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Government in a Pandemic

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EXECUTIVE SUMMARY

When the threat of COVID-19 became apparent, some political commentators began arguing that Americans must accept much greater governmental intervention in their lives if the United States were to respond effectively to the disease. This idea was soon distilled into a pithy slogan: “There are no libertarians in a pandemic.”

In fact, government can respond effectively to the historic COVID-19 crisis while following the principles of limited government. However, federal, state, and local governments in the United States have done a poor

job of identifying and implementing good policies for the pandemic that are compatible with those principles. Instead, policymakers have attempted interventions far beyond the powers of a properly limited government—with poor results.

Americans and their political leaders are understandably worried about COVID-19 and its effects, both on human health and the economy. That worry may indeed lead some people to reflexively demand broad government intervention. But if the United States follows the principles of limited government, those principles will help see us through this crisis.

“When the COVID-19 threat became apparent, some commentators began claiming that the philosophy of limited government would handicap America’s response to the crisis.”

INTRODUCTION

When the threat to the United States from the novel 2019 coronavirus disease (COVID-19) became apparent, political leaders and commentators began calling for large governmental interventions to counter the disease’s health and economic effects. Many of these people added that the political philosophy of limited government—“liberalism” in the classical sense—would handicap the country’s response to the crisis and thus must be rejected. This was soon distilled into a pithy slogan: “There are no libertarians in a pandemic.”

As COVID-19’s grim health toll and economic statistics have accumulated, the criticisms of liberalism have grown louder.

Appropriate to the era, the “no libertarians” slogan was popularized by a Twitter post: *Atlantic* staff writer Derek Thompson used it to introduce a news item about Republican lawmakers advocating public funding for COVID-19 testing and for treatment of uninsured victims of the disease.¹ A week later, his *Atlantic* colleague Peter Nicholas used a variant of the slogan as the title of a column criticizing President Trump for campaigning on “anti-socialism” while his administration pushed a host of extraordinary interventions into the economy in response to the pandemic.² “Just as there are no atheists in foxholes, in a national emergency, there’s no truly laissez-faire government,” Nicholas wrote.

Others quickly picked up the theme. *New York Times* columnist Farhad Manjoo, noting the same news item as Thompson, concluded, “Everyone’s a socialist in a pandemic.”³ Ryan LaRochelle, a lecturer at the University of Maine, wrote in the *Washington Post* that a “decades-long war on the safety net and the government’s administrative capacity [has] made our society particularly vulnerable to the pandemic’s impact on our economic life. This has seriously hampered the federal government’s response to the coronavirus and shown how dangerously ill-suited this ideology is to the crisis.”⁴

Perhaps the sharpest criticisms came from essayist and novelist George Packer, who

bemoaned “a federal government crippled by years of right-wing ideological assault” and “politicians and donors who wanted government to do as little as possible for the common good.”⁵ He described a dystopian America that, without active management from Washington, DC, is nearly powerless against COVID-19:

Every morning in the endless month of March, Americans woke up to find themselves citizens of a failed state. With no national plan—no coherent instructions at all—families, schools, and offices were left to decide on their own whether to shut down and take shelter. When test kits, masks, gowns, and ventilators were found to be in desperately short supply, governors pleaded for them from the White House, which stalled, then called on private enterprise, which couldn’t deliver. States and cities were forced into bidding wars that left them prey to price gouging and corporate profiteering. Civilians took out their sewing machines to try to keep ill-equipped hospital workers healthy and their patients alive. Russia, Taiwan, and the United Nations sent humanitarian aid to the world’s richest power—a beggar nation in utter chaos.⁶

As for the idea that private actors could respond to the virus, Packer asserted simply, “It turns out that ‘nimble’ companies can’t prepare for a catastrophe or distribute lifesaving goods—only a competent federal government can do that.”⁷

The belief that COVID-19 shows the need for bigger, more interventionist government has not been confined to the left of the U.S. political spectrum. The right, which in previous decades repeatedly declared a commitment to “small government,” began talking about the need to boost “state capacity” to respond to the pandemic and other problems. Two of the right’s up-and-coming leaders, Sens. Marco Rubio (R-FL) and Josh Hawley (R-MO), pushed large-scale government

financial assistance programs, with Rubio helping to craft the Paycheck Protection Program that has blossomed into a roughly \$650 billion subsidy to businesses.⁸ Its creation was part of the \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act that provides federal support to businesses, households, and state governments.⁹ The CARES Act passed with overwhelming support from Republican lawmakers and was signed by President Trump, who had his name prominently stamped on the ensuing household subsidy checks.¹⁰

Those efforts are in accordance with the new “national conservative” movement, which endorses government intervention in the economy to promote a host of goals.¹¹ As one of the movement’s intellectual leaders, Henry Olsen of the Ethics and Public Policy Center, told *Politico* about policymaking in response to COVID-19:

This is going to jump-start the already simmering debate over how the right should deal with domestic policy. Clearly there’s going to be demand for many types of stimulus. There’s going to be demand for the view that we’re not going to let this happen again. And a libertarian, hands-off policy doesn’t really respond to that.¹²

These calls for government to intervene in response to COVID-19 are understandable. The disease is often painful and sometimes fatal, and it is produced by a novel virus that spreads through social contact. As yet, there is no known effective vaccine against the virus, and treatment therapies are limited. People naturally want something to “fix” a crisis, and they look for government to be that powerful fixer. It is comforting to envision government scientists in their labs probing the virus, government doctors tending to the infected and uninfected alike, government financing research and development on therapies and vaccines, and government policymakers, counseled by sage experts, directing the public toward safety and away from danger.

That’s the vision; the reality is different. Government leaders and their advisers have been operating with imperfect knowledge about the recently discovered disease, resulting in public recommendations and policies that, especially in the early months of the outbreak, have been wasteful at best and harmful at worst. Though a number of those failures can be attributed to an especially inept Trump administration, they can be found across the political spectrum, at different levels of government, and among both the virtuous and dishonorable.

Government does have important roles to play in a pandemic. However, those roles are consistent with the principles of limited government. This analysis examines some of those interventions—constraining negative externalities and providing public goods—and notes instances where government has performed poorly in those areas when responding to COVID-19. The analysis also discusses interventions that limited government *should not* undertake—such as manipulating the production and distribution of private goods—but that government has attempted broadly in this crisis, with poor results.

LIMITED GOVERNMENT AND MARKET FAILURE

Critics of limited government often equate it with anarchy, the lack of *any* government activity. That equivalence is false. The philosophy of limited government does place the highest value on individual liberty, including people’s freedom to privately arrange for the satisfaction of their wants. These arrangements often take place in the market, an arena for many forms of voluntary exchange. So, rather than rejecting government altogether, valuing liberty means creating important roles for government in protecting the freedom of exchange and private ordering.

Among the oldest roles of the state is defending its citizens from violent invaders, thereby protecting against a dramatic disruption of the market. This defense is difficult,

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“Under the philosophy of limited government, government can intervene to address market failures.”

if not impossible, to provide through purely private agreement. Residents operating individually would be hard-pressed to fend off an invading horde, and private mutual aid agreements or contracts employing mercenaries would be weakened by residents who did not join the arrangement or who joined only when a threat was imminent. A defense that protects only parts of a community is a defense penetrated by invaders.

Defense is an example of *market failure*: a want that cannot be adequately addressed through private exchange. Specifically, defense is an example of market failure known as a *public good*. Public goods are difficult to limit only to individuals who pay for them; the goods must be provided to everyone in a community if the goods are to have much value. If left to private exchange, residents would be tempted to not purchase the goods but instead *free-ride* on the purchases of others. That would result in only some residents—or perhaps none—purchasing the goods. That, in turn, would reduce the funding and quality of the public goods provided, to the detriment of all residents, including those who do purchase the goods.

Government can provide its citizens public goods via taxation. Government can produce the goods itself (e.g., by employing troops to provide defense) or contract with a private provider to furnish them (e.g., purchasing materiel to equip the troops). The key is that taxation overcomes the market failure by requiring citizens to pay for the goods. Besides defense, examples of public goods include police and fire services (private security and firefighters cannot ignore crimes and fires at noncustomers' properties without putting their customers at risk), street lights (the lighting's benefit cannot be limited to customers), and—at least until recently—local roads (before technological advances, it was prohibitively costly to toll local roads).

Other types of market failure exist. Though there is no definitive list, several forms are commonly recognized. One of these is *externalities*, which are costs or benefits of an exchange that are borne by some party

other than the participants who agree to the exchange. Externalities result in less welfare than if all involved parties had voluntarily reached agreement. For instance, a polluting factory inflicts a cost (*negative externality*) on its neighbors, who may not be part of the voluntary exchange between the factory and its customers. *Positive externalities*, in which a third party receives a benefit, are less commonly cited as a problem, but they do exist.

Government can intervene to address other market failures.¹³ Often, such policies take the form of laws, regulations, and enforcement. For instance, environmental law is intended to reduce the negative externality of pollution.

Minimizing Government Failure

From an economic perspective, under a properly limited government, market failure is a necessary but insufficient condition for government intervention. Another necessary condition is that the proposed policy does not violate established liberties. Also, intervention always comes with costs, and those costs must not outweigh the benefits.

Further complicating matters, many of the troublesome dynamics that produce market failures also afflict government policymakers and bureaucrats, producing *government failures*.¹⁴ For instance, policymakers often suffer from imperfect information, resulting in bad policies.¹⁵ Also, policymakers and bureaucrats are motivated by private incentives just like everyone else, and those incentives can yield misguided—and even corrupt—outcomes.¹⁶ Unlike in the marketplace, where interaction is voluntary and participants can look for the exchanges that best fit their wants, citizens are compelled to abide by and pay for the choices of government policymakers and bureaucrats regardless of how sensible those choices may be. Classical liberal principles help to minimize those problems.

Despite the constraint of limited government, there is much it can do to address COVID-19 by focusing on the market failures associated with the disease. Unfortunately, the U.S. federal government and some state

and local governments have struggled to identify and implement such policies. Instead, they have intervened in ways beyond the powers of properly limited government, with poor results. The following sections describe some of those government failures.

LIMITED GOVERNMENT AND COVID-19

Several market failures are present in the COVID-19 crisis. Among them:

- **Negative externality:** Infected persons can transmit the virus that causes the disease, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), through common social contact. Transmission involuntarily inflicts costs on others, making it a negative externality. As libertarians often say, “People’s right to swing their fists ends at the tip of another’s nose”; likewise, people’s liberty ends at the point that they put others at involuntary risk.
- **The public goods of medical research:** People want to avoid the disease and recover from it quickly if they are infected. That creates market incentives for research into the virus and disease and distribution of the findings. But the benefits from that work are difficult to confine to the individuals who pay for it. Information is easily transmitted, and the academic world rewards the broad distribution of many types of research to accelerate scientific discovery. That makes research into SARS-CoV-2 and COVID-19, and the resulting knowledge, public goods. Though some people would still pay for that work even if others free-ride on the results, private funding would likely be below optimal levels.
- **The public good of acquired immunity:** Relatedly, an effective vaccine against the virus has public goods characteristics. A population can become resistant to an infectious disease if

only a portion of its members develop resistance to it, a phenomenon known as “herd immunity.” Some diseases require high member immunity rates to produce this resistance—80 percent or more—but others have lower thresholds.¹⁷ Currently there is no scientific consensus on a threshold for COVID-19, though early guesses by epidemiologists fall in the 60–70 percent range, and one study argues that it could be as low as 43 percent.¹⁸ Those numbers suggest that a third to more than half of the population could free-ride on others’ bearing the cost of the vaccine, allowing for a public goods problem.

Some government interventions are justified to address these market failures regarding COVID-19, provided that the interventions’ benefits outweigh the costs and that the interventions do not violate protected rights. The U.S. federal government and state and local governments have made efforts at this sort of policymaking. Below are a few examples.

Research on the Disease

When news first broke in late 2019 that a new and dangerous coronavirus had appeared in China, it seemed of little concern to Americans. Other epidemics had occurred in various parts of the world over the previous two decades: a previous novel coronavirus, SARS-CoV-1 in 2002–2004; Zika in 2007, 2013–2014, and 2015–2016; H1N1 “swine flu” in 2009; another novel coronavirus, MERS-CoV, in 2012, 2015, and 2018; and Ebola in 2014–2015. Only H1N1 made a significant appearance in the United States, and it was extinguished with the help of a quickly developed vaccine.¹⁹ Given those experiences, many Americans in 2019 and early 2020 were rationally ignorant of the new virus.

That did not change when, on January 21, 2020, the U.S. Centers for Disease Control and Prevention (CDC) announced the first confirmed U.S. case of the “mysterious virus that broke out last month in China.”²⁰ (The

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name “COVID-19” had not been coined at the time.) Several public officials quickly reassured the public, saying the illness did not appear to be a major threat to the United States and that people did not need to change their lifestyles because of the virus. In many cases, the officials carefully added caveats such as “at this time,” noted that matters could change significantly in the future, and said that the situation required close monitoring.²¹

Those reassurances may look bad in hindsight, but they were reasonable given what was known at the time. Importantly, and following the adage that one should change one’s mind as new facts emerge, many of these officials altered their stated views in the following weeks as the crisis unfolded. Unfortunately, other officials—including elected ones—were less careful in their reassurances and were much slower to change their messages as information developed.²² Some even spread false information on how to avoid and treat infection—for instance, dismissing the benefit of wearing facemasks, not worrying about crowded public spaces, and promoting therapies unproven to treat COVID-19.²³

Some of this is understandable. Especially in the early weeks of the outbreak, it was difficult for policymakers (and even epidemiologists) to stay current on discoveries about the virus and disease. Moreover, because the public often overestimates the risk of low-probability, high-cost events, it is usually good policy for authorities to offer assurance.²⁴ That said, it is also good policy for authorities to be forthcoming about the limits of their knowledge and how a situation might change. Instead of increasing public knowledge about COVID-19, many U.S. policymakers spread false information. That is not a failure of limited government but of government officials who performed their duties poorly.

RESEARCH FUNDING. As previously noted, scientific research, especially in health and medicine, suffers public goods problems. The U.S. Constitution specifically authorizes federal intervention to address this market failure by permitting Congress “to promote the

progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Congress thus created the U.S. system of patents and trademarks, which gives innovators exclusive rights over the use of their creations for specified lengths of time.

However, patents alone are believed to be insufficient to secure optimal financing for some types of research. “Pure science”—often described as “science for science’s sake”—leads to many important, high-value breakthroughs over the long term, but those advancements often cannot be foreseen, making it difficult for particular research efforts to secure funding.²⁵ Even “applied science”—research that applies previous discoveries to specific problems—can have problems finding sufficient funding, including research on vaccines for emerging infectious diseases.²⁶

Government has long addressed this market failure by providing grants for scientific research and operating research centers, often making the results of this work available for public use. This support will be important in the response to COVID-19. The People’s Republic of China, for instance, contributed to this effort by identifying and making freely available the genetic code of SARS-CoV-2 in January 2020.²⁷ In the same vein, the U.S. government has allocated billions of dollars to the National Institutes of Health for research into SARS-CoV-2 and COVID-19.²⁸

There is reason to worry that this money could crowd out private funding for research into the virus and disease rather than supplement it.²⁹ Federal science grants have had this effect in the past.³⁰ Though there likely is no way to fully avoid this problem without cutting off government support for research, it is important for grant monitors to direct government funding away from research that would attract sufficient private funding.

Facemasks and Social Distancing

When the risks of COVID-19 became known, many Americans voluntarily began social distancing and/or wearing facemasks and

other personal protective equipment when in public. Transmission of the SARS-CoV-2 virus is believed to occur primarily through the inhalation of moisture droplets expelled through the nose and mouth of an infected person. Those droplets are thought to typically float in the air at dangerous concentrations only briefly before dispersing and falling, though droplets expelled indoors may linger in the air at dangerous concentrations for much longer.³¹ Distancing and universal wearing of facemasks reduce the chance of transmission in two ways: by reducing the number of droplets expelled by infected persons wearing masks and by reducing the number of droplets absorbed by healthy persons who are both masked and some distance away. There is no scientific consensus yet on exactly how much protection these practices provide, but studies indicate it is large.³²

This protection has public goods characteristics: distancing requires that most people (if not everyone) adopt the practice for it to be effective, and wearing a facemask if you're infected appears to especially protect others.³³ Moreover, scientists believe people carrying the virus are highly contagious before they become symptomatic, and a large portion of infected people never become symptomatic or else experience symptoms so mild that they do not realize they are infected.³⁴ That means they could unknowingly transmit the virus to others.³⁵ Given those characteristics, it is especially important for the population to distance and wear masks to combat the disease.

As previously discussed, classical liberal principles allow for government intervention to address market failures if the intervention's benefits outweigh its costs and if it does not infringe on protected liberties. Both distancing and mask-wearing typically can be done at low expense and limited inconvenience, so policies that promote the two practices can be highly cost-effective. These interventions are reminiscent of the 2001 Aviation and Transportation Security Act provision that commercial passenger aircraft cockpit doors be "hardened" and kept locked during flight to prevent hijackers from taking control of

the plane³⁶—a low-cost, highly effective intervention to prevent a repeat of the negative externalities of the 9/11 terrorist attacks.³⁷

Ideally, a public information campaign promoting distancing and mask-wearing would be sufficient government intervention to promote broad public adoption of these practices and reverse the virus's spread. Government could also provide law enforcement support of businesses and other property owners that choose to require visitors to follow the practices.

In many places in the United States, people have refused to adopt these practices, especially wearing masks in public. Given the seriousness of the COVID-19 negative externality, legally mandating masks and distancing is appropriate in certain situations under classical liberal principles. Though some commentators have claimed that any sort of government facemask requirement violates protected liberty, they do not raise similar objections to other clothing mandates, and a facemask order would seem to be a much clearer example of addressing a serious market failure than, say, requiring people to wear shirts and shoes in restaurants or certain articles of clothing when in public.³⁸ If mask and distancing mandates are necessary, they should be drafted and implemented by local governments, which could tailor the ordinances to local circumstances to minimize costs.

Unfortunately, policymakers in the United States were slow to promote these practices. Indeed, some officials initially discouraged the general public's use of facemasks, claiming they offered little or no protection.³⁹ This is a government failure, and it underscores the earlier point that policymakers must take care to be forthcoming and admit what they do not know when dealing with a public problem. Another government failure involving facemasks occurred in states such as Arizona and Georgia, where the governors *prohibited* local governments from mandating the wearing of masks in public.⁴⁰ Perhaps it could be argued that local governments did not first try less-stringent policies, such as public information campaigns, to promote mask-wearing, but the policies

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ultimately should be left to local officials to craft and implement.

Government has done better at promoting social distancing, but there have still been failures. For example, President Trump’s political campaign and administration have discouraged distancing at both his political rallies and presidential functions, and they have seemingly encouraged political allies at the state level to do likewise.⁴¹ Local political leaders have continued to operate their mass transit systems, on which distancing is difficult if not impossible, and the federal government has financially supported them.⁴²

On the other hand, some state and local officials who did adopt distancing orders did so with insufficient attention to avoiding unnecessary costs. For instance, several states—at least initially—prohibited such activities as boating, golfing, leisure driving, and shopping in specific sections of stores, and they ordered the closing of public parks and other large spaces where distancing could be done easily.⁴³ Those interventions not only reduced the net benefits of policies intended to address COVID-19 market failures, but they also likely weakened public tolerance for unpleasant but sensible efforts to combat the virus.⁴⁴

What about Shutdown Orders?

In March 2020, as U.S. infection rates soared, states and localities began adopting “shutdown orders” that directed businesses and other public places to close unless policymakers deemed them essential. Ultimately, each of the 50 states had some sort of closure order in place for at least a portion of its population.⁴⁵

These orders were initially justified as an effort to “flatten the curve”: that is, slow the rate of infection spread so that health care resources would not become overwhelmed, thereby allowing for better treatment of the afflicted.⁴⁶ Other justifications were added later, including that “the curve” should not just be flattened but put on a permanently downward slope and that the closures gave researchers and doctors more time to learn about the disease and develop better treatment options.

Transmission and fatality rates generally did plateau and even decline in the wake of the shutdown orders, and some states subsequently experienced large rate increases after (sometimes long after) their orders were relaxed.⁴⁷ However, it is unclear how much the policy changes contributed to the rate changes or how much the policies were responsible for such ill effects as economic contraction. People and organizations voluntarily began reducing commercial activity out of fear of COVID-19 before the orders, resulting in the economy falling into recession by the beginning of March.⁴⁸ The first local government shutdown orders were not imposed until mid-March, followed by state orders.⁴⁹ Policy analysts are trying to untangle the effects of the government orders from voluntary private actions, but right now it is plausible that the orders had little effect on either the virus’s spread or the economy.⁵⁰

If the orders did—or if future shutdown orders would—reduce transmission and fatality rates, that would not necessarily justify the orders. As previously noted, legitimate intervention under classical liberal principles must have benefits that outweigh the costs. Such policy costs would go beyond negative economic effects to include reduced individual happiness from lost outings, psychological and physical harm from social isolation and economic distress over both the short and long term, and public pushback against practices that reduce COVID-19.⁵¹ Further, limited government philosophy requires not only a net-positive effect but that the net benefits are greater than those produced by policy alternatives. It remains to be seen whether the shutdowns yielded any benefits beyond what the government would have achieved simply by encouraging or mandating mask-wearing and social distancing.

What about Test, Trace, and Isolate?

A much-lauded intervention option is “test, trace, and isolate”: using widespread testing to identify people infected with SARS-CoV-2, isolate them, and track down others who have

had contact with the infected to encourage them to self-quarantine and be tested.⁵² This strategy is often heralded as effective to stop the disease without resorting to disruptive interventions such as shutdowns. South Korea's success at containing COVID-19 has been credited to test, trace, and isolate.⁵³

But there is reason to doubt this strategy would be effective in the United States. Because infection is frequently asymptomatic, people would have to undergo regular testing—perhaps weekly—even if they feel well and have not been around anyone thought to be sick.⁵⁴ People who test positive would have to submit to quarantine and provide government officials the names of others with whom they have had recent contact, and the officials would need to contact the others quickly and convince them to self-quarantine or be tested. It is likely that many privacy-valuing Americans would not voluntarily follow such a regime for an extended period and would politically oppose a mandated regular testing regime.⁵⁵

Nonetheless, testing is an important part of a good virus suppression strategy. It even has public goods qualities—testing reduces others' risk of infection—so classical liberal principles can permit public subsidy of testing (and the United States is subsidizing such tests⁵⁶). But policy that moves beyond subsidizing testing to a broad, mandatory program of testing, tracing, and isolating is unlikely to play a major role in suppressing the virus in the United States.

BEYOND CLASSICAL LIBERAL PRINCIPLES

Instead of focusing on policy responses to COVID-19 that would have been effective and consistent with the principles of limited government, U.S. policymakers have aggressively pursued other interventions, with poor results. Specifically, the White House, Congress, and state officials have attempted to manipulate the supply and distribution of goods important to alleviating the pandemic even though no market failures were apparent.

The results of these policy efforts have ranged from useless to wasteful to deadly. Below are some examples of these government failures.

Developing a Test

The first confirmed U.S. case of COVID-19 was announced on January 21. Two days prior and half a world away, South Korea likewise announced its first confirmed case.⁵⁷ At the time, neither country had a test for the disease ready to be distributed, and both set to work to remedy that. But they went about it in very different ways.

A week after South Korea's first case, officials there met with representatives of the country's top medical device companies, telling them that if they created a test for the disease, it would receive quick regulatory approval.⁵⁸ Within a week, one firm's test was ready; three others soon followed. By mid-February, laboratories across the country were processing samples; the lab network soon swelled to 96 public and private facilities, processing 20,000 samples a day with results in five to six hours. By mid-March, there was no shortage of test kits in South Korea.

In contrast, the U.S. Food and Drug Administration (FDA), at the behest of the CDC, elected to approve and distribute a test that the CDC had developed and would manufacture.⁵⁹ Some 20 commercial and academic labs informed the FDA of their interest in developing similar kits, and the World Health Organization made available a German-produced test in mid-January, but the FDA responded that those would have to go through the standard, arduous review process for new medical tests to ensure their quality.

Some of the would-be CDC competitors did seem to catch a break on January 31 when the U.S. Department of Health and Human Services (HHS) designated the new virus a public health emergency. That allowed for temporary approval prior to FDA review of tests developed by "government-certified clinical laboratories" at universities, research centers, and hospitals. But this came with a catch: the labs first had to

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“The federal government made the CDC the monopoly provider of SARS-CoV-2 testing in the United States.”

obtain an Emergency Use Authorization (EUA) from the FDA to construct the tests, and EUAs themselves are difficult and time-consuming to obtain.⁶⁰ So, instead of clearing the way for new tests, the HHS swapped one regulatory barrier for another. The federal government had made the CDC the monopoly provider of SARS-CoV-2 testing in the United States.

The FDA approved the CDC test on February 4, and the CDC promptly shipped kits to state and local public health labs. But users soon found the kits yielded a high number of false positive results. It would later be discovered that, when the CDC scaled up production of the tests, one component—which was ultimately deemed unnecessary—became tainted, corrupting the results.⁶¹ The CDC should have been on guard against such a failure; something similar befell a test it developed for the Zika virus and other pathogens in 2016.⁶²

When the problem first became apparent, local and state officials quickly surmised that the flaw was in the unnecessary component and that screening could be conducted effectively by forgoing that part of the test.⁶³ But FDA regulations did not allow for that adaptation; the kits had to be used as directed, making them largely useless. So, the United States had no diagnostic test for a novel, contagious, deadly disease that was then spreading in parts of the country.⁶⁴

It would take until February 26 for the FDA to permit public health labs to forgo the flawed part of the kit. Three days later, the agency relaxed regulations on outside groups that wanted to develop their own tests. By then, a sharp rise in COVID-19 cases was underway in the United States.

Long before COVID-19, policy analysts had criticized the FDA's lengthy approval process for new medical tests.⁶⁵ Policymakers justify this regulatory barrier as ensuring the tests are of high quality—though clearly that was not the case for the CDC's COVID-19 kits. In the current pandemic, it likely would have been far better to risk possibly lower quality in exchange for tapping the abilities of commercial and academic labs to create

and distribute tests early in the crisis. At least, it would have been preferable for doctors and members of the public to have had the choice of using those tests.

The Defense Production Act

As community spread of SARS-CoV-2 took hold in the United States, several important medical supplies grew scarce. Some state governors, members of Congress, and political commentators called for the federal government to actively manage the production and distribution of those goods. It was an odd demand: government is not a mass manufacturer of ventilators, facemasks, medical gowns, and gloves. Rather, consumers rely on private firms with expertise and specialized manufacturing facilities to supply the goods at large volumes. Nonetheless, President Trump obliged the calls, invoking the 1950 Defense Production Act (DPA) for ventilators and medical-grade facemasks.⁶⁶

Production of those and other health care goods did expand in the following weeks, but the DPA had little if anything to do with that.⁶⁷ Before Trump's order, ventilator manufacturers were gearing up for unprecedented output in response to the emerging crisis and ensuing market demand. One manufacturer, Ventec Life Systems of Seattle, had forged a partnership with General Motors (GM) to create a production line at a GM plant in Kokomo, Indiana, tapping the automaker's mass-manufacturing expertise and global supply chain. Similar deals were struck between Medtronic and Tesla and between GE Healthcare and Ford.⁶⁸

Likewise, the target of the facemask DPA action, 3M, had already doubled its output rate and begun shipping masks it produced in other countries to the United States.⁶⁹ The Trump order came when the administration learned that a small percentage of the U.S. production would go to Canada and Latin America.⁷⁰

Manufacturers' robust voluntary response to the U.S. (and global) need for more medical equipment suggests that the DPA was unnecessary. Indeed, it is unclear *how* the DPA *could*

increase production of those goods under the current circumstances. The law was enacted in September 1950 after the U.S. military was caught ill-equipped by the start of the Korean War. At that time, the post-World War II economy was surging, and government officials apparently did not want to bid against other consumers for output. Instead, they responded with the DPA, which grants the federal government three powers:

1. It can order producers to accept and prioritize the federal government's demands ahead of others.
2. It can provide producers with capital and tax incentives to initiate and expand production.
3. It can act against price gouging and hoarding.

In the COVID-19 crisis, federal financial support under the second power might help manufacturers to expand their production lines. But that apparently was not what motivated President Trump, who justified the GM DPA by decrying the automaker's corporate leadership for not working hard enough to manufacture needed supplies and who excoriated 3M for sending some of its U.S.-produced masks to Canada and Central America.⁷¹

Trump, members of his administration, and other political leaders and commentators seem to believe that simply invoking the DPA would promptly create new capacity for the desired goods.⁷² Yet, unlike in the Korean War, there has been no general shortage of U.S. manufacturing capacity amid the COVID-19 pandemic; instead, there has been a scarcity in the time and investment necessary to convert some of this capacity to medical goods. And there has been no market failure in the supply of these goods; they are private goods that have responded appropriately to the shift in demand, independent of any government taskmaster. There are only two reasons to invoke the DPA in this crisis: so that politicians can gain the political benefit of *appearing* to take action and so that the executive branch

of the federal government can control the distribution of the goods covered by the orders.

That latter explanation may sound like a good idea: federal managers could direct supplies to where they are most needed. But there is reason to doubt that government can do that well. For example, federal officials were given control over distribution of the antiviral drug remdesivir, which has been shown to speed recovery of patients seriously afflicted with COVID-19. This oversight proved inept: some vials of the precious medicine were sent to hospitals without COVID-19 patients, and others went to hospitals without the necessary refrigerated storage.⁷³ That would be unlikely to happen if distribution were left to market forces; hospitals without COVID-19 patients or proper storage would have little incentive to purchase the drug.

Distribution of Aid

One of the sharpest criticisms leveled at the federal government's response to COVID-19 is that politicians are routing disaster aid to favored constituencies and away from the constituents of political opponents.⁷⁴ The *Denver Post* charged that President Trump "is treating life-saving medical equipment as emoluments he can dole out as favors to loyalists."⁷⁵ Michigan Gov. Gretchen Whitmer, a prominent Trump critic, similarly claimed that "vendors are being told [by the White House] not to send stuff here to Michigan" in retribution for her criticism.⁷⁶

There is some evidence supporting those charges. An analysis of the first round of the Paycheck Protection Program found that businesses in states that supported Trump in 2016 received much more generous government assistance than businesses in states that went to his Democratic opponent, Hillary Clinton.⁷⁷ Another analysis alleged that lobbyists with connections to the Trump administration and presidential campaign have delivered billions of dollars in federal aid to their clients.⁷⁸

Political favoritism in a disaster is a long-time practice in Washington, DC. A rich academic literature indicates that New Deal

“Advocates of the Defense Production Act seem to believe that simply invoking it will promptly create new capacity for the desired goods.”

“Political favoritism in a disaster is a longtime practice in Washington, DC, but Trump allegedly went further and withheld aid to punish swing states.”

spending was channeled to politically valued districts and to districts with members on key congressional committees.⁷⁹ Beyond the New Deal, empirical work finds that Federal Emergency Management Agency aid flows more generously in election years, that federal agriculture disaster aid flows disproportionately to states with members on the relevant House and Senate agriculture committees, and that disaster declarations are issued more readily to politically competitive states than to noncompetitive states.⁸⁰ Most relevant to the COVID-19 crisis, an analysis of the distribution of the H1N1 vaccine during the 2009 epidemic found that those doses went disproportionately to states with Democratic members on a key congressional committee.⁸¹

There is an important difference between the allegations made against the Trump administration and those earlier examples of political gamesmanship. In the earlier episodes, disaster aid apparently was a reward to politically valuable districts, whereas Trump allegedly put lives at risk by withholding aid from a swing state that seems vital to his 2020 reelection prospects. Nonetheless, playing politics with disaster aid is an old game.

Anti-Price-Gouging Laws

Once the COVID-19 crisis hit and supply chains came under stress, prices for goods rose. Some public officials responded to this by invoking state and federal price-gouging laws, which typically cap price increases at a specified percentage during a state of emergency.⁸²

Higher prices in a disaster are aggravating, but they are also the natural response when supply dwindles or demand intensifies. And the increase is virtuous: It encourages consumers to conserve the goods and manufacturers and stockpilers to provide more of the goods. It also rewards shippers for delivering the products.

Critics of price increases in a disaster typically allow that there should be some increase but only by some legally specified percentage. This overlooks the nature of production in a crisis: suppliers typically respond by

increasing production far above ordinary levels to meet surging demand, resulting in an increase in the marginal cost of production. Capping price increases dampens manufacturers' willingness to increase output; they will not expand beyond what is profitable to produce. Accordingly, some demand will go unmet at the capped price, resulting in shortages, while shoppers who happen into a supply of the goods will be more likely to stockpile, to the detriment of others.

In the early weeks of the COVID-19 crisis, Americans experienced shortages in such household staples as bath tissue, paper towels, and cleaning products, while health care facilities ran low on protective masks, gowns, and gloves. Some such scarcity was inevitable in the short run because supply chains had to be reconfigured in response to obstructions and increased demand. But the price controls hampered the market's ability to provide goods to consumers who would pay for them.

Regulatory Barriers

The previous government failures in responding to COVID-19 have been frustrating and painful. But they are not the only government interventions that have weakened America's response to the crisis. Others have existed for decades: regulations that dampen virtuous economic incentives and protect incumbent industries from competition. These interventions harm economic efficiency and human welfare at any time, but they are especially harmful in a crisis, when markets are under severe stress.

These regulations include rigid health care licensing requirements that prohibit medical professionals from practicing outside of specific geographic areas; supply-limiting and price-raising protections for funeral homes and other “death care” services; freight transport restrictions that dampen competition over the delivery of goods; and tariffs and other trade barriers that constrain the importation of foreign-made goods.⁸³ Encouragingly, state and federal regulators have suspended some of these regulations during the crisis.⁸⁴ However,

most of the suspensions are temporary and dependent on the whims of government officials, while many other questionable regulations remain in place.

CONCLUSION

When the danger from COVID-19 became apparent, Americans looked to government for help. That was appropriate; there is much that government can do to combat the market failures present in the crisis. Among those interventions are policies to reduce the negative externality of the virus, promote the public good of resistance to the disease, and expand the public good of knowledge about SARS-CoV-2.

Unfortunately, government in the United States has done a poor job of identifying and implementing cost-effective policies that would address these market failures. At the same time, it has intervened with poor results in market efforts to respond to the virus and reduce its harmful effects on Americans' health and the economy.

To some extent, these government failures are understandable. Humankind last faced

such a pandemic a century ago. Policymakers were bound to make mistakes when combating a completely new virus in a world-historic crisis. Moreover, their desire to use the power of government to reduce human suffering is morally respectable.

However, policymakers and the public must realize that there are limits to what government can do well. Perhaps in some cases and to some small degree it can assist the market in producing needed goods, but far too often government intervention hinders economic output—sometimes dramatically—rather than aids it. And too often, when state intervention *is* successful, the benefits are eclipsed by the costs.

Rather than intervene in functioning markets, policymakers should focus on cases where markets are obstructed—where there are true market failures. Intervention in these cases *may* improve welfare, provided that the benefits are greater than the costs and that protected rights are not infringed. By following classical liberal principles, policymakers would improve America's overall response—public and private—to the COVID-19 crisis.

“Rather than intervene in functioning markets, policymakers should focus on cases where there are market failures.”

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