program participant eligibility requirements included individuals that were dislocated, either permanently or temporarily, or unable to work because of the disaster. *Id.* An individual is considered “dislocated” if he was terminated or laid-off, eligible for or has exhausted his unemployment insurance benefits, ineligible for unemployment insurance benefits because of insufficient earnings or having worked for an employer covered by the corresponding state law, or unlikely to return to his previous occupation or job. Workforce Investment Act of 1998, 29 U.S.C. § 2801(9) (2006).

21. *See, e.g.*, JESSE L. JACKSON, JR. & FRANK E. WATKINS, A MORE PERFECT UNION: ADVANCING NEW AMERICAN RIGHTS 252–73 (2001) (arguing for a reformed capitalism in the United States such that full employment might become an economic reality). Further, from a policy perspective on green job growth, it is important to note that “the consensus view internationally and domestically is that climate solutions should be developed mindful of their prospects for contributing to economic development, security, and human rights and dignity, in addition to protecting our environment and health.” David L. Markell, *Greening the Economy Sustainably*, 1 WASH. & LEE J. ENERGY, CLIMATE & ENV’T 41, 46 (2010).

22. *See infra* Part I.

23. *See infra* Part II; ADAM FAIRCLOUGH, TO REDEEM THE SOUL OF AMERICA: THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND MARTIN LUTHER KING, JR. 14–15 (1987) (describing the leadership roles accepted by clergy in leading social causes in the South). Moreover, the United Church of Christ’s Commission on Racial Justice (“UCC”) was deeply involved in the early environmental justice movement, producing a 1987 report (only second behind the U.S. General Accounting Office’s 1983 report) detailing environmental hazards in poor and minority communities. *See* Alice Kaswan, *Environmental Justice: Bridging the Gap Between Environmental Laws and “Justice”*, 47 AM. U. L. REV. 221, 226 n.7, 232 (1997) [hereinafter Kaswan, *Environmental Justice*]. Scholars have unequivocally recognized the direct connection between the clergy’s involvement in the Movement and the environmental justice movement that followed. *See, e.g.*, CLIFFORD RECHTSCHAFFEN ET AL., ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION 3–4 (2009); Waterhouse, *Environmental Injustice*, *supra* note 6, at 157.

astation from Hurricanes Katrina and Rita,<sup>24</sup> as well as the BP Deepwater Horizon disaster.<sup>25</sup> Further, in continuing to examine Louisiana, Part V illustrates Louisiana's cutting-edge environmental operations.<sup>26</sup> Finally, Part VI is theological. It concludes this Article by providing a brief ecological exegesis on the *Book of Revelation*, positing what King's thoughts might be on Louisiana's leadership in environmentalism and alternative energy—arguably forms of a new environmental justice—fifty years after he went to prison to protest conditions in the South.<sup>27</sup>

## I. Dr. King and the South in 1963

*When King raised issues of moral justice, he drew upon an ideal rooted in the classical western natural law tradition. This tradition, grown from the*

24. Hurricane Katrina hit Southeast Louisiana, devastating about fifteen million people. See, e.g., *FAQs*, HURRICANEKATRINARELIEF.COM, <http://www.hurricanekatrinarelief.com/faqs.html#> (last visited Jan. 28, 2013). Further, Hurricane Rita hit Southwest Louisiana, near the Texas border, also causing significant destruction. See generally *In Receding Floodwaters, More Damage Found: Ten Fatalities Reported; Rescue Missions for People and Cattle Continue*, NBCNEWS.COM (Sept. 27, 2005), [http://www.msnbc.msn.com/id/9389157/ns/us\\_news-katrina\\_the\\_long\\_road\\_back/t/receding-floodwaters-more-damage-found/](http://www.msnbc.msn.com/id/9389157/ns/us_news-katrina_the_long_road_back/t/receding-floodwaters-more-damage-found/). Because of the more popularized destruction of Hurricane Katrina and the commercialized focus on rebuilding in New Orleans, this Article focuses much more so on Hurricane Katrina than Hurricane Rita. See *infra* Part III.

25. See *infra* Part III. For an analysis of the April 20, 2010, Deepwater Horizon explosion in the Gulf of Mexico, see Diane Courselle, *We (Used to?) Make a Good Gumbo—The BP Deepwater Horizon Disaster and the Heightened Threats to the Unique Cultural Communities of the Louisiana Gulf Coast*, 24 TUL. ENVTL. L.J. 19 (2010); Thomas C. Galligan, Jr., *Death at Sea: A Sad Tale of Disaster, Injustice, and Unnecessary Risk*, 71 LA. L. REV. 787 (2011); Oliver A. Houck, *Worst Case and the Deepwater Horizon Blowout: There Ought to be a Law*, 24 TUL. ENVTL. L.J. 1 (2010); Lauren E. Hume, Note, *Are We Sailing in Occupied Waters?: Rethinking the Availability of Punitive Damages Under the Oil Pollution Act of 1990*, 86 N.Y.U. L. REV. 1444, 1444–45 (2011). Further, for details on the investigation and findings of the BP Deepwater Horizon disaster, see U.S. COAST GUARD, REPORT OF INVESTIGATION INTO THE CIRCUMSTANCES SURROUNDING THE EXPLOSION, FIRE, SINKING AND LOSS OF ELEVEN CREW MEMBERS ABOARD THE MOBILE OFFSHORE DRILLING UNIT DEEPWATER HORIZON (2010), available at [http://www.888-oil-spill.com/sites/oilspill/USCG\\_Final\\_Redacted\\_Version\\_DWH\\_Transocean\\_BP-2011-04-22.htm](http://www.888-oil-spill.com/sites/oilspill/USCG_Final_Redacted_Version_DWH_Transocean_BP-2011-04-22.htm).

26. See *infra* Part V. Louisiana's recent progress—especially that of New Orleans—is extremely significant, considering the city's demographics. According to the Brookings Institution, as recent as 2000, the poverty rate of Blacks in New Orleans was three times higher than that of the whites, with Blacks being five times as likely as whites to live in concentrated poverty. THE BROOKINGS INST., NEW ORLEANS AFTER THE STORM: LESSONS FROM THE PAST, A PLAN FOR THE FUTURE 7 (2005), available at [http://www.brookings.edu/~media/research/files/reports/2005/10/metropolitanpolicy/20051012\\_neworleans.pdf](http://www.brookings.edu/~media/research/files/reports/2005/10/metropolitanpolicy/20051012_neworleans.pdf).

27. See *infra* Part V. King's Good Friday arrest in Birmingham, the occasion that precipitated his writing *Letter From Birmingham Jail*, was in protest to segregationist practices in the city's business district. Augustine, *The Theology of Civil Disobedience*, *supra* note 15, at 260 n.11.

writings of Greek philosophers and the Christian scholars that influenced many of the sacred texts of Judaism and Christianity, viewed justice as part of the natural order of the universe created by God and comprehended by human beings through their ability to reason.

In this tradition, the laws of society are secondary to a higher law that establishes the right and the good.

—Professor Carlton Waterhouse<sup>28</sup>

By April 1963, the time King was incarcerated and wrote *Letter From Birmingham Jail*,<sup>29</sup> he was already internationally known for his nonviolent leadership in the 1955 Montgomery Bus Boycott.<sup>30</sup> Moreover, by August 1963, King would receive further international acclaim for his famous “I Have A Dream” speech, given at the culmination of the historic March on Washington.<sup>31</sup>

As a member of the clergy, King accepted a natural leadership role in the Movement’s “social gospel”<sup>32</sup> because of his independence

28. Waterhouse, *Dr. King’s Speech*, *supra* note 5, at 101–02 (internal citations omitted).

29. See *supra* note 1 and accompanying text.

30. In describing the boycott’s significance, Professor Oppenheimer writes:

The Montgomery bus boycott initiated a profound change in the struggle for civil rights. Whereas the NAACP believed in legal reform through lobbying and litigation, the preachers used the weapon of direct confrontation. *Dr. King believed that only by personally confronting the immorality of segregation, placing his own safety and liberty at risk, would the laws of inequality be changed.*

Oppenheimer, *supra* note 3, at 648 (emphasis added).

31. See *supra* note 12 and accompanying text.

32. For a comprehensive discussion of the social gospel compelling those active in ministry to also be active in ensuring societal justice, see WALTER RAUSCHENBUSCH, *A THEOLOGY FOR THE SOCIAL GOSPEL* (1918); A RAUSCHENBUSCH READER: *THE KINGDOM OF GOD AND THE SOCIAL GOSPEL* (Benson Y. Landis ed., 1957). As a result of his seminary studies, King was undoubtedly influenced by the theology of Walter Rauschenbusch, a Baptist minister and professor of church history, who “believed that the American democracy undergirded by Christian morality represented a new era of social progress.” Janet Forsythe Fishburn, *Walter Rauschenbusch and “The Woman Movement”: A Gender Analysis*, in *GENDER AND THE SOCIAL GOSPEL* 71 (Wendy J. Deichmann Edwards & Carolyn De Swarte Gifford eds., 2003). Further, King also credited his studies of Rauschenbusch and Gandhi’s ethics of nonviolence as a basis for his social views. See Michael Dwayne Blackwell, *In the Legacy of Martin Luther King Jr.: the Social Gospel of Faye Wattleton and Marian Wright Edelman*, in *GENDER AND THE SOCIAL GOSPEL* 217 (Wendy J. Deichmann Edwards & Carolyn De Swarte Gifford eds., 2003). Indeed, King’s social perspective as a pastor must have been influenced by Judeo-Christian thought. As other scholarship provides, the “formative religious traditions of the Western world—Judaism and Christianity—have for millennia embraced the conviction that their religious duty entailed active intervention in the ‘body politic.’ As a result, . . . churches and synagogues can no more be silent on public issues than human beings can refrain from breathing.” Daniel O. Conkle, *Secular Fundamentalism, Religious Fundamentalism, and the Search for Truth in Contemporary America*, in *LAW & RELIGION: A CRITICAL ANTHOLOGY* 326 (Stephen M. Feldman ed., 2000) (footnote and internal quotations omitted).



in serving a predominately Black congregation.<sup>33</sup> King's views on social justice—presented through sermons, speeches, books, and other writings—are well preserved for future generations, along with biographical narratives.<sup>34</sup> He benefited from an excellent education and an ability to connect with both the Black masses who suffered from Jim Crow segregation in the South and the whites in the North who were committed to the ideals of liberalism.<sup>35</sup> Indeed, King's education, ability, and experience—having grown up the son of a prominent Baptist minister—made him a natural leader in the Movement.<sup>36</sup>

Social conditions in 1963 were drastically different from social conditions today. For example, although America has since elected Barack Obama as its first Black president,<sup>37</sup> in 1963, Blacks in many Southern states did not yet have the right to vote.<sup>38</sup> Consequently, in protest against what he genuinely believed to be “unjust laws,”<sup>39</sup> King

33. Augustine, *The Theology of Civil Disobedience*, *supra* note 15, at 265 (describing Black preachers and lawyers as independent because they both served a predominately Black clientele during the Movement).

34. See, e.g., DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR. AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (1986); A TESTAMENT OF HOPE, *supra* note 3; MARTIN LUTHER KING, JR., WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY (1968); MARTIN LUTHER KING, JR., THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR. (Clayborne Carson ed., 1998).

35. Waterhouse, *Dr. King's Speech*, *supra* note 5, at 92–93 (internal citations omitted).

36. See generally ALBERT J. RABOTEAU, CANAAN LAND: A RELIGIOUS HISTORY OF AFRICAN AMERICANS 109–14 (2001) (discussing King's background and leadership in the Movement).

37. See *supra* notes 10–12 and accompanying text.

38. The Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as 42 U.S.C. § 1973 *et seq.* (2006)), was signed into law by President Lyndon Johnson on August 6, 1965. In chronicling the Act's historical significance, noted historian David Garrow writes:

The newspapers of August 7 devoted [significant] headline coverage [to the law]. On the same morning front-page stories also informed readers that voter registration officials in Sumter County, Georgia had dropped their opposition to a black registration drive that had been going on for some two weeks, and that some three hundred new black voters had been registered in Sumter County on August 6 alone.

DAVID J. GARROW, PROTEST AT SELMA: MARTIN LUTHER KING, JR. AND THE VOTING RIGHTS ACT OF 1965, at xi (1979). Moreover, in analyzing the Act, Professor Garrow also writes that Nicholas Katzenbach, a former attorney general, called it “the most successful piece of civil rights legislation ever enacted[,]” and the Rev. Theodore M. Hesburg, president emeritus of the University of Notre Dame and former chairman of the U.S. Civil Rights Commission, called it “one of the most important legislative enactments of all time.” *Id.* (internal citations omitted).

39. King expressed a moral duty to disobey unjust laws, like those legalizing segregation and prohibiting Blacks from voting, while incarcerated in 1963. See KING, *Letter From Birmingham Jail*, *supra* note 1, at 82–83.

often employed direct action and civil disobedience.<sup>40</sup> Particularly, in addressing the interconnectedness of law and religion in defense of the Movement, King remarked:

[W]e are not wrong in what we are doing. If we are wrong, then the Supreme Court of this nation is wrong. If we are wrong, the Constitution of the United States is wrong. If we are wrong, God Almighty is wrong. If we are wrong, Jesus of Nazareth was merely a utopian dreamer and never came down to earth. If we are wrong, justice is a lie. And we are determined here in Montgomery to work and fight until justice runs down like water, and righteousness like a mighty stream.<sup>41</sup>

Furthermore, from King's theological perspective, human equality stemmed from the identity of *all* humans as being children of God, the very essence of "agape."<sup>42</sup> As Peter Paris, professor emeritus of Princeton Theological Seminary, writes:

King's vision of the kinship of humans as a direct corollary of the parenthood of God pervaded his entire thought. Only the divine principal of love can hold the diversity of humankind together in a harmonious community. That kinship of persons under the parenthood of God was, in King's mind, the kingdom of God . . . . His fundamental ethical norm was the Christian understanding of love as presented primarily in the Sermon on the Mount and as symbolized most vividly in the cross on which Jesus died while forgiving his enemies. King viewed Jesus as the supreme manifestation of that religious and ethical principle.<sup>43</sup>

Consequently, in defending the dissident actions that provoked King's 1963 arrest in Birmingham, and describing King as one who treated the law with respect, Professor Paris also writes:

Martin Luther King's respect for the law is well known. He constantly sought to convince his followers that nonviolent direct ac-

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40. See Augustine, *The Theology of Civil Disobedience*, *supra* note 15, at 266–79 (describing King's actions as evidenced through the theological principles that undergirded the Movement).

41. RABOTEAU, *supra* note 36, at 110 (emphasis added). Further, in recognition of the interdisciplinary connectedness of law and religion, after King's death, the editors of the Columbia Law Review dedicated an issue to King's life and works. See *generally* 68 COLUM. L. REV. 1011 (1968).

42. Theologians define the Greek word *agape* as a love or an allegiance shared by members of a group. See, e.g., BRUCE J. MALINA & JOHN J. PILCH, *SOCIAL SCIENCE COMMENTARY ON THE LETTERS OF PAUL* 116–18 (2006); Yxta Maya Murray, *A Jurisprudence of Nonviolence*, 9 CONN. PUB. INT. L.J. 65, 73–74 (2009) (describing King's philosophy of love as *agape*).

43. PETER J. PARIS, *BLACK RELIGIOUS LEADERS: CONFLICT IN UNITY* 108–09 (1991); see also HOWARD THURMAN, *WITH HEAD AND HEART: THE AUTOBIOGRAPHY OF HOWARD THURMAN* 113–14 (1979) (discussing his allegiance to Christianity because of its core principles); HOWARD THURMAN, *JESUS AND THE DISINHERITED* 11–35 (1949) (explaining the religion of Jesus Christ as one who was an advocate for the marginalized in society).

tion did not imply any disrespect for the just laws of the land, inasmuch as it was always practiced for the sake of legal justice. Further, the method is justified by the Constitution of the United States, which provides for legal protest as a means for the redress of grievances. King opposed all forms of anarchy with a passion similar to that with which he opposed tyranny. Since he considered the fundamental problem in America to be the moral cleavage between the national practice and the law of the cosmos, and since the civil rights movement was intended to be the agent of moral reform, he advocated a method for that reform that he could justify by an appeal to the moral law of the universe. He deemed it significant that the Constitution was a document that described truths in accord with that moral law. However, he viewed the nation's customs and practices as contradictions of that law, and consequently, he had no difficulty in appealing to the Constitution as a source for justifying many of his actions since that law was commensurate with the universal moral law.<sup>44</sup>

Accordingly, one can argue that King's conscious defiance of unjust laws in 1963 was mandated by his moral beliefs and practice of evangelical liberalism.<sup>45</sup> Indeed, this undergirding theology supported the Movement's very essence.<sup>46</sup>

## II. Environmental Justice as Part of the Movement

*According to the EPA's own reports, the South has more states with environmentally hazardous sites than any other region . . . Texas, Louisiana, Alabama, Florida, and North Carolina are excessively contaminated, and Tennessee, in particular, is one of the most environmentally toxic states in the nation. The South also continues to be the region where most African Americans reside.*

—Professor Andrea Simpson<sup>47</sup>

44. PARIS, *supra* note 43, at 118.

45. As Georgetown law professor Anthony Cook writes:

From its theory of human nature, evangelical liberalism deduced a new role for the Church and the Christian. Given intrinsic human goodness, social institutions could and should be transformed to reflect more accurately the ideals of universal kinship and cooperation. An infallible scripture reflecting the static will of God could not justify social institutions like slavery and segregation.

Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 985, 1025–26 (1990) (footnote omitted).

46. See generally Augustine, *The Theology of Civil Disobedience*, *supra* note 15 (detailing King's leadership and the Movement's dissident actions motivated by Judeo-Christian theology).

47. Andrea Simpson, *Who Hears Their Cry?: African American Women and the Fight for Environmental Justice in Memphis, Tennessee*, in THE ENVIRONMENTAL JUSTICE READER: POLITICS, POETICS & PEDAGOGY 82, 83 (Joni Adamson, Mei Evans & Rachel Stein eds., 2002).

### A. Environmental Justice at the Grass Roots

The general consensus of scholarship regards the environmental justice movement's origins as an outgrowth of the Movement in America.<sup>48</sup> Some argue the environmental justice movement was formed through diversity of organizing efforts, which included Native Americans, labor, and to a lesser extent, the traditional environmental movement.<sup>49</sup> Indeed, the environmental justice literature cites an African-American community's 1982 opposition to a toxic landfill in Warren County, North Carolina, as the genesis of the environmental justice movement.<sup>50</sup>

As a result of the Warren County community's opposition and the initial 1982 studies detailing environmental hazards in communities of color,<sup>51</sup> the U.S. General Accounting Office issued its 1983 report, followed by the United Church of Christ's 1987 study<sup>52</sup> that "found a positive correlation between racial minorities and proximity to commercial hazardous waste facilities and uncontrolled waste sites."<sup>53</sup>

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48. See Colin Crawford, *Strategies for Environmental Justice: Rethinking CERCLA Medical Monitoring Lawsuits*, 74 B.U. L. REV. 267, 268–69 (1994) (discussing the 1982 North Carolina arrests of noted civil rights activists including United Church of Christ Executive Director Dr. Benjamin Chavis, Jr., Congressman Fauntroy, and Dr. Joseph Lowery, president of the Southern Christian Leadership Conference, because of their protests of North Carolina's ultimately successful effort to place a dump for highly toxic polychlorinated biphenyls in the mainly Black community of Warren County); William C. Scott, *Environmental Justice: A New Era of Community Empowerment, Political Activism, and Civil Rights Litigation*, 7 ENVTL. CLAIMS J. 5, 11 (1994) (noting that grassroots environmental justice groups applied the same techniques as civil rights activists); Waterhouse, *Environmental Injustice*, *supra* note 6, at 157 (arguing that under the leadership of then-Congressmen Walter E. Fauntroy, Warren County, North Carolina's residents used "campaigns" made popular during the Movement); Robert D. Bullard & Beverly H. Wright, *The Quest for Environmental Equity: Mobilizing the African American Community for Social Changes*, in AMERICAN ENVIRONMENTALISM 39 (Riley E. Dunlap & Angela G. Mertig eds., 1992) (arguing the environmental justice movement's origins were inspired by the civil rights and antiwar movements of the 1960s).

49. LUKE COLE & SHEILA FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 19–28 (2001). Indeed, it was not until the 1990s that more traditional academicians began to see the value in environmental justice as a basis of sound scholarship. See, e.g., Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787, 790 (1993).

50. See, e.g., Benjamin F. Chavis, Jr., *Foreword* to CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 3 (Robert D. Bullard ed., 1993).

51. See Kaswan, *Environmental Justice*, *supra* note 23, at 226.

52. See *supra* note 23.

53. Kaswan, *Environmental Justice*, *supra* note 23, at 226; see also Rechtschaffen ET AL., *supra* note 23, at 3–4. Indeed, "the study found that race was a more statistically significant variable than income. The early activism also culminated in an extraordinary gathering of the grassroots activists at the First National People of Color Environmental Leadership Summit . . . ." *Id.* There was also a follow-up to the 1987 United Church of Christ Report,

Consequently, by “1990, the federal government weighed in when the Environmental Protection Agency created the Environmental Equity Workgroup . . . to examine the distributional issues raised by environmental policies and enforcement.”<sup>54</sup>

As a basis of organizing, the First National People of Color Environmental Leadership Summit was held in Washington, D.C., on October 24–27, 1992.<sup>55</sup> The Summit’s results included adoption of a declaration called the *Principles of Environmental Justice*.<sup>56</sup> In relevant part, the declaration provides as follows:

WE THE PEOPLE OF COLOR, gathered together at this multinational *People of Color Environmental Leadership Summit*, to build a national and international movement of all peoples of color to fight the destruction and takings of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to ensure environmental justice; to promote economic alternatives that would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the positioning of our communities and land and the genocide of our peoples, to affirm and adopt these Principles of Environmental Justice:

1. Environmental justice affirms the sacredness of Mother Earth, ecological unity and interdependence of all species, and the right to be free from ecological destruction.

2. Environmental justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.

3. Environmental justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.

. . .

5. Environmental justice affirms the fundamental right to political, economic, cultural, and environmental self-determination of all peoples.

. . .

7. Environmental justice demands the right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evaluation.

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published twenty-years after its initial findings were made public. *See generally* ROBERT D. BULLARD ET AL., UNITED CHURCH OF CHRIST: JUSTICE & WITNESS MINISTRIES, TOXIC WASTE AND RACE AT TWENTY: 1987–2007 (2007), *available at* <http://www.ucc.org/assets/pdfs/toxic20.pdf>.

54. Kaswan, *Environmental Justice*, *supra* note 23, at 226.

55. RECHTSCHAFFEN ET AL., *supra* note 23, at 24.

56. *See id.* at 24–25.

14. Environmental justice opposes the destructive operations of multinational corporations.

17. Environmental justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to insure the health of the natural world for present and future generations.<sup>57</sup>

The success of this grass roots activism proved to be a basis for federal intervention in years to come.

### B. Environmental Justice at the Federal Level

The foregoing events set a foundation for the Clinton Administration, in 1994, to issue Executive Order 12,898 ("the Order") to address the demographic issues associated with federal actions and improve public participation procedures.<sup>58</sup> The essential public awareness achieved through direct action demonstrations and white papers were arguably the first steps in achieving distributional justice within the environmental justice movement.<sup>59</sup> Scholarship argues the Order was the "most well-known effort to improve the distributional outcomes of environmental decision making."<sup>60</sup>

Furthermore, the Order also requires federal agencies to develop environmental justice strategies, identifying distributional implications of existing programs, and mandating that federal agencies gather information regarding demographic consequences of their policy decisions.<sup>61</sup> Consequently, "[b]y explicitly requiring that demographic information be gathered and incorporated into decisionmaking [sic] processes, environmental justice advocates hope[d] the . . .

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57. *Id.* The Principles of Environmental Justice were adopted on October 24, 1991 in Washington, D.C. *Id.*

58. See Kaswan, *Environmental Justice*, *supra* note 23, at 244–45. Executive Order 12,898 was entitled "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations." See generally Exec. Order No. 12,898, 3 C.F.R. § 859 (1995). The Order directs each federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States." Waterhouse, *Environmental Injustice*, *supra* note 6, at 160 (internal citations omitted).

59. For a comprehensive analysis of direct action in the Movement, see Augustine, *The Theology of Civil Disobedience*, *supra* note 15. The direct action King used and wrote about in *Letter from Birmingham Jail* was a catalyst in the environmental justice movement years after King's assassination. See *id.*

60. Kaswan, *Environmental Justice*, *supra* note 23, at 244–45.

61. *Id.*

Order [would] lead to a fairer distribution of the consequences of federal agency actions.”<sup>62</sup> This pro-active governmental perspective on setting environmental justice policy that began with the Order in the Clinton Administration continues under President Obama.<sup>63</sup>

### III. Disaster in Louisiana: Katrina, Rita, and the BP Deepwater Horizon Disaster

#### A. Hurricanes Katrina and Rita

*The entire country watched in shock as Hurricanes Katrina and Rita hit the Gulf Coast, bringing flooding and devastation to the region. The devastation to many victims' lives, however, was caused by more than physical damage brought on by the hurricanes . . . . The hurricanes uncovered America's longstanding structural inequalities based on race, gender, and class and laid bare the consequences of ignoring these underlying inequalities.*

—Institute For Women's Policy Research<sup>64</sup>

The U.S. Congress estimates that in the wake of a delayed evacuation order for the city of New Orleans, more than 70,000 residents remained in the city to be rescued after Hurricane Katrina.<sup>65</sup> The storm's catastrophic nature arguably revealed many of the social and socioeconomic inequities that remained vestiges in New Orleans after the 1960s. As Loyola University New Orleans law professor Bill Quigley writes, “disasters rip off our social bandages and lay bare long-neglected injustices, providing a new lens to view the real lives and living conditions of our sisters and brothers.”<sup>66</sup> To understand the storm's significance, one need only consider that “[i]t had sustained winds of 115 to 130 miles an hour, pushing a storm surge as high as twenty-seven feet along the Gulf Coast.”<sup>67</sup>

62. *Id.* at 245 (internal citations omitted).

63. *See, e.g.,* EPA PLAN EJ, *supra* note 10.

64. ERICA WILLIAMS ET AL., INST. FOR WOMEN'S POLICY RESEARCH, THE WOMEN OF NEW ORLEANS AND THE GULF COAST: MULTIPLE DISADVANTAGES AND KEY ASSETS FOR RECOVERY I (2006), available at [http://www.iwpr.org/publications/pubs/the-women-of-new-orleans-and-the-gulf-coast-multiple-disadvantages-and-key-assets-for-recovery-part-ii-gender-race-and-class-in-the-labor-market/at\\_download/file](http://www.iwpr.org/publications/pubs/the-women-of-new-orleans-and-the-gulf-coast-multiple-disadvantages-and-key-assets-for-recovery-part-ii-gender-race-and-class-in-the-labor-market/at_download/file).

65. SELECT BIPARTISAN COMM. TO INVESTIGATE THE PREPARATION FOR & RESPONSE TO HURRICANE KATRINA, 109TH CONG., A FAILURE OF INITIATIVE, H.R. REP. 109-377, at 111 (2006), available at <http://www.gpo.gov/fdsys/pkg/CRPT-109hrpt377/pdf/CRPT-109hrpt377.pdf>.

66. William P. Quigley, *What Katrina Revealed*, 2 HARV. L. & POL'Y REV. 361, 362 (2008) [hereinafter Quigley, *What Katrina Revealed*].

67. William P. Quigley, *Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again*, 81 TUL. L. REV. 955, 957 (2007) [hereinafter Quigley, *Thirteen Ways of Looking at Katrina*] (internal citations omitted).

As a result of Hurricanes Katrina and Rita,<sup>68</sup> more than 200,000 homes and 18,000 businesses were destroyed.<sup>69</sup> In New Orleans alone, “80% of the city went under water during Katrina and more than 150,000 homes were damaged.”<sup>70</sup> Indeed, Hurricane Katrina eventually became the worst natural disaster in United States history.<sup>71</sup>

In addressing the significance of how Hurricanes Katrina and Rita adversely affected Louisiana’s offshore oil and gas industry, in relevant part, economists note the following:

Shut-in oil and natural gas refers to output that was being produced but is not now because of damaged platforms, pipelines or onshore receiving units. In the case of Katrina, 95.2 percent of the crude oil and 88 percent of the natural gas production was shut-in by August 30th. By September 9th, the shut-in rates had dropped to about 56-58 percent for oil and about 33-37 percent for natural gas. Then the improvement stabilized. When Rita appeared, because it made landfall further to the west and more into the center of the GOM production region, 100 percent of crude and 80 percent of natural gas was shut-in. The last shut-in statistics released by the Minerals Management Service show that 12.1 percent of oil and 9.3 percent of natural gas production was still shut-in as of June 6, 2006.<sup>72</sup>

After such devastation, the congressional Gulf Opportunity Zone (“GO Zone”) tax incentives fueled and continue to fuel an optimism and economic recovery that is led by a construction boom.<sup>73</sup> Additionally, the state has seen another boost in oil and gas extraction, as the oil and gas industry remains a staple in Louisiana’s economy.<sup>74</sup>

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68. See *supra* note 24 and accompanying text.

69. Quigley, *Thirteen Ways of Looking at Katrina*, *supra* note 67, at 958 (internal citations omitted).

70. *Id.*

71. Danielle Holley-Walker, *The Accountability Cycle: The Recovery School District Act and New Orleans’ Charter Schools*, 40 CONN. L. REV. 125, 136 (2007).

72. LOREN C. SCOTT, JAMES A. RICHARDSON & M. DEK TERRELL, LOUISIANA ECONOMIC OUTLOOK 21 (29th ed. 2011) [hereinafter LOUISIANA ECONOMIC OUTLOOK] (on file with author).

73. See *id.* at 24; *infra* Part V.B.

74. Natural gas exploration and production accounts for almost one-fifth of the United States’ power generation and is a major source of energy for residential heating. David Schwartz, *The Natural Gas Industry: Lessons for the Future of the Carbon Dioxide Capture and Storage Industry*, 19 STAN. L. & POL’Y REV. 550, 550 (2008). Moreover, the country’s major production areas for natural gas are the southwestern states of Louisiana and Texas. See *id.* at 553. Consequently, notwithstanding the move away from an oil and gas economy, the practicality is that:

Today, the world annually burns about 3.4 billion tons of oil, 4.5 billion tons of coal (2.22 billion tons of oil equivalent), natural gas in the amount equivalent to 2.02 billion tons of oil; and wood and other forms of traditional biomass at a rate equivalent to 0.9 billion tons of oil. Taken all together, the burning of these



## B. Disaster Recovery After the Deepwater Horizon Disaster

Notwithstanding President Obama's "green challenge,"<sup>75</sup> Louisiana's economy remains heavily dependent on offshore drilling and petroleum refining.<sup>76</sup> Quite naturally, therefore, both litigious and political firestorms erupted after the Deepwater Horizon explosion when the Obama Administration issued a moratorium on offshore drilling.<sup>77</sup>

In addition to the \$2.3 million green jobs ARRA funds that LWC received from USDOL,<sup>78</sup> and the \$10 million USDOL NEG to retrain and retool workers for future job industries,<sup>79</sup> LWC works collaboratively with its sister agencies in state government, private sector busi-

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forms of collected, mostly ancient, sources of energy accounts for more than eighty-nine percent of all human energy use . . . .

David R. Hodas, *Ecosystem Subsidies of Fossil Fuels*, 22 J. LAND USE & ENVT'L. L. 599, 607 (2007).

75. See *supra* notes 10–14 and accompanying text.

76. In terms of on-going economic development in the Southwest, with respect to Louisiana, the state Office of Statewide Reporting and Accounting Policy notes the following:

Although the national economy is experiencing a lethargic recovery, Louisiana should enjoy nice prospects in most areas of growth. For example, *Louisiana's economic forecast greatly improves with the potential development of the Tuscaloosa Marine Shale. Exploration companies expect to harvest an estimated 7 billion barrels of oil from shale deposits.* In addition, over \$24.5 billion in future construction projects are planned in 2012–13 in the New Orleans, Lake Charles, and Baton Rouge metropolitan statistical areas.

POPULAR REPORT, *supra* note 14, at 1 (emphasis added). Moreover, an integral part of the United States' economy, natural gas exploration and production accounts for almost one-fifth of the country's power generation, as well as being the major source of energy for residential heating. Schwartz, *supra* note 74, at 550.

77. The initial moratorium was issued on Friday, May 7, 2010, in an announcement by Department of the Interior Secretary Ken Salazar. Heidi Avery, *The Ongoing Administration-Wide Response to the Deepwater BP Oil Spill*, THE WHITE HOUSE BLOG (May 25, 2010, 3:56 PM), <http://www.whitehouse.gov/blog/2010/05/05/ongoing-administration-wide-response-deepwater-bp-oil-spill>. Further, on May 28, 2010, Secretary Salazar exercised his office's authority, pursuant to applicable provisions of the Outer Continental Shelf Lands Act, and issued a six-month moratorium on continued drilling as detailed in a twenty-nine page memorandum from Secretary Salazar to Michael R. Bromwich, the director of the Bureau of Ocean Energy Management, Regulation and Enforcement. See generally Decision Memorandum from the Sec'y of the Dep't of the Interior Regarding the Suspension of Certain Offshore Permitting and Drilling Activities on the Outer Cont'l Shelf to Michael R. Bromwich, Dir. of Bureau of Ocean Energy Mgmt., Regulation and Enforcement (July 12, 2010) [hereinafter Memorandum], available at <http://www.doi.gov/deepwaterhorizon/upload/Salazar-Bromwich-July-12-Final.pdf>; Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1332–1348 (2006).

78. See *supra* notes 12–14 and accompanying text.

79. See *supra* note 20 and accompanying text.

nesses, and education providers to help train an environmentally friendly job corps.<sup>80</sup> It establishes a model for other states to follow.

Louisiana has long been reputed as a state with an economic infrastructure heavily dependent on oil and gas, especially in the 1980s.<sup>81</sup> As recent as 2009, a report issued by the Federal Reserve Bank of Kansas City showed that Louisiana remains as dependent on oil and gas today as it did in 1982.<sup>82</sup> In fact, when the Obama Administration issued an order halting offshore drilling in the wake of the Deepwater Horizon explosion,<sup>83</sup> the moratorium was unpopular for derailing economic growth, particularly in the Gulf South.<sup>84</sup> Indeed, after lawsuits were filed in the New Orleans-based U.S. District Court for the Eastern District of Louisiana, a judge enjoined the order's enforcement, citing potential economic harm to businesses and workers.<sup>85</sup>

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80. Research by the author has indicated that *The Louisiana Green Jobs Survey*, a report produced from research conducted during the fourth quarter of 2010, is the first of its kind in the United States. See SUMMARY RESULTS, *supra* note 18, at iii. Consequently, it establishes a benchmark in gauging current green jobs and a vantage point from which future green employment can be projected. *Id.* at iv.

81. See, e.g., Coral Davenport, *Oil Forever*, NAT'L J. (Apr. 20, 2011, 6:15AM), <http://www.nationaljournal.com/magazine/louisiana-still-dependent-on-oil-20110420>.

82. Mark C. Snead, *Are the Energy States Still Energy States?*, ECON. REV., Fourth Quarter 2009, at 43, 44–49, available at <http://www.kc.frb.org/PUBLICAT/ECONREV/pdf/09q4Snead.pdf>; see also Associated Press, *Louisiana Economy Still Heavily Dependent on Energy According to Federal Reserve Study*, NOLA.COM (Feb. 3, 2010), [http://www.nola.com/business/index.ssf/2010/02/louisiana\\_economy\\_still\\_heavil.html](http://www.nola.com/business/index.ssf/2010/02/louisiana_economy_still_heavil.html).

83. Memorandum, *supra* note 77 and accompanying text.

84. Greg Flakus, *Experts: Drilling Moratorium May Do More Damage than Oil Spill*, VOICE OF AM. (June 16, 2010), <http://www.voanews.com/english/news/usa/Experts-Drilling-Moratorium-May-Do-More-Economic-Damage-Than-Oil-Spill-96524924.html>. Moreover, according to the National Center for Policy Analysis, the moratorium suspended work on 33 wells in various stages of construction, halted new lease sales, and suspended permitting for leases already offered. Rob Bluey, *The Fiscal Impact of the Offshore Drilling Moratorium*, NAT'L CTR. FOR POL'Y ANALYSIS (Apr. 27, 2011), available at <http://www.ncpa.org/pdfs/ba743.pdf>. Further, it is approximated that the moratorium caused the federal government to forfeit approximately \$4.7 million per day. *Id.*

85. Hornbeck Offshore Servs., L.L.C. v. Salazar, 696 F. Supp. 2d 627, 639 (E.D. La. 2010); Charlie Savage, *Drilling Ban Blocked; U.S. Will Issue New Order*, N.Y. TIMES, June 23, 2010, at A1. According to Louisiana State University College of Business Professor Joseph Mason, the proposed moratorium would have cost loses of more than \$2.1 billion in output, \$487 million in wages, \$98 million in forfeited tax revenues for the Gulf states alone, and approximately 8,169 jobs. JOSEPH R. MASON, THE ECONOMIC COST OF A MORATORIUM ON OFFSHORE OIL AND GAS EXPLORATION TO THE GULF REGION 3 (2010), available at <http://www.noia.org/website/download.asp?id=40016>. While the *Mason Report's* methodology was based on an empirical analysis, as a counter argument, it is also important to note that although almost all of the nation's refineries are located in the Gulf South, other scholarship informs that "there have been no new oil refinery constructions in the United States

In the days immediately following the BP Deepwater Horizon Disaster, President Obama formed the bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling and tasked it with investigating the facts and circumstances that caused the explosion.<sup>86</sup> The President also ordered Interior Secretary Ken Salazar (“the Secretary”) to conduct a comprehensive review of the blowout and to report, within 30 days, “what, if any, additional precautions and technologies should be required to improve the safety of oil and gas exploration and production operations on the outer continental shelf.”<sup>87</sup> On May 27, 2010, pursuant to the President’s directive, the Secretary issued a report recommending a six-month moratorium on permits for new wells and an immediate halt to drilling operations on 33 permitted wells.<sup>88</sup> The following day, May 28, 2010 the Secretary issued a memorandum, which included the following language:

I find at this time and under current conditions that offshore drilling of new deepwater wells poses an unacceptable threat of serious and irreparable harm to wildlife and the marine, coastal, and human environment as that is specified in 30 C.F.R. 250.172(b). I also have determined that the installation of additional safety or environmental protection equipment is necessary to prevent injury or loss of life and damage to property and the environment.

Therefore, I am directing a six-month suspension of all pending, current, or approved offshore drilling operations of new deepwater wells in the Gulf of Mexico and the Pacific regions.<sup>89</sup>

On June 7, 2010, Hornbeck Offshore Services (“Plaintiffs”) sought declaratory and injunctive relief against the Secretary and the Obama Administration’s order in the Eastern District of Louisiana.<sup>90</sup> Within two days, additional plaintiffs joined the litigation and moved for a preliminary injunction prohibiting the Secretary from enforcing the moratorium. In finding for the Plaintiffs and enjoining the Secre-

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since the late 1970s.” David Hodas, *Imagining the Unimaginable: Reducing U.S. Greenhouse Gas Emissions by Forty Percent*, 26 VA. ENVTL. L.J. 271, 280 (2008).

86. *Hornbeck Offshore Servs., L.L.C.*, 696 F. Supp. 2d at 630. With respect to this effort, as other recent scholarship references, “[o]ver the . . . spring and summer of 2010, the government managed an unprecedented response to the largest oil spill in U.S. history. The U.S. Coast Guard . . . directed BP, the responsible party, in mobilizing more than 800 specialized skimmers, 120 aircraft, 8,000 vessels, [and] nearly 50,000 responders . . . to drill relief wells.” Joseph E. Aldy, *Real-Time Economic Analysis and Policy Development During the BP Deepwater Horizon Oil Spill*, 64 VAND. L. REV. 1795, 1796 (2011).

87. *Hornbeck Offshore Servs.*, 696 F. Supp. 2d at 630.

88. *Id.* at 631.

89. *Id.* (quoting memorandum to the director of Minerals Management Service); see also Memorandum, *supra* note 77.

90. *Hornbeck Offshore Servs.*, 696 F. Supp. 2d at 632.

tary's issuance of the moratorium as arbitrary and capricious, while also noting potential irreparable injury, in relevant part, the court wrote:

The Deepwater Horizon oil spill is an unprecedented, sad, ugly and inhumane disaster. What seems clear is that the federal government has been pressed by what happened on the Deepwater Horizon into an otherwise sweeping confirmation that all Gulf deepwater drilling activities put us all in a universal threat of irreparable harm. . . . the blanket moratorium, with no parameters, seems to assume that because one rig failed and although no one yet fully knows why, all companies and rigs drilling new wells over 500 feet will universally present an imminent danger.

. . . The [P]laintiffs have established a likelihood of successfully showing that the Administration acted arbitrarily and capriciously in issuing the moratorium. . . . The [P]laintiffs assert that they have suffered and will continue to suffer irreparable harm as a result of the moratorium. The Court agrees. . . . *The effect on employment, jobs, loss of domestic energy supplies caused by the moratorium as the [P]laintiffs (and other suppliers, and the rigs themselves) lose business, and the movement of the rigs to other sites around the world will clearly ripple throughout the economy and this region.*<sup>91</sup>

Accordingly, the court enjoined the Secretary's moratorium and reinstated offshore drilling.<sup>92</sup>

From the perspective of an entire industry—particularly in a region that has been so heavily dependent on oil and gas for so many years—because of the BP Deepwater Horizon disaster's continued effects,<sup>93</sup> the nature of both primary and support green jobs has been

91. *Id.* at 638–39 (emphasis added).

92. *Id.* at 639.

93. As a result of the Deepwater Horizon's explosion, "the rig burned and then sank in approximately 5000 feet of water over the Mississippi Canyon Outer Continental Shelf Block 252 area." Sam Kalen et al., *Lingering Relevance of the Coastal Zone Management Act to Energy Development in our Nation's Coastal Waters?*, 24 TUL. ENVTL. L.J. 73, 74 (2010). Moreover, the BP Disaster caused shrimpers, crabbers, and deckhands to lose their jobs, while devastating seafood processors, an entire culture, and a way of life in South Louisiana. Denise M. Pilić, *Satisfying Deepwater Horizon Oil Spill Claims: Will Ken Feinberg's Process Work?*, 58 LA. B.J. 176, 177 (2010). Most tragically, however, as result of the BP Deepwater Horizon disaster:

Eleven crewmembers aboard the DEEPWATER HORIZON lost their lives in the initial blast that led to the fire. *The sinking of the platform caused the drill pipe, which ascended from the ocean floor to the surface rig, to break off, precipitating what would become the largest oil spill in United States history. It would be eighty-six days and several failed attempts before BP would plug the well on the ocean floor. Estimates of the volume of crude oil that leaked from the broken drill pipe ranged from 1000 barrels per day to 62,000 barrels per day, with definitive volumes still in dispute.*

Kalen et al., *supra* note 93, at 74 (emphasis added) (footnotes omitted); *see also* Galligan, *supra* note 25, at 790–91. Further, the BP Deepwater Horizon disaster's ongoing effects also

changed forever. Indeed, pollution prevention and cleanup is cited in each of the three industry sectors discussed herein.<sup>94</sup>

Part of the reason the *Louisiana Green Jobs Survey* was conducted in the fall of 2010 was to develop a baseline of where the state was in energy efficiency, but also to logically forecast where energy-efficient employment opportunities and associated training would be in years to come. Being a wise environmental and economic steward means not treating future generations as any less valuable than the current generation.<sup>95</sup> Accordingly, in helping to enable a state-of-the-art workforce, LWC promotes “green” at every opportunity.<sup>96</sup>

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include multidistrict complex litigation that will dominate a U.S. district court’s attention for the foreseeable future. See Edward F. Sherman, *The BP Oil Spill Litigation and Evolving Supervision of Multidistrict Litigation Judges*, 30 Miss. C. L. REV. 237 (2011). Such litigation is even more likely in Louisiana, a state with a “direct action” statute. See generally Jonathan C. Augustine, *Other States Should “Get With the Program” and Follow Louisiana’s Lead: An Examination of Louisiana’s Direct Action Statute and Its Application in the Marine Insurance Industry*, 27 TUL. MAR. L.J. 109 (2002) (explaining from the plaintiff perspective the benefits of aggrieved parties filing suit under Louisiana law where they can sue a tortfeasor and its insurer).

94. In noting the BP Deepwater Horizon disaster’s impact, the Louisiana Office of Statewide Reporting and Accounting Policy reports that “[t]o date, Louisiana businesses and individuals have received \$1.6 billion dollars in claim payments from the Gulf Coast Claims Facility and BP.” POPULAR REPORT, *supra* note 14, at 2. Further, in analyzing Louisiana’s economic future, nationally noted economists write that “[a]dditional regulations arising from the oil spill will drive up costs of operation in the Gulf of Mexico, leading to a decline in economic activity in the Gulf over 2011–2012. If President Obama’s proposed \$36 billion tax on the industry is passed, that activity will be even further arrested.” LOUISIANA ECONOMIC OUTLOOK, *supra* note 72, at i, iii.

95. SUMMARY RESULTS, *supra* note 18, at iii–iv; Richard L. Revesz & Matthew R. Shahabian, *Climate Change and Future Generations*, 84 S. CAL. L. REV. 1097, 1120 (2011).

96. In September 2011, LWC hosted four green jobs symposiums around various parts of Louisiana to promote the growing greenness of the state’s economy and release the findings made part of the *Louisiana Green Jobs Report*. See generally *Regional Growing Green Conferences Set for September*, LA. WORKFORCE COMM’N (Aug. 29, 2011), [http://www.laworks.net/PublicRelations/PR\\_PressReleaseDetails.asp?SeqNo=1250&Year=2011&Month=8](http://www.laworks.net/PublicRelations/PR_PressReleaseDetails.asp?SeqNo=1250&Year=2011&Month=8). Moreover, the LWC also prominently displays information dedicated to green jobs in a section entitled “Growing Green” on its website. *Growing Green*, LA. WORKFORCE COMM’N, <http://lwc.laworks.net/sites/lmi/Greenjobs/Pages/default.aspx> (last visited July 25, 2012). The LWC’s efforts are intended to serve as a catalyst, in a demand-driven workforce, in connecting employers with potential employees, as well as facilitating training and certifications for demand-driven occupations. Indeed, the LWC’s mission is to lead the development of the workforce for Louisiana’s current and future employer need. *Vision, Mission, and Values*, LA. WORKFORCE COMM’N, [http://www.laworks.net/PublicRelations/PR\\_MissionValues.asp](http://www.laworks.net/PublicRelations/PR_MissionValues.asp) (last visited July 25, 2012).

#### IV. Where We Go from Here: Louisiana on the Cutting-edge of Environmentalism in 2013

*Justice is a team sport. It cannot happen through individual efforts. It is an adventure because you never know where you are going to end up. That is why we need communities of resistance and hope.*

*One such community is the Holy Cross neighborhood in New Orleans. It is a working class, multi-racial community. It is part of the Lower Ninth Ward. They have come back because they were fighting together for years before Katrina hit . . . . When Pam Dashiell, a fifteen-year resident of and President of the neighborhood association, returned to her neighborhood after evacuating, she pledged, "We're not going down. We want to rebuild in the best, healthiest and most sustainable way." Together, with help from others, their neighborhood is coming back.*

—Professor Bill Quigley<sup>97</sup>

Notwithstanding the disasters through which Louisiana had to fight in Katrina, Rita and the Deepwater Horizon explosion and oil spill, the process of rebuilding has created an opportunity to address issues of environmental justice. The federal government remains forward-thinking in encouraging and incentivizing green jobs research as a means to help transition the state away from oil and gas dependence.<sup>98</sup> While America's transition toward energy efficiency remains in flux, white papers like the *Louisiana Green Jobs Report*<sup>99</sup> and legal scholarship play a huge role in analyzing current data and anticipating future trends in occupational forecasting and green job growth. Louisiana's citizens have reason to be proud as the state surpasses the national economic recovery with unemployment rates that are lower than the national average with respect to overall jobs.<sup>100</sup>

97. Quigley, *What Katrina Revealed*, *supra* note 66, at 383 (citing Rebecca Solnit, *The Lower Ninth BattlesBack*, THE NATION, Sept. 10, 2007, at 13).

98. See Dernbach, *supra* note 18, at 615–16 and accompanying text. As evidence of energy efficiency's clear international importance in economic development, one of the themes of the June 2012 Rio de Janeiro World Summit on Sustainable Development was "a green economy in the context of sustainable development and poverty eradication." *Id.* at 616. Further, for an excellent summary perspective on similar international efforts at transitioning toward energy efficiency, see Peter M. Crofton, *Discovering Great Opportunity in the Midst of Great Crisis: Building International Legal Frameworks for a Higher Standard of Living: Alternative Fuels and Developing Nations: Who Will Pay the Piper?*, 24 EMORY INT'L L. REV. 185 (2010).

99. See generally SUMMARY RESULTS, *supra* note 18.

100. As the Louisiana Office of Statewide Reporting and Accounting provides: Louisiana's recovery from the 'Great Recession' continues on a positive track. As in the past, Louisiana's lesser dependency on durable goods production protected the state from a serious decline. The state was protected further by the still lingering benefits of extra construction activity due to the GO Zone legislation.

There is arguably an assumption that green jobs are environmentally friendly. In actuality, however, there are no standardized parameters to define “green.”<sup>101</sup> For this Article’s purposes, green jobs are divided into two categories: (1) primary; and (2) support. As such:

Primary green jobs are those with a primary job function in one of seven activity categories: Renewable Energy; Energy Efficiency; Greenhouse Gas Reduction; Pollution Prevention and Clean-Up; Recycling and Waste Reduction; Sustainable Agriculture, Natural Resource Conservation and Coastal Restoration; and Education, Compliance, Public Awareness and Training, [s]upporting the [o]ther [c]ategories. [Furthermore,] [s]upport green jobs are those essential to an organization’s involvement in a primary green activity category, but do not require more than 50 percent of an employee’s effort.<sup>102</sup>

Furthermore, this Article focuses on three industry sectors in discussing green jobs: (1) Administrative and Support and Waste Management and Remediation; (2) Construction; and (3) Professional Scientific and Technical Services.<sup>103</sup> A visual representation of this Article’s green job focus appears below:

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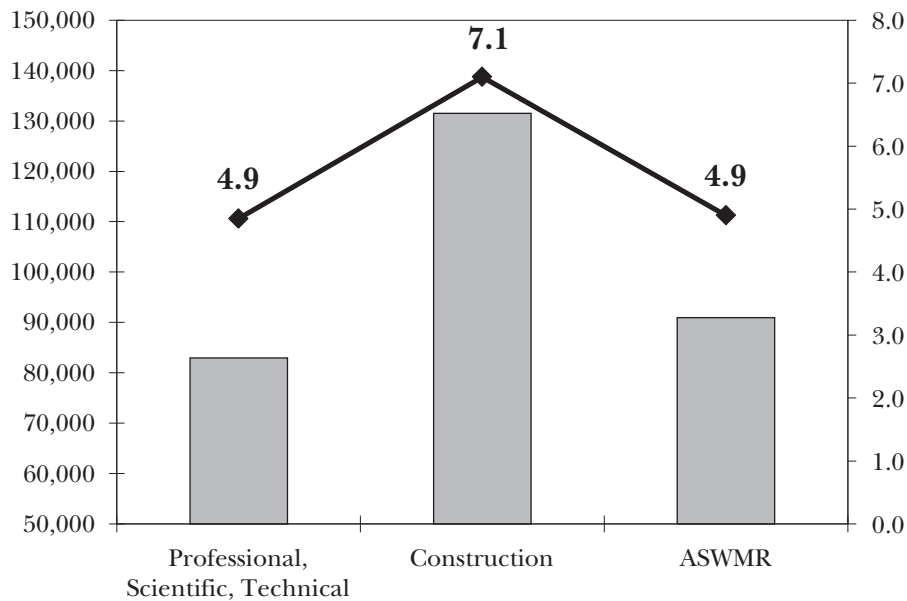
On a positive note, Louisiana’s unemployment rate in fiscal year 2011 was 1.4% below the U.S. unemployment rate of 9.3%. Louisiana is expected to add 14,200 jobs in 2012 and another 14,800 jobs in 2013. At the end of 2013, Louisiana will be only 3,600 jobs below its previous peak reached in 2008.

POPULAR REPORT, *supra* note 17, at 1.

101. See *supra* note 18 and accompanying text.

102. SUMMARY RESULTS, *supra* note 18, at iii.

103. Of all the industry sectors, Administrative and Support and Waste Management and Remediation Services had the greatest number of primary green jobs—4,992. *Id.* at 12. Construction had the second greatest number—3,646. *Id.* Further, Professional, Scientific, and Technical Services included 2,362 primary green jobs, as well. *Id.* Consequently, said categories were included in this Article. Although the Educational Services Sector is not discussed herein because of its small percentage of primary green jobs during the period of the survey, its opportunity for green growth is significant as educational reform and curriculum redesign remain areas of national interest, especially in the wake of Hurricane Katrina and New Orleans’ well-documented educational rebuilding efforts. See, e.g., Jonathan C. Augustine & Craig M. Freeman, *Grading the Graders and Reforming the Reform: An Analysis of the State of Public Education Ten Years After No Child Left Behind*, 57 LOY. L. REV. 237, 259–60 (2011). Accordingly, green jobs growth in secondary and post-secondary level educational services should be monitored in years to come.



#### A. Administrative and Support and Waste Management and Remediation

“The North American Industry Classification System (NAICS) describes the Administrative and Support and Waste Management and Remediation Services sector, NAICS 56, as providing commonplace support activities for the [daily] operations of other organizations . . . .”<sup>104</sup> Examples of services provided under NAICS 56 include office administration, human resource management, clerical services, cleaning, and waste disposal.<sup>105</sup> “In Louisiana, this sector employs 90,942 people, representing 4.9 percent of the total nonfarm employment.”<sup>106</sup>

The Administrative and Support and Waste Management and Remediation (“ASWMR”) sector provides a wide range of ongoing

104. LA. WORKFORCE COMM’N, THE GREENING OF LOUISIANA’S ECONOMY: THE ADMINISTRATIVE AND SUPPORT AND WASTE MANAGEMENT AND REMEDIATION SERVICES SECTOR ii (2011) [hereinafter ASWMR REPORT], available at [http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS\\_56\\_Waste\\_Management.pdf](http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS_56_Waste_Management.pdf).

105. *Id.* As a matter of industry distinction, it is important to note that firms within NAICS 56 *do not* engage in strategic decision-making. *Id.* Instead, such responsibilities fall within NAICS 55, the Management of Companies and Enterprises Sector. *Id.* at ii (citations omitted).

106. *Id.* (citations omitted). Additionally, it bears noting that as of 2009, this sector was also responsible for \$4.76 billion, or 2.3 percent, of Louisiana’s gross state product. *Id.* (citations omitted).



support services to businesses in other industries, many of which may have previously been performed in-house but are often contracted out to increase efficiency.<sup>107</sup> Examples include: landscaping, cleaning, clerical support, security, and human resource assistance.<sup>108</sup> Many of the businesses within the ASWMR sector “collect, treat, dispose of and remediate the wide variety of waste products created by residential, commercial, medical, construction, and industrial activities.”<sup>109</sup>

### 1. Green Goods and Services

The green goods and services offered through the ASWMR sector are primarily concentrated in the areas of renewable energy, pollution prevention and cleanup, and waste reduction and recycling.<sup>110</sup> As the primary manager of waste and recycling materials, the ASWMR sector leads the industry in the development of more sustainable practices and goods provided by other agencies.<sup>111</sup> Indeed, establishments within the ASWMR sector distinguish themselves from their competitors by paying special attention to the environmental impacts associated with their services.<sup>112</sup> For example, cleaning companies and landscaping operations assist their clients in creating a more environmentally friendly workplace by selecting green cleaning materials and fertilizers.<sup>113</sup>

The expansion of renewable energy technology and the increasing numbers of businesses providing renewable energy to customers create specialized workforce needs.<sup>114</sup> Consequently, some firms within the ASWMR sector offer staffing services to meet businesses’ renewable energy needs.<sup>115</sup> Certified Green Technologies, for example, is a staffing agency in Northern California that exclusively serves the needs of solar, wind, and biofuel businesses.<sup>116</sup> Arguably, similar

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107. *Id.* at 1.

108. *Id.* For the sake of precision, in highlighting the ASWMR Sector, this portion of the ASWMR Report is deliberately limited to environmentally beneficial activities that are categorically described as either goods and services or business practices. *Id.*

109. *Id.*

110. LA. WORKFORCE COMM’N, THE GREENING OF LOUISIANA’S ECONOMY: THE ADMINISTRATIVE AND SUPPORT AND WASTE MANAGEMENT AND REMEDIATION SERVICES SECTOR 2 (2011), available at [http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS\\_56\\_Waste\\_Management.pdf](http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS_56_Waste_Management.pdf).

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. LA. WORKFORCE COMM’N, THE GREENING OF LOUISIANA’S ECONOMY: THE ADMINISTRATIVE AND SUPPORT AND WASTE MANAGEMENT AND REMEDIATION SERVICES SECTOR 2

ventures will emerge in Louisiana as renewable energy staffing needs continue to grow.

Furthermore, waste management and remediation organizations provide renewable energy goods and services by converting captured gases from landfills into usable methane and by operating specialized facilities that convert waste directly into energy.<sup>117</sup> With the foregoing as a guide, LWC is poised to lead Louisiana's energy efficiency initiatives by identifying national industry leaders and training a cutting-edge workforce.

## 2. Green Business Practices

With landfills as the most recognizable example, the largest contributor to the environmental footprint in the ASWMR sector is the creation and management of waste management and remediation facilities.<sup>118</sup> The size and location of these facilities make them candidates for the development of wind energy and wildlife protection.<sup>119</sup> Moreover, "[t]he natural byproducts of waste management can also be harnessed as another renewable power source for onsite use or resale."<sup>120</sup>

In addition to producing energy from landfills, waste management and remediation companies have the capacity to use such energy as a power source for their own operations.<sup>121</sup> "According to the Environmental Industry Association, garbage trucks are adopting alternative fuels at a faster rate than any other truck sector in the country. A growing number of these vehicles are being fueled by the

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(2011), available at [http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS\\_56\\_Waste\\_Management.pdf](http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS_56_Waste_Management.pdf); see also *Welcome to Certified Green Technologies*, CERTIFIED GREEN TECH., <http://www.certifiedgreentech.com/index.php> (last visited July 15, 2012).

117. ASWMR REPORT, *supra* note 104, at 3. In relevant part, the ASWMR report provides as follows:

Landfill operations create energy when the buried treasure decompresses and releases methane gas. That gas can be collected, filtered and piped to users. According to the Environmental Protection Agency, there were 526 operational projects generating landfill gas in the United States as of October 2010. These facilities produced enough energy to power 1.7 million homes. In Louisiana, there are seven fully operational facilities producing energy from landfill gas . . . . Louisiana is also home to seven other facilities the EPA has classified as "candidates[.]" . . . which means landfill gas-to-energy projects are either planned, being investigated, or that the facility meets certain waste volume requirements.

*Id.* (citations omitted).

118. *Id.* at 7.

119. *Id.*

120. *Id.*

121. *Id.*

natural gas created inside landfills, known as biomethane.”<sup>122</sup> Indeed, cities like New York, Chicago, Denver, Fort Worth, and Houston have all begun testing hybrid garbage trucks and recycling trucks with special systems of regenerative braking technologies and automatic engine start/stop systems to conserve fuel or charge batteries during their frequent collection stops.<sup>123</sup>

## B. The Construction Sector

According to NAICS, the Construction Sector, NAICS 23, is primarily comprised of establishments that erect buildings or are engaged in engineering projects, such as building highways.<sup>124</sup> In addition to working on new projects, firms in the Construction Sector often perform additions, remodels, and repairs.<sup>125</sup> “In Louisiana, this sector employs 131,504 people representing 7.1 percent of total non-farm employment.”<sup>126</sup>

The USDOL’s Standard Occupational Classification System reports that the Construction Sector accounted for the largest number of primary green jobs in Louisiana, 6,333, which amounts to 5.3 percent of the state’s primary green jobs.<sup>127</sup> Although homes, offices, and other buildings are constructed with the expectation they will last for many years, Louisiana stands to benefit from the “greening” of the construction industry because of the destruction it recently sustained.<sup>128</sup> Unquestionably, the state has had significant national atten-

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122. *Id.* (citations omitted).

123. *Id.*

124. LA. WORKFORCE COMM’N, THE GREENING OF LOUISIANA’S ECONOMY: THE CONSTRUCTION SECTOR, at ii (2011) [hereinafter CONSTRUCTION REPORT], available at [http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS\\_23\\_Construction.pdf](http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS_23_Construction.pdf).

125. *Id.*

126. *Id.* (citations omitted). Furthermore, as of 2009, “private entities in the Construction Sector were responsible for \$11,601 million, or 5.6 percent of Louisiana’s gross state product.” *Id.* (citations omitted).

127. SUMMARY RESULTS, *supra* note 18, at iii.

128. See CONSTRUCTION REPORT, *supra* note 124, at 1. Additionally, Louisiana has become a national model in successful disaster recovery, as it manages coastal erosion along with national disasters, in a growing green environment. As recent scholarship explains:

Since Hurricanes Katrina and Rita in 2005, including the immediate aftermath of the 2010 BP *Deepwater Horizon* oil spill, efforts have been made to expand costal restoration and recovery planning. For example, Congress created the Costal Impact Assistance Program (“CIAP”) in 2005, with a budget of \$250 million for each of the fiscal years 2007 to 2010, to provide for ecosystem restoration to mitigate the impacts of offshore oil and gas production. On October 5, 2010, President Obama issued Executive Order 13554 that directed the creation of a Gulf Coast Ecosystem Restoration Task Force. The [t]ask [f]orce’s mandate is to build on the ongoing spill response and [Natural Recourse Damage Assessment] effort, as

tion and opportunities to “build green”<sup>129</sup> because of its recent disasters.<sup>130</sup>

Heat during cold months, air conditioning in the summer, year-round computer and electronic equipment usage, as well as the electricity used by appliances and cooking, amount to approximately 40 quadrillion BTUs of annual energy use in the United States.<sup>131</sup> Consequently, “commercial and residential buildings use more energy than either the transportation sector or industrial sector and account for 40 percent of the nation’s total energy use.”<sup>132</sup> The Construction Sector is an area of vital importance as Americans move toward more energy-efficient living. Because of the previously highlighted devastation, Louisiana is well positioned to be a national leader in environmentally friendly building reform.

The construction industry uses multiple rating systems to evaluate the environmental benefits of buildings, with considerable overlap in design features used to assign rankings.

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well as achieve overall recovery for the Gulf of Mexico through coordinating federal, state, and local initiatives.

Edward B. Barbier, *Coastal Wetland Restoration and the Deepwater Horizon Oil Spill*, 64 VAND. L. REV. 1821, 1827 (2011) (citations omitted).

129. “Green buildings, as they are commonly known, are high performance buildings that (1) use energy, water, and materials more efficiently and (2) use measures related to siting, design construction, operation, maintenance, and removal to reduce the building’s impacts on human health and the environment.” Edna Sussman, *Reshaping Municipal and County Laws to Foster Green Building, Energy Efficiency, and Renewable Energy*, 16 N.Y.U. ENVTL. L.J. 1, 8 (2008). Clearly, therefore, “[t]he large use of energy and other resources by buildings demonstrates the compelling need to use green building practices to foster sustainability.” *Id.*

130. In making a distinction between newer “green buildings” and traditional “non-green buildings,” in the context of considering energy efficiency, the following data from the United States Department of Energy (“DOE”) is compelling. In relevant part, DOE provides:

- Use about 40% of all the energy consumed and 72% of all the electricity used in the country;
- Are responsible for about 40% of the country’s carbon dioxide emissions;
- Account for 52% of sulfur dioxide emissions, 19% of nitrous oxide emissions, and 12% of particulate emissions, all of which degrade air quality; and
- Produce 136 million tons of construction and demolition waste annually.

U.S. DEP’T OF ENERGY, 2006 BUILDINGS ENERGY DATA BOOK 1-1 tbl.1.1.3, 1-3 tbl.1.1.6, 3-1 tbl.3.1.1, 3-8 tbl.3.3.1, 3-9 tbl.3.4.3 (2006), available at [http://buildingsdatabook.eren.doe.gov/docs/DataBooks/2006\\_BEDB.pdf](http://buildingsdatabook.eren.doe.gov/docs/DataBooks/2006_BEDB.pdf); see also Sussman, *supra* note 129, at 8. Further, according to the Natural Resources Defense Council, traditional non-green buildings account for 40 percent of the United States’ raw material consumption. *Affordable Green Housing*, NAT’L RES. DEF. COUNCIL (Jan. 26, 2006), <http://www.nrdc.org/cities/building/fhousing.asp>.

131. CONSTRUCTION REPORT, *supra* note 124, at 2.

132. *Id.*

In 1989, the American Institute of Architects formed a Committee on the Environment and published their Environmental Resource Guide in 1992. The EPA and Department of Energy's ENERGY STAR program was started in 1992 as was the first local green building program, which began in Austin, Texas. And in 1993, the United States Green Building Council (USGBC) and a "Greening of the Whitehouse" initiative of the Clinton Administration were both started. Finally, the USGBC's Leadership in Energy and Environmental Design (LEED) pilot program was introduced in 1998.<sup>133</sup>

As such, when a construction project qualifies as a "green building," it must conform to well-defined criteria for environmental improvement.<sup>134</sup>

Recent national population increases have caused an interest in energy efficient building.<sup>135</sup> Since 2005, the year Hurricanes Katrina and Rita struck, the number of LEED-accredited professionals in Louisiana has increased dramatically,<sup>136</sup> with two high-profile examples of LEED-certified buildings in New Orleans' Lower Ninth Ward, an area Katrina almost completely destroyed.<sup>137</sup>

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133. *Id.* at 3 (footnote omitted).

134. *Id.*

135. With population increases, both residential and commercial construction is expected to significantly increase over the coming years. For example, "[b]y the year 2015 the nation is projected to add over 15 million households and 11 billion square feet of commercial space." Sussman, *supra* note 129, at 9 (citations omitted). Clearly, therefore, green construction of these buildings could make a huge environmental impact. *Id.*

136. CONSTRUCTION REPORT, *supra* note 124, at 5.

137. This Article is in no way intended to diminish environmental concerns that existed immediately after Hurricane Katrina, as to whether marginalized citizens would be victim to environmental injustice and live in contaminated housing. See generally Benjamin Rajotte, *Environmental Justice in New Orleans: A New Lease on Life for Title VIII?*, 21 TUL. ENVTL. L.J. 51 (2007); Amy Laura Cahn, *Our "Rights Are Not Cast In Stone": Post-Katrina Environmental "Red-Lining" and the Need for a Broad-Based Human Right Lawyering Movement*, 12 U. PA. J.L. & SOC. CHANGE 37 (2009). Instead, this Article is intended to highlight significant progress such as the two high-profile ventures, Global Green's Holy Cross Neighborhood Development Project and the Make It Right Foundation, Inc.:

The Holy Cross neighborhood development consists of five single-family homes, one 18-unit apartment building and a community center that will double as a sustainable design and climate action center all with the goal of achieving LEED Platinum standards. Through the use of solar panels, efficient design, HVAC [heating, ventilation, and air conditioning] systems, energy and resource monitoring systems and efficient appliances, the buildings in this project are aiming to be self-sufficient in terms of their energy needs and carbon neutral. The apartment building will provide 75 to 90 percent lower energy bills and healthy indoor air quality for residents, and the community center will showcase community services and include a visitor's and green building resource center, an arts component, a rain water harvesting system and solar panels to provide battery charging and drinking water during emergency situations. [Further, t]he Make It Right Foundation has committed to constructing 150 affordable, green, storm-resistant homes . . . .

Furthermore, Louisiana's "construction industry is being presented with new [economic] opportunities for pollution reduction through advances in common building materials."<sup>138</sup> For example, at Louisiana State University, Louisiana's flagship research institution:

[P]ollution-absorbing concrete is being laid and tested for the first time in the United States. Professor Marwa Hassan in the Construction Management and Industrial Engineering Department has teamed with Pureti Inc., a company known for pioneering products that benefit the environment . . . to install and monitor photocatalytic pavement.<sup>139</sup>

Such advances in the state's construction industry, along with the associated jobs, will make Louisiana a standard-bearer and industry leader in years to come. Moreover, such technological advances will obviously help further define Louisiana's professional, scientific, and technical services sector.<sup>140</sup>

### C. The Professional, Scientific, and Technical Services Sector

Green employment in the Professional, Scientific, and Technical Services ("PSTS") sector is projected to increase 16.4 percent over the ten-year period from 2010 through 2020.<sup>141</sup> NAICS describes the sector, NAICS 54, as providing specific services for businesses—and occasionally households—with examples including law, accounting, engineering, architectural, and advertising firms.<sup>142</sup>

In Louisiana, the PSTS sector employs 82,950 people, representing approximately 4.5 percent of total nonfarm employment.<sup>143</sup> In

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*With the development achieving LEED Platinum status, this project will be the largest and greenest neighborhood of single family homes in the United States.*

CONSTRUCTION REPORT, *supra* note 124, at 5–6 (emphasis added) (citations omitted). Clearly, therefore, Louisiana's construction sector is positioned to lead the nation in energy efficiency, with local and municipal governments potentially having a tremendously positive impact on global warming by utilizing measures to foster green building, energy efficiency, and renewable energy. *See generally* Sussman, *supra* note 129, at 8–9.

138. CONSTRUCTION REPORT, *supra* note 124, at 8.

139. *Id.*

140. *Id.* at 12. It bears noting that of the professionals engaged in construction, "[a]rchitects, designers and engineers are primarily responsible for the adoption of green features and pursuing green certifications for buildings . . . . Contractors do, however, exert influence over certain project elements that can lead to a greener building and significant reductions in the environmental impact of the industry as a whole." *Id.*

141. LA. WORKFORCE COMM'N, THE GREENING OF LOUISIANA'S ECONOMY: THE PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES SECTOR 13 (Sept. 2011) [hereinafter PROFESSIONAL SERVICES REPORT], available at [http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS\\_54\\_Professional\\_Scientific.pdf](http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS_54_Professional_Scientific.pdf).

142. *Id.* at ii.

143. *Id.* (citations omitted). Moreover, as of 2009, private entities within this sector were also responsible for \$9.73 billion, or 4.7 percent of Louisiana's gross state product. *Id.*

deed, “the projected increase in green employment in this sector is expected to outpace growth in total employment within the sector.”<sup>144</sup> According to a Pew Charitable Trust study of the clean energy economy, Louisiana has reason to be optimistic because, although the state has a smaller number of jobs by national comparisons, its job growth in the PSTS sector is expected to outpace the national average.<sup>145</sup>

The PSTS sector includes a wide range of highly trained professionals who work to design, develop, and produce goods and services with a positive impact on the environment.<sup>146</sup> Firms in this sector may offer services including legal counsel for compliance with environmental regulations and assistance with policy development, architectural, engineering and design services, marketing environmental services, and providing the scientific assistance to investigate new green technologies.<sup>147</sup>

Because large numbers of the individuals working in the PSTS sector belong to professional organizations, “whole categories of professionals working in this sector are being encouraged to recognize their role in producing environmental improvements. Among those professional organizations highlighting their environmental commitments are the American Institute of Architects (“AIA”), The American Society of Landscape Architects (“ASLA”) and the American Society of Civil Engineers (“ASCE”).”<sup>148</sup>

In Louisiana, individuals within this sector will see the most opportunity to provide environmentally beneficial expertise when they can support, improve, or re-image existing industry, like Louisiana’s large chemical manufacturing presence, oil and gas extraction services, and agricultural economy.<sup>149</sup>

With respect to renewable energy, Louisiana is becoming an important contributor to national projects by collaboratively building upon existing technology in its universities.<sup>150</sup>

The potential in Louisiana for the development of hydrokinetic power and its impact on the Professional, Scientific and Technical Services sector is being investigated at “RiverSphere,” an industry-

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144. *Id.* at 13.

145. *Id.* (citations omitted).

146. *Id.* at 1.

147. LA. WORKFORCE COMM’N, THE GREENING OF LOUISIANA’S ECONOMY: THE PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES SECTOR 1 (Sept. 2011), *available at* [http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS\\_54\\_Professional\\_Scientific.pdf](http://lwc.laworks.net/sites/LMI/GreenJobs/IndustryProfiles/NAICS_54_Professional_Scientific.pdf).

148. *Id.*

149. *Id.* at 2.

150. *See id.* at 3–4.

neutral testing, development, research, demonstration and business incubation site on the Mississippi River. RiverSphere is being jointly run by Tulane and Xavier Universities and hopes to engage academic, industry, public agencies and nonprofits in the growth and development of Louisiana's river resources as a source of renewable energy and economic development. . . .

One less traditional source of renewable energy that Louisiana is poised to take advantage of, should the technology develop, is biofuels from algae. Algae are simple, plant-like organisms that show promise as a biofuel because they can produce more biomass per unit of growing area than other biofuel sources while also capturing carbon dioxide. Louisiana has an excellent climate to grow algae—good sunlight, relatively affordable and available land and a wide range of carbon dioxide sources. . . . During 2008–2009, Louisiana Economic Development [the state's Department of Economic Development] partnered with KEMA, an energy consulting, testing and certification firm, to evaluate algae-to-energy potentials in Louisiana. This study found that the state's capacity for algae-to-energy production could be up to 1.5 billion gallons of fuel per year, which would mean 25 facilities capable of producing 60 million gallons of fuel a year and \$4.5 billion in added revenue.<sup>151</sup>

The foregoing clearly shows Louisiana's lead in energy efficiency by using an indigenous natural resource to potentially change fuel manufacturing as it is currently known.<sup>152</sup>

Furthermore, in looking at the future of green job growth in the PSTS sector, it should be noted that Louisiana and other states along the Gulf Coast are still recovering from the BP Deepwater Horizon disaster.<sup>153</sup> In doing so, with more and more anticipated federal and state environmental regulations, there presumably will be an increased need for professionals, such as lawyers who will act as advocates in litigious matters as well as counselors who will ensure compliance with governmental regulations.<sup>154</sup> Louisiana—a state in the Deep South—is therefore leading a civil and economic rights movement, which is a “new” environmental justice movement, based on green rebuilding, the associated green jobs, and economic opportunity for all citizens.

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151. *Id.* at 3–4 (citations omitted).

152. Moreover, Louisiana's indigenous green algae seems to be celebrated as the mascot of the state's oldest university, Tulane. *See generally Traditions*, TULANEGREENWAVE.COM, <http://www.tulanegreenwave.com/trads/tul-trads.html> (last visited Jan. 22, 2012). Tulane University's mascot was formerly depicted by a pelican (the state bird) riding a surfboard. Upon information and belief, a 1920 football song, “The Rolling Green Wave,” had to do with the Tulane football team rolling over its opponents, like the green algae-laden waters rolling in Louisiana's many bayous. The name stuck since that time, with the university's mascot becoming the “Green Wave.”

153. PROFESSIONAL SERVICES REPORT, *supra* note 141, at 8.

154. *See id.*



## V. Dr. King's Thoughts in 2013?

Then I saw a new heaven and a new earth; for the first heaven and the first earth had passed away, and the sea was no more. And I saw the holy city, the new Jerusalem, coming down out of heaven from God, prepared as a bride adorned for her husband. And I heard a loud voice from the throne saying, 'See, the home of God is among mortals. He will dwell with them as their God; they will be his peoples, and God himself will be with them; he will wipe out every tear from their eyes. . . . Then he said to me, 'It is done! I am the Alpha and the Omega, the beginning and the end. To the thirsty, I will give water as a gift from the spring of the water of life.

—*Revelation* 21:1-6<sup>155</sup>

If King were alive today, would he recognize the South in contrast to the way things were in 1963?<sup>156</sup> Would King believe the tactics that he used in 1963 would be equally as successful for the subsequent environmental justice movement in the 1980s and beyond?<sup>157</sup> Indeed, as an ordained minister who was obviously committed to incorporating religious beliefs into a social gospel, one could logically conclude that if King were alive today, his environmentalism would be theologically-oriented.<sup>158</sup>

In reading *Revelation* through a lens of ecological eschatology,<sup>159</sup> there exists a contrasting vision between Babylon (a code name I argue that is used for Rome) and a "new" Jerusalem. The portrayed difference offers a prophetic critique of environmentalism and ecological imperialism, in contrast to the promise of a renewed urban

155. *Revelation* 21:1-6 (New Revised Standard Version).

156. See *supra* Part I.

157. See *supra* Part II.A.

158. For an excellent exegetical review of environmentalism in the Book of Revelation, see Barbara R. Rossing, *For the Healing of the World: Reading Revelation Ecologically*, in FROM EVERY PEOPLE AND NATION: THE BOOK OF REVELATION IN INTERCULTURAL PERSPECTIVE 165 (David Rhoads ed., 2005) [hereinafter Rossing, *Reading Revelation Ecologically*]; PAUL SANTMIRE, THE TRAVAIL OF NATURE: THE AMBIGUOUS ECOLOGICAL PROMISE OF CHRISTIAN THEOLOGY 200 (1985) (discussing the New Testament as being shaped by ecological motif, albeit eschatologically construed); PresbyterianWomen, *Introduction to the Revelation Study*, YouTube, [http://www.youtube.com/watch?v=n\\_03axPvnMQ](http://www.youtube.com/watch?v=n_03axPvnMQ) (last visited Apr. 14, 2012).

159. The term eschatology (last things from the Greek word *eschatos* "last" and *logos* "word") is commonly used in the theological academy to denote a belief in the *parousia* (second coming of Jesus Christ) and the anticipated end of the world. See MARIAN L. SOARDS, THE APOSTLE PAUL: AN INTRODUCTION TO HIS WRITINGS AND TEACHINGS 199-200 (1987) (defining *parousia* as the second coming of Jesus, the foretold messiah, and explaining its messianic influence on the Apostle Paul's theology); JAIME CLARK-SOLES, ENGAGING THE WORD: THE NEW TESTAMENT AND THE CHRISTIAN BELIEVER 78-79 (2010) (same); JAMES H. CONE, A BLACK THEOLOGY OF LIBERATION: TWENTIETH ANNIVERSARY EDITION 135 (1990) (defining eschatology as a study of the future; that which is called the "last things").

world wherein God takes up residence on earth.<sup>160</sup> John uses the imagery of both cities, Babylon and “new” Jerusalem, to critique Roman dominion during the last decade of the first century, when Domitian was emperor.<sup>161</sup> John’s contrasting imagery in *Revelation* deploys Jewish symbolism as a way of inviting the reader to leave one city to journey through the other.<sup>162</sup> From a theological perspective, therefore, if King were alive today, he might argue humans have a moral duty to serve as good stewards of the Earth as they await God’s return to it.<sup>163</sup>

Part of the popularly described New Testament rapture theology underscores a common belief that humankind will ascend into the heavens to be with God at the *parousia*.<sup>164</sup> In *Revelation*, however, there instead is a “rapture in reverse” whereby God descends to take up residence on Earth.<sup>165</sup> As such, *Revelation* indicates God loves the Earth and comes to dwell in it.<sup>166</sup>

If King were alive today, he might be influenced by environmental scholars such as John Dernbach, a lay preacher in the Episcopal Church and distinguished law professor at Widener University who advocates an ecological read of the Holy Bible. On Earth Day in 2001,<sup>167</sup> Professor Dernbach preached at the Cathedral Church of St.

160. See generally Barbara Rossing, *River of Life in God’s New Jerusalem: An Ecological Vision for Earth’s Future*, in CHRISTIANITY AND ECOLOGY 206 (Dieter T. Hessel & Rosemary Ranford Ruether eds., 1999).

161. BRIAN K. BLOUNT, *Revelation*, in TRUE TO OUR NATIVE LAND: AN AFRICAN AMERICAN NEW TESTAMENT COMMENTARY 523, 524–25 (Brian K. Blount ed., 2007); see also Rossing, *Reading Revelation Ecologically*, *supra* note 158, at 167. For other images of a “new” or heavenly Jerusalem, see *Tobit* 13:16–17, 14:5–7 (apocryphal/deuterocanonical scriptures); *Galatians* 4:21–31.

162. Rossing, *Reading Revelation Ecologically*, *supra* note 158, at 167. “[W]ith regard to its symbolic images . . . they all come from Jewish prophetic and apocalyptic language and . . . cover up references to . . . historical realities—especially ones related to Rome and its persecutions of the early Christians—so that the book might not provoke the wrath of the evil authorities.” John of Pergamon, *The Book of Revelation and the Natural Environment* (July 2006), available at <http://www.rsesymposia.org/themedia/File/1151635502-Natural.pdf> (last visited Apr. 30, 2012).

163. From a theological perspective, King might indeed support this position, especially in light of *Revelation*’s contrast between imperial (corporate) domination and an organizing community rejecting such imperialism. See RECHTSCHAFFEN ET AL., *supra* note 23, at 25 (fourteenth Principle of Environmental Justice manifesting a rejection of corporate imperialism and destruction of the Earth).

164. See, e.g., *1 Thessalonians* 4:16–17 (describing how the Lord will descend from heaven and humans will be caught up in the clouds to meet the Lord).

165. See *Revelation* 21: 2–3.

166. *Id.*

167. Earth Day is officially recognized as April 22nd of each year. As part of its ecumenical observance of Earth Day’s significance, the United Methodist Church has a special dedicated focus on environmental justice. See generally REVISED COMMON LECTIONARY

Stephens in Harrisburg, Pennsylvania.<sup>168</sup> He emphasized the connection between the planet God gave humanity and humanity's obligation to be a prudent trustee of God's gift.<sup>169</sup>

In preaching about *Mark's* portrayal of the story in which Jesus says there are two great commandments, Professor Dernbach notes that when one of the scribes asked Jesus which commandment was first of all, Jesus answered by proclaiming:

The first is "Hear, O Israel: the Lord our God, the Lord is one; you shall love the Lord with all your heart, and with all your soul, and with all your mind, and with all your strength." The second is this, "You shall love your neighbor as yourself." There is no other commandment greater than these.<sup>170</sup>

According to Professor Dernbach, the ecological exegesis of Jesus' response finds its origins in the Old Testament's *Genesis* 1:28.<sup>171</sup> As such, having "dominion"<sup>172</sup> over the Earth has an associated responsibility of loving the Earth's resources because they are shared with one's neighbors.<sup>173</sup>

If King were alive today, he likely would not recognize the South and he would probably join in the South's continuing environmental justice movement. King's theological training, as a minister of the "social gospel," suggests his likely ecological advocacy would be theologically-based. King would therefore likely agree with Professor Dernbach in encouraging humanity to live as prudent stewards of the Earth while waiting in joyful anticipation of God's descent to dwell on it. In choosing a place to live, perhaps King might move to Louisiana—the arguable capitol of the "new" South and an obvious leader in a new environmental justice movement. Indeed, if King were alive today, he would not recognize the South. It's come a long way in the fifty years since he wrote *Letter From Birmingham Jail*.

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2013—SUNDAY'S AND SPECIAL DAYS ONLY—YEAR C, <http://www.gbod.org/content/uploads/legacy/kintera-files/worship/2013-2pagercl.pdf> (last visited Mar. 14, 2013).

168. For a full text of Professor Dernbach's Earth Day 2011 sermon, see John Dernbach, *Earth Day Sermon*, The Cathedral Church of St. Stephen, Harrisburg PA (Apr. 22, 2001) (internal citations omitted) (manuscript on file with author).

169. See generally *id.*

170. *Id.* at 1.

171. *Id.* at 2.

172. See Laura Kerns, *The Context of Eco-theology*, in THE BLACKWELL COMPANION TO MODERN THEOLOGY 466, 467–68 (Gareth Jones ed., 2004) (arguing that religious ecology regards God's *Genesis* 1:28 gift of "dominion" to humankind as implying a stewardship to care for creation).

173. Dernbach, *supra* note 168, at 2 (emphasis added).

