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The Rebirth of a City: Birth and Achievement of the Ethics Review Board

Kevin Wm. Wildes, SJ¹

INTRODUCTION

Across the nation, many Americans have their own views on the “recovery” of New Orleans. Many people who live outside the city wonder why the recovery is taking so long. There is not one answer to this question that can encompass what New Orleans has experienced in the time since Katrina. The physical recovery of New Orleans in some ways overshadows the governmental and social structures that are also in need of recovery. There are multiple examples of the failure of government at every level to perform its basic functions²—these failures have hindered necessary progress in rebuilding New Orleans.³ The significant deterioration of social structures must also be repaired. Addressing or evaluating the progress of one without the other fails to provide an adequate understanding of the situation in New Orleans. While the physical city is being rebuilt, its governmental and social structures must be rebuilt as well. This article will focus on one example of such an overhaul: the creation of an Ethics Review Board (ERB).

However, in addition to governmental and social failures, outsiders often miss the complexity of the physical infrastructure problems unmasked by Katrina. Many forget that the real damage to the city came not directly from the storm, but from the failure of the infrastructure that was supposed to protect the city.⁴ This failure left over 80 percent of the city (more than seven times larger than the size of Manhattan) under water for almost three weeks;⁵ moreover, damage done by the flooding is damage that cannot be fixed quickly. It requires detailed work that is seldom visible to the eye

(e.g., repairs to water systems and gas lines). But, if completed thoroughly, these repairs and upgrades will equip the city to move into the future. The repair of the flood protection system is key to New Orleans' future. Until displaced residents have confidence in the physical infrastructure, they will not rebuild homes or businesses.⁶

As mentioned previously, the work being done to the city's social structures is as important as the work being done to the physical infrastructure. Work on public education, health care, criminal justice, and government are just as crucial to the city's long-term health as the work being done on the levees. In this article, I argue that the work being done to reform the social infrastructure is an exercise of social justice; these reforms are helping to shape a city where all citizens can live and flourish. The example upon which I focus is the development of the city's new Ethics Review Board.

The establishment of an ERB—an independent agency with the ability to examine every city contract—is the most important reform instituted thus far. I have had the privilege to serve as chair of the Ethics Review Board since its formation and have worked to establish its operations and procedures, including creating and hiring a new public office seat, that of the Office of the Inspector General (OIG). The ERB and OIG handle the education of city employees and the investigation of problems in all matters of city business. The goal of these entities is to prevent fraud, waste, and abuse.

Questions and problems of public ethics are not simply about cases of corruption; the fundamental issues surrounding ethics are rooted in the efficiency and effectiveness of government. Thereby, the development of this board and office laid the groundwork for a city government that can address ethical and efficiency issues for the benefit of all citizens. When government offices and structures are not capable of tending to residents' needs, such dysfunction provides opportunities for corruption as people look to buy their way around the broken system.⁷ Citizens who can will

often pay city bureaucrats to help expedite processes. Many of the city's bribery cases are examples of people trying to get through an inefficient system. Efforts to address efficiency and ethics in government are especially important for those citizens who are poor and disadvantaged, as they are often the most dependent on city services and have little recourse if those services do not work well.⁸ They need the city to work, and when it does not, they do not have the resources to pay to make the system work for them.

In this article, I outline the history and development of the ERB and the OIG and discuss their role in the context of social justice. Part I provides an overview of the origins of the concept of social justice and its potential connection to governmental systems. Part II details the creation of the ERB, and Part III explains the goals and accomplishments of the new ERB.

I. PUBLIC ETHICS AND SOCIAL JUSTICE

As the members of the first ERB moved through the difficult and time-consuming process of establishing the ERB and OIG, it was largely an effort to achieve social justice. Some people might argue that we are simply setting up another bureaucracy, and that is a real risk. But if this structure is properly created and effectuated, it can be a tool that prevents and quashes corruption by making government more efficient and effective for all citizens.

A. Human Dignity, Community, and Social Justice in the Catholic Tradition

Links between modern governmental structures and their role in social justice for the public can be seen through the historical roots of religion and its emphasis on social justice. The language of justice in the Catholic tradition is founded on the notion of dignity of the human person—the fundamental object of concern in the tradition of Catholic social thought.⁹ In this tradition, the language of human dignity is tied to the idea of community; in essence, the language of justice is inextricably bound to the

language of community and the dignity of the person. This tradition of justice is distinct from atomistic accounts of many modern philosophers.

In the work to build a more humane city after Katrina, the tradition of Catholic social thought, with its emphasis on human dignity, has been a framework to think about the issues at hand. Why is Catholic tradition so tied to the relationship of human person, human dignity, and community? The fundamental assumption is that the human person is made in the image of God (*imago dei*). This language, based in the Hebrew and Christian scriptures, was developed by theologians and philosophers in the early church, throughout the Middle Ages.¹⁰ One theme that runs through the development of the language of the *imago dei* by theologians and philosophers in the early church is a Trinitarian understanding of God.¹¹ In the doctrine of the Trinity, God is communal by nature. The one God is Father, Son, and Spirit. As God is fundamentally communal in God's own nature, so too is human life, made in the image of God, communal.¹² This communitarian view leads Catholic tradition to examine the political, social, and economic spheres of life together as one: *imago dei*. Human beings are individuals, but they achieve their individuality with others. A Trinitarian lens helps us appreciate the integral relationship of our individual identity with our communal nature.

B. The Common Good: Imago Dei

Embedded in the concept of the *imago dei* is the notion of the "common good." Most Americans understand common good to mean the good of the majority (the will of the majority),¹³ but that interpretation is incorrect in this tradition. Instead, common good refers to those conditions that are necessary for humans to flourish. Pope John XXIII defined it as "the sum total of conditions of social living, whereby persons are enabled more fully and readily to achieve their own perfection."¹⁴ Social justice strives to create a society that enables its members to have access to these basic conditions, to take part in the common good.¹⁵ In his encyclical *Pacem in*

Terris, Pope John XXIII said that “in our time the common good is chiefly guaranteed when personal rights and duties are maintained.”¹⁶ The idea of social justice is a cross, one could argue, between general justice and distributive justice. The object of social justice is how a society is organized with respect to the common good. The language of common good tries to focus on those conditions that human beings need to flourish.

C. The Common Good: Civil Rights, New Orleans, and Katrina

A prime example of the common good (social justice) in the United States is the civil rights movement in that it sought to ensure that the same rights were extended to all Americans. The civil rights movement was focused on being sure that all Americans, especially African Americans, were able to exercise fundamental rights, such as voting. In many ways, the development of the ERB and OIG in New Orleans is an exercise in social justice in that these entities are charged with making sure the structures of the city respond efficiently and effectively for all citizens.

II. PUBLIC ETHICS IN NEW ORLEANS: DEVELOPMENT OF THE ETHICS REVIEW BOARD

A. Beginning with the Home Rule Charter

New Orleans is a city governed by a home rule charter;¹⁷ the Ethics Review Board was established under this jurisdiction. Created by a city council ordinance, the ERB finds its origins in Article IX, Chapter 4, Section 9-402, entitled “Office of Inspector General; Ethics.” Under that ordinance, the ERB is empowered to issue advisory opinions, promulgate rules regarding interpretation and enforcement of the Code of Ethics, retain counsel, and impose fines. Other relevant charter provisions can be found in Article IX, Chapter 1, “Board and Commissions in General,” as well as other provisions of the Home Rule Charter as it may relate to the context of the work of the ERB. The Home Rule Charter was amended in 1995 to

include this change. These changes became part of the Charter on January 1, 1996. While the power to implement an ERB was officially on the books in 1996, it took eleven years and Hurricane Katrina to implement these ideas and move from charter to ordinance, from planning to action. The leadership for this implementation came from the city council.

Under the aforementioned Home Rule Charter, the ERB was permitted seven members. In order to fill the positions available, the mayor of New Orleans, then C. Ray Nagin, selected a nominee from each of the universities within the city, and appointed the last seat. The presidents of the following universities each submitted a name for nomination: Dillard University, Loyola University New Orleans, Tulane University, Southern University New Orleans, Xavier University, and the University of New Orleans.¹⁸ After all nominations were taken, the city council voted to confirm the mayor's selections.

B. Organization as a New Entity

The first meeting of the newly established ERB was held on January 26, 2007, at Xavier University. I was elected to chair the ERB; Rev. Cornelius Tilton, a pastor in New Orleans nominated by the Mayor, was elected as vice chair; and Mrs. Elizabeth Nalty, a civic activist, was elected secretary. I agreed to provide office space and support staff for the ERB and OIG at Loyola University New Orleans until such time as an official office, budget, and hiring of staff could be effected. Xavier University agreed to provide public meeting space for the ERB meetings. The first order of business was to educate the board on the pertinent laws and ordinances as well as commence a search for the first inspector general for the City of New Orleans. We also began the process of developing the bylaws, which were adopted in April of 2007.

The establishment of the ERB required that the members of the board understand the relevant state and local statutes that governed boards and commissions. Therefore, at our second meeting, the members of the ERB

were briefed on the contents of the Home Rule Charter provisions, city code provisions, state ethics laws, and the state “Sunshine” law. These laws regulate public meetings, records, and the way business can be conducted. The chair shared a memo written by the city attorney in response to questions about the indemnification of board members. The memo stated that members of the ERB are considered “officers of the City of New Orleans while fulfilling the responsibilities and duties of the position. As such, members are clearly protected in the performance of such duties.” Therein, the members of the ERB were covered under the City’s insurance policy when they acted as members of the ERB.

In its first year of existence, the ERB spent most of its time organizing operations and procedures. Being the first board, none had been established when work began in January 2007. Most often, when one joins a board or organization, the entity is already established, and one simply follows the routine of the organization’s operations. This was not true of the ERB; the board in 2007 was on the forefront of an organization coming into existence. The ERB had no bylaws or procedures to follow, so for the first year, the ERB focused on the organization of the board and its functions. The board also concentrated on rules and procedures to promote its efficiency and effectiveness in handling matters that would be brought to the board for review.

C. The Next Step: Finding an Inspector General

While we had much to do in the way of the procedural organization of the ERB in our first year, our most important work was the hiring of the first inspector general for the City of New Orleans and the initiation of Office of the Inspector General.

We conducted a national search for an inspector general and were able to hire Robert Cerasoli in June 2007. Mr. Cerasoli was the former inspector general of Massachusetts and one of the leading figures in the inspector generals community. The search process, approval of position description

for the inspector general, and timeline were established by the ERB; the search began with the approval of advertisements and announcements for the position.

In April, the request for position of inspector general received final approval by the Civil Service Commission. Inquiries to other cities and municipalities were made by the ERB to research further information on the Office of the Inspector General. Candidate requirements and best practices were established.

At the May meeting, there was a review by the ERB of the character and competency of twenty candidates for the position of inspector general. Through a standardized system of rating and scoring of candidates, five finalists were notified of interviews by the ERB.

Interviews of the top five candidates were conducted in early June 2007. Background and reference checks were made on all of the candidates; ERB members performed in-depth personal reference checks. Additionally, education transcripts were reviewed and examined for authenticity. Inspector general candidate Robert A. Cerasoli was hired by the ERB with a start date of September 1, 2007.

D. With a New Inspector General in Place, Finalizing the ERB and OIG

Over the summer the ERB worked with the new inspector general, the mayor, and the city council to prepare budget information for the both the ERB and OIG. This report was submitted to the City of New Orleans in September 2007. There was an initial round of discussion on the draft of the rules for the ERB, which had been prepared in our opening meetings. There was continued discussion on legal representation, possible conflict with the city attorney, and other issues touching on the independence of the OIG, which was protected by the actions of the city council.

In November, the inspector general and chair of the ERB appeared before the city council for budget hearings. The budget was approved thanks to

the combined work of the inspector general; the ERB; the city council; and Cynthia Hedge Morrell, chair of the budget committee.

By January 2008, the ERB reviewed a preliminary draft of the rules and formed a subcommittee to proceed with finalization. Office space for the OIG was obtained in the Federal Reserve Bank building. With rules established and a place to work, the OIG is currently in the process of hiring staff through another national search process. This process, like the search for the inspector general, involves a rigorous screening and background check of every candidate.

Nonetheless, while still in the hiring process, much work has already been done. The office has initiated several audits of city departments and property and has begun some investigations. In the year ahead, the OIG and ERB will work to develop a program of education and orientation for city employees pertaining to ethics laws and practices.

III. THE INSPECTOR GENERAL, ETHICS REVIEW BOARD, AND SOCIAL JUSTICE:

As discussed in Part II, the Office of Inspector General and the Ethics Review Board are good examples of structures that help achieve social justice. For example, the overarching concern of these structures is to help government deliver effective services to citizens. While I am sure the ERB and OIG will uncover cases of corruption in the city's agencies and activities, as noted previously, finding corruption is not the primary goal of the OIG. The purpose is to prevent waste, fraud, and abuse of city resources. One of the key insights in the movement to establish an Office of the Inspector General at the federal, state, and local levels is that when governmental structures are inefficient, ineffective, or wasteful, they present opportunities for corruption.¹⁹ People look for ways to "buy" their way around systems that are not working. When governmental structures function efficiently and effectively they better serve all citizens and the common good.

Who benefits if the OIG and the ERB function well and do their respective jobs? Everyone. Efficient and effective government is essential to economic development for every jurisdiction in New Orleans.²⁰ Effective government services also benefit the poor and the marginalized. When governments are inefficient and ineffective, people find ways to work around them. Such inefficiencies and ineffectiveness are the seeds for corruption, but poor and marginalized citizens do not have the resources, in money or connections, to buy their way around these failed government structures. Often these are the citizens who depend on the structures of city government because they have fewer resources to use when public organizations fail to work. Although these offices are just starting, we are already looking at waste in regard to city vehicles as well as fraud and corruption in the program for affordable housing, a program which affects the city's poorest and most disadvantaged citizens.

IV. CONCLUSION

Most Americans expect that recovery after Hurricane Katrina should happen quickly, and they are surprised that the renewal of New Orleans has taken so long. But the renewal in the aftermath of this disaster offers a unique opportunity to build a new New Orleans. It can be more than a city that is safer from nature; it can also be a city which appropriately serves the social needs of all men and women. The purpose of the ERB and OIG is to help make government effective in the work of serving citizens. In a city where government works for all citizens, the basic social needs of health care, housing, education, and criminal justice will be met to provide a platform from which all citizens can flourish.

¹ President of Loyola University New Orleans and chair of the Ethics Review Board. My professional work has been in the area of bioethics and health policy. This article builds on the work of many people. It reflects the work of the New Orleans City Council

and the Office of the Mayor. The members of the Ethics Review Board, Rev. Cornelius Tilton, Vice Chair; Elizabeth Nalty, Secretary; Dean Winston Brown; Professor Kathryn Lorio; Mrs. Leah Chase; and Dr. Beverly Favre, are very important contributors to this article. David Marcello of the Public Law Center at Tulane has been a vital contributor. My executive assistant, Ms. Gail Howard, was a crucial party to the early life of the Ethics Review Board and the Office of the Inspector General. Finally, Mr. Robert Cerasoli, the first inspector general of the City of New Orleans, is also responsible for helping the ERB move beyond ideas to reality.

² See Scott Shane, *After Failures, Government Officials Play Blame Game*, N.Y. TIMES, Sept. 5, 2005, at A1.

³ One example in Louisiana has been the Road Home Program. The program was set up to ensure that people whose homes were lost or damaged got the resources they needed. However, the program has been very slow and bureaucratic in getting money to citizens. See David Hammer, *Road Home to Hit Dead End*, TIMES-PICAYUNE (New Orleans), May 29, 2007, http://blog.nola.com/times-picayune/2007/05/road_home_to_hit_dead_end.html.

⁴ Scott Shane & Eric Lipton, *Government Saw Flood Risk but Not Levee Failure*, N.Y. TIMES, Sept. 2, 2005, at A1. It is also important to remember that the Mississippi River and Delta are all under federal control, and not under the control of the states involved, in order to protect national commerce and energy needs.

⁵ America's Wetlands Resource Center, *Hurricanes Katrina and Rita's Impact on America's Wetlands*, http://www.americaswetlandresources.com/background_facts/basic_facts/hurricane.html (last visited Nov. 5, 2008).

⁶ John Schwartz, *One Billion Dollars Later, a City Still at Risk*, N.Y. TIMES, Aug. 17, 2007, at A1.

⁷ Paolo Mauro, *Corruption: Causes, Consequences, and Agenda for Further Research*, FIN. & DEV., Mar. 1998, at 11, 12–13.

⁸ See, e.g., Praveen Kulshreshtha, *Bureaucratic Corruption: Efficiency Virtue or Distributive Vice?*, INDIAN J. OF BUS. & ECON., Dec. 2006, available at http://findarticles.com/p/articles/mi_m1TSD/is_2_5/ai_n25012646/print?tag=artBody;col1.

⁹ SECOND VATICAN ECUMENICAL COUNCIL, *Gaudium et Spes* ¶ 76, in PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD, (Dec. 7, 1965) [hereinafter *Gaudium et Spes*], reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 216–17, available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

¹⁰ Pope John XXIII, Encyclical Letter, *Mater et Magistra* 65 (1961) [hereinafter *Mater et Magistra*], reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 94 (David J. O'Brien & Thomas A. Shannon eds., 1992), available at http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_jxxiii_enc_15051961_mater_en.html; *Gaudium et Spes*, *supra* note 9, at 26.

¹¹ CATECHISM OF THE CATHOLIC CHURCH 232–67 (1994), available at <http://www.vatican.va/archive/catechism/p1s2c1p2.htm>.

¹² *Mater et Magistra*, *supra* note 10; *Gaudium et Spes*, *supra* note 9, at 26.

¹³ Robert Bellah, Why Americans Have Difficulty Understanding the Phrase “Common Good,” (Aug. 14, 2004) (paper presented at the annual meeting of the American Sociological Association) (on file with author).

¹⁴ *Mater et Magistra*, *supra* note 10.

¹⁵ Pope Pius XI, Encyclical Letter, *Divini Redemptoris* 51 (1937), available at http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_pxi_enc_19031937_divini-redemptoris_en.html.

¹⁶ Pope John XXIII, Encyclical Letter, *Pacem et Terris* 60 (1963), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 141 (David J. O’Brien & Thomas A. Shannon eds., 1992), available at http://www.vatican.va/holy_father/john_xx_iii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html.

¹⁷ In Louisiana, local governmental subdivisions (parishes and municipalities) are creatures of the State. They may be abolished by the State and may be vested with such powers and authority as determined by the State. Without constitutional limitations, local governmental subdivisions are at the mercy of the legislature. However, the Louisiana Constitution grants general authority to any Louisiana municipality or parish to draft, adopt, and amend a home rule charter.

¹⁸ NEW ORLEANS, LA., CHARTER, art. IX, §§ 9-401-402 (1995), available at <http://www.municode.com/resources/gateway.asp?pid=10040&sid=18>.

¹⁹ See Association of Inspectors General, Home Page, <http://www.inspectorsgeneral.org/mc/page.do> (last visited Nov. 5, 2008).

²⁰ See Jang B. Singh and Emily F. Carasco, *Business Ethics, Economic Development and Protection of the Environment in the New World Order*, J. BUS. ETHICS, Mar. 1996, at 297-307.