Tensions in State-Local Intergovernmental Response to Emergencies: The Case of COVID-19*

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The U.S. emergency and disaster response system is inherently bottom-up, meaning that responses are intended to begin at the local level with state and federal governments stepping in to assist as needed. The response to the current COVID-19 outbreak, however, has been something else entirely, as each level of government competes with the others over resources and authority. Some states preferred a local response with state support, while other states took a more uniform, state-mandated response enabled by state preemption of local actions. The latter has revealed an often-dormant means of state preemption of local ordinances: the executive order preemption. Local government managers will thus have to be creative in balancing responsiveness to their constituents in this time of crisis while also being constrained by their states in what they are able to do. These administrative choices are likely to have both immediate and long-term consequences for future emergencies.

Keywords: Intergovernmental affairs, preemption, pandemics

Introduction

The current outbreak of severe acute respiratory syndrome coronavirus (SARS-CoV-2), the virus that causes Coronavirus Disease 19 (COVID-19), has spurred a large governmental response from all levels of the U.S. intergovernmental system. The emergency and disaster response system of the United States is inherently bottom-up, meaning that responses are intended to begin at the local level with state and federal governments stepping in to assist as needed. The response to the current outbreak, however, has been something else entirely, as each level of government competes with the others over resources and authority.

In this article, we examine how the U.S. intergovernmental system of emergency response is designed, how state and local governments have responded to the COVID-19 crisis thus far, and how this crisis has further exposed tensions in the state-local intergovernmental system. We argue state-local intergovernmental COVID-19 response is associated with many issues with intergovernmental relations broadly, mainly conflict about who is the "best" provider of emergency services. This leads some states to prefer a local response with state support and other states to prefer a more uniform, state-mandated response enabled by state preemption of local actions. The latter has revealed an often-dormant means of state preemption of local ordinances: the executive order preemption. Accessible through the emergency powers afforded to U.S. governors, this type

*Preliminary Draft, Please do not cite or circulate without author's permission.

†May 1, 2020

of preemption is uncommon because it is overshadowed by legislative and judicial preemptions. Yet all types of preemption have substantial effects on what local government administrators can do to respond to their constituency's needs. Such constraints can be challenging in normal times but are potentially catastrophic in emergencies.

We use the National League of Cities' (2020) COVID-19 Local Action Tracker to examine city and state responses to the COVID-19 pandemic. We find cities generally focused on responses within the local government purview of prevention, government operations, utilities, and housing, whereas states have been more likely to adopt coordination policies. While some states took the proscribed bottom-up approach to emergency management, other states preempted their local governments' actions through executive orders. We argue these preemptions pose significant challenges for local government managers as they seek to respond to this pandemic as well as future emergencies. Administrators will need to be creative in balancing responsiveness to their constituents within a limiting policy environment.

Intergovernmental Responses to Emergencies

The intergovernmental response to emergencies and disasters in the United States was designed to operate from the bottom up (Rubin and Barbee 1985; Schneider 1995; Schneider 2008). Following principles similar to those of street-level bureaucracy, policies for emergency response and preparedness are based on the assumption that those closest to the emergency have the best perspective on what help is needed. Accordingly, the response to an emergency begins with local governments, typically led by the county, and follows a prescribed series of steps as the emergency escalates to include both the surrounding local governments and the state, and then eventually the federal government as needed (Kapucu 2008; Waugh 1994). This bottom-up structure places local governments at the center of emergencies and natural disasters. By starting emergency responsibilities at the local level, officials can address the needs and specific conditions of the community that others may be unaware of. In anticipation of an event, local governments develop emergency preparedness and response plans that adhere to certain state and federal guidelines to outline how the government will respond to a crisis and how it will coordinate its response with other governments, which may be at the local, state, or federal level (Kapucu, Lawther, and Pattison 2007).

As higher levels of government become involved, their intended role is to assist in the coordination of services and to support the local response rather than supersede or replace it (Kapucu and Hu 2016; Schneider 2008). Much like the local governments before them, states maintain a response plan that lays out how state-based resources will be deployed and how they will support and coordinate with their cities and counties in times of need. Though there is some variation on the structure of the plans from state to state, these plans frequently identify the responsibilities assigned to state officials during an emergency to minimize confusion and maximize the effectiveness of the response during the event. To assist further in coordination roles, federal guidelines also require that a state's response plan identify a single state agency that will be responsible for coordinating all state action (Kapucu 2009). This agency serves as the primary liaison between local and federal governments regarding any needed federal assistance.

The local-centric approach to emergency response does not mean states do not play an important role. Local governments, after all, are creations of the state and are subject to its rules and oversight (Kim, McDonald III, and Lee 2018). As the chief executives of their states, gov-

ernors play key roles in emergency responses (Waugh 2007). Governors are typically given a wide breadth of powers during emergencies, allowing them to declare states of emergency, order evacuations, and mobilize the National Guard. It is only after both local and state resources are exhausted that governors issue requests for federal assistance during a response. This bottom-up approach to emergency response allows for what Schneider (2008, p. 718) refers to as a "'pull' system of intergovernmental relief."

In recent years, however, the structure of emergency response has faced some challenges due to concerns surrounding homeland security. Since the events of September 11, 2001, Birkland (2009) notes that the federal government has preferred a more top-down approach, that allows the federal government to use its experts in times of need rather than rely on local expertise during events that may have national implications. The federal government, for example, is better prepared to respond to terrorist actions. Such events are rare, however, allowing the default bottom-up structure to continue.

In the context of a pandemic, such as the current outbreak of SARS-CoV-2, the virus that causes COVID-19, the structure of an emergency response remains uncertain due to the novelty of the situation. Previous research into bioterrorism preparation indicates the federal government might push for a top-down response due to the national interest of a terrorist released bio-agent and the capacity of the federal government's expertise to track and treat those sickened due to the release (Sutton 2001). Limitations of authority, however, hinder the ability of the federal government to lead such a response, as Gibbons v. Ogden reassured the authority of state control, which includes the capacity to regulate public health and impose quarantines. Without careful planning and clarification by local, state, and federal governments on how the response might differ in an emergency such as what we now face, the default response to the emergency should follow the bottom-up structure previously outlined, with higher levels of government stepping in to provide assistance as lower levels exhaust their resources. Support for this approach is based on the Center for Disease Control and Prevention's strategic plan for bioterrorism preparedness and response, which focuses on assessing local capacity and then augmenting that capacity as needed to achieve positive outcomes (e.g., Koplan 2001).

City and State Responses

Despite the planning and preparation for emergencies, such as the COVID-19 pandemic that all levels of government conduct, actual governmental policy responses have been more complicated. To examine the actions municipalities are taking to cope with this pandemic, we turn to the National League of Cities' (2020) COVID-19 Local Action Tracker. This website was developed in partnership with Bloomberg Philanthropies to track and disseminate actions taken by municipalities in response to the pandemic. These data are self-reported by city officials and citizens. As such, they may exhibit some bias; however, they represent the best and most complete enumeration of local policy action around the COVID-19 response. Overall, this database represents 1,301 policy actions taken by 428 cities in 49 states beginning in early March and ending on April 28, 2020. Policy responses range from the mundane (declaring a state of emergency in the city) to canceling events to suspending evictions or water service shutoffs. These data provide us the opportunity to track city-level responses to COVID-19 by response area and date of implementation.

Turning first to the date of implementation, figure 1 plots the number of city-level policy adoptions as a function of date. Policy adoptions begin in early March (March 4 being the earliest

recorded adoption) and reach a peak in the week beginning March 16. These early policy changes are nearly all from cities on the U.S. west coast; however, there are outliers in states such as Michigan and Texas (see figure 2 for a state distribution). The majority of city-level implementations were in the weeks beginning March 16 and March 23, during which time nearly 2/3rds of all policies adopted were implemented.

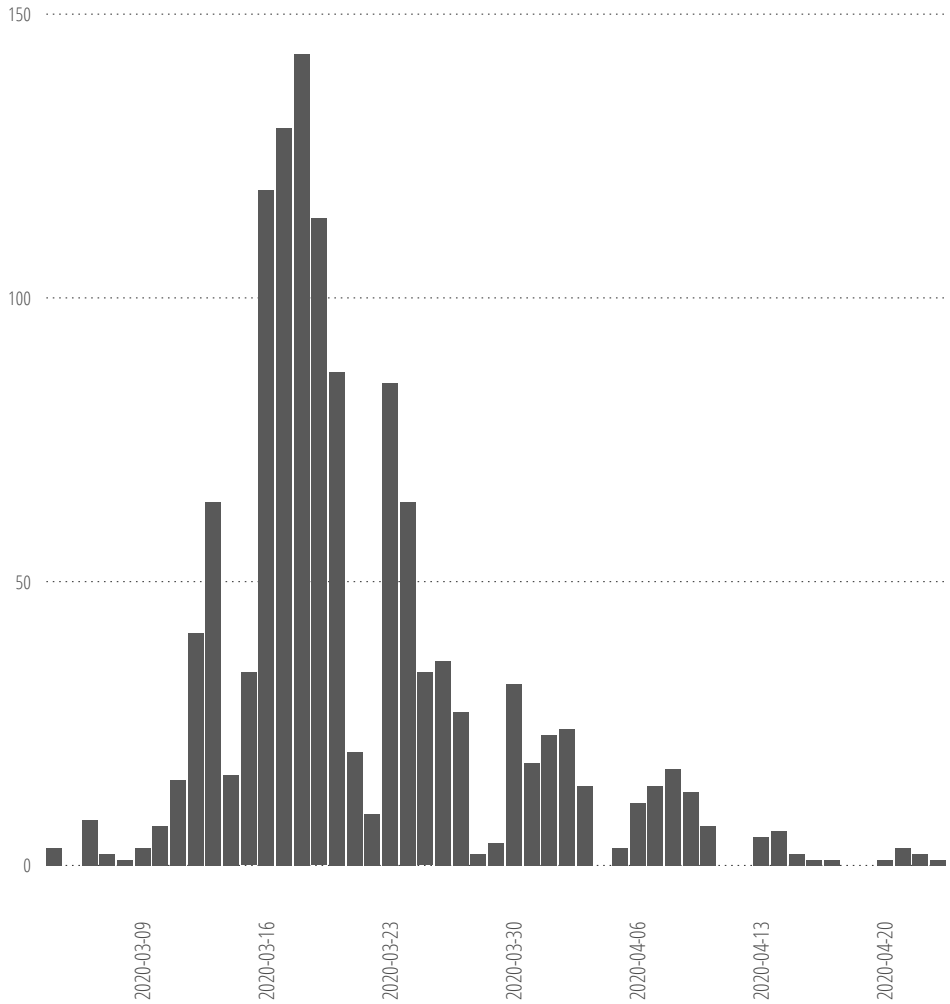


Figure 1: City Policy Adoption by Date

Table 1 outlines 17 potential areas for city-level policies by category. As can be seen, the predominant policy responses fall into just a few categories. The majority of policies implemented are related to prevention (29.8 percent), government operations (20.7 percent), utilities (20.7 percent), and housing (15.7 percent). This collection of predominant actions makes sense from a local government perspective because they are immanently within local government's control. Many prevention-related policies involve local disaster declarations, activating local government disaster relief powers. Actions around governmental operations typically suspend, cancel, or change the venue of public meetings. Utility-related actions tend to be in the realm of suspending service shut offs. Local responses around housing tend to restrict evictions or other actions that may re-

move individuals from their homes during the crisis. All of these areas are under the direct control of many local governments, making these policies relatively simple to carry out.

Table 1: City Policy Adoptions by Category

Policy Category	Number of Policies Enacted	Percentage of Total
Prevention/Flatten the Curve	387	29.75%
Government Operations	269	20.68%
Utilities	269	20.68%
Housing	204	15.68%
Business Economic Stability	108	8.30%
Communication	94	7.23%
Mobility and Transit	86	6.61%
Food and Nutrition	61	4.69%
Individual/Family Financial Stability	42	3.23%
Medical/Behavioral Health	37	2.84%
Participatory Governance	36	2.77%
Public Safety/Law Enforcement	28	2.15%
Education and Childcare	21	1.61%
Long-term Community Resilience	14	1.08%
Digital Connectivity	10	0.77%
City Fiscal Stability	5	0.38%
Combating Discrimination	5	0.38%
Total Policies	1301	

Note: Polices may be assigned to multiple categories; therefore, the number of policies and the percentage of the total add up to greater than 1,301/100%.

States have their own responses, but these tend to be in the coordination realm (Kapucu and Hu 2016; Schneider 2008). These include official emergency declarations (e.g., activating state response plans), major disaster declarations, activation of the state's National Guard, and in some instances placing limitations on large group gatherings and closing schools.[1] Because states and local governments are somewhat autonomous, each can act without the other, leading to discrepancies in the timing of local-level and state-level policy adoption. We explore this in figure 2, where local-level policy implementation by state is graphed in a manner similar to figure 1, and vertical lines are introduced for when a state closed schools (dashed line) and when a state implemented a statewide "stay at home"/"shelter in place" order (solid line).[2] We chose these two actions because the former is a relatively uniformly implemented limitation on large group gatherings (as opposed to actual limits on large groups that vary considerably by state) and the latter is on the more extreme end of policy action. Both are also ordered via gubernatorial executive

[1]See the National Governor's Association (2020) and National Conference of State Legislatures (2020) for more specific information on state-level responses.

[2]The exact timing of these dates is aggregated by Ballotpedia (2020).

order. The distance between these two actions can be seen as the time it took for a state to begin limitations on activity to fully implementing such a limitation.[3]

Consistent with our expectations, the timing varies between local and state action. In many states, local action predated the first large-scale state action, but once statewide school closures were ordered, local policy action ramps up. This is particularly evident in large states such as California, Florida, Illinois, and New York. However, each of these states has its own trajectory with California and New York having very little time between the two orders (0 and 1 days, respectively), Illinois having a somewhat larger gap (5 days), and Florida having a significant gap (17 days). Local responses filled in the gap between the two state responses. In many cases, local response tailed off after the state "stay at home"/"shelter in place" was ordered. In several states, these orders were accompanied by broad preemptions on the local government's ability to adopt stricter responses.

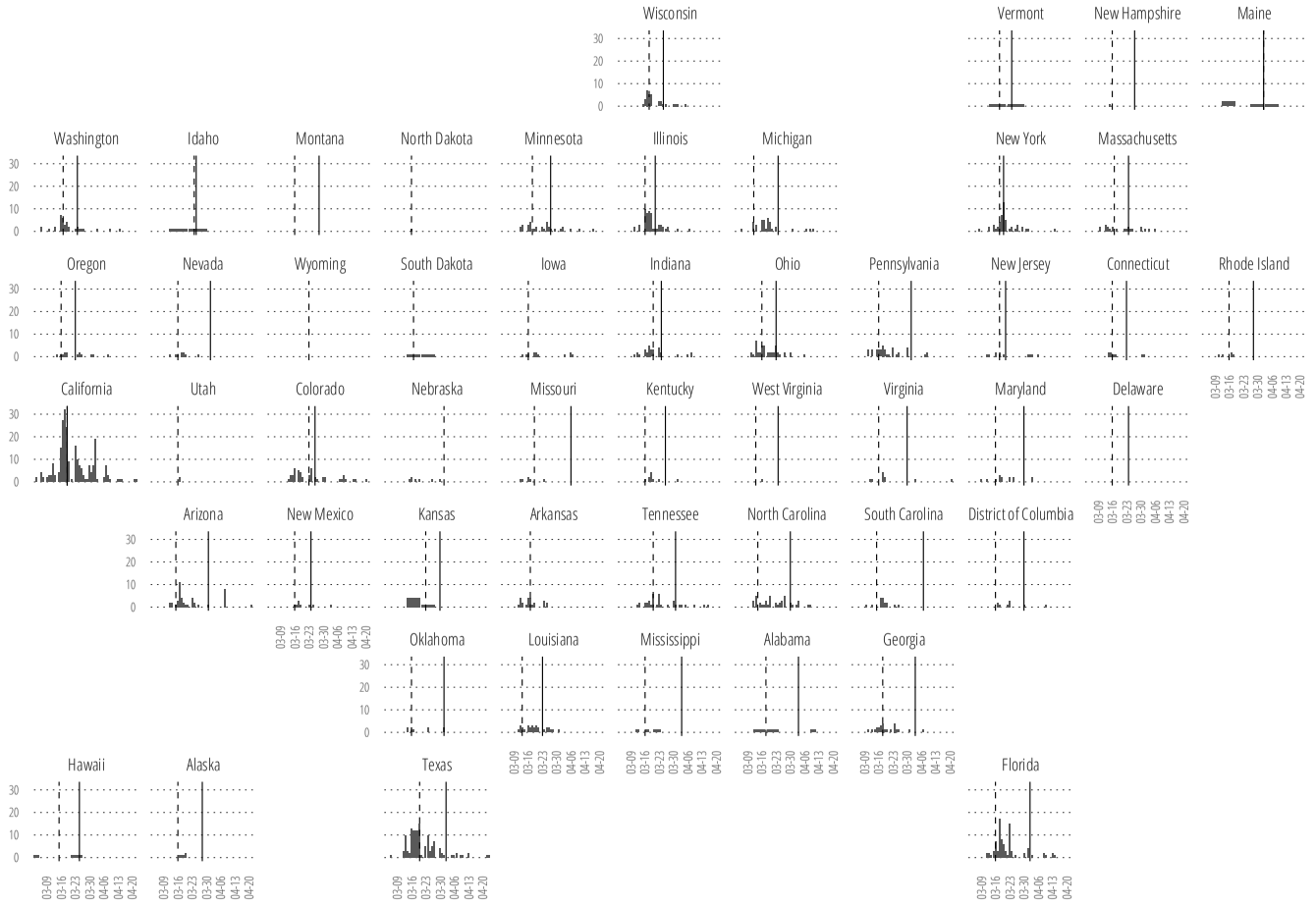
City Policy, Executive Orders, and State Preemption in a Health Emergency

As shown in the figures above and in line with the expected intergovernmental response to emergencies and disasters, many U.S. cities passed laws to protect public safety and health in response to the COVID-19 pandemic. However, many governors also responded to the pandemic with executive orders (more than 1,000 executive orders and/or agency orders have been issued about COVID-19, see Federman and Curley (2020) for more information), in some cases preempting their cities from taking action. In the 43 gubernatorial executive orders ordering states to stay-at-home or shelter in place, we observe 20 orders preempting local ordinances that order local sheltering in place or locally defined essential activity/business.[4] Forty-five percent of these preemptions set policy minimums (floor preemptions), a quarter set policy maximums (ceiling preemptions), and 30 percent contained both floor and ceiling provisions. In doing so, these states stymied local responses to the pandemic, potentially limiting cities' ability to respond effectively to the crisis and disrupting the normal chain of authority. This is a continuation of patterns of state preemptions of public health policies but through a lesser-used format of executive orders. As a result, there is significant variation in the number and scope of policies aimed at addressing the crisis across states. This poses significant challenges for local government managers in both their immediate and long-term emergency responses.

While state preemption of city actions appears to be increasing, states have preempted their cities since at least the latter half of the nineteenth century (Zimmerman 2012). More recently, Goodman, Hatch, and McDonald III identify four preemption epochs: tax and expenditure limitations, unfunded mandates, public health, and the new preemption. State preemptions in response to COVID-19 have elements of the latter penultimate epoch, a focus on public health issues but with a new format. During the 1990s and early 2000s, public health preemptions often limited the extent to which states could regulate behaviors such as smoking. Public health experts and scholars expressed concern that these preemptions would have profound effects on health (Pomeranz and Pertschuk 2017, 2019). Mowery et al. (2012) emphasize tobacco regulation preemptions hin-

[3]It is important to note that seven states have not fully implemented a "stay at home"/"shelter in place" order, leaving large portions of their economy to voluntarily limit operations.

[4]Other COVID-19 related executive orders can and do preempt local response. For instance, California's executive order declaring a state of emergency preempts local noise ordinances in so much as they inhibit the "delivery of food products, pharmaceuticals, and other emergency necessities distributed through grocery stores and other retail or institutional channels, including, but not limited to, hospitals, jails, restaurants, and schools" (California EO-N-35-20).



Dashed line equals date of state-wide school closure; Solid line equals date of state-wide stay home/shelter in place order.
California (2020-03-19) and Maine (2020-04-02) issued both orders on the same day.

Figure 2: City and State Policy Adoption by State

dered social norm development surrounding the lack of desirability of smoking. Preemptions around COVID-19 responses, such as Mississippi's Executive Order 1463, which disallowed local government actors from imposing additional social distancing limitations, may have a similar effect on social norms. If states prohibit their cities from requiring social distancing, wearing personal protective equipment in public, and other activities aimed at flattening the curve of the disease, such practices might not develop into social expectations, thus prolonging the crisis. Just like the earlier public health preemptions (Berman 2019), other state COVID-19 preemptions may increase public health. In Maine, for example, Executive Order 28 preempted local governments from adopting less restrictive stay-at-home orders. While the majority of COVID-19 preemptions to date have not taken this form, there is nothing inherently dangerous to public health about them; the content and form of the preemptions are the important features.

Structurally, state COVID-19 preemptions are also similar to the public health preemptions in the third epoch in that many are ceiling or floor preemptions. Ceiling preemptions occur when the state essentially puts a limit on regulation, such that no local government can enact stricter laws (Wagner et al. 2019). Georgia's Executive Order 03.14.20.01 is a ceiling preemption in that it says no local government can adopt a similar ordinance. This is in contrast to floor preemptions, which set statewide minimums, allowing local governments to adopt stricter regulations (Wagner et al. 2019). Alabama enacted a floor preemption when the State Health Officer stated specific local governments would be authorized, with approval, to adopt more stringent response measures.

While COVID-19 preemptions are structurally and substantively similar to the public health preemptions in the 1990s and early 2000s, the format is different. Those preemptions were mostly enacted legislatively. In contrast, COVID-19 preemptions are predominantly issued via executive order, reflecting the Emergency Powers of Governors. Governors in various states have used the wide power and discretion issued to them during emergencies to determine what local governments can and cannot do (Waugh 2007).

Such preemptions create path dependencies, limiting the ability of local governments to respond to emergencies in the expected bottom-up manner (Rubin and Barbee 1985; Schneider 1995; Schneider 2008). Policy diffusion and learning (Shipan and Volden 2006) cannot occur. In times of crisis where policymakers' decisions are literally questions of life and death, this is a dangerous void. Thus, local governments have to get creative. Previous responses to state preemptions, such as lobbying the state legislature, working with interest groups, and turning to constituents for support (Berman 2019; Rutkow et al. 2019; Swindell, Svara, and Stenberg 2018; Wagner et al. 2019), are unlikely to be feasible in the limited time environment of a pandemic. Policy path dependency suggests that without a long-term strategy, local governments will face similar constraints from their states in any future emergencies.

Conclusion

The COVID-19 pandemic has led to unprecedented policy responses as officials at all levels of government respond to the crisis. Traditionally, disaster management in the United States has operated from the bottom up (Rubin and Barbee 1985; Schneider 1995; Schneider 2008). Many governors, however, have used their emergency powers to issue executive orders aimed at coordinating their state's response to the pandemic and limiting what their local governments can do. These types of preemptions are reminiscent of the public health preemptions in the 1990s and early 2000s, but in a form not commonly seen in the literature. State preemptions are often leg-

islative (Riverstone-Newell 2017) or judicial (Swanson and Barrilleaux 2020), but the COVID-19 pandemic has shown how the executive branch also participates in limiting the ability of local governments to make locally responsive policy. Nevertheless, local government managers have a responsibility to their constituents, and restrictions limit their responsiveness (Sances 2019). For these managers, balancing these responsibilities and constraints might be one of the most difficult administrative challenges during the pandemic.

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