



Federalism and Domestic Disasters: Promoting a Balanced Approach

By **Richard Weitz, Senior Fellow, Hudson Institute**

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, local, and private entities manage almost all critical infrastructure in the United States. They also conduct most national preparedness efforts, including early detection of threats. Hurricanes Katrina and Rita highlighted the vital role of nongovernmental organizations (NGOs), private-sector initiatives, and individual civic deeds in saving people during emergencies. Hurricane Katrina alone engendered the single largest charitable response to a domestic disaster in

American history. Louisiana residents affected by these two storms generally rated the assistance provided by private sources such as non-profit, community, and faith-based organizations substantially higher than that supplied by federal, state, and local governments.¹

The first section of this paper reviews the fundamental constitutional principles that govern the American response to domestic disasters. It also underscores the importance of NGOs, private businesses, and individual citizens in incident management. The next section analyzes the complementary roles of public and private entities in preventing and responding to disasters in a range of areas, from major terrorist incidents to public health emergencies to preventing waste, fraud, and abuse. The final section offers recommendations to optimize the balance among the various elements that contribute to U.S. security. These proposals encompass strengthening public-private partnerships, restructuring national preparedness programs, enhancing information-sharing and asset visibility, improving cooperative law enforcement, restructuring the homeland security advisory system, establishing a regional structure within the Department of Homeland Security (DHS), and managing catastrophic emergencies better.

THE UNDERLYING PHILOSOPHY OF FEDERALISM

Constitutional Principles

The principle of dispersed power is embodied in the U.S. Constitution and other essential features of American democracy. Within the U.S. government, power is separated among the executive, legislative, and judicial branches. Checks and balances

¹ Audrey Hudson, "Storm Victims Praise Churches," *The Washington Times*, December 2, 2005.

also exist within these institutions. Nation-wide, the principles of limited government and federalism aim to give local citizens and communities the greatest role in shaping their lives. For example, the Tenth Amendment states that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”²

The American disaster response system reflects these principles. The core assumption guiding the response to most domestic emergencies is that incidents are typically managed best at the lowest possible geographic, organizational, and jurisdictional level. Since every community is unique, preparedness planning must account for local conditions of culture, geography, language, infrastructure, politics, and numerous other factors. Furthermore, the federal government lacks the resources to serve as a first responder during every disaster within the United States. Accordingly, Washington should focus on the most extensive and threatening emergencies, while relying on private and non-federal public actors to manage the rest.

National planning and strategy documents for homeland security adhere to the assumption that the federal government should reinforce rather than replace state, local, and nongovernmental efforts. Congressional legislation, especially the Robert T. Stafford Emergency and Disaster Assistance Act (42 U.S.C. 5121 et seq.), and presidential directives embody this “tiered” approach in which state and local authorities have the initial lead role in managing emergencies within the United States.³ For

² *The Federalist Papers*, authored by Alexander Hamilton, John Jay, and James Madison during the ratification debate over the Constitution, still provides an excellent analysis of the various factors counterbalancing the powers of the federal government.

³ See for example section (6) of Homeland Security Presidential Directive (HSPD)-5, which states: “The Federal Government recognizes the roles and responsibilities of State and local authorities in domestic incident management. Initial responsibility for managing domestic incidents generally falls on State and local authorities.”

example, state and local governments devise the emergency response and evacuation plans for their jurisdictions and authorize their implementation. In accordance with the principles of federalism, each state determines for itself the precise delineation of authorities and responsibilities for emergency response between state-wide and local public bodies (e.g., municipalities, counties, etc.). The common planning assumption is that communities need to manage a local emergency largely by themselves for up to 72 hours until substantial federal assistance can be mobilized and deployed on the scene.

The National Response Plan (NRP), which formally took effect in December 2004, provides the framework for delineating responsibilities during a domestic emergency. The NRP and its various Annexes designate which federal agencies and programs are activated in various types of incidents or threat conditions. In particular, the NRP specifies 15 Emergency Support Functions (ESFs), and states which organizations are primarily responsible for coordinating each ESF during an emergency. The NRP also indicates how federal agencies should interact with state, local, and tribal governments and the private sector, and specifies when federal authorities assume control of the national response.⁴

The Constitution, in such clauses as “provide for the common defense” (Article I, section 8), recognizes the ultimate role of the federal government in preventing and managing large-scale attacks and other emergencies. When the scale of an incident exceeds the capacity of state and local actors to respond, the Federal Emergency Management Agency (FEMA) and other U.S. government agencies mobilize to provide assistance. Such intervention requires the President, following an appeal from a state

⁴ Department of Homeland Security, “National Response Plan,” December 2004, at <http://www.dhs.gov/interweb/assetlibrary/NRPbaseplan.pdf>.

governor, to issue a disaster or emergency declaration that authorizes supplemental federal assistance to the stricken area.⁵ Even in this case, however, state bodies preserve much authority over the response. For instance, the governor can retain control over the state National Guard, and state disaster managers continue to decide what role, if any, they want FEMA to play in distributing emergency supplies.

Vital Role of Non-Government Institutions

America's decentralized philosophy of emergency management also recognizes that nongovernmental actors such as private businesses and voluntary associations can make substantial independent contributions to disaster preparedness, response, and long-term recovery. For example, section (7) of Homeland Security Presidential Directive (HSPD)-5 states: "The Federal Government recognizes the role that the private and nongovernmental sectors play in preventing, preparing for, responding to, and recovering from terrorist attacks, major disasters, and other emergencies. The Secretary will coordinate with the private and nongovernmental sectors to ensure adequate planning, equipment, training, and exercise activities and to promote partnerships to address incident management capabilities." While Katrina has highlighted the help that NGOs can provide Americans after natural disasters, charities also provided billions of dollars worth of assistance after the 9/11 terrorist attacks. The American Red Cross and other private associations have increased their terrorist-related preparedness efforts in recent years to deal with such man-made incidents.

⁵ Under certain conditions specified in the Stafford Act, the president may declare an emergency without a gubernatorial request if primary responsibility lies with the federal government.

This principle of relying on private groups and individuals during emergencies has deep historical roots. Alexis de Tocqueville and subsequent observers have underscored the essential role civic associations play in engaging Americans to deal with common social challenges. Indeed, until this century, it was widely assumed that organized charities supported by generous individuals would manage local emergencies with minimal government involvement.⁶ As in other policy sectors, the government's role has increased substantially in this area during the past century. Through tax exemptions, deductions, and other measures, however, federal and state authorities still encourage Americans to donate money and other resources to charities involved in disaster relief and recovery.

U.S. law and practice grants the American Red Cross, the largest nongovernmental relief organization in the United States in terms of personnel and revenue, a unique role in responding to domestic disasters. In particular, the provisions of the NRP's "Emergency Support Function (ESF) #6—Mass Care, Housing, and Human Services," treat it as an integral partner with FEMA and other federal agencies in coordinating "mass care" (i.e., non-medical services such as providing shelter, food, first aid, and emergency financial assistance) during domestic disasters. This clause makes the American Red Cross the only charity to serve as a primary agency under any ESF. Other NRP Emergency Support Functions assign the American Red Cross additional disaster relief responsibilities.⁷

⁶ As Tocqueville put it in *Democracy in America*, "The inhabitant of the United States learns from birth that he must rely on his own exertions to overcome the evils and difficulties of life; he looks on social authority with mistrust and anxiety, and claims its assistance only when he is unable do without it" (from volume 1, chapter 12).

⁷ ESFs #3, #5, #8, #11, #14, and #15 list the American Red Cross as a Support Agency; it is also listed as a Cooperating Agency under several NRP Support Annexes and NRP Incident Annexes (American Red

Besides its NSF-specified role in major disasters, the American Red Cross also plays a major independent relief role at the community-level. Its local chapters organize volunteers and raise funds to manage the approximately 70,000 smaller emergencies (e.g., house fires) the organization responds to annually. The American Red Cross has established a National Disaster Relief Fund to provide supplementary financing for such efforts. Its congressionally approved charter also entrusts it with helping collect and distribute the nation's blood supply.⁸

Following hurricanes Katrina and Rita, American Red Cross personnel worked at FEMA's resource processing center receiving validated requests for assistance from state and local emergency responders and transmitting them to the relevant federal agency. Its 820 chapters across the country organized over 200,000 volunteers to collect and distribute to hurricane victims approximately \$2 billion worth of assistance, amounting to over half the financial aid collected by private charities. The American Red Cross also housed hundreds of thousands of people at over 1,000 shelters.⁹

Federal legislation also gives other charities an official role in domestic disaster response. For example, Section 403 of the Stafford Act specifically names "the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations" as partners with federal, state, and local agencies in distributing medicine, food, and other aid to disaster victims. Representatives of the National Voluntary Organizations Active in Disaster (National VOAD), an umbrella organization of some

Cross, "American Red Cross Key Part of National Response Plan," January 6, 2005, at http://www.redcross.org/pressrelease/0,1077,0_314_3922,00.html.

⁸ For a history and current summary of the organization's role in disaster relief see "The Federal Charter of the American Red Cross," at <http://www.redcross.org/museum/charters.html>.

⁹ American Red Cross, "Facts at a Glance: American Red Cross Response to Hurricane Katrina and Rita," December 15, 2005, at http://www.redcross.org/news/ds/hurricanes/katrina_facts.html.

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 of Understanding with government agencies and other voluntary organizations regarding the provision of disaster relief services. Although it is not a first responder, it offers food, shelter, and “spiritual comfort and emotional support” to emergency workers and disaster victims. The Salvation Army also keeps disaster response teams on call. In an actual emergency, thousands of local volunteers reinforce them. The Salvation Army receives no federal funds, relying solely on donations of money and goods (often resold) to sustain its disaster relief and other services.¹²

Local grassroots initiatives—such as those organized by faith-based groups, families, and individuals—always supplement the efforts of these well-known nationwide organizations. Traditionally, local churches provide immediate assistance to a

¹⁰ ESF #6 explicitly refers to National VOAD’s information-sharing role. For more on the institution, see its website at <http://www.nvoad.org>.

¹¹ Alan Cooperman and Elizabeth Williamson, “FEMA Plans to Reimburse Faith Groups for Aid,” *The Washington Post*, September 27, 2005. Only those religious organizations that operated emergency shelters, food distribution centers, or medical facilities at the request of state and local governments in Alabama, Louisiana, and Mississippi

¹² The Salvation Army’s role in providing disaster relief is discussed on its website at <http://www.salvationarmyusa.org> under the “services” heading.

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 its long-run recovery. In the aftermath of Katrina, however, overwhelmed American Red Cross personnel required an exceptionally long time to service many of the smaller, often rural, Gulf Coast communities, and declined to operate in locations when they feared for the safety of their volunteers and the victims (i.e., due to fear of strong winds or unsanitary conditions).¹³ Government agencies also found it difficult to provide timely assistance to all the residents of the many devastated areas. Private civic efforts (often local churches) filled many of these gaps through countless, often unrecorded, acts of generosity. In cooperation with neighbors, friends, and fellow sufferers, victims also organized to help themselves, a step mental health professionals consider essential for overcoming feelings of powerlessness and trauma.¹⁴

Since New Orleans has an unusually large number of long-term residents, they perhaps found it easier to form self-help networks than would communities with more transient inhabitants. Nevertheless, local newspapers throughout the United States reported how a myriad number of groups organized to help fill the gap by collecting money, food, clothing and other supplies, sending them to stricken regions, and distributing them to Katrina victims, either in the Gulf Coast states or wherever they had been evacuated. Although they lacked the resources available to government agencies,

¹³ Stephanie Strom and Campbell Robertson, "As Its Coffers Swell, Red Cross Is Criticized On Gulf Coast Response," *New York Times*, September 20, 2005.

¹⁴ Marianne Szegedy-Maszak, "Shattered Lives," *U.S. News & World Report* (October 3, 2005), pp. 50-54.

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 played an important role in connecting companies seeking to provide assistance with points of contact in government and nongovernmental sectors.¹⁶ Modern communications technologies such as the Internet also facilitated the development of “virtual” communities among concerned people. Many commercial web sites (including Amazon, Google, MSN, and Yahoo) offered visitors the opportunity to donate cash to hurricane victims with a few clicks of a computer mouse. The Korean, Hispanic, Vietnamese, and Afro-American media proved especially active in mobilizing support for their fellow ethnic members affected by the disaster. Fearful of dealing with the federal government, illegal immigrants came to depend heavily on such private assistance.

SHARED FEDERAL-STATE RESPONSIBILITIES

Coordinating the National Response

Effectively preparing for and responding to large-scale domestic emergencies requires coordinating hundreds of public and private actors. Given its broad perspective

¹⁵ Many of their contributions are recounted in William Schambra, “Katrina and the American Idea of Community,” *Philanthropy*, forthcoming.

¹⁶ Jeffrey H. Birnbaum, “Stepping Up: Corporate Efforts for the Stricken Gulf Are Unprecedented,” *The Washington Post*, September 4, 2005.

and ability to shape behavior through grants and other monetary incentives, the federal government is best positioned to synchronize many dimensions of the national approach to major disasters. For example, the National Incident Management System (NIMS) underpins the NRP by promoting an integrated response across all emergency management disciplines and at all levels of the American government—federal, state, local, or tribal—to any type of domestic disaster (“one all-discipline, all-hazards plan”). DHS developed NIMS after lengthy consultations with representatives from other federal agencies, states, territories, cities, counties, townships, tribes, and nongovernmental first responders from a wide range of disciplines. Its architects sought to incorporate the best practices currently used by these incident managers to ensure that responders from different jurisdictions and disciplines can cooperate effectively during natural disasters and other emergencies.¹⁷

NIMS promotes the widespread use of common terminologies, doctrines, and command and control systems among emergency response personnel. It sets unified standards for training, technologies, organizational processes, and operational and reporting procedures for use by government and nongovernmental first responders in all four mission areas of prevention, protection, response, and recovery.¹⁸ HSPD-5 (section 18) requires all federal departments and agencies to employ NIMS in their preparedness efforts, including in their assistance to state and local entities. Beginning with Fiscal Year 2007 on October 1, 2006, DHS will require their full compliance with the NIMS

¹⁷ The importance of achieving standardization in command-and-control procedures and other emergency management functions is discussed, with reference to the achievements of the national fire management system, in Brian Friel and Paul Singer, “Gaps Remain in Government Strategy for Handling Natural Disasters,” October 28, 2005, at <http://www.govexec.com/dailyfed/1005/102805nj1.htm>.

¹⁸ See Department of Homeland Security, “National Incident Management System,” March 1, 2004, at www.dhs.gov/interweb/assetlibrary/NIMS-90-web.pdf. Additional information on NIMS is available at <http://www.fema.gov/nims/>.

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

The federal government also plays an essential role in helping ensure that every community has a minimal base level of essential capabilities for emergency response. HSPD-8 directs DHS to take the lead in establishing national performance standards for preparedness. It also instructs the department to use those criteria to assess readiness, determine priorities, and target investments.²⁰ DHS subsequently identified 15 “all-hazards” catastrophic scenarios that should guide state homeland security authorities in developing their plans and capabilities as part of the department’s development of a common National Preparedness Goal.²¹ At present, federal authorities are working with state, local, and private actors to achieve the National Preparedness Goal and other standards through grants, information-sharing, and other programs.

Providing for the Common Defense

Averting and managing the consequences of an attack from a terrorist group or foreign country is a clear responsibility of the federal government. Although Washington-based agencies do provide local emergency responders with some antiterrorist training, especially those involving the possible use of weapons of mass destruction (WMD), only the federal government commands sufficient resources and the scarce specialized assets (including scientific and technical personnel) required to

¹⁹ 9/11 Public Discourse Project, *Report on the Status of 9/11 Commission Recommendations*, Part I: *Homeland Security, Emergency Preparedness and Response* (Washington, DC: 9/11 Public Discourse Project, September 14, 2005), p. 2, at <http://www.9-11pdp.org>.

²⁰ “To the extent permitted by law, Federal preparedness assistance will be predicated on adoption of Statewide comprehensive all-hazards preparedness strategies” (HSPD-8, section 9).

²¹ David Howe, “Planning Scenarios: Executive Summaries,” (Washington, D.C.: Homeland Security Council, July 2004), at http://www.globalsecurity.org/security/library/report/2004/hsc-planning-scenarios-jul04_exec-sum.pdf.

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 against Americans see the *National Strategy to Combat Weapons of Mass Destruction* (Washington, DC: December 2002), available at <http://www.state.gov/documents/organization/16092.pdf>.

²³ For a detailed discussion of the laws and procedures governing the use of military units in domestic emergencies see Jennifer K. Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues* (Washington, D.C.: Congressional Research Service, September 16, 2005); and Steve Bowman, Lawrence Kapp, and Amy Belasco, *Hurricane Katrina: DOD Disaster Response* (Washington, D.C: Congressional Research Service, September 19,2005).

Guard's other traditional role is to reinforce active military forces during wartime, as in Iraq today.) State governments also have established a network of mutual assistance agreements under the auspices of the Emergency Mutual Aid Compact (EMAC), a congressionally approved arrangement by which states can support one another during an emergency by sharing state National Guard troops and other resources. Under its auspices, National Guard units from 18 states besides Louisiana deployed in the region to assist with post-Katrina recovery effort.²⁴

For such sharing mechanisms to be most effective, the National Guard needs to be sufficiently large to maintain some units on active duty at all times for rapid response to homeland security emergencies, including natural disasters and terrorist incidents. In the event of crises within multiple states, however, or when many Guard units are deployed on overseas missions, the affected regions probably would still require assistance from DOD active-duty troops, the U.S. Coast Guard, and other federal assets.

Border Security and Immigration

Preventing the entry of potential terrorists and other dangerous individuals into the United States is also primarily a federal responsibility, though state and local law enforcement agencies, along with private employers and individuals, can assist in their detection. For example, the 2002 Homeland Security Act charges the DHS with both blocking illegal immigration and removing unlawful entrants from the United States. Similarly, the Transportation Security Administration is responsible for preventing terrorists from gaining access to vehicles traveling into or across U.S. territory. Federal bodies also are best situated to work with international institutions and foreign

²⁴ Sylvia Moreno, "Many Helping Hands Ease the Pain," *Washington Post*, September 7, 2005.

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 revenue from local commercial activities collapse, along with the businesses themselves. Federal emergency assets also provide a necessary surge capacity in instances of multiple domestic crises, when state leaders confronting emergencies in their

jurisdictions might prove unable or unwilling to share their limited homeland security personnel and equipment with other regions.

Responding to Major Public Health Emergencies

The Department of Health and Human Services (HHS) has primary responsibility for working with state and local authorities to ensure public health during and after major domestic crises. In particular, the HHS Secretary has broad authority to declare a public health emergency in one or more states. Katrina represented the largest mass-casualty/mass-fatality incident within the United States in recent years. HHS Secretary Michael Leavitt declared public health emergencies in many, though not all, of the states affected by the hurricane—either directly or as a result of hosting thousands of vulnerable evacuees. Previously, the HHS Secretary had also declared a nation-wide public health emergency following the 9/11 terrorist attacks.

The Centers for Disease Control and Prevention (CDC) represent the other major federal body responsible for ensuring public health during emergencies. The CDC controls a Strategic National Stockpile of drugs and medical supplies. It deployed vaccines, insulin, ventilator kits, and other items to the states most affected by Katrina. The CDC also launched a website (<http://www.bt.cdc.gov/disasters/hurricanes/index.asp>) designed to provide the latest public health information to several key audiences: health professionals, local officials, and the general public. In addition, the Food and Drug Administration (FDA) made available information on how exposure to floodwater and loss of refrigeration could affect the safety of food and medical supplies.

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 Katrina-affected regions. In the event of a terrorist attack involving biological weapons, DHS would coordinate the federal response with assistance from the HHS, CDC, and DOD.

State authorities also possess substantial discretion to declare emergencies and take other measures to ensure public health in their localities.²⁶ State and local health personnel are most likely to be the first to detect the use of a harmful biological agent when victims start appearing in community hospitals. Federal authorities also would need local support to distribute drugs and impose quarantines.

The National Strategy for Pandemic Influenza highlights the need for multiple players—from foreign countries to diverse U.S. government agencies to state and local

²⁵ Information on the NDMS is available at <http://www.ndms.dhhs.gov/>.

²⁶ The authorities and responsibilities of federal and state agencies for ensuring public health during emergencies, as well as descriptions of how federal health agencies responded to the Katrina emergency, are discussed in Sarah A. Lister, *Hurricane Katrina: The Public Health and Medical Response* (Washington, DC: Congress Research Service, September 21, 2005). Emergency Support Function #8 of the National Response Plan tasks the HHS Secretary with coordinating a number of public health and emergency services, assisted in many cases by 14 designated support agencies and the American Red Cross, during a disaster (Department of Homeland Security, National Response Plan, December 2004, Annex ESF#8, at http://www.dhs.gov/interweb/assetlibrary/NRP_FullText.pdf).

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, local, and private-sector preparedness and response planning, including by providing funds and guidance.

In discussing the national strategy and their other public health emergency planning efforts, federal officials have stressed their reliance on the private sector to develop and manufacture vaccines and medical technologies, and to ensure the sustainability of critical infrastructure despite the potential months-long illness and widespread absenteeism of essential personnel. Likewise, they depend on state and local authorities for early detection of biological threats through community surveillance measures. Cooperation among federal, state, local, and private representatives will also be necessary in order to distribute antiviral or antibacterial drugs, develop medical and veterinary surge capacity, and communicate essential and credible information in an emergency.

As expected, the current salience of the Avian Flu threat has heightened public awareness and interest in planning for pandemics. Ideally, this planning will yield a positive spillover in other areas since many community public safety measures and basic disaster response activities are useful in a range of emergencies. For example, drafting response plans and conducting exercises to deal with the outbreak of a new form of

²⁷ Homeland Security Council, *National Strategy for Pandemic Influenza* (Washington, DC: November 2005), p. 10.

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 Countering Waste, Fraud, and Abuse

During emergencies, vast sums of public and private money flow to devastated regions. In order to provide relief as rapidly and widely as possible, many standard safeguards on monetary transfers are relaxed. This reduced oversight has caused problems at both the national and regional level. In some past disasters, for instance, FEMA appears to have exercised inadequate supervision over private contractors and provided assistance to recipients that did not suffer substantial financial losses. In response to the concerns expressed by Homeland Security Inspector General Richard L. Skinner in a December 28 report, which stated that the enormous size of the response and recovery efforts following Katrina and Rita “provide an unprecedented opportunity for fraud, waste and abuse,” DHS stressed that FEMA was taking steps to strengthen its contracting oversight procedures.²⁸

²⁸ Cited in Associated Press, “Homeland Audit Says FEMA is Biggest Problem,” December 28, 2005, at <http://www.msnbc.msn.com/id/10630211/>.

Concerns also have arisen about private charities, especially the transparency and accountability of their fund raising and expenditures. In the wake of Katrina, stories circulated of fraud by unjustified claimants and false charities.²⁹ The American Red Cross suffered criticism when it diverted some money it had raised for the 9/11 victims to other purposes, primarily preparing for future disasters and funding infrastructure and management improvements such as the latest telecommunications, information and accounting technologies. Since most donors want their contributions to help immediate victims, and government agencies do not normally support investments in infrastructure and management improvements, these areas have traditionally suffered from underfunding. Americans may reduce their charitable donations if they conclude they are being misused. Finally, Washington's growing involvement in response to disasters in recent years, signified by the increasing congressional appropriations for the Disaster Relief Fund (DRF), might have inadvertently given local authorities an additional incentive to prematurely declare that they have exhausted their resources in order to trigger large-scale federal intervention and funds.³⁰

Collaborative oversight by federal, state, local, and private agents helps ensure the proper use of disaster-relief funds. During an emergency, the U.S. government dispatches federal coordinating officers, federal contracting officials, and FEMA liaison personnel to the affected areas to supervise the distribution of federal funds to state, local, and nonprofit organizations that provide mass care and other disaster relief. State and

²⁹ See for example Eric Lipton, "Money Flowed to City Spared Worst of Storm," *New York Times*, November 20, 2005; and some of the testimony before the Subcommittee on Oversight of the Committee on Ways and Means of the U.S. House of Representatives at its hearings on "The Response of Charities to Hurricane Katrina," December 13, 2005.

³⁰ Congress appropriates funds annually to the DRF to reimburse federal agencies that receive mission assignments from DHS during presidentially declared disasters. It also supports some disaster relief efforts by states, localities, and certain non-profit organizations involved in emergency response and recovery operations in stricken communities.

local auditors also monitor expenditures by their parent agencies, especially during the recovery phase. State Attorney Generals and charity offices represent the primary public agencies monitoring the activities of charitable institutions operating in their jurisdictions.

Private groups have enhanced their efforts to guard against the misuse of their own contributions, as well as to overcome coordination problems exposed by the GAO after 9/11.³¹ For example, seven leading charities partnered with FEMA to create a Coordinated Assistance Network (CAN) to share information electronically about their services to identify any gaps or redundancies in a disaster.³² In June 2005, they launched a pilot virtual case management database that pooled information from over 40 charities based in six American cities (fortuitously including New Orleans). During Katrina, this information-sharing procedure facilitated keeping track of individuals that had already received charitable or public assistance, reducing instances of “double-dipping” (i.e., when the same victim receives aid from multiple sources). The American Red Cross and National VOAD also organized working group meetings and conference calls that included representatives of FEMA and other government agencies. Following both Katrina and Rita, the CAN launched an Internet-based registry that provided information on all the emergency shelters operating in the Gulf Coast region. Unfortunately, some newly trained volunteers found these databases, which were still under development, very

³¹ General Accounting Office, *September 11: More Effective Collaboration Could Enhance Charitable Organizations' Contributions in Disasters* (Washington, D.C.: December 2002), at <http://www.gao.gov/new.items/d03259.pdf>.

³² The seven charities are the Alliance of Information and Referral Services, the American Red Cross, National VOAD, the Salvation Army, 9/11 United Services Group, Safe Horizon, and the United Way of America.

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 responding to disasters. The section below offers recommendations to optimize the balance among these various elements in several areas concerning emergency prevention, response, and recovery.

Strengthening Public-Private Partnerships

Building on the progress achieved in recent years, FEMA and other government agencies should encourage non-profit organizations to develop additional mechanisms and procedures to overcome residual coordination problems. The Katrina experience exposed diverging expectations among NGOs and their partners about the anticipated contributions of charities and other private associations during a crisis. Too often, representatives from the federal government, state emergency agencies, and nongovernmental relief groups directed those requesting assistance to turn elsewhere.

Public and private groups need to delineate better their expected roles and responsibilities well before a disaster occurs. With government support, private disaster

³³ The use of the CAN mechanism during Katrina is reviewed in Tom McGinty, "Charities Learn from 9/11," *Newsday*, September 19, 2005; and Ian Wilhelm, "Sharing a World of Experience: Foreign-Aid Groups Offer Advice in Hurricanes' Aftermath," *The Chronicle of Philanthropy* (October 6, 2005), at <http://philanthropy.com/free/articles/v18/i01/01002701.htm>.

relief organizations should sign memorandums of understanding and take other steps to clarify pre-emergency relationships. Public officials should also encourage more charities to become familiar with the CAN database and related emergency information management mechanisms. Although the federal government has made great strides in involving NGOs in its emergency planning activities, state and local disaster preparedness efforts have lagged behind in addressing the potential role of charities and other private actors.³⁴

An improved public-private partnership is especially important for protecting the nation's critical infrastructure. Since approximately 95% of U.S. infrastructure lies in private hands, public authorities have a legitimate concern about its security given society's dependence on modern communications, transportation, information, and other networks. The federal government should work with private stakeholders to define a "reasonable" level of security for these critical systems. Together with state and local authorities, they also should provide guidance, financial incentives, and other inducements to achieve it.³⁵

Restructuring National Preparedness Programs

³⁴ Representatives of other charities have raised the issue of whether the NRP should assign to the American Red Cross alone so many special privileges; see for example their testimony before the Subcommittee on Oversight of the Committee on Ways and Means of the U.S. House of Representatives at its hearings on "The Response of Charities to Hurricane Katrina," December 13, 2005. For additional steps to improve coordination among charities, see the findings of the GAO presented at the hearing by Cynthia Fagnoni, reprinted as "Hurricane Katrina and Rita: Provision of Charitable Assistance" (Washington, D.C.: U.S. Government Accountability Office, December 13, 2005), at www.gao.gov/cgi-bin/getrpt?GAO-06-297T.

³⁵ For a more detailed analysis of this issue see Paul Rosenzweig and Alane Kochems, "Risk Assessment and Risk Management: Necessary Tools for Homeland Security," Heritage Backgrounder #1889 (October 25, 2005), at <http://www.heritage.org/Research/HomelandDefense/bg1889.cfm>.

A recurring problem in emergency preparedness is that people forget. Individuals prepare for disasters only if they believe they are likely to suffer from one. Experience with a recent disaster helps instill prudence, but it fades with time and complacency sets in. In California, for instance, many people enhance their preparedness initiatives after an earthquake, but as time passes their attention wanders and their efforts slacken (though states like California and Florida, which regularly experience natural disasters, sustain their preparedness better than most U.S. regions).

Federal efforts to stimulate community preparedness—by reminding people that they are at risk for disasters and providing guidance on how to prepare for them—have not been very successful. Federal preparedness outreach initiatives like Ready.gov, National Preparedness Month, etc., have had little visible impact and overlap with the educational efforts of the American Red Cross (e.g., its “Together We Prepare” campaign and “Masters of Disaster” program) and those of state and local agencies.³⁶

Since homeland security resources are limited, the federal government should allow state and local authorities and NGOs to take the lead in this area. Community-run, bottom-up initiatives—when residents engage in preparedness planning by, for instance, sharing their concerns and ideas with local emergency managers—are almost always more effective than those organized by Washington-based agencies. Their messages can be better targeted to local concerns, making them more credible. State and local governments can more easily highlight the peculiar risks and vulnerabilities confronting each community. Limiting the federal role in general preparedness campaigns recognizes that state and local authorities, the private sector, voluntary associations, and

³⁶ For a description of the community-based preparedness programs of the American Red Cross, see its “Red Cross Facts,” at http://www.redcross.org/services/disaster/0,1082,0_562_00.html, and its recent annual reports.

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 programs also give federal officials greater insight into the capabilities and practices of state and local emergency and law enforcement agencies.

Enhancing Information-Sharing and Asset Visibility

Hurricane Katrina highlighted to federal, state, and local emergency managers the need to improve both the visibility and the mobility of public and private sector emergency response assets. Even amidst the chaos of a disaster, managers would like to know whether and when requested items have been delivered or contracted services have been completed. FEMA officials hope their planned Total Asset Visibility system will help overcome some of these problems when it becomes fully operationally by the next hurricane season.

More generally, a task force organized by the Markle Foundation highlighted problems with DHS efforts to promote communication and information-sharing among federal, state, and local agencies.³⁷ For example, both the Foundation and the 9/11 Commission recommended establishing a “trusted information network” among national

³⁷ *Creating a Trusted Network for Homeland Security* (New York: Markle Foundation, December 2003).

law enforcement and intelligence agencies.³⁸ In addition, private businesses will hesitate to share sensitive and proprietary information with federal, state or local governments until they are assured about its protection.

Improving Cooperative Law Enforcement

Enhancing data sharing among the various levels of national law enforcement is especially important. State and local officials normally enjoy superior local situational awareness compared with their federal counterparts. In the course of their routine activities, state and local law enforcement personnel regularly collect information that could be relevant for averting or responding to terrorist attacks. In this regard, they can act as the eyes and ears of the FBI and other federal law enforcement agencies.

A recent RAND study, which employed both survey data and detailed case studies, found that state and local agencies continue to depend heavily on federal sources for information about potential homeland security threats, despite their efforts to enhance their own capacities in this area. Only the largest police departments have been able to devote sufficient resources to developing an independent counterterrorism analytic capability, and their long-term willingness to sustain such expenses remains unclear as time elapses since 9/11 without another domestic terrorist attack.³⁹ Federal officials typically have access to more advanced technologies and data from foreign intelligence operations possibly relevant to domestic threats. Federal courts also oversee actions by public or private entities that might violate individuals' civil liberties in the course of

³⁸ *The 9/11 Commission Report: The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, DC: U.S. Government Printing Office, 2004), p. 418.

³⁹ K. Jack Riley et al., *State and Local Intelligence in the War on Terrorism* (Santa Monica, CA: RAND, 2005).

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 of JTTF-approved counterterrorism investigations.

Federal training programs could improve the ad hoc and uneven intelligence-related training programs offered at the state and local level, but may themselves need to be consolidated. The Departments of Defense, Homeland Security, Energy, Health and Human Services, Justice, Transportation, and other federal agencies run their own special programs for different classes of public and private recipients.⁴⁰ Federal experts should take steps to enhance sharing among national law enforcement agencies that might come across information related to possible terrorist attacks within the United States. Such measures could include promoting minimum standards for certification requirements, common or at least interoperable technologies, and standard procedures for data collection, analysis, and retention.⁴¹

Government officials also need to rethink their entire approach towards security clearances. During the Cold War, Americans confronted a highly effective intelligence adversary in the KGB and its affiliates, making counterintelligence a top priority. In the

⁴⁰ For a description of these various programs see Shawn Reese, *Federal Counter-Terrorism Training: Issues for Congressional Oversight* (Washington, D.C.: Congressional Research Service, May 16, 2005).

⁴¹ K. Jack Riley et al., *State and Local Intelligence in the War on Terrorism* (Santa Monica, CA: RAND, 2005).

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 to detect the 9/11 plot demonstrate that excessive security clearances impede such efforts.

Restructuring the Homeland Security Advisory System

One tool for sharing information with the public has been the Homeland Security Advisory System (HSAS), a series of color codes indicating various degrees of domestic threats and appropriate national preparedness levels. Although not intended primarily to alert the general public, many observers use the HSAS for that purpose, complaining that the system’s alerts are too vague and give insufficient guidance on how people should respond to changes in alert status. The typical response has been to ignore such warnings entirely or to take actions of dubious value, such as buying duct tape. We need simpler and clearer warning systems for average Americans that are more understandable, credible, and actionable. Last year’s chaotic response to perceived bioterrorism threats indicates that we have yet to establish such a procedure.

In addition, federal officials need to craft a more refined system to communicate threats, risks, and vulnerabilities to state and local actors whose primary responsibilities

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 capabilities-based standards for assessing the preparedness efforts of state and local governments.

Establishing a DHS Regional Structure

To improve its interface with state and local officials and members of the private sector, the department should implement its long-delayed plans to create a unified regional structure. The purpose of any DHS regional framework would be to improve coordination, planning, and information sharing among these entities—with an emphasis on strengthening intelligence and early warning, critical infrastructure protection, and emergency preparedness and response.⁴³ When the Homeland Security Act merged over 22 federal organizations and programs into a single department, DHS inherited at least a dozen different regional structures that provided a framework for directing its national operations. Many of these survive. FEMA still has its original 10 regional offices and

⁴² The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass destruction, *Forging America's New Normalcy: Securing Our Homeland*, Fifth Annual Report to the President and Congress (Arlington, Virginia: RAND Corporation, 2003).

⁴³ See Edwin Meese III, James Jay Carafano, and Richard Weitz, "Organizing for Victory: Proposals for Building a Regional Homeland Security Structure," Heritage Foundation Backgrounder No. 1817, January 21, 2005, at <http://www.heritage.org/Research/HomelandDefense/bg1817.cfm>.

two area offices. Each regional office serves several states, and their staffs work directly with state and local actors to help plan for disasters, develop mitigation programs, and determine what federal assistance to provide when major crises occur.⁴⁴ For example, the governor of an affected state requests assistance for specific disaster programs through the FEMA Regional Director. An analysis of the Katrina experience might provide guidance regarding the optimal functions, capabilities, and other attributes of the future DHS-wide regional infrastructure.⁴⁵

Managing Catastrophic Emergencies

Although the principle of federalism underpinning the tiered government response framework applies well to most domestic emergencies, catastrophic incidents typically require a more vigorous federal response, especially at the earliest stages of a crisis. For this reason, DHS Secretary Michael Chertoff has identified increasing preparedness for catastrophic events as one of the six key agenda items of his planned reorganization of the department.⁴⁶ In the case of Katrina, the responders confronted a pair of major calamities: devastation in the Gulf Coast states caused by the hurricane, followed rapidly by the flooding of New Orleans after the city's levees failed. The demands of this catastrophe—which unlike other recent domestic disasters saw the total collapse of the

⁴⁴ Federal Emergency Management Agency, "Regional and Area Offices," updated October 22, 2004, at www.fema.gov/regions. For a map of these regions see Federal Emergency Management Agency, *Annual Performance & Accountability Report: Fiscal Year 2002* (Washington, DC, 2002), p. 11.

⁴⁵ For a discussion of the problems the first DHS Secretary, Tom Ridge, encountered when he tried to create a network of regional directors, including one in New Orleans, see Susan B. Glasser and Michael Grunwald, "Department's Mission Was Undermined from Start," *Washington Post*, December 22, 2005.

⁴⁶ "Secretary Michael Chertoff U.S. Department of Homeland Security Second Stage Review Remarks," July 13, 2005, at http://www.dhs.gov/dhspublic/interapp/speech/speech_0255.xml. For additional information on the reorganization see Harold C Relyea, *Department of Homeland Security Reorganization: The 2SR Initiative* (Washington, DC.: Congressional Research Service, August 19, 2005).

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, the Department of Defense and other federal agencies can use military assets to help restore emergency communications and databases when the local infrastructure is devastated (e.g., by providing expensive and scarce satellite radios and mobile command posts). The NRP itself distinguishes between most domestic incidents, best handled by the authorities of the responsible jurisdiction with limited assistance from the federal government and surrounding communities, and “Incidents of National Significance,” which require DHS quickly to assume the lead coordination role. The DHS Secretary, under certain specified conditions and in consultation with other federal departments and agencies, decides when to make such a declaration.⁴⁷

If analysis shows that normal NRP protocols unduly limited the speed of the federal response in Katrina, officials may need to modify them to provide the flexibility, guidelines, and authority to manage better the consequences of a domestic catastrophe—such as the collapse of a region’s critical infrastructure or the inability of local government bodies to continue essential public functions. It might be advisable to allow the president, in exceptionally extreme circumstances, to federalize the state National Guard or issue a mandatory evacuation order even without the approval of the governor

⁴⁷ According to HSPD-5, the DHS Secretary can declare an Incident of National Significance when any one of the following four conditions applies: (1) a federal department or agency has requested the Secretary’s assistance; (2) the emergency has overwhelmed state and local resources, and their authorities have requested federal assistance; (3) more than one federal department or agency has become substantially involved in managing the domestic incident; or (4) the President has directed DHS to assume responsibility for the response.

of a stricken state.⁴⁸ (A strengthened FEMA, however, might obviate the need for a greater role for the military in domestic disasters.) In any case, the federal government needs to improve its logistical ability to deploy its emergency response assets more rapidly to disaster regions.

Katrina also exposed a problem with the financial provisions embodied in the Stafford Act: they do not apply well to catastrophic disasters. Any major emergency will substantially increase demands for local government spending while simultaneously devastating the region's revenue base (from industry, commerce, tourism, etc). Even with the 75%-25% federal cost-sharing provisions, states and localities cannot easily pay their required shares. Congress needs to consider additional financial support mechanisms for stricken communities until their economies have clearly begun to recover.

For the federal government to concentrate its attention and resources on managing catastrophic disasters, however, it will need to continue to enhance the capacities of state and local authorities, as well as families and individuals, to respond to non-catastrophic disasters. We must avoid federalizing routine disasters.

⁴⁸ Some of the options the Bush administration is considering to make the federal response to domestic catastrophes more "automatic" are discussed in Bill Sammon, "Bush Seeks to Federalize Emergencies," *Washington Times*, September 27, 2005.