

THE COMMANDEERER IN CHIEF

*Jason Mazzone**

As Hurricane Katrina demonstrated, federalism can impede the government's ability to plan for and respond to emergencies. Many emergencies transcend federalist divisions of power and responsibility, rendering unclear which level of government should respond. In addition, while emergencies may require a coordinated response by local, state, and national government, getting different levels of government to work together in times of crises is difficult. Further, even when states and localities call for outside assistance, they tend to resist undue federal interference in their affairs; a national government that lacks experience working with local actors on the ground can find it difficult to implement relief programs. Given the widely recognized failures of the government's response to Katrina and the urgent need for reform, some federal officials have proposed that, in a future emergency, rather than try to work with state and local response personnel, the federal government should simply deploy the military to take over the relief effort. This Article presents an alternative solution: emergency commandeering. This solution would allow the federal government, when it responds to certain kinds of emergencies, to call into periods of mandatory federal service the emergency response personnel of the state in which the emergency occurs, and, if necessary, emergency response personnel from other states. These state employees—police, firefighters, emergency medical technicians, urban search and rescue teams, and public health specialists—would serve with compensation under the command of the President. Emergency commandeering allows the national government to mount an effective response, one that draws upon the skills and experiences of state and local personnel, without the hindrance of multiple command structures or other forms of state and local resistance. Emergency commandeering is authorized by the Constitution, consistent with federalism, and, compared to the alternative of sending the military into our streets, good for democracy.

© 2007 Jason Mazzone. Individuals and nonprofit institutions may reproduce and distribute copies of this Article in any format, at or below cost, for educational purposes, so long as each copy identifies the author, provides a citation to the *Notre Dame Law Review*, and includes this provision and copyright notice.

* Associate Professor of Law, Brooklyn Law School. I am grateful for the support of the Brooklyn Law School Dean's Summer Research Stipend Program.