



Federalism and Domestic Disasters: Promoting a Balanced Approach

By

In response to the widespread devastation wrought by hurricane Katrina, many people have called for strengthening the federal government's involvement in responding to catastrophic emergencies. Although enhancements to federal capabilities in this area are necessary, such steps should not obscure the principle that any homeland security system must be national, not just federal. A truly robust U.S. response to domestic disasters will require a strong contribution by state and local governments, the private sector, voluntary associations, community-based groups, and individuals to prevent and manage terrorist attacks and natural disasters. The federal government can assist in many areas, but its programs should aim to supplement, not supplant, national homeland security efforts.

Homeland security against natural and manmade emergencies must be seen as the common responsibility of all Americans. State and local governments are responsible for all critical infrastructure in the United States. They also conduct most national preparedness efforts, including early detection of threats. Hurricanes Katrina and Rita highlight the need for a more balanced approach to homeland security.

also exist within these institutions. Nation-wide, the principles of limited government and federalism aim to gi

Besides

forty charities that agree to share information with other members during disasters, played a leading role, along with those of the American Red Cross, in drafting the NRP.¹⁰ With some controversy, FEMA decided for the first time in late September to offer to reimburse faith-based groups for many of the disaster relief expenses they incurred during hurricanes Katrina and Rita. (Many of them declined to accept taxpayer money, preferring to rely solely on private donations. Those that did had to apply for reimbursement from state and local emergency management agencies, which in turn were reimbursed by FEMA.)¹¹

The Salvation Army, which belongs to the Universal Christian Church but provides assistance to all needy people regardless of religion, has signed Memorandums

stricken area, the American Red Cross takes the lead in providing emergency relief a few days later, and then other charities (many from the affected community itself) focus on promoting ir

their smaller size and innovative approaches often allowed them to respond more flexibly than their larger, more established partners.¹⁵

As after the 9/11 terrorist attacks and the Asian Tsunami, large corporations and small enterprises donated hundreds of millions of dollars in cash, goods, and services following Katrina and Rita. Umbrella associations such as the Business Roundtable
pla

and abili

Incident Command System as a condition for continued receipt of federal preparedness funds.¹⁹

The federal government al

organize the massive national response needed to manage the consequences of a large-scale nuclear, biological, chemical or radiological attack on American territory. The federal government, especially the Department of Defense (DOD), has developed detailed plans and substantial capabilities for such a catastrophic incident, though more could be done in this area. For example, Katrina showed that the federal government needs to improve its logistical ability to deploy its emergency response assets more rapidly to disaster-stricken regions.²²

Even in less than catastrophic disasters, the Stafford Act authorizes the president to use DOD resources to protect life and property after any disaster that might ultimately qualify for federal aid. As a last resort, the President may direct active-duty forces, or National Guard units acting under federal status, to provide assistance including food and water, removing debris, clearing roads, and conducting search-and-rescue operations. DOD defines such disaster-related assistance within the United States as Military Support to Civil Authorities. In accordance with the provisions of the Posse Comitatus Act (18 U.S.C. 1385), federal troops and National Guard members operating in federal status generally may not engage in civilian law enforcement activities except for certain specific activities authorized by Congress.²³

Through the National Guard, however, governors obtain access to their own military assets, typically under the leadership of a state adjutant general. A major purpose of the Guard is to serve as a state-led military force during local disasters. (The

²² For more on the roles and responsibilities of the federal government in countering WMD use agtntst

governments, especially their intelligence agencies, to detect and stop terrorism. It would be undesirable for each state or locality to conduct its own immigration or foreign policies.

Bearing the Financial Burden

Federalism underpins the principles of cost-sharing that govern the national response to major domestic emergencies. The federal government has long provided financial assistance to encourage state, local, and private actors to prevent and respond to domestic emergencies, both natural and manmade. Federal funding—both directly through grants, and indirectly through tax preferences—should focus on developing a nation-wide capacity to identify and reduce threats, risks, and vulnerabilities related to homeland security. State and local governments need additional support to integrate their counterterrorism, emergency preparedness, and disaster response efforts into a national system coordinated by the federal government.

Federal resources effectively provide a national insurance pool to help fund recovery efforts from catastrophic disasters. As Katrina made evident, most local communities cannot afford to cover the expenses of responding to, and especially rebounding from, a major emergency. At the same time that demands for spending soar, their

jurisdictions might prove unable or unwilling to share their l

As part of Secretary Chertoff's recent reorganization of DHS following his "Second Stage Review," the department now has a Chief Medical Officer to coordinate and enhance its preparedness and incident management efforts in the area of public health. The incumbent also provides medical and public health advice to the Secretary and serves as a point of entry and access for state and local public health officials. The DHS manages a National Disaster Medical System (NDMS) that "provides medical and related services when a disaster overwhelms local emergency services."²⁵ NDMS includes some 7,000 volunteers, organized in several types of response teams that can rapidly deploy to a disaster site. For example, FEMA sent approximately one hundred NDMS teams to K

bodies to private sector and individual actors—to cooperate to manage the growing threat of Avian flu and other pandemic disease threats. Its basic premise is that, “While the Federal government plays a critical role in elements of the preparedness and response to a pandemic, the success of these measures is predicated on actions taken at the individual level and in states and communities.”²⁷ For example, it directs federal departments and agencies to support state

influenza could assist incident managers to address the consequences of a biological terrorism attack. The “all-hazards” approach recognizes that preparing for one type of disaster makes emergency responders more effective at managing others. Therefore, incident planners employ a single response system that can be adapted to meet a range of potential disasters, whether natural (e.g., earthquakes, floods, droughts, wildfires, tornadoes, tropical storms and hurricanes), accidental (e.g., the disintegration of the Columbia space shuttle over many southwestern states), and deliberate (e.g., sabotage and terrorism) disasters.

Jointly C s a

difficult to use. In addition, many of the smaller disaster relief groups active in Katrina relief did not participate in the CAN.³³

REBALANCING THE NATIONAL RESPONSE TO DOMESTIC EMERGENCIES

The preceding sections reviewed the fundamental constitutional principles and public and private entities that govern the American response to domestic disasters. It stressed the complementary roles of both entities in preventing and res

relief organizations should sign memorandums of understanding and take other steps to clarify pre-emergency relati

communities and individuals must “buy in” to these efforts for them to influence their behavior and receive sustained support despite presence competing resource needs.

DHS should focus on empowering state and local leaders through training programs to develop a culture of preparedness in their localities. Training can include techniques for assessing local threats, collecting data, and analyzing information. Such progr

law enforcement and intelligence agencies.³⁸ In addition, private businesses will hesitate to share sensitive and proprietary information with federa

their information-collection activities (i.e., wiretapping, reference checking, data retention and distribution, etc.).

About 100 FBI-run joint terrorism task forces (JTTF) now serve as the principal information-sharing mechanism connecting the federal government with state and local bodies involved in homeland security and law enforcement. At present, state and local funds normally subsidize federal participation in JTTFs. To reduce this burden, federal officials should consider paying for services used in support

case of Islamic terrorists, whose intelligence capabilities lag far behind the former Soviet bloc, the barriers used to prevent Soviet penetration now arguably have become more of a burden for U.S. counterterrorism efforts than a help. Although allowing state and local officials easier access to federal intelligence data (but not to sources and methods) could make it somewhat easier for terrorist to access such information, the benefits from such enhanced sharing on balance would probably outweigh the risks. A key problem with countering terrorist operations is ensuring that analysts receive sufficient data to “connect the dots.” The missed opportunities

suf

include homeland security issues. The Gilmore Commission found that most state and local law enforcement personnel desired additional information, including the type and duration of the incident that could occur.⁴² DHS already has begun to use more regional or sectoral alerts (for different types of industries and infrastructures) to identify possible targets to local responders. To enhance its ability to employ such targeted alerts effectively, the department must complete its development of a comprehensive national threat-risk-vulnerability database. Such a compilation also is required for DHS to refine its allocation of grants and its capa

local critical infrastructure (e.g., transportation, telecommunications, power, public health, etc.)—rapidly overwhelmed state and local responders.

Only the federal government has the authority and resources to cope with disasters on the scale of Katrina or a major terrorist attack, such as one involving a WMD in an American city. For example,our

of a stricken state.⁴⁸ (A strengthened FEMA, however, might obviate the need for a