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Unmasked: A History of the Individualization of Risk

Greta R. Krippner[1]

Abstract

In this article, I explore how risk transformed from being understood as a property of groups to being understood as a property of individuals by examining the history of public and private insurance in the United States. Rather than locate changes in how risk is managed in our society in the "great risk shift" that occurred with the emergence of neoliberalism, I suggest the individualization of risk in recent decades is only the latest instantiation of a recurrent conflict between security and freedom that has marked the evolution of capitalism. Seen from this longer historical perspective, the "personal responsibility revolution" appears not as the handiwork of neoliberal policymakers but, rather, as the unintended result of social movements that contested discriminatory practices in insurance markets. Thus, paradoxically, my account suggests that struggles against discrimination seeded the individualization of risk that is now the hallmark of neoliberal capitalism.

Keywords

risk, individualization, insurance, history of capitalism

On a late spring evening in 2020, patrons sit at the bar in a Wisconsin tavern enjoying refreshments and conversation. The scene is convivial and would be completely unremarkable except that these patrons are there in defiance of public-health warnings—and their governor's pleadings—that they remain at home to prevent the transmission of the deadly COVID-19 virus ravaging the population. One individual explains his decision to drink with a crowd at the Iron Hog Saloon in Port Washington rather than imbibe at home alone: "If people want to quarantine, quarantine. If you don't want to quarantine, don't quarantine. Go out and do what you normally do."[1]

Apparently, this individual spoke for many others given that resistance to public-health directives has been a notable feature of the COVID-19 pandemic, erupting in by now mundane manifestations of defiance: packed beaches, crowded restaurants, tattoo parlors open for business, and—the most loaded symbolically—refusals to mask in public settings (Gessen 2020). The Iron Hog patron articulated a kind of common sense shared by many

[1]University of Michigan, Ann Arbor, MI, USA

Corresponding Author:
Greta R. Krippner, Department of Sociology, University of Michigan, 4146 LSA Building, 500 S. State Street, Ann Arbor, MI 48109, USA.
Email: krippner@umich.edu

Americans: Risk is an individual matter, subject only to one's own balancing of personal cost versus prospective benefit.

This notion of risk does not conform well to the epidemiology of infectious disease: One individual's personal decision to not quarantine or to refrain from wearing a mask in public spaces has potentially devastating consequences for others, regardless of their individual decisions. Yet the notion that risk is appropriately understood and managed in terms of each individual's own personal calculus is so familiar an idea in our society that it almost appears to not require explanation. However, closer inspection of the problem reveals an important historical irony because at least since the past century, risk has been understood to be an intrinsically *collective* affair. When the creation of the modern discipline of statistics allowed actuaries to price risk more precisely than had previously been possible, the basic intuition guiding this endeavor was that risk was calculable only as a property of groups (Ewald 2020; Hacking 1990). This conception did not rest solely on the technical capabilities endowed by statistics; in fact, this was a deeply moral intuition, reflecting the long emergence of both private and public insurance from mutual traditions in Western Europe (Beito 2000; Clark 1999; Levy 2012; Witt 2004; Zelizer 1979). In this regard, the institution of insurance created what Heimer (1985) has felicitously called a "community of fate."

How, then, did the Iron Hog patron's rough-and-ready intuition become our common sense? How, in other words, was risk transformed from being understood as a property of groups to being understood as a property of individuals? How did we arrive at the view so widely on display in the context of the current pandemic in which risk appears to be the endowment of individuals acting outside of any broader social relationships? When did we as a society lose the notion of risk as an inherently collective problem, and where in social institutions does this knowledge still reside?

The answer to these questions, on first examination, might appear obvious. Indeed, we have a common sense about this common sense: The individualization of risk is the product of a broad neoliberal transformation that reshaped political and economic institutions to privilege individual over collective solutions to social problems beginning in the 1980s. This view has been put forward most forcefully by Hacker (2006) in his now iconic book, *The Great Risk Shift*, which argues that a "personal responsibility revolution" engineered by Reagan-era conservative policy elites had the effect of shifting risk from the collective institutions forged in the New Deal to individuals who must increasingly bear the risks of participating in market society alone. Many other scholars have similarly connected the individualization of risk to notions of personal responsibility, seeing this as the handiwork of neoliberal policy entrepreneurs (see Brown 2015; Dean 1999; Mounk 2017; O'Malley 1992, 1996).

While the notion of a "great risk shift" certainly captures some aspects of recent transformations in our society, I suggest it offers at best a partial account of the individualization of risk. More to the point, I suggest that explanations of the individualization of risk that point to neoliberalism mistake symptom for cause because both the individualization of risk and notions of personal responsibility have been carried along by currents that run much deeper in American historical development than neoliberalism. Accordingly, I want to renarrate the individualization of risk by tracing this longer history, showing that neoliberalism's personal responsibility revolution is only the latest instantiation of a recurrent conflict between security and freedom that has long marked the development of capitalism. In this regard, the key to explaining the individualization of risk at the end of the twentieth century lies in understanding its collectivization a full century earlier.

To develop this argument, I focus my analysis on the history of public and private insurance in the United States over the course of the twentieth century.[2] This may seem to narrow my argument considerably, but choosing a concrete site in which to track the movement of

risk gives a necessary specificity to my account. The case of insurance, moreover, offers a strategic location from which to explore the evolution of ideas about risk.[3] This is because insurance provides a set of tools by which risks are made calculable and managed in our society. I do not want to suggest that insurance is *merely* a set of technical tools for managing risk because insurers' tools necessarily build in social imaginaries that evince a particular moral vision of how we are connected to (or disconnected from) one another. Thus, insurance offers what some scholars have referred to as a "cultural template," a concrete set of practices that transform "mentalities and sensibilities" (Ericson, Doyle, and Barry 2003:48). In this regard, a central premise underpinning my research is that *insurance is a key institution where Americans learn to think about the meaning of risk* and then translate these understandings to other social domains such as education, criminal justice, and medicine (see Horan 2021:12).

In what follows, I narrate the history of risk in two movements. First, I draw on existing historical scholarship to describe the initial collectivization of risk in response to the "accidents crisis" of the early years of industrial capitalism. This story is richly documented in the extant literature, but my presentation of this material offers a critical twist on the conventional account. Second, I turn to the decollectivization of risk beginning in the later decades of the twentieth century, relying on my own original archival research on social struggles over risk classification in insurance markets during that period. Undergirding both movements is a common theme involving the dialectical relationship of security and freedom in market society, which I suggest offers a better framework for explaining the origins of the individualization of risk than do accounts that point to the recent emergence of neoliberalism.

THE COLLECTIVIZATION OF RISK

The institution of insurance occupies a special place in the long march to capitalist modernity (see Ewald 2020; Kimball 1961; Levy 2012; Rosanvallon 2000; Stalson 1942; Sumner and Keller 1927). Through the ages, the basic human need for security—protection against risk—was a driving force in the development of institutions that forged reciprocal rights and duties, whether expressed in the bonds of kinship, the feudal tie of lord and vassal, or the obligations imposed by the Church or the medieval guild (Kimball 1961:479; Stalson 1942). In Sumner and Keller's (1927, cited in Kimball 1961:480) formulation, *all* forms of social organization can be understood in terms of an existential search for security, with varying arrangements improvised to ward away ill fortune through "some form of self-denial or sacrifice." What changed with the invention of modern insurance was that this "self-denial" or "sacrifice" no longer took the form of being pressed into the service of the household head, feudal overlord, or guild master, but instead represented a purely financial transaction in which one group of individuals agreed to indemnify the losses of another. In other words, in the modern era, security was achieved not through subjection to the dominion of another, but through the simple payment of a fee (in the form of a premium, if private insurance; a tax, if public insurance). Thus, with the advent of insurance, individuals seeking security were liberated from the tangle of status relations that had afforded social protection in the premarket era (see Kimball 1961; Stalson 1942). According to Levy (2012:61), insurance offered "a liberal form of economic security," preserving individual autonomy while still providing shelter from the cruel vagaries of life under market rule.

Closer inspection of this transition offers a somewhat different understanding, however. Consider the "accidents crisis" that took place at the birth of industrial capitalism between approximately 1870 and 1910, giving shape to the institutions of both public and private

insurance (see Ewald 2020; Moses 2018; Witt 2004). The epidemic of accidents reflected that, during the early years of industrial capitalism, the contest between security and freedom was resolved in favor of freedom (see Witt 1998, 2004). That is, as modern individuals were liberated from the constraints imposed by traditional status relationships, they found themselves increasingly unprotected from hazard. This circumstance seemed built into the culture of emerging American market capitalism—a culture that associated freedom of action with the assumption of risk, as Welke (2001) has argued. Whereas European paternalist states erected guardrails and closely administered the lives they contained, Americans were left relatively unconstrained, exhibiting bold ingenuity in industrial workplaces, exercising their own discretion, and freely taking their chances.

These "free" Americans were maimed and killed in extraordinary numbers around the turn of the twentieth century. All societies embarking on capitalist modernization experienced a surge of accidental injury and death in this period: As factories mechanized, concentrated workers, and accelerated production schedules, the interminably moving machines crushed hands, severed limbs, broke bones, and scalded skin (see Ewald 2020; Holdren 2020; Moses 2018; Tomlins 1993; Witt 2004). But the toll in American industry was particularly high, owing to a cavalier attitude toward risk-taking, limited state capacity to enforce workplace regulations, and endemic conflict between capital and labor that made cooperation over the introduction of safety measures difficult to achieve (Aldrich 1997; Rodgers 1998; Witt 2004).

At the turn of the twentieth century in the United States, approximately 35,000 deaths and 2,000,000 injuries were attributed to industrial accidents each year (Friedman and Ladinsky 1967:60). Certain industries were especially hazardous, with no industry presenting greater threat to life and limb than the railroads.[4] The fatality rate for railroad workers in 1890, according to the best available estimate, was around 3.14 workers per thousand (Aldrich 1997:15). Of course, average estimates for all railroad workers concealed significant variation in the hazards to which particular categories of workers were exposed. Trainmen who operated the coupling devices between cars were killed at an annual rate of 9 workers per thousand; for brakemen, the comparable figure was around 11 workers per thousand per year (Witt 2004:27).

One such trainman was Charles Canaday, a 28-year-old employee of the Lyons yard in Danville, Illinois. One November morning in 1912, Canaday was at work on a train that was being prepared to leave the yard. Canaday had discovered a defective knuckle in the drawbar that needed to be repaired before the train could depart. The cars were uncoupled, and the engineer pulled the front section of cars down the track to give Canaday sufficient space to do his work. He positioned himself against the defective drawbar and proceeded with the repair, not noticing that the cars detached behind him had started to roll down the slight grade, catching Canaday between the two sections of train and crushing his abdomen. The alert engineer separated the cars and removed Canaday, who was quickly loaded onto a switch engine and delivered to a waiting ambulance. Canaday died of his injuries three hours later, leaving behind a pregnant wife and three small children, the youngest of whom was my infant grandmother. A singularly horrific event in the history of my family, but a very common way to die among working people in 1912.[5]

At the time of my great-grandfather's death, workers' compensation statutes had been enacted in many European societies but were still novel in the United States; the first such statute was introduced in New York in 1910 (and subsequently declared unconstitutional by the U.S. Supreme Court; see Witt 2004). In any case, these laws never extended to American railroads, which maintained their own privately administered accident funds in lieu of participating in state-organized workers' compensation programs (Friedman and Ladinsky

1967:65). Accordingly, the remedies available to Canaday's widow, my great-grandmother, in 1912 would have been similar to those available to many working people injured or killed in industrial accidents since at least the 1870s: a choice between a paltry (but certain) payout from the company's accident fund (waiving the right to sue) or reliance on the tort system, with the possibility of achieving a much greater award from a court or (more likely) nothing at all.

The key to the tort system was that it was based on the notion of *fault* (Somers and Somers 1954:18). That is, the basic presumption underlying tort liability was that in any given accident, *someone* must be responsible, meaning a causal relationship could be drawn between that person's action (or inaction) and the occurrence of an accident. The history here presents numerous complexities given that legal doctrines governing the law of accidents have been characterized by repeated pendulum swings and there is significant controversy among legal scholars as to the correct interpretation of these movements (e.g., Friedman and Ladinsky 1967; Horwitz 1977; Lempert and Sanders 1986; Rabin 1981; Schwartz 1981; Tomlins 1993). Broadly, we can identify a period before industrialism proper during which the common law doctrine of *respondeat superior* ("let the master answer") dictated that responsibility for workplace injuries lie with the employer, even when another employee might be more proximately at fault. Rooted in master-servant law, respondeat superior was applied only selectively in the American context (Rabin 1981), which is perhaps not surprising given the connotations of dependency and subordination it carried (Tomlins 1993:382). Accordingly, as industrial development proceeded in the nineteenth century, the common law was reworked by judges who remade tort liability in keeping with laissez faire proclivities, shifting the burden of proof in industrial accident cases from employers to workers (see Friedman and Ladinsky 1967; Horwitz 1977; Tomlins 1993; Witt 2004:13, 44–45).

Among the most important of these reworkings was the "fellow servant" rule: Courts determined that an employer was not liable for an injury to an employee caused by another employee in the course of work (Tomlins 1993). Embedded in this rule was the notion that workers had assumed the risk of injury when they accepted employment and were fairly compensated for this risk through higher wages. Risk, in other words, was already "priced in" to the employment contract. Similarly, an employee's *own* negligence at work voided any claim to compensation from the employer. Taken together, these three doctrines—fellow servant, assumption of risk, and contributory negligence—made it extremely unlikely that injured workers could recover damages from their employers (Abraham 2008:42; Lubove 1968; Somers and Somers 1954).[6] But when industrial accidents increased in the decades after 1870, courts reversed or restricted rules that protected employers from liability (Fishback and Kantor 2000; Somers and Somers 1954; Witt 2004:67–68). The fellow servant rule only applied when two employees worked in close physical proximity to each other; where this was not the case, fault reverted to the employer. Similarly, the employer's liability extended to situations where authority was delegated to an employee who directed other employees in their work. As these new legal doctrines multiplied, the tort system became an increasingly complicated amalgam of rules and exceptions to rules (Lempert and Sanders 1986:92; Witt 1998:1483)—and increasingly unpredictable in terms of the results it yielded.

What finally broke the tort system was not that it provided an exceedingly cumbersome mechanism for managing the growing number of accidents—although this certainly did not help matters—but rather that the growing number of accidents itself produced a new understanding of risk that was difficult to integrate into the basic premises of tort liability (Ewald 2020; Welke 2001; Witt 2004). The tort system, with its emphasis on fault and responsibility,

relied on a thoroughly individualistic understanding of risk. Each accident was unique, with the trial functioning to narrate these events in painstaking detail to a jury. While the logic of law fit these narratives into broad types, conforming individual experience to common patterns, each injured worker nevertheless was given the opportunity to tell their story before the court (Holdren 2020; cf. Witt 2020). But as industrial accidents piled up at the turn of the century, these narratives gave way to other kinds of renderings. New statistical bureaus sought to document with meticulous precision the incidence of carefully classified industrial accidents. As these grim statistics accumulated, the details of each individual trauma were lost, and so too was any notion of fault or blame (Ewald 2020; Moses 2018; Welke 2001; Witt 2004). Rather than emphasizing individual actions that, if taken or avoided, might have prevented a tragedy, what became evident with the collection of statistics was the grinding regularity of industrial accidents. Contingency disappeared; the accident was inevitable, an expected condition of industrial life rather than a freak twist of fate (Witt 2004:63, 140–43). *Social risk* eclipsed more individualized notions: Accidents were now the product of industrial capitalism rather than random lapses in judgment, structurally determined rather than reflecting personal failings (Ewald 2020; Moses 2018; Welke 2001).

With the emergence of this new statistical understanding of risk, the stage was set for the creation of workmen's compensation insurance. Workmen's compensation pooled risks and socialized losses, subsuming each worker's experience into broad averages and displacing the individualizing logic of the tort system (Somers and Somers 1954). Abraham (2008:55–56) usefully describes three "prongs" that organized workmen's compensation insurance: (1) Employers were no longer subject to tort liability (i.e., they could not be sued by injured workers); (2) the employer was liable for injuries sustained during the course of work without regard to negligence (i.e., the strict liability principle); and (3) compensation awarded to injured workers was substantially reduced from what could potentially be awarded under tort liability (i.e., payment was available for medical expenses and lost wages, but not for pain and suffering). As a result of these three principles, injured workers received guaranteed but lower payments, rendering the entire system more predictable to both employers and employees.

Of course, the advent of statistics did not simply install this new regime unaided by broader political currents, and here too we can observe the dialectic of security and freedom. Because workmen's compensation legislation required employers to absorb a greater share of the financial costs of industrial accidents, management was motivated to reduce the incidence of accidents by limiting how much discretion workers were afforded within the production process (Witt 1998, 2004).[7] Not surprisingly, organized labor was solidly opposed to a reform that promised to consolidate managerial control over the process of production (Fishback and Kantor 2000; Somers and Somers 1954; Weinstein 1967).[8] As Samuel Gompers, the leader of the American Federation of Labor, noted of the proposed legislation, "[labor] would be deprived of its essentials of independence, self-direction and elastic adaptation to the needs of a forceful mass mechanism" (Weinstein 1967:160). As such, the effort to pass workmen's compensation legislation was initially led by employers, who were increasingly wary of settling injury cases in unfavorable courts with uncertain results (Asher 1969; Fishback and Kantor 2000; Lubove 1968), and by middle-class reformers, who sought to smooth out the rougher edges of the emerging capitalist order (Weinstein 1967). Only the dramatic surge in industrial accidents in the first decade of the twentieth century caused labor to reluctantly sign on to the program as they realized the tort system would be inadequate to meet the growing need for relief (Fishback and Kantor 2000). But first these workers had to accommodate themselves to new production systems that placed control over work processes firmly in the hands of management. Workmen's compensation found its

necessary, if paradoxical, complement in the ideology of scientific management (Witt 1998, 2004).[9]

Once in place, the new regime produced an entirely new social ethics. Two novel insights, in particular, reordered the management of workplace accidents under workmen's compensation. First, if accidents were inevitable occurrences in industrial societies, the meaning of "responsibility" must be reinterpreted to refer not to the requirement of *establishing fault* for an accident but to the necessity of *providing compensation* (Abraham 2008; Ewald 2002; Moses 2018; Rosanvallon 2000). Second, by the same logic, the costs of compensation must be borne by those who reaped the benefits of the industrial processes that maimed and killed, implying that either industrialists or society at large should organize compensation systems (Ewald 2020; Moses 2018; Simon 1987). The calculus of risk no longer attempted to grasp particular experiences of injury and death, but instead endeavored to describe the frequency of industrial accidents in the overall population. Attention focused not on the special circumstances that determined how a particular person was hurt, but on the aggregate number of workers injured over a given period of time, regardless of circumstances. The goal of these new technologies of risk management was not to investigate accidents that had already occurred in order to assign blame, but instead to predict (and possibly prevent) *future* accidents so their costs could be distributed and managed (Ewald 2002; Simon 1987; Welke 2001). This notion of risk was abstract, its method actuarial, and its meaning demoralized (Simon 1987, 1988; Witt 2004).

Most important for my purposes, this notion of risk was also *collective*: calculated and carried on the basis of membership in a group, whether that group was defined by the private employer's risk pool or the more universal systems of risk-sharing created by public insurance. So close is the relationship between this collective understanding of risk and the institution of insurance that Francois Ewald (2020), the dean of insurance historians, fully equates the two. Risk, for Ewald, is *by definition* collective in nature—the concept of risk is simply not meaningful outside the contours of group experience—and insurance is the institution that most perfectly expresses risk as a collective construct. Accordingly, Ewald (2020) presents the invention of workmen's compensation insurance as resurrecting collective notions of risk that had been displaced by the nineteenth-century regime of tort liability. However, this was no simple repetition because these new methods of risk-sharing dissolved older solidarities and ancient bonds, eschewing the constraints on individual autonomy that characterized the precapitalist past (Ewald 2020:106). As such, the invention of modern insurance seemed to offer security without any trading away of individual liberties.[10] As Ewald (2020:102) explains, "Insurance manifests a form of association that combines a maximum of socialization with a maximum of individualization. Insurance allows each person to benefit from the advantages of the whole while leaving individual existence free. It seems to reconcile these two antagonistic terms, 'society' and 'individual liberty.'"

Thus, risk belonged to all and would be shared by all, but without requiring the authoritarian social forms that collectivized risk in the preindustrial past. Instead of being subordinated to the social control of the patriarchal household head, the feudal overlord, or the guild master, individuals merely had to subject themselves to the actuary's calculations. Equally important, the novel construction of risk as social relieved individuals of the attributions of fault and blame that dominated the nineteenth-century tort regime. The compilation of statistics demonstrated that injury was inherent to the process of industrial work. As a result, *no one*, employer or worker, could be held responsible for work accidents (Moses 2018; Witt 2004). Accordingly, individuals involved in accidents would no longer be subject to what Holdren (2020) calls the "tyranny of the trial," in which individuals' human failings were judged, sometimes harshly, by a jury. Instead, individual failings were simply subsumed into aggregates, rendering the exercise of judgment unnecessary.

We have now returned to our starting point as this narrative suggests the modern risk regime inaugurated with workmen's compensation legislation transcended the alternation between security and freedom that has long described the history of risk. Traditional social arrangements prioritized security over freedom, protecting individuals from harm while binding them in oppressive status hierarchies; nineteenth-century laissez faire capitalism reversed this prioritization, privileging individual freedoms, but leaving workers substantially unprotected in the face of mounting industrial hazards. Now, with the advent of a statistical understanding of risk undergirding the technology of modern insurance, security and freedom would move in tandem rather than representing opposed forces (Ewald 2020).

Or so it seemed. While important insights can be gained from exploring how the invention of insurance reworked the relationship between security and freedom, my account suggests this reworking is more usefully described in terms of *transformation* rather than a full *transcendence*. Instead of overcoming the opposition between security and freedom, the invention of modern insurance changed the form of the trade-off between them. As we have seen, an important aspect of this new risk regime was its reliance on statistical calculations that subsumed individual experiences into broad averages. Critically, and here I depart from the standard narrative, *this too represented a loss of freedom*: The "tyranny of the trial," to once again borrow Holdren's (2020) evocative language, was displaced by the "tyranny of the [statistical] table." To be sure, the loss of freedom imposed by subjection to the actuary's calculations was not on the same order as the loss of freedom associated with subordination in hierarchical social relationships organized around family, church, or guild. In this regard, demands for liberation in the modern risk regime took a qualitatively different form than in preceding eras: not a desire to be free from interference as one navigated the thrills and perils of the industrial workshop (Witt 1998, 2004), or a desire to be emancipated from the domination of a harsh authority in factory or household (Tomlins 1993), but rather the desire to navigate the social world *unmarked* by the social stereotypes (fashioned by actuarial science as "objective" statistical classifications) that compromised capacities for self-definition and autonomy. Notably, the desire to define oneself outside of the "average" or "typical" experience may reflect a peculiarly American notion of liberty (see Igo 2007).[11] As the journalist and political commentator Walter Lippmann ([1922] 1997:59; italics added) observed shortly after the consolidation of the workmen's compensation system: "We feel intuitively that all classification is in relation to *some purpose not necessarily our own*; that between two human beings no association has final dignity in which each does take not the other as an end in himself." Lippmann's observation underscores how the calculus of probabilities flattened individual experience into sterile classifications, constraining how individuals imagined themselves and the affiliations they sought with others (Hacking 1986; Simon 1988; cf. Krippner and Hirschman 2022). Accordingly, as the modern risk regime took hold, the unique qualities of a life disappeared into statistical computations and their associated stereotypes—and with them, a critical sense of agency. *This* loss of freedom, in fact, is key to explaining how risk was decollectivized in the later decades of the twentieth century.

THE INDIVIDUALIZATION OF RISK

The creation of workers' compensation insurance, as the system later came to be called, laid the groundwork for the massive expansion of the American welfare state in the middle decades of the twentieth century. Most notably, Social Security, the cornerstone of the public welfare state, was created in the image of workers' compensation (Asher 1969:475; Fishback and Kantor 2000; Lubove 1968). Workers' compensation similarly provided the template for private insurers who took over the administration of occupational injury claims (Klein

2003:207). The movement for no-fault auto insurance represented another significant collectivization of risk modeled on workers' compensation (Abraham 2008). In more limited but important ways, health, disability, and unemployment insurance all shared the same basic premises: Risks were pooled, payouts were automatic, and questions of fault or blame receded far into the background. In this respect, as Ewald (2020:115) notes, public and private insurance were "single branches of the same tree," with a shared history and similar preoccupations.

Given how completely this new risk regime became embedded in American society by the mid-twentieth century, how do we understand its unraveling by the century's end? What explains the shift from a regime in which risk was understood as constitutively collective, a property of groups, to one in which Americans increasingly were expected to go it alone? As I noted, the most prominent explanation for this shift—the resurrection of notions of "personal responsibility" associated with a broader neoliberal transformation of American society—seems so obvious that it has been widely accepted without close empirical scrutiny. Indeed, insofar as we are concerned with changes at the level of policy, pointing to "neoliberalism" as the main culprit seems reasonable. As a matter of policy, the individualization of risk was accomplished through a restructuring of the apparatus of social provision in the United States, carried out by policy elites who did in fact ascribe to a world view that can be described, retrospectively at least, as "neoliberal" (Hacker 2006). However, if we are interested not simply in the policy landscape, but in broader cultural understandings of risk, we would arguably do better to stay closer to the technologies of risk management that have their origins in insurance and are woven into social institutions spanning education (Peters 2005), criminal justice (Feeley and Simon 1992; Reichman 1986; Simon 2005), and medicine (Aronowitz 2015). It is through quotidian encounters with these varied institutional practices, I suggest, that Americans have learned shifting cultural idioms of risk (see Horan 2021).

Accordingly, I will examine not the machinations of policymakers, but the risk classification practices of insurers and the response to these practices by those who were classified by them. This vantage point provides a very different understanding of the social forces propelling the individualization of risk compared to the conventional view. Rather than seeing the individualization of risk as engineered by neoliberal policymakers who initiated a personal responsibility revolution (Hacker 2006), I argue that social movements seeking to contest discriminatory practices in insurance markets played a critical role in recentering notions of individual responsibility in late-twentieth-century America (see Krippner 2021). But this was largely inadvertent. These movements were not attempting to launch neoliberalism, but merely to throw off statistical classifications they perceived as discriminatory. Of course, these were the same statistical modes of calculation that made notions of personal responsibility irrelevant in the context of the accidents crisis early in the twentieth century; now that this statistical paradigm was under assault, personal responsibility could make a comeback.

To make sense of this argument, it is necessary to understand a little more fully what insurers do when they price risks. Notably, the adoption of statistical modes of calculation was important not simply for making accidents (and other misfortunes) visible as regular and inevitable features of the modern world—the aspect I have emphasized up to this point (with implications for who ultimately is understood as being "responsible" for the workplace accident)—but also for introducing new techniques for the *social regulation and management* of these accidents. If the inevitability of accidents made it necessary, morally and practically, to share their costs widely, how was this risk-sharing accomplished? A key aspect here was the forward-looking orientation of the statistical paradigm for socializing risk. Unlike the tort system, which was organized around securing compensation for an accident

that had *already* occurred, the modern risk regime was oriented toward the prediction of an accident *yet to occur* so that its costs could be planned for and managed (Ewald 2002; Simon 1987; Welke 2001). By anticipating future accidents, insurers could collect for them in advance, maintaining a reserve fund that would be made available to individuals who suffered misfortune. As long as insurers were reasonably accurate in predicting future accidents, the reserve fund would be maintained at a sufficient level to provide relief for accident victims without threatening the solvency of the insurance organization.

Critically, the prediction of future accidents (and other misfortunes) necessarily involves the *classification* of risks (Benston 1982:499). This is because under the statistical paradigm, risks cannot be calculated at the level of the individual but only at the level of the group (Ewald 2020; Hacking 1990). Accordingly, insurers are in the business of sorting risks, that is, defining groups (or classes) that share select characteristics in common and within which exposure to risk is assumed to be approximately equal among individuals (Abraham 1986).[12] Of course, insurers cannot predict which *particular* individual will have an accident (or become sick or die). But from the insurer's perspective, knowing the experience of particular individuals does not matter. What does matter is having a large enough group in each risk class to accurately predict that *some number* of individuals will have an accident (or become sick or die) over some period of time. Thus, as Levy (2012:204) notes, "the law of averages" is the basic rule in insurance markets.

And now we come to the crux of the matter. Insurers' reliance on the law of averages means that in modern risk regimes, individual experiences are necessarily subsumed into statistical aggregates, with each person taken as "average" or "typical" of the group to which they are assigned (Brilmayer et al. 1980:513). The assumption that each individual represents the "average" risk of their assigned group is what allows insurers to socialize risks *within* classes: Each person in a given cell of the actuarial table makes an equivalent contribution in the form of a premium to the insurer's reserve fund. Of course, no such average or typical person actually exists. Insurers create risk classes around a finite number of characteristics (e.g., age, gender, marital status, etc.), yet each person's real exposure to risk reflects an infinite number of factors refracted through the vagaries of personal circumstance and history (Wortham 1985:375). The notion that individuals grouped in risk classes represent "equal" risks is little more than a convenient fiction.

This fiction, of course, does significant work. In fact, it undergirds the entire moral economy of the insurance industry, allowing insurers to claim the premiums they assess are "fair," in the sense that each person pays *exactly* the cost of their own risk—"no more and no less" (Kimball 1979:105). Of course, the claim is a paradoxical one insofar as the insurer's premium is not an individual price at all, but is based on the calculation of a group average. Complicating matters still further, the group averages used by insurers to determine premiums are constructed by relying on characteristics such as gender and marital status that have long been considered out-of-bounds by competing understandings of fairness rooted in the American civil rights tradition (see Heen 2014; Horan 2021; Krippner 2021).

The collision between these two competing moral economies is critical for understanding how the statistical paradigm that supported the collectivization of risk unraveled in the latter decades of the twentieth century. In the early 1980s, feminists led by the American Civil Liberties Union's (ACLU's) Women's Rights Project, the National Organization for Women (NOW), and NOW's Legal Defense and Education Fund (NOW LDEF) launched a series of lawsuits challenging as discriminatory the widespread practice of using gender classifications to determine the price of insurance. Insurers countered by suggesting that removing gender as a pricing variable would violate basic considerations of fairness (Heen 2014; Horan 2021; Krippner 2021).[13] The corollary to the rule that *equal* risks ought to pay the

same price for coverage—so that each individual contributes their "fair" share of the insurer's reserve fund—is that *unequal* risks ought to pay *different* prices for coverage.[14] In this regard, if men and women represent different risks, as insurers firmly believed was the case, *not* to charge them different prices for insurance coverage would itself be discriminatory (Lautzenheiser 1976). Accordingly, insurers' notion of discrimination *required* the use of group-based classifications to differentiate between individuals based on the cost they contributed to the risk pool.

This view of discrimination was at odds with the more familiar civil rights tradition adopted by feminists, which suggested individual outcomes must *not* be determined on the basis of (stigmatized) group characteristics. "It is a most fundamental principle of the American tradition that no individual should be considered simply as part of a racial, sexual, religious or ethnic group, or treated differently because of his or her membership in that group," ACLU lawyer Mary Heen explained. "[But] in the context of insurance risk classifications," she continued, "no individual can ever overcome the stereotypes or 'averages' of invidious group classifications on the basis of... sex."[15] Heen articulated the anti-stereotyping principle foregrounded in the litigation campaigns organized by the ACLU and NOW: Sexual stereotypes compromised the ability of women (and men) to determine their own freedom of action as individuals who defined themselves outside of membership in a group.[16] The issue was not that sexual stereotypes were "abstractly offensive," but that they materially constrained the options of otherwise identically situated women and men "based solely on their gender."[17] In the words of one often-cited Supreme court opinion, rather than "[placing] women... on a pedestal," sexual stereotypes "[put] them in a cage."[18] Thus, "break[ing] the sex-typed mold" of these stereotypes was critical,[19] even when doing so imposed an economic cost, as in the case of insurance, where women could be advantaged or disadvantaged by gender-based pricing.[20]

Insurers had their answer to feminist accusations that they engaged in stereotyping when they classified on the basis of gender: All appearances to the contrary, *they did not classify on the basis of gender*.[21] Rather than relying on outmoded stereotypes that locked men and women into rigid social roles, insurers suggested they were simply interested in facts produced by data: "[The insurance company] is nothing more than a bystander to the results of mortality and morbidity... in its own insured population."[22] Ultimately, their investigations targeted *claims experience*, not gender; that longevity, health history, or accident exposure happened to differ for males and females did not impugn the practice of risk classification as discriminatory.[23] Of course, as feminists were quick to note, seeing these patterns in the data required a *prior* decision to sort on the basis of gender. A different classifier (e.g., smoking status or alcohol use) would reveal other risk factors as significant, and in this sense, it was circular to justify a given classification by referencing the results it produced (Brilmayer et al. 1980:512).

In fact, in referencing "stereotypes," feminists were not primarily concerned with outmoded representations of sex-typed social roles commonly associated with the term—and deeply embedded in equal protection jurisprudence, which challenged assumptions about women's desire to become mothers, lesser career ambitions, and dependency on a male breadwinner, among other familiar tropes. Rather, feminists' objection to the use of stereotypes in the context of insurance litigation reflected a more fundamental and, in a sense, mathematical concern: Feminists rejected the manner in which insurers' reliance on calculating broad averages subsumed a woman's experience into an aggregate that did not "fit" the individual.[24] "Women's greater average longevity... is a *generalization* that is not true for many women," NOW observed.[25] Sex-based generalizations were necessarily simplifications of a more complex reality: "Men are not the only ones who experience heart disease;

women are not the only ones who metabolize fat."[26] Individual men with healthy hearts and individual women who did not metabolize fat were misdescribed by group averages and, as a result, mispriced by insurers. Accordingly, feminists argued that insurers ought to "treat individuals *as individuals*, based on personal lifestyles and other causally relevant factors" and not "based only upon the statistical risks presented by his or her sex as a class."[27]

Insurers found feminist demands for individual treatment puzzling because classifying by gender involved *more* information about the individual than would be obtained by eliminating gender classifications from insurers' rating schemas (Lautzenheiser 1976). Given that insurers were *required* to group individuals in order to calculate risk, using gender classifications was treating the individual "as individually as it is possible to do" in the context of insurance.[28] "Paradoxically," insurers noted, "in seeking to have insureds treated as 'individuals,' [feminists] seek to establish a rule which would require insurers to *ignore* individual differences."[29] Accordingly, insurers warned ominously that ceding to feminist demands would result in the creation of "one large group"—a bleak, vaguely totalitarian state of affairs in which all policyholders were made identical, fully suppressing any expression of individuality.[30] How ironic, insurers observed, that they and not feminists were the true champions of individual rights!

Feminists did not contest the necessity of using group classifications to price insurance, however, but only the use of classifications referencing *groups protected by antidiscrimination law* (Brilmayer et al. 1980:511; Gray and Shtasel 1985).[31] As such, NOW's assumption was *not* that the elimination of gender classifications would result in "one large group." Indeed, the whole notion was anathema to feminist aspirations to be free of the statistical aggregates that flattened individual experiences into sterile abstractions, denying self-determination and autonomy. Instead of "one large group," feminists fully expected insurers would substitute *other* rating variables for gender, ultimately resulting in a more individualized form of insurance pricing.[32] In this regard, feminists observed that gender classifications operated as crude proxies for the causal factors that actually determined an individual's risk: smoking, alcohol use, weight, exercise habits, driving record, mileage, and so on (Ellis 1989).[33] These factors, feminists suggested, could be measured directly. "Insurance can be, and should be, based on factors that can be *modified*," NOW's President, Judy Goldsmith, wrote in an editorial. "It should not penalize people for something over which they have no control."[34] The exercise of *choice* was key because it meant reliance on controllable lifestyle factors would give individuals an opportunity to alter their behavior in order to determine the premiums they paid (Gray and Shtasel 1985).[35] Under such a system, NOW suggested, "People would…have financial incentive for reducing their weight and driving carefully; they could do something positive to upgrade their rate classifications."[36]

This logic was so compelling to feminists that they assumed insurers would be guided by market competition to voluntarily adopt rating variables that reflected individual lifestyle choices once gender was eliminated from risk classification schemes.[37] Later, however, NOW seemed to lose faith in market forces and instead attempted to secure regulations that would require insurers to substitute alternative rating variables for gender. But no matter whether feminists relied on the market mechanism or regulatory actions to achieve their ends, the impulse was the same: NOW believed that a more refined classification scheme that better calibrated each individual's risk—and, arguably more importantly, allowed individuals greater *responsibility* for the risk rating they received—would emerge from the adoption of gender-neutral pricing. Perhaps inadvertently, feminists became tireless advocates of the individualization of risk.[38]

As it happened, feminists were correct that the antidiscrimination challenge would move insurers inexorably toward more individualized forms of pricing, but wrong that this would

result from the elimination of gender classifications. In fact, the causal chain seemed to flow in the opposite direction: Insurers attempted to *preempt* NOW's allegations that they were engaged in gender discrimination by proactively expanding the range of factors they used to classify risks.[39] If insurers could demonstrate they were not indifferent to risk factors other than gender, they might also demonstrate their reliance on gender classifications was not rooted in gender bias. Whether or not this logic was convincing to feminist critics (it was not), it was at least somewhat convincing to judges, and as litigation made its way through the court system, the factors used by insurers to sort risks proliferated (see Stone 1989). Critically, as the number of risk factors utilized by insurers expanded, risk classes necessarily became smaller, with the result that risk was shared across fewer individuals.[40] Thus, gender remained as a pricing variable, but insurers followed the lead of feminists in parsing risks ever more finely, with each person increasingly responsible for bearing their own risk.[41] Accordingly, the account I presented here suggests it was a desire for emancipation from statistical classifications, not neoliberalism per se, that resurrected notions of personal responsibility and seeded the individualization of risk in late-twentieth-century America.

CONCLUSION

Let me conclude by situating the narrative I presented in terms of the repeated alternation of security and freedom that has characterized the long history of risk. With the dawn of the industrial age, individuals increasingly broke free of the hierarchical status relations that had afforded protection in the premarket era. Accordingly, in the early years of industrial capitalism, workers were allowed considerable discretion over the process of production and over the shape of their lives more generally, at least relative to the highly constricted work and life patterns of preceding epochs (Welke 2001; Witt 1998, 2004). But increased latitude also exposed workers to considerable hazard. As casualties mounted in the machine age, new modes of statistical calculation documented the growing toll and transformed its meaning, with notions of individual fault displaced by a novel understanding of the accident as a regular, even inevitable feature of industrial capitalism. Critically, this new understanding ushered in novel methods of risk-bearing: The introduction of workers' compensation insurance socialized the workplace accident by applying a probabilistic calculus to the risk of injury and death.

Initially, it seemed the advent of modern insurance—first governing industrial accidents and then extending to a wider array of risks—provided a neat resolution for the age-old conflict between security and freedom. Access to social protection no longer required personal subjection in a hierarchical social relationship but could be achieved through a routine financial transaction. Examining the experiences of feminists who challenged insurers' risk classification practices in the later decades of the twentieth century, however, recasts this conventional narrative. The fact that the "community of fate" made by the modern insurance contract was constituted by the computations of actuaries rather than lived social relationships certainly lessened its burdens relative to social obligations forged in feudal Europe (Ewald 2020; Levy 2012; cf. Simon 1988). Notwithstanding these lesser burdens, insurers' practices of risk classification were nevertheless experienced as constraining to women who felt their individual experiences were disregarded and disaffirmed when they were aggregated into overly broad statistical categories. Paradoxically, feminist demands for autonomy vis-à-vis statistical categories provided an impetus to insurers to break apart risk classifications and to introduce new rating variables that placed greater emphasis on actions individuals could take to manage their own risk. "Listening carefully" to the challenge posed to insurers by feminists, the *National Underwriter* observed, necessarily involved the

realization that premium rates should "truly reflect [risk] exposures," giving each individual more "say" in their premium and an incentive to focus on "loss prevention activities."[42]

Is it appropriate, given this, to "blame" feminists for neoliberalism (or at least for some of its features, including the individualization of risk)? While skirting the question of blame, some scholars have suggested that "elective affinities" exist between feminism and neoliberalism (Fraser 2009). Others have observed a "dangerous liaison" between the two, with feminism acting as a powerful "cultural solvent" dissolving patriarchal social norms and "freeing" women to participate in wage labor, dismantling the "family wage" along the way (Eisenstein 2005; cf. MacLean 2002; Streeck 2011). Still others have written more broadly about how neoliberals have appropriated elements of the civil rights tradition undergirding antidiscrimination movements, including feminism, turning these traditions to purposes foreign to their original intent (Dinner 2017; MacLean 2006). What all these accounts have in common, albeit with different emphases, is a deep skepticism of the "individualism" of liberal (i.e., White, Western) feminism, suggesting this individualistic stance is precisely what has made feminism so vulnerable to incorporation into the neoliberal project. In some sense, the account I offered here confirms this skepticism.

But perhaps we should take a step back. Every progressive social movement in the history of humankind has been subject to appropriations contrary to its own aspirations. Rather than rendering the aspiration illegitimate, this suggests the need for a countermovement. Accordingly, before we get to neoliberal appropriations, I want to hold for a moment on the original aspiration of the feminists who sought to be free of forms of statistical classification they experienced as oppressive. I think we do ourselves a disservice as sociologists by dismissing aspirations such as those expressed by feminists who resisted categorization as simply "advancing" neoliberalism. Certainly, feminists advanced that project, but they also advanced others, including forms of self-determination and agency that are not accurately described as "neoliberal," and that instead of producing an unfettered individualism, created the possibility for novel forms of connection and community.[43] Here then is a sociological agenda that I submit as being worthy of the legacy of Lewis Coser: to investigate the politics of freedom with as much attention as we have heretofore directed to the problem of equality,[44] probing the outlines of society in which individual self-realization in all its varied and complex manifestations is not the hollow echo of neoliberal prophets but a necessary condition of human life under capitalism and any other social system yet conceived.

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ORCID ID

Greta R. Krippner https://orcid.org/0000-0002-5303-1332

NOTES

1. Meagan Flynn, "After Wisconsin Ruling, Crowds Liberated and Thirsty Descend on Bars," *Washington Post*, May 14, 2020. https://www.washingtonpost.com/nation/2020/05/14/wisconsin-bars-reopen-evers/.

2. Sociologists have lavished careful attention on public insurance—the institutions of the welfare state—but the same cannot be said of private insurance. With a handful of notable exceptions (e.g., Baker and Simon 2002; Chan 2012; Dobbin 1992; Heimer 1985; Kiviat 2019; Krippner 2021; Krippner and Hirschman 2022; McFall 2014; Quinn 2008; Schneiberg 1999; Schneiberg and Bartley 2001; Zelizer 1979), private insurance has been neglected as a topic of study among sociologists.
3. In using the case of insurance to explore the individualization of risk, I follow Bouk's (2015) important work on the quantification of financial risk in life insurance markets early in the twentieth century. Bouk's account differs from mine in locating the individualization of risk at an earlier historical moment and in giving greater emphasis to developments internal to the insurance industry rather than external challenges to it.
4. Coal mining was a close second in terms of the hazards the industry presented to workers (see Aldrich 1997).
5. "Car Inspector Fatally Hurt," undated newspaper clipping, personal papers of author.
6. Weinstein (1967:157) estimates that under the tort system, only 15 percent of injured workers recovered damages from their employers even though the vast majority of these accidents were deemed to be due to employer negligence or inherent risks in the nature of the work.
7. Simon (1993) demonstrates that the shift to greater managerial control was already underway before the passage of workmen's compensation laws because the gradual erosion of employer immunity from liability in the latter decades of the nineteenth century similarly increased managers' incentives to prevent accidents.
8. In addition to ceding control over the production process, organized labor worried that workmen's compensation would erode worker power by trading away the right to sue and by displacing trade unions as the primary source of social security (Asher 1969; Lubove 1968; Weinstein 1967).
9. Outside of industrial workplaces, an analogous shift was underway, as Americans ceded individual autonomy in exchange for the protection offered by state regulations in matters such as public transportation, food safety, and consumer product safety (see Jain 2006; Mohun 2013; Welke 2001).
10. This is especially the case if one looked beyond the shop floor, where the introduction of workmen's compensation insurance was accompanied by technocratic systems of managerial control (Witt 1998, 2004).
11. Here is how the idea was expressed by (then) Senator Joe Biden in hearings before Congress in the mid-1970s: "When you make [John Doe] part of a category which is totally beyond his control, where he has no way of affecting what happens within that category, and you in fact then impose upon him certain limitations because he falls within that category . . . [this] certainly does not move us toward a society which recognizes the importance of individuals as opposed to statistical categories." Senate Committee on Banking, Housing, and Urban Affairs, *Equal Credit Opportunity Amendments and Consumer Leasing Act—1975*, July 15, 17, and 24, 1975, 458.
12. I focus here on the practices of private rather than public insurers. However, the distinction between public and private insurance should be understood as one of degree rather than kind (see Stone 1989, 1993). That is, public insurance tends to create broader risk classes (with a greater degree of risk-sharing), whereas private insurance creates narrower, more segmented risk classes (involving less risk-sharing), but both public and private insurers engage in the classification of risks for purposes of estimating future costs. See Friedman (2020) for a nuanced discussion of the shared conceptual underpinnings of public and private insurance.
13. The following account is based on original archival research conducted using the papers of NOW and NOW LDEF at the Schlesinger Library at the Radcliffe Institute in Cambridge, Massachusetts, and the papers of the ACLU's Women's Rights Project housed at the Mudd Library at Princeton University (see the Data Appendix for details). I give greatest attention to one particular lawsuit in which NOW LDEF participated first as amicus curiae and then as a plaintiff, *Maryland Commission on Human Relations v. Equitable Life* (later *Insurance Commissioner of Maryland, et al., v. Equitable Insurance*). The case is especially useful for my purposes because it ran for almost 20 years (1978–1997) and is therefore richly documented in the archival record. However, I also examined full records for *all* the lawsuits involving gender discrimination in insurance brought by NOW/NOW LDEF during this period. On the basis of this review, I can confirm that *Equitable* was representative of issues litigated in the fuller set of cases (see Krippner 2021).

14. The concern here is that if *unequal* risks pay the *same* price, lower-risk individuals will bear some of the costs of higher-risk individuals. Of course, the issue is a tricky one because insurance as an institution is *designed* to share (i.e., "subsidize") risks (Stone 1993). But for insurers, there is a critical difference between risk-sharing *within* risk classes (where risks are presumed to be equal) and *between* risk classes (where risks are presumed to be different). According to insurers, the former situation simply involves risk spreading between the "lucky" and the "unlucky"; only the latter situation involves unacceptable subsides between individuals with systematically different exposures to risk (Lehtonen and Liukko 2011). Given that insurers construct risk classes by selecting a finite number of characteristics from an infinite number of possible risk factors, however, the distinction between legitimate "risk sharing" and illegitimate "subsidization" is somewhat arbitrary—a point central to the arguments feminists directed against insurers in litigation (see Krippner 2021).
15. Mary L. Heen, "Insurers' Unacceptable Discrimination by Sex," *The New York Times*, November 15, 1982. https://www.nytimes.com/1982/11/15/opinion/l-insurers-unacceptable-discrimination-by-sex-029916.html.
16. I rely here on Franklin's (2010) important excavation of the philosophical grounding of the anti-stereotyping principle elaborated in constitutional law. As Franklin notes, feminists did not invent the idea of stereotypes as antithetical to individual desires for autonomy and self-definition. But feminists sharpened this intuition and, following the lead of the civil rights movement, fashioned it into a robust principle organizing legal and political struggles. Thus, rather than reflecting a "thin" version of formal equality, as critics of liberal feminism contend, Franklin suggests the anti-stereotyping principle expresses a deep commitment to human liberation. For elaboration of the emancipatory aspects of the anti-stereotyping principle, see Case (2000:1472–77) and Franklin (2014).
17. "Statement on Behalf of American Civil Liberties Union Before the Elimination of Discriminatory Insurance Practices Study (Deborah Ellis Testimony)," Women's Rights Project – Insurance Practices Study Folder, Box 2161, ACLU Papers.
18. *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (Brennan, majority opinion).
19. "Brief Amicus Curiae of the American Civil Liberties Union, ACLU of Eastern Missouri, NOW Legal Defense and Education Fund, Women's Equity Action League, and Women's Legal Defense Fund" (*Wengler v. Druggists Mutual Insurance Company and Dicus Prescription Drugs, Inc.*), October 1979, MC 623, Folder15, Box 631, NOW LDEF Records.
20. The ACLU's and NOW's litigation against insurance companies involved health, disability, life, and auto insurance, with the latter two industries being especially important in feminist litigation efforts. Because women typically paid *lower* premiums in these two lines of insurance, feminist efforts to combat gender-based pricing were complicated by what was referred to as the "hoax" of "beneficial discrimination." See "Memo to Preparers of NOW Insurance Case from Twiss and Pat Butler," September 14, 1986, MC 666, Folder 4, Box 363, NOW Records.
21. "Brief of The Equitable Life Assurance Society" (*Maryland Commission on Human Rights v. Equitable Life*), September 18, 1991, MC 623, Folder 3, Box 515, NOW LDEF Records; "Memorandum of Law of The Equitable Life Assurance Society" (*Equitable Life v. Insurance Commissioner of the State of Maryland*), October 30, 1992, MC 623, Folder 2, Box 516, NOW LDEF Records; "Brief and Appendix of Appellee/Cross-Appellant The Equitable Life Assurance Society" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), July 30, 1993, MC 623, Folder 4, Box 517, NOW LDEF Records; "Brief of Amicus Curiae American Insurance Association" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), MC 623, Folder 6, Box 517, NOW LDEF Records.
22. "Memorandum of Law of The Equitable Life Assurance Society" (*Equitable Life v. Insurance Commissioner of the State of Maryland*), October 30, 1992, MC 623, Folder 2, Box 516, NOW LDEF Records.
23. "Brief of The Equitable Life Assurance Society" (*Maryland Commission on Human Rights v. Equitable Life*), September 18, 1991, MC 623, Folder 3, Box 515, NOW LDEF Records.
24. "Dialogue on Pennsylvania NOW's Auto Insurance Sex Discrimination Lawsuit," September 23, 1988, MC 496, Folder 23, Box 117, NOW Records; "Reply Brief of Appellants and Brief of Cross-Appellees Baltimore NOW and Maryland NOW" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), September 27, 1993, MC 623, Folder 6, Box 517, NOW LDEF Records.

25. "Memorandum of Appellants/Cross Appellees Baltimore NOW and Maryland NOW" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), June 29, 1993, MC 623, Folder 2, Box 517, NOW LDEF Records.
26. "Reply Brief of Appellants and Brief of Cross-Appellees Baltimore NOW and Maryland NOW" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), September 27, 1993, MC 623, Folder 6, Box 517, NOW LDEF Records.
27. "Brief Amicus Curiae in Support of Appellants on Behalf of ACLU of Maryland (and others)" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), July 29, 1993, MC 623, Folder 4, Box 517, NOW LDEF Records.
28. *Los Angeles Water and Power Company v. Manhart*, 435 U.S. 702, 727-28 (1978) (Burger, dissenting).
29. "Brief of Amici Curiae American Life Insurance Council and Health Insurance Association of America in Support of Appellee" (*NOW v. Mutual of Omaha*), May 28, 1986, MC 623, Folder 4, Box 560, NOW LDEF Records.
30. "Brief Amici Curiae for the American Council of Life Insurance and the Health Insurance Association of America in Support of Appellee" (*NOW v. Mutual of Omaha*), May 28, 1986, MC 623, Folder 4, Box 560, NOW LDEF Records; "Respondent's Brief on Appeal" (*Kirsh v. State Farm*), February 4, 1991, MC 623, Folder 8, Box 540, NOW LDEF Records.
31. "National Association of Life Underwriters: Discussion with Phineas Indritz, Re: H.R. 100," December 2, 1980, MC 623, Folder 5, Box 126, NOW LDEF Records; "Statement of Ira Glasser, Executive Director of American Civil Liberties Union, Hearings before the U.S. Senate on S. 372," May 19, 1983, MC 623, Folder 6, Box 126, NOW LDEF Records; "Maryland Commission on Human Relations, Merits of the Case, Preliminary Statement" (*Equitable Life v. Maryland Commission on Human Relations*), August 11, 1986, MC 623, Folder 6, Box 516, NOW LDEF Records; "Brief of the American Association of Retired Persons (and others) as Amicus Curiae" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), July 30, 1993, MC 623, Folder 5, Box 517, NOW LDEF Records; "NOW Targets Mutual of Omaha," *Insurance Times*, August 28, 1984, MC 623, Folder 15, Box 561, NOW LDEF Records; "Angered over Foster's 'Damaging Lie' – Pennsylvania NOW Charges Tactic Is Divisive and Blocks Reform Chances," *Atlantic States Insurance*, September 23, 1989, MC 663, Folder 14, Box 24, Patricia Ireland Papers; "Letter to Co-branch Manager (name redacted) from Twiss Butler," no date, MC 666, Folder 9, Box 362, NOW Records.
32. "Letter to Co-branch Manager (name redacted) from Twiss Butler," no date, MC 666, Folder 9, Box 362, NOW Records; "Letter to Julya Hampton from Deborah Ellis," July 22, 1988, Washington Case Folder, Box 2200, ACLU Papers.
33. "Supplemental Memorandum in Further Support of Motion of NOW LDEF, Maryland NOW, Baltimore NOW, The American Association of University Women (Maryland Division), and The Women's Law Center to Intervene as Amici Curiae" (*Equitable Life v. Maryland Commission on Human Rights*), November 9, 1990, MC 623, Folder 1, Box 515, NOW LDEF Records; "Statement on Behalf of American Civil Liberties Union before the Elimination of Discriminatory Insurance Practices Study (Deborah Ellis Testimony)," Women's Rights Project – Insurance Practices Study Folder, Box 2161, ACLU Papers; "Insurance Discrimination: Myth and Reality," April 1983, Sex-Based Classification – ACLU Publications Folder, Box 2200, ACLU Papers; "Sex-Based Discrimination: Questions and Answers," October 1985, Sex-Based Classification – ACLU Publications Folder, Box 2200, ACLU Papers.
34. "Insurance Industry Hurts Women (Editorial Comment by Judy Goldsmith)," April 29, 1983, MC 666, Folder 1, Box 364, NOW Records.
35. "Brief of the American Association of Retired Persons (and other parties) as Amicus Curiae" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), July 30, 1993, MC 623, Folder 5, Box 517, NOW LDEF Records; "Sex, Risk, and the Actuarial Equation," *The New York Times*, August 16, 1987. https://www.nytimes.com/1987/08/16/weekinreview/pro-con-women-vs-the-insurance-industry-sex-risk-and-the-actuarialequation.html.
36. "Insurance Industry Case against the ERA: 'Fair Sex Discrimination,'" May 8, 1982, MC 666, Folder 9, Box 362, NOW Records.
37. "Issues Relating to the Proposed Unfair and Deceptive Insurance Practices Act," May 16, 1984, MC 623, Folder 9, Box 125, NOW LDEF Records; "National NOW Times Draft Article," October 25,

1984, MC 623, Folder 10, Box 125, NOW LDEF Records; "Women Are Cheated in Auto Insurance," December 7, 1984, MC 623, Folder 10, Box 125, NOW LDEF Records; "Letter to Julya Hampton from Deborah Ellis," July 22, 1988, Washington Case Folder, Box 2200, ACLU Papers.

38. "Reply Brief of Appellants and Brief of Cross-Appellees Baltimore NOW and Maryland NOW" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), September 27, 1993, MC 623, Folder 6, Box 517, NOW LDEF Records; "Letter to Judge Revercomb from Jeffrey Braun," October 21, 1985, MC 623, Folder 5, Box 553, NOW LDEF Records; "Memo to the Leadership List from Vice President – Action," March 19, 1984, MC 666, Folder 7, Box 363, NOW Records.
39. "Memorandum of Appellants/Cross-Appellees Baltimore NOW and Maryland NOW" (*Insurance Commissioner of the State of Maryland, et al. v. Equitable Life*), June 29, 1993, MC 623, Folder 2, Box 517, NOW LDEF Records.
40. The inverse relationship between the size of risk classes and the number of risk factors reflects the fact that as more factors are used, the more difficult it becomes to populate risk classes with individuals who have *all* of the necessary characteristics to qualify for a particular rate (see Abraham 1986).
41. Note that the "individualization of risk" in the insurance context involves the finer and finer segmentation of risk classes, *not* an abandonment of classification altogether, as is sometimes implied in discussions of "personalized prices." A full individualization of risk—in which each person actually receives their own *unique* price—was not technically feasible in insurance markets during the period of time (i.e., 1980s and 1990s) considered in this article. Predictive analytics and machine learning have brought this goal closer, but the insurance industry has been slow to adopt fully individualized pricing for both technical and cultural reasons (see Barry 2020; Barry and Charpentier 2020; Cevolini and Esposito 2020; Francois and Voldoire 2022; Krippner and Hirschman 2022; McFall 2019).
42. "On Listening Carefully," *National Underwriter*, July 2, 1983.
43. I have in mind here especially the proliferation of new communities organized around those who have rejected dichotomous gender categories as a critical (if perhaps indirect) legacy of feminism's anti-stereotyping principle.
44. The problem of freedom has not been entirely neglected by sociologists, and Patterson's (1991) work is of particular significance here. But the imbalance between freedom and equality in the discipline is striking. As an admittedly rough proxy, a search of the online program for the American Sociological Association meeting at which this lecture was originally presented returned 343 results for "equality" or "inequality" but only 32 results for "freedom" or "unfreedom." On the broader abandonment of freedom by the progressive left, my thinking has been shaped by the writings of Brown (1995), Gourevitch and Robin (2020), and Nelson (2021). From diverse vantage points, these authors make a similar appeal for progressives to attend to freedom, a call that has been taken up somewhat belatedly after the fall of *Roe*. See "Progressives Push Democrats to Make Their Fight about Freedom," *The New York Times*, August 11, 2022. https://www.nytimes.com/2022/08/11/us/politics/midterms-democrats-freedom.html.

DATA APPENDIX

Archival Materials

Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, Massachusetts

496 Records of the National Organization for Women (NOW), 1959–2002.
623 Records of the NOW Legal Defense and Education Fund, 1968–2008.
663 Papers of NOW Officer Patricia Ireland, 1972–2005.
666 Additional Records of the National Organization for Women, 1970–2011.

Seeley Mudd Library, Princeton University, Princeton, New Jersey

American Civil Liberties Union (ACLU) Papers, Subgroup 3, Series 1: Organizational Matters.
ACLU Papers, Subgroup 4, Series 2: Women's Rights Project.

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AUTHOR BIOGRAPHY

Greta R. Krippner is associate professor of sociology at the University of Michigan. She is a historical sociologist, with substantive interests in economic sociology, political sociology, the sociology of law, and social theory. Her first book, *Capitalizing on Crisis: The Political Origins of the Rise of Finance* (Harvard University Press, 2011), examined the financialization of the U.S. economy in the period since the 1970s, arguing that the turn to finance was an inadvertent response to unresolved distributional dilemmas as post-war growth stalled. Her current book project traces the long history of the individualization of risk in U.S. society, asking how the notion that each individual should "bear the cost" of her own riskiness emerged as a widely accepted normative principle governing how risk is distributed.