

2020

Lessons from the Coronavirus Pandemic for Environmental Governance

Erin Ryan

Follow this and additional works at: <https://ir.law.fsu.edu/articles>



Part of the Law Commons

Recommended Citation

Erin Ryan, *Lessons from the Coronavirus Pandemic for Environmental Governance Seeing the Woods: A Rachel Carson Center Blog* (2020),
Available at: <https://ir.law.fsu.edu/articles/720>

This Article is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in Scholarly Publications by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

Lessons from the Coronavirus Pandemic for Environmental Governance



(Source: FolsomNatural via flickr CC BY 2.0)

By Erin Ryan

The coronavirus pandemic offers lessons for leaders on every level about how—and how not—to manage complex interjurisdictional challenges, like the environment, which unfold without regard for political boundaries[1].

In a matter of months, Covid-19 has laid bare the interdependence of the world[2] on every front imaginable: global public health, economic growth and development, social and professional networks, transportation and migration, and of course, ecological and environmental systems. No single nation has the coronavirus. No one state is economically disrupted. There is no single ethnic group, occupation, or corner of the world that has been impacted. *All* of us, in every corner of the world, in every profession, and in every ecosystem are affected. Since the virus was introduced, it has surfed the channels of our interconnectedness, uniting us all in the grip of its devastation. Similarly, unless we can act in unison to contain it, it will continue to surf those channels, exposing our interconnectedness despite all efforts to pretend otherwise.

In this way, the virus and our response to it betrays the fundamental problem with which environmental governance[3] has always contended in our interdependent, multijurisdictional world: We cannot do it alone. The major environmental problems with which we wrestle—air and water pollution, biodiversity preservation, ecosystem integrity, climate stability, and all the others—are bigger than we are, and certainly bigger than any one of these jurisdictions. No matter how skilled or well-intended, a single town, city, state, or even nation cannot effectively cope with the critical environmental challenges of our time, because they extend beyond these arbitrary political boundaries. To accomplish our goals, we have to coordinate our efforts.

The pandemic exposes this lesson even within the boundaries of a single nation, trying to act as one. For example, the disappointing US response in the early days of the pandemic highlights the

futility of a purely state or local response to an interjurisdictional problem of this magnitude. The virus—like pollution—jumps so easily from people in one state to people in neighboring states that inconsistent local regulatory responses are doomed to failure. If New Jersey stays in lockdown but Pennsylvania opens up[4], New Jersey residents will get sick. Similarly, if Florida limits offshore oil drilling while Louisiana does not[5], all Gulf of Mexico coastlines are vulnerable to the next spill.

The US federal government was also considerably better positioned than any individual state or city to deploy its unique array of technical expertise, fiscal resources, and legal authority in preparation for the pandemic. For example, the national government could have invoked the Defense Production Act[6], which enables the President to mobilize domestic industry to produce supplies during an emergency, such as respirators, masks, test kits, and swabs. Without centralized coordination to secure or produce these resources in advance, many states have now devolved into scrambled and unproductive competition for the woefully scarce existing resources. These are exactly the kinds of tasks for which coordinated national capacity outperforms isolated local action. Only the federal government could marshal necessary resources on a national scale, by means of both market force and sovereign authority—just as a nationally coordinated response to climate change is direly needed.

At the same time, the pandemic response also exposes the value of coordinated multilevel governance, and federalism in particular, for coping with complex interjurisdictional problems. Even strong national planning for the pandemic would require localized implementation and enforcement[7], and more local levels of government are always better positioned to understand the constellation of geographic, demographic, economic, and cultural factors that will either facilitate or complicate implementation in each unique community. In administering virus tests[8], coordinating food assistance, or delivering public education from lockdown, the state and local governments are far better positioned than the national government to deploy these kinds of expertise. Just as they are in implementing low-carbon transportation infrastructure and stormwater pollution controls on the ground.

Most dramatically, however, the failed US response to the pandemic highlights the regulatory backstop value of federalism as a system of good governance, because of the way federalism allows for simultaneous response by different levels of government in realms of jurisdictional overlap. The Trump Administration has been widely condemned[9] for its lack of leadership[10] during the early pandemic, from its failure to respond to early warnings to its later abdication of responsibility for a national response plan. *The Lancet*, a leading world medical journal, recently excoriated the Administration[11] for politicizing its own public health response agency, the Center for Disease Control, further compromising the nation's response. In its place, however, many state governors rose to the occasion, providing leadership and role modeling to fill the national void. The checks and balances built into US federalism[12] create inefficiencies by design, which can be frustrating indeed. But during the pandemic, citizens in those states could be grateful that it enabled someone to take the reins at a critical moment when the Commander in Chief faltered.

Alternate leadership emerged in red and blue states alike. For example, California Governor Gavin Newsom acted quickly to institute shelter-in-place orders to mitigate the spread of virus

from neighboring Washington, admirably flattening the curve in his state[13] in comparison to other parts of the country. Kentucky Governor Andy Beshear began offering statewide virus testing[14] to all comers as early as April, well in advance of many other states. New York Governor Andrew Cuomo deployed his state's considerable economic might to commission the production of medical supplies and equipment[15] that were needed. Taking advantage of the same regulatory backstop feature of federalism, twenty-four state governors representing 55 percent of the US population united to form the US Climate Alliance[16] after President Trump withdrew the United States from the Paris Climate Agreement, pledging to lead on critical climate governance initiatives abdicated by the federal government.

The pandemic response and environmental governance are both dynamic projects of policymaking and adaptation. Reasonable minds may differ on the ideal balance between public health and economic concerns associated with the coronavirus lockdowns. Many US citizens support President Trump's laissez faire approach, and not every resident of New York or California has been happy with their governors' actions. However, these leaders acted far more decisively than the President at a time where critical governance decisions had to be made, and polls confirm that the vast majorities of citizens in these states supported their choices[17]. The leadership that these and other state leaders have shown give Americans cause for hope that the US will improve our unfolding pandemic response. We can similarly hope that the Covid-19 experience will embolden subnational leaders to show the same vision on climate leadership and other matters of interjurisdictional environmental governance moving forward.

[1] Portions of this essay will appear in a composite chapter of a forthcoming book, *Environmental Law, Disrupted*, eds. Keith Hirokawa and Jessica Owley (ELI Press, 2020).

[2] "Coronavirus Disease (COVID-19) Pandemic," World Health Organization, published 22 May 2020. <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>.

[3] Erin Ryan, "Multilevel Environmental Governance in the United States," *Environmental Scientist* 25, no.3 (2016): 51-57. <https://www.the-ies.org/resources/quadrophilia-how>.

[4] Sarah Mervosh, Jasmine C. Lee, Lazaro Gamio, and Nadja Popovich, "See Which States Are Reopening and Which Are Still Shut Down," *The New York Times*, 21 May 2020 (updated 26 May 2020). <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>.

[5] Alex Daugherty, "House Passes Bill to Permanently Ban Offshore Drilling off Florida's Gulf Coast," *Miami Herald*, 11 September 2019. <https://www.miamiherald.com/news/politics-government/article234922247.html>.

[6] Katie Rogers, Maggie Haberman, and Ana Swanson, "Trump Resists Pressure to Use Wartime Law to Mobilize Industry in Virus Response," *The New York Times*, 20 March 2020. <https://www.nytimes.com/2020/03/20/us/politics/trump-coronavirus-supplies.html>.

[7] "Coronavirus: What You Need to Know," National Governors Association, published 21 May 2020 (updated 26 May 2020). <https://www.nga.org/coronavirus/#glance>.

[8] "Memorandum," National Governors Association, published 14 May 2020, <https://www.nga.org/wp-content/uploads/2020/04/Testing-Memo-Update-5-13-20.pdf>.

[9] Kayla Epstein and Sonam Sheth, "A Timeline of How Years of Missteps and Budget Cuts Undermined the Trump Administration's Preparedness for COVID-19," *Business Insider*, 7 April 2020. <https://www.businessinsider.com/coronavirus-timeline-trump-failures-undercut-pandemic-response-2020-4?r=DE&IR=T>.

[10] Eric Lipton, David E. Sanger, Maggie Haberman, Michael D. Shear, Mark Mazzetti, and Julian E. Barnes, "He Could Have Seen What Was Coming: Behind Trump's Failure on the Virus," *The New York Times*, 11 April 2020. <https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>.

[11] "Reviving the US CDC," *The Lancet* 395, no. 10236 (May 2020). [https://doi.org/10.1016/S0140-6736\(20\)31140-5](https://doi.org/10.1016/S0140-6736(20)31140-5).

[12] Erin Ryan, *Federalism and the Tug of War Within* (Oxford, 2012), available at Oxford Scholarship Online. Doi: 10.1093/acprof:oso/9780199737987.001.0001.

[13] Geoffrey A. Fowler, Heather Kelly, and Reed Albergotti, "Social Distancing Works. The Earlier the Better, California and Washington Data Show," *The Washington Post*, 1 April 2020. <https://www.washingtonpost.com/nation/2020/04/01/lockdown-coronavirus-california-data/>.

[14] Daniel Desrochers, "Kentucky Expanding COVID-19 Testing to All Who Want It. 196 New Cases and 14 Deaths," *Lexington Herald Leader*, 22 April 2020. <https://www.kentucky.com/news/coronavirus/article242209666.html>.

[15] Elisabeth Buckwald, "Cuomo Says New York Inmates Will Produce 100,000 Gallons of Hand Sanitizer a Week to Help Combat Coronavirus," MarketWatch, published 10 March 2020. <https://www.marketwatch.com/story/there-aint-no-free-lunch-but-there-is-free-of-charge-hand-sanitizer-in-new-york-state-courtesy-of-inmates-2020-03-09>.

[16] United States Climate Alliance, 2020. <http://www.usclimatealliance.org/>.

[17] Dhrumil Mehta, "Most Americans Like How Their Governor Is Handling The Coronavirus Outbreak," *FiveThirtyEight*, 10 April 2020. <https://fivethirtyeight.com/features/most-americans-like-how-their-governor-is-handling-the-coronavirus-outbreak/>.

-- Published by the Rachel Carson Center, SEEING THE WOODS (June 1, 2020), at <https://seeingthewoods.org/2020/05/31/lessons-from-the-coronavirus-pandemic-for-environmental-governance/>; (later republished by the Environmental Law Profs Blog).