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Random Activities Theory: The Case for 'Black Swan' Criminology

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Abstract In the United States, infamous crimes against innocent victims—especially children—have repeatedly been regarded as justice system "failures" and resulted in reactionary legislation enacted without regard to prospective negative consequences. This pattern in part results when 'memorial crime control' advocates implicitly but inappropriately apply the tenets of routine activities theory, wherein crime prevention is presumed to be achievable by hardening likely targets, increasing the costs associated with crime commission, and removing criminal opportunity. In response, the authors argue that academic and public policy discourse will benefit from the inclusion of a new criminological perspective called *random activities theory*, in which tragic crimes are framed as rare but statistically inevitable 'Black Swans' instead of justice system failures. Potential objections and implications for public policy are discussed at length.

Introduction

American crime control policy is powerfully driven by popular outrage over lurid, highly publicized crimes—especially crimes against innocent children. In the wake of the brutal murder of a compelling victim, "memorial crime control" legislation is often passed to satisfy popular demands to address some perceived shortcoming in the justice system's ability to protect the public (Surette 2007). The result has been "three strikes" laws, stiff mandatory terms for select offenders, extremely rigorous supervision for sex offenders, and so forth. While gratifying public pressure to "do something", such legislation often creates more problems than it solves, destructively burdening public safety officials and at times even backfiring.

In this paper we argue that this repeated pattern of dysfunction in part results from the lack of an adequate popular and criminological language for "framing" unique and

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horrifying crimes. The implicit approach of memorial crime control legislation is to create a reactionary "patch" for some perceived "hole" in the justice system's treatment of dangerous offenders that was exposed by the tragic fate of a famous victim (typically a child). The implicit criminological perspective underpinning all such measures is routine activities theory, in which the crime is seen to have occurred owing to an intersection of a motivated offender and a vulnerable coveted target (Cohen and Felson 1979). The unspoken assumption of the routine activities framework is reflected in the adoption of strategies presumed to reduce the risk of victimization by rigorously monitoring the likely offenders (e.g., Megan's Law), hardening potential targets (e.g., through the AMBER Alert child rescue device), or increasing the prospective penalties for the offender (such as with "three-strikes" laws or "Jessica's Law" enhancements for first time sex offenders.)

We argue that policy makers' implicit adoption of routine activities theory, despite its intuitive appeal, is both conceptually and empirically defective. Examination of the unique and horrifying crimes that inspire memorial crime control measures shows there is nothing "routine" about them. Unlike more commonplace offenses, rare and intensely disturbing crimes against children are better viewed as improbable 'Black Swans' stemming from random, unpredictable events that defy systemic response.

To counter the recurring misapplication of routine activities logic to such 'Black Swan' crimes, we propose the introduction of a novel criminological lens through to interpret them: *random activities theory*, which frames 'Black Swan' crimes not as justice system failures but as statistical inevitabilities. Despite possible objections, the *random activities theory* frame can enlighten a stunted public policy discourse that has too often resulted in destructive reactionary crime control measures in the wake of rare but tragic crimes.

Background: "Jessica's Law" and "Memorial Crime Control"

Early in the morning of February 23, 2005, Mark Lunsford discovered that his daughter, Jessica Marie, was missing from the family home in Citrus, Florida. Because of evidence of forced entry, it was quickly assumed that Jessica was kidnapped, and the subsequent search received national news coverage. Within a month, investigators connected the crime to local resident and convicted sex offender John Evander Couey, who eventually confessed that he had in fact kidnapped Jessica, held her captive for a period of time that remains unclear (owing to his drug use), and raped her. At the end of this ordeal, Couey bound the nine-year old girl with speaker wire, wrapped her in plastic, and buried her alive in the woods near his residence. When the details of the appalling crime were disclosed to the media, the case received even greater attention and outrage.

What followed was merely the latest episode in the sadly predictable American crime policy melodrama. Shortly after John Couey's indictment, child advocacy groups and state legislators in Florida drew attention to Couey's extensive prior criminal history, which had included a conviction for indecent exposure to a five-year-old, and questioned why this known predator was ever free to brutalize Jessica Lunsford in the first place (PR Newswire US 2007; The Associated Press State & Local Wire 2005). Within 2 months there was overwhelming support for and swift passage of Florida's "Jessica's Law," which mandated a minimum prison term of 25 years for offenders found guilty of sexual misconduct against a child 13 years or younger (Johnson 2005). The new legislation also implemented extremely strict monitoring for registered sex offenders—an apparent reaction to a breakdown in Couey's supervision that preceded his murder of Jessica Lunsford. Jessica's Law did not end in Florida; other state legislatures rapidly proposed and passed copycat

laws, and as of late 2009, some form of Jessica's Law had been adopted in most states (O'Reilly 2009).[1]

There are of course numerous examples of this recurring script involving a famous victim and subsequent "memorial crime control" legislation (Surette 2007). They include sex offender registration and supervision requirements (The Jacob Wetterling Act), "Megan's Law" community notification rules (Megan Kanka), "three-strikes-and-you're-out" and other habitual offender statutes in California and other states (Polly Klaas), and the AMBER Alert system (Amber Hagerman). The general pattern is (1) a horrifying, extensively publicized crime against a child, causing (2) public and political outcry over an apparent defect in the justice system exposed by the crime, followed by (3) "memorial crime control" legislation designed to address the perceived defect. As with these other examples, the popularly accepted lesson of the Lunsford murder was that a lenient justice system failed to adequately punish John Couey for his prior sex crimes. The viscerally appealing policy response to this failure was Jessica's Law, which circumvents perceived judicial leniency by mandating a draconian prison term for predators who attack very young children.

The desire to protect children from unspeakable crimes, moral revulsion at the perpetrators who commit them, and an instinctive attraction to extreme punishments for the worst predators are all powerful and legitimate emotions. However, as students of the justice system know, the trouble with the measures inspired by these sentiments is not with the intentions behind them, but the real-world consequences. For example, harsh registration and monitoring requirements for sex offenders can actually work against public safety if offenders chafe under the intense scrutiny and begin to disregard their conditions of supervision, perceive no incentive to complete effective treatment, or simply discontinue contact with probationary supervisors (Tewksbury 2005; Rudin 1996). Extremely restrictive residency requirements can backfire if they force offenders into remote locations where they are difficult to monitor (Elbogen et al. 2003; Rohde 2007). Harsh habitual offender statutes can lead to prison overcrowding, which can in turn cause the premature, court-ordered release of potentially dangerous felons before their presumed parole dates (Walker 2006).

Jessica's Law in particular could ultimately lead to several problems. Despite a popular stereotype of the marauding stranger preying on children, most sex offenses occur within circles of acquaintances or families, and victims might actually be reluctant to report their victimization to avoid onerous prison terms for the offender (Dziech and Schudson 1989; Faller et al. 2006; McGough 1993; Myers 1998). Extremely harsh mandatory minimum sentences also run the risk of dissuading offenders from pleading guilty and going to trial, where the risk of full acquittal can be relatively high if the prosecution's case relies on child witnesses and shaky medical evidence (Farkas and Stichman 2002). While it is not our purpose here to detail the potential pitfalls of all past, current, and prospective "memorial crime control" measures, in sum, prior research and solemn reasoning suggest that reactionary legislative acts such as "Jessica's Law" might be ineffective or even detrimental to the goal of child protection that inspired them.

[1] This has often been instigated by Fox Network News personality Bill O'Reilly. On his news talk show, *The O'Reilly Factor*, the famous journalist and commentator has criticized state governments that have hesitated in adopting Jessica's Law and lambasted specific judges for apparently lenient sentences for sex offenders, and often with great effect. It is likely that the passage of Jessica's Law in Ohio in particular was to some extent a result of O'Reilly's influence (Griffin and Wooldredge in press).

Criminologists and justice system experts understand all this. They generally dismiss such legislation as ill-conceived and based on popular politics instead of rational public discourse (Currie 1998; Kappeler and Potter 2005; Tonry 2004). Yet these laws continue to be enacted, and the alarming and increasing disjunction between crime policy in practice and informed criminology has been a topic of much pained and recurrent discussion within the academy (Barak 1988, 2007; Chancer and McLaughlin 2007; Currie 2007). Thus, in the balance of this paper we argue that, in attempting to bridge this gap, criminologists should consider the infusion of a new language into the stunted public discourse underlying legislation like Jessica's Law. The proposal is an admittedly radical new framework for interpreting and informing the public and policy makers on the crimes they care about, so the fully articulated argument first requires a recognition of the underlying theory (and there definitely is one) driving so much emotional and reactionary crime control legislation.

The "Theoretical" Basis of Memorial Crime Control

Numerous efforts have been made to fathom the social and political origins of modern crime policy trends in Western democracies. It has been argued, for example, that fear of crime and dangerous populations has been exploited by political conservatives who have promoted rhetorically appealing ("tough on crime") legislation, in turn forcing liberals to espouse similar rhetoric to shore up their anti-crime credibility—even if those policies are of dubious crime control value (Gest 2001; Newburn and Jones 2005; Smith 2004). The trend toward greater criminalization and categorization of criminal behavior and a shift toward more formally punitive responses to crime in western democracies has also been viewed as societal reaction to perceived criminal threats and uncertainty about public safety (Ericson 2007; Garland 2001; Swaaningen 2005). The rightward shift in American crime control policy in the past quarter of a century (massive increases in incarceration, expansion of the war on drugs, disregard for rehabilitation, harsh treatment of juvenile offenders) has been described as part of a cyclical transition toward extraordinarily punitive "sensibilities" regarding what constitutes appropriate approaches to addressing crime (Tonry 2004).

However, in this paper, our purpose is not to add to the emerging understanding of the underlying social and political explanations for societal response to crime, but to launch a discussion about the *public discourse* when reactionary crime control policies are proposed and enacted. In other words, what *rationales* are provided by advocates of measures such as "Jessica's Law", and what (if anything) could be fruitfully added to this discussion?

There is little explicit theoretical underpinning from the exponents of memorial crime control measures. (For example, we are not aware of any supporters of Jessica's Law who routinely consider, reference, and delineate "rational choice theory" or the marginal crime reduction effects of imprisonment.) However, there are some straightforward, intuitively appreciated principles to which they appeal. To generalize, legislators and advocates who propose such laws to "protect our children" appear to have little interest in the etiology of perpetrators' behavior. The motivation of inexplicable illness or evil is regarded as a given; the justice system's responsibility is not to change the offender but to reduce the opportunity for the heinous behavior. Whatever the *underlying* social factors that drive modern crime policy trends, advocates of memorial crime control legislation *publicly* appeal to crime control *benefits* in justifying their proposals.

The assertion that memorial crime control advocates and supporters routinely promote the prospective public safety impacts of such policies might seem less than keenly insightful, and an exhaustive documentation of the phenomenon would be both distracting and unnecessary for our purpose. However, instances are easily found to briefly illustrate the point. For example, after the murder of Amber Hagerman in Texas in 1995, the AMBER Alert system was developed on the assumption that rapid response time can interrupt menacing abduction cases in progress or deter would-be abductors, making it an attempt at both opportunity reduction and target hardening (National Center for Missing and Exploited Children 2008; US Department of Justice: Office of Justice Programs 2008). After Megan Kanka's murder in New Jersey in 1994, state level "Megan's Laws" were promoted for their presumed ability to inform parents and guardians of sex offenders in their communities and thus reduce the opportunity for previously convicted sex offenders to commit gruesome crimes. (Buffalo News 1994; Richards 1994; The Augusta Chronicle 1994). "Jessica's Law" supporters have no doubts that such tough prison terms can both reduce convicted sex offenders' opportunities for recidivism and dissuade prospective predators (Siegel 2006a, b). Such approaches downplay the importance of offender rehabilitation, often because it is seen as too lenient or if it is assumed that sex offenders are not amenable to treatment. From this observation we argue here that the assumption of criminal intent as a given and the promotion of systemic reductions in the opportunity for serious violent crimes against children (in the form of memorial crime control laws) *implicitly* derives from a particular criminological perspective: routine activities theory.

While probably known to the reader and more thoroughly expounded elsewhere, it is useful at this point to summarize the principal tenets of routine activities theory as it is germane to our fully developed argument. First proposed by Cohen and Felson (1979), routine activities theory posits that crime occurs at the intersection of space and time of three required elements: (1) a motivated offender; (2) an attractive target, and (3) the absence of capable guardianship. As a theoretical framework, routine activities theory has been employed to show how differential exposure to high-risk persons and situations across individuals or locales is associated with variations in individual crime commission (Felson 1997; Osgood et al. 1996), aggregate crime rates (Caywood 1998; Cohen and Felson 1979), and criminal victimization (Felson 1997; Forde and Kennedy 1997; Miethe and McDowall 1993; Miethe et al. 1990). Routine activities theory has also been the basis for useful policy recommendations for reducing the risk of various types of crimes by target hardening and reducing the rewards and opportunities for criminal behavior (Clarke 1983, 1997; Felson 2002).

It is not our purpose here to evaluate the merits of routine activities theory, but to identify its relevance to the subject of serious crimes that so powerfully affect public opinion and subsequent public policy. In the case of shocking crimes against children and the policies they inspire, the connection is straightforward. Routine activities theory implies the possibility of a policy solution to a particular category of crime, such as an alteration of routine activities to avoid the presentation of attractive targets to criminals, diverting prospective offenders from likely targets, or buttressing the quality of guardianship (Felson 1992). Current American policy responses to sensational crimes such as child abduction-murder reflect all the components of routine activities theory. Element 1 is seen in the assumption of offender motivation and related disregard for treatment. Element 2 is of course the reliance on systemic measures to deter and incapacitate through incarceration. Element 3 is exhibited in attempts to thwart known predators though supervision, registration, and residency restrictions.

The crux of the matter is whether this implicit adoption of routine activities theory for crimes like child abduction-murder is appropriate, and we contend it is *not*. In fact, this misguided use of routine activities theory, even if not explicitly evoked by policy makers, is the core error that leads to so much ineffectual and dysfunctional crime control legislation. The cause of the error is a lacuna in popular and academic thinking about crime causation and control, and the remedy is an additional language and theoretical framework that can be employed by both criminologists and public officials as a counterpoise to the prevalent but failed routine activities paradigm.

Random Activities Theory

We make two contentions at this point. First, even if we academic criminologists have produced intelligent sociological explanations of modern trends in crime policy, we have yet to produce a *politically effectual* language for commenting on crimes such as child abduction-murder, and have been equally powerless to resist the deleterious public policies they inspire. This might seem to follow by default given the past 25 years of memorial crime control legislation in the United States. Despite repeated and pointed cautioning by numerous critics, state and federal lawmakers continue to enact reactionary and almost invariably misguided legislation in the wake of serious crimes, especially crimes against children. Second, we assert it is time for academic criminologists to critically evaluate available modes of public discourse on sensational crimes and consider whether an additional language for framing such crimes is in order. In an effort to inspire such a discussion, we here propose a criminological and policymaking framework called "*random activities theory.*"

The antonymic derivation from *routine* activities theory is of course no accident. Crimes like child abduction-murder occur because of tragically unique and often bizarre circumstances, and it is appropriate to regard them as deriving from random instead of routine activities. Little about them is predictable other than the horrifying behaviors of the perpetrators. Intersections of the elements specified by routine activities theory—an unrestrained predator and a coveted child target divested of conventional supervision and protection—are fortunately rare but tragically inevitable events. The unpleasant but plain truth is that, in the long run, despite all the best intended efforts that families and public safety officials can reasonably exercise, something will eventually go wrong and a horrible crime will ensue owing to a twisted turn of events that no one could foresee.

Proper understanding of such crimes and their intense impact on public policy is thus an adaptation of Nassim Nicholas Taleb's 'Black Swan logic'. In *The Black Swan: The Impact of the Highly Improbable*, Taleb argues that the most important historic events are unanticipated flukes ('Black Swans') that seem unthinkable when they occur, have an "extreme impact", and are, owing to the human tendency to impose interpretive order on even chaotic events, perceived to be explicable in retrospect (Taleb 2007). Under 'Black Swan Logic', the most important information is unknown, which is the very reason the 'Black Swan' event occurs.

Applying Taleb's logic to crime and justice in the United States, the 'Black Swans' are the rare but horrifying, highly publicized crimes that, because of their "extreme impact" in the form of associated publicity and anger, have disproportionately affected American crime control policy. When we consider the example of child abduction-murder, what could be called "Black Swan criminology" shows us that these unique and tragic crimes result from simple lack of knowledge that a specific threat was posed, and are quickly

followed by public outcry (the massive impact), resulting in memorial crime control legislation (reflecting the popularly accepted narrative that the crime "could have" been prevented were it not for a defect in the justice system.)

Because Taleb's focus was the role of 'Black Swan' economic events foiling overly optimistic market projections, the analogy is of course imperfect. Nonetheless, 'Black Swan logic' can be readily applied to crime and justice: "Black Swan criminology" indicates that rare, random, horrifying crimes will inevitably occur and have the effects of (1) undermining the public hubris which places an unrealistic expectation on the justice system to prevent such crimes, and (2) (ironically) playing to the same hubris by instigating public and legislative outcry for more memorial crime control. The fallout (massive effect) is seen not in the level of crime per se (unlike in Hassim's economic milieu, where tangible economic upheaval results from the 'Black Swan' event) but in the social construction of criminal threat and moral panic-driven legislation that follows in the wake of a 'Black Swan' crime.

The murder of Jessica Lunsford and its aftermath provide a grim case study. Of course if anyone had known John Evander Couey's intentions toward Jessica Lunsford, swift action would have neutralized the threat. However, as the state of Florida has thousands of sex offenders to monitor, it was inevitable that a few, like Couey, would elude effective monitoring. (It turns out Couey had flouted the conditions of his supervision requiring him to report any change of residence, and as a result no one knew his whereabouts.) The horrifying crime had a massive effect on public and legislative opinion, leading ultimately to Jessica's Law, reflecting the *ex post facto* interpretation of the tragedy as the byproduct of a flawed and lenient justice system requiring legislative chastisement.

As a counterpoise to this recurrent dynamic, *random activities theory* is thus not a "theory" of crime causation, but a very safe bet about the future, and a very different lens through which to interpret rare and tragic crimes. It is a resignation to the fact that *in the long run a 'Black Swan crime' will happen*. If the routine activities theory framework is part of the bridge between criminological theory and sensible policy recommendations to restrict opportunities for crime, then *random activities theory* is the troll under the bridge. Good public policies and sensible lifestyle choices can minimize the risk of serious criminal victimization, but not absolutely.

Unfortunately, current American public policies such as child protection legislation are driven not by the realization of this apparently simple truth, but by its denial. Rigorous sex offender supervision requirements and residency restrictions, the AMBER Alert system, and a host of "get tough" sentencing measures are passed because their advocates explicitly believe such measures will accomplish something despite the overwhelming empirical evidence that they are ineffective or even detrimental (Tonry 2004). These advocates and policy makers have misapplied the logic of routine activities theory to crimes that are best regarded as 'Black Swan crimes' resulting from *random* activities, with telling results.

Random activities that result in heinous crime are the flip-side of the routine activities of life presumed to be associated with commonplace crime. Child abduction-murder is a fortunately rare example that typically results from children simply behaving as children—attending school, visiting friends, and residing in the relative safety of home. Eventually some *random* turn of events distorts this normally healthy routine into a very non-routine, horrifying crime. Whereas routine activities theory says a certain amount of crime is inevitable because of routine activities, *random activities theory* says there will always be at least some especially heinous crime *despite* routine activities. *Random activities theory* is thus applied to the extremely rare categories of crime where the normal explanations and

policy prescriptions of routine activities theory break down, making the former the quantum mechanical qualification to the Newtonian physics of the latter.[2]

The situational crime prevention literature is rife with policy recommendations for adjusting environmental and social factors to reduce criminal victimization. They derive from a routine activities theory approach that suggests crime can be minimized if it is made more difficult, risky, unrewarding, and inexcusable (Clarke 1983, 1997). But child abduction-murder met these criteria long before the wave of American memorial crime control legislation enacted in the past quarter century. Examining these factors for crime reduction recommendations reveals the inapplicability of the routine activities interpretation of child abduction-murder, an occurrence of which involves a number of extremely uncommon phenomena. The first is an incomprehensibly disturbed individual who is driven to disregard the obvious risks of attacking children, is able to foil the normal safeguards in place to protect them, or chances upon a vulnerable child victim. This perpetrator must somehow perceive a prospective personal "reward" in a gruesome assault and possess none of the normal moral revulsion toward such a crime that most of us—even most *criminals*—would regard as a definitional to humanity. Such a tragic intersection of events is extremely unlikely, which is of course why such crimes are very rare. Nonetheless the confluence eventually occurs because of the cruel inexorability of random activities. There are too many potential targets, and in the long run something goes wrong and a horrific crime occurs.[3]

A Different Public Policy Language

Criminologists focus on the "Why?" of crime commission, with the attached assumption that if we can explain a criminal phenomenon, we can devise a solution to it: "What causes this crime and how can we prevent it or treat those inclined to commit it?" However, in

[2] However, in employing this figurative language, it is extremely important to distinguish *Random activities theory,* which we propose as an additional framework criminologists could use in the *public discourse* about crime policy, from the recent and intriguing arguments for the application of chaos theory or complex systems science (CSS) in explaining crime and justice system phenomena. While the former is simply a statement about the future of crime ("bad things will happen—whatever the reason"), criminologists' employment of CSS represents sophisticated efforts to use the various aspects of chaos theory (such as the systemic interdependence among system components, patterned outcomes or "fractals", or the importance of initial conditions) to *explain* the complex, nonlinear, and often multidirectional relationship between crime and social factors or variations in system behavior (Walker 2007; Arrigo and Barret 2008; Milovanovic 1997; Walters 1999). As an effort to inform more populist discussions, *random activities theory* is of necessity a plainer animal.

[3] Besides being applicable to problems such as heinous crimes against children or serial killers, *Random activities theory* is applicable to the crime of terrorism in essentially the same way as Taleb employed 'Black Swan logic' in explaining the 9-11 terror attacks. The current "war on terror" with its implied notions of an epic struggle of good versus evil and "us" versus "them" that will result in a terminal defeat of the "enemy" is unrealistic. In invoking military imagery and encouraging often counterproductive military incursions, the "war on terror" metaphor is highly analogous to the failed draconian efforts by policymakers to eradicate, for example, the intractable crime of child abduction and murder. The war mentality implies that only complete eradication is acceptable. Consider the commonly forwarded mantra that, "We have to be right every time; the terrorists only have to be right once." This statement is exactly as sensible as saying, "The police have to be right all the time; the car thieves only have to be right once." The mindset enables terrorists to consider one fortuitously successful strike as a strategic victory. Rather than being seen as acts of "war", terrorist attacks should be seen as another category of unusual *crime*. They occur when routine intelligence and surveillance defenses are foiled and a terrorist is able to commit his intended act. In other words, a successful terrorist attack is an example of *random activities* at work.

some cases, this might be asking the wrong question. The logic of *random activities theory* suggests that, at times, the proper question is, "What causes this crime—and is there any possible solution at all?" If public officials could embrace the grim reality that a certain number of certain types of crimes are inevitable, it could move the public discourse away from a futile search for a misguided solution and toward a mindset of rational problem management. The policy implication of *random activities theory* is that public safety officials and the general public need to be prepared to accept the fact that, for some categories of crime, there are few if any "solutions" beyond what we are currently doing, and that our visceral reaction to 'Black Swan crimes' in the form of memorial crime control legislation is futile and possibly self-defeating.

Thus, our aim is to initiate a fruitful discussion by proposing that academics, criminal justice practitioners, and legislators adopt the *random activities theory* framework as part of the public discourse on crime and its control. This would mean exposing the concept to our students who will be leaders in their fields and be consulted when future crime policies are proposed and debated. It could mean that when a horrific crime occurs, and calls are made for stricter punishments, more supervision, greater public awareness, and other commonly proposed remedies, expert voices would resist such moral panic with a level-headed appeal to the *random activities* perspective. Finally, *random activities theory* could be nurtured over time as a frame (see below) that can hold its own among the other frameworks that compete in the social construction of crime and justice in the United States.

Answering Objections to *Random Activities Theory*

We recognize that, at first blush, *random activities theory* would be a challenging and potentially unsettling perspective for criminologists and policy makers to adopt as part of the normal public policy language regarding 'Black Swan crimes.' Thus, before *random activities theory* could ever be eagerly embraced, a number of potential objections must be addressed. It is thus appropriate at this point to consider the possible responses from readers skeptical of the proposed idea or of the need to coin another criminological catch phrase.

A first likely objection is that *random activities theory* critiques of modern mythical perceptions of crime and public policy responses already exist, even if the specific language of "random activities" is not employed. Although their voices are relatively muted by the clamor of moral panic over shocking crimes against innocent victims, scholars have always pointed out the rarity of crimes such as serial murder (Kappeler and Potter 2005), stranger abduction of children (Finkelhor et al. 1992; Sedlak et al. 2002), and freeway violence (Best 1991), begging the question of what *random activities theory* really contributes beyond these critiques.

The answer is that these statistical clarifications are rarely if ever associated with the pointed truth that *random activities theory* directly addresses: These crimes are indeed infrequent, but they are also nonetheless, because of the simple probabilistic laws associated with random activities, *inevitable*. The fact that child abduction-murder is rare, for example, holds little weight with the exponents of memorial crime control policies such as AMBER Alert or Megan's Law. For these advocates, it is axiomatic that "getting tough" or "engaging the public" will save children in peril. The number saved makes no difference, and it is commonly argued that these policies are justified if "only one child is saved." Thus, from a public discourse perspective, it is a mistake to equate *random*

activities theory with what could be called the "rare events" frame. Unlike the latter, the *random activities* interpretation specifically denies the possibility of additional systemic intervention. Whereas the "rare events" frame says horrible things happen rarely, *random activities theory* says horrible things happen rarely, and there is nothing more the justice system can do about it.

We hasten to add that when *random activities theory* says no more additional intervention is possible, we mean systemic intervention of the type that has been attempted to date, such as stricter supervision and incarceration laws for sex offenders, repeat offender statutes, and so forth. Practitioners and scholars have long argued that the worst offenders have usually (although with notable exceptions, it must be conceded) received strict punishments and scrutiny, and there is probably very little that can be done to improve system officials' inclinations and capacities in this regard through reactionary legislation that is based on disinformation about the "lenient" justice system, "liberal" judges, and so forth. This does not exclude the possibility that other types of systemic improvements, such as a rational focusing of supervision resources away from low-risk offenders and improvements in treatment delivery for offenders might not render some marginal benefits. We choose to sidestep these issues because of empirical and philosophical contentions about "treating" problem populations like sex offenders and because the real utility of *random activities theory* is to repudiate the mindset behind current trends in reactionary crime control policy.

A second likely challenge is the semantic critique that *random activities theory* is really not a "theory" at all, because the *random activities* declaration that crimes such as child abduction-murder are inevitable despite any systemic interventions is not falsifiable. For example, if every state in the Union adopted Jessica's Law, and no tragic child-abduction murders occurred in the ensuing century, then *random activities theory* would still not technically be incorrect, because the future, and thus the hypothetical opportunity for a tragic crime, is endless.

Our response to this objection is twofold. First, we chose the nomenclature of "*random activities theory*" because of its ready affinity to both the criminological and crime policy arenas and the conceptual language it provides by which both worlds can be fused. This, again, is the whole point. Criminologists will understand the relationship between the two frameworks and see that *random activities theory* applies where the routine activities perspective has historically been *mis*applied—for crimes like child abduction-murder. Furthermore, "non-falsifiable" does not mean "false". We suspect that few of our readers really imagine that a sudden and absolute termination of child abduction-murder will follow Jessica's Law or any other such memorial crime control legislation.

This leads to a third, and to some extent opposite, potential objection to *random activities theory*—that it is inanely obvious and even tautological—no more profound than saying, "Crimes will occur because crime happens." Even if we forgive it as technically non-falsifiable, *random activities theory* still amounts to little more than a well-hedged bet about the future. Of course something terrible will happen eventually, so why dwell on the dishearteningly obvious prospect and aggrandize it with a label as lofty as "theory"?

However, this again goes to the very core of the proposal. Public crime policy in the United States is too often made *without* an appreciation of the obvious. Criminologists might accept the inevitability of a few severe crimes against children or other highly sympathetic victims, but it is clearly *not* accepted in public policy circles, where crime legislation is proposed and implemented. Real public policy is built around the opposite, erroneous assumption that reactionary responses to infamous crimes actually accomplish

something. If the general public and the elected officials who represent them truly appreciated the folly of this supposition and the "obvious" truth of *random activities theory*, measures like Jessica's Law would never be passed, but they are. Hence, *random activities theory*, although a virtual truism, fills a glaring gap in modern American crime policy discourse.

Besides, the objection of being just a label for the obvious could be leveled at any criminological perspective. Concerned guardians and social workers had understood the influence of deleterious environmental influences long before Edwin Sutherland employed "differential association" or Ronald Akers advocated the "social learning theory" explanation of crime (Akers 1998). Countless parents have noted variations in aggressiveness and misbehavior tendencies among different offspring without ever hearing of Gottfredson and Hirschi's "general theory" or the role of "impulsivity" in explaining criminal behavior (Gottfredson and Hirschi 1990). Curfews and other restrictions on youngsters' movements and behaviors, and commonsense advice to avoid high-risk situations and people preceded "routine activities theory" by centuries. Competent parents and social welfare institutions have always tried to provide safe and nurturing environments in which to rear children toward productive and law-abiding lives whether having read of "social support" theory or not (Cullen et al. 1999). In short, criminologists have long been in the business of applying nomenclature to intuitively grasped and often evident concepts for the purpose of organizing competing perspectives and infusing structure to the academic discussion of crime causation and prescriptions for crime prevention. We believe it is right that they do, and that in this regard *random activities theory* is on a par with any other criminological perspective.

A fourth (and probably the most serious) major objection that could be aimed at *random activities theory* is its inherent cynicism and threat to the advancement of "newsmaking criminology" (Barak 1988, 2007). Taken in a simplistic fashion, *random activities theory* could easily seem to be nothing but a criminology of despair, the ultimate postmodern sneer at well-intended efforts to rationalize the etiology of crime or official responses it, and void of practical recommendations to the public or policy makers regarding the crimes they really care about. (Poor delivery could easily exacerbate the problem. One cringes at the prospect of a wooden criminologist on television cavalierly exhorting the public to take comfort in the knowledge that the Lunsford murder was merely a 'Black Swan crime'.) Furthermore, as an intellectual attack on the viability of memorial crime control responses to shocking crimes, *random activities theory* is a direct threat to any "cathartic" social function such policies might confer independent of their actual impact on crime. When the public is horrified by a terrible crime against an innocent victim, it wants dramatic expressive responses (i.e., new laws), not cynical quibbling over their likely effectiveness. Is it really our place as criminologists to militate against the potential solace that symbolic social response might provide?

In response to this objection a number of points need to be made. First, while "Black Swan criminology" might seem a bleak message at first blush, this does not diminish its truth. The alleged purpose of social science research and theory is to describe and explain the world in a manner that can be used to bring about some societal benefit. Few if any crime control benefits are accrued by our current fixation on and policy responses to rare and inevitable crimes, and a greater popular appreciation of *random activities theory* would mitigate our proclivity to enact reactionary crime legislation in the context of unrestrained moral panic. Furthermore, even if the message is stark, we in the academy would need to constantly remind the public and policymakers that we are only the messengers and take no joy in the message.

Second, the proper application of *random activities theory*, rather than resulting in a depressing resignation toward tragic crime, could actually have the opposite effect. *Random activities theory* is not a conceptual end, but a point of departure toward rational crime policy discourse. The depressing fact about the inevitability (despite the fortunate infrequency) of crimes like child-abduction murder must be faced, but it would also be liberating. *Random activities theory* could be a powerful heuristic in the public discussion of crime control because it enables experts to identify and categorize a class of crime that have stubbornly resisted repeated public attempts at suppression. It is a rhetorical tool that can defuse at least some of the excessive attention lavished on unavoidable crimes and allow the public discourse to move toward the preponderance of crime which is more amenable to public policy remedy. *Random activities theory* could empower academics and practitioners to cogently explain to the public and policymakers that the impossible cannot sensibly be defined as necessary. Only when this simple truth is appreciated can the public dialogue invested in specific crime issues achieve something resembling proportionality.

The third response to the objection that *random activities theory* is prohibitively cynical is related to the second. The reflexive manner in which legislators and the public they represent default to misguided systemic interventions like Jessica's Law reflects an irrational reliance on the justice system's prospective ability to protect the public from 'Black Swan crimes'. Regarding the potential crime of child abduction, one would prefer to believe that parents generally exercise all reasonable caution in protecting their children. However, when the inherent limits of the justice system to protect innocent victims are acknowledged, this recognition could work to reduce any extant laxity of guardianship resulting from a misguided faith in the justice system's ability to protect the public. Thus, an ironic potential benefit of *random activities theory* would be to inspire a proper appreciation of the justice system's limitations and attenuate the endless succession of unrealistic demands to purge its "leniency" and close its "loopholes".

This is also puts into perspective the concern that aggressive adoption of *random activities theory* might threaten the societal "catharsis" that memorial crime control legislation might facilitate in the wake of disturbing crimes. We contend that to the extent this catharsis is both needed and achievable through symbolic, reactionary legislation, it simply highlights the very problem for which *random activities theory* is the needed remedy. In times of inexplicable tragedy, people cannot be faulted for taking what solace they can in whatever beliefs and comforts they can muster, but these are the arenas of religion, philosophy, and personal reflection—not the justice system. The history of memorial crime control in the United States shows that whatever catharsis it provides is always short-lived. There will always one more "Black Swan crime" to fuel reactionary demands for legislative response, and the failed policy cycle continues.[4]

Finally, *random activities theory* might be an idea whose time has come, or is at least on its way. It is of course difficult to measure public sentiments toward memorial and other reactionary crime control policies, but common sense suggests at least the possibility that their ability to genuinely stir public sentiment might be reaching a point of diminishing returns. For example, the recent effort by members of the California legislature to pass a law banning registered sex offenders from working as ice cream vendors (after an instance of this became publicized as exposing this "dangerous loophole" in the law) suggests that the moral entrepreneurs who latch onto emotional crime control causes might be running out of justice system "holes" to plug. Maybe in time even the generally ill informed American public might start to suspect that, over the past 25 years, they've been had, and

[4] We would like to thank an anonymous reviewer for suggesting we address this issue.

the admittedly disheartening but plain truth of *random activities theory* might begin to resonate.

The *Random Activities Theory* 'Frame'

Theodore Sasson has argued that five general "frames" compete for supremacy in the social construction of crime and justice in America (Sasson 1995). Among these are the "blocked opportunity" frame, in which crime is conceived as a product of social inequality and dysfunction stemming from unequal access to educational and professional opportunities. Another is the "racist system" frame, where disproportionate justice system attention toward minorities is viewed as a result of either conscious or institutional bias. The "social breakdown" and "violent media" frames respectively reflect the idea of the disintegration of social institutions such as families and schools, or that a society desensitized to violence by mass media images is more likely to produce violent individuals and subcultures.

However, the most prominent frame, according to Sasson, is the "faulty system" frame, where crime is popularly seen as the direct result of justice system leniency and incompetence. In fact this frame completely dominates in the arena of memorial crime control. Three-strikes-and-you're-out, Megan's Law, AMBER Alert, Jessica's Law, and similar measures were all created as reactions to perceived defects in the justice system's capacity or willingness to protect the public. We argue that this typical framing of tragic crime is misguided, and needs to generally be replaced with the *random activities theory* interpretation when such tragedies occur.

Thus, in the end *random activities theory* is not really a theory proper (see above), but a heretofore neglected *frame* for interpreting the problem of 'Black Swan crimes' and societal responses to them. Unlike criminological theories positing explanations for crime and, typically, explicit or implied solutions, the key message of *random activities theory* is that in the long run tragedies will occur simply because they are inevitable, and the policy recommendation is essentially null. Some crimes occur not because we went wrong, but because fate went wrong in some unforeseeable way. In the face of such inevitabilities the best response is to maintain normal vigilance to protect ourselves and our fellow citizens as well as possible within the understood limits of our abilities. The message might lack visceral appeal, but most people do have, at some level, an intuitive appreciation of "acts of God", "adversity", or just plain bad luck. We are able to interpret the tragedies of everyday life through some version of this frame, so the transition to the arena of crime and crime policy should not be impossible—and might very well be necessary. Crimes such as the murder of Jessica Lunsford prove we live in a world scarred by a measure of horror and cruelty that we are, at the end of the day, powerless to prevent. We must not exacerbate the damage associated with that truth by failing to recognize it, and perhaps the time has come for academic criminologists to begin saying as much.

Conclusion

In recent years American crime control policy has often been characterized by reactionary legislation enacted hastily in response to horrific crimes, usually against innocent children. A recent example is state-level "Jessica's Law" mandatory incarceration and supervision provisions for sex offenders. Despite understandable sentiments and intentions behind such

policies, they are empirically questionable and can even be counterproductive. Yet they continue to be enacted.

We argue that such moral panic-driven policies reflect not only popular ignorance about crime causation and control, but a gap in the patchwork of frames by which the public and policymakers interpret rare crimes and their likely solutions. Specifically, these policy responses reveal a misapplication of the routine activities theory principles of crime causation and control. They represent attempts to reduce opportunities for brutal crimes against (usually) children by restricting sex offender movements (Megan's Law), engaging the public in rescuing victims (AMBER Alert), and incapacitating would-be recidivist sex offenders (three-strikes-and-you're out; Jessica's Law). However, critical examination of the crimes inspiring such "memorial crime control" policies shows the routine activities logic to be misapplied in these cases. Such crimes are the product of tragic, unpredictable events and occur despite, not because of "routine" activities. They are criminological 'Black Swans' resulting from the inevitable limitations on crime prevention knowledge and capacity in specific cases.

Thus, we propose a novel frame criminologists and justice system scholars could employ in the public discussion and interpretation of such rare but highly influential crimes. We call this new framework *random activities theory*. It interprets tragic crime as an unfortunate inevitability given the inherent limitations of our knowledge of criminal risk. The implicit routine activities theory logic underpinning memorial crime control to date constitutes an irrational denial of this truth, suggesting the viability of the more realistic *random activities theory* interpretation. For criminologists and criminal justice educators this would in practice include the presentation of *random activities theory* for the consideration of criminal justice students, the application of "Black Swan criminology" to crimes that might inspire reactionary crime control legislation, and the general infusion of the random activities *frame* for interpreting the crimes drawing the highest levels of public attention and which become the impetus for so much criminal justice policy. Although the message seems morose, it might nonetheless be palatable—and necessary.

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