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USING HISTORIC PRESERVATION LAWS TO HALT THE DESTRUCTION OF “PORCH CULTURE” IN THE LOWER NINTH WARD OF NEW ORLEANS

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Introduction

One Saturday in May, 2014, I visited the Lower Ninth Ward neighborhood¹ of New Orleans with a group of my law students. The students had spent Monday through Friday volunteering with pro bono legal service providers throughout the City as part of the Law School’s annual mission trip and were going to spend that Saturday working on some rebuilding projects in the Lower Ninth Ward—an area that had been devastated by Hurricane Katrina in 2005 and was still struggling to rebound.²

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^Ω This Article is dedicated to my grandmothers, Bernice Green and the late Angeline Jefferson, Black Louisiana women who both owned their own homes prior to their marriages, married, lived in those homes with their husbands and children, and remained rooted in those places and spaces for the duration of their lives.

¹ See *infra* Part I.B. for a description of the Lower Ninth Ward neighborhood.

² “Since 2006, [Barry] Law School annually selects 10-12 student applicants to participate in a Mission Service Project. This opportunity is offered for a week between the spring and summer terms. Students are placed as volunteers with legal agencies and organizations serving communities of need. Sites are selected by priority of need and the availability of licensed attorneys to supervise the students. Two faculty members serve as mentors and supervisors. The Mission Service Project is an initiative of the Mission Effectiveness Committee and the Law School Office of Mission Engagement.” Office of Mission Engagement, *Law School Mission Service Projects*, BARRY UNIV., <http://www>.

While shuttling students between job sites, I was shocked to see a number of newly built houses that looked as if they had been dropped from outer space into the middle of the “Lower Nine.” They had oddly angled roofs with solar panels, swooping overhangs, and, in some cases, the entryways were more than a story above ground. I later learned that these houses had been built by actor Brad Pitt’s organization, Make It Right.³ They seemed to me to be grotesque caricatures of the Greek revival, Italianate, Creole cottages, and shotgun houses that had previously occupied the landscape.

My sentiments were echoed by those of experts who had also made post-Katrina pilgrimages to the Lower Ninth Ward to observe or participate in rebuilding efforts. One architect recounted his dismay:

When I visited New Orleans last fall, there was no way to prepare myself for the despair I felt when walking through the Lower 9th Ward, even 6 years after the storm A vacuum of leadership at every level has left the task of “salvation” to celebrities, and their private celebrity architects—with projects that are an exercise of vanity over practicality.

What was most dismaying was seeing “celebrity architecture” masquerading as sustainable housing Are we seriously expected to believe that a handful of LEED houses will somehow create a template for the future, even while the architecture itself destroys the *porch culture* that formerly characterized the close-knit social life of the neighborhood?

*Whose intentions are really more important?*⁴

I would add to the speaker’s questions an additional one: once the more important intentions are identified, how might historic preservation law aid in effectuating those intentions?

In Part I of this Article, I argue that rebuilding approaches like Make It Right’s—approaches that admittedly seek to “change the way buildings are designed and built”⁵—often fail to adhere to cultural and historical norms. This failure misses an opportunity to preserve the history of a community—one of the essential functions of historic preservation.⁶ In advocating for a larger role for historic preservation law in post-disaster rebuilding, I also explore the history of the Ninth Ward, the nature of pre-Katrina activism in this predominantly African-American community, and the role of place and space in that activism, as typified by the role of the front porch and the development of “porch culture.” I explore these issues by harkening back to the roots of African-

barry.edu/mission-engagement/committees/service-projects.html (last visited July 24, 2015).

³ See *infra* Part I.C. for a discussion of the Make It Right Foundation and its mission.

⁴ Rebecca Firestone, Editorial, *New Orleans Post-Katrina: Making It Right?*, THE ARCHITECTS’ TAKE (Jan. 25, 2011), <http://thearchitectstake.com/editorials/new-orleans-post-katrina-making-right/> (emphasis added) (quoting Mark English, AIA).

⁵ *About, MAKE IT RIGHT*, <http://makeitright.org/about/> (last visited July 24, 2015).

⁶ See, e.g., Carol M. Rose, *Preservation and Community: New Directions in the Law of Historic Preservation*, 33 STAN. L. REV. 473, 479-81 (1981).

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American homeownership in New Orleans—roots that extend to the legacy of real property ownership established by antebellum free women of color.

In Part III of this Article, I examine the City of New Orleans’s current historic preservation mechanisms and posit that in instances of complete destruction or widespread devastation, existing historic preservation ordinances and processes must apply not just to pre-designated historic districts, but also to entire neighborhoods. I argue that such a regulatory scheme is necessary to maintain neighborhood integrity in the face of widespread destruction, such as that wrought by Hurricane Katrina in 2005.

I. S/p[l]ace⁷ in the Pre-Katrina Ninth Ward

A. The Development of the Lower Ninth Ward

The Lower Ninth Ward is made up of two adjacent neighborhoods: the historic district of Holy Cross and the neighborhood to the north of it, which is simply referred to as the “Lower Ninth Ward” or the “Lower Nine.”⁸ The Lower Ninth Ward was among the very last of the City’s neighborhoods to be developed, having been settled by freedmen and recent European immigrants in the 1870s.⁹

The Lower Ninth Ward is separated from the rest of the City “by the Industrial Canal to the west,¹⁰ the Southern Railway railroad and the Florida Avenue Canal to the north, the [Orleans/St. Bernard] parish line to the east and St. Claude Avenue to the south.”¹¹ Because of its geographical isolation from the rest of the City, historic lack of adequate drainage systems, later development, and relatively slow growth, “[t]he area continued to maintain a rural feel and the Lower Ninth Ward’s reputation for neighborliness actually attracted some New Orleanians from other crowded city neighborhoods.”¹²

B. Lower Ninth Ward Population and Homeownership Demographics

The population data from pre- and post-Katrina U.S. Censuses is instructive as to the impact that the storm had on the Lower Ninth Ward’s community. In 2000, approximately 19,500 people lived in the Lower Ninth Ward.¹³ The 2010

⁷ “The slash and bracket purposefully highlights the relatedness of [the] concepts [of space and place].” Amanda Reid, *Place, Meaning, and the Visual Argument of the Roadside Cross*, 2 SAVANNAH L. REV. 265, 276 n.85 (2015). Part I.A. of this Article explores the relatedness between space and place in the Ninth Ward context.

⁸ *Lower Ninth Ward Neighborhood Snapshot*, DATA CENTER, <http://www.datacenterresearch.org/pre-katrina/orleans/8/22/snapshot.html> (last updated Oct. 10, 2002).

⁹ *Id.*

¹⁰ The Industrial Canal connects the Mississippi River to Lake Pontchartrain.

¹¹ *Lower Ninth Ward Neighborhood Snapshot*, *supra* note 8.

¹² *Id.*

¹³ This figure combines the populations of the Lower Ninth Ward’s two neighborhoods: Holy Cross (5507) and the Lower Nine (14,008). *Lower Ninth Ward Statistical Area*, DATA CENTER, <http://www.datacenterresearch.org/data-resources/neighborhood-data/district-8/Lower-Ninth-Ward/> (last updated Mar. 28, 2014); *Holy*

U.S. Census reported that only about 5500 people resided in the area.¹⁴ The overwhelming majority of the Lower Ninth Ward's pre- and post-Katrina residents are African American.¹⁵ Holy Cross was 87.5% Black in 2000, and 89.3% in 2010.¹⁶ The remainder of the Lower Ninth Ward was 98.3% Black in 2000 and 95.5% Black in 2010.¹⁷

The Lower Ninth Ward was and has remained largely a neighborhood of homeowners. Prior to the storm, 54% of occupied units in the area were owner occupied, while 61% were owner occupied as of 2010.¹⁸ It is important to note that 50% of these homes in 2000 and 59% of these homes in 2010 were owned free and clear by their owners and were not encumbered by mortgages.¹⁹ A number of these houses had been built by the owner's ancestors and had been in their families for generations. For this reason, many owners were not obliged to carry homeowner's insurance on their properties.²⁰ This lack of insurance, coupled with the area's comparative poverty, has made rebuilding extremely challenging for this neighborhood and helps to account for the slow progress being realized there.²¹

Cross Statistical Area, DATA CENTER, <http://www.datacenterresearch.org/data-resources/neighborhood-data/district-8/Holy-Cross/> (last updated Mar. 28, 2014).

¹⁴ This figure combines the populations of the Lower Ninth Ward's two neighborhoods: Holy Cross (2714) and the Lower Nine (2842). *Lower Ninth Ward Statistical Area*, *supra* note 13; *Holy Cross Statistical Area*, *supra* note 13.

¹⁵ *Lower Ninth Ward Statistical Area*, *supra* note 13; *Holy Cross Statistical Area*, *supra* note 13.

¹⁶ *Holy Cross Statistical Area*, *supra* note 13.

¹⁷ *Lower Ninth Ward Statistical Area*, *supra* note 13.

¹⁸ These figures combine the statistics for Holy Cross (41.8% owner occupied in 2000, and 55.5% owner occupied in 2010), and the Lower Nine (59% owner occupied in 2000, and 66.4% owner occupied in 2010). *Lower Ninth Ward Statistical Area*, *supra* note 13; *Holy Cross Statistical Area*, *supra* note 13.

¹⁹ These figures combine the statistics for Holy Cross (32.8% owned outright in 2000, and 51% owned outright in 2010), and the Lower Nine (55.5% owned outright in 2000, and 65.4% owned outright in 2010). *Lower Ninth Ward Statistical Area*, *supra* note 13; *Holy Cross Statistical Area*, *supra* note 13.

²⁰ Lolita Buckner Inniss, *A Domestic Right of Return?: Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*, 27 B.C. THIRD WORLD L.J. 325, 340 (2007).

²¹ The average, household income in the Lower Nine in 2000 was \$37,894. *Lower Ninth Ward Statistical Area*, *supra* note 13. The average household income in Holy Cross was \$44,375. *Holy Cross Statistical Area*, *supra* note 13. In 2000, the average household income for New Orleans was \$59,497, and the national average was \$78,056. *Lower Ninth Ward Statistical Area*, *supra* note 13; *see also* Inniss, *supra* note 20, at 340 (“[A] number of low-income homeowners, having owned their homes long enough to pay off mortgages, were under no obligation to purchase either standard homeowner's insurance or flood insurance; thus, many did not. For these uninsured homeowners, the only recourse against Katrina damage was to hope for government assistance . . .”).

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C. What is Wrong with “Mak[ing] It Right?”

Actor Brad Pitt founded Make It Right (MIR) in 2007, after visiting New Orleans’s Lower Ninth Ward and noting the lack of rebuilding progress there.²² MIR’s intention is to build 150 Leadership in Energy and Environmental Design (LEED) Platinum-certified²³ homes in the Lower Ninth Ward.²⁴ One hundred homes have been completed to date.²⁵

In describing its philosophy of “making it right,” MIR lists one of its goals as “chang[ing] the way buildings are designed and built.”²⁶ Moreover, MIR notes the organization believes that “[d]esign has the power to improve the quality of affordable housing and enhance occupants’ living conditions; it also plays a key role in creating vibrant, sustainable communities.”²⁷ This statement presupposes a historic lack of such “vibrant, sustainable communities”²⁸ prior to the imposition of MIR’s design initiative as aesthetic. Moreover, it intimates that in their nearly three-hundred-year history, New Orleanians have failed to design adequate structures in which to house themselves.

Richard Campanella, a leading expert on New Orleans’s geography and architectural history, opined that “Make It Right seems to be more interested in making garbled political statements and basking in the glow of progressive righteousness than in building a maximum number of reasonably sustainable low-cost houses”²⁹ Likewise, other experts have contended that MIR’s rebuilding approach has been wasteful and antithetical to the creation of affordable housing solutions.³⁰ They cite the fact that MIR’s houses cost two-to-three times as much as non-LEED houses³¹ with similar square footage.³² Thus, had traditional homes been built, MIR could have made far more headway in replacing the approximately 4000 Lower Ninth Ward homes lost to Katrina. Moreover, MIR’s houses take much longer to build.³³

²² *History*, MAKE IT RIGHT, <http://makeitright.org/about/history/> (last visited July 24, 2015).

²³ *LEED*, U.S. GREEN BUILDING COUNSEL, <http://www.usgbc.org/leed> (last visited July 24, 2015).

²⁴ *New Orleans*, MAKE IT RIGHT, <http://makeitright.org/where-we-work/new-orleans/> (last visited July 24, 2015).

²⁵ *Id.*

²⁶ *About*, *supra* note 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Firestone, *supra* note 4 (quoting Richard Campanella, Research Professor in the Department of Earth & Environmental Sciences at Tulane University).

³⁰ *Id.*

³¹ The U.S. Green Building Council developed the Leadership in Energy & Environmental Design (LEED) housing initiative to promote renewable, clean energy. Specifically, LEED is a “green building certification program that recognizes best-in-class building strategies and practices.” *LEED*, *supra* note 23.

³² *Id.*

³³ *See id.*

One commentator noted that “the [MIR] houses reveal a raft of unrealized opportunities, the most fundamental of which are typological.”³⁴ He defined typology as follows:

[A]s programs of use and methods of construction are executed repeatedly over time, effective patterns emerge. These patterns optimize relationships among the innumerable considerations of architecture—structure, construction economy and the configuration of social space, most regularly; but also light and ventilation, symbolic representation and other factors.³⁵

It is the disregard for type and its impact on “the configuration of social space”³⁶ that is one of the concerns of this Article. Contrasting the typical pre-Katrina Ninth Ward front porch with the reconfigured (or in some cases, nonexistent) MIR front porches³⁷ produces a perfect example of this typological misstep.

D. The Porch as S/p[l]ace in the Pre-Katrina Lower Ninth Ward

1. Porch S/p[l]ace

Socially, politically, and psychologically significant, the porch is a charged transitional space between public and private spheres. Facilitating yet limiting access to others, the porch inextricably links community members to each other, while setting boundaries *In essence, the porch creates a “liminal” space.*³⁸

Much has been made about the difference between “space” and “place.” Michel de Certeau defines place (*lieu*) as a “configuration of positions,”³⁹ and space (*espace*) as being “composed of intersections of mobile elements.”⁴⁰ Folklorist Joyce Hazelwood Donlon, in her study of “porch life” in the Southern United States, interprets de Certeau’s distinction between place and space in the context of the porch as follows:

“[P]lace” is an area controlled by the prevailing culture. Individuals, however, can resist societal regulations by manipulating a controlled “place,” thereby recasting it as a creatively used “space.” “Space” is thus “practiced place.” . . . [T]he porch—a “place” that is liminally situated between public and private spheres—has served also as a

³⁴ Tim Culvahouse, *Stoop, Balcony, Pilot House: Making It Right in the Lower Ninth Ward*, PLACES J. (Sept. 30, 2010), <https://placesjournal.org/article/making-it-right-in-the-lower-ninth-ward>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Firestone, *supra* note 4.

³⁸ JOYCE HAZELWOOD DONLON, SWINGING IN PLACE: PORCH LIFE IN SOUTHERN CULTURE 13 (2001) (emphasis added).

³⁹ MICHEL DE CERTEAU, THE PRACTICE OF EVERYDAY LIFE 117 (Steven Rendall trans., Univ. of Cal. Press 1984).

⁴⁰ *Id.*

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“space” where southerners can forge an identity within and between designated folk groups.⁴¹

By contrast, Professor John Agnew casts de Certeau’s place-space dichotomy as follows: “[S]pace refers to location somewhere and place to the occupation of that location. Space is about having an address and place is about living at the address. . . . Place is specific and space is general.”⁴² Despite this seeming disagreement between what is general and what is specific in the place-space dichotomy, both definitions reflect the porch’s dynamism as exemplified by its ability to migrate between performing as place or space depending on the circumstance. Donlon argues that the porch is a place because it “is governed by certain constraints,” but that it is also a space in that “individuals can gain power for themselves by reshaping [this] ‘place’ in their own terms.”⁴³ Donlon seems to be saying that the porch as place becomes space (generalized) when norms are broken down.⁴⁴ The porch is, therefore, dynamic—a true hybrid that is ever-shifting between space and place—and, thus, truly a s/p[]ace.

2. The New Orleans Shotgun House

New Orleans is the birthplace of the American shotgun house.⁴⁵ The shotgun house arrived in New Orleans in the late-eighteenth century, along with Haitian free people of color who were fleeing the revolution led by Toussaint L’Ouverture.⁴⁶ These new immigrants brought with them the *ti-kay*, a Haitian slave cabin that melded West African (particularly Yoruba) building styles with those of the Arawak Indians to create what evolved into the New Orleans single shotgun, shotgun double, and camelback.⁴⁷

3. Ninth Ward Porches

The pre-Katrina architecture of the Ninth Ward could be described as “democratic”: “[h]ouses were all lined up, same size same level, with open porches that encouraged communication.”⁴⁸ One architectural commentator summed up the pre-Katrina Ninth Ward as follows:

⁴¹ DONLON, *supra* note 38, at 25 (citing CERTEAU, *supra* note 39, at 117).

⁴² John Agnew, *Space: Place, in SPACES OF GEOGRAPHICAL THOUGHT: DECONSTRUCTING HUMAN GEOGRAPHY’S BINARIES* 81, 82 (Paul Cloke & Ron Johnston eds., 2005).

⁴³ DONLON, *supra* note 38, at 25.

⁴⁴ *See id.*

⁴⁵ *Id.* at 24. The shotgun house has been described as “one room in width and from one to three or more rooms deep, with frontward-facing gable.” *Id.* at 58 (quoting Fred B. Kniffen). The shotgun house also featured a front porch that was open on three sides. *See* Firestone, *supra* note 4. The rooms are lined up one behind the other with no hallways and no doors between the rooms, in a manner that allows a single bullet shot to pass from the front door, through each room, and out the back door. Culvahouse, *supra* note 34.

⁴⁶ DONLON, *supra* note 38, at 58.

⁴⁷ *Id.* at 58-62. For more information on and illustrations of shotgun, shotgun double, and camelback homes, see *African Inspired Architecture in America*, <http://smcweb.smcvt.edu/mmulhern/Root%20Folder/shot%20gun%20houses.html> (last visited July 24, 2015).

⁴⁸ Firestone, *supra* note 4.

In New Orleans, the 9th Ward is a peculiarly isolated place. Steps from downtown, it's cut off by a canal with drawbridges that can stay open for half an hour at a time. And yet, stories abound describing its stable, neighborhood feel. 80% of the residents owned their own homes, some having been there for generations. A strong tradition of local activism also seems to have continued. The architecture and layout was highly regular: single or double family shotgun cottages, only 6 feet apart, with generous front porches and modest dimensions of 800 to 1200 SF. The porch was probably the most visible and certainly the most socially functional feature. Generous overhangs protected the house from the sun's heat and the rain, and especially prior to the days of air conditioning, it was likely the most comfortable place to be in the summertime. People would sit on their porches, conversing across houses, watching the street, facing outward.⁴⁹

MIR's houses are decidedly "undemocratic" in comparison to the pre-Katrina structures. They vary in both their levels and setbacks from the street.⁵⁰ Architects have noted a number of problems with the design of the MIR houses, including the pitch and angles of the roofs, the non-conventional side ornamentation, and, important to this discussion, the lack of porches.⁵¹ The porches of the pre-Katrina homes were practical in that they shaded occupants from the elements—both sun and rain.⁵² In the few instances where MIR houses have "porches," they are not functional, but merely decorative.⁵³

The pre-Katrina porch also had social utility. One architectural design commentator described the porch of the traditional New Orleans shotgun home as one of its "brilliances" in that the porch "deftly shapes a space for the casual meeting of homeowner and passerby."⁵⁴ Another commentator noted: "The porches on the new [MIR] homes are sometimes blocked from the side. In other parts of the country, the 'inward looking box' is the ideal—privacy trumps street awareness. But those other regions don't have the same close-knit community feel, either."⁵⁵

4. Ninth Ward Activism

Southern porches were also sites of political activity.⁵⁶ This fact was no less true in African-American communities. The liminal nature of the front porch—neither fully private nor fully public—made it a perfect community gathering spot. It was private enough to enforce the exclusion of white strangers, yet public

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See id.*

⁵⁴ Culvahouse, *supra* note 34.

⁵⁵ Firestone, *supra* note 4.

⁵⁶ *See, e.g.,* DONLON, *supra* note 38, at 4-5 (recounting a story about neighbors sharing the author's grandparents' porch to listen to the radio broadcast of election returns when Franklin Delano Roosevelt was elected President in 1932).

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enough to afford access to Black neighbors. As such, poet Frenchy Hodges referred to front porches in Black neighborhoods as “the revolutionary/Cribs of [the Black] race.”⁵⁷ One scholar noted:

Some [African American] families date their presence in the area to the 1870s, when a number of African American benevolent associations and mutual-aid societies organized to provide support for the large numbers of freedmen whose recent condition of servitude had left them few resources to live on their own. From their earliest presence in the Lower Ninth Ward, self-help became the watchword for African American families as municipal authorities all but ignored the area’s residents.⁵⁸

The Ninth Ward’s geographic separation and feelings of neglect by the City’s leaders among its residents also fostered the development of civic activism among various neighborhood organizations that “fought diligently to obtain funds and services for the Lower Ninth Ward.”⁵⁹ This activism was evident in the African-American community and during the Civil Rights Movement.⁶⁰ It resulted in the Ninth Ward leading the way in school desegregation in New Orleans.⁶¹ New Orleans was the first Deep South school system to embrace desegregation, and the first desegregated school was in the Lower Ninth Ward in 1960.⁶²

E. Property Ownership by New Orleans’s Free Women of Color as a Precursor to Modern New Orleans’s African-American Homeownership and the Development of “Porch Culture” in the Lower Ninth Ward

Prior to Katrina, approximately one-quarter of the households in the Lower Ninth Ward were headed by women with no husband present and children under the age of eighteen.⁶³ That number shrank to approximately 19% in 2010. However, female-headed households make up the second largest household type in the neighborhood after those households with no children under the age of eighteen.⁶⁴ This heavy pattern of female-headed households mirrors the historic African-American, realty ownership patterns in New Orleans.

The acquisition of personal wealth was of prime importance to newly-freed slaves, including those who migrated to the Lower Ninth Ward. During the

⁵⁷ Frenchy Jolene Hodges, *Belle Isle (Central Park of Detroit)*, 22 BLACK WORLD 62, 64 (1972).

⁵⁸ Inniss, *supra* note 20, at 337; *see also Holy Cross Neighborhood Snapshot*, DATA CENTER, <http://www.datacenterresearch.org/pre-katrina/orleans/8/20/snapshot.html> (last updated Oct. 10, 2002).

⁵⁹ *Lower Ninth Ward Neighborhood Snapshot*, *supra* note 8.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Lower Ninth Ward Statistical Area*, *supra* note 13.

⁶⁴ *Id.*

antebellum period, free-Black New Orleanians possessed a great amount of wealth in real estate.⁶⁵ In fact, this group had the highest number of property owners among the nation's free-Black, urban populations. According to the 1850 U.S. Census, New Orleans had the greatest number of free-Black, real estate owners of all urban centers.⁶⁶ And among that group, free women of color, who totaled 60% of New Orleans's free-Black population in 1850, had both the highest number (302) and the highest percentage (46%) of real estate owners.⁶⁷

Real estate was often passed by free women of color to their daughters who would most likely have no husbands and, unlike their brothers, would have no skills, such as carpentry, masonry, or blacksmithing. This suggests that, during the early period of the formation of New Orleans's free-Black population, women were the main contributors to the future prosperity that would come to characterize later generations of free people of color.

These women were among the people who streamed into the Lower Ninth Ward after the Civil War, along with newly-freed Blacks eager to begin their lives as freed men. They built shotgun cottages, and over more than one hundred years, formed the close-knit community that was nearly washed away in the aftermath of Hurricane Katrina.

The rebuilding of the Lower Ninth Ward has suffered from a lack of resources and a lack of planning. The implementation of the principles and laws of historic preservation could have been instrumental in ensuring a timely and culturally appropriate rebuilding effort.

II. What Should Have Been Done, and Who Should Have Been the Gatekeepers?

A. The Current Historic Preservation Mechanism in New Orleans

New Orleans was among the nation's first cities to create historic districts to protect its architectural heritage.⁶⁸ The first of these historic districts was created in the 1930s to protect the architecture of the Vieux Carré, also known as the French Quarter—the City's original settlement.⁶⁹

⁶⁵ LEONARD P. CURRY, *THE FREE BLACK IN URBAN AMERICA, 1800-1850: THE SHADOW OF THE DREAM* 39, 41 (1981).

⁶⁶ *Id.* Some 650 free-Black New Orleanians (7% of the free-Black population) owned real estate; while in the city with the second-highest number of free-Black property owners, Washington, D.C., only 178 free Blacks owned real estate (4% of the free-Black population). *Id.* at 269.

⁶⁷ *Id.* at 269. In 1830, the second-highest number of free-Black female, real estate owners (thirty-five) could be found in Washington, D.C. *Id.* The city with the second-highest percentage of female real estate owners (31%) among the total free-Black, real estate-owning population was Louisville, Kentucky. *Id.*

⁶⁸ KAROLIN FRANK, *HISTORIC PRESERVATION IN THE USA* 33 (Patricia Petersen ed., Hannah M. Mowart et al. trans., 2002).

⁶⁹ JACOB H. MORRISON, *HISTORIC PRESERVATION LAW* 12 (1974) (indicating that the creation of the historic district in the French Quarter took place in 1937). *But see* FRANK, *supra* note 68, at 33 (indicating that New Orleans established the French Quarter as a historic district in 1933).

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In 1976, a general, historic preservation ordinance was passed, which provided that within a historic district, no improvement may be “erected, altered, restored, moved or demolished” without a Certificate of Appropriateness.⁷⁰ Currently, New Orleans has two main gatekeepers with respect to historic preservation: (1) the Vieux Carré Commission, and (2) the Historic Districts Landmarks Commission (HDLC).⁷¹ The Vieux Carré Commission is the City’s regulatory agency for historic preservation in the French Quarter.⁷² The HDLC is the City’s regulatory agency for local, historic districts outside of the Vieux Carré (French Quarter).⁷³ The HDLC is composed of two subordinate agencies: (1) the New Orleans Historic District Landmarks Commission, and (2) the Central Business District Historic District Landmarks Commission.⁷⁴ The HDLC describes its mission as one of “safeguard[ing] the heritage of [New Orleans] by preserving and regulating historic landmarks and districts which reflect elements of its cultural, social, economic, political and architectural history.”⁷⁵

The HDLC regulates proposed exterior changes to the properties located within the City’s fourteen historic districts outside of the French Quarter.⁷⁶ It does so by determining whether such proposed changes are in keeping with the character of that historic district.⁷⁷ The HDLC has the authority to review repairs, renovations, additions, demolitions, relocations, and new construction.⁷⁸ If a favorable determination is made regarding proposed exterior changes to a historic structure, the HDLC will issue a Certificate of Appropriateness (CofA) for the proposed work.⁷⁹ Once the CofA is issued, the property owner may apply separately for a building permit.⁸⁰ If a CofA application is denied, the property owner may revise and resubmit a new application or appeal the HDLC’s decision to the City Council.⁸¹

⁷⁰ NEW ORLEANS, LA., CODE OF ORDINANCES § 84-106(a) (2014), available at https://www.municode.com/library/la/new_orleans/codes/code_of_ordinances?nodeId=PTIICO_CH84HIPR_ARTIHHIDILA (last visited July 24, 2015).

⁷¹ *Historic District Landmarks Commission*, CITY OF NEW ORLEANS (Jun. 15, 2015, 12:57 PM), <http://www.nola.gov/hdgc/>.

⁷² *Vieux Carré Commission*, CITY OF NEW ORLEANS (Jun. 15, 2015, 1:03 PM), <http://www.nola.gov/vcc/>.

⁷³ CITY OF NEW ORLEANS HISTORIC DIST. LANDMARKS COMM’N, GUIDELINES INTRODUCTION 01-3 (May 2011), <http://www.nola.gov/nola/media/HDLC/Guidelines/01-Introduction.pdf> [hereinafter GUIDELINES INTRODUCTION].

⁷⁴ *Id.* at 01-4.

⁷⁵ *Id.* at 01-2.

⁷⁶ *Id.* at 01-3; *Historic District Maps & Location Information*, CITY OF NEW ORLEANS (Mar. 31, 2015, 3:47 PM), <http://www.nola.gov/hdgc/map>.

⁷⁷ *Id.* at 01-3; NEW ORLEANS, LA., CODE OF ORDINANCES § 84-77(2).

⁷⁸ GUIDELINES INTRODUCTION, *supra* note 73, at 01-8; *see also* NEW ORLEANS, LA., CODE OF ORDINANCES § 84-77.

⁷⁹ GUIDELINES INTRODUCTION, *supra* note 73, at 01-3.

⁸⁰ *Id.* at 01-7.

⁸¹ *Id.* at 01-7.

If an owner violates the HDLC's requirements, the owner will be given notice of the violation.⁸² If the owner does not cure the violation, that owner will be fined between \$100 and \$500 per day while the violation continues.⁸³ The HDLC may also use a stop-work order to effectuate injunctive relief.⁸⁴

B. A Proposal for Enhanced Historic Preservation in the Ninth Ward

The Lower Ninth Ward is home to Holy Cross, one of the fourteen HDLC-administered historic districts.⁸⁵ The Holy Cross Historic District is the oldest area of the Lower Ninth Ward.⁸⁶ It is part of the final eastward (downriver) expansion of the City of New Orleans. Development of the area began in 1849, when the religious congregation of Holy Cross⁸⁷ established an orphanage.⁸⁸ In 1871, they founded Holy Cross School, after which the area is named, to serve the growing population.⁸⁹

Residential development in Holy Cross was largely complete by the late-1800s.⁹⁰ Notably, two houses—the Doullut Steamboat Houses—were built in Holy Cross in the early-1900s and were among the first buildings designated as historic landmarks in 1977 by the newly-formed HDLC.⁹¹ In 1986, the Holy Cross neighborhood was listed on the National Register.⁹² Then in 1990, it was given a Local Historic District designation.⁹³

Because of its designation as a historic district, rebuilding in Holy Cross was done under the supervision of the HDLC. This supervision was unavailable for the other neighborhood of the Lower Ninth Ward, the Lower Nine.

In the Introduction of this Article, we saw that at the conclusion of his lament over the state of the Lower Ninth Ward, Mark English asked, “Whose intentions are really more important?”⁹⁴ It appears that English is pitting foreign celebrity against local community. As I noted, I would add to the speaker's

⁸² NEW ORLEANS, LA., CODE OF ORDINANCES § 84-23(b).

⁸³ *Id.* at § 84-23(c).

⁸⁴ *Id.* at § 84-23(d).

⁸⁵ *Historic District Maps & Location Information*, *supra* note 76.

⁸⁶ CITY OF NEW ORLEANS HISTORIC DIST. LANDMARKS COMM'N, HOLY CROSS HISTORIC DISTRICT (May 2011), <https://www.nola.gov/nola/media/HDLC/Historic%20Districts/HolyCross.pdf> [hereinafter HOLY CROSS HISTORIC DISTRICT].

⁸⁷ Blessed Basile Moreau helped join Auxiliary Priests, Brothers, and Sisters in 1841. Moreau envisioned the three groups of Holy Cross as one holy family. *About us*, CONGREGATION OF HOLY CROSS, <http://www.holycrosscongregation.org/about-us/history/> (last visited July 24, 2015).

⁸⁸ HOLY CROSS HISTORIC DISTRICT, *supra* note 86.

⁸⁹ *Id.*

⁹⁰ *Holy Cross Neighborhood Snapshot*, *supra* note 58. The predominant architectural style found in the neighborhood is the shotgun, but Creole cottages, side halls, bungalows, and occasional brick Italianate structures can also be found. *Id.*

⁹¹ HOLY CROSS HISTORIC DISTRICT, *supra* note 86, at 02-1; *Holy Cross Neighborhood Snapshot*, *supra* note 58.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Firestone, *supra* note 4 (quoting Mark English, AIA).

Using Historic Preservation Laws to Halt the Destruction of “Porch Culture”

questions an additional one: Once the more important intentions are identified, how might historic preservation law aid in effectuating those intentions?

In the case of the Lower Ninth Ward, if one posits that the local community’s preservation is the intention that should have been privileged, then one must conclude that the HDLC should have been authorized to oversee the rebuilding of the entire Lower Ninth Ward.

When entire neighborhoods are destroyed, cultural and historic legacies are at risk, and therefore warrant protection. Rebuilding in this context must be broad-based, and must conform with the types of goals and values already identified as the HDLC’s mission: “safeguard[ing] [New Orleans’s] . . . heritage.”⁹⁵

⁹⁵ GUIDELINES INTRODUCTION, *supra* note 73, at 01-2.

