

To What Extent Can Natural Disasters Be Considered State Crimes?

Written by Harish Kohli

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<https://www.e-ir.info/2019/06/28/to-what-extent-can-natural-disasters-be-considered-state-crimes/>

HARISH KOHLI, JUN 28 2019

Geographers and criminologists seem to be in agreement that climatic and geophysical hazards in themselves[1] are not the direct causation of death or injury.[2] Indeed, it is the state, through negligent practices or deviant actions[3], which can indirectly or directly be culpable for the exacerbation of a natural disaster.[4] It has been suggested that social, economic and political structures such as deprivation and inequality within countries determine a population's vulnerability to natural disasters.[5] The more vulnerable a population[6], the more susceptible it is to state criminality.[7] This essay will examine the ways in which natural disasters can be understood as state crimes incorporating case studies in Turkey 2003, Japan 2011 and New Orleans 2005. The essay will conclude that while natural disasters can be understood as state crimes, the association between disaster and criminality is particularly difficult to assess.

Turkey: Corruption, Poverty and Authoritarianism as State Criminality

Green and Ward outline three factors that determine the extent to which a population is vulnerable to natural disasters: corruption, poverty and authoritarianism.[8] The first factor, corruption is inextricably linked with the second factor, poverty. [9] This is evidenced in Turkey where the deeply rooted corruption[10] resulted in government officials providing amnesty[11] for the illegal developments in exchange for votes and bribes.[12] This led to land being seen as a commodity[13] which led to the private appropriation of land being seen as completely normal, where poor construction was encouraged to elicit bribes. [14] The government also ensured that the inspector reviewing building construction was the same person[15] approving the engineering and technical plans.[16] As a result, there was no separation of responsibilities between planning and safety,[17] resulting in poorly constructed housing.[18] Due to the widespread inequality in Turkey, many had little choice but to live in the inadequate infrastructure that the government allowed to be erected.[19] It has been suggested that it is the inhabitants' own decision for living where they do, and the state cannot be held liable. [20] However, this has been criticised by the Red Cross, who suggest that it is the state that induces the pathway for human development.[21] It is not individuals who are responsible for where they live; it is the state which determines where people live and, more importantly, the quality of housing which is available. [22] This had led researchers such as Cross to suggest that there should be internationally agreed standards for earthquake proofing buildings in areas of vulnerability.[23] This has been criticised, as some have suggested that technology is not yet developed.[24] However, knowledge on safer earthquake construction is already in the public realm which is evident in Tokoku, Japan. The Japanese officials have ensured that 87% of buildings are able to withstand earthquakes due to strict regulations that must be adhered to.[25] These strict protocols coupled with multiple, independent checks mean that there is no place for corrupt practices in the Japanese building industry. The low levels of corruption ensured "superior"[26] building construction which meant that the 9.1 magnitude earthquake had a negligible impact. Experts have suggested that without such controls in place, the earthquake could have been one of the most-deadly disasters in the world.[27] This highlights that if the Turkish government had proactively ensured autonomy and independence within the construction industry to minimise corruption[28], it is likely that devastation could have been limited. In-turn, it is likely that if this approach had been fostered there would not be state liability because the state would have done all it could to have protected its citizens.

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Furthermore, it should be noted that in authoritarian governments[29], methods of neutralisation are often put forward by states in an attempt to offset liability.[30] Such behaviour was evident in Turkey where the state endeavoured to shift responsibility for the collapsing buildings.[31] The Minister of Housing stated that “the Turkish government has shown itself to be the most successful of any government...at managing disaster”. [32] This statement, as suggested by Cohen, is a technique of ‘imperative denial’. [33] The implicit focus on the success of the relief efforts[34] by the government represents both denial of responsibility as well as deceitfully hinting that the construction methods that were in place were adequate.[35] The government also under-estimated the death toll as missing persons were not accounted for even after the completion of rescue efforts. The UN declared that the death toll was over 40,000 which is contrary to the Turkish government only declaring 17,840.[36] This highlights the attempt to scale down the magnitude of the corrupt practices by attempting to lower the death count.[37] These methods of neutralisation put forth by the Turkish government are convincing to scholars that state criminality did indeed exacerbate the trauma in Turkey.

In addition to corruption, political structures[38] can have a profound effect on how natural disasters affect local populations. A liberal, democratic society can provide protection against needless devastation.[39] Authoritarian regimes are less inclined to protect vulnerable sectors of the population because of the absence of a social contract[40] to bind state and citizenry together.[41] This is partially due to not having an open and free media which means that the news being disseminated is usually very bias. Independent media outlets allow effective “political transparency”[42] from the state to ensure that there is no opportunity for state criminality to occur.[43] Without a country having the administrative capacity to establish an independent forum for debate and active communication, between the state and its people, states are unlikely to be deterred from corrupt practices.[44] This is very evident in Turkey. Society was not able to denounce state criminality due to mass media being controlled by the state.

Although factors such as, corruption and an authoritarian regime allowed state criminality to occur, there were factors outside the control of the Turkish government that enhanced vulnerability. For example, the geographical location of Turkey coupled with the deprived socio-economic background of many citizens are fundamental factors.[45] Empirical research states that Turkey lies open one of the most seismically active spots in the world[46] meaning that repeated seismic disaster is inevitable. [47] This therefore hinders the ability for the state to respond to natural disasters.[48] Furthermore, this enhances the costs associated with establishing the necessary mechanisms required to reduce the impact of earthquakes, particularly as the earthquakes consume such a large percentage of the country’s Gross Domestic Product.[49] This therefore increases the population’s vulnerability to humanitarian crises irrespective of government policy, somewhat undermining the notion that natural disasters can be understood as state crimes.

Hurricane Katrina and the Problems of Ascertaining State Crime

Although at times, intervention from states can lead to state criminality, state crimes can also be conceptualised by omissions.[50] Kauzlarich defines state crime victims as “individuals...who have experienced economic, cultural, or physical harm...because of...state actions...which violate law or generally defined human rights.”[51] This definition alludes to the fact that there is an implied trust to prevent the loss of human life “under the state’s social contract”. [52] Breaching this implied contract is not only a matter of injustice but also a “breach of democracy’s fundamental obligation to its citizens”. [53] This is precisely what occurred in New Orleans in the aftermath of Hurricane Katrina where the state and federal governments have both been criticised for failing to adequately protect the local population.[54] It has been documented that the state had prior warning that a hurricane could strike New Orleans, with the Federal Emergency Management Agency (FEMA), listing that the area was highly likely to be subject to a catastrophic disaster.[55] A simulation concluded that 300,000 would be displaced and would cause 60,000 deaths unless several recommendations were complied with.[56] The use of simulations highlights good practice from the government, as experts, residents and business owners were brought together to assess the impact that a disaster could cause.[57] However, the recommendations[58] put forth by FEMA, such as strengthening the current levees, fell short of being implemented.[59]

Following on from the predictions, when Hurricane Katrina arrived, the levees indeed failed, which resulted in 80% of New Orleans being flooded.[60] The state initially only issued an ‘advisory’ evacuation warning to its citizens

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because it was believed that it was unlikely that the Hurricane would pass over New Orleans. [61] However, there was strong evidence, from multiple forecasters, that the hurricane would strike New Orleans. Due to the fact that New Orleans was prone to hazards such as tropical storms, the advisory warning to evacuate was naturally ignored by many. It was only once the Hurricane had picked up sufficient strength that the evacuation became mandatory. However, many had already become stranded due to the flooded water, as they could not find a way out indicating gross negligence on part of the state and federal government.

In summary, the failure to engage with the recommendations from FEMA to ensure that the impact would be lessened of a “known and profound threat”, coupled with the lack of urgency to evacuate the area of New Orleans, provides strong evidence of a crime of omission.[62]

After the Hurricane had elapsed, several narratives allocated responsibility to political officials on the state and federal levels for the excess human suffering resulting from the hurricane.[63] However, the state attempted to divert responsibility[64] claiming that the majority of the residual damage was out of their control and unavoidable. However, this contradicts the commentary by scholars such as Heerden concluding that 87% of the water that flooded New Orleans was as a result of levee failure[65] which could have been avoided.[66] This has led some[67] to question whether this indeed was a natural disaster, with some re-conceptualising the natural disaster into a ‘man-made disaster’.[68] This has significant merit because the state had the opportunity to minimise the impact of a known threat, yet failed to do so.

Of the 400,000 residents that were displaced[69], Gregory cites that African-Americans[70], were “disproportionately affected by the storm”. [71] Faust rejected the concept put forth by the then president, George Bush, that it was simply ‘co-incidental’ and adopted a more convincing thought that it was because the segregated black resident had less protection than their white counterparts.[72] It seemed unjust that the area was not as protected as neighbouring, predominantly Caucasian areas. This made the affected African American’s feel powerless, dehumanised, and almost marginalised from the rest of society. [73] Understood in this way, the disproportionate rate of victimisation amongst the poorer African-American community in New Orleans is part of a wider pattern of segregation and exclusion in the United States. This challenges the idea that Hurricane Katrina can be understood as a state crime, and arguably can be seen as more of a societal crime.

Before turning attention towards reaching a conclusion, it should be noted that while the cases of Turkey and New Orleans both demonstrate how a state can exacerbate liability due to deviant acts or omissions, one factor in particular remains distinctively different. Those affected in New Orleans were not under an authoritarian regime or subject to corruption as was the case in Turkey. The events that unfolded in the aftermath of Katrina highlight how liberal, democratic regimes are not immune from housing vulnerable populations and committing state crimes. This is somewhat contrary to Green and Ward’s interpretation of what constitutes a vulnerable population. Hurricane Katrina highlights that vulnerability can be ascertained in any country, where areas of vulnerability is dependent on the state’s competence. Paradoxically, this challenges the concept that the impact of natural disasters are exacerbated purely by government-driven factors, such as an authoritarian regime. Conversely, although unlikely, if a natural disaster occurred in a country with an authoritarian regime, this would not automatically mean that state criminality has occurred. It is the processes, mechanisms and responses that a government, authoritarian or not, has in place, that frames and moulds state liability. However, the lack of uniformity over these processes, mechanisms and responses renders it challenging to establish a quantifiable assessment of natural disasters as state crime that exists independent of time and place.[74]

Conclusion

It has been demonstrated that failures to reduce the impact of a disaster when a government has a clear mandate and responsibility to do so can be perilous.[75] Turkey illuminates the direct link between gross human rights violations, corrupt practices and an authoritarian regime. Katrina on the other hand illuminates how racial segregation and socio-economic inequality can determine the prevalence of humanitarian disasters. Both cases demonstrate that whilst natural hazards may be uncontrollable, the steps taken by governments could lessen the vulnerability of local populations and reduce the adverse humanitarian consequences of natural disasters. It is also possible that through

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the greater recognition of state liability, and greater demand for state agencies to fulfil their obligations to act ethically and morally, such devastation can be limited. Nevertheless, it is also apparent that while it is relatively easy to highlight cases of inadequate planning and response, it is immensely difficult to quantifiably demonstrate that state crimes have occurred in the aftermath of natural disasters. Ultimately, states are responding to events that exist outside of their control. Thus, it is prudent to deduce that while natural disasters can be understood as state crimes, the association between disaster and criminality is particularly difficult to assess at times due to factors beyond the state's control.

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Written by Harish Kohli

*Written by: Harish Kohli
Written at: Hertfordshire University
Written for: Dr. Melanie Collard
Date written: December 2018*