

## KATRINA: CATATONIA COMPOUNDS CATASTROPHE

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While more information will surely come in, it appears that enough is known to draw six lessons taught anew by Katrina. At bottom the prime policy failure seems to be that state officials were unwilling to surrender authority to the federal government, but wanted the federal government to take responsibility and provide vast resources. *A fundamental managerial truth: When power is decoupled from responsibility—especially when key decision-makers lack sufficient mutual trust—the result is policy paralysis.*

Here are six key lessons from Katrina and its aftermath: (1) prevention beats recovery as a strategy—especially when timely measures to limit damage require drastic decisions taken when whether disaster strikes remains highly uncertain; (2) lax leaders are lethal when disaster strikes; (3) in race-obsessed urban America, the politics of race can trump civil order; (4) when multiple jurisdictions must cooperate, it is essential that there be mutual trust at all levels of joint administration, plus power fully commensurate with relative responsibility; (5) when catastrophe strikes, the President gets the credit or blame; (6) in a global media age, America's credibility is on the line, always.

*Put another way, there was a massive strategic failure of long-term federal planning that dwarfed tactical federal failures this past week, and a massive strategic and tactical failure of medium- and short-term state and local planning that dwarfed myriad cases of individual heroism. Worse, it is now clear that state officials refused to give their legally required consent to surrender control to federal authorities despite their own massive default on their obligation to protect the public. Instead, state officials jealously guarded their ultimate legal power of decision while shifting maximum responsibility to the federal government, thus creating an intolerable situation.*

Enough information has surfaced to support these factual findings: (1) by Saturday morning the storm's track and speed could justify evacuation—Katrina was already a slow Cat 3 storm and gaining strength, bearing down on a levee system designed at best to ward off a fast Cat 3; (2) it was possible to evacuate the city—primarily using its 2,000 buses—within 36 hours, and to complete this 12 hours before Katrina struck, *i.e.*, while roads were still passable; (3) state officials ignored their own disaster plan, while local officials lacked a serious one.

Federal disaster law places authority with the State Governor. While federal martial law has been declared several times in America's history, the last declaration came during Reconstruction. Short of invoking martial law, the President had to obtain the Governor's consent to federalize the Louisiana National Guard, which she withheld. Absent unified command the feds were paralyzed. New Orleans is part of the South Louisiana port complex, America's largest and the world's fifth largest port. Thus, the disaster's impact was one of national, even global, impact. In such instance, a President must take control.

Neither laws on the books nor the weight of American historical tradition were hospitable to such a decision.

Four policy changes may be proposed now, with confidence that no subsequent disclosure will render them obsolete. Nor does one's assessment as to the relative culpability of federal, state and local officials in compounding the damage done by Katrina affect the vitality of the recommendations. The four are:

*(1) Build ASAP Category 5 storm protection for the restored New Orleans and the Louisiana port complex; (2) Deploy survivable electric power and communications for first responders; (3) When catastrophe endangers civil order and raises the plausible prospect of harm nationwide in scale, establish emergency federal authority—for 30 days in the President's sole executive discretion free of legislative and judicial review, and for 90-day increments thereafter per Congressional authorization and subject to judicial review; (4) in such emergencies make it a federal felony punishable by a mandatory minimum ten-year sentence to commit crimes, state or federal, that foster deterioration of civil order, and permit discretionary imposition of the death penalty.*

**(1) Cat 5 protection ASAP for the Port Complex.** Two reasons compel whatever investment is needed—even spending extra to finish sooner: (a) there is no other viable way to assure the safety of the hundreds of thousands of residents living in close proximity to sea walls; (b) the port complex is vastly important for the nation's own security and for the world economy as well. Re the first, an evacuation strategy is dicey, because the lead time needed to decide whether to take such action is two days, well before the path of a destructive storm is known with sufficient assurance to confidently predict disaster. *It runs counter to human nature to order decisive, drastic action that inevitably will cause great political, economic and social dislocation, at a moment of great ambiguity; rare will be the leader who will do so.*

**(2) Deploy survivable electric power and communications for first responders.** It is a national embarrassment that four years after 9/11 Katrina brought electric power and communications to a virtual complete halt for days. Local and state responders lacked battery-powered satellite communications gear; mobile systems were incompatible with parishes surrounding New Orleans. Mobile wireless links and handsets are essential. Cell towers will often topple, so satellite links are preferable. Priority access channels must be given for first responders. The federal government must reclaim television spectrum that broadcasters promised to return. Emergency channels can be dedicated to federal use, state use and local use, with common channels for multi-entity communication. Portable emergency equipment, such as satellite earth stations, switches and small-screen video-conferencing equipment (all fitting on cars or small water craft) must be prepositioned in secure locations, with triple redundancy. Mobile power back-up is needed, with in-place power including space above flood water lines.

**(3) Special Presidential Authority.** Unless doing nothing is the right thing to do in a given case, most critical of all is that a crisis decision be taken within the time necessary to ameliorate the consequences of catastrophe, if it cannot be headed off entirely. The

time leaders have to decide will, in case of natural disasters, often lie outside the control of decision-makers. *Flip the famed football maxim “speed kills”: In a crisis with potential catastrophic impact, undue delay kills.* One does not argue over the shape of a table if a bomb sits in the center with fuse burning. Give the President 30 days sole executive discretion to act in emergencies that threaten life and essential national assets, free of legislative and judicial review. Allow serial renewal for 90-day periods, subject to Congressional authorization and judicial review. It is possible in theory to give Congress a limited time to review the initial executive decision, failing which the President may act. But this is impractical in reality for two reasons: (1) Congress is not set up to act quickly; (2) if a divided Congress fails to approve, a President who then acts could find his authority politically impaired after a divisive debate during emergency times, when nationwide unity is a paramount societal value.

But can this reform be squared with the Constitution’s reservation of police power to the states? Yes. First, recovering a major port that is the gateway for traffic coming down the Mississippi from many states is hardly a local matter. Second, the Framers lived in a world where the infant federal government had no resources—an era when travel between Washington, DC and New York City took a week on horseback. Naturally the police power had to lie with the states. And so it should still, for *local* matters. Federal assistance for purely humanitarian relief should require state consent. *But where larger issues are engaged—of substantial national or global impact—federal supremacy is essential; far less is truly local than was the case in 1787.* Third, if federal hate crimes legislation can pass constitutional muster, making recreational looting during major disasters a federal criminal offense can pass muster, too (see below). Fourth, as the President has 60 days of sole authority under the 1973 War Powers Resolution, a month regarding extreme domestic emergencies is reasonable. *Fifth, the proposed executive prerogative is discretionary: A President who finds local authorities highly competent (as with NYC and 9/11) can decline to exercise extraordinary emergency power.*

Wherefore the intellectual rationale for such extraordinary executive power? To begin with, the strongest executive is most needed when the worst disasters strike; add that the public in times of severe crisis inevitably looks to the President for leadership. *As power must equal responsibility, Presidential authority must be pre-eminent at times of greatest national crisis.* Finally, rest on the philosopher whose writings were the main source for Thomas Jefferson’s Declaration of Independence. The President would, in effect, exercise what John Locke called in Chapter XIV of his *Second Treatise of Government* inherent executive “Prerogative” to protect society and public safety:

“159. For the Legislators not being able to foresee, and provide, by Laws, for all, that may be useful to the Community, the Executor of the Laws, having the power in his hands, has by the common law of Nature, a right to make use of it, for the good of the Society, in many Cases, where the municipal Law has given no direction, till the Legislative can conveniently be Assembled to provide for it....’tis fit that the laws themselves shall in some Cases give way to the Executive power, or rather to this Fundamental Law of Nature and Government, viz., that That as much as may be, *all* the Members of the Society are to be *preserved*. “ (Emphasis in original.)

*This recommendation is not dependent upon agreement with a conclusion that state and local officials were more culpable than federal. Divorcing power from responsibility is bad under any circumstances. Unifying the two by no means guarantees sound decisions, but it eliminates certain perverse incentives, and thus improves the odds that good decisions will be made.*

**(4) Federalize crimes committed during emergency, with a ten-year minimum sentence and discretionary death penalty, that foster deterioration of civil order.**

“Looting” as a term must exclude taking food and drink or medical supplies essential to survival; this tracks the common law privilege known as “necessity” as a valid defense to legal action. However, looting non-essential property is much more grave than ordinary theft, as it fosters social breakdown and descent into the savage depths we saw for days after Katrina. *Crimes during emergencies are an extreme form of terrorism—assaults against the very concept of civil order that is the foundation of modern liberal society.* These must not be tolerated, period.

***Last Lessons: Perils of Paralysis.*** Katrina says to us: *Catatonia compounds catastrophe.* Katrina created a catastrophe, but strategic and tactical blunders by federal, state and local (mostly the latter two) governments compounded already immense damage by an order of magnitude. The feds failed to grasp that the strategic significance of America’s largest port complex demanded extra investment for the once-per-century storm, to protect essential assets of immense value; they also blundered in getting ensnared into protracted negotiations with recalcitrant, incompetent state and local officials, when events on the ground demanded promptly breaking the logjam. Federal operational failings do not give one confidence in Homeland Security. This argues for taking FEMA out of the stultified bureaucracy that a 170,000-person Department inevitably becomes.

State and local officials committed the strategic error of relying upon evacuation as a primary strategy, despite the fact that the long lead time needed to do so meant deciding upon a drastic step when there would clearly be large ambiguity as to where a major storm might make landfall, making a radical early decision highly improbable. They then adopted an ostrich-like tactical pseudo-plan regarding evacuation of the helpless, defaulting upon their bedrock obligation to provide succor for the defenseless by limiting loss of life. They then tried to shift responsibility to the federal authorities to restore civil order while retaining supervisory control, an arrangement no reasonable federal official could accept. Racial tension made imposition of federal martial law—not done since Reconstruction—politically combustible. Discord between federal and state officials made violent conflict between them a real prospect; even mere lack of cooperation by locals would have impeded administration of martial law. The tragic result of these strategic and tactical blunders—greater than, but compounded by, federal blunders—was the horrifying spectacle presented in graphic color video to a stunned nation and to even more stunned observers worldwide.

End with Katrina’s saddest, and sternest, lesson: “*Laissez les bon temps rouler!*” (French for a New Orleans motto: “Let the good times roll!”) is not a program.