

Extralaw and Disorder: Risk, Crime, and Political Disruption, 1964-1976

In the United States, the later 1960s were fraught with disruption. Most analysts have been transfixed by the smouldering of Vietnam as the cause of the fracture of the consensus politics of Lyndon Johnson. There were, however, other disruptions that led to this splintering, many of them supremely close to home. The conflagrations along the Ho Chi Minh Trail mirrored the intensity of race riots across the United States' major urban centres, which occurred every summer from 1964 through the end of the decade. The lapse of 'law and order' revealed a fundamental disruption in American thinking as the White House passed from Lyndon Johnson to Richard Nixon in 1968. For the first time since 1932, conservatism had won a presidential victory. Rather than reaching for a Great Society for the future, citizens had voted to protect their lives today.

In this paper, I explore how domestic disruptions immolated an old political culture, and birthed another from its ashes. Though many historians have examined the disruptions in these citizens' political thinking, this paper explores them through the unique lens of risk. Popularized by Ulrich Beck's *Risk Society: Toward a New Modernity*, published in 1992, studies of risk have increasingly been applied to political history.¹ Lockean political theory holds that modern society sees individuals coming together into a body politic to secure greater liberties. Through the prism of the risk-society thesis, one such greater liberty is risk spreading, which allows individuals to be unencumbered by hazards such as crime. The state aggregates citizens in various risk pools so that 'at risk' groups are protected against threats, with the goal of equality of opportunity. Technicians of state determine who ought to be a 'policy holder'; statistical calculation, data, and number crunching are emblematic of the modern state.² Liberal risk-sharing principles have been pervasive in world politics since the Great Depression. This tendency to liberal governing principles only became stronger in the ruins of World War II, with Social Democratic parties becoming successful across Europe. The United Nations, the signature post-war institution, represented the global embrace of risk spreading. Individual nations' risks could now be spread to non-affected peers.

However, this commitment to world liberalism could only continue as long as states were able to successfully fulfil the terms of their social contracts before shortcomings emerged. By the late 1960s, many believed the state was not fulfilling its end of the

¹ Ulrich Beck, *Risk Society: Toward a New Modernity* (London: Sage, 1992).

² Pat O'Malley, 'Introduction', in *Crime and the Risk Society*, ed. by Pat O'Malley (Brookfield, Vermont: Ashgate, 1998), p. 1.

bargain. Liberal technocracies, with their sorting and aggregating of populations, embrace a powerful state and rigid social organization by methodological necessity. However, the effect of subjection of the individual to membership in risk pools was alienating; one contemporary commentator cautions against surrendering ‘in the name of security, those precious remaining political spaces where new discourses and rituals might yet be born’.³ For this reason, 1968 was an incendiary year worldwide, from Tokyo to Mexico City. Liberal statism was critiqued by the Left for aiding the military-industrial complex, as it deprived people of freedoms, whether in the *Quartiere Latin*, the plaza of Tlatelolco, or the rice paddies of Vietnam.

This conflict with the Left, particularly in the United States, is well documented by commentators of the 1960s. What is often overlooked, however, is the participation of a strong conservative party in this disruption. The American Right saw the liberal commitment to risk sharing as wrong-headed. Welfare was argued against in conservative circles as a ‘moral hazard’: rather than using aid to work themselves out of poverty, it was believed that ‘at risk’ groups used welfare as a hand-out. This difference in policy stemmed from a fundamental ideological difference in determining risk. While liberals see crime risk as a symptom, the Right sees crime as a cause. For the Right, crime is a pollutant: it is a ‘non-distributable’ risk, for it holds a symbolic peril that no premium can cover. Thus, unlike the liberal, who aims to spread crime-risk, the conservative populist clamours to ‘defile the defilers’ through revocation of membership in the social body for the evildoer.⁴

Clearly, the way ‘average people’ perceived risks was vastly different from the actuarial methods of liberal government. Consequently, ‘pointy-headed’ liberals were out-of-touch technocrats that contaminated the social body with freeloaders. This popular voice came to be represented by neoconservatism, part of the new Right. Largely based on the teachings of University of Chicago Professor Leo Strauss, neoconservatives denied liberal moral relativism for leading to moral nihilism and anarchy. Though not reactionary, neoconservatives advocated the reversal of insidious social developments, while protecting valuable modern institutions. As such, neoconservatives advocated a ‘revolutionary conservatism’, a term favoured by British neoconservative Douglas Murray: the suppression of toxic social behaviour would re-establish moral clarity. In this way, neoconservatism offered an attractive alternative to the liberal risk management; rather than rewarding those who undermined the social fabric, individuals would be made to see that moral society rejected their actions as inherently evil.⁵

The First Civil Right

In the 1960s, the great enemy of the neoconservative was the ‘Great Society’. On May 22, 1964, Lyndon Johnson stated his goals at the University of Michigan, outlining an idealistic vision of ‘Risk Society’ utopia. His model was redistributive in nature: the nation’s material prosperity, harnessed through tax income, was the bedrock upon which the Great Society rested. Not only was the Great Society an attempt to

³ Jonathan Simon, ‘The Emergence of a Risk Society’, in *Crime and the Risk Society*, p. 30.

⁴ Ian Hacking, ‘Risk and Dirt’, in *Risk and Morality*, ed. by Richard Ericson and Aaron Doyle (Toronto: University of Toronto Press, 2003), p. 38.

⁵ Douglas Murray, *Neoconservatism: Why We Need It* (New York: Encounter Books, 2006).

redistribute wealth, but also risk. The Great Society anticipated a raft of social insurance programs to achieve its goals: Civil Rights, Medicare, Medicaid, among other social programs, all mitigated risks associated with being an American. The Great Society was consistent with the model of the risk-managing welfare state: its goal was to manage 'at risk' citizens' risk portfolios and consequently allow them to arrive at universal abundance and liberty.⁶

Unsurprisingly, Republican presidential nominee Barry Goldwater came out as a virulent opponent of Great Society redistributionism. Goldwater tried to take advantage of the inherent disconnect in risk assessment between liberals and conservatives, as he stated, 'we see [liberal welfare] as the result of a fundamentally and absolutely wrong view of man, his nature and his destiny'.⁷ Tying the liberal welfare state to a corruption of moral values, Goldwater accused the Johnson administration of creating a society of dependency. Johnson would create moral decay by rewarding civil disobedience with the moral hazard of welfare, rather than emphasizing personal responsibility. Furthermore, welfare redistributed resources to those who actively created hazard through agitation, malfeasance, and crime. Law-abiding citizens were left without any recourse to risk-managing resources, forcing them to subsidize the 'criminal class'. Goldwater would be the agent of a conservative revolution in government.⁸

Despite Goldwater's best efforts to show that the Great Society risk spreading encouraged moral turpitude, Johnson rode a landslide to re-election in 1964. Johnson effectively cast Goldwater as a crazed extremist. This was relatively easy to accomplish in 1964, for urban race riots had not yet become as prominent as they would in the latter half of the decade. But Goldwater's call for law and order served as a portent of the pending disruption. Crime had been on the rise since 1961: between 1961 and 1963, the crime rate had increased by 6.3%. From 1963 to 1964, there was a 14% increase. This upward trend was particularly prominent in property crimes, which increased by 26% from 1960 to 1963.⁹ Johnson recognized the need to address this issue that clearly would be capitalized on by Republicans during the next national cycle.

It is telling that in July 1965, a few months after his second inauguration, Johnson announced the creation of the President's Commission on Law Enforcement and the Administration of Justice. Johnson aimed to expand his War on Poverty to address the crime issue. A committed liberal, he believed both crime and poverty to be part of the same set of structural problems. Johnson's Commission was eminently liberal: it would make suggestions for legislation to address crime via social justice. The liberal commitment to share a community with reformed lawbreakers is evident by Johnson's

⁶ Lyndon B. Johnson: 'Remarks at the University of Michigan', 22 May (1964). Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, last accessed 26 November 2015, <<http://www.presidency.ucsb.edu/ws/?pid=26262>>.

⁷ Barry Goldwater: 'Address Accepting the Presidential Nomination at the Republican National Convention in San Francisco', 16 July (1964), *The American Presidency Project*, last accessed 26 November 2015. <<http://www.presidency.ucsb.edu/ws/?pid=25973>>.

⁸ Michael Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005), pp. 32-33.

⁹ Federal Bureau of Investigation, Uniform Crime Reports, Crime in the United States, Nationally, 1961-1964 (Washington, DC: FBI, 1964), last accessed 26 November 2015, <<http://bjs.ojp.usdoj.gov/ucrdata/>>.

explicit goals for the War on Crime as a corollary to the Great Society. In 1967, Johnson quoted his Crime Commission: ‘There is no doubt whatever that the most significant action...against crime is action designed to eliminate slums and ghettos, to improve education, to provide jobs, to make sure that every American is given the opportunities and the freedoms that will enable him to assume his responsibilities’.¹⁰ The administration’s strategy lay in managing ‘at risk’ groups, with the view that by equalizing risk portfolios, crime would become a thing of the past.

Johnson’s commitment to liberalism made electoral sense. Since the 1930s, liberal universalism had offered a wide consensus among the electorate, creating a robust political coalition that was patronized by both parties. In September 1965, for example, when asked which party was more interested in reducing crime rates, Democrats were favoured 18% to 9%, but 57% saw no difference between the parties.¹¹ Despite Johnson’s best efforts to find consensus on his War on Crime, nothing could alleviate the racial violence that occurred every summer from Newark to Detroit. This increasingly suggested liberal failure: by October 1966, when posed the same question as in 1965, 56% chose the Republican Party as better suited to dealing with crime.¹²

Even in the face of disruption, from the New Left that rejected the rigidity of liberal institutionalism, and the Right that was increasingly successful at using domestic unrest to discredit the liberal risk-sharing agenda, Johnson persisted in his commitment to welfare. Liberals desperately stressed the uncertainty surrounding the crime statistics and the complex nature of the problem: ‘it was an honest answer, typical of the constant search for accurate information by liberals who put their faith in social science...[but] the fear was real...rather than address that fear in emotional terms, liberals offered an intellectual response that was dismissive of what many Americans had experienced’.¹³ The elemental disconnect between liberal actuarialism and neoconservative fears of pollution had created fissures in the artifice of liberal consensus politics.

Republicans were poised to capitalize as the next presidential election loomed. The banner of law and order had fallen to Nixon in 1968, a year when many Americans were galvanized against liberal risk-sharing. While Hubert Humphrey clung to the liberal agenda, Nixon offered his view on law and order, most pithily shown in his campaign ad, ‘The First Civil Right’. The ad appealed strongly to those who feared the defilements of civil disorder and resented the moral hazard of welfare. The ad opens with dissonant chords and a martial drumbeat, as images of flames, bloody protestors, policemen with tear gas, and a destroyed female mannequin flash on the screen. Nixon intoned:

It is time for an honest look at the problem of order in the United States. Dissent is a necessary ingredient of change, but in a system of government that provides for peaceful change, there is

¹⁰ Lyndon B. Johnson, ‘Special Message to the Congress on Crime in America’, 6 February (1967). *The American Presidency Project*, last accessed 26 November 2015, <<http://www.presidency.ucsb.edu/ws/?pid=28394>> .

¹¹ Gallup Poll (AIPO), September (1965). From the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut, last accessed 25 November 2015, <<http://www.ropercenter.uconn.edu/>>.

¹² Harris Survey, October (1966). iPOLL Databank.

¹³ Flamm, *Law and Order*, p. 128.

no cause that justifies resort to violence. Let us recognize that the first civil right of every American is to be free from domestic violence. So I pledge to you, we shall have order in the United States.¹⁴

In implicitly rejecting the civil rights movement's disobedience, Nixon tapped into simmering racial resentments. The female mannequin evoked sexual violence, traditionally associated with racial fears. While Republicans did not explicitly preach Jim Crow racism, Nixon utilised racially-tinged ideas that blacks had fundamentally betrayed the social contract by urban defilement, and as such, did not merit reward. In this ad, Nixon reasserted the terms of the social contract and firmly defined the boundaries of the body politic: condemning all polluters, Nixon promised a renaissance of stability, a 'revolutionary conservatism'.

After years of gradual disillusionment, Americans had finally been seduced to the Republican cause by the allure of law and order. In an August 1968 Harris poll, 81% believed that law and order had broken down in the country; 84% believed that a strong president could make a big difference in directly preserving law and order; 67% believed that national leadership was somehow to blame for breakdown in law and order, with 55% of those believing it to be a major cause.¹⁵ In September 1968, a Harris poll showed that 36% of Americans believed that Nixon was best suited to handling law and order, compared to 23% for Humphrey.¹⁶ On Election Day, Nixon won with 43.4% of the popular vote. The Great Society and national liberalism were routed by 1968 in large part due to Republicans' efficacy in harnessing the separation between liberal risk-assessment methods and those of the 'silent majority'.

'City in Crisis'

Despite the polls' illustrations of the importance of national leadership, however, 78% believed that law and order was much more a local problem than a national one.¹⁷ Thus, these same debates about risk were reflected on the municipal level. Johnson's counterpart in New York was John Lindsay, who had been elected mayor in 1965 on the Liberal Party ticket. At the time, New York was rife with fiscal problems, racial unrest, poor education, and growing crime rates. Lindsay campaigned on liberal approaches to fix social ills, and his political coalition depended upon the support of traditionally liberal groups, such as blacks, Jews, and Puerto Ricans. He won with 43.3% of the vote in a three-way race; when combining the vote totals for the two liberal candidates - Lindsay and Democrat Abe Beame - over 82.8% of New Yorkers voted for a liberal in the mayoral race.¹⁸

The Lindsay mayoralty quickly demonstrated its commitment to liberalism to cure society's ills. In 1967, Lindsay was tapped to vice-chair President Johnson's new National Advisory Commission on Civil Disorders. Lindsay quickly proved to be the most liberal voice in the group. Demanding aggressive language that tied the status of

¹⁴ 'The First Civil Right', Nixon-Agnew Victory Committee, 1968. *Living Room Candidate*.

¹⁵ Harris Survey, August (1968). iPoll Database.

¹⁶ Harris Survey, September (1968). iPoll Database.

¹⁷ Harris Survey, August (1968). iPoll Database.

¹⁸ Vincent Cannato, *The Ungovernable City: John Lindsay and His Struggle to Save New York* (New York: Basic Books, 2001).

African-Americans to white racism, Lindsay advocated a risk-spreading approach; the goal was '[r]emoving the frustration of powerlessness among the disadvantaged by providing the means for them to deal with the problems that affect their own lives'.¹⁹ As mayor, Lindsay's expansion of welfare to counteract poverty underscored his commitment to risk-sharing: the percentage of New Yorkers on municipal welfare rose from 8% to 16% from 1965 to 1972.²⁰

Unfortunately for Lindsay, data did not support his anti-crime policies. Between 1965 and 1973, violent crime rates increased by 131% with an average growth rate of 11.4% a year, and a peak increase of 32.8% in 1967-8.²¹ Furthermore, due to swelling welfare outlays, by 1973, there was a city budget crisis on the horizon. This led to an increasing strain on the city's budget and taxpayers, as by 1972, New Yorkers paid 8.9% of total income on city taxes, 50% higher than the twenty next-largest cities. High taxes translated into higher rates of corporate relocation and deindustrialization, causing the quality of life in the city to take a plunge.²²

Consequently, by the early seventies, Lindsay did not get much affection from outer borough white ethnics. Pete Hamill, a man of working class origins, captured the deep discontentment of his neighbours:

Look in the papers. Look on TV. What the hell does Lindsay care about me?...None of them politicians gives a good goddam. All they worry about is the niggers... I gotta carry him on *my* back. You know what I am? I'm a sucker. I really am. You shouldn't have to put up with this.²³

Despite the racist language, Hamill maintained that his neighbours were not against black equality, but rather the deep unfairness that they perceived to be part of the system, in which they had to subsidize the criminality of rioters. They believed that the liberal project of risk spreading undermined American values. One of Hamill's interviewees prepared to defend them: 'I got me a shotgun, license and all... the way things are goin'. I might have to use it on someone. I really might. It's comin' to that. Believe me, it's comin' to that'.²⁴ The Lindsay administration never engaged with the white neighbourhood, with its set of values. Rather, these liberals expected their elite method of crime control to be palatable to those who did not agree with their methods of determining risk, and who instead yearned for an agent of 'revolutionary conservatism'.

'A Man Who Stood Up'

In New York City, certain citizens felt that Lindsay and Johnson had let them down. The city was increasingly seen as abandoned to wallow in filth, both literal and metaphorical. This municipal crisis, real or imagined, was prominent in the national

¹⁹ National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders* (Kerner Report), p. 20.

²⁰ Cannato, *The Ungovernable City*, p. 545-52.

²¹ Federal Bureau of Investigation, *Uniform Crime Reports, Crime in the United States, New York City, 1965-1973* (Washington, DC: FBI, 1973).

²² Cannato, *The Ungovernable City*, p. 545.

²³ Pete Hamill, 'The Revolt of White Lower Middle Class', *New York Magazine*, 14 April (1969), last accessed 26 November 2015, <<http://nymag.com/news/features/46801/>>.

²⁴ *Ibid.*

mind, thanks to one of Lindsay's more lasting contributions to the city. Lindsay, a failed actor, had created the Mayor's Office of Film, Theatre, and Broadcasting in 1966 to offer opportunities to portray the city in popular media.²⁵ However, New York films of the 1970s almost never conveyed the city in a positive manner, as Lindsay must have hoped. This realist 'New Hollywood' movement aspired to create films that depicted 'the last days of American civilization', according to a *New York Times* film critic:

New York City is a mess...It's run by fools. Its citizens are at the mercy of its criminals who, as often as not, are protected by an unholy alliance of civil libertarians and crooked cops. The air is foul. The traffic is impossible. Services are diminishing and the morale is such that ordering a cup of coffee in a diner can turn into a request for a fat lip.²⁶

In film, the city's decay served as a cautionary tale for the terrors of liberalism. Thanks to the decay of the 1970s, largely attributed to Lindsay, New York was seen as riddled with a variety of pollutants that promised to threaten the fabric of American society and Americans' 'first civil right'.

Consequently, the figure of the 'vigilante' was logical reflection of citizens' frustrations and disillusionment with their society. As seen in Hamill's piece, vigilantism represented an alluring populist myth, even outside of the theatre. Lindsay's liberalism had caused a pall of violent desperation to descend over the city: citizens craved the redemption offered by neoconservatism. New Yorkers, and by extension, Americans, were ready to end ineffectual liberalism and reassume law-enforcement risks through vigilante activity. Citizens saw characters defend their neighbourhoods from the hazards of liberalism. Vigilante films thus offered beleaguered Americans a way to vicariously redeem their country through visions of 'revolutionary conservatism'.²⁷

In *Taxi Driver*, Travis Bickle (Robert De Niro) is a celluloid interpretation of Silent Majority angst. Throughout the film, Bickle's obsession with purity drives his increasingly tenuous grasp on reality: 'Listen, you fuckers, you screwheads. Here is a man who would not take it anymore. A man who stood up against the scum, the cunts, the dogs, the filth, the shit. Here is a man who stood up'. This quixotic mission leads Bickle to become fixated on a young prostitute, Iris (Jodie Foster). At the climax of the film, Bickle kills a series of thugs to save her from her degradation. And rather than being shunned as a lawbreaker, he is lauded by all as a hero. Moral clarity has been re-established, thanks to the one man who stood up.²⁸

Death Wish offered an allegorical narrative for how law and order politics gave rise to neoconservatism. Paul Kersey (Charles Bronson) is a well-off architect and self-described liberal, whose 'heart bleeds a little for the underprivileged'. This good will quickly evaporates as Kersey's wife and daughter are savagely beaten, leading to his wife's death and his daughter's catatonia. Kersey hopes the police will help him find justice, but is consistently let down. As such, Kersey takes the law into his own hands, buying a gun and patrolling the streets of New York at night, killing evildoers. The

²⁵ Cannato, *The Ungovernable City*, p. 561.

²⁶ Vincent Canby, 'New York's Woes are Good Box Office', *New York Times*, 10 November (1974).

²⁷ Stanley Corkin, *Starring New York: Filming the Grime and the Glamour of the Long 1970s* (New York: Oxford University Press, 2011), p. 147.

²⁸ *Taxi Driver*, directed by Martin Scorsese, 1976.

police try to capture this unknown vigilante by denigrating him in the press, but the vigilante's activity actually encourages New Yorkers of all stripes to fight back. By the film's end, the police have captured Kersey, but rather than prosecuting him, they suggest he relocate to another city. Again, the vigilante is a hero for his sacrifices.²⁹

These films exploited 'actual fear in order to trumpet the right's critique of liberal social and economic policy in the Nixon era, and thus operat[ed] as an agit-prop for law and order proponents'.³⁰ Clearly, the gratuitousness of the violent escapades offered average citizens a sense of catharsis. In an article entitled 'What Do They See in *Death Wish*?' Judy Klemestrud profiled the film. Klemestrud was seemingly surprised by the fact that despite mixed reviews, people continued to line up to see the film, and applauded and cheered as the body count rose. As one woman said: 'I think what Bronson did is right - no one else is doing anything...Our system just isn't working today. So you've got to protect your own self'.³¹

Conclusion

Overall, risk is a powerful totem that concentrates fears about purity, morality, and the social fabric. It may be easy to state that law and order politics were purely a destructive, disruptive force. Risk analysis, however, suggests that 'revolutionary conservatism' offered certain citizens something constructive. It paradoxically offered hope to those who ostensibly had little to hope for. It promised a society that once again made sense to them, one in which citizens were protected from crime, rather than being subjected to it by a dysfunctional government.

In this way, the risk-assessment dispute of the 1960s and 1970s had a lasting effect on American politics. Law and order rhetoric contributed to conservative dominance of the White House for forty years. Municipally, with the near thirty years of neoconservative mayoral administrations, New Yorkers also rejected liberalism in favour of neoconservatism. Within the past year, commentators on the Right have denounced the liberal policies of Baltimore, Ferguson, and Chicago as the cause of the racial unrest there, while Donald Trump decries the supposed criminality of all undocumented Mexican immigrants, and of the ineptitude of government to stem the tide of moral turpitude. Clearly, conversations about risk and crime remain an important tool of political discourse, and it is only through an understanding of the motivations of those who view crime as pollution that we may begin to have more fruitful conversations about ending the disruptions of our current age.

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²⁹ *Death Wish*, directed by Michael Winner, 1974.

³⁰ Brian Tochtermann, 'Welcome to Fear City: the Cultural Narrative of New York City, 1945-1980', Ph.D. diss., University of Minnesota, 2011.

³¹ Judy Klemestrud, 'What Do They See in *Death Wish*?', *New York Times*, 1 September (1974).

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