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REGULATORY FLEXIBILITY: How to Mitigate the Effects of Katrina and Other Disasters

Bruce Yandle
Distinguished Adjunct Professor of Economics

Mark Adams
Graduate Fellow, Mercatus Center

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Bruce Yandle and Mark Adams

EXECUTIVE SUMMARY

This policy comment discusses the importance of reducing regulatory barriers to recovery in the wake of a disaster. The ability of a disaster-stricken area to recover depends to a great extent on a large number of private actors who have place- and time-specific information that is generally unavailable to government agencies. We find that laws that empower individuals to respond to events on the ground are likely to help disaster-affected cities recover faster.

We present our findings as follows:

1. We briefly provide a background on government response to disasters and explain how social learning can become embodied in rules that allow for exceptional enforcement during disasters. We apply the concept to New Orleans and highlight specific cases where rigid regulations stood in the way of the post-Katrina recovery.
2. We provide examples of flexibility allowed under emergency conditions and show how regulatory flexibility can enable state government to avoid gridlock in the face of a major disaster.
3. We provide some lessons based on a review of state laws. We show how those lessons can be applied to federal agencies.
4. We offer specific policy proposals based on our findings.

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1 Introduction

There are no constraints on the human mind, no walls around the human spirit, no barriers to our progress except those we ourselves erect.

Ronald Reagan

On August 29, 2005, Hurricane Katrina made landfall in Louisiana, striking communities across the Mississippi and Louisiana coasts. In New Orleans, rain from the hurricane burst the city's protective levees and flooded 80 percent of the city,[1] taking a tragic human toll as well as destroying over $100 billion of property.[2] In other communities across the coast, the human and economic toll was likewise enormous. The tragedy was not just the result of the hurricane but also of the subsequent government response. The multiple agencies, charities, and private companies that were trying to mount a response faced a thicket of rules and regulations that might have worked well in other times but became paralyzing during the disaster. Government regulations and institutions that may have functioned reasonably well during normal times stood in the way when people were attempting to reorganize their lives following the disaster. Put another way, what may have worked well going forward did not work at all when the economy was moving in reverse.

Disasters like Hurricane Katrina are unique in that policy makers can never prepare for the particular set of economic conditions that may arise in an unexpected, uncoordinated, and rapidly evolving event. However, whether the next disaster is an earthquake in California or a terrorist attack on a major city, policy makers can, and must, expect to be unprepared.

We propose that government cannot be truly prepared for every eventuality but that there are principles that, if applied consistently, will reduce the harm caused by disasters. While disasters may necessitate government intervention, there are also frequent occasions when less intervention is better. We propose several modifications to existing laws—using, when possible, model legislation or examples from different states—that would eliminate excessively burdensome regulations for the period following a disaster, leading to more rapid, efficient, and equitable recoveries.

2 Disaster in New Orleans

Disasters force governments and citizens to change their behavior quickly and unexpectedly. This does not mean that governments cannot be prepared for disaster (although some are not), but that it is too costly to be in a state of constant readiness. It is also impossible to predict when, where, and how disaster will strike. Effective disaster planning means being ready for the unexpected. Citizens leave their day jobs when they are called up to their National Guard regiments; government officials abandon their normal work to focus on coordinating relief efforts; normal law enforcement work is replaced with the pressing need for search and rescue. This is not to say that there are no resources dedicated entirely to disaster relief, but that an important part of disaster relief is found in changed behavior and reallocation of both private and government resources.

Laws change too, in a variety of different ways. Historic legal precedents, long recognized in common law, weaken the law of trespass to allow people seeking shelter to enter another person's property to avoid serious harm. This kind of legal change is automatic—no one has to pass a law to allow a person fleeing a storm to find shelter. The change also leaves normal property and contract law as the default that resurfaces when conditions return to normal. At other times the legislature must change the law or allow a governor to change to law. For example, the rules of the roads can be changed to allow counter-flow

1. David L. Johnson, *Service Assessment, Hurricane Katrina August 23-31*, 2005 (Silver Spring, MD: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, 2006), http://www.weather.gov/os/assessments/pdfs/Katrina.pdf.
2. Richard Knabb, Jamie Rhome, and Daniel Brown, *Tropical Cyclone Report, Hurricane Katrina* (Miami, FL: National Hurricane Center, 2006).

traffic, turning two-way highways into one-way evacuation routes. Cities and states may put in place new laws such as curfews or evacuation orders. When disasters are so severe that all rules for maintaining civil order are ineffective, then governors may be empowered to invoke martial law, which places a disaster-struck area under the control of military units that report to the governor.

Finally, governments can effectively change the law by failing to enforce existing laws: parking violations are overlooked, and past-due property taxes are temporarily forgotten. Winking at law violation may be acceptable in dire circumstances, but doing so is risky for societies organized under a rule of law. It is better to have a pre-existing regulatory framework that allows specifically for exceptions to normal enforcement standards during emergencies.

It is hard to change laws immediately after a disaster when governments are struggling to deal with the crisis at hand and communications are disrupted. Democracies are designed to be slow and deliberative to protect the rights and interests of citizens. Ordinarily, it is better to have more carefully thought-out legislation, but in a disaster time is of the essence, and too much time spent making decisions can be paralyzing and result in unnecessary harm. To allow decisions to be made quickly without compromising democratic safeguards, governments can prepare by deciding how the law will be changed prior to the disaster. For example, the relaxation of trespass law or the use of roads as evacuation routes can be decided upon without knowing when disaster will strike or what form it will take.

In New Orleans and across much of the rest of the Gulf Coast, many of the laws and regulations in place remained the same before and after Hurricane Katrina, but the costs and benefits of having those rules changed. Researchers from the Mercatus Center have traveled to the Gulf Coast and conducted over 450 hours of interviews with residents. These interviews indicate how rules that existed beforehand, which may have been beneficial, become roadblocks to recovery. Below we highlight some of the most serious problems and suggest opportunities for reform.

2.1. Planning Laws

Like most U.S. cities, New Orleans regulates construction with zoning laws and building codes. Anyone who wants to build, or even rebuild, a property is required to purchase a permit from the city. The fee itself is nominal, but obtaining the permit takes time, and the legal process can be complicated. In ordinary times a slow permitting process is inconvenient, but after a disaster it becomes a bottleneck in the recovery process. The problem was worsened still as the need for permits was far higher after the disaster while government itself had been partially disabled by the disaster. The law created a chicken and egg problem: restoring government services meant bringing workers back into the city, but workers could not return quickly because of legal barriers exacerbated by the disabling of government.

The costs and benefits of zoning laws changed suddenly with the destruction of housing. Existing homeowners want to be protected from developments that would reduce the value of their property: no one wants a factory built in the middle of their neighborhood. If private property owners cannot reach a voluntary agreement that protects the value of their property, then zoning laws make sense. When only a few people want to build and there is a lot of existing property, as in a developed neighborhood, the cost of zoning laws can be low relative to the benefit. When neighborhoods were knocked flat, and people could not return to the city, the costs of restrictions on rebuilding were higher and the benefits to (sometimes non-existent) residents were considerably lower.

The law had other unintended consequences. Interviewees reported residents living in unsafe buildings because structural repairs would have required a rebuilding permit.[3] Building codes were supposed to protect residents; instead, they caused residents to live in homes that were unsafe.

Planning laws, zoning, and land-use regulation existed in New Orleans prior to Katrina, but after the disaster, local authorities attempted to leverage their powers to shape the rebuilding of the city.[4] The mayor created a new commission to oversee the redevelopment of New Orleans.[5] Not only did the new authority erect barriers to reconstruction, but it created uncertainty as officials

3. Staff from the Mercatus Center at George Mason University conducted a series of confidential interviews with current and former residents of New Orleans between 2006 and 2008.

4. Emily Chamlee-Wright and Daniel M. Rothschild, *Disastrous Uncertainty: How Government Disaster Policy Undermines Community Rebound*, Mercatus Policy Series, Policy Comment no. 9 (Arlington, VA: Mercatus Center at George Mason University, 2007).

5. Ibid.

tried one plan after another without success. Developers waited on permission to build, but they also waited to see what the final plan would be before going ahead with investments.[6]

Planners delayed new buildings being erected (and thus workers returning to the city) and in some cases prevented buildings that had been erected from being occupied.[7] City planners want to restrict building because they see disaster as a chance to rebuild better than before—like Christopher Wren redesigning London after the Great Fire—but great cities cannot be built or rebuilt without residents, and people cannot return without homes to live in.

People also need services, including some services they did not need before. Prior to Katrina, many residents did their laundry at home. In the aftermath, many homes were without basic services, creating an immediate need for laundromats. But because the regulations were written before Katrina when people did not want laundromats in their residential neighborhoods, so entrepreneurs could not provide these basic services, even on a temporary basis.[8]

Ultimately, none of the plans developed by the commission were successful—the mayor eventually lost faith in his idea[9]—but this is not necessarily because the planners were bad at their jobs. The aftermath of a disaster is a dynamic environment: each day brings novel problems that require novel solutions. Without knowing in advance what will work, the only option is trial and error. Yet trial and error did not work for the mayor's commission, and the frequent chopping and changing of plans created uncertainty, which delayed recovery. Unlike entrepreneurs, government officials do not have the rapid feedback of the price mechanism to see what is working and what is not. When policymakers try to plan recovery, the unintended result is to stifle the activities of entrepreneurs and make it harder to discover solutions to novel problems.

SUCCESS IN THE MIDST OF DISASTER

Though many of the interviewees reported failures that increased human suffering, there were also tales of heroism, self-sacrifice, and great triumph in the face of adversity. Among these were the stories of dedicated parents and teachers who were able to use the tragedy to rebuild a better public education system.

At first the story sounds like many other failures. Only four of the 123 schools in New Orleans were open after the disaster;[1] and all but 20 of the school buildings were badly damaged.[2] A number of public schools did not reopen until a year after the hurricane, and some never reopened. Local entrepreneurs and non-profits attempted to bridge this gap through charter schools but were initially limited by tight restrictions (such as early deadlines and extensive paperwork) on providing educational services.

Even before the hurricane, New Orleans school system was mismanaged and corrupt; with 55 of the 78 worst schools in the country.[3] In 2003 voters in Louisiana approved a constitutional amendment allowing the state to take control of failing schools.[4] Of the 16 schools affected, 15 were in New Orleans.[5] The hurricane put the school system over the edge, but it also presented a new opportunity to rebuild. The City of New Orleans turned to the state for help. A new law allowed the state to take over all schools in districts that were in "academic crisis."[6]

Legislators in Baton Rouge did not know where the deficits in the education system were, but they knew the parents and teachers did. Policymakers saw the opportunity to use this local knowledge to bypass bureaucracies and meet an immediate need. By removing the New Orleans Parish School Board from the equation, Louisiana made it much easier to start public charter schools. Before Katrina there were just five charter schools in New Orleans but by 2007 that number had risen to over 50.[7] Today New Orleans has the highest proportion of charter schools in the country.

The move might have led to greater centralization: an attempt to plan recovery from the center as had been tried by city planners. Instead, by relying on local knowledge, policy makers in Baton Rouge were able to overcome many of the deficits that had plagued education in New Orleans and improve the quality of public education in the city.

1. Kathryn Newmark and Veronique De Rugy, "Hope after Katrina: Will New Orleans Become the New City of Choice?" *Education Next* vol. 6, no. 4 (2006): 12-21.
2. Paul Hill and Jane Hanaway, *After Katrina: Rebuilding Opportunity and Equity into the New Orleans* (Washington, DC: Urban Institute, 2006).
3. Newmark & deRugy, "Hope after Katrina."
4. LA Act 1293
5. Newmark & deRugy, "Hope after Katrina."
6. Ibid.
7. Peter Gordon and Sanford Ikeda, *Power to the Neighborhoods: The Devolution of Authority in Post-Katrina New Orleans*, Mercatus Policy Series, Policy Comment no. 12 (Arlington, VA: Mercatus Center at George Mason University, 2007).

6. Ibid.
7. Ibid.
8. See New Orleans Comprehensive Zoning Ordinance, Available at http://library.municode.com/HTML/16306/level1/CODE.html
9. Chamlee-Wright and Rothschild, *Disastrous Uncertainty*

2.2. Licensing Laws

New Orleans required extensive licensing of many skilled trades and professions both before and after Katrina.[10] Only Interviewees reported that only professionals licensed by the State of Louisiana were allowed to carry out certain jobs—even on a person's private residence.[11] Louisiana permits an abbreviated licensing process for contractors licensed in another state based on a reciprocity arrangement and the State Licensing Board for Contractors may further reduce licensing requirements on a discretionary basis.[12] The state has also adopted laws which may serve as a license waiver for qualified individuals under certain circumstances.[13] Furthermore, the governor may waive licensing requirements although she did not do so after Katrina.[14]

While in principle Louisiana had the legal tools in place to overcome the problems facing New Orleans in the aftermath of the disaster, in practice the provisions were confusing, not only to contractors and residents, but to the courts.[15] Many of the powers were arbitrary, such as the power to waive licensing requirements on a case by case basis. Both confusion and the arbitrary nature of waivers lead to uncertainty. Furthermore, after Louisiana does make provision for waivers that would allow contractors licensed elsewhere to work in the state following a disaster declaration, but contractors must first obtain government permission. After a major disaster, government agencies like the Licensing Board are strained, making administrative delays inevitable. The Licensing Board relaxed enforcement of licensing in the aftermath of Katrina, but the laws remained in place, meaning that an unlicensed contractor could not enforce contracts in the courts.[16]

For homes that were flooded, the city would not restore power until the wiring had been inspected by an electrician home be completely rewired, among other things, putting substantial strain on a small number of electricians.[17] One interviewee explained how many jobs (such as plumbing or electrical work) must be inspected, even if they are carried out by a licensed professional.[18] According to the same interviewee, immediately following Katrina there may have been as few as four such inspectors in New Orleans.[19]

Flooded buildings had to be assessed before they could be reoccupied. A building that was assessed 49 percent damaged could be repaired but a building that was 51 percent damaged had to be demolished and rebuilt (requiring a permit) under a different code than repaired buildings and at a massively increased cost.[20] The subjective nature of this judgment meant residents sought repeated assessments, further straining the limited number of individuals providing this service.

The combination of licensing and permitting, which increased in both magnitude and costliness after the disaster, made it harder for New Orleans to rebuild. A study by David Skarbek found that by increasing, rather than reducing, licensing requirements, Louisiana created unnecessary delays in recovery and exacerbated the crisis.[21] Many Louisianans turned to illegal workers, reducing the level of consumer protection by government and further worsening the crisis.[22]

10. Adam B. Summers, *Occupational Licensing: Ranking the States and Exploring Alternatives*, Reason Foundation, (Reason Policy Study No. 361, 2007).
11. Louisiana Contractor's Licensing website, http://www.lslbc.louisiana.gov/
12. Louisiana Review Statute §37: 2164.
13. See Louisiana Review Statutes § 29:733, art. 4 and § 29:751, art. V
14. Louisiana Review Statute § 29:724.
15. See TRADEWINDS ENVIRONMENTAL RESTORATION, INC V. ST TAMMANY PARK LLC & COLONY INSURANCE COMPANY, UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, No. 08-30729 (2009).
16. Ibid.
17. See City of New Orleans, "Post-Katrina FAQ," available at http://www.cityofno.com/portal.aspx?portal=1&tabid=50.
18. *Supra*, note 3.
19. Ibid.
20. Ibid.
21. David Skarbeck, "Restricting Reconstruction: Occupational Licensing and Natural Disasters," in *The Political Economy of Hurricane Katrina and Community Rebound*, Emily Chamlee-Wright and Virgil Henry Storr, eds. (forthcoming).
22. Ibid.

2.3. Minimum Staffing Ratios

Louisiana requires minimum staffing ratios for child and nursing care.[23] In ordinary circumstances this requirement may result in a higher standard of care, but in a crisis there may be too few resources to provide that level of care to all. The optimal response may be to provide the best possible care to everyone, but the laws prevented this from happening.

Interviewees revealed that childcare facilities were prevented from taking many children due to restrictions on child/staff ratios, resulting in parents being unable to place children in a facility at all.[24] Even though the law was designed with the best intentions—to ensure a standard of care for children—the effect for many children was the absence of care. The consequence was that some children were left unattended, parents were unable to go to work, and some citizens simply decided not to return to the city at all.[25]

3 Facing the Unexpected

Disasters do not just disrupt individual lives, they also disrupt governments. When certain actions require government permission—such as rebuilding—civil society becomes dependent on a government that may itself be paralyzed by disaster. The system of checks and balances designed by America's founding fathers is slow and deliberative—not at all designed for crisis. Similar checks and balances have been adopted by state and local governments. Furthermore, when the disruption is great enough, the government may be unable to repeal or even suspend the rules that are problematic.

The system of checks and balances designed by America's founding fathers and adopted by state and local governments is slow and deliberative, and not at all designed for crisis. In emergencies, the executive branch must sometimes step in and assume greater powers than usual. Executive power can overcome roadblocks by breaking through the system of checks and balances in exceptional circumstances. The downside is that in all other times, those checks and balances serve to protect Americans against government excess. Handing emergency power to the executive becomes particularly problematic when, as is very often the case, the executive declares the emergency in the first place. In 2006, the governor of California declared prison overcrowding an emergency, which allowed him to use extraordinary powers to outsource prisoners to other states. The rationale for making prison overcrowding an emergency was that a special session of the California legislature ended without approving the governor's proposals. In refusing to overturn the governor's actions, the California appeals court noted that no declaration of emergency by the governor had ever been overturned.

State approaches to defining "disaster" differ. California includes air pollution and energy shortages among the (non-exclusive) list of potential disasters. In contrast, Arizona permits broad emergency powers for invasion or nuclear disaster, but the power of the governor to respond to other disasters is considerably more limited. Furthermore, the broad powers granted in war expire after 24 hours unless the legislature is in session or the governor calls a special session.[26]

By using his emergency powers to force prison outsourcing, California Governor Schwarzenegger certainly broke through the gridlock of a paralyzed legislature, but perhaps not in the way the writers of California's laws had envisaged. Ideally, legislators would tell the executive exactly what to do in an emergency, but this is not possible when the immediate needs of the crisis are unknown. A better solution would be for power to flow to thousands of chief executives who have specialized knowledge about what needs to be done to recover from a disaster—such as local officials, entrepreneurs on the ground, and the heads of state agencies , non-profits, and charities—rather than just to one chief executive. Among these thousands of executives are the heads of state agencies and local officials, as well as nonprofits, charities, and entrepreneurs on the ground.

The idea of empowering thousands of chief executives sounds counterintuitive. In war we do not expect the

23. See *Louisiana Administrative Code* Title 67, ch. 73 §7355–7385, http://www.dss.state.la.us/assets/docs/searchable/OS/licensing/ClassBChildCare.pdf; Charlene Harrington, *Nursing Home Staffing Standards In State Statutes And Regulations*, University of California, San Francisco (2007); and Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, *Nursing Homes—Minimum Licensure Standards*, http://www.dhh.louisiana.gov/offices/publications/pubs-112/NH_Minimum_licensure_01201998.pdf.
24. *Supra*, note 3.
25. Ibid.
26. A.R.S. § 26-301 - 306.

army, navy, and air force to each make separate plans. Why then should the optimal response to a natural disaster or a terrorist attack be to decentralize decision making? This may be the proper response because of the difficulties of collecting information around a centralized agency. During Katrina, the White House was forced to rely on the same news reports available to every American.[27] The federal government had the resources, but the top-down hierarchy was unable to match the central supply of information with demand. Indeed, attempts to coordinate resources often proved counterproductive to absurd extremes. After Katrina, Federal Emergency Management Agency (FEMA) officials denied rescuers—including the Red Cross, which is experienced in such disasters—entry to the city on the grounds of safety, but the officials were unable to provide the needed help.[28] Even the federal government had difficulty getting through to FEMA: a hospital ship sat outside New Orleans for a week waiting for permission to help Katrina victims.[29] In one case, a doctor was ordered to stop giving chest compressions to a dying woman because he had not registered with FEMA.[30]

One explanation for the disconnect between the supply of relief and the demand for it is that FEMA, which took charge of the federal response, simply did a bad job. An alternative explanation is that FEMA officials could not have done a good job (though they might have done a better job under the than the one they did) because they lacked the information necessary to connect those who could provide relief with those who needed it. Although the big picture would emerge in the weeks and months following the hurricane, at the time there were only thousands of small pictures. It was as though someone had dumped out a jigsaw puzzle and asked FEMA to describe the picture before putting any of the pieces together.

The solutions to the crisis were known, but not by any single individual. There were a host of knowledge problems of the sort that are solved continuously and smoothly in a normally operating market economy. For example, gas station owners knew about the need for gas because their customers continued to buy it. But they may not have known about the specific needs for daycare and public schools unless they themselves had children.

WHEN DOING SOMETHING MAKES THINGS WORSE

Immediately after Katrina, the federal government attempted to prevent most residents from re-entering New Orleans. Then, when return was permitted, a permit was required. One gas station owner reported being prevented from returning to his business until explaining to police that his was the only gas station still operating in New Orleans (and therefore responsible for supplying gas to the police).[1] Interviewees reported one local government bought fuel for generators only to have it confiscated by FEMA agents. The problem was resolved in a sense when the second shipment of fuel was guarded by armed sheriff's deputies with orders to defend the needed supplies by force.[2]

In addition to other restrictions, some businesses that were able to open were closed down. This was not limited to small businesses; FEMA briefly closed down a Wal-Mart (which was reopened after the Jefferson Parish Sheriff's Department threatened to arrest FEMA officials).[3] By closing down businesses and preventing people from returning to the city, the federal government was responding to public concern about the safety of New Orleans's residents, but, the effect was to turn away aid and assistance needed to rebuild the city.

During the disaster, the president of Jefferson Parish, Louisiana said to NBC's Meet the Press:

> "Sheriff Harry Lee said that if America—American government—would have responded like Wal-Mart has responded, we wouldn't be in this crisis."[4]

FEMA made things worse because it assumed it could do a better job than local officials and entrepreneurs at allocating resources. In reality, FEMA had the resources but not the local know-how to use those resources most effectively.

1. Confidential interview conducted by Mercatus scholar.
2. Ibid.
3. See statement by Aaron Broussard, President of Jefferson Parish Louisiana, to "Meet the Press," NBC News (September 4, 2005), http://www.msnbc.msn.com/id/9179790/.
4. Ibid.

The local Wal-Mart knew what customers were buying and had the operational expertise to deliver it—so much so that one local politician remarked, "We didn't have looting on a mass scale because Wal-Mart showed up with food and water so our people could survive."[31] Yet Wal-Mart would not have been so effective at getting doctors to the patients who needed their help since that was outside the firm's scope of knowledge and expertise. The Red Cross knew this but did not know where laundromats were needed.

27. Jed Horne, *Breach of Faith: Hurricane Katrina and the Near Death of a Great American City* (New York: Random House, 2006), 91.
28. Ibid, 89, 90.
29. Ibid, 89.
30. Ibid, 90.
31. Steven Horwitz, "Wal-Mart to the Rescue: Private Enterprise's Response to Hurricane Katrina," *The Independent Review* 13, no. 4 (2009): 511–528.

In short, a vexing problem had to be resolved. Holders of specialized knowledge on particular needs, gasoline let us say for instance, had no way to know about or connect with potential gasoline suppliers. First the disaster itself, and then government efforts to take control of the knowledge problem, shut down the critical role played by multiple small-business operators, brokers, and middlemen, who bring supply and demand together.

In the wake of the hurricane, FEMA officials assumed someone needed to take control. In reality, someone needed to release control. It is not necessary to centrally coordinate the actions of Wal-Mart and the Red Cross with gas stations and laundromats any more than such coordination would be desirable outside of an emergency. This is not to say there is no coordination: prices can serve the function of coordinating individual activities toward a common goal making central planning unnecessary. An individual shopper does not know if other shoppers might need supplies more than she does, but if the price of those supplies is more than she is willing to pay, then she will leave those items on the shelf for others who are willing to pay more.

Non-price mechanisms such as social networks can also coordinate individual activities, but disasters make it harder to know the needs of all individuals.[32] When needs change suddenly and continue to change rapidly until the crisis has subsided, prices are the most effective way of coordinating individual activity because prices allow for rapid feedback between individuals.[33] To prepare for the unexpected, policy makers need to be ready to give power to the thousands of individuals who know where the need is greatest.

BEING READY

States differ in their approach to preparing for disasters. In California, the government spends money on disaster mitigation projects as diverse as improving building designs and construction methods, public education, and research into the physical and social effects of earthquakes. California law also emphasizes the importance of public-private collaboration, but the state focuses on the government developing plans for coordinating private sector responses. Similarly, New York gives broad powers for using "any and all" resources—public or private—to respond to a disaster. In fact, state law mandates a plan to centralize coordination of resources.

Other states take the opposite response of relaxing rules. In Florida, the director of the Office of Financial Regulation can temporarily modify or suspend financial regulations to unburden private actors.[1] By contrast, the governor of New York's power to temporarily suspend regulation is extremely limited and can be easily overturned by the legislature.[2]

Florida and North Carolina were the first two states to require that local governments develop a plan for disaster.[3] This overcomes the difficulties that face state and federal governments of measuring the outcomes of intervention because local governments are held accountable to voters. However, because the cost of disaster relief is still largely born by the federal government, local governments tend to be shortsighted in disaster preparation.

1. FL ST § 252.62-3.
2. NY EXEC § 29-a.
3. Philip R. Berke & Steven P. French, "The Influence of State Planning Mandates on Local Plan Quality," *Journal of Planning Education and Research*, Vol. 13, No. 4, (1994): 237– 250.

4 Lessons from the States

Policy makers do not need to devise entirely new mechanisms for dealing with crisis. Many mechanisms already exist for empowering the thousands of chief executives among the states. Here we consider some of the most effective mechanisms revealed by a survey of disaster laws across several states.

4.1. Licensing Waivers

Licensing laws are designed to protect consumers, but in a disaster many licensed professionals may be injured, killed, or will leave the crisis area. At the same time, the demand for their work will often increase. Consumers

32. Emily Chamlee-Wright, *The Cultural and Political Economy of Recovery*: *Social Learning in a Post-disaster Environment* (New York: Taylor & Francis Group, 2010).
33. Ibid.

are not protected when needed services are unavailable: it may be better to have unsafe electrical wiring replaced by an electrician who is licensed by another state than to not have the wiring replaced at all or to have it replaced secretly by an unqualified amateur.

Under the Emergency Assistance Management Compact between the states, there is a provision for this eventuality: disaster-stricken states will accept licenses issued by other states. However, in some states only government entities can accept out-of-state licenses, leaving a large number of homeowners in need to try to get the services of a diminished number of locally licensed tradesmen. For example, in Texas, any person with evidence of a qualification is treated as being as being licensed in their special discipline when their assistance is requested by a local government but not when their assistance is needed by a private individual or organization.

Moreover, licensing laws vary from state to state, and some professions are not licensed in every state. Some states award the governor power to waive licensing requirements, generally as part of broader powers to alter regulation, whereas others waive or reduce licensing laws automatically when a disaster is declared.

For some professions, a complete waiver of licensing laws might be appropriate. This would be the case, for example, when a particular licensed profession is not licensed in nearby states or when there is little risk to consumers. Missouri's restriction on hairdressers is a good example of both cases. In other professions, such as medical care, states might not want to eliminate all licensing but some reduction in licensing may be essential to averting unnecessary death. In Florida, a disaster declaration automatically serves as authority for a healthcare practitioner licensed in another state to assist in providing healthcare in the disaster area. Making the waiver automatic allows for those with the power to respond to do so as soon as disaster is declared rather than wait for the government to issue a waiver.

Indeed, automatic waivers are the most effective response to a disaster. Instead of waiting to determine where supply shortages exist, the act of declaring a disaster is enough to trigger a waiver. No state has licensing laws so dangerously lax, or radically different, that they would not provide more than adequate protection in an emergency. Many Americans already rely on licensing waivers to allow them to drive in states other than their own. Certainly some states have less rigorous driving tests, and driving conditions vary considerably between states. Drivers from rural Michigan may find it hard to navigate New York City in rush hour, just as Manhattanites might have difficulty after three feet of snowfall; yet the cost of requiring separate licenses for each state a driver visits is simply too high to justify the benefit. Likewise, it is better to have enough carpenters to repair hurricane damage and construct temporary accommodation than to have only the best carpenters or those who have proven familiarity with local building regulations.

States should pass laws that treat anyone who may legally practice their profession in another state as licensed in that profession for the duration of a disaster declaration. For professions that only some states see a need to regulate these laws would waive licensing altogether. For professions that every state sees a need for licensing, the waiver would allow licensed professionals from other states to practice. Such a waiver need not be reciprocal (although every state would be advised to create waivers) because it is the state granting the waiver that receives the benefit. In doing so, states would recognize that the exigent need outweighs the downside of relaxing licensing laws.

4.2. All Politics Is Local

FEMA officials have specialized knowledge about disaster recovery. When a FEMA official enters a disaster area, she can use her training and experience to predict what kind of responses are likely to work. For example, a federal official might be better at deciding how to prioritize rebuilding schools or hospitals than a local official who has little experience with those kinds of decisions.

In an emergency, governors typically delegate authority upwards to federal experts, but they should also delegate power down to local experts. Local officials have specialized knowledge about their communities, and rebuilding after a disaster involves working with those communities. Some individuals, businesses, and communities will have skills or resources that can help the rebuilding effort. When federal officials step in, they lack the specific knowledge about the community they enter and may fail to take full advantage of those skills and resources. Successful disaster relief needs to take advantage of both the expert knowledge of experienced officials and local knowledge.

Delegating downwards has the added advantage of reducing the incentive problems that occur when the governor can increase his own power by declaring an emergency. Many states have elected statewide offices besides that of the chief executive. In addition, political subdivisions may have their own chief executives. Vesting emergency powers in these offices separates the declaration of emergency from the power it confers and removes the incentive problem to the extent the officers are independent of the governor. When some central coordination is necessary, several states transfer power to an emergency management council comprised of statewide officers. (See "Delegating Executive Power" for examples.)

DELEGATING EXECUTIVE POWER

In Arizona, when the governor declares an emergency, specific executive powers relating to emergency management are not vested in the governor but in a director of emergency management.[1] This director has no power to declare a state of emergency. Arizona law also provides for the creation of an emergency council composed of executive officers of the state. In addition to its responsibilities for advising the governor, the council is responsible for monitoring the necessity of the ongoing state of emergency.[2]

Florida also delegates power downward, giving authority to modify or suspend financial regulations to the director of the Office of Financial Regulation and similar powers over insurance to the commissioner of insurance.[3]

1. Arizona Revised Statutes § 26-306.
2. Arizona Revised Statutes § 26-304.
3. Florida Statutes §252.358.

Economist Sanford Ikeda and disaster planning specialist Peter Gordon suggest the devolution of power can go even further.[34] Even local officials cannot benefit from the feedback provided by the price mechanism. They suggest allowing neighborhoods the opportunity to form private associations—similar to homeowners associations but separate from the city government—if supermajorities of residents agree. Under Ikeda and Gordon's plan, these associations would have the latitude to experiment with different rules to encourage rebuilding and development, replicating the entrepreneurial discovery process.

Whether it is allowing private associations or devolving power to existing officers, decentralizing decision making has the power to capture local knowledge, reduce the likelihood of governments being shut down by disaster, and protect our system of checks and balances.

4.3. Immunities and Boards of Conduct

States generally recognize that disaster responders should have a lower legal liability in emergencies than would be the case under normal circumstances. Although some states only extend legal immunity to public employees and government agencies, several states also offer limited immunities to private individuals offering aid or shelter. These provisions can increase the amount of aid made available and reduce the degree of human harm.

In some cases, it may be beneficial to reduce legal liabilities and regulatory standards imposed on businesses. For example, interviewees in New Orleans described how numerical limits on the number of children a daycare facility could take, resulted in some children having no daycare at all.[35] The standard imposed by this regulation was too strict in the aftermath of a serious disaster. In general, lower-quality standards may be beneficial in a disaster to ensure a greater range of needs can be served.

Medical care is an example of a service where a reduction in the level of quality assurance provided may be beneficial. After Katrina, policy makers in Louisiana created an Emergency/Disaster Medicine Review Panel to serve in the place of an ordinary criminal investigation following accusations of medical misconduct.[36] Medical personnel who administer (or fail to administer) treatment or evacuation have special immunity in a disaster.[37] If copied by other states, these provisions could expand the availability and affordability of healthcare after a disaster and reduce the potential for human suffering.

4.4 Specific Regulatory Waivers

Sometimes the unexpected is a little more predictable. When states can predict the type of disruption that will hit, if not the timing or location, then policy makers can get more specific about the type of remedy. Hurricanes are a common occurrence in Florida, and the state has special laws that protect its elderly and vulnerable populations. Among these, the state allows people to pick up their prescriptions ahead of time whenever a

34. Peter Gordon and Sanford Ikeda, *Power to the Neighborhoods: The Devolution of Authority in Post-Katrina New Orleans*, Mercatus Policy Series, Policy Comment no. 12 (Arlington, VA: Mercatus Center at George Mason University, 2007).
35. *Supra* note 3.
36. LA R.S.*Louisiana Revised Statutes* 29:735.4.
37. LA R.S.*Louisiana Revised Statutes* 29:735.3.
38. FL ST § 252.358.

hurricane is coming.[38] This allows people to stock up in advance of possible disruption.

Most disasters are not as predictable as hurricanes, but anticipating the needs of residents can preserve checks and balances by allowing full deliberation of measures ahead of time while maximizing regulatory preparedness. If California can enact laws that require buildings to withstand earthquakes, why not also put in place laws that automatically waive building regulations after an earthquake to allow for the construction of temporary shelters?

4.5. Rethink Price-Gouging Laws

Many states have price-gouging laws which come into effect after a disaster. These laws are a natural response to the concern that businesses might exploit customers during disasters, but in some cases price-gouging laws can actually harm consumers. The cost of bringing in goods may rise in the disruption of a disaster. Wages typically rise when people are unwilling to return to the afflicted area.[39] It is normal that workers in adverse conditions (e.g., Bering Strait fishermen, North Sea oil riggers) are paid a hardship allowance; workers returning to a disaster area should reasonably expect to be paid more than they would receive to do the same job in more comfortable conditions. The same may be said of the owners of small businesses who must also endure hardships to reopen immediately after a disaster.

Higher prices act as an incentive to entrepreneurs to provide goods and services that are in short supply. For example, a store may decide to remain open 24 hours a day, fulfilling the immediate need for goods and services allows, because the store owner to charge higher prices in a disaster. Alternatively, the owner might keep more goods in stock in preparation for a disaster knowing that he will be compensated for this extra cost if disaster strikes.

Finally, prices are an effective way of rationing scarce goods, and even when prices are controlled, those individuals who are able to obtain the desired item may be able to resell the item to others. In short, scarcity will not be eliminated by price controls; their presence ensures that opportunities for arbitrage gains will remain. In the 1970s, the federal government responded to an energy crisis with price controls. This meant that those who could get gas paid less—but a lot of people who needed gas couldn't get it at all. In the 2000s, prices were allowed to rise. A lot of people disliked the higher prices, but people responded by reducing the amount they drove or carpooling. The result was that people who needed gas, and were willing to pay more, could still get it.

In most circumstances, Americans understand the problems with price controls. Far from being an exception, a disaster is a time when price controls are especially problematic. It is harder for governments to know what is needed or what the appropriate price should be. As a general policy, price-gouging laws should either be eliminated or designed with enough flexibility to encourage movement of critically needed resources to people and places that face the greatest need. Instead of limiting price, governments might consider offering bounties.

5 Recommendations for Federal Policy Makers

Since the early 20th century, the federal government has played an increasing role in disaster relief. This can be beneficial by providing resources and expertise not available at a local level. But the rules that accompany federal aid can also distort incentives. For example, North Carolina has established criteria for disaster declaration that forces the governor to declare a major disaster if the criteria for federal aid is reached.[40]

By making disaster declarations more commonplace, the incentive structure also encourages states to make fewer provisions for dealing with the most serious disasters. States can benefit financially from treating minor emergencies as disasters, but special provisions that can mitigate serious disasters can be harmful when no disaster exists. Disaster provisions disrupt the rule of law and can undermine the power of special interests. If the government puts in place a safety provision, such as minimum quality of care in nursing facilities, it might be desirable to waive that provision when care is unavailable, but if disasters are declared every week then the standard may as well not exist. States would rather not see their standards diminished in this manner but rather than sacrifice federal aid by declaring fewer disasters a state may decide to treat all emergencies as disasters and be unprepared when the worst happens. Frequent waiv-

39. P. Beeson and W. Troesken, "When Bioterrorism Was No Big Deal," NBER Working Paper 12636, 2006.
40. N.C.G.S.A. § 166A-6.

ers will also hurt special-interests who are able to obtain favorable regulations, like a local monopoly which lobbies for zoning laws to prevent competitors from entering the neighborhood. Though it may be desirable to see special interest regulation waived often, the more frequently disasters are declared, the more the industry will oppose general regulatory waivers, which are needed in a true emergency.

If disaster declarations bring money to the state, state government officials and special interests will want more of them. The federal government has attempted to reduce the magnitude of this problem by requiring state or local governments to provide up to 25 percent of disaster spending, depending on the type of aid being offered.[41] This decreases the incentive to declare disasters, but it also means that there is less aid for the truly needy. Consequently, the federal government often requires that state and local governments foot much less than 25 percent of the bill for disasters.[42]

As noted above, government officials and special interests like disaster declarations if they bring money, but they dislike the effect of disaster declarations when best practices, like the policies described in this paper, are adopted: the carpenter's association likes federal funding for building projects but not allowing carpenters from other states to compete. States respond by not adopting best practices. If the federal government required that states could not receive money without the adoption of best practices, however then states would prefer fewer disaster declarations and would have better responses to the most serious disasters.

The federal government should delink the goal of relieving human suffering from the goal of economic recovery; protecting people from the harm created by disaster needs to be linked to rebuilding the afflicted area. Indeed, when rebuilding a community means moving people back into a high-risk area, the two goals are in conflict. By designing programs to focus only on the goal of reducing human suffering, and not rebuilding, the federal government can avoid such conflicts. The federal government can decline to make capital investments (e.g., rebuilding roads, schools) in damaged communities while maintaining a commitment to protecting human life (e.g., evacuating individuals, providing medical supplies). The federal government can adjust economic relief programs to help people rather than geographic areas by giving aid and assistance to individuals in need. Then individuals can decide to use either to rebuild their former community or to leave the area and make a fresh start.

LEND A HELPING HAND OR AN INVISIBLE HAND?

Sometimes aid efforts can make things worse. Economists Russ Sobel and Pete Leeson argue that although rescuers want to help, political incentives can make it hard to do so.[1] Rescuers want to avoid public criticism, which leads them to be excessively risk averse. Unfortunately, in New Orleans this risk aversion not only made the helping hand of federal aid less effective, but impeded what Adam Smith called "the invisible hand" of the market. In the first few days of the disaster it was private companies who brought needed resources into New Orleans while federal rescuers prevented essential workers from returning to the city, even after it was safe to do so, and prevented businesses from providing needed services.[2]

Federal aid might also contribute to corruption. When Leeson and Sobel compared indices of state corruption to the receipt of federal aid they found a positive correlation, which they argue is because federal disaster money increases the opportunities for corruption.[3] The relationship becomes more complex when federal disaster aid is not only tied to the number or severity of disasters a state receives, but also to the political importance of that state. For example, so-called "swing states" tend to receive more disaster aid than other states for the same level of destruction.[4]

1. Russell S. Sobel and Peter T. Leeson, "The Use of Knowledge in Natural-Disaster Relief Management," *Independent Review* (2007).
2. Ibid.
3. Peter T. Leeson and Russell Sobel, "Weathering Corruption," *The Journal of Law and Economics* (2008).
4. Ibid.

The Small Business Administration's (SBA) disaster loan program is a good example of such a program. It requires entrepreneurs to assume some of the risk of rebuilding: entrepreneurs receive subsidized loans for investment, but they must repay the loan. This allows the federal government to use its substantial resources to alleviate suffering and to aid rebuilding, but to delegate decisions to the thousands of chief executives who have specialized knowledge about needs on the ground. The program does not eliminate all the problems created by subsidies, and the SBA is more likely than banks to back excessively risky projects, but the SBA program offers potential improvements over direct government spending.[43]

Finally, federal regulators can waive some regulations during a disaster. For example, the Environmental Protection Agency will sometimes remove environmental

41. The Robert T. Stafford Act 42 U.S.C. 5121-5207.
42. See Jamie Guillet, "Louisiana pressures Bush to waive funding match," *New Orleans City Business*, April 27, 2007.
43. Veronique de Rugy, *Banking on the SBA*, Mercatus on Policy, no.2 (Arlington, VA: Mercatus Center at George Mason University, 2007).

protection standards when those standards become harmful to, as opposed to protective of, human life. Some workplace safety standards might also be waived to allow rebuilding to proceed more rapidly and reduce the number of people living in substandard accommodation. Currently, these waivers are implemented by individual agencies implement these waivers on the application of the governor of the state. We propose that agencies be able to waive regulations as soon as a disaster is declared and that policy makers should consider automatically waiving some regulations as soon as disaster strikes, evaluating afterwards which waivers need remain in place.

6 Conclusion

When disasters strike, laws designed to protect citizens in ordinary circumstances can sometimes make matters worse. Ordinarily, there are advantages to requiring that daycare centers provide a high quality of care. After a disaster, however, when there are too few daycare centers, a lower quality of care is preferable to leaving children unattended.

The natural response to such problems is often to turn to a central authority—often a governor or the president—but such central authorities often lack important knowledge about the situation on the ground. The result can create more impediments to recovery. Instead, governments should turn over power to the thousands of chief executives on the ground who know and understand the needs of people in the aftermath of the disaster. This includes local officials, nonprofits, and entrepreneurs, all of whom have specialized knowledge not available to federal officials. This also includes small local organizations but also outside groups such as the Red Cross, who have experience dealing with human suffering, and businesses such as Wal-Mart, who have experience in managing large-scale distribution operations.

By spreading decisions out among the people who have the best information at the time, cities and states struck by disaster can improve the speed of their response and better alleviate human suffering. To coordinate these thousands of chief executives, states need to reconsider price controls that limit the ability of decision makers to take into account the needs of others. In short, although individuals have some needs after a disaster that require government assistance, this is not universally true. Many of the needs of the people will be better met by allowing individuals greater freedom will better meet many of the needs of people.

About Bruce Yandle, author

Bruce Yandle is a distinguished adjunct professor of economics for the Mercatus Center's Capitol Hill Campus program and the dean emeritus of the Clemson College of Business and Behavioral Sciences.

Dr. Yandle is the author or co-author of numerous books, including *Taking the Environment Seriously*, *The Political Limits of Environmental Regulation*, *Environmental Use and the Market*, *Land Rights*, *The Economics of Environmental Quality*, and most recently, *Common Sense and Common Law for the Environment*. He served as a member and chairman of the South Carolina State Board of Economic Advisors.

From 1976 to 1978, Dr. Yandle was a senior economist on the staff of the President's Council on Wage and Price Stability, where he reviewed and analyzed newly proposed regulations. From 1982 to 1984, he was executive director of the Federal Trade Commission. Before entering a career in university teaching, Dr. Yandle was in the industrial machinery business in Georgia for fifteen years.

Dr. Yandle earned his PhD and MBA from Georgia State University and his AB degree from Mercer University.

About Mark Adams, author

Mark Adams is a research fellow within the Regulatory Studies Program.He has previously worked as a economist for the British Conservative Party and as the research director for the Laffer Center at Mercer University. Adams earned his bachelor's degree from the University of Liverpool and his master's degree from George Mason University where he was a Mercatus Master's Fellow. He is currently seeking a PhD at George Mason. Adams' areas of specialization are immigration, transport, and regulation.

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Managing Editor: Jennifer Zambone
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