

The Twin Problems of Governing Security

A GRAY DAWN BEGAN TO BREAK over New Orleans on Monday, August 29, 2005, as Hurricane Katrina ripped into the Louisiana Coast. It was 6:10 a.m.¹ At that moment, as thousands of people stuck in the Crescent City were still scrambling to find shelter from the storm, the winds were powerful enough to make even the waters of the mighty Mississippi River reverse course to flow away from the ocean.² Less than two hours later, a barge broke loose from its moorings, smashing into New Orleans's Industrial Canal. Before long, millions of gallons of water were spilling onto the residential streets of the Lower Ninth Ward and St. Bernard Parish. Upon learning of the breach, the National Weather Service predicted flash floods of up to eight feet of water. The water did not reach the Superdome, where ten thousand refugees had gathered. But the hurricane did. Shortly after the flash flood warning, Katrina tore two holes in the roof of the arena. Elsewhere in the city, water from multiple canal breaches mixed with fuel and industrial runoff. By early afternoon, the breaches were well on their way to placing much of New Orleans under a muddy soup of polluted water, and no fewer than eight Gulf Coast refineries had shut down.³

Severe though these consequences were, they did not come as a complete surprise to some public officials. The preceding Friday, three days before Hurricane Katrina struck, Governor Kathleen Blanco had declared a state of emergency in Louisiana.⁴ She authorized National Guard commanders to call up to 2,000 reservists to active duty.⁵ Governor Blanco ordered an additional 2,000 Guardsmen to active duty the next day.⁶ On Sunday, August 28, the state adjutant general, Major General Bennett C. Landreneau, established five task forces to conduct aviation search-and-rescue missions, to deliver food, water, and other supplies, and to help the Corps of Engineers repair storm levees.⁷ National Guardsmen also helped implement contraflow—the use of all lanes of the highway system for outbound traffic only—by directing traffic and erecting barriers.⁸ Not

to be outdone, New Orleans mayor Ray Nagin followed suit on Sunday, declaring his own state of emergency and directing legal counsel to explore whether the mayor could legally force recalcitrant individuals to leave town without facing liability.⁹ While state and local officials across much of Louisiana were scrambling to determine how best to protect their citizens and the delicate infrastructure of a region that partly sat below sea level, other Gulf states such as Mississippi also declared states of emergency and began efforts to protect the security of their residents.¹⁰

On Saturday morning, however, President George W. Bush was, ironically, focused on a different sort of security issue altogether. In his weekly radio address, the president covered the challenges faced by U.S. foreign policy with respect to the Middle East peace process and the Gaza Strip.¹¹ Although the president had also declared that a “state of emergency” existed in Louisiana and ordered federal agencies to assist state and local authorities, several reports indicate that two key officials in charge of managing that effort—Homeland Security secretary Michael Chertoff and Federal Emergency Management Agency director Michael Brown—did not mobilize the National Guard at that time.¹² Indeed, on Tuesday, several hours after Katrina hit the Gulf Coast, President Bush proceeded with a previously scheduled speech in San Diego discussing the history of America’s involvement in World War II and calling on the nation to continue supporting the deployment of American soldiers to Iraq.¹³ Even as the president addressed events thousands of miles beyond American shores, a different cluster of security issues was emerging along the Gulf of Mexico. There the looming disaster posed risks to the American energy infrastructure, and to hundreds of thousands of people, in the path of the vast storm. The people and infrastructure of the Gulf Coast region—as richly demonstrated by the infamous British Petroleum oil spill five years later—were all the more exposed because they found themselves in a fragile, low-lying region of bayous, refineries, and oil rigs crisscrossed by canals and by the waters of the Mississippi.

By Tuesday, August 31, fully 80 percent of New Orleans was underwater. Tens of thousands of its residents had themselves flooded into downtown seeking shelter.¹⁴ For five days, about 20,000 people waited inside the Ernest N. Morial Convention Center in New Orleans, turning it into

a squalid urban refugee camp.¹⁵ Conditions inside the convention center rapidly deteriorated, reflecting inadequate security policies and insufficient numbers of security personnel.¹⁶ Observers in the region at the time described problems involving young men from “rival housing projects” who brought guns with them and put them to people’s heads.¹⁷ Later, “a gang broke into the locked alcohol storage areas . . . [a]nd before long, there were scenes of gangsters drunk, groping after young girls.”¹⁸ Youths hot-wired electric utility carts and forklifts, driving them recklessly through crowds of people.¹⁹ Just over a mile away, nearly the same number of people had taken shelter under the torn roof of the Superdome, where refugees faced hunger, squalor, and racial tensions.²⁰

Three miles from the Superdome in the direction of Lake Pontchartrain, floodwaters reached the edge of Tulane University’s historic campus, stopping just short of the university’s main library on Freret Street.²¹ Among the government documents in the university’s library system was the Homeland Security Act (HSA), the 187-page statute that provided the blueprint for the creation of a new cabinet-level agency focused on the country’s inter-related security challenges. Among other things, the law conferred upon the superagency the responsibility for preventing and mitigating disasters such as the one that was at that moment bringing New Orleans to its knees. And while the HSA unquestionably defined the new agency’s mission to encompass disasters like the one that was on the verge of flooding Tulane’s library, it also—indeed, perhaps inevitably—left a considerable amount of discretion to the executive branch in defining precisely how security priorities should be understood and implemented. In effect, the problems posed by both the floodwaters at the edge of Freret Street and the complicated statute housed in Tulane’s library implicated the role of federal bureaus such as FEMA and the Coast Guard, and the priorities of the new cabinet-level Department of Homeland Security (DHS), which was imbued with the legal responsibility for helping Americans manage threats to their security at home.

Actually, the performance of what was then a recently forged cabinet agency poses a stark organizational irony. Despite the fact that DHS was created precisely to improve the nation’s capacity to manage disasters, reasonable observers would find it all but impossible to describe the early

response to Katrina as a success.²² A year after Hurricane Katrina devastated the Gulf region, former FEMA director Michael Brown claimed that there was no federal pre-disaster planning because President Bush and Department of Homeland Security secretary Michael Chertoff did not release funds to allow the federal agencies to coordinate a response.²³ Yet Brown himself waited five hours after Katrina struck Louisiana's shoreline before asking his superior, Secretary Chertoff, to authorize sending about 1,000 employees of DHS to the region.²⁴ The FEMA director also gave them two days to arrive, a decision suggesting that FEMA hardly grasped the full scale of the disaster in New Orleans.²⁵ Reacting in part to uncertainty regarding the federal role,²⁶ Brown discouraged state, local, and private efforts to help in the critical hours after the hurricane struck.²⁷ While Secretary Chertoff was the pivotal national official in charge of emergency response (and of FEMA itself), he failed to activate the national response plan until late Tuesday.²⁸ Over time, the Coast Guard—a bureau that had been transferred to DHS—continued rescuing people from the rooftops of city districts swelling with toxic floodwaters and earned plaudits from many observers. But despite this effort and the work of thousands of DHS employees, the roles of FEMA and DHS itself provoked continued concern among lawmakers, state and local officials, and the public as the tense days of the initial recovery gave way to the longer-term challenges of reconstruction. These and countless other examples of staggering failure in the federal response contributed to the scale of a tragedy that cost the nation thousands of lives and more than \$150 billion.²⁹

The survivors who experienced those costs most directly witnessed the destruction of one of the country's most iconic urban communities. Even for Americans who have never set foot on the Gulf Coast, Katrina's consequences will undoubtedly appear to be unique in the nation's history. The human toll and the economic costs reinforce this conclusion, along with the particular set of individuals and circumstances involved. In the days that followed the devastation wrought by the storm itself, Katrina cast a long shadow over the reputations of certain officials and even entire agencies. That shadow also raised for many Americans—including those who weathered the days after the storm at the Morial Convention Center and the Superdome—the question of whether it was all but impossible to

expect that federal officials would prioritize the security of thousands of relatively poor residents hard-pressed to leave the Crescent City.

But the detailed analyses of the Katrina response that emerged over the following year tell a more complicated story. In that narrative, ineluctable and related questions arise about the organization of the executive branch and the scope of the executive branch's responsibility for governing the security of the nation. In that story, organizational problems and trade-offs involving security priorities loom large in a drama also implicating the personalities of those involved in running FEMA, the difficulties overcome by the Coast Guard, and the physical and metaphorical breakdown of entire cities. Boxes and lines on a sterile organizational chart are unlikely to explain all the activities of Coast Guard commanders, disaster response experts, or military commanders. Still, the enormous potential of organizational structure to shape the world is reflected in the fact that it is largely the product of laws allocating jurisdiction across agencies. Indeed, within organizations, formal structure can itself become a form of law, binding groups to each other in a specific way. If it is true that few legal arrangements (whether concerning organizational structure, criminal liability, or anything else) are entirely self-enforcing, it is also true that jurisdictional rules, reporting relationships, and response plans can create expectations and guide the behavior of many thousands of public officials.

In part because of this, when explaining what happened during the Katrina response, a host of observers emphasized the consequences of a complicated and recently imposed organizational structure, coupled with choices that downplayed the relative importance of national disasters in the mission of DHS and FEMA. According to some observers, the reorganization of FEMA under DHS took away its "status as an independent, cabinet-level agency. [I]t became a small part of a large department with much broader objectives."³⁰ After September 11, 2001, FEMA began transferring its focus away from natural disasters and toward the development of antiterrorism capabilities, a trend that accelerated as DHS was being created.³¹ FEMA director Brown and DHS secretary Chertoff both stated publicly that they had not been entirely aware of the conditions in New Orleans, even though the media had provided graphic and nearly

continuous coverage for days.³² Subsequent reports indicate that local, state, and federal government officials were unclear about what role to play, and this confusion “exacerbated the pain, suffering, and frustration of disaster victims.”³³ Under the National Response Plan, a Principal Federal Official (PFO) is a person “designated by the Secretary of Homeland Security to facilitate federal support to the established Incident Command System (ICS) Unified Command structure and to coordinate overall federal incident management.”³⁴ In fact, several failures in the appointment of the PFO took place before the Hurricane Katrina disaster. DHS secretary Chertoff should have appointed a PFO on Saturday, two days before the hurricane reached land, but instead he waited until Tuesday, one day after the storm had reached land. Chertoff’s testimony before the House of Representatives indicated that he was confused about the role of a PFO and had appointed Brown without understanding the scope of a PFO’s duties.³⁵ The uncertainty in roles and responsibilities resulted in the absence of a unified command structure, diluting the capacity of federal officials to leverage available resources.³⁶

Running through the story of the Katrina response, then, is a theme that may hold still-larger implications for the country. It concerns how the nation fills the gap between the general imperative reflected in the Homeland Security Act of providing security to the nation and the pressures that arise when a threat like Katrina confronts citizens, civil servants, lawmakers, and presidents. That gap forces us to consider how the nation defines its security priorities, and at the same time, how public officials work and even compete to secure control of the complex organizations that stand between citizens and the threats they face. If we use the existence of this gap to consider the larger social, legal, and political dramas implicated in the Katrina episode, we can readily discern *two* sets of questions that should spark interest among scholars, citizens, and policymakers. First, in a world of complex risks, competing lawmakers and organized interests, and differing ideologies, how do agencies acquire their particular structure within the larger context of law and politics? Why, for example, is FEMA within DHS, and what does that mean? Indeed, why is there a FEMA at all rather than (for example) two or three separate agencies disaggregating natural disaster recovery, civil

defense, and flood prevention responsibilities? A second question has perhaps even more far-reaching implications: How do agencies involved in security define that concept for purposes of pursuing their priorities and even defining the kind of risks that the state will manage for its citizens?

This book is about how profoundly our lives have been shaped by these questions. It is also about why these questions turn out to be so thoroughly entangled. The national debates and legislative choices that forged DHS constitute a vivid example of how an advanced industrialized country such as the United States decides how to organize and define its security. In the chapters to come, we will learn how this process is driven not only by differing ideas about the value of some organizational forms over others or distinct views about where natural disaster risks rank relative to threats of terrorist attacks; it is also driven by pluralist political realities that set the stage for struggles among lawmakers, organized interests, and presidents to secure the ability to govern organizations. But first, we can benefit from considering a largely forgotten episode of American history from a time when the nation faced equally stark questions about the scope of security and the allocation of control over executive power.

FROM DHS TO FSA:
ORGANIZATION, SECURITY, AND EXECUTIVE
POWER IN THE ROOSEVELT ADMINISTRATION

Three-quarters of a century before Katrina and DHS, a different irony was playing out against a backdrop of sweeping legal and political change. During the 1930s the administration of Franklin Delano Roosevelt spurred major growth in the federal state by stressing government's role as guarantor of the nation's security.³⁷ With security as a lodestar, administration priorities led to now-familiar statutory changes catalyzing financial regulation, retirement and unemployment benefits, food safety policies, and energy rules. As the New Deal matured, security-related rationales taking subtly distinct forms—emphasizing international, geostrategic concerns—also bolstered the case for expansive federal power and even blended with the more expansive domestic risk-reduction ideas in the period before World War II. In 1939, for example, the administration wove together multiple strands of its security trope while using a sliver of legal authority for execu-

tive reorganization to forge a colossal new Federal Security Agency (FSA). It then proceeded to justify the executive branch's new legal architecture by arguing that the ability to respond to international threats depended on the strengthened domestic capacity provided by the FSA to implement the law effectively in domains such as health and education.³⁸

But for all its success in reconstructing the national agenda around an expansive conception of security, by the late 1930s the administration was losing the capacity to secure its own control of the outsized federal state it had created. In *Humphrey's Executor v. United States*,³⁹ the Supreme Court refused to let the president fire a Federal Trade Commission (FTC) official whose term had been fixed by Congress,⁴⁰ thereby eviscerating presidential power over an ever-multiplying empire of independent commissions and opening the door to even greater congressionally imposed limits on presidential power. In the process, the Court rejected the view that proper presidential supervision of the executive branch under Article II depended on the power to fire senior officials, an idea central to the Court's conception of executive power articulated in *Myers v. United States*,⁴¹ decided just a few years earlier.⁴² Meanwhile, Congress was increasingly designing the structure of agencies like the Social Security Board (SSB) to disrupt presidential control,⁴³ blocking White House staff expansion and refusing to grant reorganization authority, which the Roosevelt administration considered essential to securing control of a rapidly growing federal state.⁴⁴

In at least one respect, the story of the FSA evokes the challenges faced by the nation in creating DHS and responding to the Katrina disaster. The FSA, too, illuminates the fertile intersection of two "security" problems: the control that politicians seek to secure over agencies with expansive legal powers, and the security that modern nation-states promise citizens when justifying why public bureaucracies must be given such powers in the first place. Time and again, whether the subject is the Roosevelt-era FSA or the Bush-era DHS, these two security problems turn out to be deeply enmeshed in the web of federal regulatory power. Bureaucratic control helps executive branch officials and their lawyers promote a particular definition of security through legal interpretations, public communications, legislative initiatives, and discretionary decisions. Security concerns, mean-

while, shore up public justifications for organizational changes affecting political control over implementation of the law. By understanding how these two problems intersect, we can grasp underappreciated tensions coursing through public law—such as how agencies shape public perceptions about the laws they implement, how the definition of “security” has changed as the architecture of the executive branch has evolved, and how to understand the consequences of forging the modern-day DHS.

The link between these themes is an extended case study—the first ever—on the remarkable legal and political history of the FSA, an account that at times will diverge sharply from what happened with DHS and at other times will offer eerie parallels. Placing the FSA in the larger context of its bureaucratic brethren, our exploration of the life and times of that agency will show how politicians exploit reorganizations, particularly during or in anticipation of national security emergencies, to reshape agencies’ legal mandates by controlling their bureaucratic power.⁴⁵ It shows how changes in the organization of political officials, civil servants, and government bureaus can enhance presidential control. Simultaneously, such changes can repackage regulatory activities in relation to the concept of national security, bolstering the political coalitions supporting those functions. These dynamics have typically escaped scholarly attention among academics specializing in bureaucracy, whose work in recent years has tended to focus on elucidating how politicians reorganize government to satisfy a preexisting public demand or to deliberately sabotage agency activities.⁴⁶ Nor have scholars in the developing field of national security law fully investigated questions about the scope of national security rather than the surveillance, detention, emergency, or foreign affairs powers deployed in the name of security.

Although the FSA has been all but forgotten, even cursory scrutiny reveals it to be among the more important bureaucracies created in twentieth-century America. It was the gangly and occasionally brash adolescent—equal parts wartime soldier and audacious dreamer—that matured into the federal government’s sprawling health, welfare, and civil defense apparatus. The agency was born amid a tangle of administrative changes enshrined in statutes as the New Deal morphed into the American response to World War II. Its litany of statutory responsibilities at once confirms what has

today become a familiar picture of federal functions, encompassing medical research, civil defense, social security, federal education assistance, weapons development, and food and drug regulation. But the list also scrambles modern sensibilities about the line dividing conventional national security functions from domestic regulatory activities.

President Roosevelt began blurring that line nearly two and a half years before the Pearl Harbor attacks.⁴⁷ On April 25, 1939, he delivered a long-expected announcement about his plans to reshape the architecture of the executive branch.⁴⁸ The change in architecture had been on the president's agenda for more than twenty-four months, but the specific changes he had in mind had become possible only three weeks earlier, after Congress grudgingly gave the president limited reorganization powers. Thwarted in an ambitious effort to create a cabinet-level Department of Public Welfare the previous year, the Roosevelt White House nonetheless announced that it would use its more modest reorganization power to unify half a dozen bureaus involved in health regulation, economic security, and education in the new Federal Security Agency. From then on, the FSA expanded steadily. By 1943, the FSA's bureaus included the Public Health Service (PHS), the Social Security Board (SSB), the Office of Education, the Food and Drug Administration (FDA), the Office of Community War Services (CWS), the War Research Service (WRS), and nearly a dozen other organizations.⁴⁹ By 1953, the agency became the Department of Health, Education, and Welfare (HEW).⁵⁰ And by the 1970s, HEW's budget accounted for nearly half of federal nondefense expenditures, dwarfing the national budget of every country except what was then known as the Soviet Union.⁵¹

To observers situated in the early twenty-first century, however, the name of the Federal Security Agency foreshadows DHS more than it does a welfare agency. Legal history readily demonstrates how the meaning of "security" is versatile. Until the current economic downturn, the term elicited concepts of economic risk reduction more easily in the 1930s than in recent years. As will become clear, however, some aspects of the FSA's work nonetheless fit readily with more modern applications of the term, presaging its subsequent evolution. It was the FSA that facilitated the resettlement of Japanese Americans.⁵² It was the FSA that laundered White House funds and funneled them into secret biological weapons research

even though the United States had signed a treaty outlawing such activity.⁵³ FSA officials presided over the rapid growth of a national system to train workers for war-related occupations. They set up record-keeping systems to assist a national military draft. The agency's inspectors prevented food contamination while insisting that their mission was essential to the performance of the military, and they sought to limit the spread of sexually transmitted diseases among military personnel. And the agency performed these tasks while it continued—and expanded—its role of issuing social security benefit checks, providing medical services to underserved American communities, screening new drugs, and printing books for the blind.⁵⁴

As the FSA's origins recede into history and are replaced by public scrutiny of episodes like the disastrous DHS Katrina response seven decades later, however, scholars too have remained blind to certain puzzles about its birth, which are also reflected in the story of the birth of DHS.⁵⁵ *Why*, for instance, did President Roosevelt create the FSA at all, particularly when doing so involved such an expenditure of scarce political capital and resulted in the removal of some bureaus from agencies where they were already supervised by trusted political lieutenants? The meager scholarly literature on the subject, much of it written at the time of the merger or shortly thereafter, speculates that the president's interest was in more "efficient" government, without defining the concept or considering the more directly political implications of the White House move. *Why* did the agency so pervasively mix social welfare, regulatory, and national security functions, years before the United States became embroiled in World War II? Indeed, *what* was meant by the reference to "security" used to justify expansive legal powers in the early years of the FSA? And how did the FSA's creation affect the work of its bureaus?

The challenge in addressing these questions arises not only from the limited amount of scholarly attention they have received, but also from the fact that we may not always be able to take the public statements of federal officials at face value. For example, despite Franklin Roosevelt's willingness to explain the immediate consequences of creating the FSA in terms of financial and administrative efficiency, he was also perfectly willing to disparage those arguments in private. Small wonder, too, since the efficiency-focused explanations that so heavily draw on prescriptive scholarship in

a “public administration” tradition suffer from limitations. First, they are provided with little or no empirical support. Second, they do not consider the full scope of the FSA’s legal powers, or the president’s special concern for these functions. And finally, they do not place the discussion in the political context of the times, including the battle over Roosevelt’s reorganization plans and the developing war-related rhetoric of the administration.⁵⁶

In the pages that follow, the answers will emerge from a more nuanced and theoretically informed investigation of history. In the process, we will learn something about health policy and public organizations—but far more about the battle to define security in the American state.

OVERVIEW OF THE ARGUMENT

Americans listening to one of President Franklin Roosevelt’s fireside chats on a cabinet-sized radio in the late 1930s were not, of course, heavily concerned with organizational charts or statutes about executive power, any more than the waterlogged residents of New Orleans in the early twenty-first century were. Indeed, Americans in the 1930s might have scarcely imagined the eventual birth of the Internet. They would have been hard-pressed to imagine the spectacular growth of East Asian economies, or perhaps even the fall of the Soviet Union. They might have been just as surprised, however, at what remains the same in the early twenty-first century. For all that has changed over the course of six or seven decades, in many respects Americans today share a common reality with their forebears from the late 1930s. First, they face multiple sources of insecurity: from financial instability, natural disasters such as Hurricane Katrina, and potential external threats. Second, their government is characterized by the competition to secure control over the organizations that implement the laws that regulate markets and public health, provide services, manage security risks, and otherwise shape people’s lives.

At the core of our exploration will be the under-appreciated connection between these two security dynamics—how our nation defines the scope of security through statutory enactments and the architecture of the executive branch, and how presidents, White House aides, lawmakers, civil servants, interest groups, and political actors work within the law to secure control over public organizations. The book offers major case studies about two

agencies charged with promoting (and in the process, defining) American security: the now little-known Federal Security Agency and the all-too-familiar Department of Homeland Security. Both cases showcase how much of law and policy pivots on defining the scope of national security during and after a crisis. Both also indicate the stakes in battles to forge the structure of the organizations charged with implementing our public laws, whether they involve disbursing social security benefits, safeguarding public health, or preventing terrorist attacks. As examples of how our nation defined security and then reshaped the federal government to address that definition, these examples prove enormously revealing.

So powerful has been the recent and understandable focus of our government on counterterrorism that we can easily forget how less than a generation ago policymakers questioned how much to define terrorism as a major geostrategic threat. Earlier still, Franklin Roosevelt's New Deal gave meaning to the concept of security through a confluence of public rhetoric and government programs advocating an expansive definition linking public health, government benefits, and national preparedness in agencies such as the Federal Security Agency. The animating principle behind that agency nicely illustrates, and served to advance, Roosevelt's vision of government as a bulwark of security for citizens facing a panoply of threats: domestic crime, adulterated food, financial instability, public health issues, and dictatorships hostile to democracy. The question of how to define national security, perhaps endemic to the nation-state, also runs through more-recent debates about whether environmental protection, response to natural disasters such as Hurricane Katrina, immigration policies that enhance our standing in the world, or public health goals can be properly understood to fit within the modern nation-state's promise to provide security to its citizens.

How those questions are answered depends heavily on the second dynamic described in this book, reflecting the competition of political players (particularly in the executive branch) to secure control over the public organizations through which laws are implemented. These fights sometimes play out in the executive branch or in Congress as compromises are forged to allocate authority among agencies or to create new bureaucracies of staggering size and power, such as the Department of Homeland Security. Competing agendas to secure control over public organizations

also animate fundamental legal developments involving separation of powers. This domain of legal doctrine—with executive branch legal interpretations sometimes driving outcomes at least as much as court decisions do—establishes some of the rules of a political game that often involves the creation, dissolution, transfer, restructuring, and conflict over the authority of public organizations. Both political strategies and legal interpretations shape how presidents, White House staff, agency leaders, lawmakers, and organized interests seek to secure control of federal bureaucracies. And these developments shape how society implements different interpretations of national security. Debates about national security, in turn, can provide different actors in the system with an opportunity to increase their control over the functions of government—as did President Jimmy Carter, for example, in his successful effort to frame the creation of an executive department focused on energy policy as a national security imperative.

The book further contends that these two dynamics—defining the scope of security and politicians' competition to secure control of the bureaucracy—are linked to each other through public organizations (whose power includes shaping the scope of security and whose own structure is in turn shaped by debates about the federal role in providing security), law (regulating the structure of, control of, and performance of agencies), and the perceptions of the mass public (which can translate into political support and simultaneously affects agency missions as well as the scope of federal power). Hence, political control over public agencies facilitates efforts to shape public perceptions of security as well as the future development of these agencies, and debates about the scope of security in turn affect the dynamics of political control over public organizations. Central to the argument is the idea that the meaning of the concept of national security is not fixed but is instead given life through choices about the architecture of public agencies and legal interpretations.

Although the argument draws support from a number of historical episodes over the last century as well as theoretical work in law and political science, the book primarily makes its case by telling the stories of the two major government agencies whose origins illustrate the entanglement between the scope of security and the competition to secure political control of agencies. The FSA was a preeminent public organization

bridging the latter New Deal and the emergence of the Cold War state. Although the budget of its successor agency eventually dwarfed that of most nations on earth, the FSA has been almost entirely neglected by scholars and is unknown to the public. Telling its surprising story is one of the book's major contributions. The other is the story of the latter-day DHS. Both the agency's importance and its failures have become all too familiar to scholars and educated laypeople. Less familiar are the curious twists involved in the agency's origins, its concomitant parallels to and differences from the Roosevelt-era Federal Security Agency, and underappreciated dilemmas about the scope of security that were raised behind the scenes during the department's response to Hurricane Katrina or in the work of bureaus such as the Coast Guard.

To link the case studies with the book's core argument, I explore certain unresolved puzzles about the history of these agencies. I consider why Roosevelt decided to expend political capital on executive reorganization despite his decision to back down on the fight for judicial reorganization. Why was it not enough for loyal but separate cabinet secretaries to oversee the bureaus from which the FSA was ultimately forged? I then ask: How did the creation of the FSA affect the day-to-day work of administering statutory programs? And in a more recent context, why did the Bush administration also decide to undertake an effort to reshape security policy through DHS? Why did Bush and his advisors switch, moreover, from opposing the creation of DHS to supporting it? By addressing these puzzles in light of the book's theoretical perspective, we can learn something about how the concept of security has changed over time and how it is given meaning through organizational choices as well as legal interpretations.

The book's theoretical perspective, in turn, is meant to link fights over how the public understands the role of government, choices about the architecture of public organizations, and developments involving the law's implementation and interpretation. It reflects some simple but important ideas informed by developments in organization theory, political economy, and the law. Politicians seek to advance competing agendas within the bounds of legal and institutional rules that are frequently difficult to change. These agendas often turn on efforts to shape the law's implementation by having an impact on the massive public organizations that epitomize

mize the advanced industrialized nation-state, such as the Federal Security Agency, the Department of Homeland Security, the Department of Energy (DOE), or the Federal Reserve. Less commonly appreciated by scholars and educated laypeople, however, are two additional factors: the impact of crises on political conditions and the potential for public organizations to reshape what the public expects from its government.

By juxtaposing the story of these agencies and a theoretical backdrop emphasizing the importance of agency structure, crises, and goal-seeking behavior by individuals, the book will also make several additional contributions to public law, American political development, and security studies consistent with its broader argument. *First*, the book addresses the aforementioned historical puzzles about public organizations and the laws they implement. Readers will learn why Roosevelt sought to use his scarce political capital in the late 1930s on an uphill battle to get executive reorganization authority and create the new Federal Security Agency, despite the fact that loyal political allies were already overseeing the key bureaus that he shoehorned into the new organization. The book addresses how the creation of that new agency affected the work of public bureaus handling some of the core components of Roosevelt's domestic agenda. It sheds light on why President Bush oddly switched from disfavoring the creation of a cabinet-level homeland security department following the September 11 attacks to offering a plan for such a department that actually exceeded the size and scope of previous proposals made by congressional advocates of reorganization. Tying together the answers to these puzzles is the reality that the concept of national security has a contested scope, and fights about that scope raise core questions about the law and the role of the nation-state itself.

Second, the book makes theoretical contributions for scholars of law and political science, centering on the project's new account of how public organizations shape the law by affecting public perceptions (about matters such as the scope of national security, or the immediacy of external threats). A related contribution involves developing examples of how and why politicians sometimes have incentives to invest in the capacity of public organizations to do their job effectively rather than (as some scholars have argued) simply taking credit for reshaping agency architecture with-

out being concerned about agency performance (or, in some cases, affirmatively seeking to sabotage such performance).

Third, the project sheds light on separation-of-powers disputes. It showcases how Roosevelt responded to setbacks in the courts by pursuing executive reorganization, and how the Bush administration later sought to structure DHS to facilitate a considerable degree of de facto presidential control. The book also argues that principled solutions to such disputes will elude courts, lawyers, and the public if they fail to consider the extent of presidential control achieved through reorganizations. In contrast, many judges and scholars underscore the value of simple, unchanging rules in this context.

Fourth, the project offers some underappreciated historical insights about Franklin Roosevelt and the New Deal, and about the creation of DHS three-quarters of a century later. The book describes how Roosevelt used incremental strategies to reshape legal and political realities in response to political difficulties with Congress. It chronicles how the White House used its funds to secretly support biological weapons research disguised as a public health initiative. The Bush administration, meanwhile, seemed far less interested in using reorganization as an exercise in enhancing state capacity. Whereas officials in the Bush administration and their allies in Congress felt strongly concerned about gaps in state capacity in certain areas—most notably the cluster of functions concerned with terrorism prevention—they were far less concerned about overall state capacity as it related to environmental protection, public health, and even (initially) natural disaster preparedness. These decisions were reflected in choices about how to design the statute creating DHS, the Homeland Security Act, as well as choices about funding and organizational priorities affecting how laws under the purview of DHS were implemented.

The pages that follow also highlight some surprising parallels (as well as differences) between Bush and Roosevelt. Both presidents reorganized the executive branch to enhance their control of federal bureaus and promote their particular visions of risk regulation. But the substantive visions of security that each pursued through his work to re-forge the executive branch were in stark contrast—with Roosevelt articulating a vision of the nation-state as an active regulator of risk and provider of public services

that would ultimately strengthen (according to him) the nation's capacity to withstand external threats, and Bush focused on articulating a more circumscribed vision of geostrategic security and counterterrorism. These historical precedents emphasize how much the future of the nation-state is likely to pivot substantially on how societies interpret laws and structure organizations to choose among competing visions of national security.

In light of such parallels, though, the overall resemblance of different security agencies should not be overstated. Even without thinking of security in the expansive fashion that Franklin Roosevelt did, no two American security agencies are exactly the same. In scrutinizing agencies such as the FBI and the National Security Division of the Department of Justice (DOJ), the Department of Energy, and the Department of Defense (DOD), it is clear that each has a distinctive story. And while it is not my goal to address the fate of each of these agencies through the Cold War and thereafter, the approach developed here holds important implications beyond the FSA and DHS. Whereas agencies have some role in helping Americans manage domestic or external risks, one can expect presidents and lawmakers to compete for control of these entities. One can anticipate the high stakes that arise when agencies define the scope of their security-related missions, and when crises serve as inflection points for policymakers seeking to reshape the agencies that implement the law.

Ultimately, the spike of interest in the concept of homeland security is furnishing opportunities to remake the domestic regulatory state similar to those that Roosevelt had in anticipation of World War II. Today's world of elaborate infrastructure problems, global non-state actors, and mature regulatory agencies renders the historical context different. The George W. Bush administration's narrow substantive definition of security, with implications that tend to cut against expansive regulatory activity in domains such as environmental protection or federal involvement in providing health services, is also different.⁵⁷ But the cycle epitomizing fundamental conflicts over the architecture of law is not: policymakers mold law by defining security and then seek to command the implementation of that law by securing control over bureaucracies.