

**ESSAY: DECIPHERING RISK: SEX OFFENDER
STATUTES AND MORAL PANIC IN A RISK SOCIETY**

Bela August Walker*

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* Visiting Assistant Professor, Fordham Law School. For their thoughtfulness and insight, I am indebted to Noa Ben-Ashar, Jennifer Flynn, Katherine Franke, Jack Greenberg, Henry P. Monaghan, Kimani Paul-Emile, Dan Richman, Kendall Thomas, Patricia Williams, and the participants of the Columbia Law School Associate Workshop.

Across the country, civil sanctions for sex offenders are increasing. Society's rising anxieties about sexual abuse lead us to employ seemingly ineffectual yet oppressive legislative tools to control and prevent it. This essay examines these growing fears and resulting legislation through the lens of moral panic and risk society theories. In a risk society as envisioned by scholar Ulrich Beck, people become overwhelmed with increasing industrial threats they are unable to control or even comprehend. A moral panic, the quintessential witch-hunt, can represent a comprehensible risk within risk society. Regulation of crime becomes a tangible way to control risk and quell fears. Through sex offender legislation, we an over-anxious risk society attempts to assuage that anxiety by branding and banishing deviants, a classic moral panic approach to controlling the threat.

Scholars have conventionally described the sexual abuse movement as a sex panic, or moral panic. While many similarities exist to moral panic, I argue that that explanation is insufficient. Sex offender legislation cannot be explained by solely a moral panic or risk society theory. Rather, it is important to understand this regime as a moral panic created in and molded by a risk society, producing a state of perpetual moral anxiety.

I. INTRODUCTION

Across the country, civil sanctions for sex offenders are multiplying.¹ In addition to existing federal legislation, state and local governments are enacting increasingly strict regulations.² In California, someone convicted for public urination is forever branded as a sex offender.³ In twenty-eight states, statutory rape is a strict liability crime, but remains a registerable sex offense.⁴ In other states, so is obscenity and false imprisonment of a minor.⁵ A formerly incarcerated sex offender can find life outside almost as

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1. Sarah E. Agudo, Comment, *Irregular Passion: The Unconstitutionality and Inefficacy of Sex Offender Residency Laws*, 102 NW. U. L. REV. 307, 308 (2008).
 2. See discussion *infra* Part I.B.
 3. See CAL. PENAL CODE § 314.1 (West 2008).
 4. See Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295, 324–25 (2006).
 5. See Steven R. Morrison, *Creating Sex Offender Registries: The Religious Right and the Failure to Protect Society's Vulnerable*, 35 AM. J. CRIM. L. 23, 45 (2007) (obscenity); Ofer Raban, *Be They Fish or Not Fish: The Fishy Registration of Nonsexual Offenders*, 16 WM. & MARY BILL RTS. J. 497, 497 (2007) (false imprisonment).

restrictive as in prison.⁶ Twenty-two states now have residency restrictions for sex offenders.⁷ In Florida, a sex offender cannot live within one thousand feet of any “place where children regularly congregate.”⁸ In Louisiana, they are banned from living near video arcades.⁹ In Fort Lauderdale, sex offenders are paroled to live under bridges; parole officers can find no other locations that conform to local statutes.¹⁰

The increasing legislation is inspired by proliferating fears about sexual abuse and seeks to quell those fears by defining and controlling the threat.¹¹ The civil regime permanently brands a small sector of ex-offenders with criminal status.¹² Offenders shift from being persons convicted of certain acts to becoming permanent carriers of an inherently degraded status. In this way, the legislation effectively banishes sex offenders from the community.¹³ Despite the rapidly increasing scope and severity of the civil legislation, the majority of sexual abuse continues unabated, in part because public attention and enforcement efforts focus on stranger offenders, while friends and family commit at least ninety percent of child sexual abuse.¹⁴

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6. See Mark Loudon-Brown, Note, “*They Set Him on a Path Where He’s Bound to Get Ill*”: Why Sex Offender Residency Restrictions Should Be Abandoned, 62 N.Y.U. ANN. SURV. AM. L. 795, 795 (2007).
 7. See Chiraag Bains, *Next-Generation Sex Offender Statutes: Constitutional Challenges to Residency, Work, and Loitering Restrictions*, 42 HARV. C.R.-C.L. L. REV. 483, 483 & n.5 (2007).
 8. FLA. STAT. ANN. § 947.1405(7)(a)(2) (West 2001 & Supp. 2009).
 9. LA. REV. STAT. ANN. § 14:91.1.A(2) (West Supp. 2009).
 10. Isaiah Thompson, *Sex Offenders Set Up Camp; The Julia Tuttle Becomes a Colony; Politicians Pass the Buck*, MIAMI NEW TIMES, Dec. 13, 2007, <http://www.miaminewtimes.com/2007-12-13/news/sex-offenders-set-up-camp/full/>.
 11. See discussion *infra* Part III.C.
 12. See *supra* notes 1–10 and accompanying text (reviewing increasingly stricter state-residency requirements applicable to those branded as sex offenders for acts deemed criminal by state legislatures including public urination, statutory rape, obscenity, and false imprisonment).
 13. See Michael J. Duster, Note, *Out of Sight, Out of Mind: State Attempts to Banish Sex Offenders*, 53 DRAKE L. REV. 711, 717–18 (2005).
 14. *National Child Abuse Statistics: Child Abuse in America*, CHILDHELP, <http://www.childhelp.org/pages/statistics> (last visited Jan. 8, 2011); see also Jennifer M. Collins, *Lady Madonna, Children at Your Feet: The Criminal Justice System’s Romanticization of the Parent–Child Relationship*, 93 IOWA L. REV. 131, 133, 150, 157 (2007) (reiterating that only three percent of the defendants who sexually assaulted children under the age of six were strangers); Duster, *supra* note 13, at 717 (“[E]vidence [shows] that individuals known by the [child] victim [are] most likely to be the offenders of concern.”).

Society's rising anxieties about sexual abuse lead us to employ seemingly ineffectual, yet oppressive, legislative tools to control and prevent it. This essay examines these growing fears and resulting legislation through the lens of moral panic and risk society theories. Sex offender legislation is both disproportionate and misdirected because of a distortion in the process of risk detection. In a risk society, people become overwhelmed with increasing industrial threats they are unable to control or even comprehend. A moral panic, the quintessential witch-hunt, can represent a comprehensible risk within risk society. Regulation of crime becomes a tangible way to control risk and quell fears. In sex offender legislation, we see the efforts of an overanxious risk society to assuage that anxiety by branding and banishing deviants, which is a classic moral panic approach to controlling the threat.

Indeed, scholars have described the sexual abuse movement as a sex panic, or moral panic.¹⁵ While many similarities exist to moral panic, I argue that that explanation is insufficient. A moral panic is a sudden eruption of hostility towards a specific group out of proportion to any harm they cause.¹⁶ In the case at hand, released sex offenders are the focal point for all anxiety: They represent sensationalized deviants who threaten the sanctity of the community and its children.¹⁷ The state of perpetual moral anxiety out of which sex offender legislation arises is similar to a moral panic, but is expressed in the context of a risk society and legislated as a risk society fear.¹⁸

The risk society is a period we have entered in late modernity where anxiety over manufactured risks overwhelms other worries, creating a world fraught with insecurity and unpredictability.¹⁹ There is no specific group to hold directly responsible; nevertheless, intangible, indefinable risks consume us.²⁰ Concerns over sex

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15. See, e.g., Daniel M. Filler, *Terrorism, Panic, and Pedophilia*, 10 VA. J. SOC. POL'Y & L. 345, 347–48 (2003); Janice M. Irvine, *Transient Feelings: Sex Panics and the Politics of Emotions*, 14 GLQ: J. LESBIAN & GAY STUD. 1 (2007).
 16. See STANLEY COHEN, *FOLK DEVILS AND MORAL PANICS: THE CREATION OF THE MODS AND ROCKERS* xxii (Routledge, 3d ed. 2002) (1972).
 17. See Filler, *supra* note 15, at 360.
 18. See discussion *infra* Part II.B (discussing sex offender scares as moral panics); Part III.B (analyzing how sex offender moral panics are used to reduce anxieties in our risk society).
 19. See Sheldon Ungar, *Moral Panic Versus the Risk Society: The Implications of the Changing Sites of Social Anxiety*, 52 BRIT. J. SOC. 271, 282 (2001).
 20. See Marc R. Poirier, "It Was the Best of Times, It Was the Worst of Times . . .": *Science, Rhetoric and Distribution in a Risky World*, 53 CASE W. RES. L. REV. 409, 428–29 (2002).

offenders become a way to quell greater anxiety, as a concrete problem with concrete objects that can be acted against, unlike other risk society risks. The surrounding circumstances create a moral panic that is longer and more insidious than that anticipated by classic moral panic theory. The fact that sex offenders seem to be a defined, controllable risk justifies ever-increasing surveillance and governmental intrusion. The result is an escalating system of laws that will not fade away, trapping society into a perpetual witch-hunt. The anxieties of a risk society sustain a moral panic that might otherwise subside.²¹

Sex offender legislation cannot be explained solely by a moral panic or risk society theory. Rather, it is important to understand this regime as a moral panic created in and molded by a risk society. This state of perpetual moral anxiety is expressed through the risk society and legislated as a risk society fear.²² In particular, it uses typical resources and rule-making developed within the context of a risk society, such as increased state involvement and government surveillance.²³

Understanding why sex offender legislation has developed in this disproportionate and misdirected manner is crucial to reforming this system. This reform is necessary because of the increasing impact of our dysfunctional sex offender regime on society.²⁴ In this new paradigm, persons identified as “sex offenders” are targeted in a

21. See Sean P. Hier, *Risk and Panic in Late Modernity: Implications of the Converging Sites of Social Anxiety*, 54 BRIT. J. SOC. 3, 6, 18–19 (2003).

22. See Duster, *supra* note 13, at 712; see also Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 CRIMINOLOGY 449, 453, 466 (1992) (noting the rising trend of penal systems targeting groups of people rather than individuals); Wendy Hollway & Tony Jefferson, *The Risk Society in an Age of Anxiety: Situating Fear of Crime*, 48 BRIT. J. SOC. 255, 263, 265 (1997) (“[D]iscourses that appear to . . . produc[e] identifiable victims and blameable [sic] villains are likely to figure prominently in the State’s ceaseless attempts to impose social order.”).

23. See ULRICH BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* 78 (Mark Ritter, trans., 1992).

24. See Agudo, *supra* note 1, at 337 (“[M]ost anti-crime groups would actually prefer that [sex offender] laws be narrowed.”); Amber Leigh Bagley, Comment, *An Era of Human Zoning: Banishing Sex Offenders From Communities Through Residence and Work Restrictions*, 57 EMORY L.J., 1347, 1377–88 (2008) (arguing that human zoning regulations fail to protect children, create a false sense of security, increase recidivism, and stigmatize perpetrators instead of rehabilitating them).

manner uncorrelated to their statistical likelihood of re-offending.²⁵ Offenders may have performed their required time, but they continue to carry their prisoner status with them, subject to ongoing regulation as well as social discrimination. Civil sanctions have become increasingly significant in defining the sex offender.²⁶ Legislative restrictions place ever-increasing controls on this group, creating a status that permanently determines what they can do, where they can live, and even which physical spaces they can occupy.²⁷ These laws transform offenders from persons convicted of certain acts to permanent carriers of an inherent degraded status, while ignoring the vast majority of offenders: friends and family members.²⁸

Section I of this Article addresses sex offender legislation, focusing on the burgeoning historical development of sex panics and sex offender legislation. Section II defines moral panic and explores the ways in which the current anxieties over sex offenders are similar and dissimilar to the traditional moral panic. Section III discusses the risk society and examines the way that it transforms moral panic.

II. SEX OFFENDER LEGISLATION

A. *Historical Development*

The first modern sex panic began in the mid-1930s when a set of murders in New York and Michigan brought about a state of “mass hysteria.”²⁹ In Chicago and New York City, local authorities initiated the first sexual offender registries.³⁰ Beginning in the mid-1940s, a spate of sexual crimes again brought the issue to the forefront.³¹ Subsequently, states passed various local “sexual psychopath” laws, allowing for extended commitment.³² California enacted the first

25. See Agudo, *supra* note 1, at 309; Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step from Absurd?*, 49 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 168–69 (2005).

26. See Bagley, *supra* note 24, at 1350–54.

27. See Duster, *supra* note 13, at 718–19 n.41 (listing state laws that ban sex offenders from areas near schools, child-care facilities, parks, and other areas where children congregate).

28. See Collins, *supra* note 14, at 164.

29. ESTELLE B. FREEDMAN, *FEMINISM, SEXUALITY AND POLITICS* 129 (Thadious M. Davis & Linda K. Kerber eds., 2006); PHILIP JENKINS, *MORAL PANIC: CHANGING CONCEPTS OF THE CHILD MOLESTER IN AMERICA* 49–50 (1998).

30. JENKINS, *supra* note 29, at 80.

31. *Id.* at 52–55.

32. *Id.* at 80–81.

statewide registration law in 1947.³³ The public encouraged the police in raids against “perverts”—which in practice meant any men found at the local gay bar.³⁴ These men often ended up incarcerated or institutionalized.³⁵ Outside of this context, however, the laws were rarely used.³⁶ The regulations were viewed as too harsh.³⁷ Moreover, the greater context for such government regulation was not in place.³⁸ The populace balked at the intensive state intrusion required.³⁹ By the late 1950s, sexual offenders had dropped from the front page and continued in relative obscurity through the 1960s.⁴⁰

In the late 1970s, child sexual abuse again arose as a significant political issue. In this period the phrase “child abuse” changed from referring to violence against children to being understood as child sexual abuse.⁴¹ Public anxiety initially galvanized around child pornography rings.⁴² In the late 1970s, a set of stranger abduction scandals also served to generate concern.⁴³ In this period, there was greater focus on rape and incest, as the growing feminist movement brought these issues to the forefront.⁴⁴

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33. Wayne A. Logan, *Criminal Justice Federalism and National Sex Offender Policy*, 6 OHIO ST. J. CRIM. L. 51, 61 (2008).
 34. See NEIL MILLER, *SEX-CRIME PANIC: A JOURNEY TO THE PARANOID HEART OF THE 1950s* 108 (2002). Miller describes how “[o]n a single night in Baltimore in October 1955, 162 men were arrested at a gay club. . . . [I]n Boise, Idaho, beginning in November 1955[, t]he arrest of three men on charges of sexual activity with teenage boys precipitated a massive witch hunt [where over] a 15-month period, some 1,472 men were brought in for questioning.” *Id.* at 108–09.
 35. *Id.* at 108–09, 121–22 (“Psychiatric hospitals often treated gay men and women with shock treatments, lobotomies, and aversion therapies.”).
 36. See JENKINS, *supra* note 29, at 85–88.
 37. See *id.* at 89–90.
 38. See *id.* at 91–93.
 39. *Id.* at 116–17.
 40. See FREEDMAN, *supra* note 29, at 132, 134 (explaining that during the 1960s sexual psychopath laws came under criticism, and in 1968 Michigan actually repealed its sexual psychopath laws).
 41. Amy Adler, *The Perverse Law of Child Pornography*, 101 COLUM. L. REV. 209, 220–21 (2001).
 42. JENKINS, *supra* note 29, at 148–49. There was also a general “child abuse revolution,” brought on by the work of feminists to create public awareness on the issues of rape and child sexual abuse. *Id.* at 118–19. This movement is not included here as a “moral panic” because it lacked the clear disproportionality aspect. See discussion *infra* Part II.A.
 43. See JENKINS, *supra* note 29, at 132–33 (discussing the media’s treatment of serial killers like John Wayne Gacy and Randy Kraft, who committed sexual homicides against children and teenagers).
 44. Adler, *supra* note 41, at 221.

In the early 1980s, federal legislative hearings around child sexual assault and abduction resulted in the Missing Children's Assistance Act.⁴⁵ The focus, however, quickly changed to concern over child sex-rings, daycare center horrors, and satanic rituals.⁴⁶ Beginning in the late 1970s, there was an upsurge of interest in child pornography and focus on police action against "child pornography rings."⁴⁷ This fear continued into the 1980s despite evidence that the child pornography industry had been virtually eradicated in the United States by that time.⁴⁸ The focus of fear changed back from the familiar to the stranger.

The scares of the 1980s began with a 1982 incident in Bakersfield, California, involving married couple Alvin and Debbie McCuan.⁴⁹ Originally charged with child endangerment after the molestation of their daughter by her grandfather, accusations of a child molestation ring soon followed.⁵⁰ Ultimately, the McCauns were found guilty, and each was sentenced to over one-hundred years in prison.⁵¹ Authorities in Kern County continued to prosecute members of "child sex rings" throughout the 1980s.⁵² After the McCauns, allegations of satanic and ritual abuse began popping up around the nation.⁵³ The first traditional daycare scandal quickly followed in 1983, involving the McMartin preschool.⁵⁴ These cases continued through the 1995 sex ring scandal in Wenatchee, Washington.⁵⁵

While the scandals spread across the country and even abroad, the response was initially local.⁵⁶ Members of the locality investigated within their own community and called for immediate local reaction,

45. Missing Children's Assistance Act, 42 U.S.C. §§ 5771–5780 (2006); JENKINS, *supra* note 29, at 133–34 tbl.6.1 (chronicling legislative hearings leading up to the passage of the Missing Children's Assistance Act).

46. Adler, *supra* note 41, at 223–24.

47. See JENKINS, *supra* note 29, at 153–55.

48. Adler, *supra* note 41, at 232–33.

49. EDWARD HUMES, MEAN JUSTICE: A TOWN'S TERROR, A PROSECUTOR'S POWER, A BETRAYAL OF INNOCENCE 206 (1999).

50. *Id.* at 209–11.

51. *Wrongly Convicted Database*, FOREJUSTICE, <http://forejustice.org/db/location/McCuan--Alvin.html> (last visited Jan. 8, 2011); see also Maggie Jones, *Who Was Abused?*, N.Y. TIMES, Sept. 19, 2004, § 6, at 1, available at <http://www.nytimes.com/2004/09/19/magazine/19KIDSL.html>. These sentences were overturned two years later. *Id.*

52. See HUMES, *supra* note 49, at 218–19.

53. See JENKINS, *supra* note 29, at 165–70.

54. See *id.* at 166–67.

55. See *id.* at 179–80.

56. See *id.* at 167.

be it through governmental or social pressure (such as public denunciation).⁵⁷

The current legislative framework, originating with registration and notification requirements, began in the 1990s and has grown continually since then. In the aftermath of the horrific rape and murder of a seven-year-old boy by a released sex offender, Washington State passed the first notification bill in 1990.⁵⁸ The statute also created residency restrictions and new standards for extended detention.⁵⁹ The 1993 murder of Peggy Klaas and the 1994 murder of Megan Kanka pushed sex offender laws onto the national scale.⁶⁰ Seven-year-old Megan, a New Jersey child, had been raped and killed by a released sex offender who lived in her neighborhood.⁶¹ From the outrage that followed, New Jersey passed “Megan’s Law” in 1994.⁶² The U.S. Congress followed in 1996, requiring all states to introduce some form of notification procedure.⁶³

B. Description of Current Legislation

Current legislation regarding sex offenders is both ineffective and counterproductive. Such statutes have not benefited public safety and may have actually endangered it.⁶⁴ By increasing alienation of sex offenders, they can also raise recidivism rates.⁶⁵ Sex offender regulations primarily involve registration, notification, and residency

57. See, e.g., HUMES, *supra* note 49, at 219–20 (noting that suspected child molesters lost jobs, lives, and families whether charges were filed or not).

58. WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, WASHINGTON STATE’S COMMUNITY NOTIFICATION LAW: 15 YEARS OF CHANGE 1 (2006), available at <http://www.wsipp.wa.gov/rptfiles/06-02-1202.pdf>; see also JENKINS, *supra* note 29, at 191.

59. JENKINS, *supra* note 29, at 191–92.

60. *Id.* at 196–97.

61. See *State v. Timmendequas*, 737 A.2d 55, 65 (N.J. 1999); William Glaberson, *Man at Heart of Megan’s Law Convicted of Her Grisly Murder*, N.Y. TIMES, May 31, 1997, § 1, at 1, available at <http://www.nytimes.com/1997/05/31/nyregion/man-at-heart-of-megan-s-law-convicted-of-her-grisly-murder.html>.

62. JENKINS, *supra* note 29, at 197–98; see N.J. STAT. ANN. §§ 2C:7-1 to -11 (West 2005). California passed the first registration statute in the nation in 1947. Logan, *supra* note 33, at 61.

63. Megan’s Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (amending 42 U.S.C. § 14071(d) (1994)) (codified as amended at 42 U.S.C. § 14071(e) (2006)); JENKINS, *supra* note 29, at 198.

64. See generally Bagley, *supra* note 24 (delineating reasons why current legislation is ineffective).

65. *Id.* at 1381.

restrictions.⁶⁶ Under federal law, states face the loss of federal funding if they do not adopt registration requirements.⁶⁷ The law also requires some form of “notification” making the information publicly available.⁶⁸

The statutory designation of “sex offender” often contains offenders not commonly considered an inherent danger to society.⁶⁹ Some states make no distinction regarding the seriousness of the crime or the determined dangerousness of the offender.⁷⁰ Depending on the state, sexual offenses include possession of child pornography, kidnapping a minor, public exposure, computer solicitation of a minor, providing a child with pornography, false imprisonment of a minor, obscenity, or conspiring to do any of these acts.⁷¹ For example, the District of Columbia and twenty-nine states define *statutory rape* as a strict liability crime, but nonetheless, twenty-eight of these jurisdictions include it as a registerable offense.⁷²

Residency restrictions are the largest growing area of law in sex offender regulations.⁷³ Although not required by federal law, twenty states now have some form of residency restrictions.⁷⁴ In the past

66. *Id.* at 1350. “[C]ivil commitment, registration, notification, and zoning schemes[] are not alternatives to each other; rather, they are supplements, building an increasingly higher wall around sex offenders.” *Id.* at 1354.

67. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 1796, 2038 (1994) (codified as amended at 42 U.S.C. § 14071(g)(2)(A) (2006)).

68. 108 Stat. at 2042 (codified as amended at § 14071(e)).

69. See HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 39 (2007).

70. *Id.* at 8, 55.

71. Sex Offender Registration and Notification Act, Pub. L. No. 109-248, 120 Stat. 587, 590 (2006) (codified as amended at 42 U.S.C. § 16911) (describing covered offenses); CAL. PENAL CODE § 314 (West 2008) (obscene conduct); MD. CODE ANN., CRIM. LAW § 11-207 (LexisNexis 2002) (child pornography and computer solicitation); see also Duster, *supra* note 13, at 763.

72. Carpenter, *supra* note 4, at 325 n.139 (noting that Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, and Wisconsin include statutory rape as both a strict-liability and a registerable offense). Twenty-one states provide some kind of defense to statutory rape where the defendant mistook the victim for being at least the age of consent. *Id.* at 317.

73. See HUMAN RIGHTS WATCH, *supra* note 69, at 2; Jill S. Levenson, *Collateral Consequences of Sex Offender Residence Restrictions*, 21 CRIM. JUST. STUD. 153, 153 (2008).

74. HUMAN RIGHTS WATCH, *supra* note 69, at 100 (including Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana,

few years, hundreds of municipalities have passed local zoning ordinances.⁷⁵ Depending on the locality, residency restrictions ban sex offenders from living within five-hundred feet to four miles from locations such as bus stops, childcare facilities, churches, parks, public swimming pools, schools, skating rinks, and video arcades.⁷⁶ Some states include the vague “locations where children are the primary occupants or users”⁷⁷ and “place[s] where children regularly congregate.”⁷⁸ To address the problem, developers have even designed “sex offender-free” communities.⁷⁹

Consequently, sex offenders have been regulated right out of town, as is often the explicitly stated intent of the legislature.⁸⁰ In Georgia, the house majority leader constructed the state residency restrictions to make it “[so] onerous and . . . inconvenient [that] they may just want to move somewhere else.”⁸¹ Many other localities have followed suit, afraid that displaced sex offenders will relocate to their districts.⁸² Repeatedly, industrial areas and high-end residential

Michigan, Mississippi, Ohio, Oklahoma, South Dakota, Tennessee, Virginia, Washington, and West Virginia).

75. *See id.*; Levenson, *supra* note 73, at 153.

76. For state residency restrictions governing sex offenders, *see* ALA. CODE § 15-20-026 (LexisNexis 2008); ARK. CODE ANN. § 5-14-128 (2006 & Supp. 2009); CAL. PENAL CODE § 3003.5(b) (West 2000 & Supp. 2009); FLA. STAT. ANN. § 947.1405 (West Supp. 2009); GA. CODE ANN. § 42-1-15 (Supp. 2009); IDAHO CODE ANN. § 18-8329 (West Supp. 2008); 720 ILL. COMP. STAT. ANN. 5/11- 9.3 (West 2002 & Supp. 2009); IND. CODE ANN. § 11-13-3-4 (LexisNexis Supp. 2008); IOWA CODE ANN. § 692A.2A (West 2008); KY. REV. STAT. ANN. § 17.545 (West Supp. 2008); LA. REV. STAT. ANN. § 14:91.1-2 (Supp. 2009); MICH. COMP. LAWS ANN. § 28.735 (West Supp. 2009); MINN. STAT. ANN. § 244.052 (West 2008); MISS. CODE ANN. § 45-33-25(4) (West Supp. 2008); MO. ANN. STAT. § 566.147 (West Supp. 2009); OHIO REV. CODE ANN. § 2950.031 (West 2008); OKLA. STAT. ANN. tit. 57, § 590 (West 2004 & Supp. 2009); OR. REV. STAT. § 144.642 (2007); S.D. CODIFIED LAWS §§ 22-24B-22(1)–(4) (2008); TENN. CODE ANN. § 40-39-211 (2008); TEX. GOV'T CODE ANN. § 508.187(b) (West 2008); VA. CODE ANN. § 18.2-370.2-3 (2008); REV. CODE WASH. § 9.94A.030(8) (West 2008); W. VA. CODE ANN. § 62-12-26(b) (LexisNexis Supp. 2009).

77. *See* OR. REV. STAT. § 144.642 (2007).

78. *See* FLA. STAT. ANN. § 947.1405 (West Supp. 2009).

79. Emily Ramshaw, ‘Sex Offender’ Label Makes No Distinction: For Many Men, Registry Has Lasting and Devastating Effects, DALLAS MORNING NEWS (Oct. 2, 2006), available at http://www.nacdl.org/sl_docs.nsf/freeform/sex_offender009?OpenDocument.

80. *See, e.g., Doe v. Miller*, 298 F. Supp. 2d 844, 850 (S.D. Iowa 2004), *rev'd*, 405 F.3d 700 (8th Cir. 2005) (describing how the majority of the towns in the county were restricted, and in some towns, “barely two percent of housing [wa]s available”).

81. HUMAN RIGHTS WATCH, *supra* note 69, at 100 (quoting Rep. Jerry Keen).

82. *See id.* at 2–3.

neighborhoods are the only places left in town.⁸³ Others deny sex offenders access to emergency shelters; in the case of a hurricane: sex offenders must report to the local jail.⁸⁴

For the most part, residency laws have proven ineffective. Studies have not found any correlation between the presence of residency restrictions and lower recidivism rates.⁸⁵ Additionally, despite these restrictions, sex offenders continue to have access to children. Except in rare cases, the statutes govern where sex offenders live, not what spaces they otherwise inhabit.⁸⁶ Required only to occupy their official residence from, for example, ten in the evening until six in the morning,⁸⁷ they can still visit bus stops, parks, and playgrounds throughout the day, the times when children are most likely to be there.⁸⁸ Usually, restrictions have no impact on access to private homes, where eighty-four percent of sexual assaults on children under twelve occur.⁸⁹ In a study conducted by Jill Levenson and Leo P. Cotter, sex offenders related the “chilling and ironic reality: ‘You can live next door to a minor but not a school.’”⁹⁰ One respondent reasoned that these limits “serve[] no purpose but to give some people the illusion of safety.”⁹¹

More than being ineffective, these regulations can actually prove counterproductive. Sanctions affect daily living in a myriad of ways.

83. See, e.g., *Miller*, 298 F. Supp. 2d at 851.

84. See HUMAN RIGHTS WATCH, *supra* note 69, at 103–04. In Florida, the state “directs registrants to report directly to prison in case of a hurricane.” *Id.* at 104.

85. See, e.g., COLO. DEP’T OF PUB. SAFETY, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY 4 (2004); MINN. DEP’T OF CORR., LEVEL THREE SEX OFFENDERS RESIDENTIAL PLACEMENT ISSUES 9 (2003); WASH. STATE INST. FOR PUB. POL’Y, COMMUNITY NOTIFICATION: A STUDY OF OFFENDER CHARACTERISTICS & RECIDIVISM 13 (1995); Duster, *supra* note 13, at 752–53.

86. See *Miller*, 298 F. Supp. 2d. at 849; Bagley, *supra* note 24, at 1379.

87. See, e.g., HUMAN RIGHTS WATCH, *supra* note 69, at 103; Thompson, *supra* note 10.

88. See, e.g., *Miller*, 405 F.3d 700, 719 (8th Cir. 2005) (stating that offenders may freely access “areas near schools or child care facilities for employment, to conduct commercial transactions, or for any purpose other than establishing a residence”); Bagley, *supra* note 24, at 1379 (explaining how statutes bar sex offenders from living, working, or loitering in restricted zones, but they do not “completely prohibit registered sex offenders from being within those zones”).

89. See BUREAU OF JUST. STATS., DEP’T OF JUSTICE, CHILD VICTIMIZERS: VIOLENT OFFENDERS AND THEIR VICTIMS 12 tbl.14 (1996) (finding that 42.9% of violent crimes against children happen in the victim’s home and another 41.8% happen in the offender’s home).

90. Levenson & Cotter, *supra* note 25, at 175.

91. *Id.* at 174 (“The majority of respondents emphatically proclaimed that the 1,000-ft rule would have no effect on their risk of re[-]offense.”).

These restrictions only increase the difficulty sex offenders have reintegrating into the community, a factor that has consistently been shown to reduce recidivism.⁹² This includes participating in family and community activities, obtaining a job, and having a stable place to live.⁹³ Residency restrictions interfere with the ability of sex offenders to live in their hometowns or even with their families.⁹⁴ Sex offenders are often forced into rural or other inaccessible areas.⁹⁵ Those without a firm residence may fail to register with the parole officer, falling off the state's radar and increasing the number of sex offenders deemed missing from state rolls.⁹⁶ Of the more than 620,000 sex offenders required to register, at least 100,000 are now missing from the system.⁹⁷

III. APPLICATION OF MORAL PANIC THEORY

This essay analyzes the rising fears about sexual abuse and resulting legislation through the lens of Ulrich Beck's risk society.⁹⁸ Previous legal scholarship has addressed these laws as the result of a moral panic, or sex panic.⁹⁹ This section will explain what moral panic is, then explore the ways in which the current anxieties over sex offenders are similar and dissimilar to the traditional moral panic.

A. *Defining Moral Panic*

In *Folk Devils & Moral Panics: The Creation of the Mods and Rockers*, Stanley Cohen provides the foundation model of a moral panic:

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92. See COLO. DEP'T. OF PUB. SAFETY, *supra* note 85, at 32; Levenson & Cotter, *supra* note 25, at 173 (recounting research in the field and study where "many offenders emphasized their need for social support and believed their risk increased with isolation from supportive family and friends").
93. Levenson & Cotter, *supra* note 25, at 172-73.
94. *Id.* ("[H]ousing restrictions increased isolation, created financial and emotional hardship, and led to decreased stability.").
95. See, e.g., Doe v. Miller, 298 F. Supp. 2d 844, 851, 869 (S.D. Iowa 2004), *rev'd*, 405 F.3d 700 (8th Cir. 2005).
96. HUMAN RIGHTS WATCH, *supra* note 69, at 116.
97. NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, 2008 REPORT 5 (2008); *Tracking Team Hunts for Missing Sex Offenders*, THE FRONTLINE, Winter 2007, at 4 (Nat'l Ctr. for Missing & Exploited Children, Alexandria, Va.).
98. See BECK, *supra* note 23.
99. See, e.g., JENKINS, *supra* note 29, at 6; Filler, *supra* note 15, at 358; Irvine, *supra* note 15, at 1.

(i) *Concern* (rather than fear) about the potential or imagined threat; (ii) *Hostility* — moral outrage towards the actors (folk devils) who embody the problem . . . ; (iii) *Consensus* — a widespread agreement (not necessarily total) that the threat exists, is serious and that “something should be done” (iv) *Disproportionality*: an exaggeration of the number or strength of the cases, in terms of the damage caused, moral offensiveness, potential risk if ignored (v) *Volatility* — the panic erupts and dissipates suddenly and without warning.¹⁰⁰

Cohen emphasizes the last two factors: disproportionality and volatility.¹⁰¹ David Garland includes two additional elements he sees as essential, yet unmentioned in Cohen’s definition: “(i) the *moral dimension* of the social reaction, particularly the introspective soul-searching that accompanies these episodes; and (ii) the idea that the deviant conduct in question is somehow symptomatic.”¹⁰²

Moral panics are concerned with the disintegration of society.¹⁰³ They can involve concern over material harm—as with crime panics—but the focus is social dangers that create such harms.¹⁰⁴ A moral panic is the quintessential witch-hunt, such as the actual Salem Witch Trials or the red scares of the McCarthy era.¹⁰⁵ In modern times, panic discourses have developed around such issues as child pornography, internet predators, and welfare fraud.¹⁰⁶ Individual problems are “discovered” and elevated into wide-scale evils.¹⁰⁷ A moral panic centers on a specific group viewed as threatening those around them;¹⁰⁸ without action, they risk destroying society as a

100. COHEN, *supra* note 16, at xxii.

101. *Id.*

102. David Garland, *On the Concept of Moral Panic*, 4 CRIME, MEDIA, CULTURE, 9, 11 (2008).

103. *See id.*

104. *See id.* at 13.

105. *See* ERICH GOODE & NACHMAN BEN-YEHUDA, MORAL PANICS: THE SOCIAL CONSTRUCTION OF DEVIANCE 56 (2d ed. 2009) (likening the Salem Witch Trials to moral panic); Jeffrey S. Victor, *Moral Panics and the Social Construction of Deviant Behavior: A Theory and Application to the Case of Ritual Child Abuse*, 41 SOC. PERSP. 541, 541–42 (1998) (identifying “Red Scares” as an example of moral panic).

106. *See generally* JENKINS, *supra* note 29, at 145–63 (discussing child pornography); Justine Cassell & Meg Cramer, *High Tech or High Risk: Moral Panics About Girls Online*, in DIGITAL YOUTH, INNOVATION, AND THE UNEXPECTED (Tara McPherson, ed., 2008) (internet predators); Benjamin Shepard, *Sex Panic and the Welfare State*, 34 J. SOC. & SOC. WELFARE 155–60 (2007) (welfare fraud).

107. *See* GOODE & BEN-YEHUDA, *supra* note 105, at 154–55.

108. *See id.* at 35.

whole.¹⁰⁹ For its own survival, the community must unite to find the contamination and purge it from its midst.

A moral panic centers around one specific group: the oft-described “folk devil.”¹¹⁰ Folk devils, the cause of the panic, “are inherently deviant and are presumed to be self-seeking, out of control and in danger of undermining the stability of society.”¹¹¹ A moral panic cannot exist without a focus to be frightened about, a place for passions to converge: “[N]ot only must the condition, phenomenon, or behavior [be] seen as threatening, but a clearly identifiable group in[,] or segment of[,] the society must be seen as *responsible* for the threat.”¹¹² As an identifiable group, their “visibility is the basis of . . . expurgation.”¹¹³ The danger is contained within them—and consequently is the group against whom to act, the persons to fear.¹¹⁴

Disproportionality is essential to classifying a specific episode or set of expressed concerns as a moral panic.¹¹⁵ The alarm is often misdirected, expanding in one area, while other threats are downplayed.¹¹⁶ As Cohen notes, there is no exact way to measure when the reaction to a specific risk is overstated.¹¹⁷ Nonetheless, in a situation such as the sex offender scares, the accumulated evidence can point to a general estimation of risk.¹¹⁸ The rhetoric of the moral panic, as shown through the media and sources like legislative

109. *See id.*

110. *See, e.g.,* Christie Barron & Dany Lacombe, *Moral Panic and the Nasty Girl*, 42 CAN. REV. SOC. & ANTHROPOLOGY 51, 53 (2005) (“All moral panics identify and denounce a personal agent responsible for the condition that is generating widespread public concern.”).

111. BERNARD SCHISSEL, *BLAMING CHILDREN: YOUTH CRIME, MORAL PANICS AND THE POLITICS OF HATE* 30 (1997).

112. *See* GOODE & BEN-YEHUDA, *supra* note 105, at 38.

113. *See* Ungar, *supra* note 19, at 283–84.

114. *See* GOODE & BEN-YEHUDA, *supra* note 105, at 35.

115. *See id.* at 37, 40.

116. *See id.* at 44–46.

117. *See* COHEN, *supra* note 16, at xxviii–xxix.

118. *See* Meaghan Kelly, *Lock Them Up – and Throw Away the Key: The Preventive Detention of Sex Offenders in the United States and Germany*, 39 GEO. J. INT’L L. 551, 552 (2007) (discussing the relationship between media portrayal of sex offenders and the public’s perception of risk); *see also* Emily Horowitz, *Growing Media and Legal Attention to Sex Offenders: More Safety or More Injustice?*, 7 J. INST. JUST. & INT’L STUD. 143, 146 (2007) (discussing how media coverage of sexual offenses against children prompts public fear and panic).

history, allows for an analysis of proportionality when compared with other statistics.¹¹⁹

Finally, moral panics are volatile: an eruption of passion and fear that jumps out and eventually subsides.¹²⁰ While it may ebb and flow, ultimately a panic is temporally bound.

B. *Sex Offender Scares as a Moral Panic*

Previous legal scholarship has analyzed sex offender statutes as the manifestation of a moral panic.¹²¹ This period of anxiety meets most of Cohen's factors for a moral panic: concern, hostility, consensus, and disproportionality.¹²² Anxiety over child sexual abuse and the inability to protect children from harm is a salient fear in present society.¹²³ Despite other, more probable dangers, these issues remain a large concern. Moreover, they are an agreed upon social harm. Child sexual abuse is decried unanimously as a moral wrong and a violation of social norms.¹²⁴ Garland warns against the dangers of anthropomorphizing "society" into a monolithic mass that can share a single viewpoint.¹²⁵ In these circumstances, however, there is scarce disagreement. Clear consensus exists as to the serious injury caused.¹²⁶ Legislators, in particular, have felt the push to support sex offender statutes and show their "hard stance" against sexual abuse.¹²⁷ Politically, to oppose such statutes would be seen as backing sexual abuse and would mean certain death in the polls.¹²⁸

In turn, this concern generates great hostility. Sexual abuse is a widespread social harm that must be battled. Nonetheless, there has been too little analysis of the systemic issues involved: what leads to sexual abuse, what leads to it being ignored, and thus, what has

119. See Horowitz, *supra* note 118, at 144, 146–47, 151 (discussing a statistical analysis of media coverage concerning sex offenders and sex offenses).

120. COHEN, *supra* note 16, at xxx. As Cohen describes it, panic "is self-limiting, temporary and spasmodic, a splutter of rage which burns itself out." *Id.*

121. See Horowitz, *supra* note 118, at 143, 144, 155; Kelly, *supra* note 118, at 553.

122. See *supra* Parts II.A–B.

123. See JENKINS, *supra* note 29, at 1–2; Garland, *supra* note 102, at 15; Horowitz, *supra* note 118, at 143–44.

124. See Nancy Fischer, *Oedipus Wrecked? The Moral Boundaries of Incest*, 17 GENDER & SOC'Y 92, 107 (2003); Matthew Kieran, *The Thrill and Repulsion of the Morally Prohibited*, 64 PHIL. & PHENOMENOLOGICAL RES. 31, 41–43 (2002); Donald Levy, *Perversion and the Unnatural as Moral Categories*, 90 ETHICS 191, 191 (1980).

125. See Garland, *supra* note 102, at 23.

126. See JENKINS, *supra* note 29, at 1–2; see also Kelly, *supra* note 118, at 551, 555.

127. See Horowitz, *supra* note 118, at 143, 148–50, 156.

128. See JENKINS, *supra* note 29, at 198 (discussing the political economy); Filler, *supra* note 15, at 362–63; Horowitz, *supra* note 118, at 143, 155–56.

allowed it to continue.¹²⁹ Instead, the anger is focused on a specific set of actors out of proportion to the actual harm they cause.¹³⁰

The clearest similarity is the presence of the folk devil, the focus of society's hostility: released sex offenders living secretly in the unknowing community and destined to offend again.¹³¹ In particular, many see stranger offenders as the root of all injury and the focus of all blame. While family and friends commit ninety percent of child sexual abuse, the anxiety is not directed at this potentially nebulous group.¹³² Statistically, a child is safer on the street than at home, particularly when young.¹³³ Nonetheless, the most vivid fear is that of children abducted, raped, and murdered, all by outsiders. The danger is personified in the stranger offender, the man lurking on the street, unable to control his desires, waiting for the unsuspecting child.

The risk is not diffused and free form, like the intangible, scientific issues dealt with in risk society.¹³⁴ Anyone can identify the individuals in question. They can be delineated and legislated against. The very nature of the laws indicates the clear target: It exists within those required to be registered and bound by the subsequent requirements.¹³⁵ These dangers are in striking contrast to risk society anxieties, which are more likely to deal with an intangible scientific issue or an ecological disaster.¹³⁶ Here, the acts of harm are clear, the harm caused is clear, and the anticipated perpetrators are clear.

C. *Dissimilarities to a Moral Panic*

Nonetheless, a moral panic account is insufficient to explain all. Unlike a traditional moral panic, anxiety about sexual abuse and sex offenders has been a constant in American culture for decades.¹³⁷ While there have been peaks of anxiety, public anxieties about sexual

129. See Regina Jones Johnson, *Advances in Understanding and Treating Childhood Sexual Abuse: Implications for Research and Policy*, 31 FAM. & COMMUNITY HEALTH S24, S24 (2008), available at <http://www.nursingcenter.com/pdf.asp?AID=763931>.

130. See U.S. DEP'T OF VETERANS AFFAIRS, NAT'L CTR. FOR PTSD, CHILD SEXUAL ABUSE (2007), <http://www.ptsd.va.gov/public/pages/child-sexual-abuse.asp>.

131. See Barron & Lacombe, *supra* note 110, at 53.

132. See U.S. DEP'T OF VETERANS AFFAIRS, *supra* note 130.

133. See BUREAU OF JUST. STATS., *supra* note 89, at 12 tbl.14.

134. See discussion *infra* Part III.A.

135. See Ungar, *supra* note 19, at 283–84.

136. See *infra* Part III.A.

137. See discussion *supra* Part I.A.

abuse have persisted since the 1970s, even as the exact subjects have changed.¹³⁸

In a moral panic, while the same subject can cause more than one interval of moral panic, generally each episode has a start date and a finish date.¹³⁹ To the extent that one could delineate a period of panic, the 1970s serve as a starting point for the current preoccupation with sex offender dangers.¹⁴⁰ Since then, there has been some form of sex panic, even though the targets have varied.¹⁴¹ Child sexual abuse has remained a key public concern and prime media topic.¹⁴² While discussions and statutes point to specific events, the general movement does not derive from definite moments.¹⁴³ Instead, there has been a continuous process of anxiety for decades; the only current change is the role of the state.¹⁴⁴

The reaction also differs from a traditional moral panic.¹⁴⁵ Sex offender statutes and criminal registration laws have been in place since the 1930s.¹⁴⁶ Over the years, the level of control has grown and intensified, developing at a national and local level.¹⁴⁷ Registration requirements have increased, morphing into notification and residency restrictions.¹⁴⁸ The web of legislation creates a status that permanently determines what a sex offender can do, where he can live, even which physical spaces he can occupy.¹⁴⁹ Growing regulations increase governmental intrusion into the minutia of daily life.

Crucially, opinions of these statutes have changed as well. With the development of the risk society, views of registration statutes and other status regulations have become more positive.¹⁵⁰ There is

138. See discussion *supra* Part I.A.

139. See Ungar, *supra* note 19, at 272.

140. See Adler, *supra* note 41, at 211–12, 218; *supra* notes 41–48 and accompanying text.

141. See *supra* text accompanying notes 45–62.

142. See Adler, *supra* note 41, at 215–18 (explaining that beginning in the 1990s, the child abuse crisis became a recurring topic in movies, political debates, and television talk shows). Even celebrities such as Oprah Winfrey, Roseanne Barr, and Suzanne Somers have revealed that they were sexually molested as children. *Id.*

143. See Adler, *supra* note 41, at 226–29 (discussing statutes enacted in response to particular events).

144. See *id.* at 223–26 (describing decades of anxiety); *infra* text accompanying notes 230–36, 258–63 (discussing the role of the state).

145. See *supra* text accompanying notes 212–28.

146. See JENKINS, *supra* note 29, at 80; *supra* notes 29–33 and accompanying text.

147. See *supra* text accompanying notes 64–68; *infra* text accompanying notes 255–57, 263.

148. See *supra* notes 66–84 and accompanying text.

149. See Duster, *supra* note 13, at 717–18.

150. See *infra* notes 250–63 and accompanying text.

increasing acceptance of these state intrusions.¹⁵¹ The United States Supreme Court first addressed criminal registration statutes in 1957. In *Lambert v. California*, the Court held that the Los Angeles felony registration did not provide sufficient notice and violated due process.¹⁵² The statute was considered particularly egregious because “[v]iolation of its provisions is unaccompanied by any activity whatever, mere presence in the city being the test.”¹⁵³ Quoting Oliver Wendell Holmes, the Court felt that a “law which punished conduct which would not be blameworthy in the average member of the community would be too severe for that community to bear.”¹⁵⁴

Now, *Lambert* is “an isolated deviation from the strong current of precedents—a derelict on the waters of the law.”¹⁵⁵ Status regulations are unproblematic; they are widely regarded as reasonable obligations that greatly benefit the community instead of burdening it.¹⁵⁶ Because of their condition, like “[o]wners of firearms, doctors who prescribe narcotics, and purchasers of dyed diesel,” sex offenders are responsible for consequences of their actions.¹⁵⁷ A sexual offender “removed himself from the class of ordinary citizens’ to the point ‘that cannot reasonably expect to be free from regulation.’”¹⁵⁸

IV. MORAL PANIC IN THE RISK SOCIETY

While similarities to a moral panic exist, the traditional moral panic paradigm does not hold. This is moral panic developed in a risk society. As Sean P. Hier writes, “the emergence of the risk society presents fertile ground for moral panics.”¹⁵⁹ Surrounded by

151. See *infra* notes 250–57 and accompanying text.

152. 355 U.S. 225, 228–30 (1957).

153. *Id.* at 229.

154. *Id.* (quoting OLIVER WENDELL HOLMES, *THE COMMON LAW* 50 (1909)).

155. *Texaco v. Short*, 454 U.S. 516, 537 n.33 (1982) (quoting *Lambert v. California*, 355 U.S. 225, 232 (1957) (Frankfurter, J., dissenting)).

156. See, e.g., *Doe v. Pataki*, 940 F. Supp. 603, 630 (S.D.N.Y. 1996) (“[R]egistration does not impose a substantial affirmative disability or restraint.”).

157. *United States v. Lovejoy*, 516 F. Supp. 2d 1032, 1037 (D.N.D. 2007) (quoting *United States v. Roberts*, No. 6:07-CR-70031, 2007 WL 2155750, at *2 (W.D. Va. July 27, 2007)).

158. *United States v. Hinen*, 487 F. Supp. 2d 747, 754 (W.D. Va. 2007) (quoting *United States v. Bostic*, 168 F.3d 718, 722 (4th Cir. 1999)).

159. Hier, *supra* note 21, at 5. Hier predicts that “as anxieties endemic to the risk society converge with anxieties contained at the level of community, we should expect a proliferation of moral panics as an ordering practice in late modernity.” *Id.* at 19 (emphasis omitted).

uncontrollable and unquantifiable fears, crime, in particular, is a concrete danger against which to rally.¹⁶⁰ The menace is contained within a clearly ascertainable group and provides a focus to relieve general anxiety.¹⁶¹ This section will explain what the risk society is and then explore the way that moral panic interacts with and is transformed by the risk society.

A. *Defining Risk Society*

The risk society is a period in late modernity where anxiety over manufactured material risks overwhelms other worries, creating a world fraught with “[u]ncertainty and unpredictability.”¹⁶² The global risk society is “a phase of development of modern society in which the social, political, ecological and individual risks created by the momentum of innovation increasingly elude the control and protective institutions of industrial society.”¹⁶³ According to Ulrich Beck, “[t]he entry into risk society occurs at the moment when the hazards which are now decided and consequently produced by society undermine and/or cancel the established safety systems of the provident state’s existing risk calculations.”¹⁶⁴ In contrast to a moral panic, the concerns are: “1) very complex in terms of causation; 2) unpredictable and latent; 3) not limited by time, space, or social class (i.e., globalized); 4) not detectable by our physical senses; and 5) are the result of human decisions.”¹⁶⁵

The risk society is a world filled with intangible, indefinable risks. Beck describes it as a period where concerns over managing risk supplant worries over managing goods.¹⁶⁶ In the current phase of reflective, or advanced, modernity, “the social production of wealth is systematically accompanied by the social production of risks.”¹⁶⁷ Current preoccupations have turned from issues of subsistence to controlling the unknown dangers that surround us, at least in wealthier parts of the world.¹⁶⁸ Beck frames the paradigm issue as “[h]ow can the risks and hazards systematically produced as part of

160. See Poirier, *supra* note 20, at 428–29; Ungar, *supra* note 19, at 275.

161. See *infra* text accompanying notes 218–30.

162. Ungar, *supra* note 19, at 282.

163. ULRICH BECK, *WORLD RISK SOCIETY* 72 (1999).

164. Ulrich Beck, *Risk Society & the Provident State*, in *RISK, ENVIRONMENT & MODERNITY: TOWARDS A NEW ECOLOGY* 31 (Scott Lash, et al. eds., Martin Chalmers, trans., 1992) (emphasis omitted).

165. Ungar, *supra* note 19, at 273.

166. See Beck, *supra* note 23, at 19–20.

167. *Id.* at 19 (emphasis omitted).

168. See *id.*

modernization be prevented, minimized, dramatized, or channeled?”¹⁶⁹ These feelings change the way people interact with the world around them. Under a risk society, “riskthinking has become not only pervasive but also routinised [sic]: it is part of the everyday thinking processes of individuals in their private and organisational [sic] lives.”¹⁷⁰ Created from anxiety, risk-thinking perpetuates anxiety in its stead.¹⁷¹

Ecological dangers and disasters are emblematic of risk society concerns.¹⁷² Discussions of the hazards of modern life are rife with concerns over the harm the environment can do to its population.¹⁷³ These anxieties manifest themselves in issues as diverse as the dangers of nuclear reactors to worries over rising coastlines. The consumption of mercury provides one discursive example.¹⁷⁴ Due to ecological contamination, some animals have rising levels of mercury.¹⁷⁵ Discussions have centered on fish as the point in the cycle where humans are most likely to ingest mercury.¹⁷⁶ Pregnant women are considered particularly vulnerable, with an unquantifiable threat for their incipient child.¹⁷⁷ The risk of mercury, however, is intangible. We know it is there, but we cannot see it. There is no identifiable evildoer. Moreover, while we may have an intellectual notion that the fish before us may cause harm, there is no way to

169. *Id.*

170. BARBARA HUDSON, *JUSTICE IN THE RISK SOCIETY: CHALLENGING AND RE-AFFIRMING JUSTICE IN LATE MODERNITY* 43–44 (2003).

171. *See* Beck, *supra* note 23 at 20.

172. Ulrich Beck, *Politics of Risk Society*, in *THE POLITICS OF RISK SOCIETY* 10 (Jane Franklin ed., 1998) (“Risk society begins where nature ends. . . . This is where we switch the focus of our anxieties from what nature can do to us to what we have done to nature.”).

173. *See generally* Beck, *supra* note 164, at 27, 32–33. Beck explains that, “[i]n contrast to early industrial risks, nuclear, chemical, ecological and genetic engineering risks (a) can be limited in terms of neither time nor place, (b) are not accountable according to the established rules of causality, blame and liability, and (c) cannot be compensated or insured against.” *Id.* at 31.

174. *See, e.g.*, David N. Pellow, *Social Inequalities and Environmental Conflict*, 25 *HORIZONTES ANTROPOLÓGICOS*, 15, 22–23 (2006), available at <http://www.scielo.br/pdf/ha/v12n25/a02v1225.pdf> (discussing anxieties surrounding mercury poisoning).

175. EPA, EPA-452/R-97-005, *MERCURY STUDY REPORT TO CONGRESS, VOLUME III: FATE AND TRANSPORT OF MERCURY IN THE ENVIRONMENT* 7-1 (1997), available at <http://www.epa.gov/ttn/oarpg/t3/reports/volume3.pdf>.

176. *See id.* at 2-12 to 2-14.

177. *See* Dariush Mozaffarian, MD, DrPH, & Eric B. Rimm, ScD, *Fish Intake, Contaminants, and Human Health Evaluating the Risks and the Benefits*, 12 *J. AM. MED. ASS'N* 1885, 1889–90 (2006), available at <http://jama.ama-assn.org/cgi/reprint/296/15/1885>.

verify that feeling. Furthermore, we have knowledge that damage may have already occurred, but again, we have no way to confirm that or to ascertain the extent of any potential harm.

Unlike a moral panic, there is no specific group to hold directly responsible. Mercury poisoning can come from many different locations.¹⁷⁸ At most, there is a nebulous notion of “industry” as the cause of harm, at times with particular corporations to point to as the polluters. The chemical surrounds us, the potential for ingestion is heavy in the foods we eat.¹⁷⁹ There is no way for the average person to track one specific strain, let alone a specific fish.¹⁸⁰ Consequently, there is no easy way to address the problem, at least not at a local level.

In the risk society, scientists and other experts arbitrate the omnipresent threats, foreclosing the ability for the nonprofessional to control and manage their own dangers.¹⁸¹ The extent of the harm, the causes of the harm, the duration of the harm, even the starting point of the harm, all remain outside of lay comprehension.¹⁸² The public is forced to rely on scientific actors for interpretation—but often does not have faith in the answers because of competing claims and the inability to verify independently.¹⁸³

While a moral panic has a concrete focus of blame, within risk societies, the dangers are uncontrollable and even unknowable.¹⁸⁴ They are omnipresent, but remain ethereal. Often, “the violators are more institutionally-based and somewhat invisible [T]heir routine rather than deviant actions . . . underlie the problem.”¹⁸⁵ In contrast, an identifiable object is essential in a traditional moral

178. EPA, *supra* note 175, at 7-1.

179. *See id.*

180. *See* Mozaffarian & Rimm, *supra* note 177, at 1889.

181. *See, e.g.,* Ungar, *supra* note 19, at 277 (“With the risk society, issues tend to be warranted more by scientific findings or claims, with scientists, for all their public liabilities, playing a central role in the cast of claims makers.”).

182. *See* Beck, *supra* note 164, at 29–30 (“[T]he relationship of society to the hazards and problems produced by it . . . exceed the bases of societal conceptions of security.”).

183. HUDSON, *supra* note 170, at 44 (“The distance from nature which is the situation of the citizens of modernity necessitates an ever-increasing dependency on expert knowledge, but at the same time the critical reflexivity of modernity’s mentalities means that confidence in such knowledge tends to decline rather than increase.”); Poirier, *supra* note 20, at 429 (“Because the risks are difficult or impossible for the average citizen (or perhaps for anyone at all) to appreciate, we live in a state of constant apprehension about them.”).

184. *See* Ungar, *supra* note 19, at 273, 276, 282.

185. *Id.* at 284.

panic.¹⁸⁶ A population is galvanized under one banner with the impetus of a focused enemy. A witch-hunt requires witches. A moral panic is right there, moved forward by popular appeal, carried along by your neighbors. Here, however, there is no person directly in front of you. There is no way to grasp easily the risks by reference to what you can see and hold. Instead, we turn to experts to lay out the dangers, through scientific claims that are often in dispute.¹⁸⁷

Nonetheless, it is not only that risk society fears focus on more complex, intangible problems; many issues are complex. In contrast to a moral panic, however, fears focus on material harm: the danger to one's environment, but ultimately to one's own bodily integrity.¹⁸⁸ The fear is not corruption of the soul, but of the lungs or the liver. The harm is ultimately individual. While all the community shares the cancer of sexual abuse—though the direct victims feel such harm most acutely—mercury poisoning is an individual injury, distinct from what may happen to others in society.¹⁸⁹ It is not a rot in the fabric of society.

Ultimately, humans control human-created risks, even if in a mediated way. Again, pollution provides an example. The risk, intangible as it is, is a manufactured harm.¹⁹⁰ The average person cannot measure the amount of carbon particles in the air on a given day (leaving experts the only sufficiently capable parties in this scenario).¹⁹¹ Nonetheless, we can identify coal companies as producers of harmful carbons, even if we still need scientists to explain the process.¹⁹² Once defined by science, an impression is created that science can also control the risk.

186. See *supra* notes 110–14 and accompanying text (discussing the concept of the folk devil as a group society identifies to fear).

187. See Adler, *supra* note 41, at 219.

188. See, e.g., Ungar, *supra* note 19, at 273–74 (discussing an outbreak of E. coli as an example of a risk society disaster).

189. See *supra* notes 174–77 and accompanying text.

190. See, e.g., Jeannette M. Trauth, *A Case Study of Health Risk Communication: What the Public Wants and What It Gets*, 2 RISK 49, 49–51 (1994) (examining the health effects of air pollution caused by steel manufacturing).

191. See Sarah Jovan & Bruce McCune, *Air-Quality Bioindication in the Greater Central Valley of California, with Epiphytic Macrolichen Communities*, 15 ECOLOGICAL APPLICATIONS 1712, 1715 (2005) (describing scientific methods of collecting and analyzing air pollution data).

192. See Trauth, *supra* note 190, at 59–60 (noting residents' ability to identify the source of air pollution and their reliance on experts for information concerning the associated health risks).

Under a risk society, moreover, risks are perpetual, with no way to distinguish beginning or end.¹⁹³ Sheldon Ungar describes the phenomenon as “a stream of emergencies and would-be emergencies.”¹⁹⁴ There is a flow of specific incidents, but with perpetual undercurrents, “a vast number of relatively unfamiliar threats, with new threats always lurking in the background.”¹⁹⁵ A risk society is a perpetual state, while a panic is a flare-up within an enduring backdrop.¹⁹⁶

B. Moral Panic Used to Dispel Anxiety in Risk Society

As Sheldon Ungar notes, “Uncertainty and unpredictability are at the core of the risk society.”¹⁹⁷ People become overwhelmed with increasing industrial threats they are unable to control or even comprehend.¹⁹⁸ Fears about basic subsistence have turned into anxieties about uncontrollable risks. The world transforms into one increasingly governed by scientists and corporations.¹⁹⁹ More knowledgeable others mediate society’s hopes and fears.²⁰⁰ It becomes difficult even to identify the fears about which to be most anxious. The change is in the type of risk and the perception of risk. There is no truly objective way to measure risk.²⁰¹ To the extent that risk is considered the danger of negative acts—we rarely talk about the “risk” of a positive event occurring—the impact is subjective.²⁰² Risk is perceived. We can make calculations of how likely an event is to occur.²⁰³ The risk, nonetheless, is relative. All risk is perceived, and thus inherently managed.

Within this anxiety, regulation of crime becomes a tangible way to manage risk and quell fears.²⁰⁴ Surrounded by unmanageable, unquantifiable fears, crime is concrete. Sheldon Ungar posits that “fear of crime may be a relatively reassuring site for displacing the

193. See Ungar, *supra* note 19, at 276.

194. *Id.*

195. *Id.*

196. *See id.*

197. *Id.* at 282.

198. See BECK, *supra* note 23, at 27.

199. ULRICH BECK, *WORLD AT RISK* 6 (Ciaran Cronin, trans., 2007).

200. See generally Lennart Sjöberg, *The Allegedly Simple Structure of Experts’ Risk Perception: An Urban Legend in Risk Research*, 27 *SCI., TECH., & HUM. VALUES* 443 (2002) (noting the role of the expert in risk perception).

201. See BECK, *supra* note 199, at 13.

202. See Kathleen J. Tierney, *Toward a Critical Sociology of Risk*, 14 *SOC. FORUM* 215, 218 (1999).

203. See BECK, *supra* note 199, at 11.

204. See Hollway & Jefferson, *supra* note 22, at 260.

more uncertain and uncontrollable anxieties of a risk society.”²⁰⁵ An eternal fear of the other can be projected onto persons accused of a specific crime, recreating a traditional moral panic.²⁰⁶ Moral panic serves as a release, allowing the community to choose and ostracize a particular group to quell anxiety about those who remain.²⁰⁷ Crime is a risk that is “*knowable, decisionable (actionable), and potentially controllable.*”²⁰⁸ In this “age of uncertainty,” particularly compelling are “discourses that appear to promise a resolution to ambivalence by producing identifiable victims and blameable [sic] villains.”²⁰⁹

One of the key elements of the moral panic is disproportionality.²¹⁰ The envisioned harm is greater than the underlying acts.²¹¹ Correspondingly, the resulting fears are also of a greater magnitude.²¹² In a risk society, the response is not necessarily out of proportion to the underlying acts.²¹³ In fact, the response might be subdued in contrast to the potential for harm.²¹⁴ While subject to debate, there are strong arguments that political mobilization to protect the environment is minuscule in comparison to the threats facing humanity.²¹⁵ This energy and mobilization is channeled instead into fears over rising crime rates, a more viscerally more urgent and evocative call than that of rising coastlines.²¹⁶

In a risk society, the response sought and the ability to act are both greater.²¹⁷ The role of the state in punishment intensifies.²¹⁸ Acting alone, an individual or community organization cannot address the typical inherent risk. Action requires participation of the state or other groups with the ability to form national and local

205. Ungar, *supra* note 19, at 275.

206. See Hollway & Jefferson, *supra* note 22, at 260.

207. See *id.*

208. *Id.* at 265.

209. *Id.*; see also Hier, *supra* note 21, at 17 (“[P]eople will invariably be drawn to practices and discourses that offer the promise of social order and social control in the face of existential uncertainties.”).

210. Ungar, *supra* note 19, at 284.

211. See *id.* at 284–85.

212. See *id.*

213. See *id.* at 285–87.

214. See *id.*

215. See *id.*

216. See *id.*

217. See generally HUDSON, *supra* note 170 (explaining that people expect a greater response when the justice system allows criminals to be removed from society).

218. See JENKINS, *supra* note 29, at 236; MILLER, *supra* note 34, at xvii, 76.

partnerships.²¹⁹ There is an increasing call for government participation, particularly at the federal level.²²⁰

More so than previous moral panics, these current panics have contained both a regional and national level. During former “sex panics,” the public primarily called upon local police enforcement, not federal legislation.²²¹ In the 1950s, for example, in response to rising fears over child sexual abuse and other perceived threats to the nuclear family, the police were urged and supported in raids against “pedophiles,”—who mainly consisted of any patrons found at the local gay bar.²²² The danger was dealt with by immediate action against those identified as threateningly deviant. Persons in the community were able to observe directly that such individuals were detained and punished.²²³ Similarly, albeit perhaps with a greater national fervor, during the daycare scares of the 1980s, members of the public themselves, assisted by the police system, tracked down violators.²²⁴ While the anxiety turned national, for the most part, the response was local.²²⁵ Members of society investigated those within their own community and called for quick response, be it through government or social pressure (such as public denunciation).²²⁶ The panic was intense and furious, and so was the demanded response. The affected populations did not call for federal legislation or other national government surveillance.²²⁷ To the extent that the scares played themselves out locally, they dissipated as the potential targets were identified and isolated.²²⁸

Initially, incidents such as the murder of Megan Kanka or Jessica Lunsford were local events, all more horrifying to their communities because the murders were committed by persons among them.²²⁹ Given the reach of national news, however, the stories were quickly

219. See MILLER, *supra* note 34, at 288–89.

220. See *id.*; see also JENKINS, *supra* note 29, at 216–20.

221. See MILLER, *supra* note 34, at 78, 220.

222. See *id.* at 137, 290–91.

223. See *id.* at 80.

224. See JOHN CREWDSON, BY SILENCE BETRAYED: SEXUAL ABUSE OF CHILDREN IN AMERICA 139, 238–39 (1988); JENKINS, *supra* note 29, at 141, 238.

225. See CREWDSON, *supra* note 224, at 141, 237.

226. See MILLER, *supra* note 34, at 84–85.

227. See *id.*; see also CREWDSON, *supra* note 224, at 237.

228. See JENKINS, *supra* note 29, at 220–21; MILLER, *supra* note 34, at 193.

229. See *State v. Timmendequas*, 737 A.2d 55, 66 (N.J. 1999) (stating that a neighbor who lived across the street from Megan’s home murdered her); *Couey Guilty of Murdering 9-year-old Jessica Lunsford*, CNN (Mar. 8, 2007), <http://www.cnn.com/2007/LAW/03/07/girl.slain/index.html> (stating that a neighbor who lived about 150 yards from Jessica’s home murdered her).

repeated throughout the country.²³⁰ More than that, however, these deaths became rallying points for state and national movements.²³¹ On this larger scale, the participants no longer looked to the local police to nose out the man next door. Now they called upon the federal government to address the problem.²³²

C. Impact of Risk Society on this Panic

The switch is more than mere scale; many things have moved from local to national or global simply because of the realities of current life. The crucial change, however, is from looking for visible folk devils to addressing the problem as a risk that can be precisely controlled.²³³ As a result of these forces, the concerns of a risk society can sustain a set of moral panic that might otherwise subside.²³⁴ More than that, however, a risk society transforms the nature of the moral panic.²³⁵ In addition to prolonging the period of panic, the approach to addressing society's demons also changes. Crime used to be considered the result of human passions. Now, criminal impulses are seen as a quantifiable passion, which can be controlled down to a scientific risk.²³⁶ The discourse changes from guilt to risk, looking to control future events—directing possibility, not just history. Consequently, the role of the government also changes, increasing state intervention at all levels.²³⁷

In a moral panic, the community defines the outsider, closing the gates and casting out the deviant.²³⁸ In a risk society, however, the

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230. See Frank Langfitt, *Notification of Location of Sex Offenders Sought*, BALT. SUN, Mar. 1, 1995, at B1, available at http://articles.baltimoresun.com/1995-03-01/news/1995060044_1_community-notification-offender-moves-new-jersey; Chris Hawke, *'Jessica's Law' Eyes Sex Offenders*, CBS NEWS (Mar. 31, 2005), <http://www.cbsnews.com/stories/2005/03/31/earlyshow/main684190.shtml>.
231. See Jan Hoffman, *New Law Is Urged on Freed Sex Offenders*, N.Y. TIMES, Aug. 4, 1994, at B1, available at http://www.nytimes.com/1994/08/04/nyregion/new-law-is-urged-on-freed-sex-offenders.html?ref=megan_kanka&pagewanted=1; *Judge Sentences John Couey to Death for Murdering Jessica Lunsford*, FOXNEWS (Aug. 24, 2007), <http://www.foxnews.com/story/0,2933,294371,00.html>.
232. See *Clinton Calls for National Sex Offender Registry*, CNN (June 22, 1996), <http://www.cnn.com/US/9606/22/clinton.radio/index.html>.
233. See Hier, *supra* note 21, at 5–6; Ungar, *supra* note 19, at 277.
234. See, e.g., Hier, *supra* note 21, at 7, 18–19.
235. See *id.* at 7; Ungar, *supra* note 19, at 281–82.
236. See Eric S. Janus, *The Preventive State, Terrorists and Sexual Predators: Countering the Threat of a New Outsider Jurisprudence*, 40 CRIM. L. BULL. 576, 591–94 (2004).
237. See *id.* at 596.
238. See, e.g., Barron & Lacombe, *supra* note 110, at 53 (discussing the “Nasty Girl” as a folk devil).

gaze turns greater: Both the cause and the solution are seen as bigger. The discourse goes from guilt to risk.²³⁹ The control changes from immediate to wide arching and omnipresent, from the past and present to the future.²⁴⁰ Guilt looks back, finding the offenders and casting them out for their past acts and harm to the community.²⁴¹ Risk looks forward, with the expectation of dictating that which has not happened yet.²⁴² Moreover, there is a belief that the government can and should act to protect its populace against these dangers.²⁴³

The language of risk allows targeting for future harms.²⁴⁴ It justifies increased surveillance and greater government intervention in the minutia of people's lives. Eric S. Janus warns that the "move from guilt to risk removes key constraints on the state's ability to limit liberty."²⁴⁵ In his words, "[t]he more distant the 'risk' is from actual crime, the broader must be the gaze of the government."²⁴⁶ Additionally, in this process, society is "becoming 'markedly less concerned with responsibility, fault, moral sensibility' and more concerned with 'techniques to identify, classify, and manage groupings sorted by dangerousness.'"²⁴⁷ The response is to turn to the government, using heavy restraint and regulation.

The focus turns to danger assessment and corresponding constraint. The law no longer merely acts on crime after it occurs, but works to stop it before it exists.²⁴⁸ The laws plan for the future instead of punishing for the past.²⁴⁹ There is a feeling that the state can and should control all threats.²⁵⁰ Risk society "is a society increasingly preoccupied with the future (and also with safety)."²⁵¹ Consequently, energy focuses on "bringing possible future undesired events into calculations in the present, making their avoidance the central object of decision-making processes, and administering individuals, institutions, expertise, and resources in the service of that

239. See Janus, *supra* note 236, at 595 ("The predator template threatens the traditional liberty/security balance by transitioning from 'guilt' to 'risk' as the key predicate for liberty deprivation.").

240. *Id.*

241. *See id.* at 593.

242. *See id.*

243. *See id.* at 581–82.

244. *See id.* at 580–81.

245. *Id.* at 596.

246. *Id.*

247. *Id.* (quoting Feeley & Simon, *supra* note 22, at 452).

248. *Id.* at 578.

249. *See id.* (using 9/11 as an example).

250. *See id.* at 582.

251. Anthony Giddens, *Risk and Responsibility*, 62 MOD. L. REV. 1, 3 (1999).

ambition.”²⁵² More than avoidance of risk, *elimination* of risk is the goal. It is no longer permissible to have any potential dangers; resources are galvanized to stop the chance of even the infinitesimally small chance of harm.²⁵³ This is seen as both possible and laudatory.²⁵⁴

The burgeoning use of sex offender statutes indicates this belief in calculable results. These laws plan for the future instead of punishing violators for past acts.²⁵⁵ The force of the state serves to isolate and act upon a certain group of people as a way to contain any threats.²⁵⁶ While one of the premises of the laws is that these acts are conducted by people, who, unlike technology, cannot be finely tuned, sexual predator laws increasingly try to manage the most minute of hazards.²⁵⁷

Earlier responses to sexual abuse scares were less centered on state involvement.²⁵⁸ In the daycare scares of the 1980s, for example, legislation was not involved.²⁵⁹ The panic blazed through the public, spreading through community organizing and the media. Law enforcement was enlisted next, resulting in arrests and subsequent public trials. The enforcement power of the state played a role only to the extent of enforcing existing criminal statutes.²⁶⁰ The community responded to the parties directly before them.²⁶¹ The moral panic continued into the “foraging process” for folk devils, searching out an ever-expanding circle of perpetrators. In this context, however, the public did not turn to the legislative branch en masse. The power of the local state was called in to act on the parties before them.²⁶²

252. See Nikolas Rose, *Government and Control*, 40 BRIT. J. CRIMINOLOGY 321, 332 (2000).

253. See *id.*; see also Janus, *supra* note 236, at 576, 580 (discussing the increasingly aggressive methods used to minimize the risk of future harm from sex offenders).

254. See, e.g., Janus, *supra* note 236, at 582 (explaining that stringent sex offender laws have been met with approval).

255. See *id.* at 582.

256. See *id.*

257. See *id.* at 589–91, 597 (noting that there is intense political pressure to maintain a “zero tolerance policy” for risk).

258. See *supra* text accompanying notes 145–49.

259. See *supra* text accompanying notes 54–63 (explaining that state did not become heavily involved until the 1990s, after the daycare scares of the 1980s).

260. U.S. CONST. art. I, § 9, cl. 3.

261. See *supra* text accompanying note 57.

262. See *supra* text accompanying notes 144, 151.

In contrast, the current period of legislation focuses on total control enforced through state power.²⁶³ In particular, the present “sex panic” focuses on the ability to restrain future harm, such that the danger itself is reduced to zero. This movement requires an underlying belief that future perils can be managed to such a great extent that they can be eliminated. The danger is seen as a risk society threat that can be precisely dissected and acted upon. The notion of the “moral monster” has expanded to a language of risk.

Within this framework, the likelihood of sexual abuse committed by ex-offenders becomes a distinct hazard that can be fully regulated and eliminated. Regulating away this danger quells anxiety related to the uncontrollable risk.

V. CONCLUSION

Sex offender legislation is both disproportionate and misdirected. Existing regulations respond to fears of situations unlikely to occur, while not addressing the present problems. Advocates push these laws as necessary for the protection of children, yet they have not been shown to reduce sexual abuse. The enforcement and prosecution of these laws consume copious resources and prevent state agencies from pursuing other crime. Nonetheless, legal restrictions aimed at sex offenders continue to proliferate as society propels them forward with ardent fervor.

A new framework is necessary to analyze sex offender statutes, examining the rising fears about sexual abuse and resulting legislation through the lens of Ulrich Beck’s risk society.²⁶⁴ Scholars have traditionally applied a moral panic framework to the scares of sexual abuse and resulting legislation.²⁶⁵ The explanation is more complicated. We face a state of perpetual moral anxiety, similar to a moral panic, but expressed through a risk society and legislated through the resulting lenses.

In this transformed moral panic, the populace turns to the sex offender menace as a way to harness a controllable fear. This helps subdue anxiety about other harms that are difficult to control or even comprehend. The larger context of the risk society results in an even greater impacting moral panic. It creates a response that is ongoing, and applies increased government control and surveillance as we become used to—and expect—such government interference. These factors indicate that this “moral panic” will not fade away. The

263. See Janus, *supra* note 236, at 587; *supra* note 253 and accompanying text.

264. See discussion *supra* Part I.A.

265. E.g., Horowitz, *supra* note 118, at 143–44; Kelly, *supra* note 118, at 553.

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conditions exist for the panic to persist as long as the risk society continues. Appropriate classification creates a theoretical basis to trace what is happening, analyze why it happened, and project the future of what will happen.

