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

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

2. See discussion infra Part I.B.
restrictive as in prison. In Florida, a sex offender cannot live within one thousand feet of any “place where children regularly congregate.” In Louisiana, they are banned from living near video arcades. In Fort Lauderdale, sex offenders are paroled to live under bridges; parole officers can find no other locations that conform to local statutes.

The increasing legislation is inspired by proliferating fears about sexual abuse and seeks to quell those fears by defining and controlling the threat. The civil regime permanently brands a small sector of ex-offenders with criminal status. 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. 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.

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).
14. National Child Abuse Statistics: Child Abuse in America, CHILDEHELP, 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. 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. 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. 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.

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. There is no specific group to hold directly responsible; nevertheless, intangible, indefinable risks consume us. Concerns over sex

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).
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

manner uncorrelated to their statistical likelihood of re-offending. 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. 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. 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.

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.” In Chicago and New York City, local authorities initiated the first sexual offender registries. Beginning in the mid-1940s, a spate of sexual crimes again brought the issue to the forefront. Subsequently, states passed various local “sexual psychopath” laws, allowing for extended commitment. 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, 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).
30. Jenkins, supra note 29, at 80.
31. Id. at 52–55.
32. Id. at 80–81.
statewide registration law in 1947. The public encouraged the police in raids against “perverts”—which in practice meant any men found at the local gay bar. These men often ended up incarcerated or institutionalized. Outside of this context, however, the laws were rarely used. The regulations were viewed as too harsh. Moreover, the greater context for such government regulation was not in place. The populace balked at the intensive state intrusion required. By the late 1950s, sexual offenders had dropped from the front page and continued in relative obscurity through the 1960s.

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. Public anxiety initially galvanized around child pornography rings. In the late 1970s, a set of stranger abduction scandals also served to generate concern. In this period, there was greater focus on rape and incest, as the growing feminist movement brought these issues to the forefront.

34. See Neil Miller, Sex-Crime Panic: A Journey to the Paranoid Heart of the 1950s 108 (2002). Miller describes how “on a single night in Baltimore in October 1955, 162 men were arrested at a gay club . . . . [I]n Boise, Idaho, beginning in November 1955[. ]The 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).
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,


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

48. Adler, supra note 41, at 232–33.


50. Id. at 209–11.


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.
California passed the first registration statute in the nation in 1947. Logan, supra note
33, at 61.
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. Under federal law, states face the loss of federal funding if they do not adopt registration requirements. The law also requires some form of “notification” making the information publicly available.

The statutory designation of “sex offender” often contains offenders not commonly considered an inherent danger to society. Some states make no distinction regarding the seriousness of the crime or the determined dangerousness of the offender. 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. 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.

Residency restrictions are the largest growing area of law in sex offender regulations. Although not required by federal law, twenty states now have some form of residency restrictions. 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.
68. 108 Stat. at 2042 (codified as amended at § 14071(e)).
70. Id. at 8, 55.
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. 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. Some states include the vague “locations where children are the primary occupants or users” and “place[s] where children regularly congregate.” To address the problem, developers have even designed “sex offender-free” communities. Consequently, sex offenders have been regulated right out of town, as is often the explicitly stated intent of the legislature. 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.” Many other localities have followed suit, afraid that displaced sex offenders will relocate to their districts. 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.
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”).
82. See id. at 2–3.
neighborhoods are the only places left in town. Others deny sex offenders access to emergency shelters; in the case of a hurricane: sex offenders must report to the local jail.

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. 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. Required only to occupy their official residence from, for example, ten in the evening until six in the morning, they can still visit bus stops, parks, and playgrounds throughout the day, the times when children are most likely to be there. Usually, restrictions have no impact on access to private homes, where eighty-four percent of sexual assaults on children under twelve occur. 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.’” One respondent reasoned that these limits “serve no purpose but to give some people the illusion of safety.”

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

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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.
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:

\(^92\) 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”).


\(^94\) *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.


\(^98\) See Beck, *supra* note 23.

(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.
103. See id.
104. See id. at 13.
108. See id. at 35.
whole. 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.” 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.” 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.” As an identifiable group, their “visibility is the basis of . . . expurgation.” The danger is contained within them—and consequently is the group against whom to act, the persons to fear. Disproportionality is essential to classifying a specific episode or set of expressed concerns as a moral panic. The alarm is often misdirected, expanding in one area, while other threats are downplayed. As Cohen notes, there is no exact way to measure when the reaction to a specific risk is overstated. Nonetheless, in a situation such as the sex offender scares, the accumulated evidence can point to a general estimation of risk. 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.”).
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.
history, allows for an analysis of proportionality when compared with other statistics.\footnote{119}{See Horowitz, supra note 118, at 144, 146–47, 151 (discussing a statistical analysis of media coverage concerning sex offenders and sex offenses).}

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

\textbf{B. Sex Offender Scares as a Moral Panic}

Previous legal scholarship has analyzed sex offender statutes as the manifestation of a moral panic.\footnote{121}{See Horowitz, supra note 118, at 143, 144, 155; Kelly, supra note 118, at 553.} This period of anxiety meets most of Cohen’s factors for a moral panic: concern, hostility, consensus, and disproportionality.\footnote{122}{See supra Parts II.A–B.} Anxiety over child sexual abuse and the inability to protect children from harm is a salient fear in present society.\footnote{123}{See Jenkins, supra note 29, at 1–2; Garland, supra note 102, at 15; Horowitz, supra note 118, at 143–44.} 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.\footnote{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).} Garland warns against the dangers of anthropomorphizing “society” into a monolithic mass that can share a single viewpoint.\footnote{125}{See Garand, supra note 102, at 23.} In these circumstances, however, there is scarce disagreement. Clear consensus exists as to the serious injury caused.\footnote{126}{See Jenkins, supra note 29, at 1–2; see also Kelly, supra note 118, at 551, 555.} Politically, to oppose such statutes would be seen as backing sexual abuse and would mean certain death in the polls.\footnote{127}{See Horowitz, supra note 118, at 143, 148–50, 156.}

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
allowed it to continue. Instead, the anger is focused on a specific set of actors out of proportion to the actual harm they cause. 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. 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. Statistically, a child is safer on the street than at home, particularly when young. 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. 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. 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. 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.

While there have been peaks of anxiety, public anxieties about sexual

131. See Barron & Lacombe, *supra* note 110, at 53.
134. See discussion *infra* Part III.A.
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. 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. 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.” 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.’”

Now, *Lambert* is “an isolated deviation from the strong current of precedents—a derelict on the waters of the law.” Status regulations are unproblematic; they are widely regarded as reasonable obligations that greatly benefit the community instead of burdening it. 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.

### 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.”

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


153. *Id.* at 229.

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


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. The menace is contained within a clearly ascertainable group and provides a focus to relieve general anxiety. 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.” 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.” 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.” 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.”

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. In the current phase of reflective, or advanced, modernity, “the social production of wealth is systematically accompanied by the social production of risks.” Current preoccupations have turned from issues of subsistence to controlling the unknown dangers that surround us, at least in wealthier parts of the world. 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).
165. Ungar, supra note 19, at 273.
167. Id. at 19 (emphasis omitted).
168. See id.
modernization be prevented, minimized, dramatized, or channeled?" These feelings change the way people interact with the world around them. Under a risk society, “risk thinking 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.”

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. Due to ecological contamination, some animals have rising levels of mercury. Discussions have centered on fish as the point in the cycle where humans are most likely to ingest mercury. Pregnant women are considered particularly vulnerable, with an unquantifiable threat for their incipient child. 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

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169. Id.
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.
176. See id. at 2-12 to 2-14.
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.
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.

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. 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.

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. 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). Nonetheless, we can identify coal companies as producers of harmful carbons, even if we still need scientists to explain the process. Once defined by science, an impression is created that science can also control the risk.

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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.
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).
201. See Beck, supra note 199, at 13.
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.\textsuperscript{205} An eternal fear of the other can be projected onto persons accused of a specific crime, recreating a traditional moral panic.\textsuperscript{206} Moral panic serves as a release, allowing the community to choose and ostracize a particular group to quell anxiety about those who remain.\textsuperscript{207} Crime is a risk that is "knowable, decisionable (actionable), and potentially controllable."\textsuperscript{208} In this "age of uncertainly," particularly compelling are "discourses that appear to promise a resolution to ambivalence by producing identifiable victims and blameable [sic] villains."\textsuperscript{209}

One of the key elements of the moral panic is disproportionality.\textsuperscript{210} The envisioned harm is greater than the underlying acts.\textsuperscript{211} Correspondingly, the resulting fears are also of a greater magnitude.\textsuperscript{212} In a risk society, the response is not necessarily out of proportion to the underlying acts.\textsuperscript{213} In fact, the response might be subdued in contrast to the potential for harm.\textsuperscript{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.\textsuperscript{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.\textsuperscript{216}

In a risk society, the response sought and the ability to act are both greater.\textsuperscript{217} The role of the state in punishment intensifies.\textsuperscript{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

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205. Ungar, supra note 19, at 275.
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.
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There is an increasing call for government participation, particularly at the federal level. 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. 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. 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. 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. While the anxiety turned national, for the most part, the response was local. 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). 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. To the extent that the scares played themselves out locally, they dissipated as the potential targets were identified and isolated.

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. 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.
repeated throughout the country. More than that, however, these deaths became rallying points for state and national movements. 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.

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. As a result of these forces, the concerns of a risk society can sustain a set of moral panic that might otherwise subside. More than that, however, a risk society transforms the nature of the moral panic. 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. 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.

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


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.


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. The control changes from immediate to wide arching and omnipresent, from the past and present to the future. Guilt looks back, finding the offenders and casting them out for their past acts and harm to the community. Risk looks forward, with the expectation of dictating that which has not happened yet. Moreover, there is a belief that the government can and should act to protect its populace against these dangers.

The language of risk allows targeting for future harms. 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.” In his words, “[t]he more distant the ‘risk’ is from actual crime, the broader must be the gaze of the government.” 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.’” 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. The laws plan for the future instead of punishing for the past. There is a feeling that the state can and should control all threats. Risk society “is a society increasingly preoccupied with the future (and also with safety).” 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.
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

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. 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. Scholars have traditionally applied a moral panic framework to the scares of sexual abuse and resulting legislation. 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.
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.