Integrating Politics with the Social Amplification of Risk Framework: Insights from an Exploration in the Criminal Justice Context

Rajeev Gowda

Associate Professor, Economics and Social Sciences, Indian Institute of Management-Bangalore, Bannerghatta Road, Bangalore 560 076, INDIA. Phone: (91-80) 6993035; Fax: (91-80) 6584050; E-mail: rajeev.gowda.wp92@wharton.upenn.edu

This chapter was previously presented at the 1999 conference on the Social Amplification of Risk Framework, Cumberland Lodge, UK. Earlier versions were presented at research conferences of the Social Science Group on Risk, the Association of Public Policy and Management, and the Society for Risk Analysis. Comments from participants at these conferences, and from reviewers, especially Claire Marris, are gratefully acknowledged.

I. Introduction

Some risk-related incidents have far-reaching societal impacts while others gradually fade from public attention and memory. The extent of societal impacts include direct policy responses such as stricter regulation of the relevant risk and also "significant indirect impacts such as liability, insurance costs, loss of confidence in institutions, stigmatisation, or alienation from community affairs" (Kasperson, 1992; 158). Interestingly, the magnitude of the societal impacts had little to do with the technically assessed magnitude of the actual risks involved. This puzzle was sought to be explained by the developers of the Social Amplification of Risk Framework (SARF) (Kasperson, et al., 1988).

The SARF made a crucial contribution to our understanding of societal risk management because it helped us to understand many of the key factors affecting the amplification or attenuation of risk-related incidents. The developers of the SARF argued that amplification and attenuation depended on a complex set of behavioural, psychological, social and cultural processes, rather than objective measures of risk. Factors affecting social amplification included public concern and fears about the risks and attention from the media and active opposition from key individuals and groups in society. These individuals and groups acted as "amplification stations," often through their societal roles, and helped to convert an individual risk-related incident into a range of socially transforming outcomes (Kasperson, 1992).

The SARF clearly makes a substantial contribution to our understanding of why the social amplification of risks occurs. However, it has not yet arrived at a clearly developed understanding of how some risk-related incidents get attenuated rather than amplified. The developers of the SARF clearly recognise this problem and are actively exploring different hypotheses to enhance our understanding of attenuation. For example, Kasperson (1992; 174), has pursued the direction of whether "individual components of social amplification processes have a 'necessary but not sufficient quality', that multiple elements of social amplification must be present if the process is to 'take off' and to be sustained?" Elaborating on this question, Kasperson and Kasperson (1996; 103) have raised the question of whether attenuation results because the risks involved "occur in distant times, distant places, or [to] distant–that is, powerless or marginal–social groups?" Clearly, much more work needs to be done to enhance the SARF and to make it a unifying and overarching explanatory framework for both social amplification and attenuation of risks.

In this chapter, we aim to contribute to enhancing the explanatory power of the SARF by starting from an explicit recognition that the SARF is fundamentally a political account of how people and societies deal with risks and risk-related incidents. Therefore, we argue that the SARF can be substantially enhanced by insights drawn from political analysis and studies of the policy process. Specifically, we draw on Kingdon's (1984) "agenda-setting model" to highlight how the various stages of the policy process affect whether or not societal reactions to risks get translated into tangible policy outcomes. Further, we pay special attention to the inherently political nature of policy solutions and how this affects the success or failure of efforts aimed at the social amplification of particular risk-related incidents.

In order to make our insights more compelling, we draw on empirical cases from a domain hitherto left alone by most risk analysts–criminal justice.While the SARF was developed in the context of health and environment conflicts, investigating its utility as an explanatory framework in the domain of criminal justice should yield useful insights to enhance the framework. Further, we may be able to generatee useful insights from the risk analysis domains of health and the environment to improve the societal administration of criminal justice. Within criminal justice, our attention is focused on policy efforts to protect children from predators, particularly sex offenders who have served their terms and moved back into the community. This domain has witnessed tremendous policy activity, across continents, over the last few years. It is to this policy context to which we now turn:

II. Social Amplification in the Criminal Justice Domain: The Case of Megan's Laws

In July 1994, Megan Kanka, a seven year old New Jersey girl, was raped and murdered by a paroled child molester who lived across the street from her. Outraged by this tragedy, her parents, Richard and Maureen Kanka, lobbied state and federal officials to enact tougher laws to prevent such tragedies in the future. They argued that Megan could have been saved if they had known of their neighbor's criminal background and taken care accordingly. They called for a law that would ensure that local law enforcement officials and parents would be informed when convicted child molesters and rapists moved into a community after their release (Bredlie, 1996). This right-to-know approach to addressing people's concerns about the risks posed to their children by released sex offenders quickly attracted attention all over America. The publicity accorded to the Kankas' efforts and Megan's tragic death resulted in a wave of legislation across America whereby the right-to-know approach was implemented as the predominant policy response to managing the risks posed by released sex offenders. While the term Megan's Law specifically applies to the New Jersey state law, it has become synonymous with the broader policy approach generally. We shall therefore use the umbrella term Megan's Laws to describe legislation patterned wholly or partly on the original Megan's Law in New Jersey.

The phenomenal and quick passage of Megan's Laws around the United States suggests that this case may be an interesting example of the social amplification of risk (Kasperson, 1992; Kasperson, et al., 1988). It is particularly hard to pass new legislation in the United States, given the design of the democratic process in America and the competition among varied groups in the country's political economy. As a result only a small fraction of proposed legislation ever makes it to the statute books. Given this low base rate, the passage of Megan's Laws may demonstrate social amplification in action. It may therefore be particularly insightful to analyse the political and risk-related processes that led to the proliferation of Megan's Laws.

Just as with other instances of social amplification, Megan's Laws are fundamentally driven by risk perceptions. They represent a policy response to people's concerns about recidivism, i.e., that sex offenders are likely to repeat their crimes. However, in the case of sex offenders, there is no objective measure of the rate of recidivism. The evidence on the subject is controversial, with one study reporting that the probability of recidivism ranges from practically zero to more than fifty percent (Furby et al., 1989). More recently, Bredlie (1996) reports that the Department of Justice states that the recidivism rate for sex offenders who have not been given treatment is nearly sixty percent. And Attorney General Janet Reno is reported to have stated that "convicted child molesters have a recidivism rate as high as 40 to 75 percent" (Seper, 1995, quoted in Bredlie, 1996).

In any case, these numbers may be open to question because some of the threat to children comes not from strangers but from family members themselves (Gillespie, 2000), and the evidence on this aspect of the problem is probably underreported. Lotke (1996) emphasizes the significant problems associated with assessing the risks posed by sex offenders and argues that people are not aware of the fact that large numbers of sex offenders within families do not get caught; that when caught, the majority can be treated and the threat of recidivism reduced.

Regardless of the fact that it is seeing only a part of the larger problem, given the absence of consensus on an objective assessment of the risks involved, it is quite possible that the general public may consider every released sex offender to be a definite candidate for recidivism. It is also understandable that people will desire to ensure that their children are exposed to absolutely no risk from pedophiles. Thus, it follows that the public will support risk-reducing measures in this context based on the notion that even one repeat offense by a released sex offender is one too many. Sexual attacks on children arguably provoke reactions of dread which have been shown to enhance people's perceptions of risk in the health and environmental domains (Slovic, 1992). Thus the nature of the response to the risks of such crimes has many of the elements found in traditional social amplification of risk contexts and may indeed be more potent in the case of sex crimes against children. It is thus hardly surprising that there is tremendous public support for

registration and notification laws aimed at informing citizens about sex offenders in their midst. Politicians have reacted quickly to tap this widespread political support by pushing for the passage of variants of Megan's Laws across the United States.

The first major statute to adopt the right-to-know approach was the Washington State Community Protection Act of 1990. This law was triggered by a brutal attack on a seven-year-old boy by Earl Shriner, a convicted child molester. It turned out that Shriner had been released even though it knew that he might still be dangerous. In response to this discovery, the state legislature passed the law in the belief that registration of sex offenders with the police coupled with community notification of the presence of offenders would reduce the probability of the such attacks reoccurring. The Washington state legislature's actions were also influenced by media coverage of attacks on children by repeat offenders in other states (Bredlie, 1996). At the federal level, simultaneously with the New Jersey developments in 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act modeled after the Washington statute.

New Jersey, which promulgated the actual Megan's Law, has among the more refined systems for dealing with released sex offenders. The New Jersey system is explicitly tied to the judged seriousness of the risk posed by the released offender. Released sex offenders must register with law enforcement authorities. There are then three levels of notification based on the law enforcement agency's assessment of the offender's chances of re-offense, which is to be based on a set of risk factors including the offender's criminal and psychological history (Bredlie, 1996). For those offenders considered low risks only law enforcement agencies who are likely to encounter them are to be notified. For those offenders considered moderate risks, notification is extended to community groups involved in caring for women and children who are likely to encounter them. For those offenders considered high risks, notification must be extended to members of the community who are likely to encounter the released sex offenders (Bredlie, 1996).

In spite of the care with which the actual Megan's Law has been designed by New Jersey, the author of one of the few critical essays on Megan's Law argues that it is an example of legislation passed in an election year which has not considered all the potential consequences and constitutional issues fully (Crimaldi, 1995). This criticism may be too strong in the case of New Jersey's law but is perhaps more appropriate in the context of a similar program in Louisiana and one in California. The law in Louisiana, requires sex offenders to notify communities themselves by publishing notices in local newspapers which includes their names, addresses and their crimes. Further, local parole boards have the discretionary authority to require other forms of identification including bumper stickers which state "Sex Offender On Board" (Bredlie, 1996); this "Scarlet Letter" law is encountering legal challenges.

In California, the then state Attorney General, Dan Lungren, who was running (it turns out unsuccessfully) for election as governor, announced that the state would publish a CD-ROM containing information on upwards of 60,000 convicted sex offenders. The CD-ROM would, be available to the public at their local police departments. An article in the *New York Times* (July 1, 1997), pointed out that the information contained in the database was not accurate, comprehensive, or up-to-date, e.g., it included people who were convicted of same-sex consensual acts which have since been decriminalized. Thus, in California, some people whose names were found on the list ended up losing their jobs, even though their original crimes would no longer qualify them for the sex offender tag.

The same *New York Times* article referred to the public furor that often accompanied the discovery that a sex offender who has completed his term in prison was now living in the community. While such public concern is legitimate in light of recidivism, it also hampers rehabilitation, and provides governments with an excuse not to consider other forms of treatment of sex offenders. Further, while public hounding of sex offenders who have served their term clashes with values associated with the rule of law, a larger danger is vigilante justice and

violations of constitutionally guaranteed rights. This is cause for concern because convicted sex offenders are less likely to have defenders, other than key organizations such as the American Civil Liberties Union (ACLU). However, even the ACLU has chosen not to test the constitutionality of these laws, except in the narrow context of double jeopardy--that released sex offenders were being unfairly punished again through the process of notification. Courts have generally ruled that notification does not constitute punishment and thus Megan's Laws do not constitute double jeopardy. In any case, commentators, e.g., Schopf (1995), argue that Megan's Laws can survive constitutional challenges on many different fronts.

In considering the constitutionality of such laws, courts have ruled that the interests of the state and parents in protecting children outweigh any potential stigma effects or threats of vigilantism (Bredlie, 1996). A 1998 decision by the United States Supreme Court to not review suits challenging lower courts' upholding of Megan's Laws has spurred the full implementation of such laws in virtually every state. The key issue which these lower courts focused on to rule that such laws are not unconstitutional is that mere notification is not a significant punishment and therefore does not involve double jeopardy. Therefore, how people behave in response to such notification will be key to the determination of the constitutionality of such laws.

Our reading of the literature from risk analysis and cognitive psychology would suggest that it is likely that these punitive untoward effects of notification will occur in the course of time. One concern is the NIMBY (not in my back yard) phenomenon which may cause communities to reject the relocation of released offenders; some instances of this are already available (Nordheimer, 1995). The end result of such reactions could mean that released offenders may not be able to locate anywhere in the country, and perforce lose their right to live in the location of their choice. It could also lead to more parole violations and the spreading of risks posed by released offenders if they are forced to move from place to place or to go underground beyond the reach of police monitoring. Further, instances of vigilante justice suggest that some people may be willing to go beyond the community organizing efforts to undertake illegal acts, and that the majority may be willing to tolerate such extraconstitutional and illegal interventions. Thus these developments indicate how difficult it will be to simultaneously empower citizens, prevent crimes, and protect the civil rights of released offenders. The passage of such laws then are a clear indication of the paramount importance society places on the protection of children.

III. Political Analysis and Megan's Laws

In terms of the backdrop against which developments such as Megan's Laws need to be viewed, one of the most central issues involves the decline in people's trust in the American criminal justice system (Tyler and Boeckmann, 1997). Throughout the 1980s and thereafter, conservative politicians have seized upon salient instances of perceived judicial favoritism toward criminals, to argue that the legal system needs to be overhauled. Indeed, one of the key factors that led to the defeat of a liberal presidential candidate, Michael Dukakis, in 1988, was a political advertisement (the "Willie Horton" ad), which focused on the crimes committed by a criminal released under a parole program established by Dukakis, the then Governor of Massachusetts (Ansolabehere and Iyengar, 1995). This decline in trust in the criminal justice system has led to popular attempts to overhaul the system, for example through referenda, in ways which reduce the flexibility available to judges, and which are ultimately repudiations of legal authority. An example of this is the passage of the "three strikes and you're out" law which was passed by a referendum in California, and which seeks to ensure that repeat criminal offenders are permanently incarcerated (Tyler and Boeckmann, 1997).

One manifestation of the decline in trust in the American legal system is people's increased willingness to tolerate the vigilante or extralegal actions of citizens, and their willingness to dispense with procedural protections for criminal defendants (Tyler and Boeckmann, 1997). Another manifestation of how people have acted upon their decline in trust in the judicial system is the victim's rights movement. The proponents of victims rights argue that

the American judicial system should balance its consideration for the civil rights of criminals with attention to the rights of victims. Megan's Laws arguably fit into this framework because they involve balancing the right to privacy of released sex offenders with the right of potential victims to be free from attack.

In working out how to determine this balance between civil rights and the rights of potential victims one may assume that lawmakers in a republican form of government would consider various policy options thoroughly. That is, they would weigh the constitutional implications and potential vigilante attacks against popular pressure to enact right-to-know laws in the case of sex offenders. Indeed Suedfeld and Tetlock (1992; 51) point out that people generally assume that good political decision making is characterized by "extensive information, search, empathy for the positions of other participants, openness to disagreement, and the wish to find a mutually acceptable outcome."

However, political decision making does not necessarily conform to this narrower and idealistic conception of rationality but focuses instead on a broader strategic rationality centered around elections and electability (Mayhew, 1974). Politicians may care less about the fine balance between civil rights of released prisoners and the right of citizens to live in a crime-free environment; they may care more about what set of actions will return them to office. In this, politicians typically act as "cognitive managers" rather than "cognitive misers," reasoning that a particular course of action would draw more support and demonstrate more decisive political initiative than other options (Suedfeld and Tetlock, 1992). Thus, the widespread and quick enactment of Megan's Laws all over the country can partly be attributed to politicians catching on to a strategically advantageous policy option which would allow them to demonstrate their toughness on crime. The only people fundamentally empowered by Megan's Laws may be politicians themselves!

We thus argue that one central reason why social amplification occurred in the Megan's Law case was because the policy solution offered by its proponents was easily enactable and electorally beneficial to the political players who propelled it forward. This insight enables us to bridge the SARF with a political framework of agenda setting and policy action (Kingdon, 1984) to explain how amplification and attenuation can occur. Kingdon argues that public policy making involves a set of processes including "(1) the setting of the agenda, (2) the specification of alternatives from which a choice is to be made, (3) an authoritative choice among those specified alternatives, as in a legislative vote or a presidential decision, and (4) the implementation of the decision. Success in one process does not necessarily imply success in others" (Kingdon, 1984; 3). One way in which topics can get onto the agenda is through salient events which generate media coverage, especially when promoted by policy entrepreneurs, as also proposed in the social amplification framework.

However, Kingdon (1984) points out, merely getting on the agenda does not guarantee success. Problems have to come together at propitious moments (policy windows) with policy solutions and with favorable political circumstances, if there is to be a likelihood of policy action. He argues that "the probability of an item rising on a decision agenda is dramatically increased if all three elements--problem, proposal, and political receptivity--are coupled in a single package" (Kingdon, 1984; 204). Thus, in Kingdon's framework, advocates of policy initiatives must take advantage of policy windows that have opened due to perhaps a salient, newsworthy identification of a problem. They must then argue that their policy solution is the most appropriate to deal with this problem. And the political climate should be receptive to such arguments, perhaps because politicians see electoral advantage in responding to the problem through the adoption of the proposed solution.

In the Megan's Law case, we have a pressing problem (protecting children from the risks posed by released sex offenders) coupled with a policy solution (information provision) coupled with a political climate favorable to such action (because right-to-know laws are politically difficult to oppose and financially easy to implement in an anticrime, anti-big-government era)

which enabled the Kankas' public-spirited policy entrepreneurship to be amplified in the form of Megan's Laws around the country. Thus, the lesson for social amplification is that the Kingdon (1984) agenda setting model may help describe why some risk incidents get amplified and others attenuated. Attenuation may occur simply because the salient risk incidents which result in problem identification are not coupled with politically viable policy solutions that would result in significant policy action.

IV. Extending the Analysis

The instances of Megan's Laws in the United States provides an insightful illustration of the utility of combining Kingdon's (1984) agenda-setting model of the policy process with the SARF. However, our analysis can be extended even further by considering two other developments from the same domain of criminal justice. The first development involves the case of Polly Klaas in the United States while the second involves the case of Sarah Payne in the United Kingdom. Both these cases involved tragic incidents similar to that of Megan Kanka, but in neither case did policy developments of the range and scope of Megan's Laws result. The Polly Klaas case predates the Megan Kanka tragedy and from the perspective of the SARF can be considered to be an example of social attenuation. The Sarah Payne case is contemporaneous to the writing of this chapter but developments to date indicate that the policy community is handling the situation without extraordinarily significant changes in the management of risks from sex offenders. The addition of the United Kingdom context also provides a useful contrast to the United States experience in managing these risks.

In the Polly Klaas case, the victim was a pre-teen girl in the town of Petaluma, California who was found missing. A few days later her body was found and a vagrant, Richard Allen Davis, was ultimately convicted of her kidnapping and murder. Her father, Mark Klaas, responded to this incident by vowing to create conditions which would ensure the safety of children from criminals and other predators. His agenda involved generating collective action in communities, whereby towns formed committees to promote children's safety. His activities influenced the establishment of the Polly Klaas Foundation (http://www.pollyklaas.org) and the Klaas Foundation for Children (http://www.klaaskids.org) which are lobbying entities and information providers in the policy arena pertaining to children's safety.

While the Polly Klaas tragedy was widely covered in the news media (problem identification) and occurred during an era favorable to tough action against criminals (politically propitious policy window), its overall impact may have been limited by the policy approach chosen by Mark Klaas–collective action. Collective action is particularly hard to bring about because of rational free-riding behavior (Olson, 1965), and this will arguably be the case even in the face of threats to children. Further, collective action takes away the responsibility of responding to the problem from the government and places it in the hands of citizens and community groups, thus lessening the potential for large scale policy response. Indeed we can observe that Mark Klaas's efforts have resulted in tremendous publicity, sympathy and attention to the problem of children's safety but his activities have gradually faded from active public consciousness and the policy agenda. His collective action approach did not trigger the large-scale policy changes as witnessed under Megan's Laws.

Thus we would argue that the availability of a potent policy solution–the right-to-know–was significantly responsible for the success of Megan's Laws when compared to other approaches like collective action in terms of protecting children from criminal predators. This insight from Kingdon's (1984) political process model of agenda setting and policy formation helps us to understand a crucial factor affecting the social attenuation of risk.

We next turn to the United Kingdom for a case presents a contrast to the United States' experience and raises important insights for the SARF. In the Sarah Payne case, the victim was a nine-year old girl who was abducted and killed. A British tabloid newspaper, *News of the World*, reacted to this tragic incident by announcing a campaign to pressurise the government to enact a

United Kingdom version of Megan's Law, termed Sarah's Law. The newspaper also went ahead and published the names, photographs, and locations of 49 convicted sex offenders. It also announced plans to develop an online database of sex offenders that would be accessible to the public (Gillespie, 2000). Simultaneously, the parents of the murdered girl launched a signature campaign which resulted in 700,000 citizens signing a petition urging the government to enact Sarah's Law (Dyer, 2000). Overall, these developments had many of the hallmarks of social amplification in action; interestingly enough, the policy solutions of choice had crossed national boundaries and even generated some support from United States non-governmental organisations such as those led by Mark Klaas.

However, the reaction from the British government and various British interest groups concerned about children's safety was substantially different from what emerged in the United States. The government pointed out that it had the situation under control and had already passed a law–the Sexual Offenders Act of 1997–which also included a Sex Offenders Register. The administration of this act was the responsibility of Public Protection Units within police constabularies, whose officers were expected to interact with and monitor released sex offenders. Under this act, the police were authorised to disclose the identity of a released sex offender to various sections of society, depending on the assessed threat and need. While the Register was not intended to be a publicly accessible document, there have been instances of some of the information in it being disclosed to communities which were potentially threatened by released sex offenders (Gillespie, 2000). It was expected that this threat of disclosure would be sufficient to ensure that released sex offenders would not reoffend.

The reaction to the *News of the World* campaign from government and interest group circles hardened when it was seen that the campaign had led to vigilante attacks, e.g., on a person who looked like one of the offenders whose picture had been published. Because the newspaper did not have a sterling reputation for accuracy, and was publishing details based on their own sources rather than obtained from an uncooperative government, the likelihood of more mistakes was a significant possibility. Finally, the newspaper called off its campaign after a mob attacked the home of a suspected paedophile (Gillespie, 2000).

Strictly speaking, it is hard to assert that the potential social amplification has got attenuated instead, given that these issues are too contemporaneous for such a judgement. Still, given the comparative rapidity of the passage of Megan's Laws around the United States, the fact that no such policy change occurred in the United Kingdom allows us to conclude that social amplification of risk, especially in terms of policy-related consequences, did not actually result.

From the perspective of our integration of the Kingdon (1984) agenda-setting model with the SARF, it will be useful to consider why such amplification did not occur. Once again, we had a pressing problem (protecting children from the risks posed by released sex offenders) coupled with a policy solution (information provision) but the political climate favorable to such action did not transpire and instead actually worsened. Clearly, the evidence of attacks on innocent people strengthened the resolve of the government to continue to adhere to its existing procedures and not to yield to public pressure. In addition, the government's hand was strengthened by the fact that the *News of the World* campaign was strongly opposed by independent child protection charities who argued that publication would drive paedophiles underground and thereby increase the risk to society.

Further, the parliamentary system in the United Kingdom generates a very different policy process than in the United States. With more centralised party control over policy, there are fewer opportunities for individual political entrepreneurs or even entities outside the formal policy process to push agendas that translate into policy changes. Elections are also typically held only at approximately five-year intervals and then national issues tend to dominate campaigns. Thus, the political context of the United Kingdom does not provide easy routes for policy entrepreneurs to translate their agendas into action, and this becomes a crucial hurdle that comes in the way of the social amplification of risk.

V. The Inherent Political Nature of the Right-to-Know

Given our attention to the political nature of policy processes and specifically of policy instruments themselves, it would be worth our while to consider the political potency of policy instruments such as information provision or the right-to-know. Information-related policy approaches have a long history and information has been regarded as a key factor that could lead to improved risk management (Hadden, 1989; Magat and Viscusi, 1992). For example, information has been used as a policy tool in public information campaigns where governments attempt to change people's behavior through one-way messages (Weiss and Tschirhart, 1994). Another way in which information serves policy purposes is through product labeling and hazard warnings aimed at consumers and workers; here information is provided in particular formats and consumers and workers are expected to process it and arrive at risk-management decisions (Magat and Viscusi, 1992). Information is also a key component of risk communication efforts aimed at resolving risk-related conflicts; Leiss (1996) discusses the various phases of risk communication research and describes how risk communication practice has moved from one-way education efforts to inclusive, participatory, information sharing processes aimed at consensual risk reduction.

But risk analysts have not emphasized the political nature of these information-related tools. Their political nature is nowhere more relevant than in the context of the relatively recent information-oriented innovation–the recognition of the public`s right-to-know. At first glance, it would seem odd to term this policy instrument as inherently political. After all, rather than trying to persuade citizens toward some behavioral response, the right-to-know approach would simply place information about risks in the public domain. This way people can respond to the information in any manner they choose, though the expectation is that citizens and other entities will make better informed decisions, particularly about risk management and self-protective behavior. The right-to-know concept can be further developed by integrating it with various risk management options involving citizen participation (Hadden, 1989).

Political scientists such as Williams and Matheny (1995) are more explicit about the fact that right-to-know laws are inherently political. They consider right-to-know laws as empowering weapons in the hands of environmental activists and consumers against the powerful forces of industry. They would consider opposition to right-to-know laws as arising from industry's efforts to suppress popular challenges to risk management decisions. Overall, the right-to-know approach has been hailed as a democratizing feature of American risk regulation (Sunstein, 1997) and its application in the context of hazardous waste policy recognized as a significant policy success.

In hazardous waste policy, the right-to-know is central to the Superfund Amendments and Reauthorization Act, Title III of which is called the Community Right to Know Act. That law requires companies to make available to the public information about their hazardous waste emissions, which are also recorded in a database called the Toxics Release Inventory. The success of this approach lies in the feature that companies have drastically reduced their waste emissions in response to the law, presumably for fear of adverse risk perceptions in their host communities. Indeed Portney (2000) predicts that programs utilizing the right-to-know technique will soon proliferate in other domains of environmental policy because of their success in the hazardous waste arena. He succinctly summarises the scholarly consensus on right-to-know policies when he asserts that "experience has shown that when firms are required to make public their emissions, they feel pressure to reduce them, even when the levels of emission are perfectly legal. . . . So long as citizens are able to make sense of this information, programs like this are not only democratic but also efficiency-enhancing" (Portney, 2000; 201).

The first sentence of the quote above captures the essence of the right-to-know approach. Information provision can be a remarkably simple policy instrument. Rather than persuading citizens and firms toward some behavioural response, it merely mandates that information about

risks be placed in the public domain. People and firms can then respond to this information in any manner they choose, though the expectation is that they will make better-informed decisions, particularly about risk management and self-protective behaviour (Hadden, 1989). Information provision corrects a market failure–that of incomplete information. Firms will choose the level of emissions that is acceptable to a concerned public, even if that level goes beyond that required by regulators. The attention to people's preferences actually makes the end result more completely efficiency-enhancing than even a perfectly tuned regulatory standard that only considers the technical risks involved. Fundamentally, enhancing the public's right-to-know is politically empowering while it achieves the desired policy outcomes.

But the key challenge to the effectiveness of right-to-know policies can be discerned in the second sentence in the Portney quote above. For such policies to be effective, it is important that people "make sense of this information" correctly. Whether this will indeed occur is the central question for policy analysts. Policy analysts need to be alert to the implications of choosing a policy instrument such as the right-to-know, fundamentally to avoid the false negatives and false positives associated with policy choices (Hammond, 1996). The false positive would be judging something as a true warning signal when in fact it is false, and the false negative would be ignoring a warning signal with disastrous consequences. We suggest that risk analysts and policymakers need to work with this powerful instrument in order to minimize false positives and false negatives in people's reactions. This will help prevent such progressive, empowering techniques as the right-to-know from becoming counterproductive and yet another addition to the dreary catalogue of regulatory paradoxes where good intentions have often resulted in less than stellar policy outcomes (Sunstein, 1990).

From a political perspective, the growing popularity of information provision proposals arises from their strategic superiority to opposing arguments. Because information is simply provided, such proposals are seemingly innocuous, and this makes them easier to implement politically. Information-related policy developments are also gaining momentum because political actors reason that by calling for such laws they are demonstrating their commitment to public health and public empowerment goals. After all, such proponents seem to suggest, if risk-related information is available to producers, what is the harm in sharing it with those who may be affected by the risks? The implication is that risk producers who oppose such information provision have something to hide, and that their actions are anti-democratic in an open society. Further, because information provision typically does not entail the establishment of a large regulatory apparatus, it is attractive to policymakers on cost considerations. Also, given the hands-off nature of the information provision, any negative reactions on the part of the public are harder to pin directly to governmental actions.

Risk analysts also need to recognize that the debate over right-to-know laws is embedded in a political process, where the choice over balancing false positives and false negatives will be made by policymakers paying attention to the competing power of different groups (Hammond, 1996). In such debates, particularly in the context of social amplification, it is far from clear that all aspects of a policy solution will be discussed thoroughly. The reason for this is that people, whether laypeople or policymakers, fundamentally behave as politicians, with a keen concern for reputation effects (Tetlock, 1998). When risk-related incidents occur, the process of collective belief formation may be driven by "availability cascades" where a given belief becomes accepted as the general consensus because people endorse the belief based on what they hear from others and by even distorting their own views in order to ensure that they are socially acceptable (Kuran and Sunstein, 1999).

Further, lawmakers may often be loathe to even appear to question popularly acceptable developments such as Megan's Law for fear of their views being used against them in negative advertisements in future elections. Because party control over legislators is comparatively minimal in the United States, elections are held frequently, and political competition is substantially individual-centred, legislators are constantly attuned to how their actions will be

perceived in an electoral arena where negative political advertisements are a central feature. In such advertisements, candidates often resort to half-truths, misleading statistical inferences, and distortions to portray their opponents as deficient on some aspect of concern to the electorate. In recent years, one such aspect of concern has been candidates' views on crime, and candidates considered "soft" on crime have had a difficult time at the polls (Ansolabehere and Iyengar, 1995). Further, "[p]osturing for their next campaigns, elected officials sometimes introduce legislation designed to embarrass the opposition" (Ansolabehere and Iyengar, 1995; 149).

We can therefore surmise that if some elected officials were to advocate Megan's Laws, their opponents would be hard pressed to counsel a careful consideration of the issues because such moderation may be out of tune with the prevailing public sentiment and may well be used against them in future elections. Thus the process of social amplification may often involve a debate characterized by one dominant viewpoint, and this may prevent judicious insights from being integrated with the policy solution. Thus the political power of the combination of policy context and instrument may well come in the way of appropriate safeguards and modifications to the right-to-know.

VI. Policy Implications

Risk analysts can play a significant role in helping to inform and guide people's reactions to risk-related information, particularly in complex areas such as those involving environmental, health, and crime risks (Noll, 1996). It is important that these insights be considered because fundamentally it is not clear how people are even expected to react to information about released sex offenders in their midst. Will people move out of their neighborhood? Will people drive the released sex offender from their community, even in violation of laws? Will people restrict their children's activities substantially in order to ensure their safety? We will find the answers to questions such as these over the course of time. But the field of risk analysis can provide some educated insights into how right-to-know laws may work out in practice.

Risk analysis has two central insights for right-to-know laws: One insight derives from risk communication, which represents an understanding of the systematic ways in which people respond to risk-related information. The other insight derives from the study of the not-in-my-backyard (NIMBY) phenomenon characteristic of many risk-related disputes. Unfortunately, these insights seem to have generally escaped the purview of proponents of right-to-know legislation in recent years.

In the field of risk communication, a large body of literature and experience demonstrates that mere provision of information is not enough to ensure that people take appropriate risk-reducing and self-protective behavior. Nordenstam and DiMento (1990; 346) describe how and where problems can arise and affect information processing depending on "source problems (who says it), message problems (what is said), channel problems (how it is said), and receiver problems (to whom it is said). While these points refer to actively delivered messages, they suggest the need for research into how passively provided information may generate a variety of reactions, and for research into how different channels, including the Internet, may affect how people react to information provision.

How people respond to risk-related information has also been studied by scholars working in the domain of behavioral decision theory (Gowda, 2001). Behavioral decision theory's findings show that people: (i) use shortcuts when processing information; and (ii) rely on inherent preferences that are significantly different from that assumed in expected utility or rational choice, the economic standard of behavior. Thus individuals deviate from the rational choice standard of rationality in ways that are "persistent and large" and "systematic rather than random" (Knetsch, 1995: pp. 75; see generally, Kahneman, Slovic, and Tversky, 1982).

The use of shortcuts, or heuristics, is sometimes efficient in that they facilitate judgments without tremendous information-processing costs. Some heuristics can lead to inefficient or suboptimal outcomes that people would reject if confronted with a detailed analysis utilizing

statistical arguments. When heuristics lead to suboptimal outcomes from the normative standpoint of economic rationality, they are termed biases (Camerer, 1995). However, in the realm of choice, where people have to make decisions rather than arrive at judgments over probabilities, their preferences are significantly different from those considered strictly rational. This is made clear in prospect theory, a descriptive theory of choice advanced by Kahneman and Tversky (1979) which is a key component of behavioral decision theory.

Some of the key deviations from rational choice in judgment which affect people's response to risk-related information include the availability heuristic and the representativeness heuristic. The availability heuristic states that people "assess the frequency of a class or the probability of an event by the ease with which instances or occurrences can be brought to mind" (Tversky and Kahneman, 1974: pp. 1127). In other words, if people can readily think of examples of events, they will inflate their estimates of the likelihood of their occurrence. In the Megan's Law context people may base their estimates of the likelihood of encountering a released sex offender on media coverage, which may result in exaggerated risk perceptions. Working in tandem with the availability heuristic, the representativeness heuristic (Tversky and Kahneman, 1974; Tversky and Kahneman, 1982) may lead people to make incorrect extrapolations from media coverage of particular risk-related issues. In the Megan's Law context, this heuristic may result in people's unwillingness to differentiate between sex offenders based on their likelihood of recidivism, even if that were determined in some objective manner.

Thus people rely on several important and systematic shortcuts when they make judgments about the probabilities of events. While such errors in judgment could theoretically be ameliorated through education, deviations from rationality in the realm of choice are caused by factors other than "rational laziness." People stand by "inferior" or "irrational" choices even after they are made aware of their mistakes. This is because when individuals make choices, their heuristics are derived more from intuition than from cognition, i.e., they represent true preferences. While errors in judgment result from correctable mistakes in the thought process, errors in choice stem from fundamental violations of the assumptions of rationality (Tversky and Kahneman, 1986). This has led scholars to search for dimensions of choice which are not traditionally included in rational models of decision making. Key dimensions relevant to our discussion of Megan's Law are the certainty effect and the zero risk bias.

The certainty effect states that people prefer small benefits which are certain to larger benefits that are uncertain (see Baron, 1994: pp. 358-61 for a discussion; Plous, 1993). For example, people tend to place a higher value on reducing the probability of a negative outcome from five percent to zero percent than reducing the probability of another, perhaps more serious, danger from 30 percent to 20 percent. In the Megan's Law context, people will generally support any moves which promise to ensure that any threat to their children from released sex offenders will be eliminated, regardless of the financial and social costs of these measures. Politicians seem to understand the certainty effect well and often offer "certain" solutions such as eliminating all carcinogenic food additives (Gowda, 1998), or three-strikes-and-you're-out laws. Voters, meanwhile, seem to expect clear and certain solutions, and politicians propagate the view (myth?) that they exist by continuing to promise them. While incorporating certainty is a worthy aspiration, it may be inefficient from an economic perspective and impossible in the real world.

The insights from behavioral decision theory discussed above seem to suggest that people's reactions to risk-related information are characterized by flaws. However, scholars working on risk perception argue that the public, far from being ignorant and irrational, seeks to improve risk regulation (Hadden, 1991; Slovic, 1987; Slovic, 1992). Slovic (1987: pp. 285) lucidly captures the essence of this argument: "Lay people sometimes lack certain information about hazards. However, their basic conceptualization of risk is much richer than that of the experts and reflects legitimate concerns that are typically omitted from expert risk assessments." The concerns affecting the public include qualitative factors such as voluntariness, catastrophic potential, and impact on future generations, which experts typically ignored by restricting their

focus to only quantitative factors such as expected mortality and morbidity (Slovic, 1992). As Leiss (1992) points out, the public's perceptions of risk have also been affected by its awareness of the historical record of risks being underestimated by governments and industries.

Kunreuther and Slovic (1996) therefore advocate a "contextualist" view of risk, where its quantitative, qualitative and values aspects are all considered but with different emphases in different contexts. They then call for risk management strategies which involve "more public participation [in] both risk assessment and risk decision making to make the risk-decision process more democratic, improve the relevance and quality of technical analysis, and increase the legitimacy and public acceptance of the resulting decisions" (Kunreuther and Slovic, 1996; 123). This is perhaps the way in which Megan's Laws should be considered--as efforts which in their own complex way attempt to help people protect themselves in as workable a manner as possible.

Such insights need to be integrated with Megan's Laws so that the information provided generates the intended self-protective outcome rather than a vigilante response which is violative of laws. Information providing entities, such as local law enforcement authorities need to heed the lessons of risk communication research because "a demonstrated commitment to responsible risk communication by major organizational actors can put pressure on all players in risk management to act responsibly" (Leiss, 1996; 90-91). If right-to-know laws do not involve responsible action aimed at careful risk management but are utilized for quick political gains, this would be laying the stage for a further diminution of trust in various institutions in the future.

The other major consideration from risk analysis relevant to Megan's Laws is the NIMBY phenomenon. NIMBY refers to a phenomenon which typically arose in the context of siting of facilities where host communities rejected siting proposals, often through significant grassroots mobilization. In the Megan's Laws context, it is important to note that a NIMBY-type response may well be the consequence of risk-related information provision.

A NIMBY response arises for a variety of reasons: It is partly triggered by cognitive psychological features: people may misperceive the extent of the risks due to availability and representativeness, and may demand zero risk in their backyards due to the certainty effect and zero risk bias. It is partly triggered by value conflicts, for example between the rationales of siting or law enforcement agencies and lay publics. Finally, it is triggered by rational, self interest, where communities would rather have the risk transferred to an alternative location.

NIMBY reactions are regarded by some commentators as failures of the democratic process but commentators drawn from the communitarian perspective such as Williams and Matheny (1995) who are favorable to the NIMBY phenomenon offer arguments which support the development of information provision-type laws. They argue that NIMBY is an example of empowerment at the local level which raises consciousness and impresses "upon nascent citizen-activists the connection between information about the risks they live with and, lacking access to that information, their powerlessness to affect those risks" (Williams and Matheny, 1995; 169). Their perspective would be to address "the information problem by redrawing the boundaries among market, government, and community. It envisions information as a public right rather than a private or privileged commodity" (Williams and Matheny, 1995; 170). Information provision laws draws significant political support from such arguments about the empowering aspects of information provision, which also embody a strongly optimistic view of how this information will be used by people, in contrast to our cautious treatment in this paper.

Central results from risk analysis, and indeed from the social amplification literature suggest that NIMBY concerns can be rational because they may stem from worries that a location will be tainted by stigma effects (Slovic, 1992) and this may result in a loss in property values and other economic losses, even in areas some distance removed from the risk-imposing facility (Kasperson, 1992). In the Megan's Law context, stigma effects have only been discussed in the context of their impact on sex offenders. Sex offenders may be stigmatized by the public knowledge of their background and this may have the impact of preventing them from ever reintegrating into the community. But there may be a more substantial stigma-related impact on

communities as well. Once it becomes known that a community is host to released sex offenders the whole community may be stigmatized as people "vote with their feet" and move out to avoid the risk. This potential impact has so far not been considered in the discussion surrounding Megan's Laws.

Finally, another central insight of risk communication research is that process equity matters. That is, people do not care to be talked down to or to merely be the recipients of one-way messages from government agencies. Rather, people are willing to accept creative risk management solutions provided they are involved in the decision process and there is adequate public participation in the choice of risk management solution, before, during, and after a risk-related event (Leiss, 1996). The New Jersey version of Megan's Law contains within it the possibility of heeding this lesson. If law enforcement agencies work together with communities by ensuring that local residents are kept informed and even somehow involved in the monitoring of high-risk sex offenders, then the trust generated by such interaction could prevent vigilante attacks while also ensuring the protection of the community. Law enforcement agencies in the United States are moving toward active involvement with communities through "community policing" efforts; it is such efforts which could lead to more proactive, less legally violative risk management. The policy response in the United Kingdom already seems oriented toward active involvement with the community and that may have been a factor that affected people's willingness to accept the rejection of the Sarah's Law effort.

The goals of right-to-know laws are noble and empowering people is an act of true democratic statesmanship. However, if this innovative policy instrument is misused as a populist measure through the provision of inaccurate information or in ignorance of behavioral responses, the consequences for public policy and particular disadvantaged groups may be far from positive. This may ultimately result in the rejection of innovative policy tools like information provision and make for a less open, less deliberative democracy. And if the end result of empowering tools such as the right-to-know turns out to be actions such as vigilante attacks which are violative of the fundamental tenets of the rule of law, the end result could be a further erosion of trust in the system and its continued delegitimization, in contrast to the positive aspirations of the proponents of this policy approach.

REFERENCES

Ansolabehere, Stephen, and Shanto Iyengar. 1995. Going Negative. New York: Free Press.

Baron, Jonathan. 1994. Thinking and Deciding. 2d edition. New York: Cambridge University Press.

Bredlie, Kirsten R. 1996. Keeping Children Out of Double Jeopardy: An Assessment of Punishment and Megan's Law in *Doe* v. *Poritz*. *Minnesota Law Review*, **81**: 501-545.

Camerer, Colin. 1995. 'Individual Decision Making,' in John H. Kagel and Alvin E. Roth, eds., The Handbook of Experimental Economics. Princeton: Princeton University Press, pp. 587-673.

Crimaldi, Kenneth. 1995. "Megan's Law": Election-Year Politics and Constitutional Rights. *Rutgers Law Journal*, **27**: 169-204.

Dyer, Clare. 2000. Straw Rejects Sarah's Law. *The Guardian*, September 16. http://www.guardianunlimited.co.uk/child/story/0,7369,369173,00.html

Furby, Lita, Mark Weinrott, and Lyn Blackshaw. 1989. Sex Offender Recidivism: A Review, *Psychological Bulletin*, Volume 105, p.3, 1989.

Gillespie, Alistair A. 2000. UK Perspective. *Jurist.* http://jurist.law.pitt.edu/world/uk3.htm

Gowda, M. V. Rajeev. 1999. Heuristics, Biases, and the Regulation of Risk. *Policy Sciences*, **32** (1): 59-78.

Gowda, M. V. Rajeev. 2001. Enhancing the Effectiveness of Innovative Policy Instruments: The Implications of Behavioral Decision Theory for Right-to-Know Policies. In M. V. Rajeev Gowda and Jeffrey C. Fox, eds. Judgments, Decisions, and Public Policy, Cambridge: Cambridge University Press.

Hadden, Susan G. 1989. A Citizen's Right to Know: Risk Communication and Public Policy. Boulder, CO: Westview.

Kahneman, Daniel, Paul Slovic, and Amos Tversky, eds. 1982. Judgement Under Uncertainty: Heuristics and Biases. Cambridge: Cambridge University Press.

Kahneman, Daniel, and Amos Tversky. 1979. 'Prospect Theory: An Analysis of Decision Under Risk.' *Econometrica* 47(2): 263-91.

Kasperson, Roger E. 1992. The Social Amplification of Risk: Progress in Developing an Integrative Framework. In Social Theories of Risk, Sheldon Krimsky and Dominic Golding (eds.,), Westport, CT: Praeger.

Kasperson, Roger E., Ortwin Renn, Paul Slovic, Halina S. Brown, Jacques Emel, Robert Goble, Jeanne X. Kasperson, and Samuel Ratick. 1988. The Social Amplification of Risk: A Conceptual Framework. *Risk Analysis*, **8**, 177-187.

Kingdon, John W. 1984. Agendas, Alternatives, and Public Policies. Boston: Little, Brown.

Knetsch, Jack L. 1995. Assumptions, Behavioral Findings, and Policy Analysis. *Journal of Policy Analysis and Management* **14**(1): 68-78.

Kunreuther, Howard, and Paul Slovic. 1996. Science, Values, and Risk. *Annals of the American Academy of Political and Social Science* **545**: 116-125.

Kuran, Timur, and Cass R. Sunstein. 1999. Availability Cascades and Risk Regulation. *Stanford Law Review*, **51**: 683-768.

Leiss, William. 1996. Three Phases in the Evolution of Risk Communication Practice. *Annals of the American Academy of Political and Social Science*, **545**: 85-94.

Leiss, William. 1992. Assessing and Managing Risks. *Policy Sciences* **25**: 341-349.

Lotke, Erik. 1996. Sex Offenders: Does Treatment Work? http://www.igc.org/ncia/sexo.html

Magat, Wesley A., and W. Kip Viscusi. 1992. Informational Approaches to Regulation. Cambridge, MA: MIT Press.

Mayhew, David. 1974. Congress: The Electoral Connection . New Haven: Yale University Press.

Noll, Roger G. 1996. Reforming Risk Regulation. *Annals of the American Academy of Political and Social Science* **545**: 166-175.

Nordenstam, Brenda J., and Joseph DiMento. 1990. Right-to-Know: Implications of Risk Communication Research for Regulatory Policy. *University of California, Davis Law Review* **23**: 333-374.

Nordheimer, Jon. 1995. 'Vigilante' Attack in New Jersey Is Linked to Sex-Offenders Law. *New York Times*, Feb. 20, B1.

Olson, Mancur. 1965. The Logic of Collective Action, Cambridge, MA: Harvard University Press.

Plous, Scott. 1993. The Psychology of Judgment and Decision Making. New York: McGraw Hill.

Portney, Paul R. 2000. Environmental Problems and Policy: 2000-2050. *Journal of Economic Perspectives*, *14*, 199-206.

Schopf, Simeon. 1995. 'Megan's Law': Community Notification and the Constitution. *Columbia Journal of Law and Social Problems* **29**: 117-146.

Seper, Jerry. 1995. Reno Backs Notification Law. *Washington Times*, Feb. 10, A4.

Slovic, Paul. 1987. Perception of Risk. *Science* **236** (17 April, 1987).

Slovic, Paul. 1992. 'Perception of Risk: Reflections on the Psychometric Paradigm,' in Sheldon Krimsky and Dominic Golding, eds., Social Theories of Risk. Westport, CT: Praeger, pp. 117-152.

Suedfeld, Peter, and Philip E. Tetlock. 1992. Psychological Advice about Political Decision Making: Heuristics, Biases, and Cognitive Defects. In Psychology and Social Policy, Peter Suedfeld and Philip E. Tetlock (eds.), New York: Hemisphere.

Sunstein, Cass R. 1997. Free Markets and Social Justice. New York: Oxford University Press.

Sunstein, Cass R. 1990. 'Paradoxes of the Regulatory State.' *University of Chicago Law Review* **57**(2): 407-41.

Tetlock, Philip E. 1998. People as Politicians. In Research on Judgment and Decision Making: Currents, Connections and Controversies. William Goldstein and Robin Hogarth (eds.), New York: Cambridge University Press. Cite incomplete.

Tversky, Amos and Daniel Kahneman. 1974. Judgement Under Uncertainty: Heuristics and Biases. *Science* **185**(4157): 1124-31.

Tversky, Amos and Daniel Kahneman. 1982. Judgments of and by Representativeness, in Daniel Kahneman, Paul Slovic, and Amos Tversky, eds., Judgement Under Uncertainty: Heuristics and Biases. Cambridge: Cambridge University Press, pp. 84-98.

Tyler, Tom R., and Robert J. Boeckmann. 1997. Three Strikes and You're Out, but Why? The Psychology of Public Support for Punishing Rule Breakers. *Law and Society Review*, **31**(2): 237-265.

Weiss, Janet A., and Mary Tschirhart. (1994). 'Public Information Campaigns as Policy Instruments.' *Journal of Policy Analysis and Management* 13(1): 82-119.

Williams, Bruce A., and Albert R. Matheny. (1995). *Democracy, Dialogue, and Environmental Disputes: The Contested Languages of Social Regulation.* New Haven, CT: Yale University Press.