

**State Structure and the DHS: The Hybridization of Disaster Planning
and the Prospects for Homeland Security in the United States**

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Introduction

After the attacks of 9/11, the revival of a national civilian defense program, under the moniker “homeland security,” has become a crucial domestic policy of the federal government. Disaster planning and civilian defense, subjects that had long been relegated to the academic subdiscipline of security studies, are now the daily grist of newspapers and cable news channels. The events following the natural disasters last year along the Gulf coast have brought increased attention to disaster planning and preparedness. More than a few self-proclaimed experts on asymmetric warfare, civilian defense, weapons of mass destruction (WMD), and grand strategy (as well as the weather), have offered opinions on the obvious: emergency planning and post-disaster operations are dysfunctional.¹ But this is not news to anyone who has spent time thinking about emergency planning, national security, or the postwar history of civilian defense. There is a sizeable policy history regarding domestic planning for catastrophic events and most of it does not bode well for the Department of Homeland Security (DHS) or the other agencies charged with civilian defense in the post- 9/11 period.² Given the

¹ In this essay the term WMD is used more broadly than usual to include the use of “conventional weapons” that can have the same mass casualty effects that chemical, biological, radiological, and nuclear weapons can have. In this broad use of the term WMD, the paper is less precise than some studies. Also, the term super-terrorism or catastrophic terrorism is conceived as an attack with the intent to cause a serious disruption to the economic and political social order of the United States (or other nations), including mass destruction, death, and panic. “State structure,” is also broadly conceived here in the American context. It refers specifically to federalism and the fact that the United States is a constitutionally configured federal republic. “Hybridization,” as used in this paper refers to the conflating both man-made (i.e., terrorism) and natural disasters as an *organizational choice* for streamlining civilian defense and emergency planning.

² On the creation of the DHS see, H.R. 5005, the Homeland Security Act of 2002 . <http://www.whitehouse.gov/deptofhomeland/bill/> . The literature on emergency planning and disaster studies can be found, for the most part, in three main areas: sociology, policy administration/public policy, and the security studies subdiscipline of political science. Two interesting books with large bibliographies

comprehensive literature on the history of civilian defense and emergency management, one might assume that DHS planners, the Congress, the President, and other national security planners should have a sound basis for developing a rational system for homeland security. Instead, the creation of a super-bureaucracy within the executive branch is, by virtue of its highly centralized organizational structure, potentially at odds with a constitutionally based federal republic such as the United States. Furthermore, centralizing homeland security in a bureaucracy such as the DHS produces organizational antinomies that become institutionalized as best practices.³ For example, the concept of civilian defense still remains so poorly defined that it produces policy paradoxes that impair its implementation. In addition, the organizational structure of the DHS has overtly conflated emergency planning for man-made and natural disasters in such a way that neither will be dealt with in a satisfactory fashion and, perhaps, may complicate emergency management planning and policy.⁴ In other words, “comprehensive” emergency management after 9/11 has come to mean *hybridized disaster planning* and

that offer fine examples of the scope of this literature are Alan Kirschenbaum, *Chaos Organization and Disaster Management* (New York: Marcel Dekker, 2004); and E. L. Quarantelli, ed., *What is a Disaster? Perspectives on a Question* (New York: Routledge, 1998). In addition, two well-respected journals deal specifically with these issues: the *Journal of Disaster Studies and Management* and the *Journal of Contingencies and Crisis Management*, both published by Blackwell.

³This is touched on below; however, suffice it to say that bureaucratic and institutional *layering* typifies the development of the DHS and this creates conditions for a type of organizational structure that is problematic. Layering as a model for understanding institutional continuity and change is a useful way for understanding some facets of American political development (APD) especially in the area of postwar security organizations such as the DHS. On the concept itself and its application to institutional development and APD, see Jakob S. Hacker, “Privatizing Risk without Privatizing the Welfare State: Hidden Politics and Social Policy Retrenchment in the United States,” *American Political Science Review* 98 (May 2004): 243-260

⁴Folding the Federal Emergency Management Agency (FEMA) into the DHS along with other emergency management line agencies is one example of this. After FEMA was established 1978-79, it took over the public policy of civilian defense, but the risk of strategic nuclear war with the Soviet Union had dissipated substantially and, hence, FEMA’s main focus was on emergency planning for natural disasters. After 9/11 the swiftly created Office of Homeland Security (OHS) was transformed into the permanent agency that is the DHS. In addition, the focus of the DHS was changed with respect to the

even though this is a reasonable way to conceptualize homeland security in theory; in practice, it is has created organizational confusion and threatens to erode the DHS's capability to streamline planning for either terrorism or natural disasters.⁵

The “global war on terrorism” (GWOT) is an opportunity to examine how the relationship between war and state formation affects domestic policy planning in the United States. This paper investigates how the structure of the American state and the exogenous shocks of 9/11 have affected the institutional and organizational development of the Department of Homeland Security, and how the organizational structure has impelled the hybridization of disaster planning. Regarding the first issue, the paper argues that timing and sequencing are important aspects of the institutional development. In the case of the organizational and administrative structure of the homeland security bureaucracy, the surprise of the 9/11 attacks produced a timing process that produced, to date, a dysfunctional homeland security bureaucracy. In analyzing the second issue, which is connected to the first, the paper suggests that post-9/11 disaster planning and civil defense programs are made more difficult because the DHS makes little distinction between man-made and natural disaster planning. The result? Poor prospects, at best, for

overall mission: counter-terrorism and disaster planning for catastrophic terrorism with weapons of mass destruction (WMD) became one of the central foci of the DHS operation.. I will argue below that the DHS confronted not only the paradox of civilian defense, but also the problematic issue of treating natural and man-made disasters as essentially (not totally) as one. On the paradoxes of civilian defense see, Andrew D. Grossman, “The Paradoxes of Civilian Defense: Political Development and the Fate of Homeland Security in the United States,” paper delivered 2006 Annual Meeting of the American Political Science Association. For a take on FEMA, see Patrick S. Roberts, “FEMA and the Prospects for Reputation-Based Autonomy,” *Studies in American Political Development* 20 (Spring 2006): 57-87.

⁵For some insight into the problem in general and putting aside the hindsight bias that is comes with the territory of any kind of post-hoc disaster reports, see *A Failure of Initiative The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina* http://katrina.house.gov/full_katrina_report.htm

the long-term success of the DHS. As a consequence, the DHS *itself* represents a national security problem for the United States.

Temporality and Institutional Development

Scholars of American political development (APD) have remarked on the American “weak” state and its effect on political development.⁶ The APD scholarship works against more traditional analyses that interpret the trajectory of American central-state development as a product of “American exceptionalism.”⁷ But as many APD and comparative politics scholars have noted, *every* state is exceptional in some form or another, so a grand theory of American exceptionalism leaves one relatively unsatisfied.⁸

While it is a truism that large, highly centralized bureaucracies run into obstacles during implementation in the United States and American exceptionalism might have something

⁶This is a large literature. See the following for examples, Ira Katznelson and Martin Shefter, eds. *Shaped By War and Trade* (Princeton: Princeton University Press, 2002); Karen Orren and Stephen Skowronek, *The Search for American Political Development* (Cambridge: Cambridge University Press, 2004); Skowronek, *Building A New American State: The Expansion of National Administrative Capacities 1877-1920* (Cambridge: Cambridge University Press, 1982); Richard Franklin Biesel, *Sectionalism and American Political Development 1880-1980* (Madison: University of Wisconsin Press, 1984); Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928* (Princeton: Princeton University Press, 2001); Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State* (Chicago: University of Chicago Press, 1999). In addition, the journal *Studies In American Political Development* deals with issues related to all facets of APD and with various arguments of all stripes on the issue of the “American weak state.”

⁷Numerous studies in APD establish this point: except for specific crises that have fairly well-defined time constraints (exceptions would be aspects of the Cold War national security state and some New Deal-era administrative agencies) such as “hot” wars, centralized bureaucracies inevitably run into problems with states’ rights and the structure of American federalism. I would argue even under these crisis circumstances federalism and states’ rights issues continued to hinder the kind of centralization that many policy planners wanted. See for example, Keith D. McFarland and David L. Roll, *Louis Johnson and the Arming of America: The Roosevelt and Truman Years* (Indiana: Indiana University Press, 2005); and Daniel Kryder, *Divided Arsenal: Race and the American State During World War II* (New York: Cambridge University Press, 2000). On crisis, sequencing, and state-building see, Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987).

⁸ See for example, Aristide R. Zolberg, “How Many Exceptionalisms?” in *Working-Class Formation: Nineteenth-Century Patterns in Western Europe and the United States*, ed. Ira Katznelson and Aristide R. Zolberg (Princeton: Princeton University Press, 1986), 397-455.

to do with this, understanding the incongruities of APD is more complex than simply pushing them into the American exceptionalism framework. Studies in American political development have established that massive bureaucracies such as the DHS almost always collapse in the long run and many of these analyses suggest reasons that are more nuanced than the traditional concept of American exceptionalism. In this vein, we might ask how temporality affects institutional development and how federalism affects DHS operations.⁹

The DHS is a product of the post-9/11 policy change in the bureaucratic architecture for national security policy. After the attacks of 9/11, there was enormous political pressure to move swiftly to pass laws and restructure the United States in response to the “new” era of asymmetric war and non-state actor movements with WMD. However, while the consideration of timing and the sequencing of specific state-building projects are the grist for much discussion within the APD literature, it is less so in the security literature and seemingly non-existent amongst DHS planners and key political elites.¹⁰ The post-9/11 literature on emergency planning and civilian defense seems to

⁹Time and sequencing are important variables for understanding institutional development, especially crisis planning. To discuss this in great detail is outside the scope of this essay. “Temporality” as the term is used in the social sciences is usually referenced to the work of Ferdinand Braudel and his historical structuralism, in particular his concept of the *longue durée*. However, theoretically at least, I am following Norbert Elias’ classic essay on the subject. See Norbert Elias, “Time and Timing,” in *On Civilization, Power, and Knowledge* ed. Stephen Mennel and Johan Goussblom (Chicago, University of Chicago Press, 1997), 253-68; see also, Andrew Abbott, *Time Matters: on Theory and Method* (Chicago, University of Chicago Press, 2001), 209-279. Regarding historical institutionalism and more recent work on temporality and the state, see esp. the essays in Wolfgang Streek and Kathleen Thelen, eds., *Beyond Continuity: Institutional Change in Advanced Political Economies* (New York: Oxford University Press, 2005); Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004), 54-102; idem., “Increasing Returns, Path Dependence, and the Study of Politics,” *American Political Science Review* 94 (June 2000): 263-66; idem., “Not Just When, But When: Timing and Sequence in Political Processes,” *Studies in American Political Development* 14 (Spring 2000): 72-92. Douglass C. North, *Institutions, Institutional Change and Economic Performance* (New York: Cambridge University Press, 1990); and David Gross, “Temporality and the Modern State,” *Theory and Society* 14:1 (January 1985): 53-82.

connect two related assumptions in a problematic way, that a new era has arrived, that is, the attacks of 9/11 represented an historical disjunction of a profound magnitude, and exogenous shocks such as the 9/11 attacks will create swift change that will drive the efficient streamlining of homeland security institutions. On the first point, which is less important for this particular paper, it remains an open question as to whether or not 9/11 represents a *fundamental* historical disjunction.¹¹ Surely there is nothing new about asymmetric methods of warfare or non-state actors using these methods to attain strategic ends.¹² On the other hand, a persuasive argument can also be made that the technology to

¹⁰In historical perspective, the Federal Civil Defense Administration (FCDA) and its follow-on agencies at least through the early 1970's could serve as templates for current DHS planning and the problems it might encounter. However, post-9/11 homeland security planners seem to believe that early Cold War civilian defense operations and emergency management programs are basically useless in this "new era" of homeland security. See for example, Richard A. Falkenrath, "Problems of Preparedness: U.S. Readiness for Domestic Terrorist Attack," *International Security* 25 (Spring 2001):147-86, esp. 147. A short list of the issues that rendered the FCDA administratively ineffective were:

- a). The unclear status of the statutory authority for the administrator of the civil defense agency;
- b). The problem of federalism, central-state authority, and state expansion;
- c). The problem of jurisdictional overlap between internal security agencies;
- d). The inability to assess and measure either success or failure;
- e). The collapse of the distinction between external and internal threats;
- f). The granting of enormous discretionary power to unelected officials;
- g). The problem of funding;
- h). The problem of training;
- i). The problem of panic.
- j). The problem that *post-attack* civilian defense against WMD does not work.

With the exception of the first point, this reads like a current list of challenges that the DHS faces. Even regarding the issue of statutory authority the DHS (which is substantially broader than anything granted the FCDA or its follow-on permutations), is caught up in disagreements about the scope of DHS head Michael Chertoff's power, especially as it relates to state governments. Falkenrath has recently been appointed as the New York City Police Department's new counter-terrorism commissioner. See <http://www.ny1.com/ny1/content/index.jsp?stid=6&aid=60551>

¹¹Historical disjunctions are few and far between. They are *profound* historical breaks that can only be conceived from a standpoint of substantial historical perspective. As used here, a historical disjunction is something akin to the break between Medieval Europe and the Dawn of the Renaissance in which lifeways, thought, and art are fundamentally changed. On this view, see Johan Huizinga, *The Waning of the Middle Ages* (New York, Anchor Books: 1954), 9-84, 138-176, 225-263.

¹²For historical context, see for example Franklin L. Ford, *Political Murder: From Tyrannicide to Terrorism* (Cambridge: Harvard University Press, 1985). For an interesting take on the shift from what historians identify as tyrannicide to terrorism, see Benjamin Grog-Fitzgibbon, "From the Dagger to the Bomb: Karl Heinzen and the Evolution of Political Terror," *Terrorism and Political Violence* 16 (Spring

kill hundreds of thousands of people or devastate the national or global economy are now in the hands of small groups in ways that *never* existed before. However, I would argue that a new technological capacity would buttress an argument for historical change, not historical disjunction.

But most post-9/11 emergency planning studies (the *9/11 Commission Report* is a fine example) presuppose historical disjunction, believing that the United States and the world have entered a new, watershed era of national security.¹³ As a result, this view holds, the exogenous shock of the attacks of September 11 will speed the rationalization of bureaucratic organizations such as the DHS, making for an effective, national, and comprehensive civilian defense policy.¹⁴ This is a dubious assumption, especially when one considers the history of state-building in the US. It is self-evident that the DHS developed very swiftly, perhaps in record time given its jurisdictional scope and sheer size, but the issue is not whether the American state can move swiftly in an emergency; instead, the question is whether a centralized super-bureaucracy such as DHS is a *good fit* for a federal republic such as the United States. In other words, has timing (i.e., speed), created the conditions (political and organizational) for a particular *type* of institutional development? I believe the answer is yes. Extreme crisis planning often produces highly centralized but ultimately inefficient bureaucratic development. The potential to fail in

2004): 97-115. Also see the very interesting and relevant opinion editorial by Robert Harris, "Pirates of the Mediterranean," *The New York Times*, (September 30, 2006).

¹³See *9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: W.W. Norton, 2004).

¹⁴The concept of exogenous shocks and effects on institutional development is used in the same way that it is used in punctuated equilibrium models. On punctuated equilibrium models to conceptualize post-9/11 security planning especially with regard to internal security agencies see, Fiona Adamson and Andrew D. Grossman, http://www.ssrc.org/programs/gsc/publications/gsc_activities/migration/adamsongrossman.pdf

protecting the civilian population and critical infrastructure is foreshadowed by the postwar history of emergency management and civilian defense planning, where issues related to federalism became a massive obstacle for any kind centralized homeland security operations.

The lack of historical sensibility in considering how earlier civilian defense plans fared is not only interesting in and of itself, but also emblematic of the way timing can affect institutional development. To wit, the pressure to move quickly after 9/11 meshed with the prevailing view in Washington, D.C. that all facets of homeland security should be consolidated—counter-terrorism, policing, immigration, civilian defense, Coast Guard operations, natural disaster planning, etc.—into one giant bureaucracy. The public and private discourse of historical novelty was not only a way to articulate a plausible logic for a new institutional arrangement for homeland security, but also a way to argue that the GWOT required an organization such as the DHS. However, descriptive language that identifies problems and offers prescriptions is not always synchronized with state-building, and so it was with the creation of the DHS. The need to move swiftly led the Congress, the President, and national security planners to engage in institutional layering, not institutional conversion.¹⁵ The result? A hybrid bureaucracy that largely rests on an *interpretation* of historical disjunction, the GWOT, but organizationally depends on the *institutional continuity* with early Cold War institutions. In this sense, the DHS is just a larger version of the early Cold War homeland security agency, the Federal Civil Defense

¹⁵ For the distinction between institutional layering and conversion, see Streeck and Thelen, *Beyond Continuity*.

Administration (FCDA) and its institutional offspring.¹⁶ The only difference is that the DHS is much more centralized than the FCDA was and, in addition, almost every other domestic security and emergency planning line agency has been folded into DHS's organizational structure.¹⁷ In a federal republic where states' rights are taken very seriously, this does not bode well for the long-term success of the DHS. Furthermore, the organizational incongruity of Cold War institutional arrangements underpinning "new-era" GWOT goals foreshadows problems of institutional buck-passing and problems of local- and state-level integration with the DHS. Politically, if not institutionally, this is a recipe for failure.

The Hybridization of Disaster Planning: Institutional Buck-passing and the Fate of Homeland Security

The DHS is organized to function as a highly centralized internal security apparatus. To date (and this might change), it lacks the kind of broad-based public legitimacy that such statist institutions require, especially in a federal republic as large as the United States.¹⁸

¹⁶With regard to institutional layering, many of the programs and public displays that domesticate and downplay the consequences of catastrophic terrorism are duplications of off-the-shelf programs first employed by the FCDA during the early Cold War. Some of the current DHS plans, especially those that relate to panic prevention, are lifted almost verbatim from early Cold War civil defense manuals. See for example (and compare with public statements today) the narrative from the United States Federal Civil Defense Administration, *Annual Report 1952* (GPO: 1952): 41-101. During the early Cold War, *Project East River* dealt specifically with fear and panic and how these emotions can be managed for purposes of civilian defense and homeland defense. Nothing discussed to date indicates that the DHS and FEMA's plans for civilian defense and homeland security are doing anything new regarding the issue of "individual vigilance" and preparedness planning. See National Archives, National Security Resources Board, Records Group 304, Box 19, Project East River Folder, "Information and Training for Civil Defense," *Project East River*, Part IX, specifically, "Panic Prevention and Control," Appendix IXB, pp. 55-65.

¹⁷ On the FCDA, the early Cold War, and American political development, see Andrew D. Grossman, *Neither Dead Nor Red: Civilian Defense and American Political Development During the Early Cold War* (New York: Routledge, 2001).

¹⁸For some devastating poll numbers that support the argument that the DHS has only minimal public legitimacy in general, see <http://www.pollingreport.com/disasters.htm>

This fact alone suggests the DHS is already in trouble politically and, more ominously, as a comprehensive homeland security bureaucracy.¹⁹ As noted, there is a incongruity between the political structure of the United States and the institutional pathway that DHS has followed.²⁰ The homeland security bureaucracy has far-reaching jurisdictional power over the states and local communities and this has induced “pushback” from the latter. The centralization of homeland security has resulted in the hybridization of disaster planning, that is, all kinds of disasters fall under the DHS’s own rubric of: “comprehensive emergency management.” As public policy, this means natural disasters and terrorism are treated, organizationally at least, as one and the same. Without a doubt, DHS planners and national security specialists distinguish between hurricanes and, say, a chemical weapons attack in a subway, but it is not clear that that profound distinction is organizationally demarcated in the DHS. For example, all the key agencies that deal with civilian defense are now integrated under the new organizational structure that preferences rationalization—i.e., comprehensive emergency management— over specialized, stand-alone organizations and line agencies that deal with different kinds of emergencies. From the perspective of organizational theory, the hybridization of homeland security not only exhibits institutional “tight coupling” but promotes it. As

¹⁹ Ominous because the need for an efficient, relatively sound public policy of homeland security is self-evident. The political component has much to do with the buck-passing of blame (see the diagram in the text), but that can undermine public support. See for example, http://www.dhs.gov/interweb/assetlibrary/OIG_06-32_Mar06.pdf Public support, ultimately, is the key ingredient for success. Currently it is lacking. As we get some perspective, the rather facile analyses are being replaced by more systematic ones. See for example, Christopher Cooper and Robert Block, *Disaster: Hurricane Katrina and the Failure of Homeland Security* (New York, NY: Henry Holt & Co., 2006).

²⁰The scope of this paper does not allow for a discussion of a path dependency and the development of the DHS. However, path dependency and punctuated equilibrium models are one way to comprehend how the DHS got to be the DHS. On path dependency and institutional change, see Pierson, *Politics in Time*; “ idem, “Not Just When, But When: Timing and Sequence in Political Processes;” North, *Institutions, Institutional Change and Economic Performance*; and North, *Understanding the Process of Economic Change* (Princeton: Princeton University Press, 2005).

Charles Perrow has demonstrated, tight coupling can generate some benefits, but for the most part Perrow and others refer to tight coupling as way to understand *how* disasters actually happen.²¹ In light of this, consider that the organization that is responsible for homeland security may be organized, as a result of tight coupling, in a way that *guarantees* policy disasters. Perhaps a good example of this was the Hurricane Katrina debacle.²²

In a relatively weak state such as the United States, federal bureaucracies tend to adapt, over time, to less statist modes of operation. Federalism affects this kind of policy adaptation.²³ For example, in the case of civilian defense and operational planning for both terrorism and natural disasters, the DHS seeks to assign a lot of discretion and operational responsibility for emergency operations with state and local governments. This policy in and of itself illustrates the organizational consequences of institutional layering instead of institutional conversion: an organization that is conceived by planners as something new but which is, in effect, something quite traditional, an institution that farms out responsibility. The result? The duplication of command and control structures, methods for first responders, and emergency management protocols that result in

²¹ The classic example that Perrow uses is the space shuttle Challenger disaster and its relationship to the organizational structure of NASA. In general, six works on organizational theory are germane here. Charles Perrow, *Normal Accidents Living with High Risk Technologies* (Princeton, NJ: Princeton University Press, 1999); Lynn Eden, *Whole World on Fire: Organizations, Knowledge, and Nuclear Weapons Devastation* (Ithaca, NY: Cornell University Press, 2004); James G. March, Martin Schulz, and Xueguang Zhou, *The Dynamics of Rules: Change in Written Organizational Codes* (Stanford, CA: Stanford University Press, 2000); James G. March and Johan P. Olsen, *Democratic Governance* (New York: The Free Press, 1995); idem, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: The Free Press, 1989); James G. March, ed., *The Pursuit of Organizational Intelligence* (Malden, Mass: Blackwell Publishers, 1999).

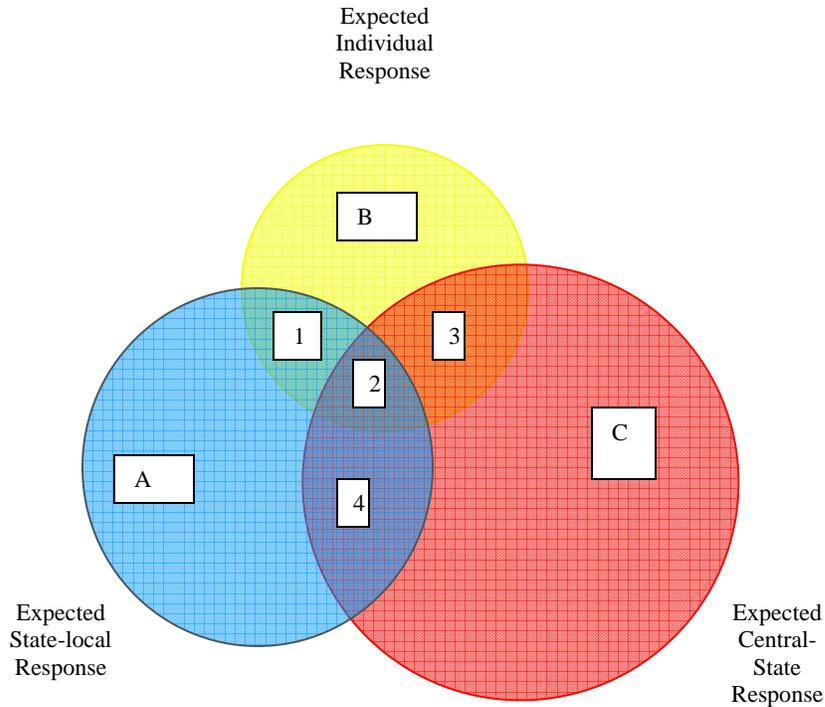
²² See especially, *A Performance Review of FEMA's Disaster Management Activities in Response to Hurricane Katrina*, www.dhs.gov/interweb/assetlibrary/OIG_06-32_Mar06.pdf

²³ See for example, "Homeland Security to Ease Process," *The Wall Street Journal* (October 16, 2006), p. A6.

confused expectations during a crisis at both ends of the command and control structure, from the individual citizen to the president.²⁴ Federalism is something no centralized bureaucratic organization – and that is what the DHS is—can circumvent. In addition to duplication of processes, the DHS organizational structure is wide open to the “boondoggle effect” which further erodes public support for the organization. With homeland security money being spent as fast as it can be printed, mini-reproductions of the DHS at the local level are developing all over the country. Of course it makes sense that towns have the capacity for local emergency planning. However, in most cases there is more pork than planning, as local politicians and whole communities crowd up to the trough to replace roads, dams, police cars, and almost anything else one can imagine as they “mobilize” for the long-term GWOT. And, of course, this mobilization will come at the expense of the federal government and DHS, rather than local tax payers.²⁵ This problem of policy replication is that it underpins the contradictory roles of civilian defense/emergency management and, as the diagram below illustrates, it creates overlapping spheres of authority. A bureaucracy such as the DHS is attempting to aggressively centralize power while also trying to surmount the problem of states’ rights: the result is not one that bodes well for operational planning, as overlapping spheres of

²⁴ Consider, for example, the recent in-fighting between local and federal agencies regarding the threat to the New York City subway system in October 2005. See for example, “Miffed at Washington, Police Develop Own Antiterror Plans” *Wall Street Journal* (October 10, 2005), p. B-1; “New York and Washington Backpedal to Explain Gap in Threat Perceptions” *New York Times* (October 8, 2005), p. A-13.

²⁵ Emergency preparedness planning has historically been viewed by communities and states as a cash cow for purchasing, at federal expense, many “emergency” items. Emergency planning is a fantastic rationale for old-fashioned, “pork-barrel politics.” See, for example, “Security Grants Still Streaming to Rural States,” *New York Times* (October 12, 2004), p. 1. On “pork-barrel politics,” see “Homeland Security Oversight,” *Washington Post* (December 28, 2004), p. 18. In general, see “Contracting Rush for Security Led to Waste and Abuse,” *Washington Post* (May 22, 2005), A-1. For interesting data on per capita spending for DHS funding see, <http://www.fas.org/sgp/crs/RL32463.pdf>



In this diagram: “C” represents the federal government (e.g., the DHS), “A” represents the state government emergency planning agencies, and “B” represents the individual and her/his role in shouldering responsibility in the post 9/11 homeland security operation. In the overlap of 1, 2, 3, & 4 one finds all positions: federal, state, and individual assuming the other will handle the problem of emergency planning and, most important, post-catastrophic civilian defense. Since all sides are passing the buck, nothing gets done, classic example: New Orleans and Hurricane Katrina. It is in position number 2, that all aspects of command and control break down as organizational frameworks fail as citizens, local government, and the federal government assume the *other* is handling the problem of civilian defense. Position 4 highlights the obstacle of federalism in emergency planning and civilian defense. Finally positions 1, 2, & 3 represent a worst case scenario for politicians, because the citizens do not expect to be part of operational civilian defense even as state government and the DHS expect them to assume substantial responsibility. In this case, the citizenry will blame their representatives and the two political parties for the failure of homeland security operations.

authority that lack clear command and control create enormous incentives for buck passing. As the diagram illustrates, emergency management agencies and citizens assume that responsibility for post-disaster civilian defense resides somewhere else than their own jurisdiction or operational plans.

Because states' rights are fundamental to the American political structure, the DHS cannot function in an optimal fashion as currently organized without, in all probability, a Supreme Court ruling that would allow it to override key aspects of federalism; in this case, the explicit power of governors to manage regional planning in an emergency.²⁶ Equally important is the fact that "comprehensive emergency management" requires a more or less active military component. This fact raises fundamental constitutional issues when we consider the use of military forces or their surrogates (e.g., counter-terrorism specialists) *domestically*, to say nothing of the fact that the military is not exactly "gung ho" about another operational mission being added to its fast-growing list of GWOT tasks. It seems clear, and planners have long written about this in the disaster studies literature, that the DHS will need active military troops to carry out post-attack operations if an act of catastrophic terrorism takes place. In addition, as the Hurricane Katrina disaster demonstrated, aspects of the military will be needed for natural disasters as well, though in a different operational mode and mainly as part of National Guard resources, which raises another issue of federalism. As we know, governors tend not to want "their" National Guard to be federalized in emergencies, for they are wary of losing control over emergency management and being blamed for

²⁶ Governors are very resistant to giving up any power. See for example, "Governors Resist Shifting Authority over Guard," *New York Times* (August 15, 2006). As are police departments: see William J. Bratton's (the police commissioner in LA) opinion editorial, "We Don't Need Our Own MI5," *The Washington Post* (October 18, 2006), p. A-21.

failures under a federalized Guard. Regardless of whether National Guard assets or active duty military assets are used, the truth about a military component to homeland security confronts fundamental legal issues such as the *Posse Comitatus Act*.²⁷ How can DHS surmount such obstacles? It is not clear that it will be able to do so as currently organized. In late 2001, Ashton Carter wrote about the need for a new planning architecture for emergency management in an age of super terrorism. In his essay he used a wonderful metaphor to describe the fate of large DHS-type bureaucracies and the “czars” that run them: “The barons ignore them, and eventually the peasants kill them.”²⁸ The DHS *may* end up ignored by the barons—the other emergency planning agencies that are now competing *within* the DHS and the Congress—and killed by the peasants—the fifty states and hundreds of localities that are already planning their *own* version of civilian defense in the age of super terrorism. Should we despair of the notion of some kind of systematic, comprehensive, and national homeland security process? I think not, but I believe that organizationally it would have to look very different from the DHS.

²⁷ See the Posse Comitatus Act (18 USC 1385). For an analysis of the act and current planning, see Gregory D. Grove, “The U.S. Military and Civil Infrastructure Protection: Restrictions and Discretion under the Posse Comitatus Act,” Working Paper, *The Center for International Security and Cooperation, Stanford University* (October 1999). For additional information see: <http://www.uscg.mil/hq/g-cp/comrel/factfile/Factcards/PosseComitatus.html> and <http://www.rand.org/publications/MR/MR1251/MR1251.AppD.pdf> The Posse Comitatus Act is a Reconstruction-era criminal law proscribing the use of the Army (later, the Air Force) to “execute the laws” except where expressly authorized by the Constitution or Congress. Limits on use of the military for civilian law enforcement also applies to the Navy. In December 1981, additional statutory amendments were enacted (codified 10 USC 371-78) clarifying permissible military assistance to civilian law enforcement agencies—including the Coast Guard—especially in combating drug smuggling into the United States. These refinements of the act emphasize supportive and technical assistance (e.g., use of facilities, vessels, aircraft, intelligence, tech aid, surveillance, etc.) while still generally prohibiting direct participation of DOD personnel in law enforcement (e.g., search, seizure, and arrests). For example, Coast Guard Law Enforcement Detachments (LEDETS) serve aboard Navy vessels and perform the actual boardings of interdicted suspect drug smuggling vessels and, if needed, arrest their crews. Most recently the confusion displayed during and after Hurricane Katrina exemplifies the chaos between National Guard and active duty troop deployment during emergencies.

²⁸ Ashton B. Carter, “The Architecture of Government in the Face of Terrorism,” *International Security* 26 (Winter 2001/02): 5-23. Quotation on p. 12.

Conclusion

In a March, 2006 final report assessing DHS operations after Hurricane Katrina, Democratic Sen. Mark Dayton described FEMA — an arm of Homeland Security — as "just so dysfunctional, or non-functional, it's frightening."²⁹ A devastating assessment to be sure, perhaps stated with an eye toward a political constituency, but for the most part it is a correct description of the organizational structure of the DHS. The tendency to place blame, pass on responsibility, and to politicize an issue such as homeland security is easy to do and, I fear, we will see more, not less, criticism of this type of behavior. What will be lost is a systematic *analysis* of why the DHS is so cumbersome. This is unfortunate and I have tried, in this brief paper, to sketch out one way we might analyze the public policy of homeland security with an eye to exposing its internal conflicts. A sound policy of emergency management and disaster planning is extremely important because there is a clear and present danger to the United States and to other countries from terrorism. And, of course, it goes without saying that Mother Nature cares not for politics, ideologies, or status: she may strike at any time and at any place. For the reasons outlined above, I suggest that DHS is a type of organization that has only a small chance of functioning successfully in a weak state founded on a robust type of federalism. Political geography, the nature of American political development, and the hybridization of disaster planning, all work against the probability of success for a federal super-

²⁹See, http://katrina.house.gov/full_katrina_report.htm . For the quote see, http://www.usatoday.com/news/washington/2006-02-15-katrina-chertoff_x.htm

bureaucracy such as the DHS. I hope that I am incorrect in this statement. Perhaps the DHS will prove to be the very rare example of a highly successful and efficient internal security bureaucracy that protects the citizens, their civil liberties, and our liberal democratic structure from catastrophic terrorism.