

Law, State and the Politics of Catastrophes: a Critical Perspective on Epiphanies of Injustice and the Need for Protection

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Abstract

While the phenomenon of catastrophes is emerging as a growing threat that humanity should face in the next years, legal studies have disregarded the issue for a long time. Recent extreme events have motivated a new attention towards the legal dimension as part of the context in which disasters take place. Catastrophes are a powerful breakdown of our normative world. Paradigms of regulation in this field have usually been identified in terms of prevention, anticipation and amelioration, theoretical schemes that can be applied to various branches of the law. Nevertheless, this is only a part of the challenge that the legal study of extreme events must face. They should in fact include into these abstract schemes the factors of inequality that contribute to producing higher rates of vulnerability. In this paper I propose to conceive catastrophes as legal epiphanies, through which it is possible to evaluate the effectiveness, the efficiency and the sustainability of regulatory choices.

Key words

Disaster; social vulnerability; risk

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Resumen

Mientras el fenómeno de las catástrofes se está convirtiendo en una amenaza cada vez mayor que la humanidad deberá afrontar en los próximos años, durante mucho tiempo los estudios jurídicos no lo han tenido en cuenta. Hechos extremos recientes han hecho que adquiera mayor relevancia la dimensión legal como parte del contexto en la que ocurren los desastres. Las catástrofes suponen una poderosa ruptura en la normativa de nuestro mundo. Los paradigmas de la regulación en este campo se han identificado generalmente en términos de prevención, anticipación y mejora, esquemas teóricos que se pueden aplicar a distintas ramas del derecho. Sin embargo, esto es sólo una parte del desafío que debe afrontar el estudio jurídico de los fenómenos extremos. En realidad, deberían tenerse en cuenta los factores de desigualdad que contribuyen a producir mayores ratios de vulnerabilidad. En este trabajo me propongo concebir las catástrofes como epifanías legales, a través de las cuales es posible evaluar la eficacia, la eficiencia y la sostenibilidad de las decisiones reguladoras.

Palabras clave

Desastres; vulnerabilidad social, riesgo

Table of contents

1. Introduction and definitional issues	224
2. From catastrophe society to risk society	225
3. First sketches of a critical approach to law and catastrophe	227
4. Reducing vulnerability and the need for protection: a normative claim.....	229
5. The politics of catastrophes: the shaping power of law	230
6. Conclusions	231
Bibliography	232

1. Introduction and definitional issues

Dealing with the vague concept of catastrophes, the search for a sound definition can be an issue on itself. In common sense, there is a tendency to put together different terms such as “emergencies”, “disasters”, “catastrophes”, “cataclysms”, etc.¹ As in many language matters, all these terms share a common intuitive essence of an event, negative in its outcomes, which evokes sinister scenarios of destruction, death, or other issues. Notwithstanding, in this article I will mainly use the term “catastrophe”. I will do this for two reasons. The first one is that there is the possibility to grasp the meaning of the differences between the events that we name with these words, according to some indicators, such as the magnitude of the event, the pervasiveness, the impact on the social structure, the amount of destruction of physical goods, etc. From this point of view, disasters are quantitatively and qualitatively different from catastrophes (Quarantelli 2000). This can be summed up in the sentence “all catastrophes are disasters, but not all disasters are catastrophes” (Douglas, Sarat, Umphrey. 2007, p. 2). The other reason to do this is that catastrophes are prodigious cultural objects that have a distinct place in the history of risk. It is not by chance that catastrophes are regarded as remarkable events in many religious texts, as well as in plots or literary texts. The link with culture can also be reflected in the choice of terms by international organizations such as the United Nations General Assembly that, in its International Strategy for Disaster Reduction terminology summary, defined disasters as “A serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources” (UNISDR 2009). The choice to avoid the term catastrophe probably reflects the attempt to obviate exactly such a cultural connotation, a surplus of meaning that could have inevitably made more vague the working definition as dependent of human understanding and interpretation of such events.

Law and catastrophe is, surprisingly, quite a recent topic. While there is a substantial amount of disaster studies, the link between legal studies and catastrophes has been under focus only recently. Recent events such as 9/11 and general terrorist threats, the number of Tsunamis and hurricane Katrina, had the effect of stirring a new interest on them, especially within the North-American literature (Malloy 2009, Farber *et al.* 2010, Sarat, Douglas, Umphrey 2007, Miller 2009, Posner 2004).

In some ways, law contributes to the very definition of catastrophes and disasters. For example, we can find the typical self-reference of legal thinking in a definition of disaster that relies on “what the intervention of disaster relief units make necessary” (Dombrowsky 1998, p. 14). Regarding the issue of definition the legal field is also influenced by the dialectics between the naturalistic and the human/social/cultural elements. According to Ségur (1997), the relationship between law and catastrophe regarding its definition oscillates between a nominalistic approach and a causal one. The features of the nominalistic approach are based in the fact that law avoids defining the elements that identify a catastrophe, recognizing only its already known ways of manifestation, preferring a descriptive attempt to define catastrophes that can open space to more vagueness than to more legal clarification. The other side of the issue, and the dominant one, is the reduction of catastrophe to its human impact, stressing the causal element.

It is possible to ground some general points in the relationship between law and catastrophe. First, a catastrophe is an event producing a subversion of the very concept of order itself. From this point of view, a catastrophe is a breakdown of the normative world: confronting the law, catastrophe is Janus-faced, juris-generative

¹ Note that I will use the terms in the plural forms to underline not only the fact that each event of widespread harm is unique in its features but also to highlight the fact that such events are growing in numbers and in the spatial space of damage, that render them a features of today world.

and antithetic to law, all at the same time (Douglas, Sarat, Umphrey 2007, p. 4). Catastrophes are “moments when we confront the limits of our normative world” (Meyer 2007, p. 20). In fact, catastrophes can be seen as powerful *legal epiphanies* in which, by stressing the limits of our normative world, we can more profoundly comprehend the way law really works or what goods and values it protects. At the same time, we need to face one of the most challenging aspect of catastrophes, namely the fact that risk is now globally spread, indifferent to national boundaries that normally constitute the territorial space where a single legal system is sovereign. So these legal epiphanies reflect this ambiguous structure: they are global and local at the same time, as are its effects and origins.

2. From catastrophe society to risk society

It has been argued that with modernity we have moved from a society of catastrophes to a risk society (Walter 2008). This assumption can be questioned but catastrophes still remain important and powerful events that challenge the conventional risks approaches. This is due to the extreme harm that such circumstances can produce. These events are, in the end, a peculiar mix of natural and human driven elements. The very happening of natural disasters is something totally (e.g. Earthquakes) or partially (Hurricanes, floods) unforeseeable and that is not directly dependent on human contribution for their coming into existence. This is, nevertheless, a very narrow way of looking at extreme events. What makes a natural event a catastrophe is the social context of the event. There are no catastrophes without an affected human community, directly or indirectly involved by the outcomes of the event. That is the reason for looking at the category of vulnerability as crucial for the understanding of the complex of social elements that contribute to such impacts which we can relate to catastrophes. A naturalistic outlook is incomplete as it cannot fully explain what causes the harm without taking into account the social, political, ecological elements concerned (Blaikie *et al.* 1994). The tool through which we can evaluate the role of these elements in the occurrence of a catastrophe is the concept of vulnerability, understood as “the characteristics of a person or group in terms of their capacity to anticipate, cope with, resist, and recover from the impact of a natural hazard” (Blaikie *et al.* 1994, p. 9).

Another distinction is also relevant for the purpose of this work: the distinction between natural and human-made catastrophes, which is a thin one from a social sciences perspective. There is still the need to introduce a more detailed account of human agency in the causal contribution to the creation of catastrophes. Posner (2004, p. 12) distinguishes between four types of catastrophes: among the first two types, natural and technological catastrophes, he lists natural pandemics and asteroid collisions, as well as laboratory and scientific accidents with the aim of stressing the role of technology in the production of disasters. The third category includes unintentional albeit man-made catastrophes such as exhaustion of natural resources, global warming, and loss of biodiversity. The fourth one takes into account deliberately perpetrated catastrophes as “nuclear winter”, bioweaponry and other forms of technological terrorism. Among those listed, it is the third category I am more interested in and that can better be used to highlight the complexity of the interactions between different levels of legal and social policies, at a national and international level.

A good example of the tension at the interaction of these levels is the position claimed by Ulrich Beck. Since his famous contribution to sociology that resulted in the global success of the term “risk society”, catastrophes found a place in his analysis. Risk society is in fact a “catastrophic society” (Beck 1992, pp. 24, 79-80). Beck is aware of the important political meaning of catastrophes as he states that the re-distribution of risk on a worldwide level will lead to a society in which politically potential catastrophes can include a “reorganization of power and authority” and exceptional conditions threaten to become the norm. So, in the risk

society Beck gives to catastrophes an enabling power that seems capable of challenging the production of risk as a consequence of the reflexive modernity, in which the policy choices regarding the elimination of the causes of hazards in the modernization process become political (Beck 1992, p. 78). In Beck's analysis of the possible role played by catastrophes in risk society, he argues that such an enabling political power of catastrophes is the substitute for revolution in the risk society. Catastrophes enable a shift from a normal state to a state of emergency, in which the administration of risks can include a reorganization of power and authority. Here people fight a crucial battle, as with increasing risk production new types of challenges to democracy arise, namely a tendency to a legitimate authoritarianism of hazard prevention.

Beck's interest in the relationship between catastrophes and the risk society continues to be important also in his most recent works, where we find a more explicit link based on his concept of cosmopolitanism. Cosmopolitanism in his view is the method in social sciences to make sense of our contemporary world. Understanding and facing the challenges of a global risk society means leaving aside methodological nationalism in social sciences. Cosmopolitanism in this perspective differs radically from a sociological analysis centred on the state. Beck claims cosmopolitanism as a new form of analysis that envisages the state as one of the actors among others, providing a new perspective on the whole global power game. In *World at Risk*, Beck has sketched an explicit link between catastrophes as the main object of a risk analysis and a cosmopolitan perspective. In his view, risk is not the same as catastrophe. It is, however, intimately related because risk is the *anticipation of the catastrophe*. While a catastrophe is always limited in its spatial, temporal and social dimensions, the anticipation of the event is not limited. What counts in the end is its *staging*: to have an idea of the meaning of the global dimension of catastrophes we need to question the staging of the catastrophe, which fills in the gap between the anticipated catastrophe and the actual one (Beck 2009, pp. 10, 67). The lesser a risk is evaluable, the heavier is the weight of cultural assumptions about it: this in the end leads to an elimination of the gap between a risk and its cultural perception. This is a distinctive feature of the new world risk society. Global risks lead to an imposed cosmopolitanism in which nation-states and national methodology are not anymore useful tools to understand society.

I will now concentrate on some elements that are relevant for the implications of Beck's position on global risk distribution. The first one is that in the global risk society "dealing with catastrophic risks, the present of the future planetary state of exception, which can no longer be contained and managed at a national level, is being negotiated" (Beck 2009, p. 73). Such a state of exception would be not a "national" one but a "cosmopolitan" one. To understand this conceptual link, a distinction is introduced between intended and unintended catastrophes. The difference here lies in the fact that while side effect catastrophes, as unintended, are a mixture of bad and good (e.g. new technologies, global warming), intentional ones (such as terrorist attacks) have no benefits (Beck 2009, p. 79). Both contribute, in any case, to a planetary state of exception that goes beyond national borders, and that is no longer declared by state authorities: it is an imposed state of exception, where social, spatial, and temporal boundaries are so wide that a single nation cannot give any sound answer to these threats. Beck's "cosmopolitan" account of the state of exception differs explicitly from Carl Schmitt's view of the exception, which he linked with the sovereignty of a state. It also differs from the recent influential account by Giorgio Agamben, who argues that the state of exception has been replaced by "a generalisation of the paradigm of security as the normal technique of government in Western societies" (Agamben 2005, p. 14). Here is a classical treatment of catastrophes as productive of a state of exception, but Beck's argument goes further, extending it not only to local authorities but labelling it as a distinctive feature of cosmopolitanism in a world risk society. As the

argument carries on it seems that any boundaries should be destined to be trespassed by global risks. Some questions arise here: is Beck not too quickly dismissive on the relevance of the state in the social determination of risks? And, more specifically, is such an analysis attractive in the context of legal and social studies?

Before trying to answer these questions it is important to stress another element of the cosmopolitan approach that has to do with the asymmetry between who decides, who takes the risk and who suffers from such a decision. Focusing on the case of social inequality, Beck first states that "the predetermined irrelevance of large inequalities enables powerful and wealthy nation-states to burden poor states with the risk entailed by their decisions" and that "the cosmopolitan perspective opens up negotiation spaces and strategies which the national strategies preclude" (Beck 2003, pp. 463, 466). While social inequalities remain invisible in an analysis centred in the national-states' context, in a cosmopolitan perspective these gain a chance to become visible thanks to a normative claim for equality and respect, through the staging of the catastrophe, in a global public sphere that goes beyond the national boundaries. Understanding risk as *conditio humana* will have the effect of a necessary recognition of the *other* on normative and cultural levels, which is no longer possible by looking at the nation-states framework of society. On a legal basis this should lead to the emergence of a risk cosmopolitan law that is transnational in its nature (Beck 2009, p. 191).

It is at this point that this theoretical proposal is at the same time more interesting and more doubtful. It is interesting because it takes into account the emergence of risks as global actors in the shaping of society on a global level. At the same time, Beck argues that catastrophes are worse for poor people and states. He also argues that cosmopolitanism is *imposed* from below on a global level. This crucial passage can be challenged by giving a different perspective that looks at the same time *inside* and *outside* the state when regarding cultural and social differences and the legal structure of risks. To do so I will sketch a brief alternative proposal, inspired by a critical approach with a "post-colonial" emphasis. By using the term post-colonial I mean an approach that takes into account differences between the global North and the global South in exposure to risk in relationship to decision making exclusion. Another consequence of this critical approach will be to ascribe a normative duty of protection of the communities on the government and the state.

3. First sketches of a critical approach to law and catastrophe

The main issue when discussing risks, and particularly global risks as catastrophes, is to take into account the profound asymmetry that divides those who decide from those who will be affected by such decision. Considering such an asymmetry between the risk-creator and the risk-bearer, I would like to propose to understand it as a matter of different lines of risks that govern the world in the era of globalization. We should qualify such lines as "abyssal lines", a concept that I borrow from Santos (2007). According to Santos, "Modern Western thinking is an abyssal thinking. It consists of a system of visible and invisible distinctions, the invisible ones being the foundation of the visible ones. The invisible distinctions are established through radical lines that divide social reality into two realms, the realm of "this side of the line" and the realm of "the other side of the line (...)" What most fundamentally characterizes abyssal thinking is thus the impossibility of the co-presence of the two sides of the line" (Santos 2007, p. 45). Knowledge and law are at the core of the production of abyssal lines. Regarding modern law, "this side of the line is determined by what counts as legal or illegal according to official state or international law. The legal and the illegal are the only two relevant forms of existence before the law and, for that reason, the distinction between the two is a universal distinction. This central dichotomy leaves out a whole social territory where the dichotomy would be unthinkable as an organizing principle, that is, the

territory of the lawless, the a-legal, the non-legal, and even the legal or illegal according to non-officially recognized law.” (Santos 2007, p. 48).

Abyssal thinking can be an alternative way for risk society to comprehend the placement and diffusion of risks in contemporary world (Santos personal communication at *Law and Justice in the Risk Society* conference, Plenary Session “Law, Democracy and Risk” of the Research Committee on Sociology of Law Annual Meeting, Milan, Italy, 11th July 2008). Risk in fact is not democratic. The profound asymmetry between who produces risks and who has to suffer its outcomes is a distinctive feature of different lines that divide our social and legal worlds. I argue that these lines do not only divide different areas of the world, as the North/South gap, but are also present *within* Western societies and states, reflecting differences in inequality and vulnerability levels inside the states and between different states. Moving between an internal and external view regarding the state is an important feature of a post-colonial approach to catastrophes. While the imposed cosmopolitanism focuses on the global fight for the definition of risks in the global arena, the effort to move away from a narrow national pattern can lead to an under-evaluation of the state as a crucial actor in the ascription of risks, in its definitions and for the accountability for vulnerability in societies.

It is possible to apply a post-colonial framework on the issue of climate change. Even if it is not possible to draw a strictly direct and causal link between some climate shocks as hurricanes, floods, and other hydrometeorological disasters, data analysis regarding disasters in the last 20 years, showing a rising in the number of disasters², demonstrates the consequences predicted by climate change scientists. As a recent work shows, the way a country is inserted into the world economy bears heavily upon its ability to cope with climate related disasters (Roberts and Parks 2007). Roberts and Parks have argued that there is a connection between a colonial legacy and the vulnerability of a community. Extraction based economies in former colonial areas generate more vulnerability in all crucial indicators, such as social, economic, environmental and institutional ones. It is not simply a matter of being a poor country in the sense of a smaller per capita GDP, but of designing a society in a way to better serve others’ interests (e.g. extractive goods economy, tourism industry) that lead to see other indicators as more relevant: income inequality, urban and coastal populations, press freedom, and property rights (Roberts and Parks 2007, p. 131). Due to the incidence of these factors on the overall vulnerability level, a preventive approach that takes into consideration the colonial legacy will be more effective than one of “risk management” based on intervention after the event. It should also be added that a colonial legacy can also lurk within the wealthier countries. Katrina’s hurricane is the perfect example. The state of Louisiana, in fact, presents all the characteristics of a state with a colonial history, sharing with those high levels of inequality, political exclusion, racism and a poor enforcement of environmental regulations. The failure in the resilience strategy relies almost on the same factors of a less developed country (Roberts and Parks 2007, pp. 98-101). Hurricane Katrina was, thus, an abyssal line of risk. As disasters hit areas such as New York, where a ‘superstorm’ at the end of October 2012 put out power for over a week throughout the metropolitan area, internal inequalities that sociologists of disaster have long discussed made coping with power and heat loss differently challenging. If a post-colonial framework is useful, it must allow thinking through how internal inequalities fit when disasters hit very populated and often very desirable coastlines.

Thus, it is possible to defend the utility of an analysis based on a critical approach as the one sketched before. Lines of risk can move outside and inside states, demonstrating that catastrophic risks can affect any area in which lines of risk are moving. It must be added that lines of risks move not only when linked to a colonial

² See the reliable data from the International Disaster Database (CRED 2013) (used also by the UN International Strategy for Disaster Reduction).

element. More generally, sometimes they just indicate how risks are distributed and grow in an unequal way, contrary to what is pretended by a cosmopolitan egalitarian approach. Heat waves in wealthier countries demonstrate the gaps of exposure to risk and vulnerability between different social groups (Klinenberg 2002, Acot 2006).

4. Reducing vulnerability and the need for protection: a normative claim

The reconstruction offered here is just a very rudimentary demonstration of an alternative route to the cosmopolitan approach to global catastrophes. The reflection on the link between a colonial legacy and higher levels of vulnerability show that, to some extents, climate-related catastrophes are colonization through different means.

Legal instruments raise a normative claim that can ground a sociolegal approach to risk. International instruments presume that the right to life as a fundamental human right, and preserving life is a legal duty for all states. In political theory, the Hobbesian argument for the necessity of the state was grounded on the need to protect the citizen from physical harm. Emphasis on life is not anymore sufficient to consider the complex relations with risk that each individual experiences nowadays. So we face a transformation of what it means to be “protected”, which is in the first instance a duty of the state. Even if in the Western world we live in the safest societies ever, rising uncertainty in society is linked to the progressive individualization in modern societies: vulnerability, as a consequence of the growing uncertainty and the need for protection are two faces of the same medal (Castel 2003). As a consequence of the affirmation of the paradigm of a risk society, as an unavoidable consequence of modernity, elites assume that risks are inevitable. Some authors argue that the inclusion of the worst-case scenarios in the normative horizon of the state, leads to a “biopolitics of catastrophes” (Neyrat 2008). This is a new form of governance that has catastrophes – in a wide sense – as its object. It regards catastrophes as a constant, widespread possibility of the worst happening, something that must be faced with defense tools such as precaution and prevention. Regulation in this way resembles a kind of *immunization* from catastrophic events, claiming the control on the possibility of existence (Neyrat 2008). It is worthy to note that a recent report by Oxfam International (2009) on the importance of defending vulnerable people from catastrophes was entitled “*The Right to Survive*”. Such a linguistic shift is very revealing of a re-definition of the very sense of being protected these days: there is not a *right* to life, but a right to *survive*, of individuals who are abandoned acting in a world where threat to their lives is the rule.

A common ground for a critical approach to catastrophes in this scenario is needed. The point can only be sketched here but it is crucial. The re-framing of the need for protection in an age of catastrophes implies an attempt to answer a simple question: is there a right to do not risk? Who holds it? And whose duty is it? Some expressions of such a right could be seen, for example, in the principle of precaution as embedded in various national and international legislation. It is still more a matter of aspiration than of a justiciable right. An attempt to ground a right not to face risk could seem an idealistic exercise best conducted in the domain of morality and legal philosophy rather than justiciable rights (Oberdiek 2009); however, it is becoming not just a generic claim for safety from harm, but a *legal* claim. The obligation to protect puts again at the center the role of the state that the cosmopolitan approach is likely to discard. For example, in the aftermath of the 2006 earthquake in Indonesia, Coalisi KPHY, an association of cause lawyers, sued the Indonesian State for ‘having not arranged any prevention measure’ (Bultrini 2009). The same could be said of Katrina where the failure of civil protection systems has been considered one of the most striking features of the event, though the judiciary did not hold the state responsible. The inertia of the civil protection system produced a clear demonstration of serious gaps in the ability of the legal

system to respond to natural disasters and other catastrophic events (Chen 2009), revealing that the right to survive Katrina was not granted to all people living in the affected area.

5. The politics of catastrophes: the shaping power of law

The politics of catastrophe outlined at this point could also be read as revelatory of emerging trends in the legal and social shaping of vulnerable subjects. This feature can be an interesting tool to analyze the creation and the shaping of subjects by law. I will briefly explore this feature regarding two possible fields: one related to the relationship between crime and catastrophes and the emergence of patterns of criminalization of victims of catastrophes, and another more focused on the consequences of environmental crises.

In the wake of Katrina, the absence of law as supporting a right to survive was evident, as most vulnerable people lacked assistance. Nevertheless, in this situation law claimed its indispensability in assuring order. The projection of traditional crime attitudes and biases regarding crimes committed during the catastrophe was initiated by wrong reports of crime related to the event. The model of disaster management centered on fusing natural elements such as floods or earthquakes with violent criminality and terrorism, with the risk of a growing amount of coercive law enforced by the state and local authorities (Simon 2007). After its breaking impact on the legal system, the law tries to exploit and colonize the catastrophe (Meyer 2007, p. 21) by avoiding recognition of the particularity of the situation. As the analysis of concepts such as looting during catastrophes seems to confirm (Green 2007), criminal law aims first at reaffirming the coercive power of the state as if the catastrophe had not happened, so that the law continues to operate normally, through ordinary legal categories, even in the exceptional conditions that the law helped create. For example, 'shoot on sight' order against looters shows the attempts of the law to reaffirm its authority, even in a time in which the law seems to have been depleted by events apparently out of its control. This pretension of the law to control the aftermath of a catastrophe seems to be more a matter of a power-driven relationship than one based on a protection-needs pattern of governmental structures with a duty to mitigate damages. From this point of view the criminalization of a catastrophe can be seen as a conscious strategy that relies more on a myth than on empirical findings (Sun 2011). Such a mythology can have practical effects in the way the response to catastrophes is directed, moving the attention from emergency plans to anti-social behaviors.

The analysis of looting in the aftermath of catastrophes confirms that the law *legalizes* the catastrophe in a way that does not allow legal subjects to ask the state to take responsibility for protection or safety, in turn the justification for the state. That is because law sometimes can only serve the aim of protecting state irresponsibility and legitimating immunities and suffering (Veitch 2007). The role of law and the state is to *design* catastrophes as *natural* ones: abdicating its role of protection, endorsing a naturalistic attitude towards these events, such as the myth of "looting in a state of nature", can hide the criminalization done with very different aims from protection. The *(un)natural* catastrophe revealed its racial injustice imposing a different criminal construction for a whole group of persons mainly belonging to a specific racial group.

Environmental refugees can also be seen as another category of legal subject emerging directly from a politics of catastrophes. As a consequence of climate change, we are going to face not only sudden climate shocks but also a slow degradation of the environment: desertification, deforestation and the rising of the sea level are some of the most evident. Technological catastrophes related to pollution and industrial accidents are also relevant here. These events affect larger sections of population in the world and this can cause compulsory displacement. The legal status of these persons is still largely debatable from the point of view of

international law (Segal 2001). Scholars in the field have recognized that the legal status of refugees, as the one enshrined in the Geneva Convention, is ambiguous with regard to refugee status as a consequence of environment-related catastrophes.³ But again we see how catastrophes shape the sense of life on a global scene more as a matter of survival, with an ambiguous legal meaning, rather than as an enforceable right to life that entails a right to be *protected*. The dialectics between a national level and an international one show their intimate link and the difficulty of any analysis only focused on a “global” level that does not try to include the ambiguous role of the state. In both situations, the subsequent criminalization of Katrina and the difficult legal status of environmental refugees, we can find a normative claim to protection, a claim to a right to survive that goes beyond the rights discourse. The indifference of the moving lines of risk to state boundaries make the case for a different understanding of the position of the victims of catastrophes. If we think about them as the recipients of humanitarian response, we reduce the responsibility of the government and argue for a natural event, moved by the forces of nature, that cannot be really reduced in its impact. If we pose the question from a normative stance, intending to translate a claim into rights-discourse, there will be clear interest in de-naturalizing the event and highlighting the failure and the gaps in the system that did not reduce vulnerabilities or were not able to help in the aftermath of the extreme event. The normative dimension is all that is left to people that hold rights formally but are excluded from effective citizenship (Somers 2008, pp. 63-117, 114).

6. Conclusions

In this paper I have shown how law has a role to play in the shaping of the many dimensions of a catastrophe. The legal answer to extreme risk is essentially *undetermined* as globalization is able to spread risk far away from the context in which the hazard can occur. In this scenario, it is important to be aware that there is an unequal exposure to risk and that any extreme event is going to show dramatically how society has been shaped till that very moment. From the legal point of view, a state-based approach and a cosmopolitan one must be combined in a way that can assign a place to a general need to be protected, a normative claim that emerges as a struggle for justice – intended here as protection – from injustice – here the individual left alone in a world of uncontrollable risks. A critical political theory of disasters is urgently needed and this article wishes to be a small contribution to such an enterprise.

Catastrophes are just another expression of the Promethean gap between humanity and the world of its products, a gap enlightened by the work of the Austrian philosopher Gunther Anders (Anders 2005). Such a gap can only be filled in by facing catastrophes as a constant presence and threat in our world, minding that the worst-case scenario can only materialize as a dramatic reality: we just don't judge catastrophes possible before their coming into existence (Dupuy 2002).

The treatment of catastrophes by law and governmental institutions is a powerful indicator of how our societies are going to deal with risks of a great harm. We can use catastrophes as “legal epiphanies”, since these events can help to understand a bit more about our laws, what values they protect and how they work or should work with the aim of protecting us from vulnerability in the global arena of risks. Law tries to claim control, in an eternal struggle between the break of order and its reaffirmation.

³ See the Draft Convention elaborated by the CRIDEAU (Interdisciplinary Center of Research on Environmental, Planning and Urban Law) and the CRDP (Center of Research on persons rights), thematic teams of the OMIJ (Institutional and Judicial Mutations Observatory), from the Faculty of Law and Economic Science, University of Limoges, with the support of the CIDCE (International Center of Comparative Environmental Law) (Prieur *et al.* 2008).

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