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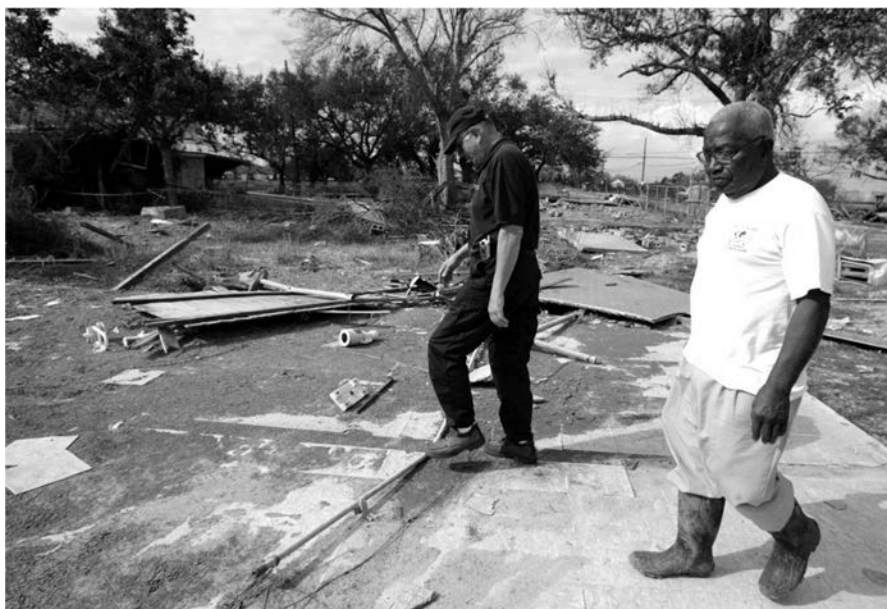
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## Insurance and Cultural Perspectives on Katrina

*By Jeffrey E. Thomas\**

I want to start with a photograph. I want to be a little bit interactive here, and get your reactions to this photograph. I looked at hundreds of pictures related to Katrina trying to find a picture that would generate an interesting narrative question—sort of what is going on? So, this is the picture that I chose. I actually paid a licensing fee so I can have this picture without AP emblazoned over the front of it, so it does not look silly. This is an actual news photograph that was put on the news line. I do not know what papers picked it up and ran it, but it is from Katrina. It is an actual narrative that comes from that disaster. So, what do you think it shows? What this process is doing is allowing you to reveal to me your narratives about what goes on and the history is of Katrina.



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\* Associate Dean for International Programs, Professor of Law, and Daniel L. Brenner Faculty Scholar. I would like to thank the Washington & Lee Journal of Civil Rights and Social Justice for sponsoring the symposium, and Pete Cosgrove, Ben Hubbard, and Lawrence MacLachlan for research assistance.

**Audience Member 1:** The white gentlemen in the blue. He seems to be kind of uniformed and he is in the lead, and he has a cell phone clipped on, so I kind of see him, knowing the context of this, an insurance guy, and the African American gentlemen, who is just kind of coming along and looking pretty bummed out at what he sees.

**Thomas:** Okay, all right, very good. Other thoughts?

**Audience Member 2:** Perhaps the guy in blue is in some official capacity. The guy with the white shirt on is a volunteer.

**Thomas:** Okay, could be, very good. What does it tell you about racism in Katrina? I mean, that's the topic of this symposium. And, we have this historical background that's really quite compelling of what's happened in disasters historically. Is this a racial narrative from this picture? Or, can you see—do you believe that there is a possible racial interpretation of this?

**Audience Member 3:** Well, you have two people of different races that sort of look like they are engaged in some joint endeavor.

**Thomas:** Okay, so it looks like there is collaboration, perhaps, going on.

**Audience Member 4:** I think there is a general disparity with the appearance and demeanor. The white gentleman is better dressed; he is being assertive. The other guy looks like he has been in the muck and he's cleaned up. He's down and depressed and he's looking across at a slab that looks like it used to be his home.

**Thomas:** Okay. Okay. And so what does that tell you about, sort of, racial issues?

**Audience Member 4:** The natural inference that we want to draw when looking at this is that the roles aren't reversed. That, when looking at it, the guy with the mud boots, with his pants tucked into them, just lost his house and the other guy with the clipped-on phone and more assertive clothing is kind of in an authority role.

**Thomas:** Okay, you can read as sort of—it's not fair to call it racism, but there's this sort of disparity of power. And there's sort of a dictum orientation that we can see or practically read into the picture with respect to the African American man.

The picture is—we are pretty close to what it actually is—this is from the Ninth Ward in New Orleans, which was 98% African American. It was at the huge epicenter of disaster, and was the focus of a lot of racial discussion, racial concerns. The gentleman in blue is a FEMA volunteer, but is a paid volunteer. So he does have some authority, but he is not a government official. That goes back a little bit to the theme of Americans

helping each other out and in the positive sense, this shows a crossing of the racial line because there is a white volunteer helping an African American victim. The earlier picture of Katrina that Marian showed, I thought was really interesting because I was not sure what the narrative was. But, it was interesting to see that there were three or four African American men that looked to me like they were carrying an injured woman. Then, there were all these people behind the barricades. I am not really sure what the timing was, or what the picture was about exactly. But, it is a different kind of picture than this because it shows race in a different way.

What is my point of this? The point is to try to understand the narratives. Try to figure out what the stories are, because those narratives are the way that we, as humans, create meaning. The cultural approach to things is to understand our way of organizing the world and creating meaning for ourselves. Racism is a big piece of that, and it's a piece that we are trying to fix or change in certain ways. What I thought I'd do is start with the insurance narratives, and work into some of the racial issues. From there, go to the cultural narratives.

From an insurance standpoint, homeowner insurance is archetypal insurance. The essential notion of insurance is risk transfer and risk pooling. Property insurance began because of big fires, like the fires that happened in San Francisco, in Chicago, and in London. So, fire insurance was the predecessor to typical homeowners insurance today. Its purpose is to allow us to manage our risk as homeowners. Homeowners could pay a little bit into a fund, that fund can be pooled, invested, and then when somebody has a loss, the pool, the fund, will pay for the homeowner's risk. So it is a very useful device for managing risk, and was something that was present in Katrina. When Katrina occurred, it created enormous pressure on the insurance system because of the scope and magnitude of the losses—and I will show you the slide in just a moment—Katrina losses were the largest losses (the largest insured losses) we have ever had. They dwarfed Hurricane Andrew and the Northridge Earthquake by a two to three-fold factor.

Overall, the narrative is that the insurance system worked pretty well. The problem was, from a racial standpoint, that many people of color did not have insurance or they did not have adequate insurance. The limitations that there were on the insurance system in Katrina were an absence of insurance coverage, and this whole issue of how to deal with floods and with water.

Katrina, if you combine the private insurance money with the flood insurance money, was 57 billion dollars in insured losses. September 11th

was right about 36 billion. Hurricane Andrew, in 2009 dollars, was like twenty-two billion.<sup>1</sup> You can see by a factor of two, almost three, that Katrina was really enormous. There has been some criticism of insurance companies that they were not able to pay, that they must be too greedy, that they were making too much money. But, in fact, they were able to pay. Here is the quick story of the insurance successes.

There was 40 billion dollars paid by private insurers to 1.7 million claimants.<sup>2</sup> And, this is not just in Louisiana. This is also including Mississippi. Ninety-five percent of claims were settled within a year.<sup>3</sup> According to the Insurance Information Institute, they believe that less than 2 percent of homeowner claims were disputed and went to mediation or court.<sup>4</sup> And, in a survey that was done, eighty-nine percent of homeowners in Louisiana were satisfied with their insurance company.<sup>5</sup> Eighty-two percent were satisfied with their settlement.<sup>6</sup> There is still some sort of dissatisfaction—certainly some racial disparity to be discussed. But on the whole, it is actually pretty good.

There are two reservations. One is the flood problem. Most private insurance policies exclude flood from their coverage.<sup>7</sup> The reason for that is because the losses in a flood are enormous. Like the 1927 Mississippi Flood— it covered so much land and those risks are all correlated, they all happen at the same time, they are not random. If I had a house fire, that's kind of random, so it is easier to pool that risk. But if a whole section burns down, or a whole area is flooded, those risks are correlated, and so it makes it a lot harder to underwrite.<sup>8</sup>

The solution was that flood insurance was available through the national flood insurance program, a federal program. The problem, though, is that less than sixty-five percent of those in Katrina had flood insurance.<sup>9</sup>

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1. Ins. Info. Inst., Hurricane Katrina: 2010 Fact File 3 (2010).

2. Ins. Info. Inst., Hurricane Katrina: 2007 Fact File 1 (2007).

3. *Id.*

4. *Id.*

5. Douglas R. Richmond, *Insurance and Catastrophe in the Case of Katrina and Beyond*, 26 MISS. C. L. REV. 49, 50 (2007).

6. Ins. Info. Inst., *supra* note 2.

7. *See generally*, Kenneth S. Abraham, *The Hurricane Katrina Insurance Claims*, 93 VA. L. REV. 173, 174 (2007) (discussing that most policies exclude flood damage from their coverage).

8. *See* Howard Kunreuther, *Correlated Risk*, in *ENCYCLOPEDIA OF QUANTITATIVE RISK ANALYSIS AND ASSESSMENT* (Edward L. Melnick & Brian S. Everitt eds., 2008).

9. Richmond, *supra* note 5, at 56. The original presentation stated that less than sixty percent of those in Katrina had flood insurance, while the actual number was sixty-five

This number is very, very soft. We are not really sure what the numbers are. I saw one quote from the insurance commissioner of Louisiana said twenty-nine percent.<sup>10</sup> Another study said that it was about forty percent,<sup>11</sup> and then another study said it was about sixty-five percent.<sup>12</sup> So, the highest number I saw was sixty-five percent, but it's much more likely to be lower than that. I think that's a generous number.

So, that's a lot of people without coverage, because they cannot get it through private insurance, and they didn't get it through the national flood insurance program. The reason they didn't is because they just didn't buy it. It wasn't that it was unavailable or it wasn't hard to get or expensive. It's actually subsidized. Nevertheless, there was another seventeen billion dollars of flood insurance payments made by the national flood insurance program.<sup>13</sup> And, there was litigation about whether the exclusion for floods was enforceable or not. I won't bore you with the details, but the bottom line is a bunch of people made this argument, and they lost.<sup>14</sup> The insurers won,<sup>15</sup> and the exclusion for floods is very long established.<sup>16</sup>

It was really quite clear and it was not that surprising. Except, that there was all this public policy talk because of the disaster, but it wasn't surprising that the insurers won. So the insurance story is: homeowner insurance worked pretty well for those who had it, flood insurance worked well for those who had it, but a lot of people did not have it. They tried to use the courts to get flood coverage, and they were unsuccessful, so there is

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percent).

10. *Percentage of Homes with Flood Insurance Back to Pre-Katrina Levels*, WWLTV.COM EYEWITNESS NEWS, [http://www.wwltv.com/news/floodinsurancecoverage\\_lagging122904069.html](http://www.wwltv.com/news/floodinsurancecoverage_lagging122904069.html) (last visited Mar. 1, 2013) ("We, pre-Katrina, had 29 percent of our properties insured for flood.") (quoting Louisiana Insurance Commissioner, Jim Donelon) (on file with WASH. & LEE J. CIVIL RTS. & SOC. JUST.).

11. *La. Commissioner Wants 100% Participation in Flood Insurance Program*, INSURANCE J., June 21, 2007, [www.insurancejournal.com/news/southcentral/2007/06/21/81020.htm](http://www.insurancejournal.com/news/southcentral/2007/06/21/81020.htm) (last visited Mar. 1, 2013) ("He said only 40 percent of the victims of Hurricanes Katrina and Rita in his state had flood insurance . . .") (quoting Louisiana Insurance Commissioner, Jim Donelon) (on file with WASH. & LEE J. CIVIL RTS. & SOC. JUST.).

12. Richmond, *supra* note 5, at 56. The original presentation stated that less than sixty percent of those in Katrina had flood insurance, while the actual number was sixty-five percent.

13. *See id.*

14. *See id.* at 58–66.

15. *See id.* at 65.

16. *See Home Ins. Co., N. Y. v. Sherrill*, 174 F.2d 945 (5th Cir. 1949) (holding that exclusions for water damage are valid).

a gap in coverage. The response, the ultimate bottom line, is that those who are uninsured can rely on government aid—FEMA, some sort of disaster relief, that becomes the default that people move to if they cannot get insurance assistance.

So what about the FEMA story? The FEMA story is really a pretty bad story. I'll just give you a few quick highlights of it. First, a big problem was a lack of infrastructure and a lack of processes for claims management, and that caused significant delay. So, you have millions of claims, and insufficient staff who work for FEMA to handle such claims.<sup>17</sup> The scope of the problem, the expertise that is needed, just isn't there. Insurance companies, they do this day in and day out. They are very able to marshal and train people to go in and have tents set up and do claim adjusting on the ground. FEMA was not at all ready to do that. FEMA had taken over the flood insurance program relatively recently, and FEMA had been moved into Homeland Security. So, there were a lot of accountability problems, there were communication problems, and it was unclear who was in charge.<sup>18</sup> That resulted in delays.<sup>19</sup>

There were also problems involved with incentives. So, if FEMA is slow, what difference does it make? I suppose that some guy might lose his job, but it's like "I'm a government employee, I'm here doing a job. I got ten thousand claims I'm trying to manage. Really, fire me and hire somebody else. Go ahead." There is not the right kind of incentive for the government to respond in the way that the insurance companies have the incentive to try to keep their customers happy—to try to be well-recognized and to sell more insurance.

Of course it led to enormous fraud, waste, and feuds that happened through the system. So the GAO [Government Accountability Office] did a study, and found tens of millions of dollars were wasted.<sup>20</sup> They found terrible common examples of double payments and all kinds of fraud and abuse.<sup>21</sup> And, it is because they did not have training or the infrastructure—

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17. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-300, HURRICANES KATRINA AND RITA DISASTER RELIEF: CONTINUED FINDINGS OF FRAUD, WASTE, AND ABUSE 152 (2007). The original text included a reference to "35 employees in the insurance department," which was an imprecise and casual way of referring to being short-staffed.

18. H.R. Res. 437, 109<sup>th</sup> Cong. (2006) (discussing problems in the Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina).

19. See *id.*

20. See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-300, *supra* note 17.

21. See *id.* at 17–26.

there's this huge disaster they were trying to address without the tools to do so.<sup>22</sup>

That leads to this question about the racial narrative, and how that interfaces with insurance and with FEMA. So the black communities, such as the Ninth Ward, bore a greater burden, and part of that has to do with the segregated nature of housing, part of it has to do with poverty, part of it has to do with the cost of housing, and so forth.<sup>23</sup> But it is quite clear, as a factual matter, that there was a great burden borne by black communities.<sup>24</sup> The second part of the narrative is that people believe, and there were accusations, and there is probably some truth to the notion, that some of these problems were due to race—it was caused by race; it was racism.<sup>25</sup> The third part of the narrative as I have seen it in some of the commentary, and this journal had a symposium in 2007 so I looked at some symposium articles. The whole question of poverty and that variable really complicates the narrative because it is hard to tease that out and look at racism independent of poverty. Interaction between racism and poverty, racism causing poverty, and poverty causing racism is very complicated.<sup>26</sup> So it just makes the narrative more difficult.

One of the things that I found very surprising is that the narrative was not as widespread as I expected. Going into this, my hypothesis—I do not know if it was because of my own biases—was that there was going to be a lot of discourse about this racial issue. While there was some, I was really surprised at the small number of pictures. I mean there were thousands of pictures in the database for Katrina but relatively few that deal with the issue of racism. I was a little surprised by that. And, there was not as much academic literature [as I expected] as well.

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22. *See id.* at 26.

23. *See* Harold A. McDougall, *Hurricane Katrina: A Story of Race, Poverty, and Environmental Injustice*, 51 *HOW. L.J.* 533, 541 (2008) (“The federal government concentrated public housing in segregated inner-city neighborhoods, subsidized metropolitan sprawl, and failed to create affordable housing for low-income families and minorities in rapidly developing suburbs, cutting them off from decent housing and educational, and economic opportunities.”).

24. *See id.*

25. *See, e.g.*, Audrey McFarlane, *Fighting for the High Ground: Race, Class, Markets and Development Done Right in Post Katrina Recovery*, 14 *WASH. & LEE J. CIVIL RTS. & SOC. JUST.* 77, 80–82 (2007) (“Race continues to remain relevant as a shorthand measurement of who is friend or foe, guilty or innocent, worthy of attention or indifference.”).

26. *See id.* at 81–82.



I am using the racial narrative as a pivot to go over into the cultural issues. Part one is the insurance perspective. Part two is this cultural perspective. Let me give you a little background first. What do I mean by culture? This is a hard thing to define and entirely controversial. For me, it is a collective set of beliefs that convey meaning—the way we interpret the world, collectively, as groups. It involves norms, it involves shared beliefs, it involves music, literature, all kinds of things, and it includes law. Law is a cultural phenomenon, and I have just a couple of examples here. One is this idea of rights—individual rights, human rights, those are very important in American culture and they are very important in American law. We have all these laws that relate to rights, enforcing rights, recognized rights. That is a way of giving meaning to certain kinds of behavior and to certain kinds of privileges that we have. We give meaning to them by our collective understanding of them as being important human rights.

Procedures also are a way of giving meaning. They give meaning to the notions of fairness and to justice, that there should be neutrality. We don't have to necessarily have neutrality as a procedure—we could have some other kind of system, we could have a religiously-based system that would not be neutral, but we believe in neutrality, and that's our collective belief that informs our procedures and our procedures inform our beliefs.

The last point I want to make is that this is incredibly complex. There is a dynamism that exists with culture that institutions create culture and culture creates institutions. So, law will shape our beliefs and our beliefs will shape our laws.<sup>27</sup> So there is this interactive dynamic which makes it very hard to unravel, but also suggests that relationship is extremely important. That is kind of the background.

What I want to do is give you three cultural perspectives to think about, and to give us some opportunity to reflect on this issue of race. The first perspective is the most obvious one, and that is racism. What is the racism narrative? Well, the first point about racism as a cultural perspective is to identify that it has very deep, significant roots. The issue of race goes back to the founding of our country, the struggle of the founding fathers, and with slavery. I was in Washington, D.C. before coming here. I was at the Jefferson exhibit and there was a part of the Declaration of Independence that started to address this issue, and it was taken out as a

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27. See Lawrence M. Friedman, *Law, Lawyers and Popular Culture*, 98 YALE L.J. 1579, 1581 (1989) (“A social theory of law . . . insists instead that an analysis of social forces best explains why the legal system is as it is, what shapes and molds it . . .”).

matter of compromise to avoid this slavery issue. They sort of set it aside; they never dealt with it.<sup>28</sup>

Well they set it aside for a certain period of time, but by the time the Civil War comes, it is at the forefront. It is an incredibly difficult, decisive issue in American culture. From there, we have these other narratives that come out—this whole issue of being an Uncle Tom and *Uncle Tom's Cabin*, the force of that piece of literature. Then, the protagonist who was written by a white author who is meant to be a very optimistic, a very good character<sup>29</sup> is in fact now has turned into an archetype for a bad character.<sup>30</sup> Being an Uncle Tom is a bad thing within the black community. Next, there is the huge issue of rebellion that we see—this tenet of rebellion that comes from black power issues, the Black Panthers, the 60's. Then, we see it now with gangster culture, rap, hip-hop culture, where we have this ongoing theme. Race in America is this huge issue and it is complicated and it has long and deep roots. We are not done with it. It is going to be a long time before we are.

So what does that mean? To me, what it means is that there will be racial meanings all the time. We will see racial meanings about disasters that have disparate impact. We just see it from a racial standpoint. It is bi-directional; it's not just one way. There are people who are victims, who believe they are victims because of racism. I am not saying this is not true, I am saying this is an interpretive process. Any time you have disaster with a disparate impact, you are going to have a racism narrative that comes out of that. But, it comes on the other side as well, where those in the majority, whites, will say that there is a racial narrative here that some of us may view as racism, but they view it as this community [that] brought it upon themselves. They did not prepare for it themselves, that's the way "those" people are. There's this racial narrative that comes from the other side as well.

So, what's my point about this? My real point is that racism is the root problem and that we should do stuff to try to address racism in disasters but recognize that there is still racism and that racism is the root problem, and it's very complicated, very hard, and it requires cultural change. And,

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28. THOMAS JEFFERSON, THE JEFFERSON PAPERS 1:426 (Julian Boyd ed., 1950).

29. See HARRIET BEECHER STOWE, UNCLE TOM'S CABIN (1852).

30. *Uncle Tom Definition*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/uncle%20tom> (last visited Mar. 1, 2013) (defining "Uncle Tom" as "a black who is overeager to win the approval of whites (as by obsequious behavior or uncritical acceptance of white values and goals)") (on file with WASH. & LEE J. CIVIL RTS. & SOC. JUST.).

cultural change takes generations, unfortunately. We should work at it, I do not mean to be overly pessimistic about it, but I want to identify it for what it is. So, that's the most obvious, the biggest narrative.

Let me give you a couple of other narratives. Narrative number two is American autonomy. One of the things that I have come to believe, I don't know if it's necessarily true but it's a belief based on my experience overseas, is that Americans have this incredible belief in autonomy—that freedom of the individuals is extremely important<sup>31</sup> and that we have these beliefs in the ability of the individual to overcome all obstacles.<sup>32</sup> If you just have hard work, will, and a little bit of good luck, anyone can go from rags to riches; anyone can be successful.<sup>33</sup> We have these extremely strong values that, as I say, go back to the founding of America. The Bill of Rights has this notion of individual freedoms, that skepticism of government is a way to protect individual freedoms.<sup>34</sup> When we expanded and settled the west, there was this strong narrative of overcoming nature, the notion of the American dream, which is actually not really true, but it is still a strong cultural belief that anyone can achieve success in America.<sup>35</sup> Foreigners believe it as well.<sup>36</sup>

So the example I wanted to use from popular culture is *Mission Impossible*—how many of you saw the latest *Mission Impossible* movie?<sup>37</sup> It is a blockbuster movie, millions of people saw it.<sup>38</sup> The protagonist, Tom Cruise who plays Ethan Hunt, he overcomes all odds. The government abandons him and through his use of technology and his teammates, and mostly through his power of his will, he manages to save the world. This “save the world” narrative through individual choices is an extremely

31. See, e.g., ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (2008).

32. See, e.g., MARGARET MEAD, *AND KEEP YOUR POWDER DRY: AN ANTHROPOLOGIST LOOKS AT AMERICA* 193 (1967).

33. See, e.g., MICHAEL RYAN, *CULTURAL STUDIES: A PRACTICAL INTRODUCTION* 65 (2010).

34. See, e.g., PATRICK M. GARRY, *LIMITED GOVERNMENT AND THE BILL OF RIGHTS* (2012).

35. See LARRY L. NAYLOR, *AMERICAN CULTURE: MYTH AND REALITY OF A CULTURE OF DIVERSITY* 58 (1998).

36. See JAMES M. JASPER, *RESTLESS NATION: STARTING OVER IN AMERICA* xii (2000).

37. *MISSION IMPOSSIBLE: GHOST PROTOCOL* (Paramount Pictures 2011).

38. The world-wide gross receipts for *Mission Impossible: Ghost Protocol* were more than \$694 million as of April 12, 2012. See *Box office/Business for Mission Impossible: Ghost Protocol*, IMDB, [http://www.imdb.com/title/tt1229238/business?ref\\_=tt\\_dt\\_bus](http://www.imdb.com/title/tt1229238/business?ref_=tt_dt_bus) (last visited on Mar. 1, 2013) (on file with WASH. & LEE J. CIVIL RTS. & SOC. JUST.).

common, popular culture narrative that comes out of American culture.<sup>39</sup> And, that's just one recent example of it.

So, what is the point of my narrative here? What am I saying about risks and disaster? What I am saying is, we as Americans are more risk-takers than people in other countries. We believe that it is okay because I can make my own way in the world. It is okay to take a risk; it is okay to go without insurance. If we are going to solve this problem, it runs afoul, contrary to a very core, fundamental value. This is a narrative that comes very strongly out of this disparate health care research. I think that American culture is not very sympathetic to that because it's like well, take care of yourself. If you don't have a good diet, eat better, educate yourself, go to the doctor—that's all sort of an individual autonomy narrative. It is going to be very hard to tell people "you need to eat better" because that is contrary to American thinking.

I've got a couple of quick statistics. There are international statistics about insurance density and insurance penetration. Insurance density is the per capita spending on insurance.<sup>40</sup> America is ranked thirteenth.<sup>41</sup> Well, that is pretty high, but we have the largest economy in the world. Japan, Switzerland, Sweden are all above us.<sup>42</sup> Switzerland is almost twice as much spending as an average American.<sup>43</sup>

Penetration is the percentage of GDP that goes into insurance.<sup>44</sup> In America, it is eight percent,<sup>45</sup> which is about average of the developed world.<sup>46</sup> Taiwan is eighteen percent,<sup>47</sup> again, more than twice as high as the U.S. South Korea eleven percent,<sup>48</sup> Bahamas, which is sort of weird—why Bahamas is an insurance place, is ten percent.<sup>49</sup> The point I want to make at the bottom is this includes health insurance.<sup>50</sup> In a great deal of the developed world, health insurance is a government program. It is not

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39. See, e.g., BRADFORD W. WRIGHT, *COMIC BOOK NATION: THE TRANSFORMATION OF YOUTH CULTURE IN AMERICA* (2001).

40. SWISS REINSURANCE, *SIGMA: WORLD INSURANCE IN 2010* 30 (2011).

41. *Id.* at 38.

42. *Id.*

43. *Id.*

44. *Id.* at 20.

45. *Id.* at 39.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

insurance. In America, it is private insurance. Well, there is a big government program to be fair—Medicaid and Medicare are really big,<sup>51</sup> but there is a huge segment of it that is private insurance. So our insurance numbers are inflated because of our using private money to buy health insurance, whereas in most of the developed world, that’s not true.

Here are the numbers on flood insurance—fifty percent of people in flood plains, flood-hazard areas, have flood insurance on their homes.<sup>52</sup> Seventy-five to eighty percent have it when it is mandatory,<sup>53</sup> that means twenty-five percent do not have it when it is mandatory. When is it mandatory? Any time you get federal money, the federal law says you have to buy flood insurance.<sup>54</sup> It improved it, but it’s still a pretty low take-up rate. In poor neighborhoods, homes valued at \$50,000 or less, [there is a] thirty-six percent take-up rate.<sup>55</sup> That is a seventy-four percent uninsured rate. Now, we might explain that by virtue of the cost, except that it is subsidized. The actual cost of insurance is fifty percent subsidized by the government,<sup>56</sup> so it is actually a below-cost figure, and nobody really knows the answer to this—why people don’t buy flood insurance. Regular insurance agents can sell it, they can get a commission for it,<sup>57</sup> the consumers just don’t buy it. When you ask people why they don’t have it, they say, “well because I didn’t think I needed it,” even though they’re in a flood plain. I think that what it shows is we are risk-takers. That Americans have an autonomy narrative that we can make our way on our own.

So the other two points were that we have mandatory insurance for auto insurance. Thirteen percent are uninsured, nationally.<sup>58</sup> In some states,

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51. *Id.*

52. LLOYD DIXON ET AL., RAND CO., THE NATIONAL FLOOD INSURANCE PROGRAM’S MARKET PENETRATION RATE 29 (2006).

53. *Id.*

54. *See id.* at xv.

55. *Id.* at 37.

56. Actually, the subsidy is closer to 55–60%. *See* U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-670T, FLOOD INSURANCE: PUBLIC POLICY GOALS PROVIDE A FRAMEWORK FOR REFORM 5 (2011).

57. THE FLOOD INSURANCE AGENCY, WRITE YOUR OWN FLOOD INSURANCE COMPANY SOLUTIONS, [https://www.thefloodinsuranceagency.com/p-why\\_wyo.htm](https://www.thefloodinsuranceagency.com/p-why_wyo.htm) (last visited Mar. 1, 2013) (on file with WASH. & LEE J. CIVIL RTS. & SOC. JUST.).

58. *See Recession Marked by Bump in Uninsured Motorists*, News Release, INS. RESEARCH COUNCIL (April 21, 2011), [http://www.insuranceresearch.org/sites/default/files/downloads/IRCUM2011\\_042111.pdf](http://www.insuranceresearch.org/sites/default/files/downloads/IRCUM2011_042111.pdf) (last visited March 1, 2013) (on file with WASH. & LEE J. CIVIL RTS. & SOC. JUST.).

it is as high as twenty-five percent.<sup>59</sup> For health insurance, seventeen percent of Americans are uninsured.<sup>60</sup> Millions and millions of people are uninsured for health insurance in America,<sup>61</sup> which is the big deal about the health insurance reform and all that. But, the point is we, as Americans, choose not to buy insurance. There's a risk-taking narrative here that I think is pretty strong.

The third perspective is an anti-government narrative. Americans just don't trust the government.<sup>62</sup> We just don't. We don't trust the government more than the Chinese don't trust the government. We don't trust the government way more than Europeans. Separation of powers, federalism—why do we have those? Because we don't trust the government. Why is America the only country in the world that has the jury system? It started in England, they abandoned it. We have it. Why? We don't trust the government. That mistrust runs very heavily through the 20s, 30s, 40s, prohibition, gangster times, it was heightened by Vietnam and Watergate, so then we have Iran-Contra, all these other scandals. And, it's very common in popular culture. The point is that we will always have, in my opinion, a government screw-up narrative, out of any disaster. It could be the military shooting blacks in the street, it could be FEMA not giving, or corruption and abuse. We will always have a government screw-up narrative because that's part of our society, part of our culture. We criticize the government. It is one of the things that makes the government strong, because it is subject to criticism and has to be reformed. Every time we have a disaster, there's going to be this narrative coming out, and it could have a racial piece to it or not have a racial piece to it.

All of that being said, now I'm back to the picture. What does this picture tell us now, in light of those perspectives? We talked about the racial piece, there could be a victimization thing, you could say, "yes, there's a FEMA guy, a volunteer! Where's the real FEMA guy? This guy has no authority. He's being paid \$10 an hour to come and help out. He's

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59. *Id.* (noting that rates of uninsured motorists in Mississippi were 28%, in New Mexico were 26%, and in Tennessee, Oklahoma and Florida, 24%)

60. *See More Americans Uninsured in 2011*, GALLUP WELLBEING, <http://www.gallup.com/poll/152162/americans-uninsured-2011.aspx> (last visited March 1, 2013) (on file with WASH. & LEE J. CIVIL RTS. & SOC. JUST.).

61. *See The Uninsured: A Primer 1*, THE KAISER COMMISSION ON MEDICAID AND THE UNINSURED, October 2012, <http://www.kff.org/uninsured/upload/7451-08.pdf> (last visited on March 1, 2013) ("In 2011, 48 nonelderly Americans were uninsured.") (on file with WASH. & LEE J. CIVIL RTS. & SOC. JUST.).

62. *See generally* GARRY WILLS, A NECESSARY EVIL: A HISTORY OF AMERICAN DISTRUST OF GOVERNMENT (1999).

not doing anything. We need people with authority to be there!” That could be the racial narrative. It could be the victimization of blacks in the Ninth Ward as a racial narrative.

What about the autonomy narrative? This guy didn’t buy insurance! Why didn’t he buy insurance? I don’t know the answer to that. There could be a racial explanation, it could be racism. There’s this whole thing. You may have heard of red-lining, it’s an old, archaic term. It means that in certain neighborhoods, there was actually a red line drawn around the neighborhood and insurance companies wouldn’t sell inside the red line. They tended to be poor, minority neighborhoods. That could be part of the explanation. That’s one narrative.

What about the government screw-up narrative? This guy from FEMA is walking around, not doing anything. They didn’t really fix it very well. The Ninth Ward is still not really fixed properly because of government screw-ups.

All of those narratives are there. So, what I’m really after here, this is the whole problem with cultural perspectives is that we are, as lawyers, trained to be problem-solvers. We want to see the problem, we want to identify it, and we want to solve the problem. What we’re about is solutions. Unfortunately, this cultural approach is not about solutions, but more about understanding, understand[ing] better what’s going on, and to draw on our historical antecedents.<sup>63</sup>

The disaster [narratives] are important and certainly relevant, but I’m trying to talk more broadly, to say what are our cultural values, how do these values play into these narratives, and what does that tell us about ourselves as Americans. I hope that’s been helpful, I hope that’s been useful. I hope you see the picture and the narrative slightly different now having talked some of the cultural perspective.

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63. See generally Naomi Mezey, *Law As Culture*, 13 YALE J.L. & HUMAN. (SPECIAL ISSUE) 35 (2001) (explaining and examining the interrelation between law and culture and how that relationship can enhance understanding).