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# Organizing the Federal System for Homeland Security: Problems, Issues, and Dilemmas

*Improving the capacity of U.S. governments to provide greater homeland security will require numerous changes in the way federal, state, and local governments are organized and operate. It also will require significant alterations in intergovernmental relations. Changes will be required in intergovernmental dimensions, including operational, financial, legal, and political dimensions. A dual-track approach to rearranging intergovernmental relationships in order to provide a coordinated intergovernmental response to the requirements of homeland security is to be expected.*

The challenges of improving homeland security in the wake of the terrorist attacks on September 11 and subsequent events, such as the anthrax outbreak, have exposed numerous deficiencies of governmental functioning in the prevention and response to terrorist attacks, as well as operational adaptation by response agencies and officials at all levels of government. Citizens have witnessed both glaring gaps in coordinated action by federal, state, and local agencies and effective joint mobilization to deal with the consequences of the attacks. A new recognition exists of the criticality of governments to act effectively on an intergovernmental, interorganizational, and interdisciplinary basis, as well as a recognition that the required relationships are not in place and, in many instances, may not be even understood.

We have come to understand that meeting the challenges of homeland security will require significant changes in the way governments are organized and operate. As one analyst put it, "So when the twin towers collapsed on September 11, it was not only physical walls that came tumbling down, it was also decades-old divisions of labor between the various parts of American government: between federal and local, intelligence and law enforcement, military and civilian, and above all, foreign and domestic. There is no clear 'at home' or 'abroad' anymore. There is just one tightly interconnected world of dangers" (Freedberg 2001, 1). While the dangers and the tasks needed to confront them may be interconnected, this does not mean the activities of U.S. governments are systematically interconnected to perform them. The problem is that "The U.S.

government was just not designed with terrorists in mind," and "the war on terrorism ultimately involves every agency and level of government" (Freedberg 2001, 3). The task of reorganizing and reorienting government operations will be substantial. The U.S. Commission on National Security/21st Century (the Hart-Rudman Commission), chartered by the secretary of defense in 1998, found that "the assets and organizations that now exist for homeland security are scattered across more than two dozen departments and agencies and all fifty states" (USCNS 2001, 10).

We can anticipate numerous changes in the intergovernmental system. Some have cautioned against rapid, sweeping policy or program changes in pursuit of homeland security with major intergovernmental implications, and they have called for reasoned discussion of future needs and responsibilities and analysis of which level of government might appropriately step in to handle them (Walters 2001, 12). Homeland security implies a significant reconfiguring of a substantial portion of the public service. Changes are being made—and will continue to be made—in the political, financial, legal-regulatory, and operational dimensions of intergovernmental functioning.

For homeland security, as for other critical public functions, public-service leaders must discover "what configu-

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ration of organizations, public and private, is needed and what arrangements between them provide the most effective relationships to perform a needed function” (Wise 1990, 142). This task is critical in the area of homeland security, because, as the General Accounting Office has pointed out, a national strategy rather than a purely federal strategy is essential: “To develop this essential national strategy, the federal role needs to be considered in relation to other levels of government, the goals and objectives for preparedness, and the most appropriate tools to assist and enable other levels of government and the private sector to achieve these goals” (Posner 2002, 7).

This article will delineate and analyze several dimensions of the intergovernmental system that may undergo essential changes to meet the challenges of homeland security. It will examine problems, issues, and dilemmas that public-service leaders confront in addressing the critical dimensions involved, including the political, legal-regulatory, financial, and operational dimensions involved in reconfiguring an array of public organizations and resources. In addition, it will analyze potential effects on interorganizational relations and the potential to arrive at configurations that will further the goals of homeland security.

## **Intergovernmental Complexities and Dilemmas**

The first dilemma posed is the all-encompassing nature of the homeland security mission and the sheer number of agencies involved at all levels of government and in the private sector. The issue of reorganizing the intergovernmental dimension is exacerbated by the issue of organizing each level of government to accomplish the homeland security mission. The lack of coordination and overlapping jurisdictions have resulted in fragmentation and often in redundancies within the system (Posner 2002). In a survey conducted by the Gilmore Commission, state and local officials reported being confused and unable to identify the entities in charge of training and resources within the federal government (Advisory Panel 2002). The federal government offered almost 100 separate federal terrorism training courses and created more than 100 federal terrorism response teams under the authority of five federal agencies and departments (U.S. House 2001, 3). In addition, four agencies—the Federal Emergency Management Agency (FEMA), the Department of Justice, the Centers for Disease Control and Prevention, and the Department of Health and Human Services—all offer separate assistance to state and local governments in planning for emergencies, and a number of agencies condition receipt of funds on completion of distinct but overlapping plans (Posner 2002, 8). The task of interfacing with that many separate training programs, response teams, and planning

programs for state and local governments is daunting. The General Accounting Office recently suggested consolidating all programs that do not involve law enforcement functions (GAO 2001a, 91).

The problem, however, is not just the sheer number of points of contact for various purposes. An additional issue is for state and local officials to be able to discern and anticipate which functions at the federal level are to take priority in a given situation. For example, during the anthrax outbreak, were state and local law enforcement and health officials to take their primary guidance from the FBI, the Postal Service, the Centers for Disease Control and Prevention, or the Department of Health and Human Services? This was not clear. More than 40 federal entities are currently involved in the antiterrorism effort. Local governments are faced with a similar array of agencies and functions at the state level. Thus, the horizontal functional axis that needs to link so many functions at every level of government further complicates the intergovernmental organization of homeland security. Many domestic programs link a small number of federal agencies with a state agency and counterpart local agencies with similar responsibilities (such as the Department of Housing and Urban Development and state and local housing authorities), and thus interagency coordination issues at any one level are relatively constrained. In homeland security, responding organizations are almost without limit.

Another degree of complexity in the horizontal plane is dealing with the need for coordination and assistance on a regional basis. Individual jurisdictions, whether local governments or states, are unlikely to have all of the resources needed to deal with every type of terrorism emergency; thus, arrangements for resource sharing and joint action are highly desirable. Federal actions need to be able to anticipate such arrangements and incorporate them into a national strategy. One way to provide for such arrangements is through mutual-aid agreements to provide for resource sharing, joint planning, and joint exercises. However, the existence of mutual-aid agreements for all of the functions involved is uneven. In addition, the terms of mutual-aid agreements vary for different services and different localities (Posner 2002, 17). Neither vulnerabilities nor actual terrorist incidents are distributed predictably, yet they must be dealt with geographically in specific locations and regions. Federal efforts to assist affected state and local governments must be coordinated with regional capabilities and efforts. To this point, the United States has not been organized on a systematic regional basis to confront terrorist threats.

The initial dilemma is how to begin meshing efforts in the two horizontal axes—functional and geographic—with the vertical axis of intergovernmental relations in order to provide for a configuration of organizations that can suc-

cessfully address the mission of homeland security. It should be clear at this point that any national strategy has to take into account the mission, capacity, and interests of the various entities involved at different levels of government. The federal government traditionally has not held the responsibility for national defense, both domestically and on foreign soil, and only the federal government has the resources and the knowledge necessary to combat threats involving weapons of mass destruction or large-scale operations such as the September 11 attacks. On the other hand, state and local governments have had extensive experience in disaster management and have always been the first line of response to such occurrences (Stratton 1989; Hinton 2002).

In sum, the overall context of the undertaking to establish an effective configuration of intergovernmental arrangements includes numerous complexities along both horizontal and vertical axes. Nonetheless, a more complete picture of the undertaking is revealed by a more extensive examination of some specific dimensions of intergovernmental relationships that must be improved—namely, operational, financial, legal-regulatory, and political dimensions. To these we now turn.

## The Operational Dimension

Because the United States has dealt continually with such disasters as floods, forest fires, earthquakes, hazardous materials spills, and riots, governments have some experience in working together during emergencies. However, terrorist attacks impose a new level of social, economic, and fiscal dislocation on the nation and its communities, and they involve the use of many specialized resources that are beyond the capabilities of state and local governments (Posner 2002, 4). In addition, the surprise nature of terrorist attacks and their potential to cause catastrophic damage quickly, in so many different ways, using difficult-to-anticipate modalities requires government agencies to diagnose the threat(s), decide on the most effective courses of action, and respond in an integrated fashion within extremely compressed time frames. Unlike floods or forest fires, in many terrorist attacks, the time is limited for assessing the extent of the threat(s) and their consequences, as well as more serious sources of uncertainty attending the assessment and the response. Three broad types of uncertainty include (1) understanding of the performance of various types of terrorist weapons on civilian populations (for instance, the effect of anthrax powder); (2) warning time; and (3) predicting public reaction and behavior to a terrorist attack (such as chemical or biological) in their midst (Falkenrath 2000, 19–20). Nonetheless, national terrorism preparedness requires that numerous federal, state, local, and private entities be prepared to op-

erate in close coordination to meet the threat and to mitigate its consequences. In short, national terrorism preparedness, crisis management, and consequence management must operate as a closely coupled system. How close the intergovernmental system has come to being prepared to operate this way has been revealed by the many counterterrorism and consequence-management exercises the federal government has sponsored since 1995. “The exercises have revealed critically deficient capabilities, inadequate response plans, and serious intergovernmental conflicts that would emerge in a real situation” (Falkenrath 2000, 21).

A national strategy to improve intergovernmental operational capability would involve assigning well-understood roles to federal, state, and local governments and to the private sector. Role assignment and role fulfillment would be facilitated by performance pursuant to the strategy of risk assessment, vulnerability analysis, and infrastructure-criticality analysis (Walker 2001, 5). As two local fire officials responding to the Gilmore Commission survey stated, “We need recommendations on the risk our area is in for weapons of mass destruction” and “we need to know what potential exposure we have in our area. We have no idea if we should be preparing for these incidents or not” (Advisory Panel 2002, G-8-2).

Intimately related to the risk and vulnerability analysis needed for preparedness is intelligence. The field of intelligence is a particularly challenging area for forging new intergovernmental relationships between federal agencies and state and local government agencies. State and local officials, including governors, mayors, emergency management directors, and fire and police chiefs, often complain their lack of access to sensitive information hampers their ability to address terrorist threats. For example, the National Governors Association has stated that intelligence sharing is a problem between the federal government and the states, and that most governors do not have a security clearance to receive classified threat information. The absence of threat information potentially affects their ability to effectively deploy the National Guard and hampers their emergency preparedness capability (Hinton 2002, 10). Similarly, the National Emergency Management Association, which represents state and local management officials, has stated that certain state or local emergency management personnel, emergency management directors, and certain fire and police chiefs hold security clearances granted by FEMA, but other federal agencies, such as the FBI, do not recognize these clearances (Yim 2002, 14). The reasons for this obvious disconnect range from genuine concerns about divulging sensitive intelligence and national security information to a well-documented history of jurisdictional disputes. The General Accounting Office has suggested developing task forces similar to the ones used to resolve the Y2K issue a few years ago. These

Y2K-style partnerships would require an extensive amount of collaboration and communication among federal, state, local, and private entities (Hinton 2002).

The White House's Office of Homeland Security has taken initial steps to address the communication of risk. On March 12, 2002, the Office of Homeland Security announced the creation of the Homeland Security Advisory System, a warning system that classifies the threat condition according to a color scale of five levels ranging from low probability to severe probability of a terrorist attack. This system is intended to address the complaints of many states and localities about the unnecessary waste of resources resulting from the several broad warnings issued by the office in the aftermath of September 11. Each level of threat in the new system would be associated with a certain protocol of protective measures to be undertaken by local law enforcement and emergency management entities.

An important component of the system will need to be greater specification of the respective roles of federal, state, and local response entities and of officials, as well as the methods for coordinating them. While much has been made of the recognition of the importance of state and local emergency response agencies as "first responders," less has been stated about the integration of federal, state, and local activities beyond the first response. Questions concerning the new color-coded threat-identification system include, do the respective roles of federal, state, and local agencies change as the level of threat escalates or as an incident unfolds? What are the thresholds (and how are they recognized) for progressing from a localized or state operational response with minimal or moderate federal support or involvement, to a more integrated intergovernmental response, to one in which the federal government—perhaps with the FBI and the military as more central actors—plays a more central role? Also, does the type of threat make a difference?

In the context of natural disasters, the governing federal statute, the Stafford Act (42 U.S.C., 5121 et. seq.), requires a finding that conditions are beyond state and local capabilities to respond effectively before major disaster assistance from the federal government is warranted. In 1999, FEMA published formal criteria for recommending presidential approval for disaster declarations that include both financial thresholds and other qualitative measures that FEMA applies in deciding whether to recommend presidential approval. The qualitative factors include such things as the heavy impact of a disaster on a particular area or the occurrence of recent multiple disasters in the same area. Nonetheless, the General Accounting Office found that although FEMA has made progress, problems with applying the criteria remain. The General Accounting Office recommended developing criteria that more accurately re-

flect the affected state and local governments' capability to respond to disaster (GAO 2001). The task of developing and applying criteria in the area of homeland security involves another whole level of complexity. National defense and foreign affairs considerations add significant imperatives to the mix that natural disaster response does not entail. The national strategy will need to incorporate lessons from the natural disaster experience with developing and applying criteria, along with projections based on the new requirements for homeland security.

Dealing with terrorist attacks inevitably involves the military operating in new ways with state and local civilian authorities. The Gilmore Commission's third annual report (UNCNS 2001) delineates several major problem areas requiring resolution before such operations can be effective:

- There remains a lack of detailed plans for the use of forces to combat terrorism, especially inside the United States. Sufficient forces are not fully trained and are, as a result, able to provide only modest support in terrorist response situations.
- No clear definition of "homeland security" and no precise definition of the military role in that activity have even been established.
- Even though the Defense Department has resources and capabilities for command, control, communications, intelligence, transportation, and other logistics, as well as engineering and medical support that can and likely will be utilized to respond to terrorist attacks, the problem continues to be a lack of comprehensive, carefully coordinated, well-understood plans and programs for how that response might occur (Advisory Panel 2002, 46–50).

The Gilmore Commission observes, "the current problems exist, in part, because of an inadequate understanding of the sequence of commitment of local, State, and Federal response. State and local agencies are, moreover, not well informed about the capabilities that the Armed Forces can contribute to emergency responses, and the Armed Forces do not fully understand the capabilities and roles of State and local response entities" (Advisory Panel 2002, 46).

On April 17, 2002, the secretary of defense moved to reposition the military for homeland defense. He announced the creation of a new combatant command, the U.S. Northern Command, which will have as its area of responsibility the continental United States, Canada, Mexico, and portions of the Caribbean region. The Northern Command, which will go into operation October 1, 2002, will be responsible for land, aerospace, and sea defenses of the United States and will command U.S. forces that operate within the United States in support of civil authorities. The Northern Command will be involved in dealing with natu-

ral disasters, attacks on U.S. soil, and other civil difficulties and is intended to provide for more coordinated military support to civil authorities such as the FBI, FEMA, and state and local governments (DoD 2002). The Northern Command also will include the North American Aerospace Command and the Joint Task Force for Civil Support, which currently resides in the Joint Forces Command that is responsible to civil authorities for chemical, biological, radiological, nuclear, and major conventional explosives events (DoD 2002).

At this time, however, little is known about how several key issues will be addressed because the implementation plan for the Northern Command was still in preparation as of April 17. First among such issues is what does “in support of civilian officials” mean operationally, and which officials will be involved in determining support needs in the context of particular incidents? A second issue is whether the Northern Command will have forces under its direct command; if so, how many, which forces, and will it have to request forces from the Joint Forces Command for particular responses (DoD 2002). Third, what will be the relationship between the Northern Command and the armed forces and agencies of Canada and Mexico? The fourth issue is defining the relationship between the Northern Command and the National Guard, which is under the command of the state governors. Addressing several of these issues will require complex negotiations with state and local officials and with the governments of Canada and Mexico. “The underlying problem is that military and civilian officials—especially at the state and local levels—have distinctly different ideas about how the new authority should work” (Freedberg 2002, 3).

In addition, the relationships within the federal government between the Northern Command and the other federal agencies must be worked out in order for the intergovernmental relationship with state and local governments to work. As the Gilmore Commission pointed out, “FEMA has been designated as the Lead Federal agency for ‘Consequence Management,’ the FBI for ‘Crisis Management.’ However those terms may be defined in actual execution, the DoD chain of command must have positive coordination links into those agencies. In addition to these interagency links, responsibilities, authorities, and accountability must be clearly established *within* the defense structure—both the civilian and military pieces—to ensure that the Armed Forces respond appropriately and effectively” (Advisory Panel 2002, 49). The Gilmore Commission survey of state and local emergency officials showed that over 90 percent favored a U.S. military role in responding to a weapons of mass destruction incident, such as maintaining order and providing security, providing personnel and equipment, and setting up kitchens, clinics, and mass care facilities (Advisory Panel 2002, 49). Important issues that

have yet to be worked out include the sequencing of commitment in such a military involvement, what processes will be used to trigger that commitment, and what role state and local officials will play in those processes.

As the Gilmore Commission has pointed out, the integration and coordination experience of the U.S. armed forces has been with similar military units rather than with state and local responders. The Commission recommended that the secretary of defense direct the development of more detailed plans for the use of the military domestically across the spectrum of potential activities, coordinate with state and other federal agencies in the creation of more state- or region-specific plans, and expand military involvement in exercises with federal, state, and local agencies across a broad spectrum of scenarios (Advisory Panel 2002, 51).

The Gilmore Commission also pointed out that the National Guard is a logical “bridge” between the military and civil authorities in terrorist incident response; however, certain support capabilities needed to respond to terrorism inside the United States are not in the National Guard, and units are frequently not organized, trained, or equipped for such missions. The Commission recommended that the secretary of defense direct specific mission areas for the use of the National Guard and, in coordination with state governors, assess the National Guard’s force structure in order to define appropriate roles and missions and establish units with specific capabilities for homeland security missions (Advisory Panel 2002, 52).

The advent of new roles for the full-time military and the National Guard in homeland security portends the construction of new intergovernmental networks that present multiple challenges. In numerous other policy domains, such as “consequence management,” many basic issues and role definitions had to be painstakingly bargained through the system, and relationships and bonds of trust had to be forged. This has not been a smooth process producing immediate intergovernmental effectiveness and harmony, but rather one of high levels of tension and conflict (Wise 2002, 138–39). Similarly, it should be expected that the process of crafting new networks for homeland security will not be without such tensions.

## The Financial Dimension

Broad support exists for increasing federal support to state and local governments for homeland security activities. As the Gilmore Commission reports, “It is imperative that Congress and the Administration recognize the need to enhance existing capabilities of State and local emergency management entities. Those agencies have the primary responsibility to provide for the implementation of emergency management functions. The emergency man-

agement system will be more effective if those capabilities are enhanced” (Advisory Panel 2002, 55).

Nonetheless, the design of the terrorism assistance programs will be subject to many of the same debates the United States has experienced in other areas of domestic intergovernmental assistance. One important topic of debate will revolve around the relative power of the federal, state, and local governments in determining and overseeing the conditions for receipt of assistance.

In recent years, the federal government has been transferring administrative and fiscal responsibilities increasingly to the state and local governments, and the states, in turn, have been delegating these unfunded mandates to the local level (Falcone and Lan 1997). Even in federally funded programs, state and local governments play a key role in policy design and implementation (Rich 1989). Disaster relief, an area that is closely related to homeland security initiatives, follows a similar pattern. Although resources are mainly national, the responsibility to define the situation, initiate governmental response, evaluate population needs, and plan for relief still lies with state and local governments (Stratton 1989). However, although the number of block grants has increased, Congress has had a tendency to recategorize block grants over time and still demonstrates a preference for more tightly controlled categorical grants, with a majority of the aid flowing through categorical grants (Kincaid 1999, 141). Advocates for a categorical grant approach argue this gives Congress a greater ability to ensure accountability for homeland security on a national basis. A second argument for greater federal direction is one that has been made in other policy areas: that the federal government has comprehensive resources allowing a broad range of activities and a capacity to act as a change agent through regulation and funding (Falcone and Lan 1997).

Arguments for greater state involvement center on the unique position of the states within the federal system. First, interests at the state level are more unified than at the federal level, allowing state governments to focus their resources on problems that are unique to their region (Falcone and Lan 1997). Second, an experienced governor can play an important role in requesting federal assistance, and state disaster agencies have shown much higher levels of knowledge and experience in disaster relief than their local counterparts (Stratton 1989). Finally, according to the National Governors Association, states can ensure a certain level of coherence among the various emergency response plans and are better able to coordinate efforts at the regional level. Constance Perett, administrator of the Los Angeles County Office of Emergency Management, agrees and argues the federal government should not send money to local governments absent a cohesive state terrorism prevention and response

strategy: “Cities and counties are always concerned that the state is siphoning off the resources, but those same officials will be the first ones screaming when the state fails to provide direction and coordination during an incident” (Walters 2002). In fact, ever since the Reagan administration’s effort to reorganize locally administered project grants into state-managed formula grants, state governments have been playing a more important role than local governments in allocating and overseeing federally funded programs (Nathan and Doolittle 1985).

Advocates for more local discretion argue that local jurisdictions are where “the rubber meets the road,” because local governments are the first line of response if a terrorist attack occurs. Local advocates also argue for funds to go directly to cities without passing through the states, thus allowing cities to manage these funds as they see fit. Local governments argue they have the best knowledge of their territory and are best suited to address specific local needs. Local governments also have more flexibility to implement policy changes quickly than is possible at the state or federal levels (Falcone and Lan 1997). Karen Anderson, president of the National League of Cities, said, “Each city has unique security needs and emergency response networks, and spending decisions must be controlled by local governments rather than by states.” (NLC 2002). Local-government advocates sometimes object to the dilution of funds intended for cities because funds are transferred to the states for planning and administrative purposes. Francis Edwards-Winslow, director of San Jose’s Emergency Services/Metropolitan Task Force, points to a case in 2000, when the Department of Justice funded \$2 million that was to be distributed to California cities, but was reduced by 25 percent to pay for a Rand threat-assessment study. She argued that the large cities already had completed threat assessments, and the study was duplicative and delayed funds to the cities (Edwards-Winslow 2002).

Although numerous federal programs have been in place to assist state and local agencies, evidence to this point indicates that additional assistance is needed to meet state and local requirements. State and local emergency officials responding to the Gilmore Commission’s survey stated they found federally provided training, exercises, and equipment valuable, but that the training and equipment programs did not or do not train or equip an adequate number of personnel to respond to a moderate-sized terrorist incident. The survey also found that state agencies receive more of all types of federal support—funding, equipment, training, exercises, and reference materials—than do local response organizations. Survey respondents reported that factors limiting participation in the federal programs were a lack of awareness of the programs and a lack of coordination between the federal government and response organizations (Advisory Panel 2002, 15).

As public administrators have long known, the design and administration of assistance programs significantly affect state and local utilization of federal assistance programs. Only 23 of 56 states and other jurisdictions have actually received money from a Justice Department program started in 1999 to provide funds to supply biological, chemical, and radiological response equipment for emergency officials. Only \$68 million of the \$145 million budgeted for the last two fiscal years—and none of the \$122 million for fiscal year 2002—has been disbursed. According to Office of Justice Programs spokespersons, some states did not apply for the 1999 money until 2000, 2001, or 2002 because of the time required to complete the application. In order to receive the funds, states must first assess their weapons of mass destruction threats, obtain an evaluation endorsed by the governor, and then submit equipment requirements to Justice Department officials for review. Once that is approved, they then fill out the grant application forms, which require intensive and comprehensive collection of information (Seigle 2002). As experienced in other public policy areas, there is a tension between the need for national strategy, leadership, and accountability and state and local immediate requirements and the need for flexibility and local adaptation.

According to the president's budget proposal, \$3.5 billion will be devoted to a first-responders initiative that is intended to enhance the preparedness of city and state governments under the supervision of FEMA. Twenty-five percent of the funds will go to the states, and 75 percent will be distributed by state emergency managers to cities, based on population. To qualify for these funds, cities will be required to submit a comprehensive emergency plan and to provide a 25 percent match of "in-kind" funds (NLC 2002). No details are yet available concerning accountability relationships among the different governments, but the most desirable configuration for allocating homeland security funds and managing the implementation of the initiative must balance the tension between the need for flexibility and local managers' knowledge of their own needs on the one hand, and the need for accountability and coordination in a critical function (such as national defense) on the other. This tension is reflected in the debate over the level of government best able to handle the responsibility of planning for and responding to terrorist attacks.

Regarding the allocation of funds, the president has proposed distributing the first-responders initiative funds according to population. This should come as no surprise because, so far, there are no reliable measures of the level of preparedness in various jurisdictions, and it would probably take a while to develop such measures. Nonetheless, this distribution method does not ensure targeted assistance according to the greatest vulnerability to threats. The danger is that the resources will be spread too thin. As the

United States has experienced in other allocative decisions, however, targeting resources at the national level is very difficult to do given the geographic principle of representation in Congress. Public administrators will remember the experience of the "Model Cities" in the 1970s, when the president proposed targeting a significant-enough critical mass of resources to transform cities of the greatest need, but Congress turned Model Cities into a general distribution program for many cities and even small towns. The distribution of Law Enforcement Assistance Administration funds followed the same course.

The General Accounting Office has suggested (1) targeting the funds to states and localities according to preparedness and fiscal capacity; (2) discouraging the replacement of state and local funds with federal funds; and (3) striking a balance between accountability and flexibility (Posner 2002; Yim 2002).

As for the replacement of state and local funds with federal funds, previous studies can offer some insight as to what might happen. In a study of local responses to federal cutbacks during the 1980s, Stine (1994) found that local governments did not raise local revenues to replace permanent losses from federal aid. A General Accounting Office analysis of 87 of the largest grant programs found that if states are already spending more of their own funds than the federal government provides for block and categorical grant programs, the purposes for which the federal aid is to be spent are less likely to be binding and the potential for substitution is higher. A majority of the 87 largest grant programs did not include features such as state maintenance-of-effort and matching requirements, which can encourage states to use federal funds as a supplement rather than a replacement for their own spending. The areas most vulnerable to substitution were found to be those where broad-based grants were used to support areas of longstanding state and local support (GAO 1996). Areas such as police protection and fire and emergency response are examples of areas of longstanding state and local support. Even with the attempt to include matching or maintenance-of-effort requirements, it may be very difficult to wean states and localities off federal assistance once it has been put in place. The Community Oriented Policing grant program, which provides assistance for hiring police patrol officers, has such provisions, but Congress has been reluctant to eliminate federal funding.

The way funds are allocated in the first-responders initiative, states bear none of the costs, and cities have to provide only a modest 25 percent of the funds received. Therefore, if the federal government wishes to have a higher level of state and local homeland security effort maintained, it probably would have to gradually wean cities and states by increasing the matching requirement, by adding a continuation-of-effort clause, or both.

Finally, the accountability structure has not yet been specified. The budget seems to suggest that localities would report to states, and states would report to FEMA. Congress also can be expected to exercise some of its oversight abilities as the project unfolds.

The budget proposal seems to follow the Reagan approach of trusting the state as an intermediary: Grant money will be disbursed by the states, and direct funding through the Local Law Enforcement Block Grant program will be eliminated and the funds consolidated with an existing grant program for states. Consequently, states might be able to “impose additional conditions ... as long as these conditions are consistent with the federal purpose” (Shapek 1981).

The first-responders initiative will be added to the existing array of federal assistance programs. State and local government emergency officials surveyed by the Gilmore Commission reported that existing federal programs to improve responder preparedness are not well synchronized or organized. All organizations, whether they were state or local emergency organizations, tended to judge the programs as inflexible, especially when federal funds or resources could not be used to meet preparedness requirements identified at the state or local level (Advisory Panel 2002, 19). The General Accounting Office points to the federal government’s development of state and local assistance programs that are similar and potentially duplicative. It has recommended the president and Congress consolidate some of the Justice Department’s programs under the Office for State and Local Domestic Preparedness Support as part of FEMA’s new Office of National Preparedness (GAO 2001b, 97). The Justice Department objected to the consolidation proposal on several grounds: (1) the preparedness support programs “fit squarely” within the Office of Justice Program’s mission of providing grant assistance to state and local governments; (2) the responsibilities that the General Accounting Office stated for FEMA’s new office are broader than those announced by the president and those agreed upon between FEMA and the Department of Justice; (3) from both a legal and a programmatic perspective, the Department of Justice is clearly the lead agency for domestic preparedness, and such programs are already consolidated there; and (4) the General Accounting Office’s recommendation was made without any analysis of FEMA’s capacity or capability to lead national preparedness efforts (GAO 2001b, 104–5.) The Justice Department’s response illustrates just how complicated it will be to sort out assistance responsibilities among federal agencies.

## The Legal and Regulatory Dimension

Effectively countering terrorism is not only a matter of adequate resources and operational coordination. It is also a matter of securing and exercising the legal authority to use operational capabilities in a manner that is both effective and respectful of the society’s values (Falkenrath 2000, 21). The importance of the legal dimension can be understood in terms of the real trade-offs that government officials may face during a terrorist incident between limiting their actions to those that are unambiguously authorized in law or taking additional actions beyond their explicit legal authority that are regarded as necessary for minimizing public casualties. The risk in adhering closely to existing legal authority is that more innocent people will suffer preventable harm, and the risk in exceeding explicit legal authority is the potential damage to principles of civil liberties that may lead to censure later (Falkenrath 2000, 21).

If officials were to amass a list of all of the legal authorities they might need to deal with a truly catastrophic weapons of mass destruction incident, they would find that some are available to government agencies and others are not. The authorizations that do exist are confusingly spread across hundreds of federal and state laws that were not enacted with such incidents in mind. During a 1999 conference, first-responder participants listed the “necessary” powers they would want during a biological terrorism event:

- The authority to impose a state of emergency, including curfew
- The authority to compel people to remain in one location or move to another, including temporary detention
- The authority to use the military for domestic law enforcement, population control, and mass logistics
- The authority to seize community or private property, such as hospitals, utilities, medicines, vehicles, or transit centers, or to compel production of certain goods
- The authority to compel individuals to undertake decontamination procedures, take medicines, or be quarantined
- The authority to censor and control the media
- The authority to liberalize standards for conducting searches and seizures
- The authority to dispose of deceased individuals
- The authority to compel civilian public servants to work
- The authority to waive regulatory requirements on the use of certain pharmaceuticals (Falkenrath 2000, 21).

Use of such authorities obviously raises a host of constitutional and statutory questions (for an analysis of these, see Kayyem 2001). One problem is that “[t]he American legal system has achieved a fragile balance between national security, effective law enforcement, and personal liberties to apply in times of war, peace, and natural disasters. Terrorism does not fall easily into any of those



categories; biological terrorism sometimes does not fit at all” (Kayyem 2001, 25).

Another problem is that, given the federal legal system and 50 state legal systems, the legal authorities that can be applied in any given locality experiencing a weapons of mass destruction incident are likely to be quite complicated or ambiguous for both state and federal incident managers. This can have a deleterious effect on federal, state, and local coordination.

Prior to September 11, the nation had witnessed a proliferation of counterterrorism legal measures adopted as a result of the 1993 World Trade Center bombing, the 1995 Oklahoma City bombing, and other terrorist events. Post-September 11, the public has seen the nation’s legislatures, federal and state, shift into even higher gear to pass new legislation related to terrorism preparedness, crisis management, and consequence management. A very broad sweep is evident in the legislation that has been introduced and passed.

As of April 2002, the U.S. Congress had passed at least 13 separate bills dealing with everything from creating a new aviation security agency within the Department of Transportation to the omnibus USA PATRIOT Act (P.L. 107-56). The USA PATRIOT Act deals with many subjects, from enhancing surveillance procedures for federal law enforcement officers, to amending immigration laws, to revising federal criminal laws against terrorism (including providing definitions of international and domestic terrorism). It also contains provisions for the review of allegations of abuse of civil rights, civil liberties, and racial and ethnic profiling by government employees and officials. State legislatures also have been exceedingly active, and several have passed new laws imposing penalties for terrorism activities; laws addressing environmental threats and security threats to nuclear plants and electric grids; cyberterrorism laws; and laws on bioterrorism, public health infrastructure, and emergency health measures (National Conference of State Legislatures 2002). Arizona’s legislature, for example, passed a new bioterrorism law that gives the governor powers to order medical examinations for exposed persons, to isolate and quarantine people, and to ration medicine and vaccines, and it also requires the police and National Guard to enforce the governor’s orders.

The questions that have not been addressed include how all these federal and state laws will mesh, and what their collective impact will be on the ability of state and federal agencies to provide for homeland security. For example, both the federal government and several states passed new criminal laws defining terrorism and assigning penalties that are somewhat different. What will be the impact of these new laws and their differences in the context of a particular incident? If the federal government declines to

proceed against a particular individual according to federal law, may a state prosecutor proceed against the individual over the objections of the federal authorities, who may have reasons based in intelligence or diplomatic considerations for their refusal to pursue federal prosecution? Objections may be raised to increased state legislation in the area of terrorism on grounds that state counterterrorism laws allow too much leeway in a realm that needs coherence and unity to be effective (Donohue and Kayyem 2001). On the other hand, in some areas, state legislation may be needed to fill the gaps in federal law.

In the health area, uncertainty may arise in dealing with bioterrorism events because of different state laws governing health investigations, forced medical examination, and quarantine. For example, what would happen in the northeast if there was a widespread bioterrorism event with states possessing varying laws on these matters? What would be the impact on the ability of state and federal authorities to conduct a combined and effective operation?

It is not only the different laws that may affect joint federal–state operations, but also varying interpretations of the laws. An illustration of the potential for this was the interpretation made by the city attorney in Portland, Oregon, during November 2001: The U.S. attorney general had requested that state and local law enforcement authorities assist the FBI in interviewing 5,000 men of Middle Eastern descent who had entered the country in the last two years. The men could decline to be interviewed. The Justice Department identified 23 Portland residents for questioning, and the Oregon state attorney general and the local district attorney indicated they had no problem with the request. The Portland city attorney, however, issued an opinion based on his reading of Oregon law (ORS 181.575; ORS 181.850) that some of the questions were illegally intrusive if asked of people who were not criminal suspects. The Portland police chief then decided that no police officers would engage in the questioning (Marshall and Gorman 2001).

Because of the all-encompassing nature of terrorism-related crisis and consequence management and the fact they are so intertwined, the potential for state and federal laws and their interpretations to conflict or leave gaps is present. In addition, various legal and constitutional principles contend in these areas, making it difficult to sort out which laws should take precedence. For example, federal law generally has been much more extensive and has taken precedence over state law in areas of defense and foreign affairs, while state law is much more extensive in the areas of criminal law and public health. Nonetheless, terrorism events are simultaneously foreign affairs, national defense, criminal, and public health events, which interact in myriad ways. Federal, state, and local legal officials will be in the process of sorting out the various laws and regulations re-

lated to terrorism after this rush of legislation for some time to come.

## The Political Dimension

Because homeland security equates to one of the most basic functions of government—the protection of public safety—politics inevitably will be a part of the decision-making processes surrounding preparedness, crisis management, and consequence management. Political relationships will be key in determining how the many joint activities among federal, state, and local agencies can be performed effectively. A key feature of the political context is the high public profile of many of the decisions that need to be made. Decisions to call public alerts, invoke emergency public health powers, and initiate prosecutions for terrorism—or to decline to do any of these things—are sure to receive a high degree of public attention and reaction. Thus, political officials are likely to continue to be front and center in many aspects of homeland security decision making, and considerations of public evaluation of their actions and subsequent public reactions are sure to play a part in the decision-calculus process.

This is not to argue that other dimensions of intergovernmental activity are free of such politics, or that other policy areas have not required intergovernmental political coordination. The processes surrounding emergency management decision making in dealing with earthquakes, floods, and tornadoes involve elected political officials along with appointed officials and civil servants at key points in the decision making. Governors, emergency management coordinators, line emergency managers, and the president all have their roles in the disaster-declaration process and in mounting the resources to deal with a particular disaster. Nonetheless, that process is not always strictly adhered to and does not always contain the political urgency that can cause political officials to “take over.” The president’s intervention in the response to Hurricane Andrew is but one example (Wise 2002; Wamsley and Schroeder 1996).

Nonetheless, critical differences are evident in the homeland security context involving terrorism and weapons of mass destruction. While some criminal law prevention and enforcement activity is involved in responding to natural disasters (prevention of looting, for example), criminal law prevention and enforcement responsibilities and the public expectations surrounding them are magnitudes greater in terrorist incidents. In addition, international terrorism brings in whole new dimensions to the decision making, invoking crucial issues of national defense and foreign affairs—dimensions that are largely absent in conditioning the relationships among officials dealing with natural disasters. And because many of the arrangements, resources, and processes

for effectively dealing with homeland security have not been put in place or are in the process of being debated, created, and experimented with, officials of the legislative branches at all three levels of government are sure to be involved in the politics of homeland security.

In brief, new players for a “domestic” policy arena are involved, and it will be important to work out arrangements between elected officials, appointed officials, military officials and officers, and civil servants at various levels of government to make the innumerable decisions to establish the new homeland security systems, programs, arrangements, and operations in the United States.

An example of how the political dynamics can come into play in homeland security decision making occurred in November 2001, when the FBI issued an advisory to Western state law enforcement officials and governors that stated, “The FBI is in possession of uncorroborated information indicating the possibility of additional terrorist attacks against the United States, specifically the West Coast. Reportedly, unspecified groups are targeting suspension bridges on the West Coast. Six incidents are to take place during rush hour beginning Friday, November 2 and continuing through November 7 2001.” California’s Grey Davis, alone among West Coast governors, made a public announcement of the threat and dispatched California National Guard members to several bridges to supplement law enforcement security. Later, Governor Davis said he had had no choice but to disclose the information: “It was specific, it was time-sensitive, and I feel an obligation to share that information with Californians. If I failed to share that information and God forbid something went wrong, I’d be kicking myself” (Keith 2001). When asked about the governor’s decision, Homeland Security Director Tom Ridge said, “Obviously, Governor Davis thought that one thing he could do to enhance security of people using those bridges was to make a public announcement. We did not encourage him to do so” (CNN 2001). The White House Office of Homeland Security’s stepped system of color-coded alerts was introduced some time after this event. It remains to be seen how this system will condition the context of decision making in the future.

The multiple-agency nature of security decision making and how it can affect political relationships is illustrated by the case of a giant tanker carrying 33 million gallons of highly combustible liquid natural gas entering Boston Harbor. Citing security concerns, the Coast Guard had decided to bar the tanker from entering Boston Harbor in September 2001 in the aftermath of the World Trade Center attacks. The Coast Guard decided to lift the ban three weeks after imposing it. At that point, the mayor of Boston strongly criticized the Coast Guard for relegating the responsibility to the city without addressing the remaining safety concerns. Then, in late November, the mayor learned from an Internet news report that the FBI had for

some time possessed information about possible terrorist attacks on gas tankers. He felt the Justice Department should have contacted him directly about the tankers and called for a reinstatement of the ban on all gas tankers entering Boston Harbor (Harris 2002).

The establishment and implementation of the Northern Command will bring its own new political dynamic to decision making. Defense regional commanders, commanders in chief, have long had to adapt to local conditions and deal with foreign leaders. However, there has never been a commander with specific authority over the area containing the states and Mexico and Canada. As retired Army Colonel David McIntyre, a consultant to the Institute for Homeland Security at the think tank ANSER, put it, "We're talking about deploying forces to people with considerable political influence." So as politically complex as military operations overseas have been, "we never had the situation where we had to negotiate with Congressmen and governors" (Freedberg 2002, 1).

The intergovernmental politics surrounding homeland security do not have a direct analogue in other areas of U.S. domestic policy. Law enforcement, and in particular drug enforcement, may come closest. Nonetheless, drug enforcement does not represent the all-encompassing nature of homeland security and definitely does not provoke the extent of widespread public concern that the threat of terrorism does. There are many cross-cutting tensions in intergovernmental homeland security politics, and even a national strategy that is widely endorsed will not completely constrain these tensions. Officials at all levels may have some incentives to reach workable cooperative arrangements and may anticipate blame for not doing so, but at the same time, they will feel pressure to demonstrate individual leadership and seek to avoid blame when the threat of attack is raised again. In addition, with all of the contending values associated with public safety, international affairs, civil rights, and distribution of resources at stake, the potential for conflict is great. The issues surrounding accountability and performance measurement in this complex area have not yet begun to be engaged in any systematic manner. The House and Senate investigations surrounding the events of September 11 demonstrate that, at the present, ad hoc political accountability is the main extant approach. That obviously portends greater political tensions. To reduce such tensions, the discussion will need to move to definition and agreement on performance measures and best practices.

## Conclusion

Homeland security poses a major challenge for the U.S. intergovernmental system. It requires the close integration of many functions and activities, yet leaves little room for

error. The challenge comes at a time when many agencies at all levels of government are only beginning to learn about the potential threats and risks of internationally sponsored terrorist attacks. It also comes at the end of a long era in which agency officials and professionals have been accustomed to operating within familiar organizational and professional cultures that have been exposed as deleterious to intergovernmental functioning for homeland security. Future failures of intergovernmental functioning are destined to be subject to intense public scrutiny because of the high-profile nature of the public safety priorities of the homeland security context.

The White House's homeland security strategy explicitly points to the requirement for increased coordination between the federal government and state and local governments, and calls for every governor to establish a single Homeland Security Task Force for the state to serve as its primary coordinating body with the federal government. Nonetheless, the creation of such task forces will constitute only the first step in fostering intergovernmental coordination. The intergovernmental approach required for homeland security will be an inherently multidimensional one.

Organizing the federal system for homeland security does not mean arranging federal, state, and local organizations into a set hierarchy. That can never happen within our system of government. The national strategy for homeland security can provide a framework that can set the stage for changes in organizations at various levels, but we must expect that change in many areas will come slowly. Organizational histories, cultures, priorities, capabilities, and competition for resources will condition the potential for change, as they have done in other areas of intergovernmental policy. This does not mean that efforts toward formulating and implementing a national strategy are destined to be fruitless. On the contrary, such efforts are vital to provide the United States with the level of homeland security it requires and for which the capabilities exist or can be developed.

The fact is that the United States will most likely be utilizing a dual-track intergovernmental approach. On one track, a national strategy has been promulgated, will now be debated, and parts of it will now begin to be implemented. It will be revised and will evolve through the processes of debate and implementation. On the other track, various networks of national, state, and local organizations of various types are being formed and will continue to evolve in response to events and leadership decisions. An example of this is the expansion and enhancement of the federal Joint Terrorism Task Forces, in which personnel of the FBI and other federal agencies regularly meet with state and local law enforcement personnel in major cities. As of May 9, 2002, the FBI had expanded the task forces to 47

of its 56 field offices, with plans to have 56 by the end of 2002. Apparently, these task forces are already having an effect on improving coordination with state and local law enforcement agencies, according to Robert Olson, Minneapolis chief of police and president of the Police Executive Research Forum.<sup>1</sup>

Various other networks, some interlocking, are being constituted or reconstituted in response to the threats to homeland security. Much organizational learning is taking place, and more will take place in these networks as personnel at all governmental levels build new collaborative relationships. Much managerial craftsmanship is needed on the part of organizational leaders at the federal, state, and local levels to make these networks function effectively (Wise 2002, 142–43).

Nonetheless, the national-strategy track and the resulting programs and organizational changes are needed to develop the type of intergovernmental system the nation requires. It is needed to provide a framework for sorting out federal, state, and local roles, to set the basis for more effective collaboration, and to set priorities for new resource allocation for homeland security. Incident response in the first instance is very much a decentralized activity, with state and local “first responders” playing a lead role. As incident response proceeds, operationally, it becomes a more intergovernmental responsibility. Terrorism preparedness and other phases of response, as well as consequence management, are inherently more complex enterprises, and the need exists to establish a framework for federal, state, and local roles in these phases as well.

The federal government has a lead role in establishing national priorities and policies. This is recognized by state and local emergency officials.<sup>2</sup> Complementing the priority-setting role is one in fostering planning by state and local agencies and evaluating capabilities and response readiness. While public administrationists are all too aware of less than successful efforts in federal programs directed at planning assistance (as in urban redevelopment), examples of more successful planning assistance also exist, such as in emergency management for natural disasters. As the city manager of Phoenix pointed out, many local governments are too locally focused to undertake terrorism-preparedness planning by themselves, and they need assistance in the evaluation of programs as well (Fairbanks 2002). The federal government needs to assist in the identification of national gaps in preparedness, and this inevitably involves examining state and local preparedness and intergovernmental preparedness cooperation. In addition, the federal government has an important role to play in assisting state and local government officials with threat assessment. This is a process in development. As the director of the FBI has pointed out, the FBI has tried several methods to pass along threat information to state and local

law enforcement agencies, but most have been slow and cumbersome. The FBI is examining alternative ways of sharing threat information, but it will take some time to sort out the methods (Mueller 2002). The federal government also has a key role to play in the development of technology and equipment to combat terrorism and to assist state and local agencies with the acquisition and use of new technologies. For example, the federal government can play a key role in helping to develop technologies to prevent and detect biological and chemical incidents and to assist local governments with the use of such technologies (Fairbanks 2002).

State and local governments play key roles in incident response and in managing the consequences of incidents. Centralization of these is unworkable, in that it would lead to delays and poor adaptation to local conditions. Where possible, it is desirable to adopt an “all hazards disaster management” approach. That is, state and local governments, in cooperation with federal agencies such as FEMA, have existing systems of disaster management that can “flex” to address unconventional emergencies. The argument for this approach is that response agencies are more likely to invest in adaptations to their operations that have more than one use and for which they will use their plans and skills regularly gaining familiarity and experience (ESDP 2002, H-4). Nonetheless, federal agencies also have key roles in responding to incidents and in assisting state and local government agencies with assisting people in recovering from incidents. Thus, incident response involves complex intergovernmental relationships in numerous programmatic areas that must be worked out.

Financial responsibilities and arrangements also remain to be worked out. While initial appropriations are providing financial, training, and other types of assistance to state and local governments, state and local officials are pursuing a much broader financial-assistance agenda. The United States is only in the beginning stages of the proposals and debates over the respective responsibilities of federal, state, and local governments for homeland security. As with the debates over responsibilities for drug enforcement and dealing with the consequences of immigration, the debates over financial responsibilities for homeland security will be intense and protracted. Homeland security is not exclusively a national or a state or a local responsibility, and the financial responsibility cannot fall on any one level of government. However, settling on the policies for apportioning the costs for the myriad activities involved is likely to be even more complex than the United States has experienced, either in the area of natural disasters managed by FEMA or in forest fires managed by the Forest Service and the other land-management agencies. Cost-sharing arrangements in many of these areas have been problematic and inconsis-

tent, and it will be even more difficult to arrive at effective cost-sharing arrangements in homeland security.

It should be recognized that, as in other policy areas, a greater degree of federal financial assistance will most likely involve a greater degree of federal policy and regulatory prescription of activities that previously were left almost wholly to state and local governments. Police, fire, and basic infrastructure have been largely the province of state and local governments. As the federal government becomes more involved in the preparedness, planning, and mitigation phases of homeland security, a greater federalization of traditional local functions could be in prospect. Discussions of “critical national infrastructure” portend greater federal involvement in policies surrounding public infrastructure, which heretofore has been under state and local control. State and local policy makers and their constituents may very well invite this federal involvement in order to obtain the financial and other resources necessary to meet the requirements of homeland security. Nonetheless, such involvement represents a new turn in the centralization–decentralization balance of U.S. intergovernmental relationships.

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## Notes

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1. According to Chief Olson, “Well, like Boston, we’re involved in a joint terrorism task force. We have regular meetings. The FBI and all the other federal agencies meet with the locals, and we’ve done all of those kinds of groundwork things with them. I have to say that the collaboration and cooperation since September has quadrupled in its level and it has been really a great start. The FBI specifically, who local law enforcement does most of its interaction with the federal government with, has just really been great in reaching out to local law enforcement” (Online Newshour 2002).
2. The State and Local Domestic Preparedness Stakeholders Forum convened by the U.S. attorney general after September 11, consisting of more than 200 emergency management officials, recommended, “The President should identify a single lead agency to implement Domestic Preparedness. The President should establish an Advisory Group drawn from all stakeholder jurisdictions. Within six months, the lead agency, with the Advisory Group, should produce a comprehensive systematic plan for implementation of Training, Equipment Acquisition, Infrastructure Improvements, Intelligence Sharing, Operational Procedure and Process Enhancements, Sustainment of Training and Equipment and Public Awareness Education (see the National Domestic Preparedness Office, <http://www.ndpo.gov/stakeholders.htm>).

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