

# A Planning Pandemic: The Spread of Mandated Planning and Its Failure in Crisis

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*Lessons Learned from COVID-19*

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**Introduction**

The coronavirus pandemic intensified concerns that America was ill-prepared for disaster. Many bemoaned the absence of a clear plan for what seemed a predictable crisis. Commentators urged that America engage in more planning and preparation for future disasters.<sup>1</sup>

Yet there is little evidence that America’s failures in the pandemic came from a lack of planning. If anything, the crisis highlighted the incredible proliferation of government-mandated plans, which encompassed numerous public and private bodies, and which often worked at cross-purposes. It also demonstrated the inefficacious nature of existing plans and their inability to adapt to changing circumstances.

While many researchers have described the growth of planning in one or another sphere of government, there has been little systematic analysis of government plans across different sectors.<sup>2</sup>

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<sup>1</sup> Jack Bernard, “America Needs a National Plan for the Pandemic,” *Florida Times-Union*, September 21, 2020, <https://www.jacksonville.com/story/opinion/columns/2020/09/21/column-america-needs-national-plan-pandemic-hat-includes-standards-and-federal-penalties/5855566002/>; Philip Rucker, Yasmeeen Abutaleb, and Ashley Parker, “As the Coronavirus Crisis Spins Out of Control, Trump Issues Directions – But Still No Clear Plan,” *Washington Post*, July 15, 2020. [https://www.washingtonpost.com/politics/trump-coronavirus-pandemic-no-plan/2020/07/15/7581bea4-c5df-11ea-a99f-3bbdfb1af38\\_story.html](https://www.washingtonpost.com/politics/trump-coronavirus-pandemic-no-plan/2020/07/15/7581bea4-c5df-11ea-a99f-3bbdfb1af38_story.html); Katelyn Ketelina, “Drastic Shift for Pandemic Preparedness,” *Your Local Epidemiologist, Substack*, September 14, 2021. <https://yourlocalepidemiologist.substack.com/p/drastic-shift-for-pandemic-preparedness>

<sup>2</sup> The closest literature describes the growth of management-based regulation and government efforts to regulate the internal operations of private companies, which inevitability includes some mandated planning activity. The most extensive versions of these studies have been for environmental management, but there has also been work on industrial and food safety. See, for example, Cary Coglianese, “The Managerial Turn in Environmental Policy,” *NYU Environmental Law Journal* 17 (2008): 54-74 <https://nyuelj.org/wp-content/uploads/2013/03/Coglianese.pdf>; Cary Coglianese, “Management-Based Regulation: Implications for Public Policy,” in *Risk and Regulatory Policy, OECD Reviews of Regulatory*

This article first explains how planning mandates became a prominent feature of American government. It explains how federal grants became tied into required planning programs, and how emergency planning became a comprehensive, and still growing, mandate for governments and private businesses. Finally, it analyzes the impact these plans have had, most importantly by analyzing how they failed to ensure a coherent response to an actual emergency, the coronavirus pandemic.<sup>3</sup>

## From Urban Plans to Every Plan

The earliest government plans were city plans, or maps of where new roads, parks, and government-funded improvements should be located. Yet in most of the globe and for most of history these plans were at best suggestive and did not impose any particular obligations on government or private actors.<sup>4</sup> Yet, beginning in Frankfurt in 1891, the Prussian government and its cities developed “Stadtebau,” or urban plans that dictated where private development should occur in the future. This concept migrated into British “town planning” and then into American “city planning.” Reformers understood the novelty of such government plans. The American progressive activist Frederick Howe wrote, “In a big way, city planning is the first conscious recognition of the unity of society.”<sup>5</sup>

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*Reform* [https://www.oecd-ilibrary.org/governance/risk-and-regulatory-policy/management-based-regulation\\_9789264082939-10-en](https://www.oecd-ilibrary.org/governance/risk-and-regulatory-policy/management-based-regulation_9789264082939-10-en). These management-based regulations often focus on specific operations or contingencies, and the structure of management itself, instead of more speculative and long-term planning described in this article. Most often they involve the regulation of the private sector instead of the regulation of governments, but see background to National Environmental Policy Act, below. For government regulation of other governments, without discussion of planning, see David Konisky and Manuel Teodoro, “When Governments Regulate Governments,” *American Journal of Political Science* 60, no. 3 (2016): 559-574 <https://onlinelibrary.wiley.com/doi/full/10.1111/ajps.12221>. This article also relates to another literature on mandatory reporting and disclosure, which similarly uses paperwork requirements to ensure compliance. See Omri Ben-Shahar and Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandatory Disclosure* (Princeton: Princeton University Press, 2014). The most extensive analyses of planning specifically have been carried out for urban plans, for which see following section.

<sup>3</sup> This article will try to evaluate existing plans under their own lights, namely, were they consulted or used in the crisis, and, if they were, did they have any positive impact.

<sup>4</sup> See R.E. Wycherley, *How the Greeks Built Cities* (New York: Norton, 1949).

<sup>5</sup> Daniel Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: Harvard University Press, 2000), 177, 164. Britain began planning on a national level with its Housing and Town Planning Act of 1909, and American zoning started in 1916 in New York City.

Plans for economic development soon followed. Beginning in 1929 with the Soviet Union's Five-Year Plan, many nations around the world adopted economic plans specifying how they hoped to develop their industrial sectors, and how government regulations, grants, and mandates could encourage those sectors.<sup>6</sup> Although America never adopted such a comprehensive economic plan, in the 1930s it began issuing plans for agriculture and for crucial industries, and funding groups such as the National Resources Planning Board to encourage the spread of federal and state economic planning. These led to the increase of government plans to encourage, although rarely force, certain types of development, from industrial location to health and infrastructure capacity.<sup>7</sup>

As the federal government expanded its use of intergovernmental grants to state and local governments from the Great Depression onward, it began to be concerned that the funds were going to haphazard projects that should be more integrated into a coherent plan.<sup>8</sup> City planning became the locus of much of this integration. As a result of the 1949 Housing Act, cities were required to use federal housing grants in conformity with local city plans, and the 1954 Housing Act Section 701 grants to cities funded the development of the planning profession and of those mandated plans.<sup>9</sup> The 1968 Fair Housing Act mandated that each city receiving housing funds create an "Affirmatively Furthering Fair Housing Plan" to ensure that urban plans did not encourage segregation.<sup>10</sup> The 1974 Community Development Block Grant required the submission of Housing Assistance Plans showing how these grants would further a coherent urban development strategy. The 1990 Housing Partnership Act required states to create a five-year Consolidated Plan for housing (ConPlan), that had to include citizen participation in the planning process and which were supposed to incorporate previous housing plans. These had to be supplemented every year with an

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<sup>6</sup> David Engerman, *Modernization from the Other Shore: American Intellectuals and the Romance of Russian Development* (Cambridge, MA: Harvard University Press, 2004); Daniel Yergin and Joseph Stanislaw, *The Commanding Heights: The Battle for the World Economy* (New York: Free Press, 2002).

<sup>7</sup> "Roosevelt Forms Planning Board: Committee of Three Created to Advise the President on National Land problems," *New York Times*, May 1, 1934; White House Statement on the Establishment of the National Resources Board, July 3, 1934. To some extent the National Industrial Recovery Act of 1933 was an attempt to plan the entire economy, but it was largely ineffective by 1935. See, Judge Glock, *The Dead Pledge: The Origins of the Mortgage Market and Federal Bailouts, 1913-1939* (New York: Columbia University Press, 2021).

<sup>8</sup> See Kimberley Johnson, *Governing the American State: Congress and the New Federalism, 1877-1929* (Princeton: Princeton University Press, 2007). The following descriptions of federal plans will not include simple general lists of planned projects, such as the Superfund National Priority List, without extensive speculative and qualitative plans to accompany them.

<sup>9</sup> Carl Feiss, "The Foundations of Federal Planning Assistance: A Personal Account of the 701 Program," *Journal of the American Planning Association* 51, no. 2 (1985): 175-184.

<sup>10</sup> National Fair Housing Alliance, "Affirmatively Furthering Fair Housing," July 2021, <https://nationalfairhousing.org/affirmatively-furthering-fair-housing/>

Annual Plan for housing.<sup>11</sup> Since 1995, the Department of Housing and Urban Development has also required, and helped fund, local groups to create “Continuum of Care” plans for the recipients of homelessness grants. These supposedly have to be coordinated with the ConPlan for general housing and with other urban plans.<sup>12</sup>

Transportation grants also became tied into government planning mandates. Beginning with the 1962 Federal-Aid Highway Act, Congress required that local governments receiving federal funds coordinate together in a “Metropolitan Planning Organization” or MPO to plan for regional transportation programs. Starting in 1975, DOT demanded that MPOs create five-year Transportation Improvement Program plans (TIPs), that had to be updated every two years. More recently, the government has required that the TIPs must be supplemented and incorporated into Regional Transportation Plans, RTPs, that would plan out for 25 years and which would be updated every three years.<sup>13</sup>

Environmental concerns have led to distinct planning mandates. The 1970 Clean Air Act required the creation of State Implementation Plans for reducing air pollutants, including plans to change driving and industrial behavior. These State Implementation Plans then required the creation of local Air Quality Plans for areas not in attainment with the Clean Air Act objectives.<sup>14</sup> Due to subsequent amendments, regional transportation plans must be in conformity to these state and local clean air plans.<sup>15</sup>

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<sup>11</sup> Margaret Brassil, *The Creation of a Federal Partnership: The Role of the States in Affordable Housing* (Albany: SUNY University press, 2010), 70-72. State housing agencies have also encouraged plan proliferation, such as the California housing department requirements that the “Council of Governments” create a Regional Housing Need Allocation Plan. California Department of Housing and Community Development, “Regional Housing Needs Allocation,” <https://www.hcd.ca.gov/community-development/rhna/index.shtml>

<sup>12</sup> National Alliance to End Homelessness, “What is a Continuum of Care,” January 14, 2010, <https://endhomelessness.org/resource/what-is-a-continuum-of-care/>

<sup>13</sup> Susan Hanson and Genevieve Giuliano, eds., *The Geography of Urban Transportation*, 3<sup>rd</sup> Ed. (New York: Guilford Press, 2004), 149.

<sup>14</sup> California Air Resources Board, “San Francisco Bay Area Air Quality Plans,” <https://ww2.arb.ca.gov/our-work/programs/california-state-implementation-plans/nonattainment-area-plans/san-francisco-bay>

<sup>15</sup> One transportation textbook notes that regional planning underwent a renaissance of sorts in the 1970s, with hospitals, sewage treatment, and water supply requiring regional plans, but these have gradually been dropped. Hanson and Giuliano, eds., *The Geography of Urban Transportation*, 116-119. For instance, the California “Office of Statewide Health Planning and Development” once did general hospital planning, but today mainly offers data, and has recently deleted “Planning” from its name. CHHS Open Data, “Office of Statewide Health Planning & Development,” <https://data.chhs.ca.gov/organization/about/office-of-statewide-health-planning-development>

For water quality control, the EPA requires the establishment of statewide water quality plans, which then help inform regional water quality plans. These are further divided into thermal water plans, enclosed bay and estuary plans, and wetlands plans.<sup>16</sup> General water infrastructure has separate plans. The Clean Water Amendments of 1987 created revolving funds for states to improve the quality of water infrastructure but required states to create an Intended Use Plan describing long-term uses of these funds, which are distinct from the Intended Use Plans for Drinking Water Revolving Funds, which themselves are distinct from the general water quality plans.<sup>17</sup>

The federal bureaucracy itself is subject to planning mandates. Although the National Environmental Policy Act (NEPA) only requires the federal government, and state and local governments using federal funds, to conduct environmental impact statements whenever they build a new infrastructure project, these statements, in effect, must describe the plan of the project and elaborate alternative scenarios. Famously, these impact statements can feature many alternatives and take thousands of pages.<sup>18</sup> The Government Performance and Results Act of 1993 and the 2010 GPRA Modernization Act requires all departments and all regulators to produce five-year strategic plans.<sup>19</sup> (These plans themselves often describe their plans for more planning and how to encourage more planning from other groups. For instance, the Office of Homeland Security’s 2014-2018 strategic plan emphasized their goal of “creating planning scenarios” that would be useful, and its desire to “promote the use of the National Planning Frameworks.”<sup>20</sup>)

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<sup>16</sup> California Water Boards, “Plans and Policies,” [https://www.waterboards.ca.gov/plans\\_policies/](https://www.waterboards.ca.gov/plans_policies/) and “National Pollutant Discharge Elimination System (NPDES) – Wastewater,” [https://www.waterboards.ca.gov/water\\_issues/programs/npdes/](https://www.waterboards.ca.gov/water_issues/programs/npdes/)

<sup>17</sup> Texas Water Development Board, “Intended Use Plan: Clean Water State Revolving Fund,” September 1, 2021, [https://www.twdb.texas.gov/financial/programs/CWSRF/doc/SFY2022/SFY2022\\_CWSRF\\_IUP.pdf](https://www.twdb.texas.gov/financial/programs/CWSRF/doc/SFY2022/SFY2022_CWSRF_IUP.pdf); Texas Water Development Board, “Intended Use Plan: Drinking Water State Revolving Fund,” September 1, 2021, [https://www.twdb.texas.gov/financial/programs/DWSRF/doc/SFY2022/SFY2022\\_DWSRF\\_IUP.pdf](https://www.twdb.texas.gov/financial/programs/DWSRF/doc/SFY2022/SFY2022_DWSRF_IUP.pdf) Texas, like many states, also has a “State Water Plan,” which plans for the use of state funds decades into the future, and is part of a state commission which must approve 16 Regional Water Plans. Texas Water Development Board, “2022 State Water Plan,” <https://www.twdb.texas.gov/waterplanning/swp/2022/index.asp>; and “2021 Regional Water Plans,” <https://www.twdb.texas.gov/waterplanning/rwp/plans/2021/index.asp>

<sup>18</sup> Serge Taylor, *Making Bureaucracies Think: The Environmental Impact Statement Strategy of Administrative Reform* (Palo Alto: Stanford University Press, 1984).

<sup>19</sup> Adam Finkel, Daniel Walters, Angus Corbett, “Planning for Excellence: Insights from an International Review of Regulators’ Strategic Plans,” *Pace Environmental Law Review* 35, no. 2 (2018): 240-291.

<sup>20</sup> Department of Homeland Security, “Fiscal Years 2014-2018 Strategic Plan,” <https://www.dhs.gov/sites/default/files/publications/FY14-18%20Strategic%20Plan.PDF> Overall, Congress mandates about 4,200 reports and plans from the federal bureaucracy, up from less than 500 in the 1960s, many of which seem to be completely unread. David Farenthold, “Unrequired Reading,” *Washington Post*, May 3, 2014, <https://www.washingtonpost.com/sf/national/2014/05/03/unrequired-reading/>

Inside the bureaucracy, there has been an increase in offices purely dedicated to planning. Ever since the creation of the Office of Policy Planning in the State Department in 1947, Congress, or sometimes departments themselves, have expanded planning staff, which have often been tied into more traditional evaluative roles. The Federal Trade Commission has its own Office of Policy Planning, while the Department of Education has an Office of Planning, Evaluation and Policy Development, and the Department of Commerce has an Office of Policy and Strategic Planning.<sup>21</sup> The HHS has an Assistant Secretary for Planning and Evaluation, while the Assistant Secretary for Preparedness and Response (ASPR) has its own Planning Division, whose goal is to “develop strategic, deliberate, and crisis action plans, which office is separate from ASPR’s Office of Emergency Management, which describes itself as “developing operational plans” for the office and the public in a crisis.<sup>22</sup>

## **Emergency Planning**

Although the background to general government planning lies in urban design, more recent years have seen the proliferation of a distinct type of planning, emergency planning. These plans’ lineage lies in the military.

Although military officers discussed general strategy for centuries, the first systematic plans for future wars arose out of the Prussian general staff in the late 19<sup>th</sup> century and were supplemented by the rise of what was known as Kriegspiel, wargames or simulations that tested the value of such plans. Most importantly, after the Franco-Prussian War of 1870, General Alfred Von Moltke created a plan for deployment and mobilization in the event of another war with France, and the Prussians

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<sup>21</sup> Federal Trade Commission, “Office of Policy Planning,” <https://www.ftc.gov/about-ftc/bureaus-offices/office-policy-planning>; Department of Education, “Office of Planning, Evaluation, and Policy Development,” <https://www2.ed.gov/about/offices/list/opepd/index.html?src=oc>; Department of Commerce, “Office of Policy and Strategic Planning,” <https://www.commerce.gov/bureaus-and-offices/os/policy-and-strategic-planning>

<sup>22</sup> ASPR, “Planning Division,” <https://www.phe.gov/about/offices/program/icc/sppr/Pages/division-of-planning.aspx> <https://www.hrsa.gov/about/organization/offices/opae> <https://www.g2xchange.com/statics/sources-sought-hhs-office-of-emergency-management-data-analytics-tool/> These are also separate from the Health Resources and Services Administration in the HHS, which has Office of Planning, Analysis, and Evaluation. Health Resources and Services Administration, “Office of Planning, Analysis, and Evaluation,” <https://www.hrsa.gov/about/organization/offices/opae>.

acted out Kriegsspielen or simulations to see how this plan, and subsequent ones, worked in practice.<sup>23</sup>

The spread of the general staff model of the military to other countries also led to the expansion of military plans. After World War I, the U.S. Joint Army and Navy Board developed mobilization plans and engaged in simulations for future wars.<sup>24</sup> Especially after World War II, governments recognized that total war required total mobilization of the civilian population and began to integrate plans for war with general emergency planning for enemy attacks on civilians and general mobilization of the economy for war.

Nuclear war spurred more emergency planning. The Federal Civil Defense Administration in the 1950s began supporting the rise of civil defense directors in the states, largely to prepare for nuclear war, which departments were usually headed by ex-military men. Since the 1970s, these offices began to transition into general “emergency management” departments. In the 1990s, through Project Impact: Building Disaster-Resistant Communities, the federal government began encouraging communities to identify broad and general risks to life and property and establish plans to reduce them.<sup>25</sup>

Military planning also began intersecting with urban planning during the Cold War, when the US government began incentivizing cities to plan for evacuation in the case of a bomb blast, and also to ensure their urban plans took account of the possibility of nuclear explosions.<sup>26</sup> The federal government began Continuity of Government plans and drills to ensure stability of the chain-of-command of the federal government in case of a nuclear attack, and these continuity plans soon became an important part of state and local planning as well.<sup>27</sup>

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<sup>23</sup> Mathew Seligmann, “Pre-War Military Planning,” *International Encyclopedia of the First World War*, June 26, 2019, [https://encyclopedia.1914-1918-online.net/article/pre-war\\_military\\_planning](https://encyclopedia.1914-1918-online.net/article/pre-war_military_planning) For a description of how these plans failed to account for the realities of war, see Barbara Tuchman, *The Guns of August* (New York, Ballantine Books, 1962).

<sup>24</sup> Some earlier semi-military parts of government created plans for the civilian sector. Members of the U.S. Public Health Service, a uniformed federal agency, created what was known as “The Plan” for how to respond to smallpox outbreaks in local communities. Michael Willrich, *Pox: An American History* (New York: Penguin Press, 2011), 112-113.

<sup>25</sup> FEMA, “Emergency and Risk Management Case Studies Textbook,” <https://training.fema.gov/hiedu/aemrc/booksdownload/emoutline/>

<sup>26</sup> Jennifer Light, *From Warfare to Welfare: Defense Intellectuals and Urban Problems in Cold War America* (Baltimore: John Hopkins University Press, 2003), 11-31.

<sup>27</sup> Garret Graff, *Raven Rock: The Story of the U.S. Government’s Secret Plan to Save Itself* (New York: Simon & Schuster, 2017).

The increased federal funding of disaster relief also spurred related emergency plans. After years of scattershot congressional bills related to disaster relief, and some systematization in the 1950 Disaster Relief Act, it was the 1974 Disaster Relief Amendments that for the first-time required mitigation efforts after a disaster and therefore planning against the possibility of future disasters. These plans were further encouraged by the creation of the Federal Emergency Management Agency (FEMA) in 1979, which tried to standardize such plans.<sup>28</sup>

In 2003, President George W. Bush required the creation of what became known as the federal National Response Framework for responding to disasters of any sort, of which local plans were supposed to become a part.<sup>29</sup> Today, before FEMA or the federal government distributes aid, a state must create certify that their request for funds is in conformity with the state's general emergency plan.<sup>30</sup> Congress has added more requirements to such plans. Due to scenes of stranded cats and dogs after Hurricane Katrina, Congress passed the PETS Act in 2006, which requires that such emergency plans include details about how to rescue animals.<sup>31</sup> FEMA also requires the creation of a hazard mitigation plan for governments receiving grants for future emergencies.<sup>32</sup>

The federal government offers several grants to encourage emergency planning specifically. The Department of Homeland Security issues Emergency Management Performance Grants to encourage participation in their Integrated Preparedness Planning Workshops.<sup>33</sup> The Department

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<sup>28</sup> See FEMA, "Developing and Maintaining Emergency Operations Plans; Comprehensive Preparedness Guide (CPG) 101, Version 2.0," November 2010, [https://www.fema.gov/sites/default/files/2020-05/CPG\\_101\\_V2\\_30NOV2010\\_FINAL\\_508.pdf](https://www.fema.gov/sites/default/files/2020-05/CPG_101_V2_30NOV2010_FINAL_508.pdf)

<sup>29</sup> Shannon Collins Schroeder, "Does America's New Disaster Relief Law Provide the Relief America Needs," *Houston Law Review* 56, no. 5 (2019): <https://houstonlawreview.org/article/10023-does-america-s-new-disaster-relief-law-provide-the-relief-america-needs>

<sup>30</sup> <https://houstonlawreview.org/article/10023-does-america-s-new-disaster-relief-law-provide-the-relief-america-needs>  
Although FEMA is supposed to manage all appropriations in a disaster, this article notes that at least 17 different federal departments are involved in disaster response.

<sup>31</sup> American Veterinary Medical Association, "PETS FAQs," <https://www.avma.org/pets-act-faq#>

<sup>32</sup> City of McFarland, "City of McFarland Local Hazard Mitigation Plan," [https://www.mcfarlandcity.org/DocumentCenter/View/1837/Local-Hazard-Mitigation-Plan\\_October-2016?bidId=](https://www.mcfarlandcity.org/DocumentCenter/View/1837/Local-Hazard-Mitigation-Plan_October-2016?bidId=);  
FEMA, "Developing and Maintaining Emergency Operations Plans," November 2010, <https://www.fema.gov/sites/default/files/2020-07/developing-maintaining-emergency-operations-plans.pdf>

<sup>33</sup> Submission for these grants requires the submission of a "EMPG Work Plan," but before submission of the Work Plan, the government must certify that the government has completed a Hazard Identification and Risk Assessments and Stakeholder Preparedness Review. For more information, grantees can consult the 200 page "FEMA Preparedness Grants Manual." There are related awards such as the Transit Security Grant Program, Intercity Bus Security Grant Program, Intercity Passenger rail Program, Port Security Grant Program, and so on. FEMA, "FEMA Preparedness Grants Manual," February 2021, [https://www.fema.gov/sites/default/files/documents/FEMA\\_2021-Preparedness-Grants-Manual\\_02-19-2021.pdf](https://www.fema.gov/sites/default/files/documents/FEMA_2021-Preparedness-Grants-Manual_02-19-2021.pdf) These are separate from the Homeland Security Grant Program, which is the second

notes their grants to encourage state planning should conform to the 2018-2022 FEMA Strategic Plan (which itself had, as one of its goals, “reducing the complexity of FEMA.”)<sup>34</sup> These are separate from the Urban Area Security Initiative grants, which require the creation of terrorism prevention-oriented plans for urban governments.<sup>35</sup> The Centers for Disease Control and Prevention (CDC) offer grants for Public Health Emergency Preparedness.<sup>36</sup>

Environmental catastrophes have led to new and distinct emergency plans. The Emergency Planning and Right-to-Know Act of 1986 requires that local governments set up Local Emergency Planning Committees to construct plans for release of hazardous or toxic chemicals and supports community involvement in such plans.<sup>37</sup> Many states have begun climate adaption plans, which have been partially funded by the CDC, which gives funds to support integrating climate adaption into existing “public health and medical provider planning efforts.” The California Natural Resources Agency recently used these funds to help create a general climate change adaption plan, along with 10 separate sector plans, from agriculture to public health. (As an example, the first goal of the Public Health sector plan is “Improve Capacity of Communities to Prepare, Respond and Recover from Climate-Related Health Risks.”) The California agencies then themselves give grants to support “Climate Resilience Planning” for tribes, and “Local Sea Level Rise Planning” for ocean-fronting communities, among other such planning efforts.<sup>38</sup>

Federal plans and planning mandates have now spread far beyond state and local governments into the private sector.<sup>39</sup> In recent years the Federal Reserve and other bank regulators have mandated

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greatest source of funds for emergency preparation after the FEMA grants. See, FEMA, “Homeland Security Grant Program,” <https://www.fema.gov/grants/preparedness/homeland-security>

<sup>34</sup> Department of Homeland Security, “Notice of Funding Opportunity: Fiscal Year 2021 Emergency Management Performance Grant Program,” [https://www.fema.gov/sites/default/files/documents/FEMA\\_FY2021-EMPG-NOFO\\_02-19-21.pdf](https://www.fema.gov/sites/default/files/documents/FEMA_FY2021-EMPG-NOFO_02-19-21.pdf)

<sup>35</sup> Ibid, With the assistance of FEMA, states have also begun encouraging families to create their own “family emergency plan New Hampshire Homeland Security Emergency Management, “Family Emergency Plan,” <https://www.readynh.gov/documents/FamilyEmergencyPlan.pdf>

<sup>36</sup> CDC, “Public Health Emergency Preparedness Cooperative Agreement,” <https://www.cdc.gov/cpr/readiness/phcp.htm>

<sup>37</sup> EPA, “Local Emergency Planning Committees,” <https://www.epa.gov/epcra/local-emergency-planning-committees>

<sup>38</sup> California Natural Resources, “Safeguarding California: Implementation Action Plans,” March 2016, <https://resources.ca.gov/CNRArchiveFiles/docs/climate/safeguarding/Safeguarding%20California-Implementation%20Action%20Plans.pdf> and CDC “CDC’s Climate-Ready States & Cities Initiative,” [https://www.cdc.gov/climateandhealth/climate\\_ready.htm](https://www.cdc.gov/climateandhealth/climate_ready.htm)

<sup>39</sup> The literature on “management-based regulation” and planning is more extensive than for government-planning mandates. As in footnote supra, this literature tends to focus on process and contingency reforms, rather than long-run and speculative planning, but some of this literature explains the distinction of when firms are required “to engage in

the creation of living wills for large banks, which is a plan for how a bank would unwind in the case of a bankruptcy or financial crisis. These banks also undergo “street-test” simulations to see how they would respond to such a financial crisis.<sup>40</sup>

The EPA mandates that some companies using high volumes of chemicals create “risk management plans” under the Clean Air Act. These require hazard mitigation strategies that the companies must continue to review and update. Many states require similar toxic chemical plans from companies. The Massachusetts Toxic Use Reduction Act, requires a state-authorized “pollution prevention planner” to certify that each company’s plan meets the law’s requirements. Despite the name of the authorizing legislation, the act does not require firms to reduce toxic emissions or even adhere to their own plans. They just need to have them.<sup>41</sup>

In 2016 Health and Human Services issued a new rule mandating emergency plans for Medicare and Medicaid supported health-care systems, which encompasses most of the healthcare industry. It requires an “all-hazards risk assessment” as part of “emergency preparedness planning.” It also requires a separate “emergency preparedness communication plan.” It argued such plans were necessary for “improving the national response to...any infectious disease threats.” The final estimate was that the plan would take 3 million hours of labor and cost about \$300 million to implement, and \$100 million more to maintain for each following year. It noted that it was “unable to specifically quantify the number of lives saved as a result of this final rule.”<sup>42</sup> This is separate from

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planning only, while others require them to engage in planning and to follow through by implementing the plans.” Cary Coglianese and David Lazar, “Management-Based Regulation: Prescribing Private Management to Achieve Public Goals,” *Law and Society Review* 37, no. 4 (2003): 691-730, 706.

<http://davidlazer.com/sites/default/files/23%20Coglianese%20Lazer%202003.pdf> For instance, extensive plans in food safety often involve specific algorithms on responding to a few and clearly identifiable issues. USDA Food Safety Inspection Service, “Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,” 61 Fed. Reg. 38806 (July 25, 1996), [https://www.fsis.usda.gov/sites/default/files/media\\_file/2020-08/93-016F\\_0.pdf](https://www.fsis.usda.gov/sites/default/files/media_file/2020-08/93-016F_0.pdf) For problems with some of these plans, see Jerry Ellig and Richard Williams, “FDA’s Animal Food Regulation is for the Birds,” *Regulation Magazine* (Summer 2014): 54-61.

<sup>40</sup> Board of Governors of the Federal Reserve System, “Dodd-Frank Act Stress Tests,” <https://www.federalreserve.gov/supervisionreg/dfa-stress-tests.htm>

<sup>41</sup> Coglianese, “The Managerial Turn in Environmental Policy,” *NYU Environmental Law Journal* 17 (2008): 54-74 includes strong evidence that some companies’ Environmental Management Systems lead to improvement, although it is not clear how much of that effect is a causal result of the regulation.

<sup>42</sup> “Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers,” 81 Fed. Reg. 63859 (September 16, 2016) <https://www.federalregister.gov/documents/2016/09/16/2016-21404/medicare-and-medicaid-programs-emergency-preparedness-requirements-for-medicare-and-medicaid> The rule noted that earlier conditions of participation in the federal program, including by The Joint Commission, the body which accredits hospitals for HHS, already required written emergency plans from some healthcare providers

the existing regulations for emergency planning that apply to Rural Health Clinics and Federally Qualified Health Centers and the Assistant Secretary of Preparedness and Readiness's grants for "Hospital Preparedness Programs."<sup>43</sup>

The Occupational Safety and Health Administration requires many large businesses to have Emergency Action Plans, which must include, at a minimum, procedures for reporting fires and other emergencies, procedures for evaluation of emergencies, procedures for those who remain in emergencies to operate critical plant operations, and a requirement to review the plan with each covered employee.<sup>44</sup>

The United States Department of Agriculture requires disaster and emergency plans for zoos, circuses, pet dealers, and laboratories to ensure the safety of animals. A few years ago the Department expanded the plan to entertainers. This resulted in many magicians having to submit disaster management plans for their rabbits. The plans had to account for fires, floods, tornados, air conditioning failure, ice storms, and power failures, among other catastrophes. One such rabbit disaster plan was 28 pages long.<sup>45</sup>

## **Government Planning in Action**

It is difficult to know the impact or value of such plans. In general, despite extensive mandates to "coordinate" or "integrate" such plans, government plans seem to have little to no coordination with each other. For instance, the most recent five-year San Francisco "ConPlan" for federal housing assistance is over 1,100 pages long, and has numerous references to homelessness, but no reference to other homelessness plans.<sup>46</sup> The city's extensive Five-Year Strategic Framework for

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<sup>43</sup> ASPR, "Hospital Preparedness Program," <https://www.phe.gov/Preparedness/planning/hpp/Pages/default.aspx>; "Emergency Preparedness," 42 CFR 491.12, <https://www.law.cornell.edu/cfr/text/42/491.12>

<sup>44</sup> OSHA, "Emergency Action Plans," <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.38>

<sup>45</sup> David Farenthold, "Watch Him Pull a USDA-Mandated Rabbit Disaster Plan Out of His Hat," *Washington Post*, July 16, 2013, [https://www.washingtonpost.com/politics/watch-him-pull-a-usda-mandated-rabbit-disaster-plan-out-of-his-hat/2013/07/16/816f2f66-ed66-11e2-8163-2c7021381a75\\_story.html](https://www.washingtonpost.com/politics/watch-him-pull-a-usda-mandated-rabbit-disaster-plan-out-of-his-hat/2013/07/16/816f2f66-ed66-11e2-8163-2c7021381a75_story.html)

<sup>46</sup> City and County of San Francisco, "Amended 2020-2024 Consolidated Plan and 2020-2021 Action Plan," September 2020, <https://sfmohcd.org/sites/default/files/Documents/Reports/REVISED%20Full%20Amended%202020-2024%20Consolidated%20Plan%20and%202020-2021%20Action%20Plan%20Sept%202020%20-%20Reduced.pdf>

homelessness, and its annual update, has no reference to the ConPlan in turn.<sup>47</sup> These plans do not seem to be integrated into the city's general zoning or urban development plan, which itself is distinct from the regional transportation plan, which has no reference to a host of emergency, climate, or other such plans.<sup>48</sup> At the same time, frequent changes, often annual, for plans that can last for up to 25 years seems to belie the likelihood of these often being used for long-term planning. The absence of integration, and consequent contradictions between plans, shows the plans cannot consistently affect practices.

The coronavirus crisis, however, offers an opportunity to examine the effect of emergency planning at all levels of government. Most importantly, despite some claims to the contrary, there were extensive government plans for responding to similar emergencies in general and for an infectious disease outbreak in particular.

In 2006, following the Avian Influenza scare, Congress passed the Pandemic Preparedness and Response Act, which ordered the creation of a Pandemic Influenza Preparedness Policy Coordinating Committee at the federal level, whose goal was to plan for a future pandemic. This led to the issue of a White House Homeland Security Council National Strategy for Pandemic Influenza, and then a National Strategy for Pandemic Influenza Implementation Plan. These would be updated in 2009 and 2017. The government also encouraged all individual departments to create their own plans.<sup>49</sup> The Act, and subsequent iterations, also required that each state create their own Pandemic Preparedness Plan and submit it to the CDC for approval. In general, despite numerous outbreaks such as SARS and MERS, almost all of the plans focused on influenza.

Yet the federal bureaucracy, often unprompted, created its own disease plans. For instance, there was a Health and Human Services National Health Security Strategy and a 2006 Homeland Security

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<sup>47</sup> San Francisco Department of Homelessness and Supportive Housing, Five Year Strategic Framework Update and 2021 Implementation Plan," March 2021, <https://hsh.sfgov.org/wp-content/uploads/2017/10/HSF-Strategic-Framework-Full.pdf>

<sup>48</sup> History of San Francisco's Urban Planning "The General Plan," <https://sfurbanplanning.weebly.com/the-san-francisco-general-plan.html> Association of Bay Area Governments, "Regional Housing Needs Allocation Draft Methodology: San Francisco Bay Area, 2023-2031," [https://abag.ca.gov/sites/default/files/documents/2021-02/ABAG\\_Draft\\_RHNA\\_Methodology\\_Report\\_2023-2031.pdf](https://abag.ca.gov/sites/default/files/documents/2021-02/ABAG_Draft_RHNA_Methodology_Report_2023-2031.pdf)

<sup>49</sup> The following page relies on Judge Glock, "Why Two Decades of Pandemic Planning Failed," *Medium*, April 9, 2020, <https://medium.com/cicero-news/why-two-decades-of-pandemic-planning-failed-a20608d05800>; See also, CDC, "National Pandemic Strategy," <https://www.cdc.gov/flu/pandemic-resources/national-strategy/index.html>

Biodefense for the 21<sup>st</sup> Century plan. The World Health Organization also encouraged the creation of disease plans, and this in turn led to a Health and Human Services (HHS) Health Security National Action Plan, which admits it at least “derives from, maintains alignment with, underscores, and supports” the goals of a few of the other strategies discussed above. This was separate from the North American Plan for Animal and Pandemic Influenza, written with the help of Canada in Mexico. There was also a National Biodefense Strategy, which emerged out of a congressional mandate in the National Defense Authorization Act of 2017. Just months before the coronavirus outbreak, in fact, Congress passed the Pandemic Preparedness Act of 2019 to encourage and assist in such planning. These pandemic plans were also supposed to be aligned and part of the general FEMA National Response Framework plans, which had their own Biological Incident Annex to deal with pandemics, and with mandated state and local plans. These were also separate from some Departments’ Pandemic Workforce Protection Plans, which governed how the departments themselves would work during a pandemic. The Department of Homeland Security had its own Pandemic Workforce Protection Plan, and its eight component units each had one as well.<sup>50</sup>

The proliferation of plans seemed to be symptomatic of a proliferation of emergency response authorities. For instance, the 2006 Pandemic Preparedness Act created the office of the Assistant Secretary of Preparedness and Planning in the HHS, which was supposed to “coordinate the Federal interagency response to a pandemic.” Yet the Centers of Disease Control and Prevention, as demonstrated by its title, has its own authority, and its empowering statute says that it has an “essential role in defending against and combatting public health threats.” Underneath the CDC is a Division of Global Mitigation and Quarantine and a National Center for Emerging and Zoonotic and Infectious Diseases, both of which would seem to have direct authority over a pandemic and over measures like quarantines. Yet the Surgeon General of United States also has the duty to “make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases.” These are separate from the general authority the Secretary of HHS must, as its website declares, work towards “preventing the introduction, transmission, and spread of communicable diseases.”

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<sup>50</sup> Office of Inspector General, Department of Homeland Security, “DHS Pandemic Planning Needs Better oversight, Training, and Execution,” October 12, 2016, <https://www.oig.dhs.gov/assets/Mgmt/2017/OIG-17-02-Oct16.pdf>

Outside of the health bureaucracy, FEMA was created, as it says due to “lack of coordination [in emergency situations] and the fact that, at the Federal level, no single entity was responsible or coordinating Federal response and recovery efforts,” and it therefore would seem to lead in such an emergency. Agencies like the FDA and the National Institute of Allergy and Infectious Diseases, the latter of course led by Anthony Fauci, would seem to have some authority as well, not to mention such strange tertiary organizations as the National Pandemic Influenza Economics Advisory Committee.

The White House itself has its National Security Council, which had written and approved previous pandemic plans, and which was supposed to coordinate interagency security threats, including from diseases. Yet, in this pandemic, the President created a separate White House Task Force to lead the fight against the coronavirus, which included many individuals that themselves were designated “coordinators” of emergency responses.



Figure 1: Sampling of Covers of Government Pandemic Plans

We know that, from early in the crisis, the federal government barely consulted, and generally did not adhere, to its existing pandemic plans. When *Politico* noted that the Trump administration was not following Obama’s National Security Councils’ Playbook for Early Response to High-Consequence Infectious disease, which I have not mentioned, the administration said it was following some combination of the Biological Incident Annex to the National Response Framework, the Biodefense Strategy, and a Pandemic Crisis Action Plan, which I have also not described previously. In fact, just weeks after the outbreak, the administration wrote its own 100-plus page plan for responding to the coronavirus, which mentioned only one previous plan, and that in passing.<sup>51</sup> It seems that after almost two decades of pandemic planning, many government officials were not even aware of the vast number of pandemic plans in existence.<sup>52</sup>

The overlapping authorities of planners seemed to inhibit any attempts at coordination and the plans in turn seemed unable to grapple with these overlapping authorities. The Crimson Contagion 2019 pandemic training exercise has received some attention, but the first recommendation to come out of its After-Action Report was a lack of clear authority to coordinate government operations in a pandemic.<sup>53</sup> The report noted that the 2016 Presidential Policy Directive allows for a “non-traditional Federal Department to serve as the lead federal agency in response to a unique threat” like a pandemic “but it does not provide requisite mechanisms or processes to effectively lead coordination of the Federal Government’s response.” It noted specifically that “HHS has no mechanisms to coordinate across or task other Federal Departments and Agencies during an influenza pandemic or other biological incident.” It also explained that existing plans like the Biological Incident Annex and the Pandemic Crisis Action Plan did not outline the organizational structure of the federal response.<sup>54</sup>

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<sup>51</sup> Dan Diamond and Nahal Toosi, “Trump Team Failed to Follow NSC’s Pandemic Playbook,” *Politico*, March 25, 2020, <https://www.politico.com/news/2020/03/25/trump-coronavirus-national-security-council-149285>

<sup>52</sup> This discussions brings up the issue of whether certain leaders, and the President specifically, failed to adhere to otherwise worthwhile plans, and thus made them “ineffective,” even if they would have saved lives. Although the President obviously contributed to and exacerbated the chaos in the response, the confusion of existing authorities and existing plans, as well as the government’s own, subsequent recognition of these plans inadequacies, means that increased adherence to “planning” per se would not have improved the situation. The very fact that government plans must ultimately be carried out by elected officials, who feel little fealty to them, is itself a problem with any government emergency planning, as professionals in the sector understand.

<sup>53</sup> David Sanger, Eric Lipton, Eileen Sullivan, and Michael Crowley, “Before Virus Outbreak, a Cascade of Warnings Went Unheeded,” *New York Times*, September 4, 2021, <https://www.nytimes.com/2020/03/19/us/politics/trump-coronavirus-outbreak.html>

<sup>54</sup> HHS, “Crimson Contagion 2019 Functional Exercise After-Action Report,” October 5, 2020, [https://www.governmentattic.org/38docs/HHSaarCrimsonContAAR\\_2020.pdf](https://www.governmentattic.org/38docs/HHSaarCrimsonContAAR_2020.pdf)

When comparing the existing government plans to the response itself, one finds little overlap. For instance, much of the policy debate around the coronavirus has centered on “nonpharmaceutical interventions,” or NPIs. The CDC had created a distinct plan for NPIs for a pandemic.<sup>55</sup> Yet a survey of the plan shows most of its recommendations were not carried out or were only carried out for a short time because they were inappropriate to the coronavirus infection, and many interventions that weren’t mentioned became central. For instance, the CDC NPI plan recommended against the general use of face masks for healthy individuals in community settings, a plan which was at first recommended until an abrupt shift in April 2020.<sup>56</sup> The CDC plan also recommended “Environmental Surface Cleaning Measures” including disinfecting frequently touched surfaces. This too was an early recommendation of the federal government, but it was later de-emphasized as a strategy. For school closures, the CDC recommended preemptive school dismissals during a severe pandemic, but it was not clear if they wanted to recommend merely a 2-week closure or closures up to 6 months. In either case, the CDC has shifted the supposed risk to children in school settings numerous times.

For social distancing measures, the CDC noted that “the evidence base for the effectiveness of some of these measures is limited” but said it might recommend use of some, largely voluntary distancing proposals, such as increasing distance in public to three feet for well people. It said that only those with symptoms of the disease should “practice voluntary home isolation.” They advised canceling only mass gatherings and merely encouraging offices in “offering” telecommuting in the workplace.<sup>57</sup> It is notable that nowhere in the CDC, or other, planning documents, was the idea of long-term and mandatory “lockdowns” proposed to reduce overall disease transmission, as opposed to just increase the time of spread. Yet lockdowns or long-term social distancing mandates became one of the most prominent means for responding to the pandemic. In fact, the early use of the term “shelter in place” to describe the lockdowns, which was nowhere in evidence in pandemic

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<sup>55</sup> CDC, “Community Mitigation Guidelines to Prevent Pandemic Influenza, 2017,” *CDC Recommendations and Reports* 66, no. 1 (2017): 1-34, [https://www.cdc.gov/mmwr/volumes/66/rr/rr6601a1.htm?s\\_cid=rr6601a1\\_w](https://www.cdc.gov/mmwr/volumes/66/rr/rr6601a1.htm?s_cid=rr6601a1_w)

<sup>56</sup> Colin Dwyer and Allison Aubrey, “CDC Now Recommends Americans Consider Wearing Cloth Face Coverings in Public,” *NPR*, April 3, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/03/826219824/president-trump-says-cdc-now-recommends-americans-wear-cloth-masks-in-public>

<sup>57</sup> For background to social distancing recommendations, see Eric Lipton and Jennifer Steinhauer, “The Untold Story of the Birth of Social Distancing,” *New York Times*, April 22, 2020, <https://www.nytimes.com/2020/04/22/us/politics/social-distancing-coronavirus.html>

planning, was common in planning documents for emergency chemical and radioactive dangers. Yet these were considered very short-term measures to last only until wind or natural environmental processes had pushed the danger onwards.<sup>58</sup> In the CDC plan and others, there was no program for mass-testing. Even the administration’s own COVID-19 plan, written early in the crisis, ignored many interventions and programs that were put in place or recommended just months later.<sup>59</sup>

Other federal planning documents recommended similar strategies that were not carried out.<sup>60</sup> For instance, the National Strategy for Pandemic Influenza recommended testing people coming into the country across its borders, a strategy which was never attempted by the federal government. The plan advocated against total border closures from some countries, because “modeling suggest that border closure would not decrease the total number of illnesses and deaths,” yet such border closures were one of the few direct federal NPIs carried out in the pandemic. Like many such plans, the 2006 pandemic plan recommended few specifics, but proposed “carefully weighing competing interests, views, and goals” in the event of a crisis. Similar language was common in many plans and would seem to obviate even the possibility of coherent planning ahead of time.<sup>61</sup>

The state and local pandemic plans mandated by the federal government also seemed to have little efficacy. A 2009 Pandemic Preparedness Plan for California consisted mainly in encouraging other departments and local governments to create plans and included a “Suggested Local Government Action Checklist” for such plans. The first goal of their plan focused on Continuity of Government planning, to ensure that government officers were safe and could continue to get to work in a pandemic. The California plan recommended some types of “social distancing” but nothing concrete was proposed and no mandates were suggested. It also included vague intimations about

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<sup>58</sup> Yale University Emergency Management, “Shelter in Place,” <https://emergency.yale.edu/be-prepared/shelter-place>. A 2007 CDC NPI recommendation paper only mentioned “sheltering-in-place” in regards to those living abroad who couldn’t get home during pandemic. Some earlier shelter-in-place models involved “snow days” of just a few days to slow the overall spreads, not weeks or months of such programs. Scott Gottlieb, *Uncontrolled Spread: Why Covid-19 Crushed Us and How We Can Defeat the Next Pandemic* (New York: Harper, 2021), 197-200.

<sup>59</sup> HHS, “PanCAP Adapted: U.S. Government COVID-19 Response Plan,” March 13, 2020, <https://int.nyt.com/data/documenthelper/6819-covid-19-response-plan/d367f758bec47cad361f/optimized/full.pdf>

<sup>60</sup> HHS, “Pandemic Influenza Plan: 2017 Update,” <https://www.cdc.gov/flu/pandemic-resources/pdf/pan-flu-report-2017v2.pdf> The general HHS Pandemic Influenza plan update of 2017 merely linked to, without referring to, CDC plans for Non-Pharmaceutical Interventions.

<sup>61</sup> National Security Council, “National Strategy for Pandemic Influenza Implementation Plan,” May 2006, <https://www.cdc.gov/flu/pandemic-resources/pdf/pandemic-influenza-implementation.pdf> and

weighing competing interests in the event of a pandemic.<sup>62</sup> This plan, like most other state and local pandemic plans, made no reference to specific proposals contained in the general emergency management plans created by the government. In turn, hospitals and businesses required to plan for such crises by HHS, OSHA, or other federal agencies seemed to not discuss or adhere to these plans in the pandemic.<sup>63</sup>

Government offices have begun to conduct after-action reports on their COVID responses, which reports were often encouraged or mandated by federal laws or regulations. These reports often describe the futility of previous plans. For instance, the Oregon Disaster Recovery Plan and Economic Recovery Plan were written just two years before the emergency, but the state's after-action report notes that, "While comprehensive in scope, the State Recovery Plan does not consider the impacts on recovery of a long-term fluid incident such as the COVID-19 pandemic," and the Economic Recovery plan likewise doesn't account for such a scenario. Instead, the Governor's office began a new plan for reopening and recovery in May of 2020.<sup>64</sup>

FEMA was one of the first federal bureaucracies to issue an after-action report on COVID, in late 2020, and it noted a lack of clear authority hampered the implementation of existing plans. They argued, similar to the Crimson Contagion after-action report, that there was insufficient authority to for any one agency to lead a response which inevitably would have led to confusion. But it also noted that the existing plans were not helpful. "Federal pandemic planning was insufficient for a national incident and did not account for interagency operations, resource shortages, and an integrated federal approach to supporting SLTT [State, Local, Tribal and Territorial] partners effectively... FEMA regional pandemic plans either did not exist or did not account for jurisdiction-specific capabilities or deficiencies."<sup>65</sup>

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<sup>62</sup> California Governor's Office of Emergency Services, "Statewide Concept of Operations for Pandemic Influenza," November 2009, <https://www.caloes.ca.gov/PlanningPreparednessSite/Documents/StatewideConOpsforPandemicInfluenza%202009.pdf>

<sup>63</sup> One post-COVID Inspector General report on the CMS's hospital preparedness plan regulations claimed they were "well-designed," but the agency's "authority is not sufficient for it to ensure preparedness at accredited hospitals." Office of Inspector General, HHS, "CMS's Controls Related to Hospital Preparedness," June 2021, <https://www.oig.hhs.gov/oas/reports/region2/22101003.pdf>

<sup>64</sup> State of Oregon, "State of Oregon After-Action Review: Oregon's COVID-19 Ongoing Response and Re-Opening," July 2021, <https://www.oregon.gov/gov/policy/Documents/or-aar-soc-4-073021.pdf>

<sup>65</sup> FEMA, "Pandemic Response to Coronavirus Disease 2019 (COVID-19): Initial Assessment Report," January 2021, [https://www.fema.gov/sites/default/files/documents/fema\\_covid-19-initial-assessment-report\\_2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_covid-19-initial-assessment-report_2021.pdf) The National Homeland Security Consortium noted the problems of "ad hoc structures to address the pandemic," which "increased

Public health officials who worked in government had a similar response. The former head of the Food and Drug Administration, Scott Gottlieb, wrote that the nation “had been preparing for this moment through presidential administrations” and had written previous plans. But he argued that “many of the plans and preparations turned out to be a technocratic illusion.” He noted that in previous public health roles, the consensus was that “planning for medical calamities provides you with no assurance that you’re prepared to deal with one,” and worried that earlier focuses on influenza led to a misdirected response to a coronavirus pandemic, including by a false reliance on NPIs directed at the flu.<sup>66</sup>

It is notable that the government’s most successful program in responding to the pandemic, Operation Warp Speed, which created the COVID vaccines, was itself unplanned. Although Congress gave HHS the authority to purchase and fund new drugs back in 2006, the administration had to create a new program of vaccine research, funding, and purchasing, all run in tandem, in the early months of the pandemic, which had not previously been planned for.<sup>67</sup> The government’s COVID-19 plan from early in the pandemic in-fact put the development of antivirals above that of vaccines.<sup>68</sup>

Surprisingly, one of the responses to the pandemic has been to advocate increasing planning. One of the recommended actions from Oregon’s after-action report was to “Establish [a] long-term planning unit” for state medical services.<sup>69</sup> The National Homeland Security Consortium, a group of public- and private-sector responders, reports that the number one problem with the response was the “failure to implement a national strategy or plan,” and its first recommendation was to “update

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confusion about roles and responsibilities.” National Homeland Security Consortium, “COVID-19 Pandemic: After-Action Report,” June 2021, <https://www.astho.org/COVID-19/NHSC-COVID-19-Pandemic-After-Action-Report/>

<sup>66</sup> Gottlieb, Uncontrolled Spread, 3-4.

<sup>67</sup> “Moonshot in the Arm,” NPR November 5, 2021, <https://www.npr.org/transcripts/1053003777>. For previous attempts of the government to support vaccine manufacturing, although not all the aspects of Warp Speed, see Eric Hargan and Robert Kadlec, “It Took Years to Reach Operation Warp Speed,” *Wall Street Journal* September 24, 2021, <https://www.wsj.com/articles/history-operation-warp-speed-vaccine-development-covid-19-coronavirus-11632494680>; Chris Hamby and Sheryl Gay Stolberg, “Beneath a Covid Vaccine Debacle, 30 Years of Government Culpability,” *New York Times*, December 23, 2021.

<sup>68</sup> HHS, “PanCAP Adapted: U.S. Government COVID-19 Response Plan,” March 13, 2020, <https://int.nyt.com/data/documenthelper/6819-covid-19-response-plan/d367f758bec47cad361f/optimized/full.pdf>

<sup>69</sup> State of Oregon, “State of Oregon After-Action Review: Oregon’s COVID-19 Ongoing Response and Re-Opening,” July 2021, <https://www.oregon.gov/gov/policy/Documents/or-aar-soc-4-073021.pdf>

and promulgate a national strategy, framework, and plan for pandemics,” which would seem to ignore the ever-increasing number of such plans.<sup>70</sup>

Overall, it seems few levels of governments even consulted their previous pandemic plans. Those plans that were consulted were quickly overridden. Those that weren’t overridden were either ineffective in practice or incapable of being adhered to because of a lack of authority, that is, when they were not directly contradictory. In sum, despite decades of planning for a specific crisis, one which was perhaps more extensively planned for than any other, such plans proved almost entirely ineffective.<sup>71</sup>

## Conclusion

There is a deep pool of wisdom on the futility of planning. As Helmuth von Moltke, one of the earliest planners, noted in the 19<sup>th</sup> century, “No plan survives first contact with the enemy.” Or, as Mike Tyson more famously put it, “Everybody has a plan until they get punched in the mouth.”<sup>72</sup> There is an alternative tradition, one which argues that plans can have value, even if they do not match reality exactly. General Dwight David Eisenhower said that “Plans are worthless, but planning is everything.”<sup>73</sup> Many emergency planners note that planning helps clarify responsibilities, even if the actual plans are not useful.

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<sup>70</sup> National Homeland Security Consortium, “COVID-19 Pandemic: After-Action Report,” June 2021, <https://www.astho.org/COVID-19/NHSC-COVID-19-Pandemic-After-Action-Report/>. It may not surprise readers at this point that the Office of Inspector General for the Department of Labor has written a Pandemic Response Oversight Plan to guide its continued evaluations. Office of Inspector General, Department of Labor, “Pandemic Response Oversight Plan,” April 27, 2021, [https://www.oig.dol.gov/public/oaprojects/DOL\\_OIG\\_Updated\\_Pandemic\\_Response\\_Oversight\\_Plan.pdf](https://www.oig.dol.gov/public/oaprojects/DOL_OIG_Updated_Pandemic_Response_Oversight_Plan.pdf)

<sup>71</sup> This does not mean such plans were actively counterproductive, although they may have been. This is merely evidence of a lack of effect.

<sup>72</sup> Mike Berardino, “Mike Tyson Explains One of His Most Famous Quotes,” *South Florida Sun Sentinel*, November 9, 2012, <https://www.sun-sentinel.com/sports/fl-xpm-2012-11-09-sfl-mike-tyson-explains-one-of-his-most-famous-quotes-20121109-story.html>

<sup>73</sup> Angel Contreras, “Plans Are Worthless but Planning is Everything: A Theoretical Explanation of Eisenhower’s Observation,” in *Decision Making under Constraints*, Martine Ceberio and Vladik Kreinovich, eds. (New York: Springer, 2020), 93-98.

Plans for some crises, some situations, and some organizations clearly can add value and improve responses.<sup>74</sup> Yet it appears that many of today's plans are exercises in wasted effort. Most especially, those speculative and long-term plans mandated by the federal government for state or local governments, or those mandated by Congress for the federal government itself, seem to defeat their own purposes by cementing overlapping centers of power and authorities in government. The layering of different planning mandates, of different funding streams, and of different offices to respond to threats make it harder to do the one thing that is most desired in disaster response, which is create a unity of effort. The more divided government authorities are, the harder it is for plans to force acquiescence to their procedures. The existing plans, as planners recognized in after-action reports, often fail to take this into account.

As emergency management professionals admit, all emergencies are political, and therefore every government plan must prepare for the fact plans can and will be ignored by politicians. But the existing proliferation of plans means it is not always clear which plan politicians should adhere to even if they wanted to do so. Many leaders, like many planners themselves, seem to be unaware of the proliferation of plans.

While plans are often proposed as ways to protect people from crises, it seems that most plans today are ways for Congress, legislatures, and, sometimes, bureaucracies, to protect themselves from charges of uncoordinated efforts. As the Catalogue of Federal Domestic Assistance, the list of federal grant and aid programs, has climbed in recent decades to at almost 2,300 separate programs, there has been growing awareness that many of these programs work at cross purposes, which has in turn led to increased demands for coordination and plans.<sup>75</sup> The "thickening" of federal bureaucracy, with an ever more hierarchical and intricate organization chart, has also led to pleas for more coordinators and interagency planning.<sup>76</sup> Yet the proliferating number of plans, and their inability to coordinate or direct real behavior, shows that such efforts are futile. As the ambit of government

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<sup>74</sup> The literature on management-based regulation shows some positive effects for environmental consequences. See Lori Snyder Benneer "Are Management-Based Regulations Effective? Evidence from State Pollution Prevention Programs," *Journal of Policy Analysis and Management* 26, no. 2 (2007): 327-348. But, as one paper suggests, "getting empirical leverage on these matters... is not always easy," and says many of the effects of such efforts are "modest." Coglianese, "The Managerial Turn in Environmental Policy," 65.

<sup>75</sup> David G. Bauer, *The 'How-To' Grants Manual* (Lanham, MA: Rowman & Littlefield, 2021), 138.

<sup>76</sup> Paul Light, "Fact Sheet on the Continued Thickening of Government," July 23, 2004, <https://wagner.nyu.edu/files/news/thickening.pdf>

grows, it is inevitable that its contrasting efforts, grants, and mandates will appear more chaotic and unplanned. In an actual crisis, such as the coronavirus pandemic, the proliferation of such contrasting mandates and plans will further hamper a coherent response.