

## Disaster and Sociolegal Studies

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### Abstract

Disasters are treated as independent events external to law. However, social processes define the beginning, end and extent of those events for mitigation, adaptation and response and recovery; those processes include the mobilization of law by people and organizations. Within the sociology of disaster, it is tempting to treat law as a problem-solving tool. Sociolegal analysis approaches law more skeptically: legal actors face problems and defer to the decisions others have made, or discount future problems as much as other institutions do and thereby contribute to problems, or offer compensation that does not ameliorate the inequality within and among countries that disaster can exacerbate. Law can signal that it is doing something about problems via national or supranational rights; for it actually to help requires legal actors to mobilize. Finally, the site of law has been displaced: from law being within public authority enacted through institutions to law as a matter of individual, self-governance set in expectation of disaster, and humanitarian assistance done through non-governmental organizations. This collection contributes analyses of individuals and organizations' action in disaster through legal processes.

### Key words

Disaster; juridification; risk; legal mobilization; social welfare

### Resumen

Los desastres se tratan como hechos independientes externos al derecho. Sin embargo, los procesos sociales definen el principio, el final y el alcance de esos

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acontecimientos en lo que respecta a su mitigación, adaptación, respuesta y recuperación; esos procesos incluyen la movilización del derecho por personas y organizaciones. En el ámbito de la sociología de los desastres, es tentador tratar el derecho como una herramienta para la resolución de problemas. Sin embargo, los análisis sociojurídicos se aproximan al derecho de forma más escéptica: los actores legales se enfrentan a problemas y se adhieren a decisiones que otros han tomado, o descartan problemas futuros de la misma forma que otras instituciones, aumentando así los problemas, u ofrecen una compensación que no mejora la desigualdad dentro de y entre los países, que en parte se ve agravada por los desastres. El derecho puede defender que está tratando los problemas a través del derecho nacional o supranacional; pero lo que realmente hace falta para ayudar requiere que los actores legales se movilicen. Por último, ha cambiado el lugar que ocupa el derecho: ha pasado de ser una autoridad pública, que actúa a través de instituciones, a tener carácter individual, con la prevención de desastres basada en el autogobierno, y siendo organizaciones no gubernamentales las que ofrecen la ayuda humanitaria. Este número ofrece un análisis de las acciones de individuos y organizaciones en caso de desastres, a través de los procesos legales.

**Palabras clave**

Desastre; juridificación; riesgo; movilización legal; bienestar social

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## 1. Introduction: Legal processes and defining disasters

The hazards of the late twentieth century that have created sudden, visible havoc include the tsunami in Japan, storms and oil spills in the United States, and earthquakes in Haiti and southwestern China. Including factory fires, wars, and the global financial crisis brings the destruction higher. The variety in the harm across groups in poor and rich countries and among poor and wealthy people within countries demonstrates the inequality in distribution of harm and the failure of regulation disaster usually marks. Although disasters such as earthquakes seem unavoidable or uncontrollable and they do indeed inflict harm across groups, it is a commonplace of the social science of disaster that while hazards may just happen, the disasters for localities that they bring have humans' choices embedded in them, and often the same people need to manage and respond to the aftermath, which means that analyzing disaster needs to include both earthquakes and factory fires.

A catastrophe is 'known by its works;' effects of an event are what we call a disaster (Quarentelli 1998). An earthquake without collapsing buildings is not a disaster. One way of answering what disasters are is tracking how people and organizations come together to delimit disaster, and the Red Cross and others who respond define disasters as time and place bound disruptions of daily life (Dombrowski 1998). The conceptual lack of clarity concerning how to understand disaster invites mapping the mobilization of law that channels money for relief and compensation to individuals or to rebuild a place after an event. The earthquakes, tsunamis and burning oil rigs that have occasioned human rights claims when people are displaced, or urgent calls for safer nuclear power plant construction, require mapping how powerful organizations and people mobilize help. Ulrich Beck has argued that the hallmark of modern risks is that they cannot be seen; they are the toxins that require specialists with esoteric knowledge to confirm the dangers. They are different from the widespread public health hazards or the industrial accidents that occasioned the modern welfare state, with social insurance to compensate people for workplace injuries or payments for the elderly when they were no longer useful in the industrial workforce (Beck 1992, pp. 13, 21, Sterett 2003). While toxins in our lives are widespread and sensing them requires the esoteric knowledge that Beck describes, storms, fires and droughts have created immediate, visible, widespread suffering. Demands for response treat the risks as self-evident. These visible risks and the disasters they have occasioned are the center of concern for the studies in this collection.

The Oñati International Institute for the Sociology of Law hosted the workshop on disasters and sociolegal studies to extend the analysis of disaster within sociolegal studies, bringing in new scholars and shifting sociolegal attention from regulation and prevention to the effects of events that we delimit as disaster. Scholars of regulation map response to disaster that governs the mining, manufacturing and building that present the risk of disaster. People and organizations also mobilize the law to clean up after disaster: to shift the costs, to compensate, to hold people responsible (Haines 2009). The liability rules after mining waste ponds have failed and the allocation of property rights and responsibilities through the courts rather than through administrative agencies have been central to the governance of disaster, more than the prevention and governance of business activities that regulation sets as its task.

This collection complements the volume from a workshop at the Institute on Climate Change and Sociolegal Studies. Sudden weather-related disasters in Australia, or on the coast of the Gulf of Mexico have been made more likely by climate change. Climate change has been a way of explaining the need to do something; the disasters come when we don't respond, and some of the disasters they bring are slow-moving, or 'crescive' (to use the helpful term applied by Beamish 2002), including the sea rise that has required relocating villages and that has occasioned beautiful designs to bring back storm surge protection to coasts

that have lost marshland and oyster beds. Climate change can bring disasters, and disasters can have many precipitating events associated with them, from proximate sudden storms to choices about how to build and regulate nuclear power plants to the much broader framework of climate change.

Each disaster, crevice or sudden, has law and legal actors and organizations shot throughout: zoning decisions, decisions not to have or to differentially enforce building codes, decisions concerning whom to hold responsible and how, and decisions concerning compensation and assistance both through the state and through humanitarian associations. Disaster is variably juridified, or governed by reference to legal rules with accountability to legal institutions (Bilchner and Molinder 2008). How and why does juridification vary? Over time and cross-nationally? What does law *do* with disasters: solve them, enact through a public drama that states care for their subjects, soothe after disaster, or cause them?

## 2. Law as solving problems

Making disaster in law the object of study can invite the belief that the purpose of law is an instrumental one: law fixes problems and helps the people who draw our sympathy. Our sympathy now is grounded in a belief that states owe care to all their people, and the duty to care is not differentiated by status, or work history, or citizenship or race (Calhoun 2010, Ophir 2007, Roberts 2007, Sarat and Lezaun 2009); the sympathy can extend to the case level workers responsible for administering the law on the ground; people experience law after disaster in case level work, and it is there that sympathy or exclusion will play out. However, the people and organizations bringing on disaster and reproducing inequality in responding to it are some of the same people responsible for remedying disaster. Businesses that drill for oil meet a demand for oil with the blessing of local and national governments; when British Petroleum must pay compensation for the oil spill that follows, they will be negotiating the payments, though they will face new pressures for compensation. The same demand to drill for oil that brought deepwater drilling to the Gulf of Mexico will shape remedies after the oil blowout (Freudenburg and Gramling 2012). If law is to impose justice from outside the event, we would need to know who could help bring that justice to pass. As the 1984 disaster in Bhopal demonstrated, if state officials see it as their responsibility to keep businesses producing in their state before disaster, they will also do so when negotiating response to disaster. The activity governments promote—manufacturing batteries, drilling for oil—could be inextricable from the problem (Haines 2009). Why, then, the belief that law will solve problems?

The commitment in liberal states to individual autonomy and to the obligation of states to protect their citizens from harm puts faith in the capacity and willingness of elites to mitigate or respond to harm. The belief that legal institutions can compensate puts faith in their ability to act independently of the organizations they govern. If law's value is instrumental, those who change laws or regulations or distribute post-disaster assistance must mean to solve problems and law and government policy must be a toolkit to allow them to do so. Problems cannot be so entrenched that they are insoluble. A belief in law's instrumentality states a pragmatic perspective, bringing the aspiration to responsive law that scholars of regulation have shared (Ansell 2011, Nonet and Selznick 1978, Parker and Nielsen 2011). Liberal states claim responsiveness. However much they do not achieve it, that aspiration allows those mobilizing for justice to fault the state when it fails, sometimes bringing partial compensation or regulatory improvement. However, claims are difficult to make and legal responses can signal that states are doing something, rather than adequately and equitably compensating for harm or mitigating the harm of the next disaster.

If it's the job of the law to do something, then officials will mobilize the law to show they are doing something. Nothing invites the public drama of rescue more than a

disaster, and public policy can be public drama as much as public problem solving (Burke 1966, Edelman 1977, Gusfield 1981, Haines 2009). We might still find a close tie between the activities we want and the disaster to which it is inextricably tied, and remedying harm can accompany continuing a dangerous enterprise. Elites can articulate principles, and reassure publics; without pressure, they may make little progress toward mitigating catastrophe. A right to compensation or safety sounds much more satisfying than it is; without relentless pursuit to put the rights into action, the promise of rights is only the 'myth of rights' (Scheingold 1974). Reassuring publics can take different routes. Political elites claim expertise, control, and concern for citizens that stories of particular disasters often belie. Yet experts choose large scale works projects or development of business that put people at risk (Freudenberg *et al.* 2009). Companies build oil rigs and assure people of their safety when there is little experience with them, so estimates of the risks they pose are little more than guesswork (Clarke 1999). As Lee Clarke argues, assuring publics that risks are manageable when risk is both unmanageable and unknown falsely implies that elites are keeping people safe.

Alternatively, Pat O'Malley (2013) argues in this collection that official responses to catastrophe have taken a *defensive* rather than falsely reassuring stance, where prevention of any imaginable harm is the aspiration of governance. Unprecedented catastrophes and the risks of new activities can make for completely unknowable harms, as Clarke argues; O'Malley argues that officials will claim prevention and precaution through imagining the worst that could happen, not that elites falsely reassure us that all is well. O'Malley traces this response to September 11 and the United States report following it. He also draws on the precautionary principle embedded in European law, which Juli Ponce (2013) discusses in his overview of land use planning and disaster in this collection. That principle invites decision-makers to imagine the worst possible disasters from any decision, and to make decisions that will avoid them. O'Malley argues that the precautionary principle and its accompanying requirement of preparedness are so cautious that they counter any freedom to act in the world, guaranteeing only a freedom from harm. He also argues that the turn toward governing the self has brought the concept of resilience from the management literature; if bureaucracies are to treat any imaginable catastrophe as possible, and it is impossible to be fully prepared, individuals and communities must be ready to learn from them and take advantage of the opportunities they offer. Alongside the defensiveness O'Malley finds is what he calls hyper-entrepreneurialism embedded in resilience, where everyone should be ready to re-invent their lives in response to any imaginable disaster.

States are both hyper-vigilant and cavalier about the harms to which people are exposed. A way to explore that tension could be through differences in vulnerability, as well as differences in the groups mobilized around the terrorism and financial crises central to O'Malley's discussion, as well as the groups mobilized around floods and hurricanes. Within any country, poorer people are often at greater risk of harm from hazards. In this collection Valerio Nitrato Izzo (2013) takes that point, long made within the sociology of disaster, and develops it through a post-colonial interpretation of what law does. Within families and neighborhoods, men and women often bear different responsibilities at work, for family and for community, and those differences expand in disaster (Enarson 2012; Peek and Fothergill 2008, Tierney 2006). Who is to prevent harm, and harm against whom? Who is to be hyper-entrepreneurial?

O'Malley argues that parallel governance frameworks operate across Western industrial states: states are to defend against all risks anyone could imagine, and at the same time encourage their citizens to respond rapidly to disaster, embracing disaster as an opportunity for new endeavours. Defensive and hyper-entrepreneurial responses match the tension that Fiona Haines finds in governments responding to disaster while finding response impossible because the disaster is unavoidably tied to businesses they invite. Governments eager to bring

in capital investment induce companies to build manufacturing plants that can fail, with catastrophic results (Cassels 1993, Fortun 2004). The cleaning up that elites do afterwards, including investigating and imposing fines for wrongdoing, allocating responsibility, and paying to get people emergency supplies and housing do not ensure the next disaster does not happen. What, then, does law do if it only partially, sometimes addresses problems, and then only with persistent follow-through by people and organizations who are supposed to benefit?

Prevention and mitigation before an event happens is less expensive and causes less harm than responding to a disaster once it has happened. Therefore, the study of regulation has been tightly linked with the disasters to which new regulations can respond. Juli Ponce argues that the precautionary principle is essential to European law; the aspiration is to prevent harm when the costs of an activity are unknown and the results of a disaster could be costly. The principle signals states' commitments to protection, as Pat O'Malley argues; all the force of that principle can only be evident in the patterns of decisions states make. Many practices that are useful could have catastrophic results. In this collection, Lloyd Burton (2013) argues normatively that when states build in wildfire zones, they are making choices that will increase the chances that people will die, and that states too readily accommodate the desire to live in wildfire zones. Burton argues that the choice that is central to the liberal legal order—people are to choose their lives, and act on those choices—also dictates responsibility for preventing disaster. He argues that those who have not chosen to live with extreme hazards are those who should be most protected.

What political mobilization would bring states to implement that principle in the world that created the problems of risk and unequal vulnerability in the first place? Environmental justice movements have mobilized around unequal exposure to risk; understanding how protection has been accomplished, wherever it has, requires tracing how groups have organized to make claims, and how individuals have taken advantage of opportunities. Women and men are often positioned differently in the harm disaster brings because of responsibility for family and neighbors, or because gender segregation at work brings different risks. The claim to humanitarian care and sympathy in disaster bring opportunity where people can mobilize the law for themselves, or have access to representatives, even though the least well off are often the most harmed in disaster. Alka Sapat and Ann Margaret Esnard (2013) note that the earthquake in Haiti allowed people to claim temporary protected status, an immigration category that would allow them more legally stable legal residence in the United States than they previously had. That is a federal status, and federal law permits it. Federal policy alongside the hurricane brought many more people to local services in Miami. Local governments' need for federal money to meet a federal policy brought the new category of 'displacee' to Dade County as much as mobilization by those who wanted to claim temporary protected status. Local governments had learned that they needed to track people who had come to Miami after disaster; bringing people into view of the state served those displaced and the local governments more than the one unified state often envisioned in analyses of the state in disaster.

Care of a population has to provide that care efficiently and effectively, borrowing from a model of coordinated military response. Humanitarian crises are militarized, with the rapid distribution of goods and maintenance of order as goals (McFalls 2010). War provided the early models of the disasters to which states had to respond after having created them (Quarentelli 1998). In the United States, outside the individual compensation schemes for industrial accidents, federal disaster response first organized for civil defense (Rozario 2007). Militarized responses include mistrust of people helping themselves and each other outside of the hierarchy of organizations providing goods, even though non-governmental organizations are integral to humanitarian care, United States federal disaster response encourages responsibility, and both individuals and communities help

themselves and each other (Cooper and Block 2007, Sterett 2012). Public portrayals hold that good citizens care for themselves and others responsibly, yet people who governing officials suspected before the disaster fit stereotypes of disorderly, dangerous, needy miserable people who must be controlled through the military and police during and in the immediate aftermath of disaster, as Lisa Sun (2013) demonstrates in her synthesis of post-Katrina media coverage. Such perceptions allow officials both to require that people help themselves and each other and to rely upon a militarized response. A requirement that people should be responsible, and a suspicion that they are not, allows the inflammatory representation of people as disorderly and dangerous after a disaster, needing to be contained and policed. Lisa Sun argues in this collection that the repeated depictions of African American citizens as dangerous and disorderly after Hurricane Katrina invited violations of civil liberties and confirmations of the rightness of inequality in the United States, all in the name of protection. Sun argues that even noticing and discussing the misrepresentation of what people do, and countering it with stories of voluntarism, keeps the justification for militarized response before the public. Sun's critique of the misrepresentation of how people act after disaster fits neatly with the possibility that what we see is elite panic inflicted on the people for whom that elite is charged to care (Clarke and Chess 2008).

The belief that states are to protect their people is a normative commitment common to several of the studies here; if states are to protect, finding that they do not is implicitly a call to action. To criticize states for allowing people to remain in dangerous places or subject to dangerous industrial accidents requires that we believe that states will respond when reminded that they are neglecting people or putting them at risk for fires, floods and oil spills. As we will see in the next section, while within liberal legalism law explains itself as protective, law contributes to disaster by allocating property rights to allow dangerous activities.

### **3. Juridification of disaster: legal judgments as cause, transformation, and gesture**

Giorgio Agamben's generative analysis of disasters and emergencies posits the disappearance of the rule of law, with states using the situation to suspend legal aspirations toward similar treatment across cases, predictability, rule-following, and that independent institutions be held accountable while making decisions (Agamben 2005). If the emergency happens in a system dense with rules and support structures that support legal accountability of institutions, we might expect that the lawyers, insurance companies, local governments facing new responsibilities without new money to pay for them, and institutionalized charities, will want to bring their preferred rules to emergency (Haines 2009).

The global proliferation of accountability to courts, international and supranational legal instruments, and an aspiration to legality, color the claims of advocacy groups cross-nationally and shape the governance of disaster as of other policy fields. However, disaster has been an opportunity for states to operate in exception, or outside the increasingly dense juridical practices that govern late modern states. How and when are the disruptions of disaster assimilated to the legal structures of late modern states? Juridification varies cross-nationally and over time; the global appeal of supranational instruments and courts can draw in lawyers and transnational advocacy groups, making disaster cross national boundaries even when the people who are hurt are within one country (Cassels 1993, Fortun 2004).

The forward-looking regulation of business can fail even after disaster when we know little about risks, and when there is a strong mandate to continue the risky activity. The allocation of property rights that the common law has historically done can allocate responsibility long after those responsible are gone, and it does not allocate responsibility well when disastrous outcomes are the result of many individual actions: when massive mudslides result from many small mines. Arthur



McEvoy (2013) uses three case studies in which common use of resources and the litigation that assigns property rights and liability then creates problems. If mining does not result in liability rules that require the miners to pay attention to the downstream effects of what they do, there is little reason for miners to take future costs into account. Floods with damage that results from mining have been common enough in the United States from nineteenth century California to the twentieth century coal mines of West Virginia to lead to the suspicion that they are normal accidents (Perrow 1984). The mining created the problem. So did the laws that made the property rights in mining. Liability rules allocate responsibility retroactively; in California those who had mined the hillsides in the foothills of the Sierras were long gone by the time the hillsides washed away and filled the Sacramento Valley with cement-like sludge. Furthermore, responsibility was not concentrated in one miner or mining company. The retroactive compensation that liability rules and judgments provide, the possibility that people can be long gone, and the diffusion of responsibility when harm has cumulated across multiple actors all make accountability via lawsuits unlikely. Legal responsibility for harm can be individuated and isolated to the case at hand and to the most recent actor, although problems have long histories; the liability system truncates inquiry into the broader role property rules play, and how property rules contribute to normal accidents. In his discussion of irrigation and saturation of the ground in La Conchita, California, McEvoy also argues that liability rules are pointless when they focus on the current landowner and the initial landowner is in sight when the mudslides come.

Although property rules can make mud slide down a mountain, holding someone responsible only when the economic activity has disappeared, legal principles pay homage to prevention through planning as a liability rule, as Juli Ponce explains in this collection. He argues that national state law in Europe relies upon land use planning to prevent harms. States are held responsible when they allow an activity in a wrong place. States work to design out crime by keeping places publicly accessible and under surveillance. Studies of regulation draw attention to business *activity*; Arthur McEvoy's examples of landslides and fisheries that collapse as well as Juli Ponce's story of responsibility for a flood in a campsite remind us that disaster happen in *places*. The late modern governance of space alongside governance of activity constitutes the governance of disaster.

By definitions in statutes and the practices of humanitarian organizations, disaster disrupts the routines of daily life. It is limited in time and space (Redfield 2005). How? Not in the nature of an earthquake, or an industrial explosion, or a fire, where years later people may be grieving lost children, or artwork might remind us of the losses. The effects of disaster can be notoriously difficult to contain: the industrial explosion at Bhopal intensified the public relations in which chemical firms engaged, changing from 'better living through chemistry' to touting the environmental responsibility multinational corporations take (Fortun 2004). Turning to legal engagements highlights how often disasters cross boundaries, and the legal work it takes to contain or recognize disaster and its survivors. Few have studied the diaspora of disaster (Weber, Peek, and Social Science Research Council Research Network on Persons Displaced by Hurricane Katrina 2012), and how law constitutes diaspora: Alka Sapat and Ann Margaret Esnard argue in this collection that the delivery of services to the victims of the earthquake in Haiti happened in Miami, so tracking American delivery of services, and American regulation of immigration, is central to understanding governance of the earthquake in Haiti. Disasters change place through art: in his 2012 show in Washington, D.C., the Chinese international art superstar and dissident Ai Weiwei (2012) included rebar (construction material) recovered from the schools that disintegrated in the Szechuan earthquake in 2008. A long snake of backpacks ("Snake Ceiling"), one backpack representing each dead child, wound its way through the art gallery to remind viewers of how many children had died. Legal institutions define official

ends and beginnings of responsibility when the effects still ripple through people's lives. Legal processes delimit disaster, not only in statutes but in the process of defining, preventing, and allocating responsibility for disaster in courts and administrative agencies.

Cleaning up toxic waste has been the kind of problem in which the costs are great and the benefits of the business that generated the waste long gone. With such an impossible problem, law may only be able to signal compliance with public priorities, rather than remedying the harms. As Petra Hiller (2013) explains in her analysis of administrative decision-making in Germany concerning toxic waste cleanup, even organizations charged with decontaminating land can find that the risk they manage is different from what the risk statutes charged them with managing. Cleaning up toxic waste after German reunification proved to cost more than the German state wanted to spend, when it also had the expenses of reunification. Hiller argues that the responsible organizations redefined the problem for themselves so they could solve it and avoid the political risks of failure. Organizations transform law, and in the case she discussed the responsible organizations made the toxic waste problem into one of risk of political risk for an organization. The risk of injury from contaminated land became the risk that the state agency would find itself under threat because it disrupted economic development that German authorities believed was particularly important after reunification, with the fear that the lack of economic development in East Germany would hinder all of Germany. Law within organizations changed the risk from one of harm to one of political failure.

How to reconcile the place of law in bringing on disaster or avoiding addressing it, and the belief that law is humanitarian and ameliorates the harm of disaster? First, disasters mobilize people, bringing people together within the law who may not have been working there before. Second, legal systems are loosely coupled organizations, with different courts and administrative agencies making decisions over time; the courts that would hold mining companies accountable for slides in Sacramento, California are not the same courts that earlier allocated water rights. Next, the instrumental vision of law misperceives the many times that law has been a site for constituting and enacting public dramas of care, and the responsibility of liberal legal states (Burke 1966, Edelman 1977, Gusfield 1981). Any actual change in behavior or mitigation of harm may be beside the point or at least not the only point for those with legal authority. When advocacy groups can follow through, insisting on implementation of the claims to care states make, sometimes the commitment to care can mitigate harms (Edelman 1977).

#### **4. Law, social welfare and disaster**

Legal actors' affirmation of legal rules that will bring about disaster would make us question when and how legal actors constituted by legal rules can ever act to mitigate harm. Nevertheless, the expectation that governments will care for their population allows advocates to make claims against the state. Compensating people for harm after disaster is grounded in sympathy and need rather than in insurance against the injuries of industrial urban life in which the modern welfare state was grounded (Beck 1992).

How would one get from the principle of protecting the most vulnerable, particularly those who have not chosen risk, to a practice of doing so? Large-scale spectacular disasters have led to compensation that values people based on losses, and those who lose more are often not the most vulnerable (Feinberg 2005). Even so, the story of helpless victims injured by forces well outside their control is compelling, and one that political regimes have used in mobilizing support for assistance. Michelle Landis Dauber has argued that the grounding of the United States welfare state was in disaster relief, and in assistance to those who seemed most helpless. She tells her story as one of the disaster of the Great Depression, and traces

advocacy for the poor after the 1937 Mississippi River flood, noting slippage between explaining people's problems as grounded in a natural hazard they could not control and as grounded in long-term poverty made worse in the Great Depression, long term problems have less often drawn sympathy in the United States (Dauber 2005). That time was one of consolidation and creation of many federal spending programs, building from what states had been doing in the previous thirty years. Disaster is a provocative grounding for the welfare state, framing problems as indisputably outside one's control and therefore meriting state assistance. It is an invitation to expand the definition of disaster when other claims cannot gain a political footing. In other New Deal programs, money did not flow from the federal government to poor African Americans in the South.

Michelle Meyer (2013) shares the normative commitment to law as a force that will mitigate harm. She builds from studies of welfare states and definitions of people's needs to argue normatively for disaster relief administered through the institutions of the state. What she offers as prescription is what Giorgio Agamben and Ulrich Beck have argued is a fact of bureaucratic welfare states: they can provide disaster relief because they have rules and practices bringing people into the governance of the administrative state. States have required regularized biographies that fit into state-inscribed categories, including work, parenting and retirement, all of which are insured against the disruptions that risk brings. States are to be held responsible for the care of their citizens, and they can exercise that responsibility by choosing the appropriate means to the end of saving lives. She catalogues the range of vulnerabilities that people have, partially constituted by law. She argues that the risks people face in disaster complement or add to the traditional risks that welfare states have been addressing for one hundred years: the risks of industrial society, including injury, death, disability and retirement after working. She argues that when states ignore those risks, they create a misalignment between the risks people increasingly face and the responsibilities states actually take for their people. Her work points to the possibility of a different kind of analysis: how have risks shifted? More people are at risk for floods on the coasts because more people live on the coasts than did one hundred years ago; in Western postindustrial states, fewer people are at risk for death in fires than they were in the nineteenth century thanks to building codes and practices. Her analysis counters Michele Landis Dauber's argument that in the United States, disaster assistance has provided a ground for extending relief that is more sacrosanct than the industrial welfare state and indeed that disaster provided the grounding for long term relief in the United States. Both analyses are fresh in incorporating the risks of disaster into the framework of the welfare state, and both point the way toward deeper integration of the law of disaster response into legal frameworks of need and of what people deserve (See also Ophir 2007, Sterett 2009). For example, Meyer argues we need to care for people harmed by disaster as well as we do people who have grown old, and Dauber argues we need to attend to how disaster relief has trumped other claims to state assistance.

What happens to disaster relief when the social insurance model of the welfare state is being cut, as it has been after the global contraction after 2008? Throughout Western Europe countries have been subject to austerity measures. Conversely, integrating post-event temporary assistance with longer standing welfare state insurance would lead to considering how people put together the assistance and work they need to live. People tap more than one form of assistance—that is, people who collect old age pensions also collect housing assistance after disaster—so starting with how people live after disaster would capture how people experience disaster relief as part of making a living, including work, housing assistance, and public pensions. Starting with what people live on and how they understand it would also illuminate the inequality in relief that sociologists of disaster find. Legal systems divide work from social insurance and

from disaster assistance or compensation. Analysis that begins from people's lives need not divide them.

Disasters and their potential for disruption of life have been gaining increasing attention, occasioned by the rise of global humanitarian assistance, debates concerning what global climate change will mean for national states, and the inability of international treaties to mitigate harms. As Sapat and Esnard argue in this collection, disasters often cross legal boundaries; the model that has communities helping themselves in their own disaster do not work when people flee, as when Haitians fled after the 2010 hurricane. After disaster, people engage legal rules that are new to them. Communities remain important in mobilizing the law, and displacement requires asking who is the community. That question can provide insight into the significance of race and ethnicity. People are not all the same in disaster, reduced to a common, bare element of humanity; communities are understood to share a culture, race or ethnicity (Sterett, Reich 2007). Sapat and Esnard argue that diasporas were central in assistance after the earthquake.

### **5. Voluntarism and NGOs: Law placing responsibility outside itself**

Without bureaucratic regulation and compensation that came with the modern welfare state, whatever help people got after fires and floods came from neighbors, family and each other (Dynes and Tierney 1994, Krainz 2012). That doesn't mean it was enough; it's just what people had, and law might clean up the aftermath by providing relief for people who were disabled in accidents or fires. Now law intertwines with individual and community response; law designates voluntary organizations to respond to disaster, and emergency response teaches people that they must rely on each other, and on their ability to store goods for use after disaster. Disaster response coaches people to take responsibility for their lives, and that those who respond first to claims in disaster are neighbors, not firefighters or federal agency officials—the officials middle class people in Western postindustrial states are most likely to believe are there to help. Once disasters strike, people often prove generous in helping each other and relying upon what they have to hand and what they could put aside. Those who have a harder time helping themselves during and after disaster often are isolated, or have disabled or very young or very old family members they can't leave behind in order to flee disaster. Yet in the public stories told, officials ask people to be responsible for themselves, while media accounts deplore irresponsibility, dependency, fraud and need. Social welfare payments for the elderly and disabled that have been instituted in late post-industrial states do not require that people work, making denunciations of dependency particularly troubling

The humanitarian impulse (Sarat and Lezaun 2009) to care for people after disaster is one that has spread throughout the world; non-governmental organizations have globalized the response to disaster. Global humanitarianism is what *Médecins Sans Frontières* and its sister NGOs do in the global South (Redfield 2005). Humanitarian response after disaster is something that happens to people in poor countries, with the sudden disruption a hurricane or tsunami brings, killing and displacing more people than they do in richer countries, and the short term rush of volunteers from abroad is targeted to places far from the global north. Humanitarian assistance in response to need is well-institutionalized in non-governmental organizations that operate within richer countries as well, including the Red Cross, the Salvation Army, and groups of volunteers that come together in localities after flood and fire. The aftermath of Hurricane Katrina in the United States brought globalization of humanitarian assistance back to the United States: global guidelines for internally displaced people framed the flow of international donations in the United States. Hurricane Katrina and the fall 2012 storm Sandy invited renewed attention to the place of humanitarian assistance organizations such as the Red Cross within the United States. After Katrina, as Victor Flatt and Jeff Stys (2013) describe in this collection, multiple nonprofit organizations were charged with delivering assistance.

Accomplishing state purposes through NGOs and private charity mobilized for an event has long been the practice for aiding people who fled fires, suffered through drought, and experienced floods. The Red Cross is legally designated as a response agency for disaster in the United States. In the great Mississippi flood of 1927, the Red Cross allocated aid and helped to implement policies that starved out Black people who were stranded on levees (Barry 1998). The nongovernmental organizations frequently praised for their flexibility and generosity, their ability to respond without being bound by the bureaucratic intransigence of governments, are deeply intertwined with states and their purposes.

Valerio Nitrato Izzo (2013) theorizes disaster as postcolonial, with people in poor countries paying the price of disaster, whether through deaths in factory fires or greater vulnerability to flooding. Inequality in experiencing disaster is both internal to countries and happens across borders; Nitrato Izzo theorizes the vulnerability experienced within wealthier countries as a matter of internal postcolonial order, explaining the vulnerability of the Gulf Coast after Hurricane Katrina through Louisiana's status in the United States. Nitrato Izzo integrates disaster into broad themes concerning how law tracks international inequality, and his argument is an antidote to the appeal of the popular belief that disasters are equalizers, striking rich and poor alike. That perspective has frequently been found wanting within sociological analyses of disaster (Tierney 2006); the question for sociolegal studies is how law either systematically contributes to or mitigates inequality. Nitrato Izzo's postcolonial perspective is also a shift from Beck's argument that risk has become impossible to apprehend through the senses, widespread, with harms far from their origins. Although Beck describes risk as delocalized, Nitrato Izzo's innovation is in linking post-coloniality, law and disaster as analytical categories. Inequality across borders still allows for inequality within borders, and the large storms such as Sandy on the East Coast of the United States in fall 2012 are a reminder.

Disasters mobilize communities, and local communities often cannot meet the yawning need that loss of homes and family leaves. Coal mining disasters in West Virginia have continued to color the organization of disaster assistance in the United States, including the significance of voluntary assistance and the belief that it is tied to the local community that suffered the disaster, where neighbors help neighbors. The world of highly professionalized charities that work internationally, with contracts for volunteers and benefits for employees, contrasts sharply with the belief that communities care for their own after a disaster (Chandra and Acosta 2009, Hull 2006). After the industrial explosion in Bhopal in India, women whose husbands were too disabled to work came together in frustration, desperation and anger to claim compensation from the state (Fortun 2004). After the storm Sandy that hit the East Coast during the fall 2012 presidential election in the United States, the Republican candidate for president argued that localities and churches were best equipped to know what their communities needed, to which the American satirist Stephen Colbert (2012) responded that clearly the best people to respond to disaster were those whose homes had just been obliterated by it. The localism and voluntarism of help predated welfare state assistance, and captured what communities did after fires, drought, insect devastation and earthquakes (Krainz 2012). The bureaucratization of the welfare state and the accompanying bureaucratization of assistance would seem to displace the celebration of local emergent organizations, however much they might be necessary in the immediate aftermath of disaster. Administration by the states and by bureaucratized charities would also seem to mitigate the inequality that scholars have deplored in the distribution of assistance after disaster. Yet the celebration of voluntarism continues, and disaster response first coaches people to be ready, and to keep phone numbers to hand and a fresh supply of water nearby. Voluntary organizations are designated by law to provide relief and they operate responsively to need outside the law.

Advice for citizens raises questions about whether state practice will even act upon the principle that states are responsible for care of the citizenry after disaster. The resilient individual has been invented for governance in the uncertainties of late modern life. Regulation aspires to preventing disaster. In contrast, a resilience framework holds that disasters are inevitable, pointing to the onslaught of climate change and the increasing numbers of people who live on the coasts and in zones that are subject to drought and severe storms. If disasters are inevitable and states cannot care for everyone, then individuals must be resilient, Pat O'Malley argues that we are far from the welfare states with their risk assessment of predictable risks of the industrial state. Instead, people are now to be ready for anything, whether the devastating fires in the Australian outback, storms and droughts or the financial disasters of the early twenty-first century. The risks are unknown, of a hugely varying kind, and need to be embraced as opportunity rather than events for which people will need to be compensated. Properly designed regulation could still aspire to preventing the disasters of industrial fires, which sweep through buildings that have locked doors and, inevitably, kill people. Those accidents are still comprehensible in the twentieth century categories of the state. O'Malley argues that in the newer literature of internalized self-governance people are to be ready to become someone new when disaster strikes. O'Malley draws on management advice. According to O'Malley, the state is abandoning responsibility for managing known risks; instead, the world is one of uncertainty without predictable risks. Prevention is impossible and compensation for harm untenable. What is left is voluntarism and people who can move, rapidly develop new skills, and who keep everything they might need in their basement.

## 6. Conclusion

The Buffalo Creek disaster of 1972 in West Virginia in the United States was the result of a failed dam that had been built to hold the waste from mining. The damage that it unleashed killed 125 people, and generated vast lawyering effort and attention, including Kai Erikson's beautiful and meticulous study of the loss of community that resulted from the flood (Erikson 1976). Even so, the legal settlement did not compensate people fully for their losses (Stern 1976). The settlement people in Bhopal received after the 1984 Union Carbide disaster often did not even compensate people for out of pocket expenses, and the Indian government did not want to cripple the international chemical industry in their country. Law consistently fails in compensating suffering after disaster *despite* the profound sympathy victims of disaster draw and the commitment in liberal states to caring for people. Sociolegal scholars can explain how that can happen and provide an explanation beyond the disappointment that meets every failure. Scholars of regulation within sociolegal studies take disaster as a failure and explain the mobilization for further regulation after disaster. If disaster is a failure, the mobilization of law and popular interpretation of rights and responsibilities during disaster is also a failure. Explaining how law works within disaster could disassemble the belief that law protects people, and that the problem with disaster is just that there needs to be more laws. From the point of view of regulation, disaster is already a failure of law. To then expect law would adequately compensate or fix the problem is to fail to take the analysis at the heart of studies of regulation far enough.

Rights embedded in administrative agencies and articulated through courts would seem to offer the hope of protection after disaster embedded in the law. International guidelines for displaced people list a right to judicial enforcement (Kromm and Sturgis, 2008). Expansions of rights are always based in analogies to something that already has a desired outcome, and advocates for care of populations suffering from environmental damage argue about whether people are thereby refugees (McAdam 2010, Pigué 2013). Refugees have well-established international protection, with rights institutionalized through both states and non-

governmental organizations. Both sides in that debate assume that the law will indeed protect people. However, rights are easy to avoid without advocates to pursue implementation (Scheingold 1974, Scheingold and Sarat 2004). Remedies for harm after disaster are complex and negotiated, with the same political forces in the legal environment as the political environment that predated the harm. The lawyers for the victims of the disaster faced experienced lawyers who worked for a corporation that had few limits on the resources they could put into the case.

Law causes problems when it allows miners to strip earth bare; how it compensates then tells organizations whether causing disaster will cost them in a way that could reshape decision-making. Compensation for harm has a poor track record. Compensation can work like a lottery system, with some people doing very well and many getting only pennies on the dollar for the material harm done to them, let alone the less measurable losses of community. Early efforts in the United States included prosecutions for the Triangle Shirtwaist Factory fire in which hundreds of young women workers died, and myriad individual claims for compensation after industrial accidents. The tort system found doctrines that exempted employers from accountability for individual harms, and the Triangle Shirtwaist Factory Fire ended in exoneration for the factory owners (Von Drehle 2004). Advocates argue for laws, whether supranational or national liability. Tracing how lawyers, judges, case-level decision-makers and non-governmental organizations have mobilized law and have met or often disappointed the hopes embedded in a belief that law will fix problems is a crucial contribution that sociolegal scholars can make. As Tom Birkland (2013) shows in his overview of contributions to both disaster journals and sociolegal studies journals, too little has been made of the mobilization and understanding of law in disasters; disasters sometimes refocus scholarship as they refocus political agendas. We hope that this collection is only one part of expanding scholarship on legal mobilization, and a politics of rights, need and care in and after disaster.

In regulation, law has been widely critiqued: accountability to legal rules that pull in multiple directions can lead to a formalist rule compliance that does not advance the goal of reducing risks (Haines and Sutton 2003). Emergent understandings of law have turned to reaching goals that a regulator and regulated group reach together rather than commanding adherence to rules (Parker and Nielsen 2011). The gain in flexibility recognizes impossibility in the traditional model of law as accountability to publicly knowable rules. Even as students of regulation analyze the move toward 'regulating self-regulation' as a flexible, goal-oriented strategy that could accomplish goals and reduce risks, accountability for disasters that have already happened continues apace, in courts and in government compensation commissions. Since disasters draw media attention and the visible suffering of people who live through disaster draws sympathy, it demands short-term care in liberal states. Who is responsible for harm and or care and how legal institutions impose rules on a disorderly process would reveal as much about legal systems as it would about managing inequality and responsibility.

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