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Wake of the Flood: Crime, Disaster, and the American Risk Imaginary after Katrina

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Abstract

When the city of New Orleans was flooded after Hurricane Katrina in August of 2005, coverage of the beleaguered city was soon dominated by horrifying tales of violent crime. These stories, carried in all the major media, and verified by top officials of the City, turned out to be completely false. The major emphasis on violent crime, however, had immediate and dire consequences. Rescuers and victims of the flood lost precious time hunkering down instead of rescuing themselves or others. Escapees from the city faced stigma and sometimes armed resistance to their seeking refuge. Politicians responsible for one of the worst failures of government in American history found crucial political traction by railing against lawlessness. Now a year later, the most significant long term consequences of this “false memory” of criminal violence in the wake of the flood, may be in shaping America’s “risk imaginary.” For a long time American personal and governmental attitudes toward risk were shaped by the work accident as a model of modern risk and insurance as an exemplary tool of risk governance. In recent decades, those models and the images, narratives, and discourses supporting them, have been replaced by ominous images of grave technological disasters and fearsome violent crimes. These new figures haunting our risk imaginary have undercut support for broad measures of social risk spreading and encouraged privatization, isolation, and heavy reliance on police and prisons as tools of government. Now, the false memory of post-Katrina violence may reinforce those tendencies by condensing the disaster and crime fears of recent decades into a memorable and racially coded image of terror.

KEYWORDS: disaster, risk imaginary, crime, work accidents

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Introduction: Covering Disaster with Crime

It was in the days following the landfall of Hurricane Katrina near New Orleans and the devastating flooding of the city that followed, when the media coverage of the disaster turned from the terrors of the natural disasters (wind storms and flooding) to a seemingly parallel and even more frightening development, the outbreak of criminal violence on a wide scale by residents of the stricken city against fellow residents and hapless visitors. Like a computer virus that first interrupts and eventually crashes the running of a program, the coverage of Katrina's aftermath was rapidly colonized by descriptions of outrageous acts of violence and torrid commentary on the apparent slide of the City into lawlessness. That these words had direct effects on deeds, those of rescuers and endangered persons, cannot be doubted, although the extent may never be known.

These reports ran the gamut from mobs involved in looting of stores and business, to murders and rapes of young children and adults, much of it alleged to be taking place inside the city's official sanctuary, a vast arena and convention space known as the Superdome. They were all the more remarkable because they were attested to by civic leaders like the Mayor and Chief of Police of New Orleans, while speaking live to national television audiences, echoed in all the major news outlets.

In the face of a catastrophic storm and a disastrously poor response by city, state, and federal officials, the basic bonds of social life seemed to dissolve as the city came apart in an orgy of sadistic and predatory violence. It was a story that for a time seemed even bigger than the hurricane and flood, a narrative that once enunciated by the media, immediately connected deeply to a familiar sense of threat in American life (Furedi, 2002). Politicians at every level, from Mayor Ray Nagin, to Governor Kathleen Babineaux, to President Bush, took advantage of the crime story to strike familiar poses of strength as defenders of law and order, threatening implicitly and explicitly to use deadly force against those involved in crimes. Indeed, in the weeks following the disaster, after virtually the entire city had finally been evacuated, the streets of New Orleans became the site for a vast mobilization of state and local law enforcement officers from all over the country, patrolling the largely empty and water logged city, enacting perhaps some kind of postmodern ritual cleansing of the crime besmirched metropolis, and enjoying long nights of recreation in what one writer described as a law enforcement *Mardi Gras* (Baum, 2006).

Now, approximately a year after Katrina and the catastrophic flood that engulfed New Orleans, it remains the case that one of the major cultural memories and civic lessons that Americans seem to have taken from the story of New Orleans after Katrina is that law and order must be enforced at all costs as a chief priority of government at all levels.

The only problem, as was quickly discovered, is that the stories of wild and violent crime were for the most part not true (New York Times, 2005). Like many other parts of the Gulf coast area devastated by Katrina, local survivors helped themselves to merchandise in local stores. That this extended well beyond necessities was clearly true. But a great deal of the activity did involve the taking of necessities for self, family, and often neighbors, and this was frequently demeaned as criminal by the media which made no effort for the most part to distinguish between the two, while exaggerating the extent of predatory looting in New Orleans as opposed to other areas along the Gulf. Subsequent research by disaster sociologists suggests that many ordinary residents in the stricken city, especially young African American men often presumed to be involved in gang life and crime (and openly called thugs by police and politicians), engaged in widespread, pro-social acts of rescue (Rodriguez, Trainor, Quarantelli, 2006). Most importantly, the most alarming and stigmatizing stories, stories of babies being sodomized and murdered, stories of tourists set upon by wilding mobs, stories that stopped rescuers in their tracks and sent many well intentioned people in the wrong direction, proved almost entirely to be false.

There was a disaster story in New Orleans that was hardly a natural disaster (at least by itself) and that was a disastrous failure of almost every level of government to prepare for the storm or to mitigate its aftermath. The large numbers of extremely vulnerable citizens, very old people, mothers with young children, who were left exposed without adequate food, water or shelter, were documented by the television footage shot at sites like the Super Dome, where people were told to seek shelter that quickly became overwhelmed, and the convention center, which was apparently only a rumored place for protection. This pattern of governmental failure included a criminal justice component. Indeed while there was no crime spree in New Orleans that week, there was an unprecedented collapse of criminal justice that carried on for weeks and months (Garrett, Tetlow, 2006). These scenes of Americans suffering a fate seemingly as bad or worse than would be experienced in a Third-World city enduring a major flood should have been deeply shocking to Americans.

In the weeks and months since, the major media sources began to report on the media coverage itself and media critics have debated what went wrong. One strand of analysis emphasized the racialized quality of the crime reporting (Niman, 2005). Since slavery, mechanisms of white supremacy have steeped themselves in an ideology of "black crime" that held it as presumptive that Americans of African descent were prone toward all forms of criminality, especially property crimes and sexual offenses. It was easy for the national media to believe that disaster victims were becoming criminal predators because much of New Orleans is poor and black, and they were especially over-represented

among those who did not or could not flee, and the media is used to covering the black community through the frame of violent crime.

Another strand defended the media against the racism charge by noting that ordinary residents, as well as the Mayor and Police Chief, had been the original sources of the reporting, all local and all African American (Thevenot, 2005-06). If the media was guilty of anything, it was perhaps in uncritically accepting these witnesses. Surely this experience of flagrant criminality was a felt truth to the victims of the larger crisis; perhaps a displacement of the broader truth of living in what David Garland calls “high crime societies.”

Both accounts have an important insight that this essay seeks to build on. Those critics who charge that the media fell for a vicious crime story about the people of New Orleans because those people were predominantly African Americans, many of them in poverty, are absolutely correct to recognize that crime in the American imaginary is not color blind; it is about black criminals and white victims. It is also about urban crime, and the traditional American fear of cities as concentrations of sin and depravity that created chaos and crime. Since the 1960s, these have been fused as cities came to be coded black and suburbs white (even as the facts have been far more complicated). Indeed, the coverage almost seemed like an echo from the great urban riots of the 1960s which became one of the first occasions for the kind of constant news coverage on a national scale that predominates media today. But the fact that a crime story will tend to interpolate race into the narrative, does not explain why in fact a crime frame comes to dominate the story.

Here we can recognize an important insight of the media’s defenders, at least against the charge of racism. Crime and state action to punish it may at first seem to have little to do with hurricanes, but New Orleans and the state of Louisiana were already places (like much of America but to a more extreme degree) where crime predominates as a politically privileged problem, and punishment as a dominant state policy in a poor state. New Orleans has had one of the highest murder rates in the country for some years and has not enjoyed as much of a decline in violent crime as the rest of the country has since the mid 1990s. Louisiana has the nation’s highest incarceration rate, keeping 816 out of every 100,000 state residents in prison compared to a national rate of 486 in 2004.¹ Many of them are serving life sentences in places like Angola State Prison, (Cohen, 2005) a sprawling plantation prison in the middle of the state. It is not surprising then that the people of New Orleans and the politicians at all levels have learned to view things through the prism of the crime problem and have a well rehearsed repertoire of narratives to deploy about crime.

¹ Sourcebook of Criminal Justice Statistics Online, <http://www.albany.edu/sourcebook/pdf/t6292004.pdf>, table 6.29.2004

The coverage of the devastation of New Orleans documents the enormous grip that crime has on how Americans think about government. Faced with novel events that raised profound questions about contemporary American government, the media, politicians, and to an unknown degree the general public, have resorted to the ubiquitous narrative about crime, one that comes fully loaded with a set of normative implications about individual responsibility, the need for government to take the form of coercive repression, and the grave danger inherent in urban life exposed to poor and minority populations.

Beyond the question of what drove the media off into a false and misleading side story and away from a genuine governmental catastrophe of huge proportions, is the question of how these first impressions of the Katrina disaster, shaped by the emphasis on crime, will enter what we might call the American risk imaginary by which I mean not simply beliefs about risk, but deeply embedded and often highly coded cultural images of the nature of risk not in the abstract but as it reaches us in our individual homes and bodies.² These images are imparted by the circulation of narratives about risk in the normal channels of upbringing, socialization, and education of young Americans and they influence how those Americans as political subjects will come to think about, and how government at all levels, from family up to the state and national governments should, respond to risk.

No empirical research that I am aware of has yet been reported on the state of the Katrina narrative, but there is ample reason to fear what sociologists of disaster call “the crime frame”, will continue to persist beyond its media renunciation (audiences are invariably smaller for the retraction). My research suggests that crime has already disproportionately shaped the way Americans think about managing risk (Simon, 2007). The exurban automobile dependent housing developments many of us live in, the military grade SUVs we drive, and the increasingly punitive and behavior focused schools we send our children to, all reflect the priority Americans in general have given to escaping risk associated with crime (and in particular the racialized urban forms of it). The resulting increases in certain other kinds of risk ranging from traffic accidents, to global warming, to childhood obesity are just now beginning to become part of our public discussion (although rarely linked to fear of crime). Moreover, the choice of crime risk to focus on has made Americans more willing to believe the worst about the forms of social risk sharing, from welfare to workers compensation, to

² I use the term “imaginary” in the sense used by scholars in cultural studies as describing the set of more or less collectively available images, scripts, models, myths and narratives through which communities of varying dimension interpret events and address problems that arise. See, for example, Arjun Appadurai’s discussion of how migrants in the late 20th century differed from earlier waves of migrants because of the availability of an “imaginary” stocked by a global media culture. See Appadurai, 1996.

even private insurance. If Katrina's cultural wake remains highly focused on crime, it may encourage Americans to invest even more on the forms of protection they associate with crime (prisons, police, guns, social distance) less in forms of social solidarity as risk management devices, and to place even more reliance on private individual solutions when collective action is essential.

In the sections that follow I will sketch out the rise of crime in the American imagination of risk since the 1960s, show how this frame predisposed the media coverage in New Orleans and highlight some of the dire consequences likely to arise from an even greater emphasis on law enforcement and other crime control measures as risk management tools.

Crimes and Accidents: The Dialectic of America's Risk Imaginary

Historians and sociologists as well as legal scholars have long been interested in the problem of work accidents and the tremendous political and legal interest they engendered across the industrial world in the late 19th and early 20th century.³ Almost everywhere, although with great variance in adoption, legal regimes based on individual fault raised in a private legal action shifted to ones based on routine compensation of injured workers, often called "workers compensation", in which individual fault was largely removed from the question of whether and how much an injured worker should be compensated.

The work accident and the forms of social insurance put in place by reformers to routinize their compensation became together a powerful social model of how to conceive more generally of the risks of modernizing societies and how to govern those risks and the conflicts they produced. For decades after, until at least the 1960s, new risks were framed as variations on the work accident and solutions proposed in the broad framework of administrative compensation through insurance (Baker, Simon, 2002). Car accidents, unemployment, illness, even wars (Simon, 2004) could be framed as variations on the work accident.⁴ Franklin Roosevelt's social security legislation with its explicit reliance on the image of insurance represented one of the broadest national adoptions, but through private consumer insurance and expansive tort law, the 1950s and 1960s produced continuing momentum toward broad loss spreading (Baker, Simon *supra* note 13 at 3). In this sense we can speak of the work accident as part of our risk imaginary, i.e., key to a way of imagining risk that came to heavily influence risk thinking by both governments and individuals through much of the 20th century.

³ See generally, Friedman and Ladinsky 1967; Lubove 1967; Lane 1979; Ewald 1986; Tomlins 1988; Simon 1993; Witt 2004.

⁴ The prevailing policy solutions have usually been more less comprehensive, more privatized and more litigation based than workers compensation.

It is not that early 20th century observers thought that wars, unemployment, poverty in old age, or even automobile accidents, were exactly like work accidents. But with varying degrees of tension they could see how the features of the work accident that lent themselves to the success of the workers compensation solution were reflected in modern hazards more generally. Modern risks (as seen through the lens of the work accident) appeared deeply involved with the modern industrial economy and its vicissitudes. In the face of these risks, ordinary workers and consumers could do little to personally avoid or save against the event of. All were to some extent predictable within the bounds of specific societies.

The work accident captured these features of 20th century risk and bound them to a promising solution that itself required only minimal compromise with the legal regimes of 19th century capitalist countries. To an important degree, the work accident analogy became a positive indicator that modern risks were a trade off for the material benefits of industrial capitalism and that the proper administration of insurance based governance could internalize these risks to the very market circuits that produced wealth without doing harm to the economy. The overall message was one of optimism and solidarity. The individual could survive both materially and ideologically in modern society, through mechanisms of insurance that off loaded the most destabilizing features of modern hazard on to broad based pools of similar individuals and sometimes whole societies.⁵

Beginning in the 1970s we can observe a fading of the work accident in the American risk imaginary. Deindustrialization and the distancing of modal American life from the experience of factories and rail yards must have played a part. Globalization, inflation, and chronic high unemployment also endangered the financial viability of broad risk spreading mechanisms. This economic pessimism was deepened by a new emphasis on the tendency of insurance mechanisms to reduce precaution, a process known by economists as “moral hazard” and which is believed to increase the total social cost of accidents even as it makes them more tolerable to individuals (Baker, Simon, *supra* note 13 at 4).

But these cultural and economic factors may have only weakened the link to the work accident as paradigmatic risk had not other very potent examples of risk, with its own very different lessons about governance become widely available starting in the late 1960s.⁶ These new hazards did not seem to fit the model of the work accident. Growing concern about environmental contamination marked one key axis of concern. The industrial economy so vital to the work accident regime, now seemed to be a source of risk not simply to

⁵ One can see how this was particularly important to liberal legal regimes. Socialism absorbed the insurance possibility in the total union of the social state (fascist regimes less consistently so). See, O'Malley 2004

⁶ For a fuller discussion of this transition see, Simon 2005

workers but through toxic wastes which might inflict cancer or birth defects to far flung populations. In the United States, more than elsewhere, violent crime and eventually illegal drugs combined to form a different kind of pollution threat, one both moral and existential. The 1980s would witness powerful examples along these dimensions and joining them. Mass technological disasters like the 1984 Bhopal India toxic gassing incident⁷, the Three-Mile Island nuclear accident in 1979⁸ and the 1986 Chernobyl nuclear disaster⁹ spoke to environmental fears and condensed them into the possibility of sudden and catastrophic danger (as opposed to long term contamination). The outbreak of the global HIV/AIDs pandemic in the early 1980s and the spread of “crack cocaine” in the inner-cities of the United States, presented images of biological disaster easily colored with moral presumptions about the people exposed.

Sociologists have suggested that these new risks pose a fundamental rupture with the risk management tools of industrial modernity and have unleashed a whole new stage of modernity, one characterized by extreme individualization, globalization, and uncertainty.¹⁰ Whether such a broad transition is underway or not, it is clear how these hazards strain the logic of the work accident. They are often transnational, and thus cannot be absorbed into a national economic system through governmental tools alone. They touch people in ways that have much less to do with the once dominant question of occupation and class. Work accidents happened in rail yards and on factory floors, but radiation in cows milk can give cancers to babies sheltered in the most upper class household hundreds of miles away. They challenge the reach of insurance as political technology for managing risk. Finally these new risks also involve irreversible forms of damage, from contamination of living space to latent malignancy.

It is not that work accidents do not also suddenly cross class lines at times or that the damage they produce is always reversible or easily compensable. But part of the narrative “work” that the work accident did for so long was to anchor the wide distribution of actual results in a central example which emphasized the relative manageability and routine character of such losses, and the worthwhile trade off for the benefits of the industrial economy. In contrast, new risks pose themselves as singular and totalizing catastrophes that can be little planned for or mitigated by loss spreading. As a new model of risk, late modern disasters taught very different lessons about governance than work accidents. Disasters by their nature cannot be routinely compensated or tolerated. Governance against such risks must aim to prevent them completely. Where the work accident declares a

⁷ <http://www.bhopal.net/index1.html>

⁸ <http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/3mile-isle.html>

⁹ <http://www.chernobyl.co.uk/>

¹⁰ See generally, Beck 1992; Erikson 1994; Ewald 2002

kind of moral truce, fault is not important; the disaster tends to cultivate great popular emotions and demands for retributive justice.

But more than anything else, it was violent crime that by the 1980s replaced the work accident as the paradigmatic risk against which innovation in American governance was to be directed. Many observers at the end of the 1970s expected environmentalism to remain the main axis of risk imagination and governmental innovation (Douglas, Wildavsky, 1982). In fact, that complex of issues remains and frequently predominates over crime in opinion surveys. The reasons why crime beat out environmental concerns in the United States need not delay us here. The point is that like work accidents, the risks that capture our imagination also influence the output of governance. In place of insurance, violent crime has framed the prison as the model governmental technology.¹¹ In place of the practices of solidarity among citizens violent crime has invited private solutions, retreat from diverse and dense cities with lots of unregulated public spaces in favor of gated and highly managed communities of various sorts. Crime is not the only problem we deal with as individuals or in governing, but its disproportionate weight in our risk imaginary sends radial lines of influence out from it across the many different hazards we face.

The Coverage of Katrina Revisited

But our explanation of why crime became such a dominant image of risk for Americans and especially for what they expected from government is less important than what we can observe about our own recent history if we take seriously the power that crime has in our imaginary. From this perspective, the emergence of crime in the coverage of the disaster that unfolded in New Orleans after Katrina, and in the wake of the flood that the storm unleashed was not surprising and can be seen as reflecting well rehearsed ways of viewing the risk environment through crime.

Faced with novel events that raised profound questions about contemporary American government, the media, politicians, and to an unknown degree the general public, resorted to the ubiquitous narrative about crime, one that comes fully loaded with a set of normative implications about individual responsibility, the need for government to take the form of coercive repression, and the grave danger inherent in urban life exposed to poor and minority populations. Paying some attention to how different players use crime as a risk to define expectations can give us more specific purchase.

¹¹ The narratives of crime, fed equally by the traditional moral denunciations of temptation and immorality or the more modern school of criminological discourse, has further undercut the appeal of insurance by suggesting pervasive fraud. This reduces support for public forms of insurance and compels all forms of insurance to invest more in detecting and punishing fraud.

First, the focus on looting and more serious crimes consistently counter balanced coverage of the massive scale of human suffering caused by the storm and the apparent failure of government to plan for evacuation and relief of 44 refugees. Despicable acts of private desire gratifying appeared to have been far more culpable than lack of foresight and a city run on a permanently impoverished budget. We may never know even the most direct social costs of this crime narrative. How many people in New Orleans were too frightened to leave their homes after the flooding for fear of violence? In subtle, but persistent ways, the description of a population that seemed to be giving into lawless anarchy, undercut the astounding dignity with which tens of thousands submitted themselves to the humiliation of suffering amidst garbage, raw sewage, and the spectacle of dying loved ones. “They don’t want those animals stealing from them. Write that, animals. Anybody that would take advantage of this is hardly better than animals” proclaimed a New Orleans police officer in the main story in the New York Times of Monday, September 5, 2005.

Second, many of the most remarkable claims about violence and lawlessness came from police and other government officials for whom these statements were often tremendously self serving. Specifically, officials from the White House on down suggested that the crime and lawlessness was in part responsible for the failure of adequate provision for the refugees. Officials at all levels were facing a storm of criticism for their lack of effective preparation. Instead of contrition, these officials repeatedly issued tough sounding statements about shooting and killing looters. These statements echoed decades of posturing on crime in which toughness on this issue has often covered for the absence of leadership on any other important matters. That it should be successfully deployed in the face of a disaster which has underlined the importance of basic civil governance was sobering but not surprising.

Third, it is not just leaders for whom crime becomes a more tolerable and convenient way of imagining the risks being faced, but to a far more general degree, the perceived threat of crime became an honorable excuse for all kinds of people to abandon their posts. One poignant example concerned the New Orleans Aquarium where the staff stayed with the animals throughout the storm and worked to keep the many vulnerable fish alive in the face of power failure, totally abandoned the facility after reports of violent looting compelled management to send everyone home.¹² While honor required standing tall in the face of the violence of a category five hurricane, even sketchy reports of human violence trumped any claim that the fish had on their dedicated human care takers. Crime stories and claims operate in our present culture as a distinct and powerful kind of social solvent that can radically alter the claims of norms, mores, and social roles.

¹² National Public Radio, “New Orleans Aquarium Unable to Sustain Many Animals,” September 4, 2005, <http://www.npr.org/templates/story/story.php?storyId=4841091>

Finally it is important to return to the role of racialization in the way risk is imagined as crime in New Orleans and more generally. The emergence of crime as a dominant image of risk in the American imagination brought with it potent racialized narratives, many directed at African Americans, and others focused on other non-white populations inside the nation (Indians and Mexicans brought in by conquest and Chinese through immigration). These narratives come from every aspect of the European settlement preceding the formation of the United States as well as its growth as a continental power thereafter, but they concentrated powerfully in the institutions of criminal justice. Here they were reinforced in the late 19th century by the rise of scientific criminology in Europe, which was steeped in what historians now call “scientific racism” (Simon, 2006).

Translated into expectations for government, crime as a dominant risk helped re-inscribe imperatives to racial segregation in the United States at the very moment when the earlier logic of white supremacy was becoming untenable. Thus the rise of mass imprisonment in the 1980s and 1990s, with its disproportionate focus on African American crimes (especially outdoor drug dealing), has helped create new racialized image of crime threat that has in many respects been stripped of its embarrassing genetic link with the history of “black crime” as an ideology of slavery and white supremacy. The draw of middle class Americans to exurban residential settings has neutralized the progress of residential desegregation in the inner ring suburbs of many large cities.

But it would be a mistake to think that crime risk and the governmental strategies it invites (both public and private) are uniquely a problem for non-Whites. It might have been harder to turn the post-Katrina disaster into a crime story without the spectacle of largely African American population left in New Orleans. Were the major population affected a white one, e.g., the largely white population in the unincorporated areas of southern Miami Dade County Florida, the overwhelming tone of the coverage would have emphasized plucky acts of self help in the face of total government failure. But cities, even less African American ones than New Orleans, have been heavily coded as crime ridden over the last several decades and the powerful messages about crime produced by the coverage of Katrina is likely to reinvest that image at a time when the crime decline and the real estate boom seemed to have increased interest and investment in American cities to the detriment of many middle class whites.

Moreover, when we consider the negative effects of crime risk on the expectations people bring to governance (both public and private) it is clear that whites cannot be sanguine about the expansion of this logic. The mistrust of public and private institutions of collective risk management, and the loss of social trust by families committed to gated communities and private security solutions to their fears, has produced a way of life that is enormously costly to the well being and productivity of the very people being “protected” by it.

Committed to long automobile commutes and mistrustful of any solutions labeled public, these families are stretched trying to earn two incomes and manage the security focused domestic routine of moving children from one supervised and managed place to another. Even in good times, the time and capital invested in these voluntary (but for many obligatory) crime prevention routines produces opportunity costs that have to be lowering the health, productivity, and satisfaction of many. When the next disaster strikes, like a major earth quake in the San Francisco Bay area, it may provide no evacuation option that allows the middle and upper class residents to escape the catastrophe. In that situation the kinds of governmental preparation, the forms of first responder deployments, the personal life style of ordinary families, and most importantly the subjective mentalities that support both flexibility and cooperation between neighbors and across great metropolitan expanses, might turn out to be important right across the class and race divides of our society.

The Fire Next Time

All the strands of recent scholarship on risk selection and decision making point to a profound path dependence to the way we select risk.¹³ The technologies, strategies, and information systems we deploy to protect ourselves from future hazard are shaped by past experience, and condition how individuals, institutions, and governments will address hazards. So to do exemplary figures of risk which through narrative and cultural work become representative of the broader field of risk in which publics and governments come to imagine themselves embedded. Work accidents played that role for a long time in industrial countries. We may live instead in an age of catastrophe or disaster, but if so it's a more fragmented figure. In the 1970s, for example, trenchant observers of social risk selection believed that radical environmentalism was coming to dominate the way Americans imagined risk (Douglas, Wildavsky, *supra* note 24). European publics indeed seem to have been far more shaped by the environmental example. Americans instead, I argue in a forthcoming book, selected crime (and especially "violent street crime") as a more salient model of risk. The crime victim, real and imagined became an idealized and representative citizen, in much the same way that the industrial worker was for the New Deal. The violent urban criminal, likewise, has become an exemplary image of risk.

On this basis I was not surprised last September as crime came to frame how the media, politicians, and presumably the public, viewed the terrible suffering actually going on in New Orleans and reenacted by now familiar scripts, gestures and mentalities in which politicians, the media, and publics have long

¹³ See generally, Sunstein 2005

come to enact and respond to violent crime. I was alarmed in particular by three features of this particular instance of what I have argued is a much more general condition.

First, as the events unfolded in New Orleans, it seemed that the crime script might actually impede the real time rescue (and self rescue) of people in New Orleans. With the flooded streets menaced by simulacra of depraved urban mobs, reports of maddened alligators, part riot, part gang warfare, rescue workers might be reluctant to drive their boats into the flooded landscape of the lower 9th ward and the already shocked occupants of those houses more reluctant to seek their own rescue. This appears to have taken place in some instances but we will never have firm information about how many such instances there were.

Second, as the survivors began to be moved away from the stricken city, it seemed likely that the crime story would follow them, making it harder for the flood victims to obtain housing and employment, and (just as importantly) triggering costly law enforcement responses by state and local government (as well as private costs in private security). I know of no empirical scholarship yet on whether, and to what extent, this has come to pass. The media has carried reports that it may be taking place, including a reported spike in crime in Houston (although typically the media rely on police expertise to characterize it as associated with New Orleans' evacuees. New Orleans itself seems to have suffered from a spike in violent crime and its political leaders have maintained a near hysterical level of discourse about this crime and the need for emergency help from outside (a double-edged appeal for those hoping the city can recover economically).¹⁴

Most importantly, and most speculatively, it seemed likely that by merging crime more thoroughly with "natural" disaster than any recent example, the coverage of Katrina might become a particularly influential image in the American risk imaginary. Specifically we might expect politicians to frame future planning for disaster mainly in terms of how to guarantee better law enforcement through "boots on the ground" quicker while hedging on any major federal efforts to address the city's near economic drowning. Thus far, federal spending while extensive has not been even proportionately generous to New Orleans, and has stopped far short of insisting on a yes answer to the question of whether the city can in fact recover. Instead, one of the Bush Administration's top priorities has been enhancing the President's own power to assume command of state reserve forces (which remain technically militias of the states) in a major disaster (Washington Post, 2006).

¹⁴ Although the comparative statistical analysis to either New Orleans' own past or to other cities is now devilishly complicated by the huge demographic changes.

We might also expect that state and local government will over prioritize preparation to suppress looting, leading to deployments of police and fire fighters that may exacerbate risks to average residents. Individual first responders and ordinary residents are also vulnerable to over preparing for the crime threat behind disaster.

Last May I attended a neighborhood meeting on my block to hear a Berkeley fire fighter speak on what they were doing to prepare for a major earthquake affecting the East Bay (like the menacing Hayward fault that runs near my home and office) and how neighbors such as ourselves ought to prepare. The major hazard in addition to the collapse of buildings and houses, is that fires might spread from broken gas lines, and that a shattered water system might permit little in the way of fire fighting for some period of time. According to the fire fighter, few of us keep anywhere near the sufficient amount water and food we would need in our homes to withstand some days or even weeks without reliable supplies (not to mention food and medicines). He also urged us to have a plan to find dependents, look for vulnerable neighbors and prepare to address most local problems without outside intervention.

Much of what the fire fighter spoke of that evening was addressed to encouraging us to actually meet again as neighbors and make real plans for common preparation. Yet laced through much of the narrative of how the aftermath of a major earth quake might play out were allusions to looting and worse than Katrina. The fire fighter suggested that in the aftermath of a major earthquake residents would be encouraged to close off the ends of the streets with moveable barricades that would allow neighbors or rescuers in but keep predatory looters out. When one of my neighbors expressed alarm at this public policy, pointing out that she might face just such barriers in trying to use her automobile to check on a disabled friend who lived a short distance away, her concern to keep the streets open was dismissed as naive and she was admonished to prepare to help her immediate neighbors. In dismissing my neighbor's concern for her friend, the fire fighter also dismissed the solidarity value of a broader vision of society, the kind that might be expected to help invest in prevention (like the levees around New Orleans or Sacramento), as well as through insurance payments after the fact. If even progressive cities like Berkeley are prepared to subdivide into so many segmented urban hamlets, sharing water and tools down the block while waiting in tense silence for marauders from other parts of town to approach, we can expect even worse from the gated suburbs.

This scenario gets even darker when one considers that our long war on crime has led many Americans to invest in one particular kind of risk management strategy, i.e., the possibility of an armed response. Americans own

more than 200 million fire arms,¹⁵ and after recent catastrophes like the September 11, 2001 attacks on New York and Washington, gun sales have surged. Yet the situation in New Orleans was almost certainly shaped in part by fire arms. One of the “facts” which many observers reported was hearing guns being fired in New Orleans. Rumors of gun toting mobs robbing and raping tourists spread leading one suburb across the river to post armed police on a highway bridge to prevent survivors from fleeing the flooded city. We can assume that many of these shots were fired by gun owning citizens in the righteous belief that they were warding off marauders from their homes. The same shots may have been the ones that discouraged rescuers from braving helicopter rides into the flooded neighborhoods for fear of violence. False memories of a nightmarish crime wave in flooded New Orleans that never was may lead more Americans to arm themselves in preparation for a disaster, and to rely on fire arms early in the aftermath of disaster when chaos is likely to prevail and cooperation crucial to the survival of many.

Conclusion

It is too early to determine how Katrina will be remembered and we can only speculate as to whether it is likely to enter into America’s risk imaginary in any enduring way. There remain elements of the work accident in the way we handle risk. Insurance remains a large part of the financial picture in recent disasters including 9/11 and Katrina, especially for businesses and higher income residents. Many of the homes destroyed by flooding, however, will not be covered unless their owners bought separate flood coverage, out of reach for many of its homeowners with modest incomes. The federal government’s poor response to the storm’s aftermath generated widespread criticism, but that criticism documents the survival of a strong residual belief that the federal government should be a safety net and a national risk spreader by providing emergency assistance and support for recovery where-ever state and local resources prove inadequate.

How Katrina’s memory will influence this residual fund of solidarity in our risk imaginary is most worrisome. The harsh criticism of FEMA could lead to a public airing and recommitment to robust federal risk spreading role, or it could further the skepticism about the reliability of any such national response and hasten the day when few expect the federal government to provide a national risk pool for Americans.

The false but enduring memory of New Orleans in the wake of the flood as a nightmare of chaos and violent criminality is likely to undercut the solidarity

¹⁵ 215 million as of 1999 according to government figures quoted by the NRA. See, <http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=126>

reinforcing dimension of criticism of the government's response by portraying the city's poor as pathological and self destructive. The risk spreading logic of the workers compensation solution to work accidents was facilitated by the positive cultural presumptions accorded to work and industrial work in particular. As the retrenchment of federal income support in the 1990s demonstrated, social insurance systems cannot easily survive the portrayal of their beneficiaries as immoral and undeserving.

Independently, the frightening images narrated from New Orleans may help to reinforce a new model of disaster fusing natural elements like flooding or earth quakes, with violent criminality or terrorism. Such disasters, even in anticipation, would re-inscribe the late 20th century's complex of racialized fears and fantasies about urban crime into 21st century public and private preparation for the risks of natural disaster. The governmental response, already gathering, will be one in which the federal government, working with state and local authorities, assures a massive show of coercive law enforcement power in the initial stages of any disaster to deter looters, and if necessary, contain violent districts to assure orderly rescue operations in the middle class areas of Oakland, Houston, or Miami.

Resisting this memory is important, and it requires a counter memory. Fortunately, we have it in the extensive documentation of the suffering of ordinary residents and visitors to New Orleans gathered at the Super Dome and the convention center, many of them the very old, the very young, and middle aged people trying to assist dependents at one end or the other of the needy stages of life. The video tapes, played alongside reports of extensive violence and crime, actually document its absence. In the face of terrible demoralizing suffering of the sort that one might expect to lead to violence, the cameras show patience and endurance in peace.¹⁶

Beyond counter memory, there is the kind of risk paradigm that might arise from a robust effort to tackle the problems of New Orleans in the face of Katrina and other major American cities exposed by population growth and environmental decline to catastrophic risks. Our risk imaginary is never one dimensional or fixed, and we cannot be certain that some altogether different narrative of risk will not begin in the wake of Katrina and gather forth. The nation watched one rather striking suggestion of such a narrative, delivered in the spectral light of television cameras against the shattered foliage of Jackson Square by none other than President George W. Bush on September 15, 2005.¹⁷ In moving terms the President promised a national effort to lift the victims.

¹⁶ Spike Lee uses the television sweep shots to moving effect in his HBO documentary. http://www.hbo.com/docs/programs/whentheleveesbroke/?ntrack_paral=leftnav_category6_show0

¹⁷ <http://www.whitehouse.gov/news/releases/2005/09/20050915-8.html>

Tonight so many victims of the hurricane and the flood are far from home and friends and familiar things. You need to know that our whole nation cares about you, and in the journey ahead you're not alone. To all who carry a burden of loss, I extend the deepest sympathy of our country. To every person who has served and sacrificed in this emergency, I offer the gratitude of our country. And tonight I also offer this pledge of the American people: Throughout the area hit by the hurricane, we will do what it takes, we will stay as long as it takes, to help citizens rebuild their communities and their lives. And all who question the future of the Crescent City need to know there is no way to imagine America without New Orleans, and this great city will rise again.

Indeed, to the surprise of this listener, the President spoke in direct terms that connected the storm's devastation to the force of historic racial discrimination in the vulnerability of many of the storm's victims, and promised that a reconstructed New Orleans would also be one of greater equality and opportunity.

When communities are rebuilt, they must be even better and stronger than before the storm. Within the Gulf region are some of the most beautiful and historic places in America. As all of us saw on television, there's also some deep, persistent poverty in this region, as well. That poverty has roots in a history of racial discrimination, which cut off generations from the opportunity of America. We have a duty to confront this poverty with bold action. So let us restore all that we have cherished from yesterday, and let us rise above the legacy of inequality. When the streets are rebuilt, there should be many new businesses, including minority-owned businesses, along those streets. When the houses are rebuilt, more families should own, not rent, those houses. When the regional economy revives, local people should be prepared for the jobs being created.

However irresolutely, President Bush pointed toward a very different memory of Katrina and risk, one that could forge a new model of governing the world of risks beyond work accidents that now alarm us. Ironically (given Bush's reputation as the anti-New Dealer) it is one with distinct echoes of a time President Franklin Roosevelt sought to leverage the solidarity lessons of workers compensation to address complex economic development and environmental management issues. The Tennessee Valley Authority project,¹⁸ and the massive hydro electrical and flood control system created by damming the Columbia River in the Northwest (Purcell, 1979) were both huge federal projects that sought to

¹⁸ See, Philip Selznick 1949.

address regional, natural, and social risks through new technologies, public investment, and innovative governmental forms. A very different kind of environmental challenge is posed by restoring New Orleans and rendering it a city socially and environmentally more capable of absorbing a category 4 or 5 storm. Yet a major effort to accomplish that, one which would show case novel technologies, innovative governmental forms, and new combinations of public and private solidarity could create an optimistic example for an age of uncertainty.

REFERENCES

- Appadurai, Arjun. *Modernity at Large: Cultural Dimensions of Globalization*. Minneapolis: University of Minnesota Press. 1996.
- Baker, Tom and Simon, Jonathan. *Embracing Risk*. Baker and Simon, eds. *Embracing Risk: The Changing Culture of Insurance and Responsibility*. Chicago: University of Chicago Press. 2002
- Baum, Dan. *A Reporter at Large: Deluged*. *The New Yorker*. January 6, 2006. http://www.newyorker.com/printables/fact/060109fa_fact
- Beck, Ulrich. *Risk Society: Towards a New Modernity*. London: Sage. 1992
- Cohen, Elias S. *Time on Their Hands, Time on Our Minds*. *Gerontologist* 45: 848-853. 2005
- Douglas, Mary and Wildavsky, Aaron. *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers*. Berkeley: University of California Press. 1982
- Erikson, Kai. *A New Species of Trouble: The Human Experience of Modern Disasters*. New York: Norton. 1994
- Ewald, Francois. *The Return of Descartes's Malicious Demon: An Outline of a Philosophy of Precaution*, in Baker and Simon. *Embracing Risk: The Changing Culture of Insurance and Responsibility*. Chicago: University of Chicago Press. 273-301. 2002
- Edwald, Francois. *L'Etat Providence*. Paris: Grasset. 1986
- Friedman, Lawrence M. and Ladinsky, Jack. *Social Change and the Law of Industrial Accidents*. *Columbia Law Review*. 67:50-82. 1967
- Furedi, Frank. *The Culture of Fear: Risk Taking and the Morality of Low Expectation*. London: Continuum, rev edition. 2002
- Garrett, Brandon, L. and Tetlow, Tania. *Criminal Justice Collapse: The Constitution after Hurricane Katrina*. *Duke Law Journal* 56:____ forthcoming.
- Lane, Roger. *Violent Death in the City: Suicide, Accident, and Murder in Nineteenth Century Philadelphia*. Cambridge, MA: Harvard University Press. 1979

- Lubove, Roger. Workmen's Compensation and the Prerogatives of Voluntarism. *Labor History* 8: 254-279. 1967
- New York Times. More Horrible than True: News Reports. September 19, 2005, A1
- Niman, Michael I. Katrina's America: Failure, Racism, and Profiteering. *The Humanist*, 11-15. November-December 2005.
- O'Malley, Pat. *Risk, Uncertainty and Government*. London: Glasshouse Press, 2004.
- Purcell Jr., Carroll W. Government and Technology in the Great Depression, *Technology and Culture* 20:162-174. 1979.
- Rodriguez, Havidan, Trainor, Joseph and Quarantelli, Enrico L. Rising to the Challenges of a Catastrophe: The Emergent and Prosocial Behavior Following Hurricane Katrina. *The ANNALS of the American Academy of Political and Social Science* 604: 82-101. 2006.
- Selznick, Peter. *TVA and the Grass Roots: A Study in the Sociology of Formal Organizations*. Berkeley: University of California Press. 1949
- Simon, Jonathan S. For the Government of Its Servants: Law and Disciplinary Power in the Work Place. 1870-1906. *Studies in Law, Politics, and Society* 13:105-136. 1993
- Simon, Jonathan. Peace and Insurance: Recovering the Utopian Vision of Insurance in Royce's War and Insurance," *Connecticut Insurance Law Journal*. 10:51-72. 2004
- Simon, Jonathan Risk and Reflexivity: What Socio-Legal Studies Add to the Study of Risk and the Law, *Alabama Law Review* 57:119-139. 2005
- Simon, Jonathan. Positively Punitive: How the Inventor of ScientificCriminology, Who Died at the Beginning of the 20th Century, Continues to Haunt American Crime Control at the Beginning of the 21st Century. *Tex. L. Rev.* 84:2135-2172. 2006
- Simon, Jonathan. *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford University Press. 2007.
- Sunstein, Cass R. *Laws of Fear: Beyond the Precautionary Principle*. Cambridge, UK: Cambridge University Press. 2005
- Thevenot, Brian. Myth-Making in New Orleans. *American Journalism Review*, 30-37. December 2005-January 2006
- Tomlins, Christopher L. A Mysterious Power: Industrial Accidents and the Legal Construction of Employment Relations in Massachusetts, 1800-1850. *Law & History Rev.* 8:375-438
- Washington Post. States Seek Aid in Fight Over Guard. Friday, September 1, 2006; Page A04

Witt, John. *The Accidental Republic: Crippled Working Men, Destitute Widows, and the Remaking of American Law*. Cambridge, MA: Harvard University Press. 2004