

“Are Solidarity, Self-Responsibility and Tort Liability Irreconcilable? Policing the Compensation of Victims of Catastrophes in America and in Europe”

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1. Introduction

1.1. Why should catastrophes be treated differently? Comparing large scale disasters to individual accidents

1.2. The need for immediate relief: tort liability may not be suitable where it is available

1.3. US self-responsibility v. European solidarity: two different societal models

A Self-responsibility system triggers huge ex-post solidarity and public expenditure.

Organized solidarity limits public expenditure before and after the event

2. The American Model: Making Compensation Available

2.1. The downside of reliance on the individual and local authorities

The predominant role of tort damages: not only a gap-filler remedy like in Europe but a citizen-operated tool to keep society safe... where there is an identified tortfeasor

Why FEMA does not work: more top-down intervention is needed in national emergencies

2.2. Reliance on insurance and government incentives

The Price-Anderson Act 1957

Professor of Law, Russell B. Long Eminent Scholars Academic Chair, Director of the Center of Civil Law Studies. This outline is based on O. Moréteau, “Policing the Compensation of Victims of Catastrophes: Combining Solidarity and Self-Responsibility”, *Shifts in Compensation*, W. Van Boom and M. Faure (Eds.), Springer, forthcoming. For other projects sponsored by the European Center of Tort and Insurance Law, visit <http://www.ectil.org/>

The National Flood Insurance Program
The Terrorism Risk Insurance Act 2002
Florida's reactions to Andrew
The California Earthquake Authority

- 2.3. The government has become a major player
 - No market distortion but creation of a new market where insurers can compete
 - Redistribution of risks: not everybody can live in a safe place
 - Self-responsibility incentives

3. The European Model: Regulating Compensation

- 3.1. Less tort and more insurance
 - The French insurance coverage for accidents of private life
 - No class actions
 - Sometimes, compensation funds
- 3.2. Compulsory insurance coverage of damage to property: the French model
 - The case of natural disasters
 - The case of industrial disasters
- 3.3. Shifts and incentives
 - Additional insurance premiums are regulated
 - Reinsurance and redistribution
 - And yet a privately capitalized system
 - With a number of incentives promoting self-responsibility and prevention of risks

4. Conclusions

Solidarity always exists ex-post but is more efficient when organized ex-ante
Individual and collective action may be combined
The market cannot fix the problems alone: some distortions may be justified

Since most disasters have some man-made origin, the US tort model has a huge potential to help fix environmental problems