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**Memorandum**

October 22, 2007

**TO:** Honorable Carolyn Maloney  
Attention: Anna Cielinski

**FROM:** Natalie Paris Love  
Analyst in American Federalism and Emergency Management  
Government and Finance Division

**SUBJECT:** Historical Role of the Federal Government in Catastrophic Disasters

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Per your request, I have prepared this memorandum providing information on the historical role of the federal government after catastrophic disasters. Specifically, you have asked for a historical accounting of appropriations enacted by Congress after the occurrence of catastrophes. This memo provides a brief summary of congressional appropriations for disasters that occurred from 1789 to 2006.

### **Defining Federal Involvement**

Defining the boundaries of what is considered a disaster proves challenging when placed in the context of federal involvement. It becomes difficult to distinguish between the justification for federal aid for losses caused by natural disasters and justification for federal aid for losses incurred by other means from which the victim could be considered blameless. War-related needs, including terrorist events, are frequently included in an analysis of federal intervention in disasters because the question of causation often plays a critical role in the determination of federal involvement. This memo briefly discusses war-related disaster assistance provided in 1812 and federal assistance provided for natural disasters, terrorist events, and unusual instances in which the claimant was successful in attaining federal disaster relief because of the assertion of blamelessness. Another CRS division is assessing war-related disaster relief provisions in greater depth.

Three studies may be used to provide a historical accounting of federal involvement in the provision of disaster relief. One study, published by the *Northwestern University Law Review*, covers the years 1789 through 1874 and includes instances in which disaster relief may have been provided for events beyond natural disasters or acts of war. These instances are highlighted in this memo because the justification for federal involvement included situations in which the claimants were “morally blameless victims of a sudden catastrophe

— a disaster.”<sup>1</sup> A second and third study were developed by the Congressional Research Service and cover 1989 through 2006. These studies include instances where federal disaster assistance was provided which may have set a precedent for federal involvement for war-related losses. These studies also discuss federal involvement where medical assistance was needed, where indigent or destitute individuals were assisted, or where there was a sizeable allocation of disaster assistance. While not a study, a fourth document from the *Congressional Record* discusses federal involvement prior to the passage of the Federal Disaster Relief Act in 1950 and provides an overview of the acts of Congress related to disaster assistance for the years 1803 through 1950.<sup>2</sup>

## Federal Disaster Relief: 1789-1874

The attached article (Appendix A), by Michele Landis, provides a detailed accounting of federal involvement in the provision of disaster relief from 1789 to 1874.<sup>3</sup> Some congressional actions of interest include:

- In 1790, Congress passed an Act to provide disaster relief to Thomas Jenkins & Company for remission of duties on goods destroyed by a storm;<sup>4</sup>
- Between 1790 and 1824, fault became an important criteria in denials of recovery for claimants;<sup>5</sup>
- In 1790, Congress passed an Act to provide disaster relief to John Stewart and John Davidson for remission of duties on salt destroyed by flood;<sup>6</sup>
- In 1795, Congress passed an Act to provide indemnification and relief for citizens who lost property in the Whiskey Rebellion;<sup>7</sup>
- In 1812, Congress passed an Act to provide \$50,000 (\$583,310 in 2006 dollars) for those left destitute by both the earthquake in New Madrid, Missouri and civil war;<sup>8</sup>
- In 1817, Congress passed an Act to indemnify private property destroyed during the War of 1812 by Americans, British, or Indians and appropriated \$12,451,799 (\$142,520,495 in 2006 dollars);<sup>9</sup>

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<sup>1</sup> Michele L. Landis, “Let Me Next Time Be “Tried by Fire”: Disaster Relief and the Origins of the American Welfare State 1789-1874,” *Northwestern University Law Review*, vol. 92, no. 3 (1998), p. 971.

<sup>2</sup> P.L. 81-875.

<sup>3</sup> Landis, p. 971.

<sup>4</sup> *Ibid.*, p. 973.

<sup>5</sup> *Ibid.*, p. 997.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, p. 977.

<sup>9</sup> *Ibid.*, p. 982.

- In January 18, 1827, Congress provided disaster relief in the amount of \$20,000 (\$343,687 in 2006 dollars) for the victims in Alexandria, Virginia who suffered property loss or damage from a fire;<sup>10</sup> and
- In 1874, Congress passed an Act to provide disaster relief for persons suffering from flooding of the Mississippi River in the amount of \$190,000 (\$3,086,715 in 2006 dollars);<sup>11</sup>

### **Federal Disaster Relief: 1875 - 1988**

The attached portion of the Congressional Record (Appendix B) provides a list of acts of Congress that awarded federal disaster assistance to states, regional areas, and municipalities.<sup>12</sup> The list in the congressional record covers the time frame of 1803 to 1950. There does not appear to be any comprehensive list of acts for the time period of 1950 to 1988. Some acts of interest in the congressional record include:

- In 1897, Congress passed an Act to provide \$200,000 (\$4,671,855 in 2006 dollars) for the purchase, transportation, and distribution of subsistence stores for destitute persons in mining regions of Alaska. The Act also authorized use of the Army and purchase of reindeer;<sup>13</sup>
- In 1906, Congress passed an Act to provide \$2,500,000 (\$54,096,444 in 2006 dollars) for the purchase and issue of subsistence, quartermaster's and medical supplies for sufferers from the San Francisco earthquake and fire;<sup>14</sup>
- In 1909, Congress passed an Act to provide \$800,000 (\$17,316,611 in 2006 dollars) for the procurement and distribution of provisions, clothing, medicines, etc., for suffering and destitute people of Italy affected by the Messina earthquake;<sup>15</sup> and
- In 1937, Congress passed an Act to provide emergency relief for health and sanitation activities in areas recently stricken by floods;<sup>16</sup>

### **Federal Disaster Relief: 1989 - 2006**

The tables in Appendix C provide information on the appropriations enacted by Congress following catastrophic events from 1989 through 2006. The intended use of funds may provide some insight into the types of activities where federal disaster assistance was provided. These include, among others, assistance for medical costs, general disaster relief

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<sup>10</sup> *Ibid.*, p. 969.

<sup>11</sup> *Ibid.*, p. 975.

<sup>12</sup> *Permanent bound volume: House debate, Congressional Record*, vol. 96, part 9 (Aug. 7, 1950), pp. 11900-11902.

<sup>13</sup> *Ibid.*, p. 11900.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, p. 11901.

<sup>16</sup> *Ibid.*, p. 11902.

as set forth in Stafford Act provisions, and disaster planning activities.<sup>17</sup> Appendix C provides details on appropriations by federal agency. Although attached hereto in response to your request, CRS may distribute any or all portions of Appendix C to other congressional requesters. The attached CRS report *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data, FY1989 to FY2007* (Appendix D) summarizes total appropriations for disaster relief provided to victims of Hurricanes Rita, Wilma, and Katrina.

I trust that this information meets your needs. If you have any questions, or if I can be of further assistance, please do not hesitate to call me at (202) 707-9569.

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<sup>17</sup> 42 U.S.C. §5121-5207.

## Appendix A

ticle seeks to explain through an examination of the social and legal history of disaster relief in the early American state.

Although the category “disaster” at first may seem unproblematic, I suggest that we should see its definition and boundaries as precisely what is at stake in many contests over the allocation of federal resources. Therefore, rather than offering a formal typology of events or a definition of “disaster,”<sup>30</sup> I attempt to breach the intuitive distinction between losses caused by natural disasters and other sorts of needs. When the boundary between disaster relief and poor relief is elided, at its root lie not discrete events such as earthquakes or floods, but moral judgments about the blameworthiness of the claimants—ascriptions of fault and fate.

To rely upon a formal definition of disaster, therefore, is to answer the question prior to the inquiry. In this Article, I argue that it is the very ability of claimants to narrate themselves as the morally blameless victims of a sudden catastrophe—a disaster—that has largely determined the success or failure of a given claim.<sup>31</sup>

In fact, we cannot intuit the meaning of disaster; the contours of this category are hotly disputed.<sup>32</sup> We cannot even rely upon perceptions of causation—the “Act of God”—as a useful divining rod, either by common sense or by Act of Congress. The facts of what we have come to consider disasters rarely permit separation of causation into neat categories caused

<sup>30</sup> In contrast to other authors and at the risk of appearing evasive, I do not attempt a formal “definition” of disaster in this Article. See, e.g., KAI T. ERIKSON, EVERYTHING IN ITS PATH: DESTRUCTION OF COMMUNITY IN THE BUFFALO CREEK FLOOD 146 (1976) (those events that cause trauma to the social and familial networks of a community); Charles E. Fritz, *Disaster*, in CONTEMPORARY SOCIAL PROBLEMS: AN INTRODUCTION TO THE SOCIOLOGY OF DEVIANT BEHAVIOR AND SOCIAL DISORGANIZATION 651, 655 (Robert K. Merton & Robert A. Nisbet eds., 1961) (“an event, concentrated in time and space, in which a society, or a relatively self-sufficient subdivision of a society, undergoes severe danger and incurs such losses to its members and physical appurtenances that the social structure is disrupted and the fulfillment of all or some of the essential functions of the society is prevented”). As Professor Levmore observes, “a theory of disaster relief must suffer immediately from the problem of defining disaster.” Levmore, *supra* note 21, at 32. I avoid this difficulty by focusing attention on how actors define “disaster,” and on how their defining is linked to other social processes.

<sup>31</sup> It is interesting to note that the elements of “compassion” or “pity” in literature are similar in structure to the successful narratives of disaster victims. Professor Nussbaum argues that compassion is elicited in Greek tragedy through the manipulation of stories containing a misfortune that is (1) large; (2) not the fault or beyond the fault of the victim; and (3) generalized enough to present the observer with the possibility of identification with the victim. See Martha Nussbaum, *Compassion: The Basic Social Emotion*, 13 SOC. PHIL. & POL’Y 27 (1996). For an excellent recent empirical treatment of the relation between moral blameworthiness and the elicitation of “sympathy” for various plights, see CANDACE CLARK, MISERY AND COMPANY 81-127 (1997). Tellingly, Clark found that a scenario involving victims of a hurricane elicited, compared to any other hardship, the most sympathy from survey respondents. *Id.* at 53.

<sup>32</sup> Erikson argues that claimants react differently to losses caused by an obvious tortfeasor and those attributed to God. However, he does not offer any way of distinguishing between the two. See KAI ERIKSON, A NEW SPECIES OF TROUBLE: EXPLORATIONS IN DISASTER, TRAUMA, AND COMMUNITY 141-43 (1994).

within the recent discourse over the "end of welfare as we know it."<sup>25</sup> Much has been written about the move to dismantle needs-based assistance programs initiated during the New Deal, such as Aid to Families with Dependent Children.<sup>26</sup> Not all federal assistance to poor people has been reduced, however. In fact, certain federal subsidies for needy and destitute beneficiaries who have lost out in a "disaster" have increased<sup>27</sup> at the very same time that an astonishingly similar array of human needs are attributed to the moral failures of the claimants and left to their "personal responsibility" to ameliorate.<sup>28</sup> It is this contrast, based upon stories about the relative moral blameworthiness of the needy for their own lot in life,<sup>29</sup> that this Ar-

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<sup>25</sup> BILL CLINTON & AL GORE, PUTTING PEOPLE FIRST 165 (1992). This campaign promise was widely reported and alternately welcomed and criticized. See, e.g., *And Now, Welfare Reform*, WASH. POST, June 12, 1994, at C6; Harry Berkowitz, *Ready, Set, Attack: First GOP Ads Criticize Clinton's Policies*, NEWSDAY, Apr. 9, 1996, at A19.

<sup>26</sup> See Mark N. Aaronson, *Scapegoating the Poor: Welfare Reform All Over Again and the Undermining of Democratic Citizenship*, 7 HASTINGS WOMEN'S L.J. 213, 228-51 (1996); Catherine R. Albiston & Laura Beth Nielsen, *Welfare Queens and Other Fairy Tales: Welfare Reform and Unconstitutional Reproductive Controls*, 38 HOW. L.J. 473 (1995); Laura Beth Nielson, *What's Not So New About Welfare Reform*, 10 BERKELEY WOMEN'S L.J. 163 (1995); Lucie E. White, *On the "Consensus" to End Welfare: Where are the Women's Voices?*, 26 CONN. L. REV. 843 (1994); Lucie White, *Searching for the Logic Behind Welfare Reform*, 6 U.C.L.A. WOMEN'S L.J. 427 (1996); Lou Cannon, *Clinton Again Sacrifices Principle to Politics With Welfare Bill*, SEATTLE POST-INTELLIGENCER, Aug. 5, 1996, at A5; *Don't Call it Reform*, COURIER-J. (Louisville, KY), July 26, 1996, at 10A; Bob Herbert, *Welfare Reform Brutalizes Poor*, N.Y. TIMES, July 26, 1996, at A26; Michele Landis, *The End of Compassion as We Know It*, LEGAL TIMES, Aug. 5, 1996, at 21; Frances Fox Piven, *The System is Not the Source*, Opinion, N.Y. TIMES, Aug. 8, 1996, at A16.

<sup>27</sup> Disaster relief appropriations have increased dramatically in recent years, engendering some criticism from commentators concerned with moral hazard. See, e.g., Charles T. Griffith, *The National Flood Insurance Program: Unattained Purposes, Liability in Contract, and Takings*, 35 WM. & MARY L. REV. 727, 737 (1994); Jonathan Rauch, *Pennies from Heaven*, 1992 NAT'L J. 2299, 2300; Richard Reeves, *Hurricane\$, Earthquake\$ and Flood\$: If People Want to Build Their Houses in Dangerous Places, Why Should the Rest of Us Pay When Disaster Strikes?*, 26 WASH. MONTHLY 10, 12 (1994).

<sup>28</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996). The conservative commentator William Bennett advocated ending welfare entirely in order to "declare that the federal government will no longer subsidize irresponsible social behavior." William J. Bennett, *The Best Welfare Reform: End It*, WASH. POST, Mar. 30, 1994, at A19.

<sup>29</sup> American relief efforts have historically sorted the poor by their relative moral worth. See, e.g., HERBERT GANS, *THE WAR AGAINST THE POOR: THE UNDERCLASS AND ANTIPOVERTY POLICY 1-5* (1995); LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890-1935*, at 1-35 (1994); JOEL F. HANDLER & YEHESKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY 40-110* (1991); Jacobus tenBroek, *California's Dual System of Family Law*, 16 STAN. L. REV. 257 (1964). Gans argues that the use of the term "underclass" reinforces punitive welfare policies designed to sanction people who are thought to be at fault for their own deprivation through their reckless or irresponsible behavior. GANS, *supra*, at 2. However, "disaster" victims have almost entirely escaped any serious scrutiny as the indigent recipients of large, long-standing federal transfer payments and consequently have been considered outside this moral and theoretical framework. One notable exception is FRANCES FOX PIVEN & RICHARD CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE 47* (1972), which points out that "federal aid was . . . given in cases of disasters such as floods and drought, but not for the disaster of unemployment." *Id.*

ground.<sup>18</sup> The next day, a bill for the relief of those who lost property in the conflagration was introduced in the House.<sup>19</sup> As the epigraph to this Article informs us, Isaac Pool bitterly denounced the proposal to assist the victims of the fire.<sup>20</sup> Poor, impoverished Pool could not decipher the logic by which Congress denied his claim even as it provided \$20,000 for the burned-out population of Alexandria.<sup>21</sup>

In this Article, I argue that it is precisely this logic, so opaque to Isaac Pool in 1827, that lies at the heart of the American response to need—a response that historically has privileged certain desperations while abandoning others. The key to understanding both historical and contemporary patterns of American social welfare legislation, policy, spending, and jurisprudence is found not in the New Deal,<sup>22</sup> nor even in the system of pensions adopted following the Civil War.<sup>23</sup> Rather, the origin of the American welfare state is found in the narratives of blame and fate that surfaced originally in eighteenth- and early nineteenth-century contests over “disaster” relief.<sup>24</sup>

This entrenched American preference for the sympathetic treatment of certain sorts of plights over others has a particular contemporary resonance

<sup>18</sup> See *id.* at 747.

<sup>19</sup> See *id.* at 752.

<sup>20</sup> See *id.* at 754.

<sup>21</sup> See An Act for the relief of indigent sufferers by the fire at Alexandria, ch. 3, 6 Stat. 356 (1827). It may be tempting to account for this disparate treatment with reference to the fact that Alexandria residents constituted a geographic “interest group” while Pool did not. See Saul Levmore, *Coalitions and Quakes: Disaster Relief and Its Prevention*, 3 U. CHI. ROUNDTABLE 1, 4-6 (1996). However, interest group theory does not offer much assistance in understanding the mechanism by which Congress distinguishes among highly similar claims for disaster relief. Many geographically discrete and well-organized groups were denied relief while hundreds of individuals received assistance during this period. See, e.g., An Act for the Relief of Joseph Forrest, ch. 34, 6 Stat. 323 (1825) (indemnifying loss of schooner); H.R. REP. NO. 15-177, at 1 (1818) (requesting relief due to distress caused by the War of 1812 for the residents of the Niagara frontier). See also *infra* notes 102-11 and accompanying text.

<sup>22</sup> See, e.g., THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS* 4-10 (1992).

<sup>23</sup> See *id.* at 102-50; Barbara J. Nelson, *The Gender, Race, and Class Origins of Early Welfare Policy and the Welfare State: A Comparison of Workmen’s Compensation and Mothers’ Aid*, in *WOMEN, POLITICS, AND CHANGE* 413-17 (Louise H. Tilly & Patricia Gurin eds., 1990). Recently, Laura Jensen extended the reach of this line of scholarship by examining the history of federal pensions for Revolutionary War veterans. Jensen concludes that Congress adopted a policy of “selective entitlement” in which claimants were distinguished by their moral worth relative to others. See Laura S. Jensen, *The Early American Origins of Entitlements*, 10 *STUD. AM. POL. DEV.* 364-65 (1996).

<sup>24</sup> It may be that scholars of the American welfare state, in focusing upon the role of class as the primary explanation for the relative generosity of national pension systems, have overlooked the underlying structure of disaster-based relief. See, e.g., ANNA SHOLA ORLOFF, *THE POLITICS OF PENSIONS: A COMPARATIVE ANALYSIS OF BRITAIN, CANADA, AND THE UNITED STATES, 1880-1940* (1993); SKOCPOL, *supra* note 22; Edwin Amenta & Theda Skocpol, *Taking Exception: Explaining the Distinctiveness of American Public Policies in the Last Century*, in *THE COMPARATIVE HISTORY OF PUBLIC POLICY* 292-333 (Frances G. Castles ed., 1989); Theda Skocpol & John Ikenberry, *The Political Formation of the American Welfare State in Historical and Comparative Perspective*, in 6 *COMPARATIVE SOCIAL RESEARCH: THE WELFARE STATE* 87-148 (Richard F. Tomasson ed., 1983).



tained by mortgaging his farm.<sup>5</sup> Because the trial dragged on for over a year and a half, he was forced to give up his command as a shipmaster with nearly twenty years experience.<sup>6</sup> Unable to find employment, and unable to support his family, he nevertheless was forced by the size of his bond and the order of the court to remain ashore and attend the trial, over 200 miles from his home in Edgecombe, Maine.<sup>7</sup>

The loss of his job was devastating. For several years, Pool found work only temporarily in short runs along the coast.<sup>8</sup> Although previously a man of some means, he could not support his family, went into debt, lost his farm, became "greatly embarrassed, and his family reduced to great distress."<sup>9</sup>

Ruined, Pool applied to Congress for relief in 1824.<sup>10</sup> Although he had received reimbursement for his travel expenses, he was left destitute by his loss of employment as a result of the attack and trial. He asked Congress to indemnify his losses, which totaled \$1,562.50.<sup>11</sup>

The House Committee assigned to evaluate Pool's claim in 1824 recommended against payment. In 1826, Pool returned to Congress and again petitioned for indemnification of his loss.<sup>12</sup> This time, the Committee reported a bill for his relief.<sup>13</sup> Pool's claim nevertheless was denied on the floor of the House, in part due to fears of creating a precedent for relief in cases of hardship on witnesses.<sup>14</sup> In addition, several Representatives argued that the terms of Pool's contract with the owner of the Evergreen required that he exert himself to save the ship and cargo.<sup>15</sup> Furthermore, it was later pointed out that he had knowingly entered pirate-infested waters. The Representatives reasoned that Pool's unemployment was attributable not to events outside of his control but to the terms of his employment, which he entered voluntarily. No charity could be given by the House despite the fact that he and his family had been "reduced to straits."<sup>16</sup>

The following year, the case of Isaac Pool was resurrected on the floor of the House, not regarding his own claim, but in opposition to another relief bill.<sup>17</sup> On January 18, 1827, Alexandria, Virginia burned to the

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<sup>5</sup> See *id.* at 4-5.

<sup>6</sup> See *id.* at 5.

<sup>7</sup> See *id.*; H.R. REP. NO. 19-37, at 1 (1826).

<sup>8</sup> See H.R. REP. NO. 18-2, at 4.

<sup>9</sup> H.R. REP. NO. 19-37, at 2.

<sup>10</sup> See H.R. REP. NO. 18-2.

<sup>11</sup> See *id.* at 4.

<sup>12</sup> See H.R. REP. NO. 19-37.

<sup>13</sup> See *id.*

<sup>14</sup> See 2 CONG. DEB. 1764 (1826).

<sup>15</sup> See *id.*

<sup>16</sup> *Id.* at 1763.

<sup>17</sup> See *id.* at 754.

## “LET ME NEXT TIME BE ‘TRIED BY FIRE’”: DISASTER RELIEF AND THE ORIGINS OF THE AMERICAN WELFARE STATE 1789-1874

Michele L. Landis\*

*I applied to Congress for relief, but instead of bread I received a stone. My case was admitted to be a hard one, but it was said not to be harder than others had to submit to, and that, to grant me relief, would be ‘opening a door,’ and ‘establishing a dangerous precedent.’ But I am unable to see why it would be opening a wider door, or establishing a more dangerous precedent, to relieve distress incurred by acts of pirates and Governments, than that incurred by an act of Providence. . . . If so, let me next time be ‘tried by fire.’ Be just before you are generous.<sup>1</sup>*

### I. INTRODUCTION

In August, 1821, Isaac Pool, captain of the schooner *Evergreen*, was engaged in the West Indian trade when his ship was captured by pirates.<sup>2</sup> The attackers confined Pool and his crew, placed a prize crew on board, and ordered the *Evergreen* to a port in the West Indies.<sup>3</sup> After five days, Pool successfully—and by all accounts heroically—led his crew in recapturing the *Evergreen* and sailed into Boston Harbor. There, on September 22, 1821, he delivered the pirates into the custody of the U.S. Marshal for the District of Massachusetts.<sup>4</sup>

Pool was then called as a witness in the criminal trial of the pirates and required to pay a recognizance bond of six hundred dollars, which he ob-

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\* J.D., Northwestern University School of Law, 1998; Ph.D. student, Northwestern University Department of Sociology; law clerk to Hon. Stephen Reinhardt, 1998-99. This Article is based upon the author’s dissertation research, and the guidance, support, and assistance by members of her thesis committee is gratefully acknowledged, in particular Arthur L. Stinchcombe, Martha C. Nussbaum, Martha A. Fineman, and Saul Levmore. The author also gratefully acknowledges the invaluable assistance of Jane E. Larson and Kenneth W. Dauber, as well as the insightful comments of Pegeen Bassett, Bruce Carruthers, Elizabeth Dominik, Carol Heimer, Thomas Merrill, Elizabeth Mertz, Robert Nelson, Alan Schnaiberg, Susan Silbey, Cass Sunstein, and the participants at the 1997 Annual Meeting of the Law & Society Association, particularly Estelle Lau, Austin Sarat, and Rayman Solomon.

<sup>1</sup> 3 CONG. DEB. 754 (1827) (statement of Rep. Herrick) (quoting from speech of Isaac Pool).

<sup>2</sup> See COMM. ON CLAIMS, REPORT ON THE PETITION OF ISAAC POOL, H.R. REP. NO. 18-2, at 3 (1824) (letter from Isaac Pool to U.S. Congress).

<sup>3</sup> See 2 CONG. DEB. 1763 (1826).

<sup>4</sup> See H.R. REP. NO. 18-2, at 3.

by God, a tortfeasor, or an accident.<sup>33</sup> Implicitly recognizing this problem, no legislative distinction has ever been made between Acts of God and acts of man in providing disaster relief.<sup>34</sup> Moreover, it may never be possible to entirely eliminate human agency as a cause, because hazard mitigation is increasingly possible, and in some instances required.<sup>35</sup>

In this Article, I demonstrate that appeals for the relief of events characterized as disasters were the earliest successful arguments for direct federal relief of deprivation among the general population. The contemporary understanding is that a strictly interpreted and enforced Spending Clause<sup>36</sup> barred federal welfare spending prior to the New Deal.<sup>37</sup> I use historical evidence to document that during the period from 1789 to 1874, the Constitution provided no serious impediment to the development of disaster relief into the first sustained, organized social welfare program of the federal government. The American experience of disaster relief consequently informed the terms for later federal social welfare spending and policy, including the particular form taken by the recent debate over its demise.

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<sup>33</sup> The famous case of the Buffalo Creek flood is instructive in this regard: it was hotly contested whether the flood was caused by too much rain sent by God (as the Pittston Company maintained) or negligent dam construction (according to everyone else). See GERALD M. STERN, *THE BUFFALO CREEK DISASTER* 10-16 (1976). The drought of 1930 presented a harder case in that both Hoover and the Red Cross had difficulty deciding whether it was bad credit, bad farming, or bad weather that caused Southern starvation. See NAN E. WOODRUFF, *AS RARE AS RAIN: FEDERAL RELIEF IN THE GREAT SOUTHERN DROUGHT OF 1930-31*, at 18, 48-51 (1985).

<sup>34</sup> Neither historic nor contemporary disaster relief legislation make any distinction favoring "Acts of God." See 6 Op. Off. Legal Counsel 708, 711-12 (1982) ("It is apparent . . . that man-made disasters have been covered for as long as there has been specific disaster legislation."). The opinion also notes that of the hundreds of separate congressional authorizations for disaster relief prior to the adoption of comprehensive disaster legislation in 1950, over half were for man-made catastrophes. *Id.* at 716 n.5. Similarly, the Stafford Act defines a major disaster to include events "regardless of cause, any fire, flood, or explosion," and also defines a separate category of "emergency" which can be declared entirely in the discretion of the President, also without regard to cause. See Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5122 (1994).

<sup>35</sup> See, e.g., Earthquake Hazards Reduction Act of 1977, 42 U.S.C. § 7701, 7704 (1988); FEMA, REP. TO THE STEERING COMM. NAT'L PERFORMANCE REV., PHASE II 9 (March 23, 1995) (proposing that local and state governments require mitigation through the use of land use regulations as a condition of receiving federal disaster relief, and that all purchasers obtain multi-hazard insurance in order to qualify for a federally-backed mortgage).

<sup>36</sup> See U.S. CONST. art. I, § 8, cl. 1.

<sup>37</sup> See *United States v. Butler*, 297 U.S. 1, 63-67 (1936); DAVID P. CURRIE, *THE CONSTITUTION IN THE SUPREME COURT: THE SECOND CENTURY 1888-1986*, at 227-31 (1990). Professor Currie argues that Congress did not grant disaster relief to Savannah, Georgia in 1796 due to constitutional concerns about the scope of its authority under the Spending Clause to relieve deprivation thought to be local rather than national in scope. *Id.* at 228 n.127. He asserts that this conservative view determined questions of relief up to the *Butler* decision and the New Deal. However, Professor Currie apparently fails to consider over two hundred other cases prior to 1937 in which Congress did grant relief for disasters that were "local" rather than "general," including several in the same year as the Savannah fire. Furthermore, with respect to Savannah, it appears that Congress was much more concerned about setting a "dangerous precedent," and with the problem of moral hazard than with the Constitution. See *infra* notes 296-315 and accompanying text.

The following Part of this Article explores the scope of disaster relief between 1789 and 1874, including its social, legal, ideological, and political roots. Part III examines the history of congressional action on disaster relief in more detail, arguing that although the Spending Clause did not constitute a bar to federal spending for the relief of certain needs, there were other salient concerns that affected appropriation decisions, chiefly a curious obsession with precedent and an attention to the relative moral blameworthiness of claimants. In Part IV, I argue that narratives of disaster relief have dominated the American discourse and direction of social welfare policy, obstructing the formation of a framework for social welfare spending based upon need rather than fault. Finally, I conclude that disaster relief policy formed a crucial part of the scaffolding over which New Deal social welfare discourses and policies eventually were constructed.

## II. ORIGINS

*Who would true valor see,  
Let him come hither;  
One here will constant be,  
Come wind, come weather.  
There's no discouragement  
Shall make him once relent  
His first avow'd intent  
To be a pilgrim.<sup>38</sup>*

One of the earliest European experiences in North America was disaster. Besting hostile elements, including hostile indigenous residents, formed part of the Puritan identity. So it should not strike us as altogether surprising that many of the first appropriations made by the new Congress of the United States were for the relief of distress caused by various events characterized as calamitous.<sup>39</sup> From our modern vantage point, in which

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<sup>38</sup> JOHN BUNYON, *THE PILGRIM'S PROGRESS* 8 (1678).

<sup>39</sup> Although no particular set or class of events was consistently considered a "disaster" or "calamity," see *supra* notes 30-35 and accompanying text, certain events, such as fires and floods, were often (but by no means always) relieved. See, e.g., An Act for the relief of Thomas Jenkins & Company, ch. 20, 6 Stat. 2 (1790) (remission of duties on goods destroyed by storm); An Act for the relief of John Stewart and John Davidson, ch. 37, 6 Stat. 3 (1790) (remission of duties on salt destroyed by flood). This has less to do with the physical nature of the event than with the importance of precedent, see *infra* subpart III.C., and the relative ability of the claimants to elicit sympathy. See *infra* subpart III.D. Other man-made events such as revolutions, wars, and riots were also repeatedly relieved. See, e.g., An Act providing for the relief of the inhabitants of St. Domingo, resident within the United States, as may be found in want of support, ch. 2, 6 Stat. 13 (1794) (providing \$15,000 for the relief of white planters fleeing the slave insurrection and French revolution on the island of St. Domingo, now Haiti); An Act to provide some present relief to the officers of government and other citizens who have suffered in their property by the insurgents in the western counties of Pennsylvania, ch. 33, 6 Stat. 20 (1795) (indemnification and relief for citizens who lost property in the Whiskey Rebellion).

disaster relief has grown into a Byzantine empire of grants, loans, and subsidies,<sup>40</sup> and every flood is on the front page,<sup>41</sup> it seems obvious—even boring—that the third Congress issued direct relief for no fewer than eight disasters<sup>42</sup> and debated three others.<sup>43</sup> If, however, we locate these appropriations in their historical context, they become more interesting.

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<sup>40</sup> Current federal disaster relief is governed primarily by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5141 (1994), which provides for direct federal relief to state and local governments, *see* 42 U.S.C. §§ 5170(a)-5170(b), as well as to individuals, *see* 42 U.S.C. § 5178. Since 1978, this aid has been administered by the Federal Emergency Management Agency (FEMA). Reorganization Plan No. 3, 43 Fed. Reg. 41,943, 92 Stat. 3788 (1978). In addition, numerous federal agencies provide their own disaster programs, some of which are either administered or coordinated by FEMA: the Small Business Administration provides low interest loans, most of which are forgiven if the funds are used to repair disaster damage, *see* 15 U.S.C. § 636(b) (1969); *Shanahan v. Commissioner of Internal Revenue*, 63 T.C. 21, 26 (1974); the National Flood Insurance Administration provides federally subsidized flood insurance, *see* 42 U.S.C. §§ 4001-4128; the Department of Housing and Urban Development (HUD) provides free emergency housing for up to 18 months, *see* 42 U.S.C. § 5174; a special federally funded extension of unemployment benefits for six months (or longer, in the discretion of the President), *see* 42 U.S.C. § 5177; special food stamps which waive the eligibility criteria and the normal application procedures, *see* 42 U.S.C. § 5179; distribution of surplus food regardless of income eligibility, *see* 42 U.S.C. § 5180; other agencies provide legal assistance, *see* 42 U.S.C. § 5182, crisis, and other psychological counseling, *see* 42 U.S.C. § 5183, and relocation/mortgage assistance, *see* 42 U.S.C. § 5181. In addition, the Red Cross, a quasi-governmental agency, provides its own menu of services and direct relief. *See* 42 U.S.C. § 5147(b). Farmers have an additional source of disaster relief from the Farmers' Home Administration (FmHA), including loan forgiveness, mortgage assistance, and other programs. *See, e.g.*, 7 U.S.C. § 1981a (loan deferments for disaster area farms); 7 U.S.C. § 1961 (national disaster emergency farm loans).

<sup>41</sup> *See, e.g.*, Ted Cohen, *Victims of Flood Begin to Recover With Help from Relief Center: About 100 Families Have Taken Advantage of the Red Cross Service Offered at the Ballpark*, PORTLAND PRESS HERALD, Oct. 29, 1996, at 1; *Residents Get No Relief for Flooding Problem*, ST. LOUIS POST-DISPATCH, Oct. 31, 1996, at 1.

<sup>42</sup> *See* An Act providing for the relief of such inhabitants of Saint Domingo, resident within the United States, as may be found in want of support, ch. 2, 6 Stat. 13 (1794), 3 ANNALS OF CONG. 169-73 (1796); Remission of duties on certain French vessels which had taken refuge in American ports in consequence of the negro insurrection at Hispaniola, 3 ANNALS OF CONG. app. 1 (1794); An Act for the remission of duties on eleven hogsheads of coffee which have been destroyed by fire, ch. 26, 6 Stat. 15 (1794), 3 ANNALS OF CONG. 86, 91-92 (1794); An Act for the remission of duties on certain distilled spirits destroyed by fire, ch. 53, 6 Stat. 17 (1794), 3 ANNALS OF CONG. 767 (1794); Taylor & Harvey's Claims for remission of duties on rum, sugar, and coffee lost in fire in Newbern, North Carolina, 3 ANNALS OF CONG. 988-89 (1794), 3 AMERICAN STATE PAPERS (Finance) No. 73 (1794); An Act for the remission of tonnage duties on certain French Vessels ch. 14, 6 Stat. 18 (1795); An Act to provide some present relief to the officers of government and other citizens who have suffered in their property by the insurgents in the western counties of Pennsylvania, ch. 33, 6 Stat. 20 (1794).

<sup>43</sup> Three petitions for disaster relief were tabled during the third Congress, although none was directly denied. 3 ANNALS OF CONG. at 614-15, 689-95 (tabled a bill to indemnify losses due to British depredations); 9 AMERICAN STATE PAPERS (Claims) No. 39 (1794) (Committee considering the petition for the relief of Revolutionary War losses of William Dewees for damages by American troops to his estate in Valley Forge failed to report a bill); 3 ANNALS OF CONG. 988-89 (tabled petition for refund of duties paid on goods destroyed by fire). In the last cited case, Congress evidently became nervous that the relief granted earlier in the session had set a precedent and it tabled the motion so that it could "consider[] this practice." *See id.* at 990 (statement of Rep. Smith).

This Part first examines the constitutionality of these relief efforts, concluding that cramped views of the Spending Clause that impeded other forms of welfare spending<sup>44</sup> did not diminish federal enthusiasm for relieving disaster victims.<sup>45</sup> It then details the history of relief appropriations during the period 1789-1874, exploring both the sorts of claims presented to Congress and the manner in which relief was provided. Finally, it turns to an exploration of ideological factors that might help to explain the apparent conflict between enunciated constitutional principles and practices of federal spending prior to the New Deal.

### *A. Disaster Relief and the Historiography of the Spending Clause*

Contemporary legal historiography of the welfare state generally accepts the notion that, prior to the New Deal, direct federal spending for the relief of distress was proscribed by a strict "Madisonian" view of the Constitution's Spending Clause.<sup>46</sup> With the exception of a few narrowly defined

<sup>44</sup> Congress rejected attempts to obtain federal relief for the unemployed urban poor numerous times during the depressions of 1893-94, 1914, and 1921 because their situation was said to be altogether different from that of disaster sufferers. See PIVEN & CLOWARD, *supra* note 29, at 47. In 1874, Representative Cox of New York objected on the floor of the House to a bill to provide \$190,000 for the relief of poverty caused by flooding along the Mississippi River, saying "I think this bill is a little outside the scope of our legislation. Why do we not assist the forty thousand suffering and starving poor in the city of New York?" 2 CONG. REC. 3151 (1874). However, the flood relief bill passed easily. See An Act to provide for the relief of the persons suffering from the overflow of the lower Mississippi River, ch. 160, 18 Stat. 34 (1874). See also An Act to enable the Secretary of War to carry out the act of April twenty-third, eighteen hundred and seventy-four, entitled "An Act to provide for the relief of the persons suffering from the overflow of the Mississippi River," and for other purposes, ch. 170, 18 Stat. 45 (1874) (appropriating \$190,000 and delegating administration of relief).

<sup>45</sup> See PIVEN & CLOWARD, *supra* note 29, at 47.

<sup>46</sup> U.S. CONST. art. I, § 8, cl. 1. The notion of a historically narrow interpretation of this clause was famously articulated in *Helvering v. Davis*, 301 U.S. 619, 640 (1937). In *Helvering*, Justice Cardozo upheld the power of the federal government to enact the Social Security Act under the Spending Clause. He wrote that, "The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison. . . ." *Id.* Madison is understood to have argued that the Congress may only spend in the service of an enumerated power, while Hamilton argued that the power to tax and spend in the service of the "general welfare" constituted a separate congressional power. See *United States v. Butler*, 297 U.S. 1, 66-67 (1936). Since *Helvering*, it has been commonly believed that Madison's view of the Spending Clause had prevailed prior to 1937, blocking appropriations for social welfare programs, such as the allocation of public lands for the care of the insane, vetoed by President Franklin Pierce in 1854. See Franklin Pierce, *Veto Messages* (1854), reprinted in 5 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1897, at 247 (James D. Richardson ed., 1897). Similarly, appropriations for maternal and child health made under the Maternity Act, ch. 135, 42 Stat. 224 (1921), were attacked by the Supreme Court as lying outside the scope of federal authority. See *Massachusetts v. Mellon*, 262 U.S. 447, 482 (1923). The Court did not reach the issue of the spending power in *Mellon*, however, disposing of the case on the question of standing. *Id.* at 480. See also Edward S. Corwin, *The Spending Power of Congress—Apropos the Maternity Act*, 36 HARV. L. REV. 548, 551 (1923). Although as Professor Corwin notes, there were many so-called "extraneous" spending projects, such as lighthouses, education, and other internal improvements, social welfare spending was thought to be purely a state and local responsibility. See PIVEN & CLOWARD, *supra* note 29, at 46-47 & n.3; SKOCPOL, *supra* note 22, at 45 (attributing responsibility for the lack of federal welfare policy prior

categories, such as Civil War veterans' pensions,<sup>47</sup> American social welfare spending is thought to have been stunted by a narrow conception of federal responsibility that placed the burden for relief on states and private philanthropy.<sup>48</sup>

No lesser advocate of direct federal relief than Franklin Roosevelt understood prior strict federal interpretations of the Spending Clause to impede direct federal welfare spending. Addressing the Congress in 1934, Roosevelt criticized the Supreme Court's interpretation, saying, "If, as our Constitution tells us, our Federal Government was established . . . 'to promote the general welfare,' it is our plain duty to provide for that security upon which welfare depends."<sup>49</sup>

The previously ignored evidence of extensive disaster relief appropriation that I document in this Article<sup>50</sup> invites us to question this conventional explanation for the tardiness of the American welfare state.<sup>51</sup> As this Part

to the New Deal to narrow "interpretations of the U.S. Constitution"). Recently, it has also been incorrectly asserted that the federal government "shrank away" from disaster relief until the New Deal due to conservative interpretations of congressional power under the Spending Clause. David W. Sar, *Helping Hands: Aid for Natural Disaster Homeless vs. Aid for "Ordinary Homeless"*, STAN. L. & POL'Y REV., Winter 1995-96, at 130.

<sup>47</sup> See SKOCPOL, *supra* note 22, at 7.

<sup>48</sup> See *Steward Machine Co. v. Davis*, 301 U.S. 548, 600-09 (1937) (McReynolds, J., dissenting). Justice McReynolds bolstered his view that the federal government lacked sufficient constitutional authority to engage in relief-giving by quoting at length from the veto message of Franklin Pierce regarding the land grants for indigent insane: "I can not find any authority in the Constitution for making the Federal Government the great almoner of public charity . . . To do so would . . . be contrary to the letter and spirit of the Constitution and subversive of the whole theory upon which the Union of these States is founded." *Id.* at 603. Herbert Hoover also believed that the Constitution proscribed direct federal relief for the Depression, arguing that such efforts were purely the responsibility of states and charitable organizations. See President Herbert Hoover, Statement to Congress on Relief (Feb. 3, 1931), reprinted in RAY L. WILBUR & ARTHUR M. HYDE, *THE HOOVER POLICIES* 376 (1936). See also CURRIE, *supra* note 37, at 227-28; PIVEN & CLOWARD, *supra* note 29, at 55; WOODRUFF, *supra* note 33, at 40, 86-87.

<sup>49</sup> Franklin D. Roosevelt, Presidential Message to Congress (June 8, 1934), in 1 *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT* 291 (Samuel I. Rosenman ed., 1938) [hereinafter ROOSEVELT PAPERS].

<sup>50</sup> See *infra* subpart II.B.; Part III.

<sup>51</sup> Many scholars have attempted to explain why America lagged far behind other industrialized nations in adopting social insurance programs. See ORLOFF, *supra* note 24; SKOCPOL, *supra* note 22, at 4-10, 13; Amenta & Skocpol, *supra* note 24; Skocpol & Ikenberry, *supra* note 24, at 143-44. See also LOUIS HARTZ, *THE LIBERAL TRADITION IN AMERICA: AN INTERPRETATION OF AMERICAN POLITICAL THOUGHT SINCE THE REVOLUTION* (1955) (arguing that the ideology of the American Revolution was that of rugged individualism that resisted the adoption of social welfare provision); David Collier & Richard E. Messick, *Prerequisites Versus Diffusion: Testing Alternative Explanations of Social Security Adoption*, 69 AM. POL. SCI. REV. 1299, 1309, 1313 (1975) (noting that the United States is a significant outlier in adopting social security in the 1930s). Professor Skocpol argues persuasively that although the United States never approximated a comprehensive western welfare state either before or after the New Deal, attention should be paid to patterns of social provision that, though not matched to the European framework, nonetheless constitute distinctly American approaches to social need. See SKOCPOL, *supra* note 22, at 7. In describing Civil War pensions and mother's pensions as the earliest forms of American

amply documents, even James Madison did not adhere to this post-New Deal account of scrooge-like Madisonian restraint.<sup>52</sup> Instead, as President, Madison signed numerous relief bills appropriating millions of dollars in property indemnifications, cash assistance, and food and clothing distributions.<sup>53</sup> As a member of the House in 1794, he supported a \$15,000 grant of poor relief for the white refugees fleeing St. Domingo following the slave revolution.<sup>54</sup> Although disaster relief began in earnest during Hamilton's

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social provision, however, she may commit the very mistake she seeks to correct—missing the “roots and consequences of the earliest phases of modern American social politics.” *Id.* Although disaster relief was generally not distributed in the form of a stipend (it sometimes was), it constituted a bureaucratized system of federal transfer payments, designed to improve the social welfare and ameliorate distress, outside the local poor relief system. It may be that the very longevity of disaster relief helps to explain its failure to previously provoke sustained scholarly interest. Jensen notes the tendency of “historical-institutional” scholarship to ignore the pre-Reconstruction patterns of social provision as irrelevant, and argues persuasively that the early relief practices of the American state “influenced both the institutional development . . . and the shape of future U.S. social policy.” Jensen, *supra* note 23, at 363.

<sup>52</sup> See Letter from James Madison, Secretary of State, to the House of Representatives (Jan. 25, 1803), reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 136 (1803). Madison recommended that the Congress indemnify the losses and relieve the financial distress of Tobias Lear, formerly the Commercial Agent of the United States in St. Domingo, who lost property and employment during the slave revolt of 1791-1794. Madison argued that the Congress should appropriate money for Lear because “the course of business to which [Lear’s] office was expected to lead was cut off by a state of things altogether peculiar and unforeseen. . . .” *Id.* See *infra* note 338 and accompanying text.

<sup>53</sup> See, e.g., An Act for the Relief of the Citizens of Venezuela, ch. 79, 2 Stat. 730 (1812) (providing \$50,000 for the relief of those left destitute by both the earthquake and civil war); An Act for the relief of the inhabitants of the late county of New Madrid, in the Missouri territory, who suffered by earthquakes, 13 ANNALS OF CONG. app. 1918-19 (1815) (providing for grants of free federal lands to replace any lands damaged by earthquake); An Act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes, ch. 40, 3 Stat. 261 (1816) (indemnifying most of the private property losses in the War of 1812), as amended by Act of March 3, 1817, ch. 110, 3 Stat. 397-98 (1817) (extending the provisions of the Act of April 9, 1816 to cover property lost in Indian depredations); An Act for the relief of certain Creek Indians, ch. 68, 6 Stat. 191 (1817) (providing \$85,000 to indemnify the losses of “friendly” Creek Indians whose property was destroyed by “hostile” Creeks).

<sup>54</sup> See 3 ANNALS OF CONG. 171-72 (1794). Although Madison expressed doubt about the measure’s constitutionality, he supported the provision of “charity” as he was sure his fellow legislators “felt the warmest sympathy with the . . . sufferers.” *Id.* Professor Currie correctly notes that Madison skirted addressing the extent of Congress’s authority under the Spending Clause by proposing a compromise that subtracted part of the federal assistance to the refugees from American war debts owed to the French government. See David P. Currie, *The Constitution in Congress: The Third Congress, 1793-1795*, 63 U. CHI. L. REV. 1, 25 (1996). The French government subsequently refused to permit the offset, and the United States funded the relief effort. The scheme was later denounced during the debate over relief for the Savannah fire in 1796 as a subterfuge designed to “make the thing more palatable.” 4 ANNALS OF CONG. 1724 (1796). Moreover, Madison admitted during the debate over the St. Domingo assistance that he was torn over whether to vote for the aid despite his reservations, saying that he “had not yet been able to resolve in his own mind” whether to refuse the aid on principle. *Id.* Professor Currie likely overstates Madison’s opposition to federal spending on relief. As Representative Clark reproved Madison during the debate over St. Domingo, Madison himself proposed that the federal government indemnify all the losses of private American vessels to pirates. See 3 ANNALS OF CONG. 171 (1794) (statement of Rep. Clark). Madison also supported the relief of Tobias Lear. See *supra* note 52.



term as Treasury Secretary,<sup>55</sup> it vastly expanded during the Republican administrations of Presidents Jefferson,<sup>56</sup> Madison, and Monroe,<sup>57</sup> continuing unabated through the Civil War and Reconstruction.<sup>58</sup>

### B. *The First American "Deserving Poor"*<sup>59</sup>

Very early in the life of the federal government, requests began to pour into Congress for the relief of individual citizens who lacked sufficient re-

<sup>55</sup> The Whiskey Rebellion was indemnified in 1795 at the urging of both Hamilton and Washington. See 3 ANNALS OF CONG. 995-1002 (1794); see also Letter from Alexander Hamilton to George Washington (Aug. 5, 1794), in THE WHISKEY REBELLION: PAST AND PRESENT PERSPECTIVES 31-49 (Steven R. Boyd ed., 1985).

<sup>56</sup> During debate over relief for a fire in New York in 1836, Senator Tyler noted that several relief bills had been "approved by Thomas Jefferson." This was enough to persuade Senator Tyler of the constitutionality of the relief. See CONG. GLOBE, 24th Cong., 1st Sess. 102 (1836).

<sup>57</sup> Story noted the history of grants for "cities laboring under severe calamities," and the appropriation for both the fleeing slave-holders of St. Domingo and the earthquake victims of Caracas, arguing that whatever Madison's philosophy on the Constitution, his practice had been to grant relief despite the lack of an enumerated power authorizing it. See 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 727-28 (5th ed. 1891).

<sup>58</sup> See, e.g., An Act to provide for the relief of suffering from the overflow of the lower Mississippi River, ch. 1125, 18 Stat. 34 (1874); H.R.J. Res. 7, 40th Cong., 15 Stat. 246 (1868) (distribution of food through Freedmen's Bureau); H.R.J. Res. 17, 40th Cong., 15 Stat. 24 (1867) (transmission of relief funds to the south); An Act for the Relief of Persons for Damages sustained by Reason of Depredations and Injuries by certain Bands of Sioux Indians, ch. 37, 12 Stat. 652 (1863); An Act for the relief of the sufferers by the fire in the city of New York, ch. 42, 5 Stat. 6 (1836); An Act for the relief of the indigent sufferers by the fire at Alexandria, ch. 3, 6 Stat. 356 (1827).

<sup>59</sup> The distinction between deserving and undeserving poor is elaborated in MICHAEL B. KATZ, THE UNDESERVING POOR (1989). Katz argues that one of the primary boundary markers dividing the two was the able-bodied nature of the undeserving variety. The able-bodied poor tended toward "pauperism"—the receipt of public relief, and were generally thought to be morally degenerate. *Id.* at 12-13. Doubtless, Katz is correct about the historical record, but how then are we to account for disaster relief—an extensive form of public charity for the able-bodied? Poverty brought on by an event considered a disaster did not throw suspicion on the moral character of its victims; indeed, it often elevated them to the status of heroes. See, e.g., 3 CONG. DEB. 759 (1827) (statement of Rep. Carson) ("He had seen delicate females . . . throwing themselves into the ranks, and handing water till their dresses were stiffened with ice, and their limbs with the cold, and who refused to retire from their post, though repeatedly urged to do so.").

It is clearly possible to be the sort of person who can receive public relief and be able-bodied (or even have money in the bank), and not be considered a moral degenerate. See PIVEN & CLOWARD, *supra* note 29, at 47 n.3 (disaster relief often was pressed by otherwise conservative farmers ready to "qualify their staunch belief in self-help in the face of acts of God"). Perhaps the boundary between deserving and undeserving is less sharp than previously theorized. As with definitions of "disaster," *supra* note 30, the question of who is "deserving" is more or less what is at stake in contests over resources. Therefore, as Nancy Fraser points out, conflicts over needs often are established within a political discourse that is "skewed in favor of . . . dominant social groups and . . . occlude . . . the fact that the means of public discourse themselves may be at issue in needs politics." Nancy Fraser, *Talking About Needs: Interpretive Contests as Political Conflicts in Welfare State Societies*, 99 ETHICS 291, 294 (1989). Contrasting claims for disaster relief with those for poor relief assist us in understanding Fraser's already simple point: it is not merely the appropriation of the money that is politically contested, but also the characterization of the beneficiaries and their needs. *Id.*

sources to pay their debts or taxes.<sup>60</sup> Congress handled these requests through the system of "private bills"<sup>61</sup> introduced for the relief of the petitioner. The petitioner would prepare a request for relief in the form of a memorial or a petition to Congress, most often originating in the House. Bills usually were presented by the Representative from the petitioner's district.<sup>62</sup> Then, if the House did not immediately take up a relief request,<sup>63</sup> it would be referred to a committee, often the Committee on Claims, in which it would be considered and a report issued.<sup>64</sup> The Congress then voted on whether to concur in the report of the Committee on the request, often deferring to the judgment of its committees with respect to private bills for relief.<sup>65</sup>

The earliest private bills for the relief of economic distress requested the refund of taxes and duties paid on imported merchandise destroyed or damaged prior to sale. Between 1789 and 1801, there were sixteen such refunds. In the few cases in which this sort of relief was denied, it was primarily because the committee determined that the petitioner was responsible for his situation, either by his actions or because he somehow assumed the risk of loss.<sup>66</sup>

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<sup>60</sup> See LEONARD D. WHITE, *THE FEDERALISTS: A STUDY IN ADMINISTRATIVE HISTORY 1789-1801*, at 358 (1948) (noting that "[f]rom the earliest days members of Congress tried to do justice to claimants whose cases before the Treasury were insufficient under the law but who, nevertheless, had good standing before the conscience of the country").

<sup>61</sup> Note, *Private Bills in Congress*, 79 HARV. L. REV. 1684 (1966). Early social welfare legislation, such as that for pensions and other relief were handled through the system of private law as claims on the resources of the federal government. See *id.* at 1685.

<sup>62</sup> See *id.* at 1688.

<sup>63</sup> Although most relief bills were reported out of a committee, the sponsors characterized certain petitions as too much of an emergency to permit the time required for the preparation of committee reports. See, e.g., 3 CONG. DEB. 747 (1827) (statement of Rep. Miner) ("[I]t was known to all the House that the City of Alexandria was at this moment burning. . . . He had, therefore, introduced the resolution with a view to meet their distressing condition as speedily as possible.").

<sup>64</sup> See, e.g., *Claims for Horses and Mules Lost in the Public Service, and for Whiskey and Gunpowder Destroyed at Chicago*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 243 (1813) (Report of Rep. Archer from the Committee of Claims on the petition for indemnification for property lost to Indian depredations); *Claim for Remission of Duty*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 109, (1800) (Report of Rep. Harper from the Committee on Ways and Means on the petition of David Wiley for the remission of duties paid due to his losses from the "drying up of a spring from which his distillery was supplied with water").

<sup>65</sup> See Note, *supra* note 61, at 1691.

<sup>66</sup> See, e.g., *Remission of Duties*, reprinted in 3 AMERICAN STATE PAPERS (Finance) No. 120 (1798) (Report of Rep. Livingston of the Committee of Commerce and Manufactures on the petition of Nathaniel Cutter). Cutter imported merchandise into Boston and paid duties there, then attempted to transport the merchandise to the West Indies, where he was repeatedly captured by both the British and the French. He was not permitted by the leaders of the slave revolt on St. Domingo to unload his merchandise, and finally was forced to return to the United States, where he paid a second duty on the same goods. In recommending against Cutter's request for a refund, the Committee remarked that it could find "no good reason for relieving him against the consequences of a risk which every exporter ought to

Appropriations for the relief of persons who had suffered the loss of property or class status through no fault of their own were uncontroversial and popular.<sup>67</sup> Tax remissions gave way to direct federal relief,<sup>68</sup> indemnifications of property damage and loss,<sup>69</sup> and food distribution.<sup>70</sup> Although doubts about the propriety of setting any precedent that might prove dangerous to the federal revenue resulted in the denial of some early requests,<sup>71</sup> the vast majority of claimants who successfully portrayed themselves as the blameless victims of sudden calamity obtained federal funds to ameliorate

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calculate for himself." *Id.* For the relation between tort doctrines such as contributory negligence and disaster appropriations, see *infra* notes 173-88 and accompanying text.

<sup>67</sup> Both the Federalists and the Republicans supported the use of federal funds to relieve those who suffered sudden, unforeseeable losses through no fault of their own. Remission of Duties, Letter from Alexander Hamilton, Secretary of the Treasury, to the House of Representatives (Apr. 20, 1792), reprinted in 3 AMERICAN STATE PAPERS (Finance) No. 37 (1792) (recommending that Congress "vest somewhere a power" to investigate the circumstances surrounding cases of the "affecting . . . calamity" of shipwreck and to adjust or remit duties according to the circumstances); Letter from James Madison, Secretary of State, to the House of Representatives (Jan. 25, 1803), reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 136 (1803) (recommending relief for Tobias Lear, who was the disappointed United States' commercial agent at St. Domingo at the time of the slave revolt).

<sup>68</sup> See An Act for the relief of the indigent sufferers by the fire at Alexandria, ch. 3, 6 Stat. 356 (1827); An Act for the Relief of the citizens of Venezuela, ch. 79, 2 Stat. 730 (1812); An Act authorizing the payment of certain sums of money to the daughters of the late Count de Grasse, ch. 3, 6 Stat. 31 (1798) (paying a lifetime annuity of \$400 to each of four daughters to relieve loss of plantation at St. Domingo); An Act authorizing the payment of four thousand dollars for the use of the daughters of the late Count de Grasse, ch. 32, 6 Stat. 19 (1795) (relieving loss of plantation at St. Domingo as a result of slave revolution); An Act providing for the relief of such of the inhabitants of Saint Domingo, resident within the United States, as may be found in want of support, ch. 2, 6 Stat. 13 (1794).

<sup>69</sup> See An Act for the relief of Joseph Forrest, ch. 34, 6 Stat. 323 (1825) (indemnifying loss of schooner while delivering relief supplies to Caracas in 1812); An Act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes, ch. 40, 3 Stat. 261 (1816); An Act for the relief of the inhabitants of the late county of New Madrid, in the Missouri territory, who suffered by earthquakes, 13 ANNALS OF CONG. app. 1918-19 (1815) (providing for grants of free federal lands to replace any lands damaged by earthquake); An Act to provide some present relief to the officers of government and other citizens who have suffered in their property by the insurgents in the western counties of Pennsylvania, ch. 33, 6 Stat. 20 (1795) (indemnification and relief for citizens who lost property in the Whiskey Rebellion).

<sup>70</sup> See H.R.J. RES. 1, 24th Cong. (1836) (enacted) (providing food to white settlers following the Seminole Wars in Florida).

<sup>71</sup> Relief was denied following a fire in Savannah, Georgia in 1796. See 4 ANNALS OF CONG. 1711-27 (1796). Relief was also denied for claims flowing from the Revolutionary War. See, e.g., Indemnity for Property Destroyed by the Enemy, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 39 (1794) (unfavorable report of the Committee on Claims regarding the petition of William Dewees for the destruction of his estate, Valley Forge, Pennsylvania by the American encampment in the winter of 1777). Many Revolutionary War claims, including this one, were eventually paid after relief payments made following the War of 1812 established a precedent requiring the payment of historical claims. See Indemnity for Property Destroyed by the Enemy in 1777, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 349 (1817). The Committee of Claims then reported that the petition of Sarah Dewees, the widow of William, should receive relief because her claim was "entirely within the scope" of the act for the relief of the War of 1812.

their deprivation.<sup>72</sup> As with claims for tax relief, those denied direct relief generally were those the committee determined were to blame for their own hardship,<sup>73</sup> including those who should have foreseen or prevented their losses in the first place. For example, relief was denied following a 1796 fire in Savannah, Georgia due in part to fears that granting relief would create a moral hazard and leave “no occasion for insurance companies, nor any inducement to build with brick in preference to wood.”<sup>74</sup>

### C. From Private to Public Relief

Between 1794 and 1822, a dramatic shift occurred in patterns of congressional appropriations for relief. The system of private bills respecting named beneficiaries gradually was replaced by general relief bills that appropriated a large amount of money for the benefit of all persons fitting the eligibility criteria set forth in the bill—for instance, the merchants of New York.<sup>75</sup> With this new form of relief, Congress delegated broad administrative authority to commissioners, appointed by the Congress and the President, who were charged with investigating applicants and distributing federal aid.<sup>76</sup>

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<sup>72</sup> See *infra* subpart III.D.

<sup>73</sup> See, e.g., Loan to John F. Amelung, reprinted in 3 AMERICAN STATE PAPERS (Finance) No. 14 (1790). The Committee on Manufactures reported favorably on the petition of Amelung for relief in the form of a loan to his failing glass factory. The Committee noted that Amelung had recently suffered a loss by fire, and that “near five hundred persons depend on him for their daily subsistence.” *Id.* The House denied relief, however, after concerns about his management of the business were raised: “[I]t is acknowledged that £20,000 have been employed in the undertaking, and yet it is in danger of failing.” 1 ANNALS OF CONG. 1688 (1790) (statement of Rep. Smith). The fire was not mentioned in the House debate.

The availability of fire insurance and increased understanding of the causes and prevention of fires led to holding uninsured petitioners responsible for their own losses. See, e.g., Remission of Duties, reprinted in 3 AMERICAN STATE PAPERS (Finance) No. 241 (1806) (report of Rep. Crowninshield of the Committee of Commerce and Manufactures on the Petition of Elizabeth Peckham). The Committee determined that it was Peckham’s husband’s failure to insure his shipment of rum, lost when his boat sank in a violent storm, that caused the forfeiture of their farm. Even though the forfeiture left the widowed Peckham and her six children homeless, no precedent should be set for the relief of uninsured petitioners who lost goods in “fire, storms and . . . every accident or injury whatever.” *Id.*

It is interesting to note that the House considered and rejected a proposal to implement a system of federal fire insurance as early as 1794. See Insurance Against Loss By Fire, reprinted in 3 AMERICAN STATE PAPERS (Finance) No. 45 (1794) (report of Rep. Giles on the petition of William Frederick Ast). Ast submitted a “general plan of insurance against accidents by fire . . . in which all persons may insure all their houses, with the furniture and wearing apparel contained therein, their barns with the straw, grain, and hay. . . .” Part of the appeal of Ast’s plan, according to the report, was that it would relieve the government of the obligation to indemnify losses and remit duties. See *id.* On the subject of late eighteenth- and early nineteenth-century views of fire and insurance, see CAROL A. HEIMER, REACTIVE RISK AND RATIONAL ACTION: MANAGING MORAL HAZARD IN INSURANCE CONTRACTS 49-90 (1985).

<sup>74</sup> 4 ANNALS OF CONG. 1712 (1796) (statement of Rep. Cooper).

<sup>75</sup> See *infra* notes 77-81 and accompanying text.

<sup>76</sup> See *infra* notes 82-122 and accompanying text.

upon the shoulder of the right sleeve . . . in open and visible manner, wear . . . a large Roman P. together with the first letter of the name of the . . . place whereof such poor person is an inhabitant, cut either in red or blue cloth.<sup>141</sup>

Labor was a calling, perhaps the only means of attaining grace. Because work was a duty to God,<sup>142</sup> its refusal constituted sin.<sup>143</sup> Although sudden deprivation was fated, impoverishment due to a lack of industry indicated moral failure, to be remediated in the workhouse.<sup>144</sup>

The treatment of the poor unemployed was governed by the Elizabethan Poor Law, brought by the Puritans to Massachusetts Bay,<sup>145</sup> which viewed the jobless as the morally deficient "victims of their own vices."<sup>146</sup> The law sought to protect the community from undesirable outsiders by making relief a local responsibility, in part by establishing a minimum period of residency as a condition of assistance. In England, these "settlement" rules limited the mobility of the poor, and assured landholding gentry a supply of cheap agricultural labor during a period of industrialization and out-migration to urban factories. By 1795, the pressures of industrialization led to the relaxation of vagrancy laws. However, filing a petition for assistance under the Poor Law without establishing residency led to arrest and "removal" under settlement requirements of the Poor Law.<sup>147</sup>

In North America, the Poor Law confronted a new set of events. In England, poor relief provided for displaced agricultural workers, "bands of unemployed . . . vagrants and beggars . . . whose numbers and potential for civil disorder loomed frighteningly large."<sup>148</sup> The American colonists, primarily agrarian and mercantile by occupation, attended to the risk of catastrophe rather than worker revolt, and all felt themselves to be equally vulnerable to unanticipated contingency.<sup>149</sup> People made suddenly poor by

<sup>141</sup> 3 Stats. at Large of Pa., 1682-1801 ch. 238 (1718).

<sup>142</sup> See WEBER, *supra* note 128, at 100-02.

<sup>143</sup> See *id.* at 175-77.

<sup>144</sup> See JUNE AXIN & HERMAN LEVIN, *SOCIAL WELFARE: A HISTORY OF THE AMERICAN RESPONSE TO NEED* 20-23 (1982).

<sup>145</sup> See *id.* at 15-31.

<sup>146</sup> Jacobus tenBroek, *The Two Nations: Differential Moral Values in Welfare Law and Administration*, in *CRISIS IN AMERICAN INSTITUTIONS* 350, 353-54, (Jerome Skolnik & Elliot Currie eds., 1970); see Aaronson, *supra* note 26, at 220-23.

<sup>147</sup> See *An Act for Relief of the Poor*, 43 Elizabeth 1601; AXIN & LEVIN, *supra* note 144, at 15-20.

<sup>148</sup> AXIN & LEVIN, *supra* note 144, at 16.

<sup>149</sup> See *id.* at 17. Indian wars, epidemics, uncontrollable fires, marine accidents, and other events were risks to which all colonists were subject. See AXIN & LEVIN, *supra* note 144, at 17. Martha Nussbaum argues that the ability to believe that one's own possibilities are similar to those of the sufferer is one of the requirements for the emotion of compassion. See MARTHA C. NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* 65 (1995). She also points to the notion of blamelessness as the primary impetus to pity in Greek tragedy. See *id.* The importance of this sentiment to the provision of relief is apparent: "Those known to be in need through no fault of their own could be helped with cash relief in their own homes . . ." AXIN & LEVIN, *supra* note 144, at 17. Although "in-

sinful people. To the Calvinist, the narratives of Exodus, Job, and Sodom and Gomorrah formed the basic law of accidents:

Chapter V (of Providence), No. 6. As for those wicked and ungodly men, whom God as a righteous judge, for former sins doth blind and harden, from them He not only withholdeth His grace . . . but sometimes also withdraweth the gifts which they had . . .<sup>134</sup>

A central tenet of the Puritan theology militated against the view of catastrophe as punishment for moral failing, however: that of the transcendental God “who with His quite incomprehensible decrees has decided the fate of every individual . . . ,” regardless of their moral conduct.<sup>135</sup> Calamity was destiny, pre-ordained by God, which could be neither penetrated nor ameliorated by human understanding.<sup>136</sup> It was random and immune to the strivings of human agency, neither earned nor avoided. Job’s trials, literally applied to the exigencies of colonial life, provided a text that rationalized sudden loss and hardship.

God’s grace, impossible for the damned to receive, was seen as equally impossible for the blessed to lose by their own efforts.<sup>137</sup> Thus, “[t]o assume that human merit or guilt play a part in determining this destiny would be to think of God’s . . . decrees . . . as subject to change by human influence.”<sup>138</sup> The personal disaster—loss of grace—and the physical disaster and loss of wealth that might signal it was therefore *not* the fault of the loser. Calamity was felt not as punishment for sin, but as morally neutral. To the extent that such events were the product of fate—for which the victim bore no responsibility—a disaster relief effort could therefore not offend God’s judgment.

In contrast to this general ideology, poverty resulting from unemployment was seen as utterly morally debased. Work and industry were prerequisite to God’s grace. Without labor, there could be no redemption.<sup>139</sup> Pauperism, a condition of the able-bodied who refused to labor, was a virulent strain of moral degeneracy.<sup>140</sup> In 1718, a Pennsylvania statute required every recipient of relief to

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<sup>134</sup> *Westminster Confession of 1647*, quoted in WEBER, *supra* note 128, at 101.

<sup>135</sup> WEBER, *supra* note 128, at 103-04.

<sup>136</sup> *See id.* at 103.

<sup>137</sup> *See id.* at 104-05.

<sup>138</sup> *Id.* at 103.

<sup>139</sup> *See id.* at 178-79.

<sup>140</sup> *See* PIVEN & CLOWARD, *supra* note 29, at 46-47 (noting that English Puritans tended to view the poor, particularly the unemployed poor, far more leniently than their American counterparts because the poor provided the more fortunate with an opportunity to express charity). American Puritans, however, rejected this less vindictive, if paternalistic, view in favor of the belief that poverty was the outward symptom of sloth and sinfulness. *See id.* at 46.

erty owners. And more than one author has suggested that the appeal of property indemnifications following the Whiskey Rebellion to President Washington may be found in his own self-interest, because he speculated extensively in the western Pennsylvania real estate market and stood to gain by increased property sales generated by the perception that property values on the frontier were guaranteed by the federal government.<sup>127</sup>

Yet, it is at least in part the discourse—and not just the outcome—that I seek to explain. Therefore, it is worth noting, however tentatively, that there were intellectual and spiritual traditions prevalent among the founders that may provide some insight into the sympathetic treatment they afforded disasters. American politicians in the first years following the Revolutionary War were affected in particular by Calvinist Puritanism,<sup>128</sup> Enlightenment political theorists such as John Locke, and the traditions of English common law.<sup>129</sup>

*1. Puritanism and the Elizabethan Poor Laws.*—Puritanism was a mass of contradictions.<sup>130</sup> Trapped between a rigid, dogmatic self-abnegation and the lucrative exploitation of the American continent, the Puritans fashioned a world view of logical Swiss cheese, in which the accumulation of wealth and grasping self-aggrandizement became signifiers of piety rather than moral decay.<sup>131</sup> An unequal distribution of wealth was ordained by God, and therefore not to be resisted. The wealthy merely fulfilled an immutable role ordained by the Almighty.

Disasters, such as fires and floods, presented a challenge to the Puritan-run local governments, which took as their key legal text the literally interpreted Holy Writ.<sup>132</sup> Because the Puritans relied upon the Bible, and in particular the Old Testament as “a digest of all statutes and regulations necessary for human government . . . a digest of history both past and yet to come,”<sup>133</sup> sudden losses might signify the wrath of God on a wayward and

<sup>127</sup> See, e.g., SLAUGHTER, *supra* note 88, at 224. By 1796, the value of Washington’s vast holdings increased in value by 50%. See *id.* Washington was the biggest and most important of the “rich absentee land speculators” in the Western Pennsylvania region. See STEPHEN E. AMBROSE, UNDAUNTED COURAGE: MERIWETHER LEWIS, THOMAS JEFFERSON, AND THE OPENING OF THE AMERICAN WEST 38 (1996).

<sup>128</sup> See MAX WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM 182 (Talcott Parsons trans., Scribner 1958) (1930).

<sup>129</sup> See BERNARD BAILYN, IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 30-31 (1967).

<sup>130</sup> See *id.* at 172-73; KAI T. ERIKSON, WAYWARD PURITANS 48-49 (1966).

<sup>131</sup> See WEBER, *supra* note 128, at 177. Weber argues that Puritanism developed in America into “a specifically bourgeois economic ethic” in which the businessman could accumulate wealth without limit “as long as his moral conduct was spotless and the use to which he put his wealth was not objectionable,” and feel that he was fulfilling a holy calling. *Id.* at 176-77.

<sup>132</sup> See ERIKSON, *supra* note 130, at 47.

<sup>133</sup> *Id.* at 47-49; See also BAILYN, *supra* note 129, at 33.

door of the Treasury against the claimants, but thrown the key into the ocean.<sup>118</sup>

Advocates argued practical considerations alongside concerns about equity or financial limitations. Representative Robertson pointed out that “every one could see the difficulty of obtaining attention to minute claims.”<sup>119</sup> Representative Johnson asserted that it was “impracticable” for Congress to “act as a judicial body, to determine the force, and validity of testimony in numerous cases!”<sup>120</sup> Such a scheme was not only unworkable, it was too expensive, argued Representative Wright.<sup>121</sup> The House ultimately rejected the attempt by the Committee on Claims to reassert authority over eligibility and benefit decisions.<sup>122</sup>

Beginning in 1794 with the Whiskey Rebellion, and elaborated in the relief Act of 1816, federal relief efforts were carried out under bureaucratic administrations created by Congress and the executive. These commissions were empowered to promulgate and publish eligibility regulations, apply eligibility criteria to a class of applicants, examine applications for sufficiency and veracity, and distribute federal relief. This creation of an administrative authority over relief distribution was a move with lasting reverberations in federal relief enterprises.

#### *D. The Ideology of Fault*

To notice the seeming constitutional aberration of Congress authorizing increasingly expansive appropriations for certain types of claims even as it rejected others is to beg the more intricate question of the first instance. Why did early congresses find some kinds of relief compelling and others untenable? Adherence to “legislative precedent”<sup>123</sup> cannot account for congressional willingness to refund taxes already paid on goods lost in fires,<sup>124</sup> or to indemnify the losses of the Pennsylvanians.<sup>125</sup> What then was the force of this particular sort of claim on the resources of the federal government?

It is impossible to do more than speculate. It is entirely conceivable that this is really not much of a question at all—perhaps these decisions were a simple matter of politics.<sup>126</sup> Disaster relief, in its earliest incarnation, was a transfer program reserved primarily, like the franchise, for prop-

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<sup>118</sup> *Id.* at 389 (statement of Rep. Grosvenor).

<sup>119</sup> *Id.* at 370 (statement of Rep. Robertson).

<sup>120</sup> *Id.* at 375 (statement of Rep. Johnson).

<sup>121</sup> *See id.* at 371 (statement of Rep. Wright).

<sup>122</sup> The vote was 74-67. *See id.* at 441.

<sup>123</sup> *See infra* notes 272-75 and accompanying text.

<sup>124</sup> *See supra* notes 67-74 and accompanying text.

<sup>125</sup> *See infra* notes 285-98 and accompanying text.

<sup>126</sup> *See infra* notes 237-69 and accompanying text.



criticized not only Lee,<sup>109</sup> but also the decision to delegate payment discretion to the executive branch.<sup>110</sup> In December 1816, the Committee on Claims offered an amendment to the Act to repeal the grant of authority to the Commissioner for most claims and restore the responsibility for administering disaster relief to the Committee and to Congress through private bills.<sup>111</sup>

The response to this proposal was overwhelmingly negative, and the debate unusually vitriolic. The Speaker of the House rose to say that the delegation of authority to Commissioner Lee was entirely appropriate. Congress had merely “prescribed the rules and directed the appointment of a subordinate officer to apply them.”<sup>112</sup> Representative Grosvenor agreed, saying that it was “undeniable that this House was incompetent to decide on claims. In nine cases out of ten, it decided on claims without ten men in the House knowing what it was upon.”<sup>113</sup> Several members declared the House flatly incompetent to decide relief cases.<sup>114</sup> The Speaker lectured the House that when he had called on members to respond to a committee report on a private claim, he “had received not a solitary aye or no on the question. We want competency, not mental but physical to decide on such questions.”<sup>115</sup>

Not only was Congress incompetent, according to the Speaker, it was ungenerous and unfair. The Speaker declared that the “right to be heard by a petition in this House is in fact little more than the right to have your petition rejected.”<sup>116</sup> On the contrary, Representative Randolph spat back, the House was too generous: “[P]etition after petition had been presented; year after year the claim had been pressed . . . till finally, in some moment of supineness, some moment of unguarded liberality” the claim was approved.<sup>117</sup> Commissioner Lee was far more likely to be just to petitioners, reproved Representative Grosvenor:

The Committee was a very safe one for the public . . . . They were excellent hands to dash the cup from the parched lips of the petitioners—parched indeed by suffering and distress—many of whom had their property destroyed, and others left orphans and widows . . . . [The Committee] had not only shut the

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<sup>109</sup> See, e.g., 14 ANNALS OF CONG. 370-72 (2d Sess. 1816) (statement of Rep. Wright) (“If there was any fault in regard to the [Act] . . . it was in the selection of a man for Commissioner who wanted judgment.”).

<sup>110</sup> See *id.* at 386-88 (statement of Rep. Randolph); *id.* at 374-75 (statement of Rep. Yancey); *id.* at 379-81 (statement of Rep. Tucker).

<sup>111</sup> See *id.* at 386 (statement of Rep. Randolph).

<sup>112</sup> *Id.* at 383 (statement of Rep. Clay, Speaker of the House).

<sup>113</sup> *Id.* at 389 (statement of Rep. Grosvenor).

<sup>114</sup> See, e.g., *id.* at 370 (statement of Rep. Robertson); *id.* at 375 (statement of Rep. Johnson).

<sup>115</sup> *Id.* at 386 (statement of Rep. Clay, Speaker of the House).

<sup>116</sup> *Id.* at 386 (statement of Rep. Clay, Speaker of the House).

<sup>117</sup> *Id.* at 387 (statement of Rep. Randolph).

satisfy them all . . . [N]o man will say that the House is prepared to support a continuation of these decisions on the same principle . . . made by the Commissioner.<sup>101</sup>

Lee was attacked primarily for approving over half a million dollars in relief for northern New York, at the Niagara frontier.<sup>102</sup> At the outset of the war, the British burned the entire area,<sup>103</sup> and Lee, traveling to Buffalo, reported to the Secretary of War his inclination to extend the provisions of the Act to permit relief for that area because "humanity, considering the relative situation of the parties, will excuse (if any should be discovered) a bearing to the side of poverty and wretchedness."<sup>104</sup>

Lee attempted to generously interpret Section 9 of the Act, which provided for relief when a house was destroyed by the enemy while occupied as a military deposite, under the authority of an officer or agent of the United States, "Provided, that It shall appear that such occupation was the cause of its destruction."<sup>105</sup> The conflict arose because the British announced that they burned the entire frontier of New York, including Buffalo on December 30, 1813, in retaliation for the United States declaration of war, a reason not within the ambit of Section 9.<sup>106</sup>

Lee chose to administer the Act liberally, and authorized nearly \$700,000 for relief in upstate New York that Congress refused to pay.<sup>107</sup> Instead, payments for the Niagara region were suspended, while they were reviewed by the President and by Congress.<sup>108</sup> Some members of Congress

<sup>101</sup> 14 ANNALS OF CONG. 387-88 (2d Sess. 1816) (statement of Rep. Randolph).

<sup>102</sup> See *id.* at 439 (statement of Rep. Johnson); Losses at Buffalo and on The Niagra Frontier, in New York (Jan. 23, 1817), reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 339, at 507 (1817).

<sup>103</sup> See H.R. REP. NO. 15-177, at 1 (1818).

<sup>104</sup> Letter from Richard Bland Lee, Commissioner of Claims to George Graham, Acting Secretary of War (Oct. 28, 1816), reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 324, at 495, pt. F (1816) [hereinafter Richard Lee Letter].

<sup>105</sup> Ch. 40, § 9, 3 Stat. 262, 263 (1816) (emphasis in original).

<sup>106</sup> See Richard Lee Letter, *supra* note 104. Lee's explanation was later derided as "nothing more than an elementary treatise, drawn up by Mr. Lee, or somebody else for him, which he suspected was the fact—a learned treatise on the construction of statutes." 14 ANNALS OF CONG. 369 (2d Sess. 1816) (statement of Rep. Hardin).

<sup>107</sup> See 14 ANNALS OF CONG. 369 (2d Sess. 1816) (statement of Rep. Hardin); Losses at Buffalo and on the Niagara Frontier, in New York, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 339, at 507 (1817) (report of Rep. Clark on the petition of the inhabitants of Buffalo and the Niagara frontier for relief under the provisions of the Act of April 9, 1816).

<sup>108</sup> See H.R. REP. NO. 15-177, at 1-3 (1818). Eventually, the Committee on Claims accused the New York claimants of "fraud, forgery, and perhaps perjury" in attempting to obtain relief. Extension of the Provisions of the Act to Pay for Property Captured or Destroyed by the British Forces, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 412, at 590-91 (1818). The Committee decried the fact that a law which "originated in its benignity, and aimed gratuitously for the benefit any suffering portion of the community" had generated so much fraud that it had been cast into disrepute. *Id.* Congress ultimately denied all the Niagara claims not paid by Lee. See 15 ANNALS OF CONG. 1698-99 (1st Sess. 1818).

forced claimants to travel to the capital and present their petitions or memorials to Congress, often several times over many years, was criticized as unfair, burdensome, and difficult to administer.<sup>96</sup>

Twenty years after the Whiskey Rebellion, when Congress granted financial relief to those who lost property in the War of 1812, it built into the statute a fully-elaborated bureaucratic mechanism for the distribution of funds.<sup>97</sup> The Act directed the President to appoint a commissioner, with the advice and consent of the Senate, for a two-year term at an annual salary of \$2000. It exempted from postage all official correspondence to or from the commissioner. The Act specified the oath the commissioner was to take upon entering his office and directed him to appoint a clerk.<sup>98</sup> Further, the commissioner was directed to:

proceed, with all practicable despatch, to establish . . . such rules, as well in regard to the receipt of applications of claimants to compensation for losses provided for by this act, as the species and degree of evidence, the manner in which such evidence shall be taken and authenticated, as shall, in his opinion, be the best calculated to attain the objects of this act . . . which rules and regulations shall, upon his adoption, be published for eight weeks, successively, in the newspapers of the several states. . . .<sup>99</sup>

The Commissioner appointed by President Madison, Richard Bland Lee, issued regulations in June, 1816, for administering the act in accordance with the statutory directive.<sup>100</sup> However, he quickly was pilloried by some members of Congress for being too liberal in his eligibility decisions:

[T]he United States ha[s] been—it is not worth while to mince the matter—having been most shamefully and scandalously plundered, under pretense of equitable claims, to the amount of some forty, fifty, or sixty thousand dollars, every other man must be allowed to put his lancet in and bleed the Treasury. If the public veins contained more blood than Leviathan himself, . . . it would not

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was very limited with respect to relief distribution, however, perhaps because even Madison admitted that in “emergencies . . . of so extraordinary and pressing a nature” the executive was released from whatever bounds Congress had set. *See* WHITE, *supra* note 60, at 330-32 (quoting James Madison).

<sup>96</sup> *See* 14 ANNALS OF CONG. 386-91 (2d Sess. 1816) (statements of Reps. Randolph and Grosvenor) (criticizing the private bill process).

<sup>97</sup> Bureaucracy is stimulated by “intensive and qualitative expansion of the administrative tasks” required by a society. *See* Max Weber, *Bureaucracy*, in *ECONOMY AND SOCIETY* 971-73 (Guenther Roth & Claus Wittich eds., 1978). Bureaucracy is, according to Weber, technically superior to collegiate organization because “work organized by collegiate bodies . . . causes friction and delay and requires compromises between colliding interests and views.” *Id.* at 974-75.

<sup>98</sup> *See* ch. 40, § 11-12, 3 Stat. 263 (1816).

<sup>99</sup> *Id.* at § 12.

<sup>100</sup> *See* Proceedings of the Commissioner Appointed Under the Act for the Payment for Property Taken or Destroyed by the Enemy During the War with Great Britain, *reprinted in* 9 AMERICAN STATE PAPERS (Claims) No. 324, at 492, pt. A (1816).

Washington appoint a "board of inquest" to determine the extent of the damages, and concurrently vested the authority in the President to distribute the money "[t]o aid of such sufferers as, in his (the President's) opinion, stand in need of immediate assistance, to be accounted for by them in such manner as may hereafter be directed by law."<sup>89</sup>

Washington initially sent Hamilton to inspect the damage in his capacity as Treasury Secretary.<sup>90</sup> Two months later, in February 1795, Washington appointed commissioners to a Board of Inquest charged with investigating claims and disbursing relief.<sup>91</sup> The commissioners traveled to the affected communities, established a claims office in Lafayette County, Pennsylvania, where they accepted applications, investigated claims, and took testimony from witnesses to verify losses.<sup>92</sup> The commission eventually reported back to Congress in 1800 with a full accounting of relief disbursements.<sup>93</sup>

Some limited initial resistance existed in Congress to the formation of a new administrative bureaucracy charged with distributing federal money. Representative Giles argued that the appointment of a Presidential board to investigate and ultimately grant or deny claims amounted to an unacceptable congressional delegation of power: "The mode is . . . totally wrong. Let the persons who have suffered come here in the usual manner. It is said that a gentleman has had his house burned. Let him come here and tell us so."<sup>94</sup>

In a remarkably prescient reply, Representative Hillhouse argued that it was preferable to give the executive flexibility to handle eligibility decisions because "[c]ommissioners going to the spot could make themselves perfectly masters of the subject" and would be better able to judge the needs of the people as well as the validity of their claims than would Congress, sitting in Philadelphia.<sup>95</sup> Furthermore, the system of private bills that

claims for damages by American troops or militia, because hundreds of such claims had been denied in the previous session. See *Indemnity for Losses Sustained by the Militia in 1794*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 102 (1798).

<sup>89</sup> 3 ANNALS OF CONG. 1001-02 (1794).

<sup>90</sup> See Letter from Alexander Hamilton to George Washington (Aug. 5, 1794), in THE WHISKEY REBELLION: PAST AND PRESENT PERSPECTIVES 31-49 (Steven R. Boyd ed., 1985).

<sup>91</sup> See *Indemnity for Losses Sustained by the Insurgents in 1794*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 114, at 235-36 (1800).

<sup>92</sup> See 3 ANNALS OF CONG. 1002 (1794) (statement of Rep. Hillhouse).

<sup>93</sup> See *Indemnity for Losses Sustained by the Insurgents in 1794*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 114 (1800). Treasury Secretary Oliver Woolcott provided a detailed report of the commissioner's awards to citizens. Some of the property replaced by Congress was "a long spy glass of the best kind," salt, bacon, and the rest of all of John Nevill's personal property. In addition, the commissioner awarded funds for such things as transportation to flee the insurrection, and the cost of food, clothing and shelter in its aftermath. See *id.*

<sup>94</sup> 3 ANNALS OF CONG. 1001 (1794) (statement of Rep. Giles).

<sup>95</sup> *Id.* (statement of Rep. Hillhouse). The dispute over executive discretion was part of a larger Republican attack on Hamilton's policy favoring extensive executive discretion in spending. Opposition

2. *The Nascent Welfare Bureaucracy: Relief Commissioners and Eligibility Criteria.*—One consequence of the shift from individual to group eligibility criteria in relief legislation was the formation of an administrative apparatus to distribute the appropriations.<sup>82</sup> Private relief bills, when passed, allocated money to a particular person by the direct order of Congress.<sup>83</sup> By contrast, appropriations intended to relieve all persons who were affected by certain events,<sup>84</sup> or were members of a certain profession,<sup>85</sup> or both,<sup>86</sup> contained sections delegating the authority to determine eligibility according to the criteria specified by the text of the relief statute.<sup>87</sup>

One of the earliest examples of a bureaucracy established for transferring funds from the federal government to a distressed population was for the relief of those whose property was damaged or destroyed by the “insurgents” in the Whiskey Rebellion.<sup>88</sup> The statute requested that President

<sup>82</sup> See, e.g., 3 ANNALS OF CONG. 1000-02 (1794) (delegating authority to the President to establish a commission for the investigation and distribution of relief following the Whiskey Rebellion); An Act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes, ch. 40, 3 Stat. 261 (1816) (authorizing the President to appoint, with the advice and consent of the Senate, a commissioner who was in turn empowered to appoint other commissioners for the purpose of investigating and verifying applications for benefits under the Act).

<sup>83</sup> See, e.g., An Act for the Relief of Joseph Forrest, ch. 34, 6 Stat. 323 (1825) (directing the Secretary of the Treasury to pay Joseph Forrest \$2,136 to compensate him for the destruction of his schooner in 1812, to be paid from any money in the treasury not otherwise appropriated).

<sup>84</sup> See An Act providing for the relief of such inhabitants of Saint Domingo, resident within the United States, as may be found in want of support, ch. 2, 6 Stat. 13 (1796), 3 ANNALS OF CONG. 169-73 (1796). The bill provided for relief for all members of the class, some fifteen-hundred persons in all.

<sup>85</sup> See An Act for the relief of the sufferers by the fire in the city of New York, ch. 42, 5 Stat. 6 (1836) (providing relief for all merchants who had imported goods into the port of New York within a specified time).

<sup>86</sup> For example, an Act remitting duties on “capacities of stills” in consequence of the destruction of fruit preventing their employment. 12 CONG. DEB. 2581 (1836) (statement of Rep. Storer).

<sup>87</sup> Administration also was devolved to state or territorial governors, Indian agents, and other governmental officers who were locally stationed. See, e.g., An Act for the relief of certain Creek Indians, ch. 68, 3 Stat. 191 (1817). Under this Act, \$85,000 was appropriated for the relief of “friendly” Creek Indians who had been attacked by “hostile” Creek Indians. The funds were transferred to North Carolina Governor Mitchell for distribution. See *Losses Sustained by the War with the Creek Indians*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 386 (1818).

<sup>88</sup> See *infra* notes 286-99 and accompanying text. Congress actually received two petitions for class-based relief flowing from the Whiskey Rebellion. One, which was granted, was for those damaged by the insurrectionists. The other, which was unfavorably reported out of Committee and eventually denied by the House, was for a similar grant of relief for those whose property was damaged or destroyed by the militia Washington raised to quell the uprising, derisively called the “Watermelon Army.” See *Indemnity for Losses Sustained by the Militia in 1794*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 102 (1798) (report of Rep. Foster from the Committee of Claims against the petition for relief); see also THOMAS P. SLAUGHTER, *THE WHISKEY REBELLION: FRONTIER EPILOGUE TO THE AMERICAN REVOLUTION* 46 (1986). At that time, Congress had not yet agreed to relieve any losses arising out of the Revolutionary War and was concerned about establishing a precedent for indemnifying

1. *Appropriations for Class-Based Relief*.—In 1794 a new species of request began to appear, for the relief of a *class* of persons, rather than respecting specific named individuals. Bills were reported out of committee for the relief of communities or certain segments of communities—for example, citizens who had suffered due to spoliations and depredations by British troops during the Revolution,<sup>77</sup> or the remission of duties on distilling capacity for all those who had suffered by the “destruction of fruit.”<sup>78</sup>

The departure from prior relief measures was steep. For example, the 1790 petition of Stewart & Davidson of Annapolis for the “[d]uties [that] were remitted on salt . . . destroyed by flood the night after it was landed”<sup>79</sup> specifically named both the claimants and the exact relief requested.

This specificity should be compared with the general language of this proposed joint resolution, presented on April 30, 1794:

Resolved by the Senate and the House of Representatives of the United States of America, in Congress assembled, That the United States will guarantee an indemnification to *all such citizens of the United States, whose property may have been captured, and confiscated* under the authority of Great Britain, in violation of the Laws of Nations and the rights of neutrality.<sup>80</sup>

This sort of grant quickly became commonplace. Between 1794 and 1822, the number of petitions for relief of a class of persons increased, as petitions for the relief of named beneficiaries diminished. Between 1816 and 1819, there were nineteen private requests and only nine class-based claims. However, by 1825, when categorical relief first surpassed private disaster relief requests, individual claims had virtually disappeared, while there were eleven class-based claims, many of which created administrative apparatuses for relief distribution.

Although the total number of bills decreased, this was because thousands of individual claims now were consolidated into class-based relief measures. Relief appropriations, as a percentage of the federal budget, grew from less than one percent in 1789 to more than ten percent in 1817. In that year, 9.4% of the federal budget was spent relieving distress following the War of 1812 alone.<sup>81</sup>

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<sup>77</sup> See 3 ANNALS OF CONG. 614 (1794).

<sup>78</sup> 12 CONG. DEB. 2581 (1836) (statement of Rep. Storer) (listing prior appropriations for relief).

<sup>79</sup> *Id.* at 2586-87 (statement of Rep. Hunt) (listing prior relief appropriations).

<sup>80</sup> 3 ANNALS OF CONG. 614 (1794) (emphasis added).

<sup>81</sup> The federal government indemnified much of the private property destroyed during the War of 1812 by Americans, British, or Indians. See An Act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes, ch. 40, 3 Stat. 261 (1816). Claims were authorized by the Commissioner of Claims, who had an office in Washington for reviewing petitions and evidence. Total appropriations for the federal government for the year 1817 were \$12,451,799.57. Of this, over \$1 million went to pay claims under the Act. See 14 ANNALS OF CONG. 375, 439 (2d Sess. 1817).

an occurrence cast as an event beyond their control did not fit easily within the Poor Law's unsympathetic framework of "moral condemnation."<sup>150</sup> Puritanism and the operation of the Poor Law provided a moral compass that pointed to the sanctioned relief of sudden catastrophe even as it proscribed the assistance of the chronically poor and unemployed.

2. *Social and Political Philosophy.*—Uneasily coexisting with this fundamentalist Christianity was a deep intellectual and political commitment to the "ideas and attitudes" of Enlightenment rationalism.<sup>151</sup> The influence of various European social critics was pervasive among both the leaders of the "American Enlightenment"—Franklin, Adams, Jefferson, Hamilton—and among "everyone who claimed a broad awareness" in the colonies.<sup>152</sup>

Although most of the leaders of the European social and political vanguard were widely read and cited, philosopher John Locke stood apart as the most influential theorist of power, the state, and the rights of man.<sup>153</sup> Moreover, this authority transcended political and ideological boundaries such that Locke was equally revered and Hobbes equally reviled by both Whigs and Tories.<sup>154</sup>

Locke's views on the ends of civil government, the importance of civic virtue, and the nature of the human will exerted a powerful influence over early leaders of the American states. Locke's refutation of Hobbesian monarchism and his elaboration of natural law profoundly affected the ideological architects of the American state such as Thomas Paine.<sup>155</sup>

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door" relief (relief in a public institution or foster home) was the normal means of delivery, disaster victims were in a rare class of recipients eligible for "outdoor" relief—eligible to remain in their own homes. See VIVIANA A. ZELIZER, *THE SOCIAL MEANING OF MONEY* 157-58 (1994). Zelizer notes that the innocence of the "disaster" or "emergency" victim was such that they could be trusted with outdoor cash relief: "[t]heir misfortune was temporary and certainly involuntary . . . . The key was not to confuse the cashworthy with the corrupt or undeserving poor." *Id.*

<sup>150</sup> Aaronson, *supra* note 26, at 222.

<sup>151</sup> See BAILYN, *supra* note 129, at 26-28.

<sup>152</sup> *Id.* at 27.

<sup>153</sup> See *id.* at 30. Citations to Locke were so ubiquitous among Revolutionary pamphleteers and other writers that he was at times referred to in "the most offhand way, as if he could be relied on to support anything the writers happened to be arguing." *Id.* at 28.

<sup>154</sup> See *id.* at 28-29. Locke was one of the "most influential of the political philosophers from whom both Federalists and Anti-Federalists alike sought guidance." Robert H. Horwitz, *John Locke and the Preservation of Liberty: A Perennial Problem of Civic Education*, in *THE MORAL FOUNDATION OF THE AMERICAN REPUBLIC* 136 (Robert H. Horwitz ed., 3d ed. 1986).

<sup>155</sup> Although Paine denied that he had been influenced by Locke (or that he had ever read any of his works) most commentators believe these denials to be a disingenuous response to a political enemy. See Nelson F. Adkins, *Introduction* to THOMAS PAINE, *COMMON SENSE AND OTHER POLITICAL WRITINGS* at xi, xiv (Nelson F. Adkins ed., 1953). At the very least, Paine was influenced by writers who themselves relied heavily on Locke for an articulation of a theory of the state opposed to *Leviathan*. See *id.* at xv. Locke himself admitted that his contribution was not the origin but rather the synthesis into a "clear and reasonable" treatise of his theory of the state. See Thomas P. Peardon, *Introduction* to JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* at vii, xiii (Thomas P. Peardon ed., 1952) (1690).

Contemporary accounts often reduce Locke to a churlish capitalist concerned only with the system of private property essential to expanding mercantile capitalism.<sup>156</sup> He is thought to have advocated a radical view of individualism characterized as “possessive,” which focused on individual ability as an explanation for social station.<sup>157</sup> He viewed the social order as a bargain by which the citizen surrendered his natural and God-given freedom in submission to the authority of the state—a compact that had as its primary consideration the use of state power for the protection of private property.<sup>158</sup> These currents in Locke’s thought and writing, so influential to the early American political elite, are consistent with a view of the poor as responsible for their own misery. However, other of Locke’s works, focusing on the value of community, as well as the work of other social philosophers such as Adam Smith and David Hume on the emotion of sympathy are valuable in backgrounding early American patterns of social provision.

Locke, interested in the virtues of individualism, also was concerned with the political realization of natural equality—the preservation of civic duty and social community—views that profoundly influenced American leaders of the revolutionary period.<sup>159</sup> Political or civil society, Locke believed, had as its end not only the protection of property, but also the preservation of community through the rule of law to be uniformly and impartially applied to “any injury received or controversy that may arise.”<sup>160</sup> In surrendering their natural right to adjudicate disputes, men vested the right to punish wrongdoers in the application of universal standards under “laws made by the society.”<sup>161</sup> Under these conditions, Locke argued, the community-wide “common good” would outweigh any loss in individual autonomy.<sup>162</sup>

Despite his modern elevation to the status of laissez-faire prophet, Locke directly refuted the notion that self-interest alone was sufficient to

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Paine’s theory of the natural law and the rights of man is “veined with expressions of, and allusions to” Locke’s “doctrine of natural rights and the concomitant theory of the social contract.” Adkins, *supra*, at xvi.

<sup>156</sup> See, e.g., C.B. MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM* 1-20 (1962).

<sup>157</sup> See *id.* at 3.

<sup>158</sup> See JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* at vii, xiii (Thomas P. Peardon ed., 1955) (1690) (stating that “[t]he great and chief end . . . of men’s uniting into commonwealths and putting themselves under government, is the preservation of their property”).

<sup>159</sup> See *id.* at 82 (stating that the legislature was to direct how the commonwealth should engage in “preserving the community and the members of it”). Locke also argued that one of the primary functions of the state, indeed a *natural* function, is not merely to protect property but the compensation and amelioration of harm, because “an injury done to a member of their body engages the whole in the reparation of it.” *Id.* at 83.

<sup>160</sup> *Id.* at 50.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 72-73.



maintain his vision of the social contract. Instead, shortly after the publication of the *Second Treatise*, he expanded his notion of the state to emphasize the importance of "civic virtue."<sup>163</sup> Self-interest alone would not motor the civil society. Instead, both children and adults required education that reinforced the importance of public service and community stability.<sup>164</sup>

Paine transformed Locke's views on the value of community into a sort of republican "golden rule," by which the duty of man was to God, and to "his neighbor, to do as he would be done by."<sup>165</sup> To Paine, it was the appropriate role of government to assist its members in the preservation of property in the face of calamity because it was no more than state recognition of the duty, imposed by natural law, of one neighbor to another.<sup>166</sup>

Late nineteenth- and twentieth-century accounts of Lockean philosophy have ignored this communitarian strain in favor of those parts of his philosophy that supported the expansion of the capitalist state. However, in the late eighteenth century, Locke's entire work, including his work on the "common good" was widely read. Supporters of Lockean political philosophy could support disaster relief as financial expense for the common good, even as they eschewed assistance for those who seemed to have brought their own difficulties upon themselves.

There were also contemporaneous theoretical foundations for social expressions of sympathy based on desert and identification. The emotion of pity or compassion was investigated by several highly influential eighteenth-century philosophers such as Adam Smith, David Hume, and Jean-Jacques Rousseau. Smith, in his *Theory of Moral Sentiments*, advised the citizen—the "judicious spectator"—to form social relations based on affinity and sympathy for undeserved sufferings, to

bring home to himself every little circumstance of distress which can possibly occur to the sufferer . . . adopt the whole case of his companion with all its

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<sup>163</sup> *Id.*

<sup>164</sup> See Horwitz, *supra* note 154, at 154-56. Shortly following the publication of the *Two Treatises of Government*, Locke published a tract, *Some Thoughts concerning Education*, that has now faded into obscurity. In it Locke outlined a pedagogy of civic virtue designed to prepare a citizenry for political and civil society. Although it is impossible to know with certainty the influence of this work relative to the *Second Treatise of Government*, it was widely available. Fifteen editions and many reprintings appeared between 1693 and 1779, and it was "readily available and widely read." Jefferson even purchased a copy for his private library. *Id.* at 134-142.

<sup>165</sup> Thomas Paine, *The Rights of Man*, reprinted in THOMAS PAINE, COMMON SENSE AND OTHER POLITICAL WRITINGS 83 (Nelson F. Adkins ed., 1953).

<sup>166</sup> Paine argued that "[m]an did not enter society to . . . have fewer rights than he had before, but to have those rights better secured." *Id.* at 84. Furthermore, he advocated direct federal relief as a duty of government, proposing pensions for elderly, unemployed, and mothers as early as 1792. See Adkins, *supra* note 155, at xli. He later elaborated a theory of wealth redistribution that would have paid a fifteen pound annuity to every citizen on reaching the age of majority as "compensation . . . for the loss of his or her natural inheritance, by the introduction of the system of landed property." *Id.* at xlvii.

minutest incidents; and strive to render as perfect as possible, that imaginary change of situation upon which his sympathy is founded.<sup>167</sup>

Smith, the founder of modern capitalist economics, argued that the ability to sympathize was necessary to the moral life of the citizen.<sup>168</sup> Social philosopher David Hume also focused on the importance of sympathy to the social order, arguing that “no quality of human nature is more remarkable.”<sup>169</sup> Similarly, the French intellectual Jean-Jacques Rousseau implored, in his essay on education, that an ability to sympathize with the “sufferings of the unfortunate and the labors of the poor” must be inculcated in the young.<sup>170</sup>

These philosophers, like Congress evaluating claims for relief, focused upon the circumstances occasioning the sympathy as critical to the production of empathy or pity.<sup>171</sup> How the person suffering the loss was viewed, particularly with respect to their own degree of blameworthiness for the negative events, and the potential for identification based on similar possibilities, were of particular importance.<sup>172</sup> This attention to sympathy in public life, coupled with Locke’s notions of the common good, may have supported a process of identification with those who experienced unforeseeable losses thought to lie beyond their own fault, and the attribution of certain suffering to “natural”—as opposed to social—causes. Under these circumstances, the provision of financial resources for the amelioration of want became commonplace despite social and legal norms that proscribed it.

3. *The English Common Law.*—Although the importance of natural law to the American elite cannot be overstated, the duty owed by one neighbor to another was increasingly the particular province of another tradition that may have informed the debate over federal disaster relief—the common law.<sup>173</sup> Among leaders of the new American state, the heroes of the English common law were cited with a reverence and frequency rivaling only that accorded to Locke. And, as with Locke, they were trotted out in support of

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<sup>167</sup> ADAM SMITH, *THE THEORY OF MORAL SENTIMENTS* 12 (1789), cited in NUSSBAUM, *supra* note 149, at 73.

<sup>168</sup> See NUSSBAUM, *supra* note 149, at 74.

<sup>169</sup> DAVID HUME, *A TREATISE OF HUMAN NATURE* (1739).

<sup>170</sup> JEAN-JACQUES ROUSSEAU, *EMILE* 224 (Allan Bloom trans., 1979). Nussbaum argues that Rousseau is here following Aristotle’s insight that “awareness of one’s own weakness and vulnerability is a necessary condition for pity.” Nussbaum, *supra* note 31, at 34.

<sup>171</sup> See CLARK, *supra* note 31, at 38-40; Nussbaum, *supra* note 31, at 33-35; NUSSBAUM, *supra* note 149, at 66-75.

<sup>172</sup> See CLARK, *supra* note 31, at 40.

<sup>173</sup> See WILLIAM E. NELSON, *AMERICANIZATION OF THE COMMON LAW: THE IMPACT OF LEGAL CHANGE ON MASSACHUSETTS SOCIETY, 1760-1830*, at 246 n.17 (1975).

nearly any proposition and all political perspectives.<sup>174</sup> The common law—from *Blackstone's Commentaries* to reported cases—formed a critical part of the self-understanding of the Revolutionary generation, standing “side by side with Enlightenment rationalism.”<sup>175</sup>

Notions of fault in tort liability emerged at precisely the same time that discussions of blame began to dominate congressional appropriations for federal disaster relief. Modern negligence doctrine, with its focus on fault and failure, began supplanting strict liability for risk-taking behavior regardless of fault.<sup>176</sup> Consequently, at the dawn of the nineteenth century, the courts, like Congress, were embroiled in contests over causation, blame, and compensation.

This shift was at least partially a response to changing patterns of economic and personal relationships, as improved transportation and increased economic activity during the latter half of the eighteenth century led to increased litigation over marine and carriage collisions. Previously, courts had focused only on whether a harmful event—a fire or flood—had occurred; by 1810, the circumstances of the newer, two-party event, such as collisions, routinely forced juries to inquire into causation and, ultimately, to lay blame.<sup>177</sup>

Beginning in 1790, English and American courts began to shift from strict liability toward a fault-based system<sup>178</sup> that would mature by 1833 into modern negligence doctrine.<sup>179</sup> The first step in this transformation was the introduction of a nascent theory of contributory negligence, which barred recovery in cases in which the plaintiff was the cause of his own injury irrespective of whether the defendant's liability was based on principles of strict liability or newer ideas of carelessness.<sup>180</sup>

<sup>174</sup> See BAILY, *supra* note 129, at 30-31.

<sup>175</sup> *Id.* This adulation was not limited to lawyers, so that citation to the towering figures of the early common law—Blackstone, Lord Coke, Camden—were “almost as frequent as, and occasionally even less precise than, those to Locke, Montesquieu, and Voltaire.” *Id.* at 30.

<sup>176</sup> Negligence and contributory negligence evolved as a means of resolving conflicts over marine collisions, originally pleaded as a “[c]ase for carelessly managing a vessel.” NELSON, *supra* note 173, at 246 n.17. Strict liability was of no use in collisions because inquiry into causation inevitably led to the issue of fault, shifting the emphasis of the action from “causation to carelessness.” See *id.*; see also MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860*, at 296-97 n.141; Wex S. Malone, *The Formative Era of Contributory Negligence*, 41 ILL. L. REV. 151 (1946).

<sup>177</sup> See NELSON, *supra* note 173, at 247.

<sup>178</sup> See *id.* at 246.

<sup>179</sup> The case of *Sproul v. Hemmingway*, 14 Mass. 1 (Pick. 1833), is generally considered the boundary marker for the emergence of the modern negligence action.

<sup>180</sup> By 1824 (three years prior to the congressional debate concerning relief for victims of the Alexandria fire) state courts routinely upheld the validity of defensive pleas of contributory negligence unless a plaintiff could show that he used ordinary care. Freedom from contributory negligence quickly became a necessary element of the plaintiff's case. See NELSON, *supra* note 173, at 247-48 n.17. That a guilty plaintiff could not recover was true regardless of the conduct of the defendant. Therefore, Professor Horwitz notes that even in those states that continued to hold defendants strictly liable on nuisance

Contributory negligence first emerged as an essential component of causation accompanying this shift from strict liability to negligent misfeasance between strangers:<sup>181</sup> a plaintiff had to establish that he “was not the cause of his own injury”<sup>182</sup> in order to prove that the defendant was responsible. Over the next forty years<sup>183</sup> notions of fault exploded out of the context of collisions into other kinds of injuries and accidents such that traditional strict liability doctrine quickly gave way to arguments over the blameworthiness of a plaintiff for his own losses.<sup>184</sup>

The earliest independent application of a recognizable modern defense of contributory negligence in America arose pursuant to a Massachusetts law holding local governments liable in double damages for accidents resulting from a failure to maintain roads. Judges, concerned about the financial burden the law imposed on localities, released towns from liability if a plaintiff failed to exercise due care while driving.<sup>185</sup> A striking feature of *Smith* is the smooth ease with which the statutory provision for compensation was judicially altered to exclude certain claimants on the basis of fault, despite the fact that the statute originally was designed to hold towns strictly liable for hazardous roads.<sup>186</sup> Between 1790 and 1824, courts overwhelmingly turned to fault as the single most important criteria in affixing liability and denied recovery to plaintiffs who were unable to demonstrate their own innocence.<sup>187</sup>

It is impossible to determine whether or to what extent the common-law shift to a fault-based system of accident liability affected congressional decisionmaking concerning federal disaster relief. It is, however, sensible to think that the common law, which was revered by the American elite as

or trespass theories, contributory negligence formed a sort of threshold inquiry. See HORWITZ, *supra* note 176, at 96.

<sup>181</sup> See HORWITZ, *supra* note 176, at 95; Malone, *supra* note 176, at 155-60.

<sup>182</sup> *Smith v. Smith*, 2 Mass. 621, 623 (Pick. 1824), cited in NELSON, *supra* note 173, at 247 n.17. Plaintiffs were required to plead and prove freedom from contributory negligence in the early nineteenth century in order to establish causation.

<sup>183</sup> See HORWITZ, *supra* note 176, at 95.

<sup>184</sup> There is some disagreement over the speed of the transition from strict liability to modern negligence doctrine. Although it is true that it was forty years between the emergence of fault-based causation analysis and *Sproul*, Nelson notes that between 1790 and 1810 strict liability was superseded by fault in fire-spreading cases, in which juries refused overwhelmingly to impose liability on defendants because, although the fire had spread to the plaintiff's property, the “spread was not the result of fault on the part of the defendant.” NELSON, *supra* note 173, at 248. However, Professor Horwitz argues that “although American judges talked the language of negligence from the beginning of the nineteenth century, it was quite some time before they used the negligence concept in order to mount a general attack on the prevailing standard of strict liability.” HORWITZ, *supra* note 176, at 89. Nevertheless, commentators agree that newer notions of fault and blame in determinations of causation took over the landscape of civil liability beginning at the turn of the nineteenth century.

<sup>185</sup> See *Smith*, 2 Mass. at 623; HORWITZ, *supra* note 176, at 95. The first English case decided on a theory of contributory negligence was *Butterfield v. Forrester*, 103 Eng. Rep. 126 (1809).

<sup>186</sup> See HORWITZ, *supra* note 176, at 96.

<sup>187</sup> See *id.*

“authority, as legitimating precedent, as embodied principle, and as the framework of historical understanding,”<sup>188</sup> influenced congressional compensation and indemnification decisions.

Viewed in this light, it is not surprising that between 1790 and 1850, a concentrated body of elites—Congressmen, judges, and lawyers—developed very similar decision rules governing public and private compensation of losses arising from unanticipated events. These rules reflected deep shifts in attention to issues of causation and fault and profoundly affected early American courts and legislatures, rendering the ability of claimants to prevail contingent upon their ability to convincingly mount a tale of sudden, unpredictable, misfortune—a collision, with either ship or storm—for which they bore no responsibility.

### III. “THE CRISIS OF THEIR FATE IS STILL IMPENDING”: FEDERAL DISASTER RELIEF 1789-1874<sup>189</sup>

This Part examines the history of congressional grants and denials of disaster relief in greater detail, arguing that although the Spending Clause did not constitute an impediment to federal appropriations for the relief of certain needs,<sup>190</sup> other salient concerns did affect appropriation decisions. The concern most often articulated by members of Congress in opposition to granting relief was fear of setting a precedent.<sup>191</sup> While adherence to precedent on principles of equity also was an important argument for granting relief,<sup>192</sup> the most frequently given reason for relieving distress was the relative moral innocence of the claimants in producing their state of want.<sup>193</sup> In addition, sectional and regional antagonisms affected relief legislation, though usually not determinatively.<sup>194</sup>

In this Part, I first examine constitutional issues in federal relief. I then explore sectionalist antagonisms in relief appropriations, concluding that neither of these concerns alone presented significant impediments to the growth of the relief apparatus. Next, I turn to a consideration of congressional views regarding legislative precedent, arguing that Congress often responded to relief petitions in a judicial rather than legislative manner. Finally, I explore the notion of “sympathy” and its relation to questions of federal relief.

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<sup>188</sup> BAILYN, *supra* note 129, at 31.

<sup>189</sup> 12 CONG. DEB. 2551 (1836) (statement of Rep. Phillips, in support of relief following a fire in New York City).

<sup>190</sup> *See infra* subpart III.A.

<sup>191</sup> *See infra* subpart III.C.

<sup>192</sup> *See infra* subpart III.D, fig. 2.

<sup>193</sup> *See id.*

<sup>194</sup> *See infra* subpart III.B.

## A. Constitutional Issues

*[T]his [i]s not the time, nor the occasion, to fight the battles of the Constitution. Even if [I] doubted [I] would at once cast [my] doubts aside, and extend relief to [my] suffering fellow citizens.*<sup>195</sup>

Although the Constitution did not impede the growth of disaster relief to any considerable degree, there were early conflicts over the extent of federal authority to grant relief. Congress expressed occasional reservations about the extent to which such appropriations were consistent with the Constitution.<sup>196</sup> Executive resistance to disaster relief was exceedingly rare,<sup>197</sup> in fact, Presidents often acted on their own authority to provide relief.<sup>198</sup>

To the extent that such concerns existed at all, most congressional reservations about the constitutionality of relief were expressed during debate over early cases. It is important to note, however, that Congress made many of the earliest appropriations without any debate at all,<sup>199</sup> let alone

<sup>195</sup> 3 CONG. DEB. 763 (1827) (statement of Rep. Cambreleng).

<sup>196</sup> For example, some members of Congress raised constitutional objections with respect to the federal relief following: a fire in Savannah, Georgia, *see* 4 ANNALS OF CONG. 1717 (1796) (statement of Rep. Macon); a business failure of a large glass factory due to fire and price fluctuations, *see* 1 ANNALS OF CONG. 1686-87 (1790); a fire in Alexandria, Virginia, *see* 3 CONG. DEB. 747, 752-74 (1827).

<sup>197</sup> There were two presidential refusals to support congressional action for drought relief, although neither was solely (or even primarily) on constitutional grounds. Grover Cleveland vetoed a "feed and seed" bill to relieve the Texas drought of 1887, chastising Congress that "the lesson should be constantly enforced that the people should support the Government, the Government should not support the people." WOODRUFF, *supra* note 33, at 40, 86-87. Citing Cleveland's veto, Hoover withheld his support for drought relief in 1930-31, forcing a legislative compromise that provided feed for animals but not humans. Hoover was concerned about preserving private philanthropy and local initiative (as well as forestalling the adoption of federal unemployment relief). He only tangentially opposed federal relief on constitutional grounds, as an invasion of states' rights. *See* Herbert Hoover, Statement to Congress on Relief, February 3, 1931, *reprinted in* RAY L. WILBUR & ARTHUR M. HYDE, THE HOOVER POLICIES 376 (1937); WOODRUFF, *supra* note 33, at 86-87.

<sup>198</sup> *See, e.g.*, 2 CONG. REC. 3151 (1874) (statement of Rep. Morey) (noting that while Congress was out of session, President Grant "considered himself authorized to order the issue of rations to the suffering people of Chicago when that city was devastated by fire"). Grant also provided food and clothing during the yellow fever epidemics in the South the previous summer.

<sup>199</sup> *See, e.g.*, An Act for the relief of the citizens of Venezuela, 12 ANNALS OF CONG. 228, 1378 (1812). The only debate on relief for the earthquake in Caracas was to increase the amount, from \$30,000 to \$50,000, which was then adopted by unanimous joint consent of both houses. *See id.* *See also* An Act for the remission of duties on eleven hogsheads of coffee which had been destroyed by fire, 3 ANNALS OF CONG. 86, 91-92 (1794); Remission of duties on distilled spirits destroyed by fire, 3 ANNALS OF CONG. 767 (1794); An Act for the Relief of Certain Creek Indians, ch. 68, 3 Stat. 191 (1817); 15 ANNALS OF CONG. 406 (1817).

any debate of the Constitution.<sup>200</sup> Even in the majority of cases in which Congress denied relief, it justified its decision on some other basis, and most often did not refer to the Constitution at all.<sup>201</sup> By the mid-nineteenth century, the Constitution was so irrelevant to the consideration of disaster relief that the vast majority of appropriations were made by unanimous joint resolution.<sup>202</sup>

A few early cases did generate substantial debate regarding the power of Congress to appropriate money for relief. Fires in Savannah, Georgia in 1796<sup>203</sup> and Alexandria, Virginia in 1827,<sup>204</sup> as well as relief for the white French refugees fleeing the spread of the French Revolution among the Black slaves and mulattos on St. Domingo,<sup>205</sup> sparked discussion of the extent of congressional power to spend for the relief of distress.<sup>206</sup>

Of the three cases, only the Alexandria fire provoked serious, sustained consideration of the extent of congressional authority to make charitable appropriations.<sup>207</sup> Congress overwhelmingly passed a bill providing

<sup>200</sup> Despite extensive debate regarding the relief of the Whiskey Rebellion, there was no mention of the Constitution. 3 ANNALS OF CONG. 984-1002 (1794). Similarly, in three years of persistent debate over relief following the War of 1812, there was no suggestion that Congress lacked the power to provide the relief sought. This was all the more surprising given that it was acknowledged in debate that the relief provided by Congress was no more than "a charitable affair." 14 ANNALS OF CONG. 387 (1816) (statement of Rep. Randolph).

<sup>201</sup> See, e.g., 3 ANNALS OF CONG. 614-15, 689-95 (1794) (denying relief for distress resulting from Revolutionary War).

<sup>202</sup> See, e.g., S.J. Res. 28, 41st Cong., 16 Stat. 596 (1871) (transport of food to France and Germany); H.R.J. Res. 29, 40th Cong., 15 Stat. 28 (1867) (transfer of \$50,000 from Freedmen's Bureau to seed distribution for South); H.R.J. Res. 28, 40th Cong., 15 Stat. 28 (1867) (distribution of food through the Freedman's Bureau); H.R.J. Res. 17, 40th Cong., 15 Stat. 24 (1867) (relief for the South); H.R.J. Res. 92, 39th Cong., 14 Stat. 369 (1866) (relief for fire in Portland, Maine). When the Constitution was mentioned at all during this period, the comments were half-hearted and quite probably insincere. For example, during the brief debate on the appropriation of \$190,000 for relief due to flooding of the Mississippi River, Representative Cox of New York remarked that he thought the proposal was "a little outside the scope of our legislation." However, the remainder of his comment suggests that he raised this objection only to create the possibility of relieving his own district from the disaster it was experiencing: "Why do we not assist the forty thousand suffering and starving poor of the city of New York?" 2 CONG. REC. 3151 (1874).

<sup>203</sup> See 4 ANNALS OF CONG. 1719-27 (1796).

<sup>204</sup> See 3 CONG. DEB. 747-773 (1827).

<sup>205</sup> See 3 ANNALS OF CONG. 169-173 (1794). Eventually, every white person on the island was either killed or forced to flee. See generally, ARTHUR L. STINCHCOMBE, SUGAR ISLAND SLAVERY IN THE AGE OF ENLIGHTENMENT: THE POLITICAL ECONOMY OF THE CARIBBEAN WORLD 231-55 (1995).

<sup>206</sup> In addition, two cases involved minor debates regarding the constitutionality of relief. One was a bill, which passed, to provide lifetime pensions to the four daughters of the late French citizen and Revolutionary War hero Count de Grasse after their plantation in Cape Francois was destroyed during the slave revolt. See 5 ANNALS OF CONG. 794 (1798). The other was during discussion of the rejected petition for a federal loan to assist a failing glass factory. See 1 ANNALS OF CONG. 1686 (1790).

<sup>207</sup> See 3 CONG. DEB. 752-773 (1827).

\$20,000 for the relief of the population.<sup>208</sup> The debate was remarkable, however, in that it showed a majority in Congress eager to find a way to legitimate spending for charitable relief under the Constitution in the face of determined argument that such allocations were prohibited. Over the course of the debate, authority was sought in three separate clauses: the power to tax and spend for the general welfare,<sup>209</sup> the power to make all laws necessary and proper,<sup>210</sup> and the power to exercise exclusive legislation over the capital enclave.<sup>211</sup>

The Alexandria relief bill was debated eight years after Chief Justice Marshall vastly expanded the scope of federal congressional authority under the "Sweeping"<sup>212</sup> Clause<sup>213</sup> in *McCulloch v. Maryland*.<sup>214</sup> Anxious anti-Federalists, already agitated by Justice Marshall's opinion in *McCulloch*, spoke against any further extension of federal power into areas they believed were reserved to the states. To the consternation of relief supporters, who saw needy fire victims becoming bound up within an old enmity,<sup>215</sup> Congress spent four days embroiled in a bitter fight over whether disaster relief properly fit the scheme of implied and enumerated powers granted by the Constitution.

Much of the debate implicitly centered on whether the Sweeping Clause could support federal poor relief after the expansive treatment it was given in *McCulloch*, with members taking up opposing positions on the more general question of federalism. Representative Johnson argued that "if Congress had the right to give away the public money for charitable purposes, there is no limit in the Constitution to whom or where it shall go."<sup>216</sup> Representative Carson responded, however, that nothing could be more necessary or proper than relief for "his fellow-beings, who the night

<sup>208</sup> See An Act for the relief of the indigent sufferers by the fire at Alexandria, ch. 3, 6 Stat. 1 (1827).

<sup>209</sup> See U.S. CONST. art. I, § 8, cl. 1.

<sup>210</sup> See U.S. CONST. art. I, § 8, cl. 18.

<sup>211</sup> See U.S. CONST. art. I, § 8, cl. 17.

<sup>212</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 344 (1819).

<sup>213</sup> U.S. CONST. art. I, § 8, cl. 18.

<sup>214</sup> 17 U.S. (4 Wheat.) at 325. Marshall interpreted the Necessary and Proper Clause to extend beyond the enumerated powers of Article I:

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

*Id.* at 421. There was even a slight hint in *McCulloch* that the Constitution could support congressional spending for disaster relief, because it was "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *Id.* at 415 (emphasis added).

<sup>215</sup> At one point, sensing that the debate was more about federalism than fire, Representative Cambreleng proclaimed that "this was not the time, nor the occasion, to fight the battles of the Constitution." Even if he doubted, "he would at once cast his doubts aside, and extend relief to his suffering fellow citizens." 3 CONG. DEB. 763 (1827).

<sup>216</sup> *Id.* at 767 (statement of Rep. Johnson).



before slept in security, and this night had not where to lay their heads—who had that very morning, risen in comfortable, perhaps affluent circumstances, and at night found themselves without a dollar in the world.”<sup>217</sup>

Congress did have the authority to relieve Alexandria under the Spending Clause, according to Representative Drayton, because “the prosperity of individuals conduces to the general welfare of the body politic.”<sup>218</sup> In a remarkably concise statement of what would become the dominant understanding of the Spending Clause during the New Deal more than a century later, he asked whether, if one of the states was “reduced to poverty, and an inability to supply its necessary wants, by an earthquake, war, or any other wide-spread calamity—would not the general welfare require that they should be saved from starvation by the aid of the national funds?”<sup>219</sup>

Sympathy notwithstanding, Representative Archer stated that the Spending Clause did not endow Congress with the “power to bestow the money of the Union, on all objects and occasions, at our discretion, however strong the appeal. . . .”<sup>220</sup> Federal money could be spent only in the service of an enumerated power.<sup>221</sup> Representative Rives protested that the Spending Clause gave Congress no authority to provide charity “even taking for our guide the most liberal construction which has ever been suggested.”<sup>222</sup> Relief for Alexandria simply was not “in any manner, connected with the payment of the debts, or providing for the common defence and general welfare of the Union.”<sup>223</sup>

Representative Johnson asserted that “Congress possessed no power to vote away the public money except for public purposes,” which could not include poor relief for Alexandria.<sup>224</sup> He was joined in this opposition by Representative Cook, who asked “shall we pour out the treasure of the Union on the People of this District, whenever their private distresses may permit a call on our compassion?”<sup>225</sup> Furthermore, disaster relief could never be for the general welfare because it was by definition local. The Constitution authorized only those projects that were “of a national character, and will promote the general prosperity of the country.”<sup>226</sup>

Although a few determined congressmen continued to maintain that the spending power alone could justify disaster relief,<sup>227</sup> a consensus eventually

<sup>217</sup> *Id.* at 759 (statement of Rep. Carson).

<sup>218</sup> *Id.* at 772 (statement of Rep. Drayton).

<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 761 (statement of Rep. Archer).

<sup>221</sup> *See id.*

<sup>222</sup> *Id.* at 769 (statement of Rep. Rives).

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 754 (statement of Rep. Johnson).

<sup>225</sup> *Id.* at 768 (statement of Rep. Cook). Cook was quick to distinguish pensions for the relief of indigent veterans as payment for service rather than as spending for the general welfare. *See id.*

<sup>226</sup> *Id.*

<sup>227</sup> *See id.* at 766 (statement of Rep. Wood).

emerged that the Enclave Clause<sup>228</sup> would support the relief measure. Alexandria then was located in the area ceded by Virginia for the construction of the capital. Although it was later granted back to Virginia, the clause of the Constitution that empowered Congress to exercise “exclusive legislation” over Alexandria<sup>229</sup> was thought to justify relief. Representative Hamilton went so far as to declare that the appropriations for the Venezuelan earthquake and the refugees from St. Domingo had been unconstitutional, but that he would vote for this bill because it was no more than “an ordinary function of municipal power . . . exercised in a manner that meets the best feelings of my own heart.”<sup>230</sup>

Few were comfortable opposing relief for their “fellow-citizens . . . houseless and destitute, who are at this moment perishing from cold and from want.”<sup>231</sup> Even Representative Johnson, who led the fight against the bill, acknowledged that it “enlisted the best feelings and sympathies of the heart, in favor of a suffering and afflicted People.”<sup>232</sup>

Moreover, there was little enthusiasm for debating dry theoretical issues in the face of an event characterized as an emergency. Representative Cambreleng lamented the lengthy debate because “while the debate was progressing, those for whom the charity was designed, were perishing . . . . [I]t was not a time to stop to examine our constitutional doubts.”<sup>233</sup> Subsuming the measure under the Enclave Clause permitted Congress to enact a popular measure even as it evaded the more freighted federalism questions.<sup>234</sup>

Although use of the Enclave Clause permitted Congress to solve the immediate problem of relieving Alexandria, it did not in any sense solve the problem of the general constitutional status of federal relief. Indeed, the Alexandria fire was often subsequently cited as a precedent that demonstrated the constitutional permissibility of disaster relief. The measure’s exceptional status was forgotten, as the Enclave Clause was discarded as the underlying rationale for the appropriation.

Many of the congressmen debating the Alexandria relief bill in 1827 perceived the difficulty of constructing and maintaining a meaningful constitutional distinction between disaster relief and poor relief.<sup>235</sup> Neverthe-

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<sup>228</sup> U.S. CONST. art. 1, § 8, cl. 18.

<sup>229</sup> 3 CONG. DEB. 766 (statement of Rep. Hamilton).

<sup>230</sup> *Id.* at 765.

<sup>231</sup> *Id.* at 763-64 (statement of Rep. Cambreleng).

<sup>232</sup> *Id.* at 754 (statement of Rep. Johnson).

<sup>233</sup> *Id.* at 763 (statement of Rep. Cambreleng).

<sup>234</sup> *See id.* at 758 (statement of Rep. Mercer) (“The power we are about to exercise, does not touch the confines of the often-contested doctrines of State and Federal authority.”).

<sup>235</sup> *See id.* at 765 (statement of Rep. Campbell) (arguing that “if Congress might appropriate for the poor of the District at large, why not for those suddenly made poor by an act of Providence”).

less, it would be another century before the constitutional and rhetorical identity between the two was forged.<sup>236</sup>

### *B. Relief and Sectionalist Logrolling*

Although the constitutionality of relief rarely was contested after the grant to Alexandria, objections based on sectionalist jealousies and rivalries became frequent. Both North-South and East-West divisions commonly were invoked in contests over relief legislation. Although these objections rarely were fatal to the relief bill in question, it is not clear that they were intended to be. Rather, such objections most often resulted in a compensatory relief appropriation for the region of the complaining congressman.<sup>237</sup> The attempt to amend a bill to include another affected area could, however, kill the proposal either accidentally or by design.<sup>238</sup>

For example, in 1818 a Maryland Representative moved to amend a bill for the relief of the beleaguered New Yorkers on the Niagara frontier who still were trying, five years later, to receive relief for losses from the War of 1812.<sup>239</sup> Representative Reed's amendment provided identical relief for residents of the Chesapeake Bay area.<sup>240</sup> The Speaker of the House interjected that the measure should be proposed as a separate bill because it would endanger the chances of the Niagara relief measure, which he was anxious to pass.<sup>241</sup> Following a heated argument, the amendment passed.<sup>242</sup> The following day, however, the entire bill was rejected.<sup>243</sup>

<sup>236</sup> The Alexandria fire was the first in a long list of disaster appropriations cited by Wisconsin Sen. Robert LaFollette, Jr. in support of federal relief for the Great Depression during the winter of 1930-31:

We have been told by those speaking for the [Hoover] administration that to appropriate money to relieve distress and suffering in the drought-stricken States would be to violate a great American principle. If that be true . . . we began violating that great American principle in 1827, when the policy of appropriating funds from the Federal Treasury for relief purposes was inaugurated. At that time, in order to assist relieving conditions created by a fire at Alexandria, Va., the Congress appropriated \$20,000.

74 CONG. REC. 4437 (1931). New Dealers such as Alger Hiss and Aubrey Williams later discovered the earlier appropriations for the Whiskey Rebellion and other disasters. Hiss incorporated this history into his briefs defending various New Deal spending programs. *See, e.g.*, Brief for the United States at 154-55, *United States v. Butler*, 297 U.S. 1 (1935) (No. 401). *See infra* notes 370-81 and accompanying text.

<sup>237</sup> *See, e.g.*, 15 ANNALS OF CONG. 1695-96 (1st Sess. 1818).

<sup>238</sup> Several members of Congress attempted to kill the proposed relief for the fire at Savannah, Georgia in 1796 by an amendment to extend identical relief to the small town of Lexington, Virginia, where there had been a fire some months previous. The amendment's sponsor, Representative Moore, said that he opposed the entire principle of granting relief on constitutional grounds, but if enacted it should be general rather than local. He declared that he would move to add Lexington to the bill and then vote against them both. *See* 4 ANNALS OF CONG. 1718 (1796).

<sup>239</sup> *See* 15 ANNALS OF CONG. 1695 (1st Sess. 1818) (statement of Rep. Reed).

<sup>240</sup> *See id.* at 1695.

<sup>241</sup> *See id.* (statement of Rep. Clay, Speaker of the House).

<sup>242</sup> *See id.* at 1696.

<sup>243</sup> *See id.* at 1698-99.

There were three significant instances during the nineteenth century in which relief legislation was affected by sectionalist antagonism. The first resulted in the expansion of the provisions of the law relieving distress caused by British troops during the War of 1812 to relieve whites involved in conflicts with Indians during 1815.<sup>244</sup> The second involved a bill for the relief of the 1836 fire in the New York mercantile district that, though it did not affect the outcome of the bill, revealed the depth of North-South divisions over slavery.<sup>245</sup> The third was a conflict between Eastern supporters of Indian rights and Western advocates of extermination during appropriation of relief for white settlers following the Sioux uprising of 1862.<sup>246</sup> In this last case, Eastern congressmen forced minor changes in the bill, as well as adoption of a separate measure designed to protect the rights of some Sioux.<sup>247</sup>

In 1817, the law providing relief for damages caused by British troops during the War of 1812 was amended to provide identical relief for those who lost property during the Indian wars in 1815, primarily involving the Creeks.<sup>248</sup> During the two-year period preceding the amendment, hundreds of applications for relief arrived in Congress from the Mississippi Territory.<sup>249</sup>

In a Memorial to Congress in 1815, both houses of the Mississippi Territorial Legislature complained about the unfair treatment they felt they received at the hands of Congress in the distribution of relief. The Memorial argued that the principle governing the provision of relief for British warfare should apply with "equal force to the Creek nations of Indians."<sup>250</sup> However, the House committee reported against relief in February, 1816,<sup>251</sup> and the claims were excluded from the relief Act of April 9, 1816, which provided only for losses inflicted by the British—primarily located in the North and East.

<sup>244</sup> See An Act to amend the act "authorizing the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," passed ninth of April, one thousand eight hundred and sixteen, ch. 110, 3 Stat. 397, 398, § 4 (1817).

<sup>245</sup> See 12 CONG. DEB. 2715-16 (1836) (statement of Rep. Chambers); *id.* at 2567-68 (statement of Rep. Graves); *id.* at 2711-12 (statement of Rep. Judson).

<sup>246</sup> See CONG. GLOBE, 37th Cong., 3d Sess. 516 (1863) (statements of Sens. Wilkinson & Clark).

<sup>247</sup> See *id.* at 518 (statement of Sen. Doolittle).

<sup>248</sup> See An Act to amend the act "authorizing the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," passed ninth of April, one thousand eight hundred and sixteen, ch. 110, 3 Stat. 397, 398, § 4 (1817).

<sup>249</sup> See Indian Depredations in the Mississippi Territory, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 276 (1815). In February, 1815, a committee reported on the memorials for relief, recommending that the losses by the Creeks be investigated and evaluated in the same manner as those caused by the British or American troops. See *id.*

<sup>250</sup> Indian Depredations in the Mississippi Territory, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 270 (1815).

<sup>251</sup> See Indian Depredations by the Creeks in Mississippi, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 290 (1816).

Angry settlers railed against the unfairness of Congress. Western congressmen took up the matter during the debates over the competence of Commissioner Lee.<sup>252</sup> Kentucky Representative Johnson pointed out that all the claims together from the Western country were less than \$100,000, whereas over \$1 million had already been paid to the Atlantic states.<sup>253</sup> Ultimately the Act was amended to include the Creek claims.<sup>254</sup>

The second instance arose during the debate over relief for a fire in New York City in 1836. Southern and Western Representatives, who opposed relieving mercantile interests, expressed vehement anti-Abolitionist, and veiled anti-Semitic sentiments.<sup>255</sup> Southern legislators, furious at the growing abolition movement in New York, used the plea for relief as an opportunity to vent their rage. After all, why should they relieve the distresses of those fomenting disastrous Black uprisings in the South:

I cannot but reflect that, while I am here discharging the duties of my station, he and his abolition associates are using their utmost efforts to instigate people whom I have raised with care and indulgence but little short of paternal, first to discontent and resentment, and ultimately to imbrue their hands in the blood of my family and friends.<sup>256</sup>

Additionally, Western congressmen who were resentful of the treatment they previously received at the hands of the New York credit establishment relished the opportunity for payback: "I do not wish, sir, to create any sectional jealousies," intoned Representative Hardin of Kentucky, but

I suppose the merchants of New York occasionally extend time to their western customers after their obligations fall due, but I have not . . . heard them charged with refusing a little interest . . . and we in the west say to the merchants of New York, if it be inconvenient to pay your bonds when they fall due, it is but just you should pay interest for the indulgence.<sup>257</sup>

In a third example, East-West sectionalist hostilities flared over a bill for the relief of white Minnesotans following a Sioux uprising in 1862. The

<sup>252</sup> See, e.g., 14 ANNALS OF CONG. 375 (1816); see *supra* notes 101-22 and accompanying text.

<sup>253</sup> See 14 ANNALS OF CONG. 375-76 (1816) (statement of Rep. Johnson).

<sup>254</sup> See An Act to amend the act "authorizing the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," passed ninth of April, one thousand eight hundred and sixteen, ch. 110, 3 Stat. 397, 398, § 4 (1817). The same day, \$85,000 was appropriated for the relief of "friendly" Indians who also lost property during the depredations. An Act for the relief of certain Creek Indians, ch. 68, 3 Stat. 191 (1817).

<sup>255</sup> See 12 CONG. DEB. 2715-16 (1836) (statement of Rep. Chambers) ("The City of New York has her Rothschilds and her Barings, in miniature, who aspire to be the bankers of the twenty-four States of this Union.").

<sup>256</sup> *Id.* at 2716 (statement of Rep. Chambers). In fact, Congress was in the midst of an acrimonious debate over the abolition of slavery in the District of Columbia. See *id.* at 185-211.

<sup>257</sup> *Id.* at 2567 (statement of Rep. Hardin).

bill for the relief of injured whites provided for the abrogation of all treaties between the Sioux and the seizure of all assets held in trust for them by the United States, some \$4 million.<sup>258</sup>

The original bill provided for an immediate distribution of \$1.5 million to injured whites.<sup>259</sup> The Committee on Indian Affairs, however, substituted an initial relief payment of \$100,000, to be distributed by relief commissioners for immediate needs, and for an assessment of the extent of the damage prior to any further appropriation.<sup>260</sup> Eventually, Congress allocated \$200,000 for the relief commissioners to disburse "immediately after arriving on the ground, and ascertaining the parties who were in need of this immediate relief."<sup>261</sup>

The parts of the bill provoking bitter sectional tensions provided for the complete removal of the Sioux from the State of Minnesota.<sup>262</sup> Furthermore, there was no provision made to preserve the annuities of those Indians who accepted the federal government's allotment policy and wanted to remain on their farms. Eastern Senators protested that "there are a portion of these tribes of Indians who have been faithful to the whites, have defended them, and saved their lives. . . . We have got to make some provision for the Indians who have been faithful."<sup>263</sup>

This sort of reasoning provoked angry recriminations from Western congressmen, who offered an Eastern colleague the opportunity to "settle with his wife and daughters in the midst of his much abused friends."<sup>264</sup> Easterners, particularly Philadelphia Quakers, were harshly criticized for opposing extermination and removal, even as they resided in the safety of the eastern seaboard.<sup>265</sup> "I am astonished that the Senators from Maine and New Hampshire should get up here and insist that these Indians shall re-

<sup>258</sup> See CONG. GLOBE, 37th Cong., 3d Sess., at 509-11 (1863).

<sup>259</sup> See *id.* at 510.

<sup>260</sup> See *id.* at 510-11. Sen. Harlan explained that "[t]he committee had no means of knowing whether the damages would amount to \$1,500,000. There is no evidence that the Senators from Minnesota are now prepared to lay before this body to justify us in coming to that conclusion." *Id.* at 510. The committee suspected that the recipients would "manage by the adoption of the usual means resorted to by persons who have suffered great damage to make their claims at least equal to the sum appropriated." *Id.*

<sup>261</sup> *Id.* at 510 (statement of Sen. Harlan). See An Act for the Relief of Persons for Damages sustained by reason of Depredations and Injuries by certain Bands of Sioux Indians, ch. 37, 3 Stat. 652 (1863).

<sup>262</sup> See EDWARD LAZARUS, BLACK HILLS, WHITE JUSTICE: THE SIOUX NATION VERSUS THE UNITED STATES, 1775 TO PRESENT 27-33 (1991). The Minnesota Indian war began as an uprising of the Santee band against unfair trading practices and federal failures to honor treaties. It resulted in the eventual slaughter of Santees by the U.S. Army, and the largest public mass execution in U.S. history. "To most easterners . . . the brutality of the western Indian campaigns [by the whites] was appalling." *Id.* at 29.

<sup>263</sup> CONG. GLOBE, 37th Cong., 3d Sess. 511 (1863) (statement of Sen. Doolittle).

<sup>264</sup> CONG. GLOBE, 37th Cong., 3d Sess., app. at 142 (1863) (speech of Rep. Windom).

<sup>265</sup> See *id.*

main among a people some of whom they have butchered in the inhuman manner which they have."<sup>266</sup> All Indians had to be removed or exterminated from white settlements; pleas by the New England delegation not to "allow ourselves to run wild in consequence of our sympathies"<sup>267</sup> for the settlers provoked waves of Western rage and resentment.

The Indian defenders were not able to provide much protection for the Sioux during the debate of the relief bill in 1863. They resurrected the issue a year later, however, and won passage of a second relief bill, for the benefit of the "friendly" Sioux. Although the bill provided minimal relief, it was a concession wrung from Western legislators favoring extermination and total removal that a part of the relief was allocated "for the purpose of securing probably a farm . . . in the *state of Minnesota* for this Chief Other-day."<sup>268</sup>

The invocation in the Spending Clause that expenditures be for the "general" welfare was interpreted even by federalists such as Hamilton and Story to mean for national rather than local ends.<sup>269</sup> Federal disaster relief violated this prescription; nothing could be more local than charity for a particular stricken community or population. Nevertheless, the regional system of congressional representation presented lucrative incentives to operate relief programs according to the opposite principle. Rather than blocking relief efforts, sectionalism antagonism operated primarily to expand appropriations for complaining regions and interest groups through legislative processes such as logrolling and amendment.

### *C. Disaster Relief as An Entitlement Program*

It is tempting to attribute congressional funding of disaster relief in the late eighteenth and early nineteenth centuries to accident. After all, it seems unlikely that the authors of the Constitution would ignore its prohibition on spending for purely local, charitable purposes. Or we may imagine them as great humanitarians, gingerly stepping over the Constitution in order to parcel out mercy and compassion. Both of these ideas likely explain a few early relief decisions.<sup>270</sup> The historical record demonstrates, however, that

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<sup>266</sup> CONG. GLOBE, 37th Cong., 3d Sess. 516 (1863) (statement of Sen. Wilkinson).

<sup>267</sup> *Id.* at 511 (statement of Sen. Fessenden).

<sup>268</sup> CONG. GLOBE, 38th Cong., 1st Sess. 2222 (1864) (emphasis added).

<sup>269</sup> See Alexander Hamilton, *Report on the Subject of Manufactures*, in 10 THE PAPERS OF ALEXANDER HAMILTON 230, 302-04 (Harold C. Syrett ed., 1966); STORY, *supra* note 57, at 673.

<sup>270</sup> For example, An Act for the relief of Citizens of Venezuela, ch. 79, 2 Stat. 730 (1812), passed without any debate, but was later used as a precedent in support of other relief proposals. See 3 CONG. DEB. 755 (1827) (statement of Rep. Brent in support of Alexandria relief bill). An Act providing for the relief of such of the inhabitants of Saint Domingo, resident within the United States, as may be found in want of support, ch. 2, 6 Stat. 13 (1794), was also cited as precedent supporting both the appropriations for Alexandria, see 3 CONG. DEB. 755 (1827), and for Savannah, see 4 ANNALS OF CONG. 1714 (1796).

Congress was much more concerned with the force of precedent than with the Constitution.<sup>271</sup>

The most frequent argument against relief in petitions debated on the floor of either house of Congress or reported on by a congressional committee between 1789 and 1870 was the fear that the appropriation would set a precedent that would obligate the federal government to provide relief in all analogous cases, as illustrated in Figure 1, below. Furthermore, the need to adhere to a previously established precedent was the second most frequently offered reason for granting requested relief during the same period.<sup>272</sup>

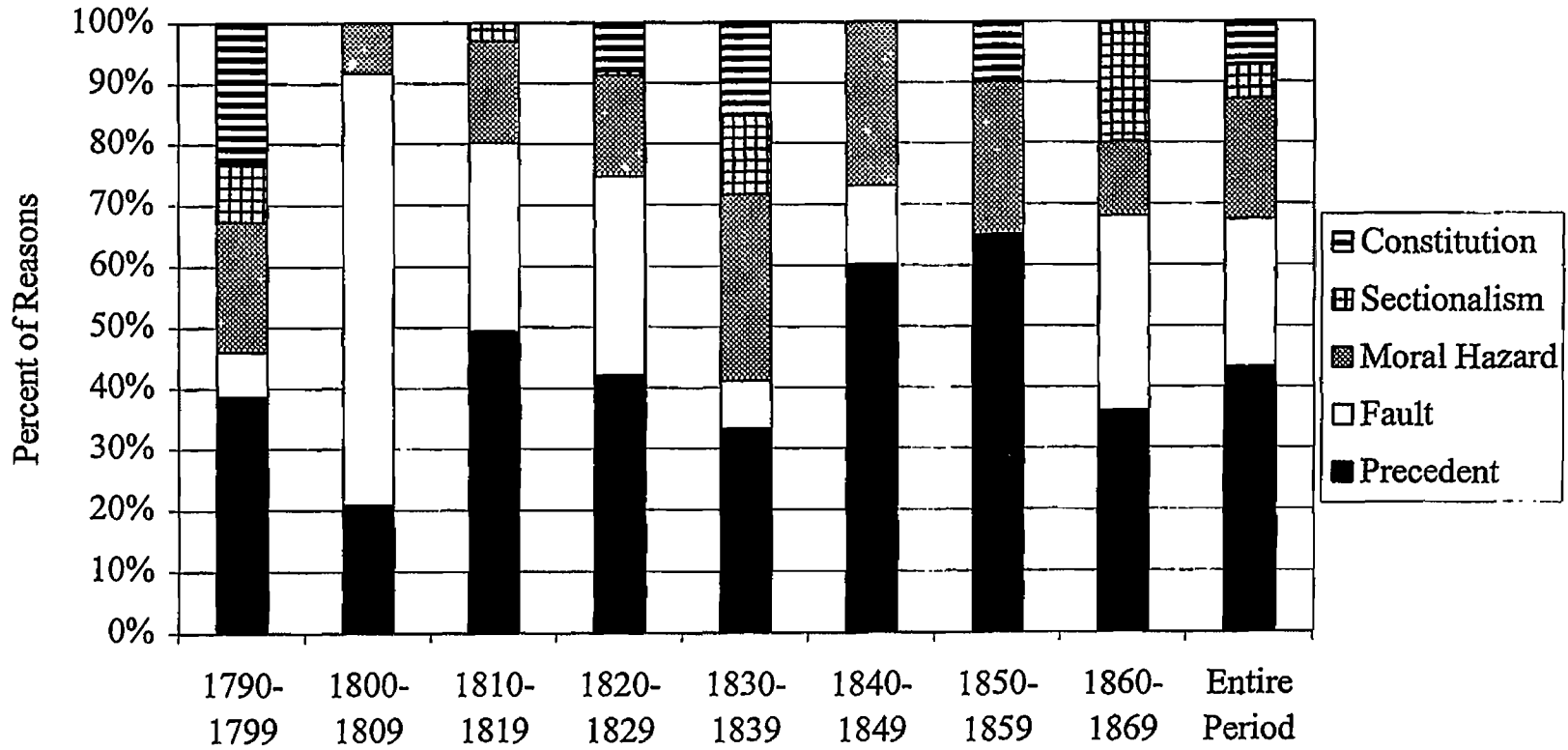
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<sup>271</sup> It is not surprising that Congress felt itself bound by precedent; early American legislatures often acted in a quasi-judicial capacity out of confusion surrounding the appropriate legislative role. Although Congress theoretically had unlimited power to alter the common law, it was unclear whether legislative action could do more than to merely articulate the "fundamental and immutable" natural law. See NELSON, *supra* note 173, at 13-15. Furthermore, adherence to precedent was a nearly inviolable rule. The eighteenth century was taken up with "inactive legislatures and judges who adhered to precedent with a simple-minded rigor and consistency." *Id.* The importance of this doctrine to early Americans of every political stripe cannot be overstated: adherence to precedent was felt to "restrain the arbitrary Will or uninformed Reason of Prince or Judge." *Id.* See also Christine Desan, *Legal Immunity and Legislative Obligation: Institutional Understandings of Remedy in the Early Republic* (Oct. 8, 1993) (unpublished manuscript, on file with author).

<sup>272</sup> Figure 1 is based upon a selection of twenty-seven events engendering Congressional debates, committee reports, and petitions for the period from 1789 through 1874. The selections were made on the basis of the length of the debate or report for each "disaster." The selections are divided approximately evenly between successful and unsuccessful petitions or bills, and includes both private and class-based relief claims. This strategy is designed to reveal the arguments employed at key moments in the development of the rhetoric of disaster relief over this period. The following events are included in both Figure 1 and Figure 2: 1790 petition of John Amelung for relief for his glass factory following a fire; 1794 petition for indemnity for American merchants from British piracy and spolations; 1794 relief for white refugees fleeing the slave revolt on St. Domingo; 1795 petition for relief of the Whiskey Rebellion; the 1796 Savannah fire; 1800 petition for the remission of duties on stills; the 1805 claim of Alexander Scott for losses due to theft of slaves by Cherokee Indian; 1806 petition of Richard Sexton for disappointed expectations under a government contract; 1806 petition of Rebecca Hodgson for the fire loss of her house; 1815 petition for relief of Creek Indian depredations; 1816 petition for loss of Ship Allegany; 1816-1818 debates over relief for the War of 1812, and for claims on the Niagara frontier; 1820 petition for loss of property at Valley Forge during the Revolutionary War; 1820 claim of Martha Youngs for property burnt by the Americans during the Revolutionary War; 1822 petition of Elizabeth House for compensation; 1824 petition of Issac Poole for losses incurred due to attack by pirates; 1825 petition for the loss of the Schooner William Yeaton while transporting aid to the victims of the Caracas earthquake; 1827 Alexandria fire; 1836 petition for relief following Seminole Indian war; 1836 New York fire; 1840 petition for the relief of Elbert Anderson for failure of government contract; 1841 petition of government mechanics for unemployment compensation; 1846 petition for relief following Seminole Indian war; 1852 petition for relief of Spanish subjects injured in mob violence in New Orleans; 1854 petition for the relief of distressed seamen; 1862-64 petition for relief of settlers and loyal Indianans following Sioux Indian War. Within each decade, every case is equally weighted. For the "entire period" column, each decade is equally weighted. Reasons given in support of relief are shown in Figure 2, *infra* at page 1019. Sympathy for the innocent victim of sudden catastrophe was the most frequently offered principle supporting relief, while the need to adhere to a previously-established precedent ranked second. See *id.*



Figure 1  
Reasons Given for Denying Relief, 1790-1869



The Congress, in asserting and defending these claims about precedent, often self-consciously operated more like a court than a legislature.<sup>273</sup> In fact, as Representative Johnson noted in the 1816 debate over the propriety of bureaucratizing relief operations,<sup>274</sup> relief was “a class of claims . . . more properly confided to a judicial tribunal than to the Congress of the United States.”<sup>275</sup> Concern that all persons receive equal treatment from Congress pervaded virtually every discussion of relief.

Precedent figured importantly in the denials of private relief claims arising out of losses during the Revolutionary War and various Indian wars,<sup>276</sup> as well as in decisions to grant relief to particular petitioners who stood in a similar position to those who had already received assistance.<sup>277</sup> Fear of setting a precedent which would be “destructive to the resources of the nation”<sup>278</sup> was invoked in rejecting hundreds of claims, even those of extremely sympathetic petitioners.<sup>279</sup> Committees, however, often exerted themselves to distinguish the case of a particular plaintiff from a set of adverse precedents.<sup>280</sup>

<sup>273</sup> See Desan, *supra* note 271.

<sup>274</sup> See *supra* notes 97-122 and accompanying text.

<sup>275</sup> 14 ANNALS OF CONG. 375 (1816) (statement of Rep. Johnson). The perception that Congress adjudicated claims in a judicial manner was prevalent among the public. Often, memorials for relief would arrive in Congress in the form of legal briefs. See, e.g., H.R. DOC. NO. 25-203 (1839) (Petition of the Sufferers of Wyoming, Pennsylvania). The Wyoming petition was a well-argued legal brief, complete with cases, statutes, and an evidentiary record attached as an appendix.

<sup>276</sup> See, e.g., Indemnity for Property Destroyed by the Enemy (Feb. 11, 1794), reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 39 (1794) (denying claim of William Dewees for the destruction of his estate, Valley Forge, Pennsylvania, during its occupation by American troops because of problems arising from precedent); Indemnity for Property Destroyed by the Troops of the United States, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 87 (1797) (denying claim of Thomas Frothingham for the destruction of his house because “loss of houses, and other sufferings by the general ravages of war, have never been compensated by this or any other government . . . . As government has not adopted a general rule to compensate individuals who have suffered in a similar manner . . . this petition cannot be granted”).

<sup>277</sup> See, e.g., Loss of the Ship *Allegany*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 312 (1816) (recommending relief for the loss of a ship in the Algerian conflicts because “the Government has awarded relief in similar cases recollected, and particularly the cases of the *Anna Maria*, of New York, and the *Resource* of Baltimore”).

<sup>278</sup> Indian Depredations and Cruelties in 1777, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 569 (1822) (Petition of Elizabeth House for relief).

<sup>279</sup> The Committee on Revolutionary Claims reported against the claim of Elizabeth House, who was kidnaped, raped, sold into sexual slavery, and forced to watch the murder of her children during Indian wars in 1777 because “[i]f the present claim be allowed, others of a similar character cannot, with propriety, be rejected.” *Id.*

<sup>280</sup> See, e.g., Remission of Duties, reprinted in 3 AMERICAN STATE PAPERS (Finance) No. 162 (1801). In this case, the committee reported in favor of relief for the merchants of Providence for teas lost in a fire, despite the fact that for the first six months of the year the committee had reported against such remissions. The committee was at pains to distinguish this case by the fact that the teas were in the possession of the officers of customs at the time of the fire so that “granting relief in this case . . . cannot establish a precedent dangerous to the revenue.” *Id.*

Precedent often was invoked both to support and oppose the same claim. In December 1794, Representative Goodhue, who in April had been rebuffed in his plea for indemnification of private property seized by British pirates in the West Indies<sup>281</sup> complained about a request for relief due to fire:

A fire happened lately at Boston, which destroyed perhaps ten or twenty thousand pounds worth of commodities that had paid duties. What kind of business would it be if all these persons were to come forward and make a demand of compensation. . . . Claims of this kind never would have any conclusion.<sup>282</sup>

Other congressmen recalled the fact that the House had granted over \$10,000 in precisely this sort of relief six months prior, and argued that “they [sh]ould have the same justice with other petitioners to that House.”<sup>283</sup> It was agreed that the petition could be “treated as others of the like nature had been.”<sup>284</sup>

There were several significant debates around the turn of the nineteenth century regarding the extent to which Congress was constrained by precedent either to provide or to deny relief for deprivation and distress. Three such cases, discussed below, demonstrate the structure and strength of these appeals.

1. *The Whiskey Rebellion*.—Principles of fairness and precedent were central to the first debate of large-scale relief. The Whiskey Rebellion, centered in eight counties of Western Pennsylvania, began in the spring of 1794 as an attack on federal excise agents charged with collecting a fiercely hated new excise tax on liquor production.<sup>285</sup> For months, rioters refused to pay taxes, while they looted and burned not just the tax office but also surrounding homes, buildings, stills, and farms.<sup>286</sup> The conflict mushroomed over the next five months into an insurrection that took 13,000 federal

<sup>281</sup> See 3 ANNALS OF CONG. 689-95 (1794).

<sup>282</sup> *Id.* at 988 (statement of Rep. Goodhue).

<sup>283</sup> *Id.* at 988 (statement of Rep. Parker).

<sup>284</sup> *Id.*

<sup>285</sup> See Letter from Alexander Hamilton to George Washington (Aug. 5, 1794), in THE WHISKEY REBELLION: PAST AND PRESENT PERSPECTIVES 31-49 (Steven R. Boyd ed., 1985) (recounting the damage inflicted by the rioters on the local community and the excise officers). Although the Whiskey Rebellion generally is recalled as centered in Allegheny, Fayette, Washington, and Westmoreland counties, four others—Bedford, Cumberland, Franklin, and Northumberland—also were sites of conflict. See SLAUGHTER, *supra* note 88, at 206.

<sup>286</sup> See SLAUGHTER, *supra* note 88, at 158-67. In the beginning there were scattered attacks on federal excise agents and their property. As the angry mood began to spread across the frontier, mobs began to attack local distillers who had agreed to pay the excise tax. Rioters beat and shot James Kiddoe, and destroyed his distillery. William Coughran was attacked, his still and grain mills destroyed, and he was forced to print an account of his ordeal in the *Pittsburgh Gazette* as a “warning to others.” *Id.* at 166.

troops led by President Washington to quell.<sup>287</sup> Eventually, the revolt spread to western Maryland, Virginia, and Kentucky.<sup>288</sup> It was, according to Chief Justice John Marshall, the most important incident of early American constitutional history.<sup>289</sup>

Although the Pennsylvania rebels ultimately did not realize their goal of looting and burning Pittsburgh, they transformed their resistance to the excise tax into generalized class hatred, and began to assault and torch everyone with any commercial wealth, regardless of their connection to the offending liquor tax.<sup>290</sup> Landowners, millers, merchants, and Pittsburgh's evolving urban bourgeoisie suffered property damage in the riots. "Marauding bands . . . populated the countryside . . . burning buildings; holding mock trials and banishing whomever they pleased; and brutalizing tax collectors and other enemies to the cause."<sup>291</sup> Ultimately, violence from the Whiskey Rebellion spread to twenty trans-Appalachian counties in four states and the Northwest Territories.<sup>292</sup> Although post-Civil War historiography has tended to diminish both the drama and the significance of the Whiskey Rebellion, contemporary accounts indicate that it was widely believed to be the beginning of a major secessionist guerilla war on the frontier.<sup>293</sup>

When it was put down, the settlers remained extremely hostile to the federal government. President Washington, recounting to Congress the federal government's "glorious, successful, and bloodless expedition,"<sup>294</sup> requested an appropriation of funds for the relief of the affected communities.<sup>295</sup>

<sup>287</sup> Washington raised the troops by federalizing local militias. The resulting 13,000 man force was as large as the force he commanded in the Revolutionary War, but it was little more than a large band of thugs, derisively called the "Watermelon Army." See *id.* at 205, 212-20.

<sup>288</sup> See *id.* at 3.

<sup>289</sup> See *id.* at 5.

<sup>290</sup> Piven and Cloward argue that one of the primary functions of relief is to pacify potentially violent class-based insurrections. In this sense, relieving "disasters" in local communities often fits this more general pattern. See PIVEN & CLOWARD, *supra* note 29, at 8-22.

<sup>291</sup> SLAUGHTER, *supra* note 88, at 188.

<sup>292</sup> See *id.* at 206.

<sup>293</sup> Indeed, the Whiskey Rebellion was "the single largest example of armed resistance to a law of the United States between the ratification of the Constitution and the Civil War [and was] once deemed a major historical event." *Id.* at 5. See also Thomas P. Slaughter, *The Friends of Liberty, the Friends of Order, and the Whiskey Rebellion: A Historiographical Essay*, in THE WHISKEY REBELLION: PAST AND PRESENT PERSPECTIVES 9-30 (Steven R. Boyd ed., 1985).

<sup>294</sup> SLAUGHTER, *supra* note 88, at 220.

<sup>295</sup> See 3 ANNALS OF CONG. 995 (1794). The Congress responded by making an open-ended authorization for the President to disperse funds on an "emergency" basis. See *id.* at 1002. The House Committee recommending relief estimated the damages at \$17,000, although substantially more was eventually paid out. See *id.* at 987. For a partial accounting, see *Indermity for Losses Sustained by the Insurgents in 1794*, reprinted in 9 AMERICAN STATE PAPERS (Claims) No. 114 (1800).

Although the requested relief was ultimately granted, it followed a month of bitter argument about principles of fairness to other disaster victims who were ignored or rebuffed by Congress:

the United States is more justly bound to make reparation to the people who suffered by the robberies and conflagrations perpetrated by British soldiers than to compensate the sufferers in the four Western counties . . . but nobody supposes that we shall ever indemnify those losses.<sup>296</sup>

Furthermore, it was argued that there were other cases that were indistinguishable on the merits, such as attacks by the Creek Indians in Georgia, which had done more than half a million dollars of damage in the past year. One member stated that he "could not see why these sufferers were not as much entitled to compensation as the others in the four Western Counties."<sup>297</sup> Fittingly, the relief granted for losses arising from the Whiskey Rebellion would be, in years following, repeatedly cited as a precedent justifying other claims.<sup>298</sup>

2. *The Savannah and Alexandria Fires.*—It is telling that the first statements uttered on the floor of the House in favor of relief for Savannah following the fire of November 29, 1796, recited a list of precedents.<sup>299</sup> Representative Smith argued that these precedents should control the decision, leaving no room to refuse: "The precedents which had been adduced appeared to be no more strongly warranted than this. . . . Another case that occurred to him . . . the recompense allowed to persons who suffered in the Western insurrection. Was that authorized by the Constitution any more than the present?"<sup>300</sup>

Opponents of the measure rebutted this argument using the same logic—that approving relief to Savannah would set a precedent that would *require* Congress to grant relief to any other community experiencing a fire.<sup>301</sup> Representative Cooper stated that if Congress "saw the losses which had been sustained at New York, Charleston &c. it would appear only reasonable that, if relief was afforded in one case, it ought to be extended to

<sup>296</sup> 3 ANNALS OF CONG. 984, 985-86 (1794) (statement of Rep. Dayton). The failure to receive compensation of losses connected to the Revolutionary War was not for want of trying. "One of the bothersome administrative tasks of the Federalist period was the settlement of claims arising out of the Revolutionary War . . . . Claims of all sorts and descriptions were presented directly to Congress." WHITE, *supra* note 60, at 355.

<sup>297</sup> 3 ANNALS OF CONG. 992 (1794) (statement of Rep. Carnes).

<sup>298</sup> See, e.g., Brief for the United States at 154-55, *United States v. Butler*, 297 U.S. 1 (1935) (No. 401).

<sup>299</sup> See 4 ANNALS OF CONG. 1696, 1712 (1796) (statement of Rep. Smith).

<sup>300</sup> *Id.* at 1724.

<sup>301</sup> See *id.* at 1723 (statement of Rep. Nicholas).

another.”<sup>302</sup> This argument ultimately led to the defeat of the measure. Representative Coit, dismissing constitutional criticisms, said that he did not object “on constitutional grounds . . . [but because] to agree with the resolution would be laying a dangerous precedent.”<sup>303</sup>

By the time of the Alexandria fire in 1827 it was clear that most members of Congress felt bound by earlier grants.<sup>304</sup> The experience of the intervening thirty years of relief measures, including over \$1 million for the War of 1812<sup>305</sup> and no fewer than fifteen other relief appropriations, caused many in Congress to charge that they were bound by these precedents to grant relief on grounds of equity, whether they agreed that it was constitutionally permissible or not.

Representative Brent called attention to the host of previous disaster appropriations, including the Venezuelan earthquake and flood relief on the Mississippi, in arguing that “as far as the law has established precedents we have enough to guide us.”<sup>306</sup> Brent rejected entirely the notion that the appropriation exceeded the scope of congressional power, arguing that the previous actions not only established that Congress had the authority to act, but that it had an affirmative duty to do so.<sup>307</sup>

Most opponents of the measure did not deny the importance of precedent; instead, they argued against relief for fear that it would create a precedent that would pitch Congress into a bottomless pit of charitable donation:

Is there anything in the Constitution of the United States, or of the States, that would prevent the citizens of Savannah, who had suffered a much severer loss, or Charleston, or New York, from receiving a donation from Congress? . . . All citizens of the United States have the same power to receive, and all have the same right to claim it. It would, therefore, seem clear, that any town had the same right to receive, as the town of Alexandria, the donations of Congress.<sup>308</sup>

The relief, if permitted, would create an entitlement to federal poor relief, according to Representative Rives. “We may thus enact a system of poor laws for every State in the Union, upon condition only that the paupers shall come here to partake of the national bounty.”<sup>309</sup> Members warned Congress that if it voted to appropriate this money, it would lose the right to

<sup>302</sup> *Id.* at 1712 (statement of Rep. Cooper).

<sup>303</sup> *Id.* at 1725 (statement of Rep. Coit). *But see* David P. Currie, *The Constitution in Congress: Substantive Issues in the First Congress, 1789-1791*, 61 U. CHI. L. REV. 775 (1994) (arguing that disaster relief was denied because it was constitutionally insupportable).

<sup>304</sup> *See* 3 CONG. DEB. 755 (1827) (statement of Rep. Brent).

<sup>305</sup> *See supra* notes 97-122 and accompanying text.

<sup>306</sup> 3 CONG. DEB. 755 (1827) (statement of Rep. Brent).

<sup>307</sup> *See id.*

<sup>308</sup> *Id.* at 766-67 (statement of Rep. Johnson).

<sup>309</sup> *Id.* at 769 (statement of Rep. Rives).

reject future claims from “the citizens of every other town in the Union who should meet with a like calamity” because they would have “precisely the same claims upon the charity of the House.”<sup>310</sup>

A few supporters denied that a legislature could be bound by precedent as was a court. According to Representative McCoy, “precedents could be produced for almost any thing. But the House was not governed by them, however numerous.”<sup>311</sup> Representative Archer agreed, noting that “[p]recedents operated in judicial tribunals because the object of this judication was to obtain uniformity of decision,” whereas the object of legislative action was to “vary decision, till it is supposed to have attained correctness.”<sup>312</sup>

Arguments about the force of precedent continued to appear in congressional debates over relief legislation through the New Deal. As such appropriations became more numerous, however, there was less debate about their controlling nature. For example, during debate over relieving a fire in New York in 1936, long lists of precedent for fire relief were read into the record several times.<sup>313</sup> No one contended that Congress was not bound to act based on these precedents—the argument instead focused on distinguishing the New York case from those previously listed and analogizing it instead to cases where relief had been denied.<sup>314</sup> A similar list of precedents was cited during debate the same year over relief for white settlers following the Seminole War.<sup>315</sup>

Many members of Congress, by relieving Alexandria and the cases that followed in the first half of the nineteenth century, embraced an obligation to stand ready to act “[w]hen a providential act was sudden and calamitous beyond the ordinary power” of the States to meet.<sup>316</sup> “If gentlemen want

<sup>310</sup> *Id.* at 755 (statement of Rep. Johnson).

<sup>311</sup> *Id.* at 755 (statement of Rep. McCoy).

<sup>312</sup> *Id.* at 761 (statement of Rep. Archer). In many relief cases, Congress struggled with the relative values of precedent and principle. See R.M. Dworkin, *Is Law a System of Rules?*, in *THE PHILOSOPHY OF LAW* 38, 44 (R.M. Dworkin ed., 1977). Although this formulation was intended to apply to judges, it seems to provide an apt description of congressional treatment of disaster relief. The rule proscribing federal poor relief, descended from the English Poor Law, “states a reason that argues in one direction, but does not necessitate a particular decision,” so that when confronted with a fire or earthquake, Congress is free to “take into account the relative weight” of competing principles. *Id.* at 47. For the history of the English Poor Law and the prejudice against federal relief efforts, see AXIN & LEVIN, *supra* note 144, at 8-33; PIVEN & CLOWARD, *supra* note 29, at 1-41.

<sup>313</sup> See, e.g., 12 CONG. DEB. 2581-82, 2586-87, 2590 (1836).

<sup>314</sup> See *id.* at 2555 (statement of Rep. Phillips) (“[T]he present case is marked by circumstances in many respects unprecedented.”).

<sup>315</sup> See *id.* at 2445 (statement of Rep. White) (citing the Caracas earthquake, the New Madrid earthquake, and several other relief bills in support of his petition).

<sup>316</sup> 3 CONG. DEB. 766 (1827) (statement of Rep. Wood). Many others agreed, arguing that Government was a moral agent with the obligation to relieve the distress of its citizens. See *id.* at 759 (statement of Rep. Mercer). In the New York fire relief debate, Representative Hunt responded to assertions that the relief would obligate Congress to provide for other similar fires “whenever Savannah,

precedents, they have them in the repeated acts of this Government in charity for the visitations of Providence. . . . [W]ith these before us, what are you to say to these people who have been ruined by the acts of enemies of this country[?]"<sup>317</sup> In pointing to precedent for justification, Congress described itself as obligated to entertain—and pay—claims on federal funds for the relief of similar circumstances.<sup>318</sup>

#### *D. Congress as Casuist: The Moral Status of the Disaster Victim*

1. *The Moral Economy of Disaster Relief.*—The previous Parts of this Article describe how, beginning in 1789, the federal government engaged in an extensive, often bureaucratically administered, program of transferring and redistributing resources for the relief of individual and community distress. Concerns about precedent and equitable treatment contributed, however, to the construction of narratives that distinguished among events and petitioners—certain events were compensated while others were ignored.<sup>319</sup>

Successful appeals told of events in a particular narrative form: sudden, unforeseeable events for which the petitioner was blameless and that caused losses implicating the federal government. Although petitioners were always described as heroic, suffering victims, it was not necessary that they be said to be destitute, or even needy. It was only required that they claim to have suffered losses through no fault of their own.

For example, in 1800, the Committee on Claims reported against the petition of distillers for a remission of a license fee. The distillers claimed that the drying-up of the spring that fed their stills caused their distress. Because they did not have productive stills for the license period, they requested a refund of the license fee. The Committee, however, blamed the distillers for their own loss, saying that they should have “take[n] licenses for shorter periods” of time. The relief was denied.<sup>320</sup>

This attention to the relative moral blameworthiness of the claimant may have been a consequence of the need to locate the requested relief within a set of precedents. For example, supporters of relieving distress caused by the Whiskey Rebellion quickly distinguished their situation from those injured by the British or the Creeks, inaugurating what would become the single most important theme in disaster relief: they asserted that the

or any other place, shall present a case similar in principle to the present one, we shall be bound to act upon it.” 12 CONG. DEB. 2587 (1836) (statement of Rep. Hunt).

<sup>317</sup> *Id.* at 2445 (1837) (statement of Rep. White).

<sup>318</sup> Reliance on the Enclave Clause, *see supra* notes 228-37 and accompanying text, as a source of congressional authority for the appropriation did not militate against its use as a precedent in future appropriation debates. *See, e.g.*, CONG. GLOBE, 24th Cong., 1st Sess. 2582-84 (1836).

<sup>319</sup> Losses that were argued by the petitioner to be caused by the operations of the market, particularly for unemployment relief, were not relieved by the federal government during the period 1789-1864. *See infra* notes 327-36 and accompanying text.

<sup>320</sup> *See* 9 AMERICAN STATE PAPERS (Claims) No. 109 (1800) (report of Rep. Harper for the Committee of Ways and Means, on the petition of David Wiley).



Pennsylvanians were not to blame for their losses, and that compared to others, they were innocent. In the case of Indian attacks, it was argued that those settlers had assumed the risk of loss by “plac[ing] themselves in a place of danger knowingly.’ The Creeks were an open enemy, but the insurgents an unexpected one.”<sup>321</sup>

Congressional advocates and opponents quickly lined up on the issue of fault. Some argued that those who lost property because they openly supported the excise tax were innocent of all wrongdoing and thus the most deserving of relief;<sup>322</sup> others contended that there was no moral difference between those who had suffered in defense of the government and those injured accidentally.<sup>323</sup> Congress eventually delegated the authority for determining blameworthiness to the President by granting extensive discretion in the distribution of the funds. Members of Congress believed that a commissioner sent to Pennsylvania would be better able to determine who deserved relief by examining the issue on both sides.<sup>324</sup>

The moral innocence of the claimant was the most frequently given justification for providing relief in petitions debated on the floor of either house or reported on by a congressional committee<sup>325</sup> between 1789 and 1870, as shown in Figure 2, below.<sup>326</sup>

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<sup>321</sup> 3 ANNALS OF CONG. 993 (1794) (statement of Rep. Dexter).

<sup>322</sup> See, e.g., *id.* at 985 (statement of Rep. Boudinot).

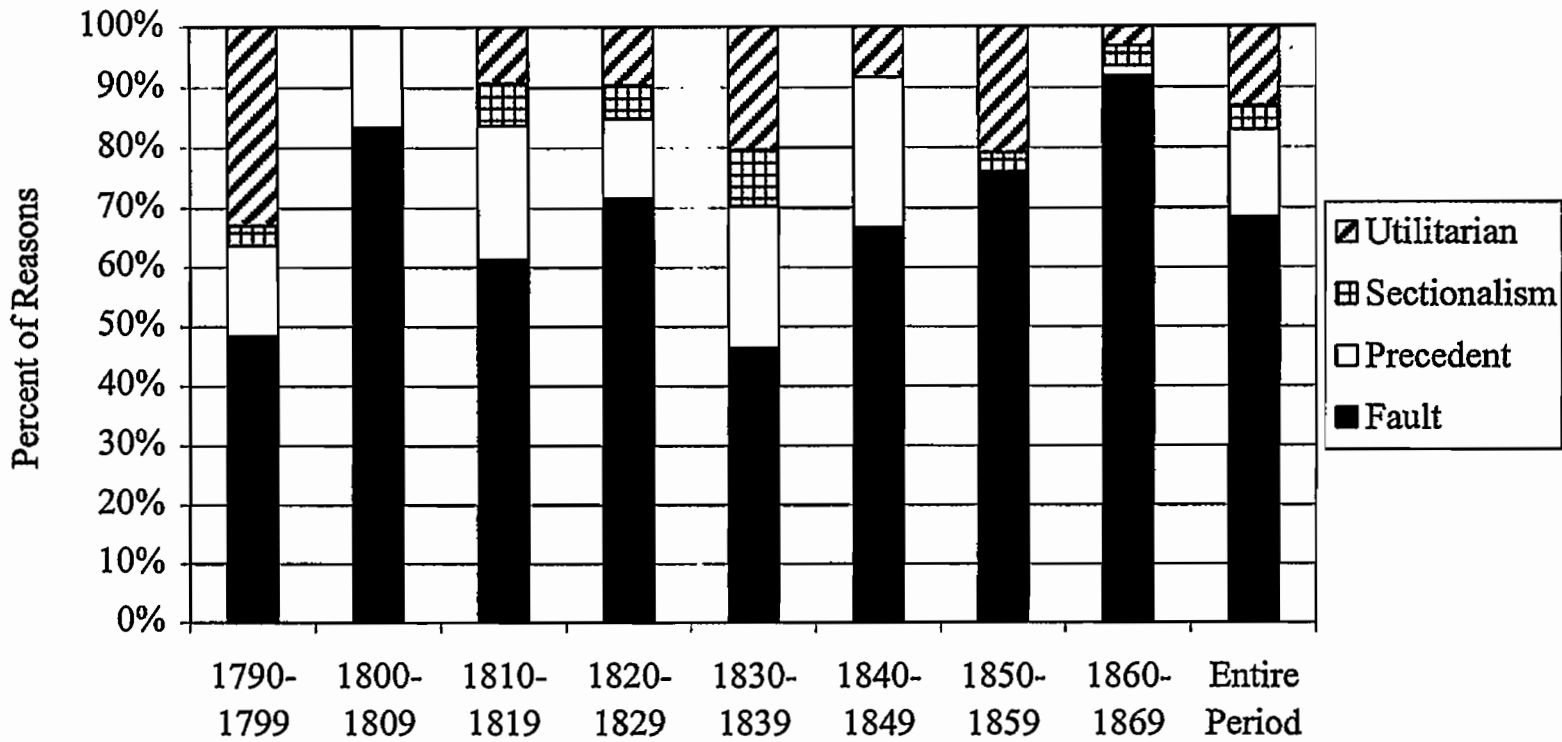
<sup>323</sup> See, e.g., *id.* (statement of Rep. Sedgwick).

<sup>324</sup> See *id.* at 1002. The language ultimately adopted called for the President to ascertain the extent of the losses sustained by citizens “by the actual destruction of their property (in consequence of their exertions in support of the laws),” however, the payment of damages was separate from their assessment, and was to be in the discretion of the President for those who “stand in need of immediate assistance.” *Id.*

<sup>325</sup> I coded statements as referring to the moral status of the claimant when they referred *directly* to the innocence of the claimant in producing their hardship; the inability of any person to have foreseen events that caused the distress; or the blameworthiness of some other agency in bringing about the hardship. Statements were coded as referring *indirectly* to the moral status of the claimant when they contained references to piety, hard-working nature, a high-class status immediately prior to the event causing the loss, or chastity (in women). When it was ambiguous whether the statement referred to one of the given categories, it was discarded.

<sup>326</sup> Figure 2 is based upon a selection of twenty-seven events engendering Congressional debates, committee reports, and petitions for the period from 1789 through 1874. The selections were made on the basis of the length of the debate or report for each “disaster.” The selections are divided evenly between successful and unsuccessful petitions or bills, and includes both private and class-based relief claims. This strategy is designed to reveal the arguments employed at key moments in the development of the rhetoric of disaster relief over this period. The following events are included in both Figure 1 and Figure 2: 1790 petition of John Amelung for relief for his glass factory following a fire; 1794 petition for indemnity for American merchants from British piracy and spoiliations; 1794 relief for white refugees fleeing the slave revolt on St. Domingo; 1795 petition for relief of the Whiskey Rebellion; the 1796 Savannah fire; 1800 petition for the remission of duties on stills; the 1805 claim of Alexander Scott for losses due to theft of slaves by Cherokee Indian; 1806 petition of Richard Sexton for disappointed expectations under a government contract; 1806 petition of Rebecca Hodgson for the fire loss of her house; 1815 petition for relief of Creek Indian depredations; 1816 petition for loss of Ship Allegany; 1816-1818 debates over relief for the

Figure 2  
Reasons Given for Supporting Relief, 1790-1869



2. *Exceptional Poverty*.—One of the most frequent ways moral desert appeared in disaster narratives was in accounts of sudden loss of class status or privilege. In the short debate over appropriation of \$190,000 in relief following the 1874 Mississippi River flood, Representative Morey noted that “[t]his distress is confined to no class of people. The colored laborer and the tenderly nurtured southern lady are alike suffering.”<sup>327</sup> Furthermore, the Mississippi claimants could be distinguished from the “forty thousand suffering and starving poor in the city of New York”<sup>328</sup> because their class status was taken suddenly and unfairly away from them, but the unemployed should get a job. The poor of New York had “the ordinary means of occupation” available, while the flood sufferers had “no prospect of employment.”<sup>329</sup> Representative Morey noted that these people had nowhere to go but New Orleans, “where they already have their own poor.”<sup>330</sup>

Those already poor in New Orleans were not to receive the benefits of any federal charity, however. That was reserved only for those whose “homes have been swept from under them . . . without the means to obtain a single meal.”<sup>331</sup> Congressional relief appropriations thus distinguished between ordinary poverty and “exceptional”<sup>332</sup> poverty by sifting the morality of the poor.

Sudden loss of class status served therefore as a proxy for blamelessness and unfair victimization by fate. Representative Carson recounted to the House how, after visiting the scene of the fire at Alexandria in 1827,

he could not help but reflect on the situation of many of his fellow-beings, who had the night before slept in security, and this night had not where to lay their

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War of 1812, and for claims on the Niagara frontier; 1820 petition for loss of property at Valley Forge during the Revolutionary War; 1820 claim of Martha Youngs for property burnt by the Americans during the Revolutionary War; 1822 petition of Elizabeth House for compensation; 1824 petition of Isaac Poole for losses incurred due to attack by pirates; 1825 petition for the loss of the Schooner William Yeaton while transporting aid to the victims of the Caracas earthquake; 1827 Alexandria fire; 1836 petition for relief following Seminole Indian war; 1836 New York fire; 1840 petition for the relief of Elbert Anderson for failure of government contract; 1841 petition of government mechanics for unemployment compensation; 1846 petition for relief following Seminole Indian war; 1852 petition for relief of Spanish subjects injured in mob violence in New Orleans; 1854 petition for the relief of distressed seamen; 1862-64 petition for relief of settlers and loyal Indiana following Sioux Indian War. Within each decade, every case is equally weighted. For the “entire period” column, each decade is equally weighted. Reasons given for denying relief are given in Figure 1, *supra* at page 1010.

<sup>327</sup> 2 CONG. REC. 3151 (1874) (statement of Rep. Morey).

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> *Id.* at 3172.

heads—who had that very morning risen in comfortable, perhaps affluent circumstances, and at night found themselves without a dollar in the world.<sup>333</sup>

Those “suddenly made poor by an act of Providence”<sup>334</sup> could not be held responsible for their own misfortune. Their situation was distinct, and they would not become “a burthen upon the community,”<sup>335</sup> as were the slothful and impoverished. The suddenly destitute should be given the tools with which to “provide the means of their subsistence, and would gradually, by their labor and exertions, contribute towards the wealth and defence of the nation.”<sup>336</sup>

3. *Foreseeability and Fate.*—The argument often was advanced that the claimant’s loss was occasioned by fate rather than by the victim’s failure to adequately foresee or forestall distress. James Madison recommended relief for Tobias Lear, the commercial agent of the United States in St. Domingo at the time of the revolution, for example, because “the course of business to which the office was expected to lead was cut off by a state of things altogether peculiar and unforeseen.”<sup>337</sup> In this case, Madison argued that Lear deserved relief not only because he experienced sudden downward mobility, but because his hopes were dashed by events he could not have foreseen or guarded against.

Those who did not succeed in arguing that they could not guard against their losses did not obtain relief. Most often in this category were losses attributed to the workings of the market, either for unemployment or business failure. In 1840, the Committee on Claims reported against the petition of Martha Bailey for relief based on the fact that her late husband had not earned the expected profit from his contract to provide army rations. He had been disappointed like Lear, but it was due to a tax imposed on whiskey that had raised the price. Representative Giddings stated that the “entire risk of loss and hope of gain were taken by the contractor.”<sup>338</sup> In short, any competent businessman would take into account the risk of price fluctuations.

Similarly, Congress would not remit the duties paid twice by Nathaniel Cutter when he could not unload goods at St. Domingo due to the revolution. The committee noted that he was aware of the political events there before he left for the West Indies, and “cannot find any good reason for re-

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<sup>333</sup> 3 CONG. DEB. 759 (1827) (statement of Rep. Carson).

<sup>334</sup> *Id.* at 766 (statement of Rep. Campbell).

<sup>335</sup> *Id.* at 772 (statement of Rep. Drayton).

<sup>336</sup> *Id.*

<sup>337</sup> Letter from James Madison, Secretary of State, to Congress (Jan. 25, 1803) *reprinted in* 9 AMERICAN STATE PAPERS (Claims) No. 136 (1803).

<sup>338</sup> H.R. REP. NO. 692, at 2 (1840) (statement of Rep. Giddings).

lieving him against the consequences which every exporter ought to calculate for himself.”<sup>339</sup>

#### 4. *Race and Relief.*

*Mr. Max, you know what some white men say we black men do? They say we rape white women when we got the clap and they say we do that because we believe that if we rape white women then we'll get rid of the clap. That's what some white men say. They believe that. Jesus, Mr. Max, when folks says things like that about you, you whipped before you born. What's the use?*<sup>340</sup>

Richard Wright entitled his compelling narrative of Bigger Thomas's courtroom odyssey “Fate,” and there uses the voice of Bigger's Communist Party lawyer Max to describe the relation between race and blame in American society.

A man's life is at stake. And not only is this man a criminal, but he is a black criminal. And as such, he comes into this court under a handicap, notwithstanding our pretensions that all are equal before the law. This man is *different*, even though his crime differs from similar crimes only in degree.<sup>341</sup>

And Bigger Thomas, a murderer before he killed, tells Max how he was rendered irretrievably guilty by the fact of his race. “I'm black. I don't have to do nothing for 'em to get me. The first white finger they point at me, I'm a goner, see?”<sup>342</sup> For Wright, race was the touchstone of blame in the American legal order.<sup>343</sup>

Bigger's effort to obtain leniency from the judge hinged on his ability to narrate events in his own life as misfortunes of fate. It was his race—being born Black into a world of white racism—that Max tried to describe as a disaster. And, Wright argues, it was Bigger's race that impeded his ability to persuade a white judge that Bigger was impelled to kill by forces beyond his control. The notion that race is often the glue that binds guilt or innocence to particular actors is well theorized. Albert Memmi's famous essays on French colonial rule in Africa discuss the way a racialist economic organization depends upon the relative moral and legal blameworthiness of rulers and subjects:

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<sup>339</sup> 3 AMERICAN STATE PAPERS (Finance) No. 120 (1798).

<sup>340</sup> RICHARD WRIGHT, *NATIVE SON* 406-07 (restored ed. 1993).

<sup>341</sup> *Id.* at 444.

<sup>342</sup> *Id.* at 407.

<sup>343</sup> For an insightful discussion of Wright's novel and its efforts to evoke empathy for Bigger, see MARTHA C. NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* 93-97 (1995).

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whites, even when facing otherwise identical exigencies. For example, following the 1927 Mississippi River flood, whites were viewed as suffering victims of Nature entitled to relief, while Blacks were crowded into slave labor camps on dangerous levee tops where even children were lucky if they were fed or housed. William Percy, the local Red Cross head in Greenville, Mississippi, harangued a group of Blacks angered by the shooting of a Black man by a white work-gang boss that they did not deserve even the meager assistance they had received:

For four months I have struggled and worried and done without sleep in order to help you Negroes. Every white man in town has done the same thing. . . . We white people could have left you to shift for yourselves. Instead we stayed with you and worked for you, day and night. During all this time you Negroes did nothing, nothing for yourselves or for us. . . . Because of your sinful, shameless laziness, because you refused to work in your own behalf unless you were paid, one of your race has been killed. . . . I am not the murderer. That foolish young policeman is not the murderer. The murderer is you! Your hands are dripping with blood. Look into each other's face and see the shame and the fear that God set on them. Down on your knees, murderers, and beg your God not to punish you as you deserve.<sup>347</sup>

Percy's charge that Black flood victims were murderers may seem no more than an extreme example of Southern race hate. Yet it can also be seen as a consequence of the simple binary structure of the disaster narrative itself, in which there are only two roles—victim and disaster. If Blacks were displaced from the role of victim by the dominant logic of the Southern racial hierarchy, they were available to fill the other narrative role, that of “disaster.”

The plausibility of Blacks and other racial minorities as occupants of the disaster role was greatly enhanced by their similarity, in the prevailing racial ideology, to the archetypal occupant of this role: Nature itself. Nowhere is this clearer than in “disasters” involving American Indians.<sup>348</sup> Indians often found to their dismay that their efforts to portray themselves as the victims of unjust American policies or unscrupulous Indian agents were overwhelmed by the successful efforts of white settlers to recast them as the sources of misfortune. Native American men and women could easily be-

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<sup>347</sup> JOHN M. BARRY, *RIISING TIDE: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* 334 (1997).

<sup>348</sup> Berkhofer notes that one of the strongest threads in conceptions of Indians, from the early history of European conquest to the present, is the identification of Native Americans with Nature. European explorers saw Indians through the lens of a primitivism developed as a critique of what was seen as a corrupt and overly complicated modern social order. This romantic image of Indians as living in harmony with nature has co-existed, Berkhofer argues, with its rhetorical dual, the image of Indians as an unbridled, and hence dangerous, natural force. BERKHOFFER, *supra* note 345, at 72-85; *see also* MEMMI, *supra* note 344, at 67-72 (arguing for a similar pattern in the African colonial experience).

come, in the conjoined narratives of disaster and primitivism, a “tornado of savage fury.”<sup>349</sup>

The debates surrounding relief for white settlers following the Sioux Indian war of 1862 provide a vivid example. At stake was over \$4 million in federal resources in Sioux annuities that might be used for the benefit of the victims. Both sides produced accounts of their innocent victimization at the hands of another. The settlers, of course, said that they were utterly blameless—that the Sioux were devils incarnate.<sup>350</sup> And the Sioux in turn produced an account of fraud and exploitation at the hands of the government.

“[H]ere is the proximate cause,” of the uprising, argued New England Representative Fessenden. “The proximate, if not chief cause of this outbreak is to be found . . . in the fact that the Government withheld from the Indians the money which by treaty it was bound to pay.” He asserted that the Indians were victims of white greed and government fraud. “For two years the Indians have demanded to know what has become of their money, and again and again have threatened revenge unless they were satisfied.”<sup>351</sup>

In reply, Representative White invoked archetypal images of good and evil in appealing instead for relieving the settlers: “A minister of the gospel, who was driven from his home by these merciless savages, has written to me demanding that I shall vote for their extermination.”<sup>352</sup> The settlers were industrious, Christian people who

were compelled to fly from their homes without a moment’s warning. They could take nothing with them, and were only too happy to elude their wily foes and escape with their lives. All that was left behind—houses, barns, crops, horses, cattle, and clothing—was either destroyed or carried away by the Indians. They have no homes to go return to. Thousands who, a short time ago, were in comfortable circumstances, are now homeless and shelterless, seeking a scanty subsistence at the hands of public charity.<sup>353</sup>

The innocence of the whites should be contrasted with the narrative of blame and responsibility told about the Sioux. The account given of the two groups by Representative Windom is literally the tale of innocence raped by inherent evil.

<sup>349</sup> CONG. GLOBE, 37th Cong., 3d Sess. (1863) (speech of Rep. Windom).

<sup>350</sup> *See id.*

<sup>351</sup> CONG. GLOBE, 37th Cong., 3d Sess. 192 (1863) (statement of Rep. Fessenden). Although part of Representative Fessenden’s argument was that the uprising was totally predictable, he did not oppose relief for the whites. He opposed seizure of Sioux assets and abrogation of the treaties, given that the government was the wrongdoer. In his account, both the Sioux and the whites were victims of federal fraud.

<sup>352</sup> CONG. GLOBE, 37th Cong., 3d Sess. 180 (1863) (statement of Rep. White).

<sup>353</sup> *Id.* This claim also refers to the sudden poverty of the whites. *See supra* notes 328-37 and accompanying text.



Another little girl, nine years of age, was subjected to treatment still more brutal. In consequence of her tender years, the savages resorted to horrid mutilations on her person to enable them to gratify their lustful desires. . . . While suffering these barbarities, their cries are represented to have been of the most heart-rending character."<sup>354</sup>

Representative Windom's characterization of Indian miscreants portrayed the forces causing the distress of the white settlers as a force of nature—bestial, savage, animalistic—a tornado—beyond any ability to predict or prevent.

In fact, Indians and other disenfranchised groups were often more likely to be cast in the disaster role than was Nature itself, because their debased status highlighted by contrast the moral innocence of their "victims." Wright compels the reader to grasp this insight when Max's effort to cast Bigger as a victim of social forces beyond his control fails. Instead, the prosecutor transforms Bigger into the natural disaster that befell the story's real victim, Mary Dalton:

It is a sad day for American civilization when a white man will try to stay the hand of justice from a bestial monstrosity who has ravished and struck down one of the finest and most delicate flowers of our womanhood.

Every decent white man in America ought to swoon with joy for the opportunity to crush with his heel the woolly head of this black lizard, to keep him from scuttling on his belly farther over the earth and spitting forth his venom of death!<sup>355</sup>

Max was unable to muster the narrative resources necessary to sustain the story of white racism as a natural disaster that hit Bigger in part because entrenched racism pushed Bigger with tremendous force into the role of a natural disaster. The effort required to simultaneously pull Bigger from this role as a calamity in the life of white people and transform him into a victim of "that white tide of hate"<sup>356</sup> was impossibly difficult in Wright's 1930s Chicago.<sup>357</sup>

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<sup>354</sup> CONG. GLOBE, 37th Cong., 3d Sess. app. 142 (1863) (statement of Rep. Windom).

<sup>355</sup> WRIGHT, *supra* note 340, at 476.

<sup>356</sup> *Id.* at 418.

<sup>357</sup> Max's Communism allows Wright to extend this analysis from race to class in the final pre-execution meeting between lawyer and client, when he tells Bigger that

They have things arranged so that they can do those things and the people can't fight back. They do that to black people more than others because they say that black people are inferior. But, Bigger, they say that *all* people who work are inferior. And the rich people don't want to change things; they'll lose too much. But deep down in them they feel like you feel, Bigger, and in order to keep what they've got, they make themselves believe that men who work are not quite human. They do like you did, Bigger, when you refused to feel sorry for Mary.

*Id.* at 500.

In sum, through a series of relief appropriations during the eighteenth and nineteenth centuries, Congress established a federal responsibility for private relief in cases described as sudden, and for beneficiaries characterized as blameless victims. Consequently, each appropriation hearing found Congress as casuist, evaluating the moral status of the claim and the claimants. However, the ability of claimants to successfully portray themselves as deserving victims of unpredictable forces beyond their control was, and continues to be, infused with a politics of race, gender, and class. Viewed in this way, disaster relief disbursements provide an index to the way in which moral virtue is built into the foundation of domination in the American state. The next part of this Article turns to the way this first federal relief entitlement established a critical part of the scaffolding over which later American social welfare discourses and procedures were built.

#### IV. EPILOGUE—FATE, RESPONSIBILITY, AND THE NEW DEAL

##### *A. Roosevelt's Social Work*

On April 7, 1936, a tornado leveled the town of Gainesville, Georgia.<sup>358</sup> Relief workers from the American Red Cross later described Gainesville as a “tumbled mass of ruins,”<sup>359</sup> through which grief-stricken residents wandered aimlessly among the twisted and burned wreckage of their homes, jobs, and lives.<sup>360</sup>

Stumping through Gainesville nearly two years later, President Franklin Roosevelt spoke from the steps of a newly rebuilt Gainesville City Hall. Roosevelt had traveled to Gainesville in the days immediately following the twister to survey the damage and provide assurances of federal relief. Now, in 1938, he returned to seek support for the continuation and expansion of the New Deal, referring the generally conservative Southerners<sup>361</sup> to their own recent privation as an index for the needs of the Nation:

You had needs—great needs. They were met in accordance with the democratic principle that those needs should be filled in proportion to the ability of each individual to help. . . . This has a national significance and . . . [t]he appli-

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<sup>358</sup> See AMERICAN RED CROSS, SPRING FLOODS AND TORNADOES 29 (1936).

<sup>359</sup> *Id.* at 28.

<sup>360</sup> See *id.* at 29.

<sup>361</sup> Southern states, including Georgia, were at that time resistant to the New Deal, particularly to the expansion of administrative agency power. Georgia was one of the most conservative states, consistently opposing the expansion of New Deal relief programs and agencies. See JOSEPH T. PATTERSON, CONGRESSIONAL CONSERVATISM AND THE NEW DEAL: THE GROWTH OF THE CONSERVATIVE COALITION IN CONGRESS, 1933-1939, at 227, 344 (1967).

cation of this principle to national problems would amply solve our national needs.<sup>362</sup>

Roosevelt in 1936 had ordered the federal government to spend over \$1 million reconstructing Gainesville and providing direct relief to its suddenly impoverished residents.<sup>363</sup> And though the President was perhaps in a crude sense calling in his marker by requesting their support for relieving the distress of "one third of our population which [is] . . . ill-fed, ill-clad and ill-housed,"<sup>364</sup> he more significantly suggested an identity between the natural disaster of the tornado and the economic devastation of the depression. "Gainesville suffered a great disaster. So did the Nation in those eight years of false prosperity followed by four years of collapse."<sup>365</sup> The depression was, to Roosevelt, no less wrenching a catastrophe than the cyclone that tore apart Gainesville; and no less deserving of the full panoply of direct relief measures constituting the American response to crisis and emergency.

Taking Roosevelt seriously and not as merely given over to metaphoric excess, we find a window into the genesis of his New Deal and the American version of the welfare state. Between the Gainesville relief effort in 1936 and the 1938 speech, the nation had experienced a severe recession.<sup>366</sup> Roosevelt, feeling intense pressure from conservatives in his Administration and in Congress, drastically curtailed spending for relief.<sup>367</sup> By March, 1938, the economy had returned nearly to its low of 1932, with four million newly unemployed.<sup>368</sup>

Finally, in the days immediately prior to the Gainesville speech, liberal New Dealers Harry Hopkins and Aubrey Williams confronted Roosevelt at his retreat in Warm Springs, Georgia, and "stampeded" him into embarking on a \$3.75 billion relief program.<sup>369</sup> He first introduced these intensified relief efforts to the American public in his speech at Gainesville, carefully

<sup>362</sup> Franklin D. Roosevelt, *The United States is Rising and is Rebuilding on Sounder Lines*, Address at Gainesville, Georgia (Mar. 23, 1938), reprinted in 7 ROOSEVELT PAPERS, *supra* note 49, at 164-65.

<sup>363</sup> *See id.* at 166.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.* at 168.

<sup>366</sup> *See* WILLIAM E. LEUCHTENBURG, *FRANKLIN D. ROOSEVELT AND THE NEW DEAL 1932-1940*, at 231-56 (1963).

<sup>367</sup> *See id.* at 244. Despite widespread unemployment and poverty during the recession, Roosevelt slashed the WPA rolls. Harry Hopkins reported in May, 1938 that there was mass starvation in seventeen Southern states. The North did no better: unable to meet the demand for assistance without federal money, Chicago closed all its relief offices in the spring of 1938. *Id.* at 249. Nevertheless, Roosevelt refused to increase spending on relief, telling his cabinet that "[e]verything will work out all right if we just sit tight and keep quiet." *Id.* at 247 (quoting Franklin D. Roosevelt).

<sup>368</sup> *See id.* at 256.

<sup>369</sup> *See id.* at 256-57. This relief program included \$1.4 billion for the WPA, nearly \$1 billion for massive public works projects, and hundreds of millions for low-income housing, food, crop support, and general assistance. *See id.*

tying his new spending initiatives to the legitimacy of the disaster relief afforded to that community. Clearly, Roosevelt understood how critical it was to successfully narrate the depression as a disaster—an emergency—not because of anything peculiar to tornadoes, but because of the particular history of the American response to need.<sup>370</sup>

Roosevelt was not, however, the author of his rhetorical move. In the course of defending the New Deal against the rising conservative backlash, he borrowed from Wisconsin Senator Robert LaFollette, Jr., who first invoked the American history of disaster relief in support of direct federal relief for the unemployed during the drought of 1930-31. In hundreds of speeches, both in Congress and out, LaFollette and his young ally, Senator Edward Costigan of Colorado, drew attention to the boundary between “natural” and “economic” catastrophes and then demolished it:

[I]f this had been an earthquake there would be no question about the Federal Government promptly and generously discharging its responsibility, but because these millions of unemployed and their dependents are the victims of an economic earthquake, caused by bankruptcy in leadership of American industry, finance, and Government, an attempt is made to discredit any appropriation for their relief by the Federal Government by calling it a dole.<sup>371</sup>

LaFollette repeatedly read into the record long lists of prior appropriations for disaster relief in order to prove both the Constitutionality of direct federal relief and the duplicity of the opposition. These recitations by LaFollette and his allies, included the Alexandria fire of 1827, the Mississippi River flood of 1874, the San Francisco earthquake, the Chicago fire, and a host of “wars . . . earthquakes, droughts, floods, plagues.”<sup>372</sup>

LaFollette and Costigan contended, exactly as members of Congress had for over a century, that the history of appropriations for disaster created an obligation—a duty—on the part of the federal government to relieve distress in all analogous cases. “[T]o refuse to meet this situation by a Federal appropriation is a violation of traditional American policy and is counter to the spirit of generosity which has always actuated the Government of the United States under similar conditions.”<sup>373</sup>

In addition to arguing precedent, the relief advocates again and again, in speech after speech, linked the moral agency of the unemployed to the deserving disaster victim. Costigan, in a 1932 radio address, argued that “[c]ertainly all of us concede that abandonment to unrelieved distress is

<sup>370</sup> See *infra* notes 376-80 and accompanying text.

<sup>371</sup> 74 CONG. REC. 703 (Dec. 15, 1930).

<sup>372</sup> *Id.* at 710 (statement of Massachusetts Sen. Walsh) (reading from an editorial he wrote for the *Washington Evening Star* on Dec. 15, 1930). See also 74 CONG. REC. 4437 (Feb. 10, 1931) (statement of Sen. LaFollette listing prior relief expenditures).

<sup>373</sup> 74 CONG. REC. 4437 (Feb. 10, 1931) (statement of Sen. LaFollette).

unthinkable when our countrymen are blamelessly stricken by drought, plague, or general economic paralysis."<sup>374</sup> LaFollette challenged a reluctant colleague to

explain, if he can, what difference it makes to a citizen of the United States, if he be homeless, without food and clothing, in the dead of winter, whether it is the result of a flood, or whether it is due to an economic catastrophe over which he had no control? I see no distinction, in so far as those who are suffering from the condition are concerned, and it is those people in whom I am interested and in whom I hope the Congress will become interested.<sup>375</sup>

LaFollette was ultimately unsuccessful in persuading Hoover to support direct federal relief for unemployment, and though he made numerous attempts, it was not until Roosevelt's election in late 1932 that his arguments about disaster relief gained currency. In January 1933, Roosevelt invited Senator LaFollette to his retreat in Warm Springs, Georgia. They discussed numerous issues including unemployment relief. LaFollette later told his brother that Roosevelt "was in substantial accord with the progressive position."<sup>376</sup>

With the support of key administration figures like Harry Hopkins and Frances Perkins, LaFollette and Costigan introduced still another bill for the direct relief of unemployment and held subcommittee hearings on the bill in February 1933, just weeks before Roosevelt's inauguration. Hopkins, who was then the Chairman of the New York State Temporary Emergency Relief Administration, testified at the hearings, in which the entire history of federal disaster relief appropriations in the form of a seven-page table was placed into the Committee report as precedent supporting unemployment relief.<sup>377</sup>

During the first Hundred Days, newly appointed Relief Administrator Harry Hopkins and Labor Secretary Frances Perkins met repeatedly with Senator Costigan regarding the LaFollette-Costigan Bill. Within days of the inauguration, Roosevelt met with Hopkins, Perkins, LaFollette, Costigan, and Senator Robert Wagner, to discuss the relief bill. With the President's support, it passed quickly, on March 30, 1933.<sup>378</sup> Disaster relief

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<sup>374</sup> See 75 CONG. REC. 11,880 (June 3, 1932).

<sup>375</sup> 74 CONG. REC. 708 (Dec. 15, 1930).

<sup>376</sup> PATRICK J. MANEY, "YOUNG BOB" LAFOLLETTE: A BIOGRAPHY OF ROBERT M. LAFOLLETTE, JR., 1895-1953, at 106-07 (1978).

<sup>377</sup> See *Federal Aid for Unemployment Relief: Hearings on S. 5125 Before the Subcomm. of the Comm. on Manufactures, 73d Cong., 1st Sess. 547-53 (1933)* (table entitled *Relief Legislation, 1803-1931*). This list began 15 years prior to the Alexandria fire, with the Caracas earthquake of 1812. See *id.*

<sup>378</sup> See FRED GREENBAUM, *FIGHTING PROGRESSIVE: A BIOGRAPHY OF EDWARD P. COSTIGAN* 133-34 (1971).

provided the explicit foundation for Depression unemployment relief, and for New Deal relief efforts generally.<sup>379</sup>

The role of disaster relief in the passage of New Deal relief legislation later figured prominently in its courtroom defense. In 1937 Roosevelt's solicitor general pressed LaFollette's point before the Supreme Court. In the course of defending federal spending under the Agricultural Adjustment Act, the administration explicitly asserted that the history of disaster relief, including the appropriation for the Whiskey Rebellion, was the legal precedent supporting the federal government's ability to spend money for relief of the Great Depression.<sup>380</sup> *United States v. Butler* was the most significant Supreme Court case in the formation of the American welfare state. Just as LaFollette did in Congress, just as Roosevelt did on the steps of the courthouse in Gainesville, Roosevelt's lawyer argued before the Court that there was an identity between the moral status of those thrown out of work by the Depression with those thrown out of their homes by wars, floods, and fires.

At the root of the persisting distinction between disaster relief and poor relief lie moral judgments about the blameworthiness of the victims, about ascriptions of fault and fate. Roosevelt's appeals, both in Gainesville and elsewhere<sup>381</sup> linking the depression and unemployment to tornadoes, floods,

<sup>379</sup> See Michele L. Landis, *Fate, Responsibility and "Natural" Disaster Relief: Narrating the American Welfare State 34-70* (1998) (unpublished manuscript) (on file with author).

<sup>380</sup> See Brief for the United States at 154-55, *United States v. Butler*, 297 U.S. 1 (1935)(No. 401).

<sup>381</sup> Roosevelt's discussion of the depression relied on characterizations of emergency, disaster, catastrophe and crisis. Indeed in his inaugural address, he called up the image of "a plague of locusts," distinguishing the depression only insofar as it was not caused by God but by human greed and avarice. Inaugural Address (Mar. 4, 1933), reprinted in 2 ROOSEVELT PAPERS, *supra* note 363, at 11. See also Presidential Statement on N.I.R.A.—"To Put People Back to Work," (June 16, 1933), in 2 ROOSEVELT PAPERS, *supra* note 49, at 251 ("first . . . to get many hundreds of thousands of the unemployed back on the payroll by snowfall . . . is an emergency job. It has the right of way."). In addition, Roosevelt issued numerous proclamations of relief for various earthquakes, fires, and floods in which, as in Gainesville, he drew our attention to his policies not just of disaster relief but also of general relief for the depression. See, e.g., White House Statement on Federal Assistance in Los Angeles-Long Beach Earthquake Disaster (Mar. 11, 1933), in 2 ROOSEVELT PAPERS, *supra* note 363, at 58. Roosevelt later wrote of his disaster policies that

[i]nstead of relying upon private charities and local efforts. . . I called into action all the resources of the regular Federal departments as well as the emergency agencies. . . [T]here was no hesitation in rushing to the help of the stricken areas the personnel, the finances, and the administrative machinery of the Federal Government.

*Id.* In response to the dustbowl, Roosevelt threw the full alphabet of the New Deal agencies into the relief effort, winning what was then by far the largest discretionary disaster relief appropriation ever—\$525,000,000, including \$125,000,000 for a "special work program and human relief." Statement to Congress Requesting Additional Funds to Carry on Drought Relief (June 9, 1934), in 3 ROOSEVELT PAPERS, *supra* note 363, at 293. Roosevelt's rejection of private and local relief for emergencies (whether natural or economic) stood in sharp contrast to Hoover's repeated veto of drought relief legislation during the drought and starvation of 1930-31. See WOODRUFF, *supra* note 32, at 48-51. Roosevelt did, however, recognize the public preference for relief of "Acts of God" over economic troubles. During the dustbowl he used this preference as an explicit justification for funneling vast sums of poor relief into the Midwest and plains states without the assistance of the Red Cross. See Press Conference No. 51 (Sept. 13, 1933), in 2 COMPLETE PRESIDENTIAL PRESS CONFERENCES OF FRANKLIN

and fires identified the agency of the unemployed with that of blameless victims of sudden catastrophe, to whom the federal government consistently had provided direct relief since 1794. His rhetorical move was not so much to *intimidate* as to *associate* the citizens of Gainesville with the unemployed, thereby to retell poverty as a disaster narrative; to re-vision the shiftless as blameless victims equally deserving of federal relief and assistance. To invoke the image of natural disaster is to enact a set of social relations premised on fate rather than responsibility. A significant part of the social work of Roosevelt's New Deal was to bridge the rhetorical and legal distinctions between the chronic and the calamitous.

### B. Fate, Fault and Welfare Reform

Roosevelt and LaFollette made claims on federal resources by locating relief for the unemployed within the precedent of relief for "disaster" sufferers. This fact helps us to make sense of the particular way in which the welfare state has recently been attacked and dismantled.<sup>382</sup> In order to destabilize the legitimacy of entitlement programs for the poor unemployed, contemporary opponents of transfer programs must now break apart the knots that they tied, re-distinguishing relief applicants by their moral status. Seen in this way, the recent attention to the relative fault of welfare recipients for their "dependency"<sup>383</sup> appears as not merely a mean-spirited attack,

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(Sept. 13, 1933), in 2 COMPLETE PRESIDENTIAL PRESS CONFERENCES OF FRANKLIN D. ROOSEVELT 254, 254-55 (1972).

<sup>382</sup> This is less a theory about *why* the American system of entitlements has been restricted and rescinded, than about *why* claims regarding the blameworthiness of the poor for their own misfortune is such an effective method of separating them from their benefits. However, Leuchtenburg notes that by 1938, unemployment was viewed as chronic rather than as an "emergency", and this perception caused enthusiasm for relief to wane. The model for welfare was based on the emergency relief of disasters, and did not easily adapt to the new normal high levels of unemployment. See LEUCHTENBURG, *supra* note 366, at 263-64, 273-74; see also *Unemployment Relief, Hearings on S. 5125 Before the Subcomm. of the Comm. on Manufactures, 72d Cong., 2d Sess. 354, 359 (1933)* (testimony of Walter West, Executive Secretary of the American Association of Social Workers) (observing that the model for unemployment relief was initially provided by disaster relief for events such as floods and fires). In addition, it was very difficult for the New Dealers to hold a political commitment to relief because as the class position of recipients improved they tended to quickly become more conservative and to distinguish their prior need from the needs of less deserving others. See LEUCHTENBURG, *supra* note 366, at 273-74 & n.63.

<sup>383</sup> For critiques of the rhetoric of welfare reform and its focus on "dependency" as a pejorative concept when applied to welfare recipients, see Martha A. Fineman, *Inevitable Dependency*, Paper presented to the 1997 Annual Meeting of the Law & Society Association (May 30, 1997). See also Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS 309 (1994). For discussions of the relationship between gender, blameworthiness, and welfare, see generally MARTHA A. FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995), and the essays collected in *WOMEN, THE STATE AND WELFARE* (Linda Gordon ed., 1990). Similarly, theorists have discussed the relation of racism and rhetorical constructions of the moral blameworthiness of welfare recipients. See, e.g., JILL QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* (1994); GORDON, *supra* note 29, at 46-49. While race, gender, and class all closely affect the ability of the claimant to construct



but as a part of the traditional process of dispute over the extent to which the unemployed have experienced a “natural,” as opposed to a self-imposed, disaster.

To the extent that disaster relief provided the “template narrative” for American social welfare policies, it may be that one of its most insidious, lasting, and expensive consequences is the utter failure of need as a sufficient rationale for government transfer payments. For example, the legacy of this approach may have been visible most recently in the debate over the 1996 welfare reform proposals.<sup>384</sup> On July 8, 1996, President Bill Clinton criticized the welfare bill he would ultimately sign for “punish[ing] the innocent children . . . for the mistakes of their parents.”<sup>385</sup> Health and Human Services Secretary Donna Shalala also distinguished children from their mothers in moral terms. Speaking to Congress, Shalala asserted that placing children in orphanages if their mothers “refuse to work makes sense . . . but making innocent children suffer because of a teenager . . . seems to me unfair and indefensible.”<sup>386</sup> Clinton subsequently attempted to write that distinction into the benefit scheme of the new law through a system of vouchers that would deny cash assistance to the morally blameworthy mother, yet still provide vouchers for such items as diapers, school supplies, and clothing to their “innocent children.”<sup>387</sup>

In another, perhaps more revealing, example of this moral logic, Clinton and House Democrats argued for the preservation of the federal food stamp program because food stamps are distributed to victims of “natural disasters, like Florida’s Hurricane Andrew.”<sup>388</sup> Further empirical research is necessary to trace the links between current welfare debates and historic patterns of provision. It appears, however, that these seamless and apparently natural divisions among the moral statuses of those laying

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a sympathetic narrative within a given historical framework, the history of disaster relief reveals the operation of a more nuanced system of distinctions than one determined solely by patriarchy, racism, or capitalism. It appears that the effect of these variables on the outcomes in resource contests is continuous rather than dichotomous—at certain times it has been relatively harder or easier to muster the narrative resources necessary to persuade the federal government that a claimant possessing particular demographic characteristics is the blameless victim of an unforeseeable catastrophe.

<sup>384</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

<sup>385</sup> President Bill Clinton, Radio Address to the Nation (July 8, 1996).

<sup>386</sup> *Orphanage, Clinton-style*, NEWARK STAR-LEDGER, Jan. 11, 1995, at 3 (quoting Donna Shalala).

<sup>387</sup> *Breaux Joins Clinton in Urging Passage of Welfare Reform*, Government Press Release (July 16, 1996).

<sup>388</sup> *Senate Rejects Changing GOP’s Welfare Plan: Republicans Want to End Guarantee of Aid to the Poor*, BALTIMORE SUN, July 20, 1996, at A7 (quoting North Dakota Democratic Rep. Kent Conrad). See also Elizabeth Shogren, *Democrats Fail in Bid to Soften Welfare Bill Legislation: Senate Blocks Amendment That Would Continue Some Aid After Families Lose Benefits: Final Vote Expected Next Tuesday*, L.A. TIMES, July 20, 1996, available in 1996 WL 11007384 (stating that Democrats wanted to preserve food stamp program because the need increases after natural disasters); *Senate Votes to Tighten Welfare Cash, Sweeping Changes in Bill: Clinton Wants Amendments*, SEATTLE POST-INTELLIGENCER, July 24, 1996, at A1 (quoting President Clinton).



claims to the resources of the federal government simultaneously recall and reinforce the patterns of fault and fate etched into the legal culture by American social welfare spending for disaster relief.

#### V. CONCLUSION

I have argued that the key to understanding both historical and contemporary patterns of American social welfare legislation, policy, spending, and jurisprudence is found in the narratives of blame and fate that surfaced initially in contests over disaster relief. I have demonstrated through the use of historical materials that these appeals were the earliest successful arguments for direct federal relief of deprivation among the general population; that disaster relief constituted the first sustained, organized social welfare program of the federal government of the United States; and that it consequently informed the terms for later federal spending and policy. This was due in large part to the Congress' deep concern with adherence to precedent. One legacy of these precedents may be seen in contemporary state and federal initiatives for "welfare reform," where efforts to reduce entitlement spending rely upon narrative constructions of the relative moral culpability of various beneficiaries for their straits.

## Appendix B

The CHAIRMAN. Is that a part of the gentleman's statement? Permission will have to be asked in the House, unless it is.

Mr. HAGEN. It is a record of the acts of Congress showing aid given by Congress to States, regional areas, and civil units, and municipalities over a period of 147 years, in the case of fires, floods, hurricanes, and other disasters.

The CHAIRMAN. The gentleman will have to ask that permission in the House.

Permission having been granted, the matter referred to follows:

**ACTS OF CONGRESS GRANTING, OR RATIFYING GRANT OF, RELIEF TO SUFFERERS FROM FLOODS, FIRES, EARTHQUAKES, AND SO FORTH**

Act of February 19, 1803 (6 Stat. 49, ch. 6): Extension of time for discharging custom-house bonds of sufferers from Portsmouth fire.

Act of March 19, 1804 (6 Stat. 53, ch. 28): Extension of time for discharging custom-house bonds of sufferers from fire at Norfolk.

Act of May 8, 1812 (2 Stat. 730, ch. 79): Appropriation of \$50,000 for provisions to be sent to government of Venezuela for earthquake sufferers.

Act of February 17, 1815 (3 Stat. 211, ch. 45): Persons owning lands in New Madrid County, Missouri Territory, injured by earthquakes authorized to exchange such land for other public lands.

Act of January 24, 1827 (6 Stat. 356, ch. 3): Appropriation of \$20,000 for relief of fire sufferers at Alexandria, D. C. (now Virginia).

Resolution of February 1, 1836 (5 Stat. 131, No. 1): Rations to be distributed to sufferers from Indian depredations in Florida; no amount specified.

Act of March 19, 1836 (5 Stat. 6, ch. 42): Extension of time for discharging custom-house bonds of sufferers from fire at New York.

Resolution of March 3, 1847 (9 Stat. 207, No. 10): Use of U. S. S. *Macedonian* and *Jamestown* for transporting contributions for relief of famishing poor of Ireland and Scotland.

Act of February 16, 1863 (12 Stat. 652, ch. 37): Relief of persons damaged by Indian depredations in Minnesota; payment from Indian annuities—not exceeding \$200,000.

Joint Resolution of July 4, 1864 (13 Stat. 416, No. 76): Appropriation of \$2,000 for the relief of sufferers from explosion in cartridge factory at Washington arsenal.

Joint Resolution of March 17, 1866 (14 Stat. 351, No. 14): Appropriation of \$2,500 for distribution among sufferers from explosion at Washington arsenal.

Act of July 27, 1866 (14 Stat. 304, ch. 285): Admission, free of duty, of foreign contributions for relief of sufferers from fire at Portland, Maine.

Resolution of July 27, 1866 (14 Stat. 369, No. 92): Suspension of collection of internal-revenue duties from sufferers from fire at Portland, Maine.

Joint resolution of February 22, 1867 (14 Stat. 567, No. 23): Use of public vessel for transportation of food and clothing contributed for relief of people of Southern States.

Joint resolution of March 29, 1867 (15 Stat. 24, No. 17): Charter of vessel by Secretary of the Navy for transportation of provisions to Wilmington, N. C., for distribution among destitute people of the South.

Joint resolution of March 30, 1867 (15 Stat. 28, No. 28): Issue of food supplies through Freedmen's Bureau for relief of persons in Southern and Southwestern States; no amount specified.

Joint resolution of March 30, 1867 (15 Stat. 28, No. 29): Transfer of \$50,000 from funds in charge of Freedmen's Bureau to

Commissioner of Agriculture for purchase of vegetable and cereal seeds for distribution in Southern States.

Joint resolution of January 31, 1868 (15 Stat. 246, No. 7): Issue of desiccated vegetables through Freedmen's Bureau for relief of destitute persons in the South; no amount specified.

Joint resolution of February 10, 1871 (16 Stat. 596, No. 28): Use of naval vessels for transportation of supplies contributed for relief of destitute persons in France and Germany.

Act of April 5, 1872 (17 Stat. 51, ch. 88): Admission, free of duty, of foreign contributions for relief of sufferers from Chicago fire. Draw-back on import duties on building materials for reconstruction. Suspension of collection of internal-revenue taxes from fire sufferers.

Act of April 23, 1875 (18 Stat. 34, ch. 125): Issue of food and Army clothing to sufferers from overflow of lower Mississippi River; no amount specified.

Act of May 13, 1874 (18 Stat. 45, ch. 170): Appropriation of \$190,000 for purchase of food and clothing for relief of sufferers from overflow of Mississippi River.

Act of January 25, 1875 (18 Stat. 303, ch. 25): Appropriation of \$30,000 for special distribution of seeds among sufferers from grasshopper ravages.

Act of February 10, 1875 (18 Stat. 314, ch. 40): Appropriation of \$150,000 for issue of food and clothing among sufferers from grasshopper ravages.

Joint resolution of February 25, 1880 (21 Stat. 303, No. 16): Use of naval or chartered vessel for transportation of contributions for relief of famishing poor of Ireland; indefinite appropriation.

Act of March 5, 1880 (21 Stat. 66, ch. 33): Admission, free of duty, of foreign contributions for the relief of colored emigrants.

Joint resolution of April 28, 1880 (21 Stat. 594, No. 27): Loan of 500 tents to Governor of Missouri for relief of tornado sufferers.

Joint resolution of May 4, 1880 (21 Stat. 306, No. 30): Issue of 4,000 Army rations for relief of sufferers from cyclone at Macon, Miss.

Joint resolution of February 25, 1882 (22 Stat. 378, No. 6): Appropriation of \$100,000 for purchase and distribution of subsistence stores for sufferers from overflow of Mississippi River and tributaries.

Joint resolution of March 10, 1882 (22 Stat. 378, No. 8): Use of Army hospital tents for shelter to sufferers from overflow of Mississippi River; no amount specified.

Joint resolution of March 11, 1882 (22 Stat. 378, No. 9): Use of Government vessels for transportation and distribution of rations and supplies for sufferers from overflow of Mississippi River and tributaries; indefinite appropriation.

Joint resolution of March 21, 1882 (22 Stat. 379, No. 12): Appropriation of \$150,000 for furnishing food for sufferers from floods in Mississippi River and tributaries.

Joint resolution of April 1, 1882 (22 Stat. 379, No. 16): Appropriation of \$100,000 for purchase and distribution of subsistence stores for sufferers from overflow of Mississippi River and tributaries.

Act of April 11, 1882 (22 Stat. 44, ch. 77): Appropriation of \$20,000 for purchase of seeds and distribution among sufferers from overflow of Mississippi River and tributaries.

Joint resolution of February 12, 1884 (23 Stat. 267, No. 9): Appropriation of \$300,000 for purchase and distribution of subsistence stores, clothing, etc., for sufferers from overflow of Ohio River and tributaries. Use of Army tents for shelter to sufferers. Use of Government vessels for transportation and distribution of supplies.

Joint resolution of February 15, 1884 (23 Stat. 268, No. 12): Additional appropriation

of \$200,000 for same objects. (Ohio River, etc.).

Act of March 31, 1890 (26 Stat. 33, ch. 58): Appropriation of \$25,000, for purchase of 2,500 tents to be loaned to State authorities for use of sufferers from floods in Arkansas, Mississippi, and Louisiana.

Joint resolution of April 25, 1890 (26 Stat. 671, No. 16): Appropriation of \$150,000 for purchase and distribution of subsistence stores for sufferers from overflow of Mississippi River and tributaries. Use of Government vessels for transportation and distribution of supplies.

Act of May 14, 1890 (26 Stat. 110, ch. 209): Ordnance, clothing, etc., issued to State of Maine to replace like stores of the militia destroyed by fire January 7, 1890.

Joint resolution of September 1, 1890 (26 Stat. 679, No. 44): Reappropriation of unexpanded balance of appropriation of April 25, 1890, to Territory of Oklahoma for sufferers from drought.

Joint resolution of May 28, 1896 (29 Stat. 475, No. 57): Loan of Army tents to mayors of St. Louis, East St. Louis, etc., for tornado sufferers; no amount specified.

Joint resolution of February 19, 1897 (29 Stat. 701-702) and April 7, 1897 (30 Stat. 219), amended June 1, 1897 (30 Stat. 220, No. 12): Use of naval or chartered vessel for transporting contributions for famishing poor of India; indefinite appropriation.

Joint resolution of April 7, 1897 (30 Stat. 219, No. 9): Appropriation of \$200,000 for purchase and distribution of subsistence stores for sufferers from overflow of Mississippi River and tributaries and Red River of the North.

Joint resolution of May 24, 1897 (30 Stat. 220, No. 11): Appropriation of \$50,000 for purchasing and furnishing of food, clothing, and medicines for destitute citizens of the United States in Cuba, and for their transportation home.

Joint resolution of June 9, 1897 (30 Stat. 221, No. 14): Reappropriation of \$10,000 (remaining under resolution of April 7, 1897) for purchase and distribution of subsistence stores and payment of transportation, for sufferers from overflow of Rio Grande near El Paso.

Act of December 18, 1897 (30 Stat. 226, ch. 2): Appropriation of \$200,000 for purchase, transportation, and distribution of subsistence stores, etc., for destitute persons in mining regions of Alaska. Use of Army and purchase of reindeer, etc., authorized.

Act of March 30, 1898 (30 Stat. 346): Payments on account of injuries, etc., suffered in destruction of U. S. S. *Maine*; indefinite appropriation.

Act of May 18, 1898 (30 Stat. 419, ch. 345): Issue of subsistence, medical, and quartermaster's supplies, etc., to destitute inhabitants of Cuba; no amount specified.

Act of March 3, 1899 (30 Stat. 1069): Appropriation of \$100,000 for subsistence supplies to be issued to destitute inhabitants of Cuba.

Act of May 13, 1902 (32 Stat. 198, ch. 787): Appropriation of \$200,000 for procurement and distribution of provisions, clothing, medicine, etc., for destitute people of French West Indies (eruption of Mount Pelee).

Joint resolutions of April 19, 21, and 24, 1906 (34 Stat. 827, 828, Nos. 16, 17, 19): Appropriation of \$2,500,000 for purchase and issue of subsistence, quartermaster's and medical supplies for sufferers from San Francisco earthquake and fire.

Act of January 18, 1907 (34 Stat. 850, ch. 154): Distribution of provisions, clothing, medicines, etc., among sufferers from earthquake and fire in Jamaica; no amount specified.

Joint resolution of April 30, 1908, and May 11, 1908 (35 Stat. 570, No. 17, 572, Nos. 20

21): Use of Army tents, provisions, and supplies for relief of sufferers from cyclone in Southern States; \$250,000 appropriated.

Act of May 23, 1908 (35 Stat. 251, ch. 191): Allowance of \$600 for expenditures by naval station pay director and \$150 by Marine-Hospital Service, for care of sufferers from fire at Chelsea, Mass.; additional authorization of hospital care, up to \$3,600.

Act of May 27, 1908 (35 Stat. 387 sec. 7): Officers of Isthmian Canal Commission relieved from liability to account for \$11,205.53 used for supplies furnished sufferers from earthquake in Jamaica in 1907.

Act of January 5, 1909 (35 Stat. 584, ch. 7): Appropriation of \$800,000 for procurement and distribution of provisions, clothing, medicines, etc., for suffering and destitute people of Italy (Messina earthquake).

Joint resolution of July 1, 1909 (36 Stat. 183, No. 4): Extension to October 1, 1909, of time allowed for treatment of accident, etc., cases in Chelsea Marine Hospital.

Act of May 13, 1910 (36 Stat. 367, ch. 232): Distribution of tents, blankets, etc., among sufferers from earthquake in Costa Rica; no amount specified.

Act of February 18, 1911 (36 Stat. 919, ch. 11a): Appropriation of \$50,000 for transportation of supplies donated for famine sufferers in China.

Joint resolution of May 9, 1912 (37 Stat. 633, No. 19): Appropriation of \$1,239,179.65 for tents, rations, etc., for sufferers from floods in Mississippi and Ohio Valleys.

Act of August 26, 1912 (37 Stat. 597): Appropriation of \$30,000 to reimburse Revenue-Cutter Service for relief of sufferers from volcano near Kodiak, Alaska.

Same (p. 601): Appropriation of \$4,500 for mileage of Army officers and contract surgeons in connection with relief of flood sufferers in the Mississippi and Ohio Valleys.

Act of March 4, 1913 (37 Stat. 919): Use of \$18,173.69 of funds appropriated May 9, 1912, to reimburse Quartermaster Corps and Medical Corps for relief of flood sufferers in Mississippi, Ohio, and Green River Valleys.

Act of October 22, 1913 (38 Stat. 211): Appropriation of \$5,000 to reimburse Life-Saving Service for rescue and relief of flood sufferers in Middle West.

Same (p. 215): Appropriation of \$654,448.49 to reimburse certain Army appropriations for relief of sufferers from floods, tornadoes, and fires in Mississippi, and Ohio Valleys, Peach Tree, Ala., and Nebraska.

Same (p. 216): Credit of \$42,431.75 to certain Army accounts for expenditures for relief of flood sufferers in Mississippi Valley. Appropriation of \$130,940.38 to reimburse naval appropriations for relief of flood sufferers in Ohio and Indiana and on Ohio and Mississippi Rivers and tributaries.

Joint resolution of November 15, 1913 (38 Stat. 240, No. 15): Use of unexpended balance under act of August 26, 1912 (first provisions cited above) for relief of sufferers from storm in northern Bering Sea.

Act of August 1, 1914 (38 Stat. 637): Appropriation of \$500 for refund of rentals to lessees on Muskingum River damaged by flood conditions; abatement of rentals and termination of leases.

Same (p. 681, sec. 13): Appropriation of \$200,000 for relief of sufferers from fire at Salem, Mass.

Joint resolution of February 15, 1916 (39 Stat. 11, ch. 28): Loan, issue, or use of tents, provisions, and supplies, and Quartermaster's and Medical Departments for relief of sufferers from overflow of Mississippi River and tributaries; no amount specified.

Act of April 11, 1916 (39 Stat. 50, ch. 70): Supply of Army tents, coats, blankets, etc., for sufferers from fire at Paris, Tex.; no amount specified.

Joint resolution of August 3, 1916 (39 Stat. 434, ch. 267): Appropriation of \$540,000 for

relief of flood sufferers in Southern States, including issue of seeds and Army supplies and supplying employment for destitute persons.

Joint resolution of August 24, 1916 (39 Stat. 534, ch. 404): Last preceding provision to apply to West Virginia also.

Joint resolution of June 8, 1921 (42 Stat. 19, ch. 17): Issue of subsistence and quartermaster supplies to persons suffering from overflow of Arkansas River and tributaries in Colorado; no amount specified.

Act of December 22, 1921 (42 Stat. 351, ch. 15): Expenditure of \$20,000,000 from funds of United States Grain Corporation for purchase and distribution of corn, seed, and grain, preserved milk for people of Russia.

Act of January 20, 1922 (42 Stat. 357, ch. 30): Transfer of \$4,000,000 worth of surplus medical supplies to American organizations for Russian relief.

Act of May 28, 1924 (43 Stat. 195): Expenditure from naval supply account of issues for relief of earthquake sufferers in Japan; no amount specified.

Act of February 24, 1925 (43 Stat. 963, ch. 297): Credit of \$6,017,069.03 in Army accounts for issue of supplies, etc., for earthquake sufferers in Japan.

Joint resolution of March 3, 1925 (43 Stat. 1252, ch. 478): Credit of \$8,548.27 in Army accounts for issue of quartermaster stores for relief of sufferers from cyclone at La-grange and West Point, Ga.

Act of March 4, 1925 (43 Stat. 1285, ch. 547): Credit of \$10,575.58 in Army accounts for issue of quartermaster stores, etc., for relief of sufferers from fire at New Bern, N. C.

Act of March 4, 1925 (43 Stat. 1286, ch. 548): Credit of \$4,582.33 in Army accounts for issue of quartermaster stores for relief of sufferers from cyclone in northwestern Mississippi.

Act of February 9, 1927 (44 Stat. 1065, ch. 89): Issue of \$936.62 quartermaster stores for flood-relief work in Texas.

Act of February 14, 1927 (44 Stat. 1097, ch. 136): Issue of \$1,775.80 Army stores for relief of sufferers from fire at Astoria, Oreg.

Act of February 25, 1927 (44 Stat. 1792, ch. 213): Determination of losses to property owners near Hatch and Santa Teresa, N. Mex., by overflow of Rio Grande; and appropriation of \$75,000 authorized.

Act of February 28, 1927 (44 Stat. 1251): Loans, etc., up to \$253,000 to owners of crops and livestock damaged or destroyed by Florida hurricanes.

Act of January 26, 1928 (45 Stat. 53, ch. 11): Authorized for employment, by Secretary of Agriculture in cooperation with States, of local agents necessary to aid in rehabilitation of farm lands in areas affected by floods of 1927. (\$400,000 appropriated for carrying out above, by act of May 16, 1928 (45 Stat. 543); and unexpended balance reappropriated by act of June 13, 1929 (46 Stat. 8, ch. 18).)

Act of May 29, 1928 (45 Stat. 985, ch. 898): State of Ohio relieved from accountability for certain Federal property lost, etc., in connection with relief work incident to tornado at Lorain in June 1924.

Joint resolution of December 21, 1928 (45 Stat. 1067, ch. 46): Authorization of \$6,000,000 for rehabilitation of agriculture, \$2,000,000 for schoolhouses and \$100,000 for purchase of seeds, etc., in Puerto Rico, following hurricane of September 1928.

Joint resolution of February 25, 1929 (45 Stat. 1306, ch. 318): Loans for purchase of seed, fertilizer, etc., in storm and flood-stricken areas of southeastern States; \$6,000,000 authorized—appropriated in deficiency act of March 4, 1929 (45 Stat. 1635).

Joint resolution of May 17, 1929 (46 Stat. 3, ch. 5): Loans under resolution of February 25, 1929, above, in respect of storms between that date and May 17.

Joint resolution of January 22, 1930 (46 Stat. 57, ch. 23): Additional appropriations authorized—\$1,000,000 for loans to coffee planters, etc., and \$2,000,000 for rebuilding of schools in Puerto Rico.

Joint resolution of March 3, 1930 (46 Stat. 78, ch. 68): Loans to farmers in storm- and drought-stricken areas of 15 States—for purchase of seed, etc.; extended to include tractor fuel, etc., by resolution of April 24, 1930 (46 Stat. 254); \$6,000,000 appropriated under act of March 26, 1930 (46 Stat. 99) for carrying into effect provisions of joint resolution of March 3, 1930.

Act of March 12, 1930 (46 Stat. 84, ch. 77): Appropriations of \$1,660,000 to aid State of Alabama in construction of roads, etc., damaged by floods in 1929.

Act of May 27, 1930 (46 Stat. 386, ch. 336): Appropriation of \$506,067.50 to aid State of Georgia in construction of roads, etc., damaged by floods in 1929.

Act of June 2, 1930 (46 Stat. 489, ch. 368): Appropriation of \$805,561 to aid State of South Carolina in construction of roads, etc., damaged by floods in 1929.

Act of June 28, 1930 (46 Stat. 829, ch. 713): State of Vermont relieved from accountability for certain Federal property lost, etc., in connection with relief work incident to flood of November 1927.

Act of July 3, 1930 (46 Stat. 865): Appropriation of \$1,000,000 to be expended by the Puerto Rican Hurricane Relief Commission for repair work, etc.

Act of December 20, 1930 (46 Stat. 1032, ch. 21): Loans for purchase of seed, fertilizer, etc., in drought and storm-stricken areas of the United States; \$45,000,000 authorized [This amount was appropriated by joint resolution of January 15, 1931 (46 Stat. 1039, ch. 40); an additional \$20,000,000 was appropriated by act of February 14, 1931 (46 Stat. 1160).]

Act of February 23, 1931 (46 Stat. 1276): Appropriation of \$2,000,000 for loans to farmers in Southern States of loss of crops due to storm and drought.

Act of February 26, 1931 (46 Stat. 1420, ch. 305): State of Alabama relieved from accountability for certain Federal property lost, etc., in connection with relief work incident to Elba flood of March 1929.

Joint resolution of March 23, 1933 (48 Stat. 20, ch. 5): Loans by Reconstruction Finance Corporation authorized for repair of damage by earthquake in 1933. [Amended by act of May 29, 1933 (48 Stat. 99) to include, in addition to earthquake, damage by fire, tornado, or cyclone in 1933.]

Act of April 13, 1934 (48 Stat. 589, ch. 121): Loans authorized to be made by Reconstruction Finance Corporation to nonprofit corporation for repair of damages caused by earthquake, fire, flood, etc., in 1933 and January and February 1934. [Amended by act of July 26, 1935 (49 Stat. 505, ch. 421) to include damage caused by catastrophes in the "years 1933, 1934, 1935, and 1936"; further amended and superseded by the act of April 17, 1936 (49 Stat. 1232) to repair damages caused by catastrophes occurring in 1935 and 1936.]

Act of July 2, 1935 (48 Stat. 443, ch. 356): Officers and men of Naval and Marine Corps Reserve who searched for victims and wreckage of United States dirigible *Akron*, considered on active duty and entitled to pay for such duty.

Joint resolution of August 27, 1935 (49 Stat. 928, ch. 777): Puerto Rican Hurricane Relief Commission authorized to make adjustments in its loans, either by reduction in rate of interest or in the indebtedness, etc.

Act of April 10, 1936 (49 Stat. 1192, ch. 170): State of Alabama relieved from accountability for certain Federal property lost, etc., while being used for emergency relief work incident to Elba flood of March 1929.

Act of May 15, 1936 (49 Stat. 1278, ch. 403): State of New Jersey relieved from accountability for certain United States property lost, etc., while being used in connection with the *Morro Castle* disaster, September 1934.

Act of June 29, 1936 (49 Stat. 2035, § 500): Benefits of Employees' Compensation Act extended to veterans or other persons attached to Veterans' Camps Nos. 1, 3, and 5, injured, etc., as result of Windlys Island and Matecumbe Keys, Fla., September 1935.

Act of February 11, 1937 (50 Stat. 19, ch. 10): Disaster Loan Corporation created to provide loans necessary because of floods or other catastrophes in 1937. [Amended by joint resolution of May 28, 1937 (50 Stat. 211, ch. 275), to include catastrophes during 1936 and 1937; further amended by act of March 3, 1938 (52 Stat. 84, ch. 40, Public, No. 438), to include the year of 1938; and further amended by act of March 4, 1939 (53 Stat. 510, ch. 4 (d)), by increasing the capital stock of the Disaster Loan Corporation from \$20,000,000 to \$40,000,000 and extending the applicability of the act to catastrophes during 1938, 1939, and 1940, and further extended by act of June 10, 1941 (55 Stat. 248), to catastrophes occurring between 1936 and 1947.]

Joint resolution of February 24, 1937 (50 Stat. 21, ch. 17): Allocation of funds from Emergency Relief Appropriation Act of 1936 for health and sanitation activities in areas recently stricken by floods.

Act of May 25, 1937 (50 Stat. 204, ch. 255): State of Maine relieved from accountability for certain Federal property loaned for emergency work during fire at Ellsworth, Maine, May 8, 1933, and lost.

Act of March 5, 1938 (52 Stat. 93): Use of War Department appropriations to meet emergencies caused by flood of the Ohio and Mississippi Rivers in 1937 authorized.

Act of June 20, 1938 (52 Stat. 777, ch. 523): State of Georgia relieved from accountability for certain United States property lost, etc., while being used for emergency relief work in connection with tornadoes at Cordela, Washington, and Gainesville in April 1936.

Act of June 23, 1938 (52 Stat. 1033, ch. 604): State of Connecticut relieved from accountability for certain Federal property lost, etc., while being used for emergency relief work incident to the Connecticut floods of March 1936.

Act of March 15, 1939 (53 Stat. 513), as amended by act of May 2, 1939 (53 Stat. 631): Appropriation of \$5,000,000 for rehabilitation of forest lands damaged by the hurricane of September 1938 in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York.

Act of July 12, 1943 (57 Stat. 542): \$15,000,000 appropriated for the fiscal year 1944, for assistance to farmers whose property was destroyed or damaged by floods in 1943. [Balance made available until June 30, 1945, by act of May 20, 1944 (58 Stat. 224, ch. 201)].

NOTE.—There are numerous acts in which provision is made for the relief of specific individuals for injuries sustained in calamities similar to those mentioned above. These are mostly reimbursement for property losses or personal injuries, after examination of extent of damage. See, for example, 17 Stat. 646 (postmaster, Chicago fire); 28 Stat. 932 (25 persons, Ford Theater disaster); 29 Stat. 273 (94 persons, Ford Theater disaster); 31 Stat. 1612, ch. 838 (1 person, Ford Theater disaster); 36 Stat. 2022, ch. 234 (1 person, Allegheny River flood); 37 Stat. 1286, ch. 273 (21 parties, Allegheny River flood); 45 Stat. 1849, ch. 589 (1 person, Galveston flood, 1900); 45 Stat. 2014, ch. 940 (9 persons, drainage ditch overflow); 45 Stat. 2047, ch. 144 (persons named in certain House documents, Lake Denmark, N. J., explosion and fire); 45 Stat. 2326, ch. 309 (1 person, ac-

cidental burning of orchard); 45 Stat. 2326, ch. 310 (21 claimants, flooding of Chesapeake & Delaware Canal); 46 Stat. 1954, ch. 791 (certain citizens of California flood, 1926); 46 Stat. 1958, ch. 808 (6 persons, erosion of dam on Allegheny River, 1927); 47 Stat. 1669, ch. 220 (1 person, Lawton, Okla., fire, 1917); 47 Stat. 1763, ch. 303 (2 persons, overflow of Rio Grande, 1921); 49 Stat. 2071, ch. 217 (1 person, earthquake and fire at Yokohama, Japan, 1923); 49 Stat. 2320, ch. 570 (1 person earthquake and fire at Kamakura, Japan, 1923).

The following acts, while not providing direct relief to sufferers, make allowances in the payment of taxes, etc., or appropriate sums to reimburse rescuers, or to prevent threatened disasters:

Act of February 12, 1875 (18 Stat. 629, ch. 73): Sum of \$5,000 appropriated for payment to Joseph J. Petri of Illinois, in recognition of his heroic and successful efforts in rescuing a train of emigrants from starvation and impending death while snowed in between the Sierra Nevada and Trinity Mountains.

Act of May 23, 1876 (19 Stat. 55, ch. 104): Time for making final proof and payment by pre-emptors extended 2 years upon satisfactory proof that crops on the lands had been destroyed by grasshoppers.

Act of August 15, 1894 (28 Stat. 553, section 28): In computing income, deductions authorized to be made for losses arising from fires, storms, or shipwreck.

Proclamation of August 25, 1906 (34 Stat. 3227): Requisition for generous response to collection by National Red Cross Association for assistance for victims of earthquake at Valparaiso, Chile.

Joint resolution of January 19, 1910 (36 Stat. 873, No. 4): Appropriation of \$10,000 for removal of ice gorges in the Ohio River, which are threatening the destruction of life and property.

Act of February 10, 1938 (52 Stat. 33 (d)): Suspension of regulations conditioning payments under Soil Conservation and Domestic Allotment Act upon the utilization of the land whenever there is a shortage of food by reason of drought, flood, or other disaster.

Same (p. 66, sec. 381, as amended by 52 Stat. 204, sec. 12): Cotton price adjustment payments not to be suspended in cases where in 1937 there was a total or partial crop failure due to hail, drought, flood, or boll-weevil infection, or destruction by fire.

(M. H. McClenon, March 6, 1928; W. C. Gilbert, October 30, 1930; Margaret Fennell, May 2, 1947.)

Mr. FORD. Mr. Chairman, will the gentleman yield?

Mr. HAGEN. I yield.

Mr. FORD. I would like to compliment the gentleman from Minnesota [Mr. HAGEN] and others in spearheading this legislation. I would like also to make a comment or two about the individual bills for the States of Minnesota and North Dakota and other units. For obvious reasons, it is not possible for the committee to approve legislation in each disaster in any particular area. Our committee would be overworked with legislation of that kind. The legislation that is before us today is the kind that will meet all emergencies of a disaster, and gives the President the necessary authority for not only providing the relief but for coordinating the relief. In many ways perhaps it is not unfortunate that we cannot take up individual bills for Minnesota and North Dakota, which the gentleman sought as necessary legislation, but under the circumstances I think we have come out with a very good solu-

tion, and I commend the gentleman for his efforts.

Mr. HAGEN. I thank the gentleman.

Mr. STEFAN. Mr. Chairman, will the gentleman yield?

Mr. HAGEN. I yield.

Mr. STEFAN. I am sure our late colleague from North Dakota, Mr. Lemke, would be very happy to know that we are considering this bill. I, too, want to compliment the gentleman from Minnesota for his untiring efforts to get these emergency flood-control bills tied into one. However, this bill calls for an authorization of \$5,000,000. Do you know when any of that money would become available? Is there some action taken, after this authorization is passed, to get some of the appropriation in the bill presently before us?

Mr. HAGEN. I am glad the gentleman brought that matter up, because I am deeply concerned about it. It is my hope that we can get the money in the deficiency bill this session, before the session ends, to carry out the purposes of this bill.

Mr. WHITTINGTON. Mr. Chairman, will the gentleman yield?

Mr. HAGEN. I yield.

Mr. WHITTINGTON. I think the question is quite important. As I stated at the beginning of this debate, there is a \$750,000 appropriation made on June 29, 1950, already made available. That fund is immediately available for Nebraska, as well as West Virginia and other States, because it has not been expended as yet.

Mr. STEFAN. Does the gentleman know, Mr. Speaker, how much remains of that \$750,000?

Mr. WHITTINGTON. I understand that none of it has been expended; it is there for relief of emergencies, some of which occurred in the gentleman's State.

Mr. STEFAN. Yes. The gentleman knows of the terrible disaster in the State of Nebraska causing loss of life and much property damage.

Mr. HAGEN. And this bill will provide aid in such situations.

Mr. STEFAN. What am I to tell my constituents as to the \$750,000 that is available for disaster relief now?

Mr. HAGEN. The President may declare that area an emergency disaster area and the governor of the State may apply for and get funds, although they may be entirely inadequate. Funds will be available in this bill to meet disaster emergencies. We recently had a disaster in Minnesota in which the full amount of \$750,000 itself would be just a drop in the bucket. We received \$150,000 from the President's disaster fund.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. DONDERO. Mr. Chairman, I yield the gentleman three additional minutes.

Mr. STEFAN. In case this bill is not passed, the \$750,000 will still be available. After this bill passes will the \$750,000 be added to the \$5,000,000 provided for in this bill?

Mr. HAGEN. It will remain available in a separate fund, as I understand it.

## Appendix C

### Uses and Allocation of Disaster Assistance Funds<sup>1</sup>

Tables 3 to 29 contain excerpts from the statutes identifying the purposes to which the appropriated funds should be used. In a number of cases, general language required that the funds be used “to meet urgent needs” or “to meet the present emergency.” Other provisions specify that funds were to be used for specific purposes or to meet needs arising from specific disasters, such as the *Exxon Valdez* oil spill, a disaster occurring on a date certain, or from a named storm.

The degree to which the statute identifies how appropriated funds are to be used has been an issue of some contention. The General Accounting Office (GAO) reported that agencies reallocated the supplemental funds for purposes other than the response to Mount St. Helens because the statute did not require that the funds only be used for that purpose.<sup>2</sup> More recently, the omnibus appropriations act for FY1999 (P.L. 105-277) included funds for natural disasters but did not specify how those funds were to be allocated. According to at least one news report, disagreement arose between the Secretary of HUD and Members of Congress. Because the statute did not specify how the funds would be used (see **Table 16** of this report), the Secretary distributed them among other states.<sup>3</sup> The broadest grant of appropriations authority enacted thus far was the language of P.L. 107-38, enacted after the terrorist attacks of September 11, 2001. The statute authorized the President to use \$20 billion at his discretion, \$10 billion of which required advanced notification to Congress.

### Caveats and Limitations

The data presented in this report provide a partial illustration of federal spending on disaster relief and recovery. In addition to agricultural disasters, funds appropriated for the following purposes have not been included in this report: enhancement of physical security to protect facilities from terrorist attacks, law enforcement and criminal investigation, reimbursement for economic failures and crises (unless a specific disaster was cited as the cause for the economic downturn), or military responses not specifically related to a disaster. This report primarily focuses on emergency supplemental appropriations legislation; with the exception of P.L. 106-74, the report does not include funds appropriated through regular annual appropriations legislation considered as a matter of course by Congress.<sup>4</sup> The report does include funds transferred or derived from trust funds.

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<sup>1</sup> Tables and text in Appendix C were prepared by Keith Bea, Specialist in American National Government at the Congressional Research Service, Government and Finance Division. This information expands upon that published in U.S. Congress, House Committee on the Budget, *Budgetary Treatment of Emergencies: Hearing Before the Task Force on Budget Process*, committee print, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 23, 1998, Serial No. 13-5 (Washington: GPO, 1998).

<sup>2</sup> For an evaluation of spending associated with the catastrophe see: U.S. General Accounting Office, *Federal Involvement in the Mount St. Helens Disaster: Past Expenditures and Future Needs*, GAO Report RCED-83-16 (Washington: Nov. 15, 1982), p. 133.

<sup>3</sup> Steve Campbell, “Ice Storm Aid Pittance Seen as ‘Betrayal,’” *Press Herald*, Nov. 22, 1998, p.1A.

<sup>4</sup> For general background on federal supplemental appropriations see CRS Report RL33134, *Supplemental Appropriations: Trends and Budgetary Impacts Since 1981*, by Thomas L.



No single definition or strict criteria were used to identify the funding citations included in this report. Instead, appropriations provisions were selected on the basis that they indicated, specifically or generally, that the funds would be used for disaster relief, recovery, mitigation, or response activities. As a result, if the statutes were reviewed using different criteria, totals different from those presented herein would be derived.<sup>5</sup> Also, funding targeted specifically at law enforcement, terrorism prevention, intelligence functions, or similar purposes have been excluded. Some may argue that such funding is an essential element of homeland security. In summary, this report is based upon a relatively narrow concept of the term emergency management that does not include national defense or national security related funding. The following tables and background information are presented chronologically by fiscal year.

## Emergency Appropriations, FY 1989

### Wildfires; *Exxon Valdez* Wreck

President George H.W. Bush submitted a \$2 billion request for supplemental funding to meet various needs that would otherwise have been unfunded, including veterans benefits, student loans, and foster care and adoption assistance to the states. In enacting P.L. 101-45 Congress approved dire emergency supplemental legislation that included \$3.3 billion for veterans hospitals, unemployment benefits, peacekeeping forces, and other needs. The measure also included almost \$350 million for various disaster-related needs, including forest fire suppression and prevention, as well as response and assessment costs associated with the wreck of the oil tanker *Exxon Valdez* off the shores of Alaska.<sup>6</sup> According to CBO calculations, Congress appropriated a total of \$3.5 billion in supplemental funding in the statute.<sup>7</sup>

**Table 3. Wildfires, *Exxon Valdez* Wreck, FY1989 (P.L. 101-45)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds [citation]
<b>Department of Agriculture</b>		
Forest Service	\$250,000	“emergency rehabilitation, forest firefighting, fire severity pre-suppression, and other emergency costs” [103 Stat. 102]
<b>Department of Interior</b>		
Bureau of Land Management	\$30,180	Emergency rehabilitation and other emergency costs [103 Stat. 102]

<sup>4</sup> (...continued)

Hungerford.

<sup>5</sup> For example, see the “disaster relief” funding totals presented in: Steven T. Dennis and Liriel Higa, “\$62 Billion and Counting,” *CQ Weekly*, vol. 63, Sept 12, 2005, pp. 2412-2418.

<sup>6</sup> Congressional Quarterly Almanac, *101<sup>st</sup> Congress 1<sup>st</sup> session.1989*, vol. XLV (Washington: Congressional Quarterly, Inc., 1990), pp. 801-806.

<sup>7</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.

Federal Agency	Funding	Intended Use of Funds [citation]
Fish and Wildlife Service	\$2,895	Emergency rehabilitation and other emergency costs [103 Stat. 102]
National Park Service	\$25,000	Emergency rehabilitation and other emergency costs [103 Stat. 102]
Bureau of Indian Affairs	\$33,594	Emergency rehabilitation and other emergency costs [103 Stat. 102]
Secretary	\$7,300	Contingency planning, response and damage assessment related to oil discharge from tanker <i>Exxon Valdez</i> [103 Stat. 102]
<b>Subtotal Interior</b>	<b>\$98,969</b>	
<b>Total</b>	<b>\$348,969</b>	

## Hurricane Hugo

In the closing days of FY1989 (September 29), Congress enacted the first of three continuing resolutions for FY1990. The statute included FY1989 supplemental funding for disaster relief after Hurricane Hugo struck Puerto Rico, the U.S. Virgin Islands, and North and South Carolina, as shown in **Table 4**, below.

**Table 4. Hurricane Hugo, FY1989 (P.L. 101-100)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds [citation]
Federal Emergency Management Agency	\$1,108,000	For disaster relief [103 Stat. 640]

## Emergency Appropriations, FY 1990

### Loma Prieta Earthquake

The second of three continuing resolutions for FY1990, enacted within weeks of the first, included almost \$3 billion for disaster relief after the Loma Prieta earthquake (also known as the World Series earthquake, as it disrupted one game of the 1990 championship baseball game). All of the funds were appropriated to FEMA.<sup>8</sup>

**Table 5. Loma Prieta Earthquake, FY1990 (P.L. 101-130)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds [citation]
Federal Emergency Management Agency	\$1,100,000	For disaster relief [103 Stat. 775]

<sup>8</sup> Ibid.



<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
Community Planning and Development (CPD)	\$500,000	For emergency expenses resulting from the January 1994 earthquake in Southern California and the Midwest Floods of 1993 [108 Stat. 12-13]
<b>Subtotal HUD</b>	<b>\$825,000</b>	
<b>Department of Interior</b>		
Fish and Wildlife Service	\$4,000	For acquisition of land in the Midwest area flooded in 1993, to be used to meet flood damage control and fish and wildlife habitat restoration objectives [108 Stat. 17]
National Park Service	\$13,102	To replenish funds used for emergency actions related to storm damaged facilities [108 Stat. 17]
<b>Subtotal Interior</b>	<b>\$17,102</b>	

# Emergency Appropriations, FY 1994

## Midwest Floods, Fires, Earthquake

Congress enacted legislation to aid the victims of a major earthquake that struck the Los Angeles area in January, 1994. The \$11 billion supplemental appropriation also included funds for farmers inundated by floods in 1993 and for U.S. peacekeeping operations abroad. The bill also included \$3.25 billion in recessions to offset part of the cost. The final bill, as signed by President Clinton, included FY1994 emergency spending not subject to budget constraints, with more than \$7.8 billion earmarked for Southern California.<sup>20</sup> According to CBO calculations, Congress appropriated a total of \$11.53 billion in supplemental funding in the statute.<sup>21</sup>

**Table 12. Midwest Floods, Fires, Earthquake, FY1994  
(P.L. 103-211)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds [citation]
<b>Department of Agriculture</b>		
Soil Conservation Service	\$340,500	Watershed and flood prevention [108 Stat. 3]
Agricultural Stabilization and Conservation Service	\$25,000	For emergency conservation needs resulting from the Midwest floods, California fires, and other natural disasters [108 Stat. 4]
<b>Subtotal Agriculture</b>	<b>\$365,500</b>	
<b>Department of Defense (Civil)</b>		
Army Corps of Engineers	\$70,000	For flood control and coastal emergencies [108 Stat. 7]
<b>Department of Education</b>		
Impact Aid	\$165,000	For carrying out disaster assistance activities [108 Stat. 8]
Student Financial Assistance	\$80,000	To assist individuals who suffered financial harm from the January 1994 earthquake in Southern California, and from other disasters [108 Stat. 8-9]
<b>Subtotal Education</b>	<b>\$245,000</b>	
<b>Department of Housing and Urban Development</b>		
Housing Programs	\$325,000	For assistance costs associated with the January 1994 earthquake in Southern California [108 Stat. 10-11]

<sup>20</sup> Congressional Quarterly Almanac, *103<sup>rd</sup> Congress 2<sup>nd</sup> session 1994*, Vol. L, (Washington: Congressional Quarterly, Inc., 1995), p. 548-557.

<sup>21</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
Community Planning and Development	\$200,000	For use only in areas affected by the Midwest floods and other related weather damages of 1993 [107 Stat. 748]
<b>Subtotal HUD</b>	<b>\$250,000</b>	
<b>Department of Interior</b>		
Fish and Wildlife Service	\$30,000	For Midwest floods [107 Stat. 750]
National Park Service	\$5,900	For Historic Preservation Fund and construction in response to the Midwest floods [107 Stat. 750]
United States Geological Survey	\$1,439	For surveys, investigations, and research in response to the Midwest floods [107 Stat. 750]
Bureau of Indian Affairs	\$3,878	In response to the Midwest floods [107 Stat. 751]
<b>Subtotal Interior</b>	<b>\$41,217</b>	
<b>Department of Labor</b>		
Employment and Training Administration	\$54,600	For disaster relief for the Midwest floods [107 Stat. 740]
Commission on National and Community Service	\$4,000	For use in carrying out federal disaster relief related to the Midwest floods [107 Stat. 740]
<b>Subtotal Department of Labor</b>	<b>\$58,600</b>	
<b>Department of Transportation</b>		
Coast Guard	\$10,000	For emergency expenses resulting from the Midwest floods [107 Stat. 747]
Federal Highway Administration	\$175,000 <sup>A</sup>	For emergency expenses resulting from the Midwest floods [107 Stat. 747]
Federal Railroad Administration	\$21,000	To repair rail lines damaged as a result of the Midwest floods [107 Stat. 747]
<b>Subtotal Transportation</b>	<b>\$206,000</b>	
<b>Environmental Protection Agency</b>	<b>\$33,950</b>	For costs associated with the Midwest floods [107 Stat. 749]
<b>Federal Emergency Management Agency</b>	<b>\$2,000,000</b>	For disaster relief [107 Stat. 750]
<b>Small Business Administration</b>		
Disaster Loans Program Account	\$90,000	For the cost of direct loans for the Midwest floods and other disasters [107 Stat. 740]
<b>Total</b>	<b>\$3,494,750</b>	

<sup>A</sup> Funds to be derived from the Highway Trust Fund.

**Table 11. Midwest Floods and Other Disasters, FY1993 (P.L. 103-75)**  
(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
<b>Department of Agriculture</b>		
Extension Service	\$3,500	For emergency expenses resulting from floods and other natural disasters [107 Stat. 739]
Soil Conservation Service	\$60,000	To repair damages to the waterways and watersheds resulting from floods and other natural disasters [107 Stat. 742]
Agricultural Stabilization and Conservation Service	\$42,000	To meet needs arising from floods and other natural disasters [107 Stat. 743]
Farmers Home Administration	\$98,183	To assist in recovery from floods and other natural disasters [107 Stat. 743-744]
<b>Subtotal Agriculture</b>	<b>\$203,683</b>	
<b>Department of Commerce</b>		
Economic Development Administration	\$200,000	For economic development assistance, in response to floods and other disasters [107 Stat. 739]
Legal Services Corporation	\$300	For emergency assistance in areas affected by floods and other disasters [107 Stat. 745]
National Oceanic and Atmospheric Administration	\$1,000	For emergency expenses resulting from floods and other disasters [107 Stat. 744]
<b>Subtotal Commerce</b>	<b>\$201,300</b>	
<b>Department of Defense (Civil)</b>		
Army Corps of Engineers	\$235,000	For flood control and coastal emergencies [107 Stat. 745]
<b>Department of Education</b>		
Impact Aid	\$70,000	For disaster assistance activities [107 Stat. 746]
Student Financial Assistance	\$30,000	To assist individuals who suffered financial harm as a result of the Midwest floods of 1993 [107 Stat. 746]
<b>Subtotal Education</b>	<b>\$100,000</b>	
<b>Department of Health and Human Services</b>		
Public Health and Social Services Emergency Fund	\$75,000	For the Midwest floods of 1993 [107 Stat. 746]
<b>Department of Housing and Urban Development</b>		
Housing Programs	\$50,000	For use only in areas affected by the Midwest floods and other related weather damages of 1993 [107 Stat. 748]

President Clinton approved a \$3.5 billion supplemental appropriation that provided FY1993 money for a broad range of defense and domestic items, such as spending for summer jobs and a community police program, as well as money to continue to assist in the disaster relief efforts following Hurricane Andrew and other flooding throughout the US.<sup>16</sup> According to CBO calculations, Congress appropriated a total of \$3.5 billion in supplemental funding in the statute.<sup>17</sup>

**Table 10. Hurricane Andrew II, and Other Flooding (P.L. 103-50)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds [citation]
<b>Department of Defense (Military)</b>		
Military Construction	\$3,000	For flood damage costs [107 Stat. 255]
Family Housing, Navy and Marine Corps	\$4,345	For flood damage costs [107 Stat. 255]
<b>Subtotal Defense (Military)</b>	<b>\$7,345</b>	
<b>Department of Housing and Urban Development</b>		
Community Planning and Development	\$45,000 <sup>A</sup>	For community development activities in areas impacted by Hurricane Andrew, Hurricane Iniki, or Typhoon Omar [107 Stat. 264]
<b>Total</b>	<b>\$52,345</b>	

<sup>A</sup> The statute also provided for a transfer of \$40 million from the assisted housing appropriation in P.L. 102-368.

## Midwest Floods and Other Disasters

After some of the most widespread flooding experienced by the country, President Clinton proposed supplemental spending for disaster aid. On the last day before summer recess, Congress passed a \$5.7 billion supplemental appropriation bill to provide fanatical assistance to the victims of the massive floods in the upper Midwest and other natural disasters in 1993. The bill which moved through congress quickly was briefly derailed based on its designation as “emergency spending.” This measure was debated when Congress considered the President’s controversial Budget-reconciliation legislation. After a House debate over offsetting the spending, Members approved the emergency spending bill.<sup>18</sup> According to CBO calculations, Congress appropriated a total of \$4.441 billion in supplemental funding in the statute.<sup>19</sup>

<sup>16</sup> Congressional Quarterly Almanac, *103<sup>rd</sup> Congress 1<sup>st</sup> session 1993*, Vol. XLIX, (Washington: Congressional Quarterly, Inc., 1993), p. 710-713.

<sup>17</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.

<sup>18</sup> Congressional Quarterly Almanac, *103<sup>rd</sup> Congress 1<sup>st</sup> session 1994*, Vol. XLVIX, (Washington: Congressional Quarterly, Inc., 1992), p. 358-366.

<sup>19</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
<b>Department of Labor</b>		
Employment and Training Administration	\$30,000	For training in areas affected by recent natural disasters [106 Stat. 1148]
<b>Department of Transportation</b>		
Coast Guard	\$41,500	For costs associated with Hurricane Andrew and Hurricane Iniki [106 Stat. 1152]
Federal Aviation Administration	\$60,000 <sup>B</sup>	For costs associated with Hurricane Andrew, Typhoon Omar, and Hurricane Iniki [106 Stat. 1152-53]
Federal Highway Administration	\$33,750 <sup>C</sup>	For emergency relief and metropolitan planning for costs associated with Hurricanes Andrew and Iniki and Typhoon Omar [106 Stat. 1153]
Federal Transit Administration	\$10,000 <sup>D</sup>	To assist transit operations affected by Hurricane Andrew and Hurricane Iniki [106 Stat. 1154]
Research and Special Programs Administration	\$44	For emergency transportation costs arising from the consequences of Hurricane Andrew [106 Stat. 1154]
<b>Subtotal Transportation</b>	<b>\$145,294</b>	
<b>Department of Veterans Affairs</b>		
Veterans Health Administration	\$16,793	For medical care costs associated with Hurricane Andrew, Hurricane Iniki, Typhoon Omar, and other disasters [106 Stat. 1156]
Departmental Administration	\$156	For other costs associated with Hurricane Andrew, Hurricane Iniki, Typhoon Omar, and other disasters [106 Stat. 1157]
<b>Subtotal Veterans Affairs</b>	<b>\$16,949</b>	
<b>General Services Administration</b>	<b>\$3,200</b>	For operating expenses arising from the consequences of Hurricane Andrew [106 Stat. 1155-56]
<b>Federal Emergency Management Agency</b>	<b>\$2,908,000</b>	For disaster relief [106 Stat. 1159-60]
<b>Small Business Administration<sup>E</sup></b>		
Disaster Loans Program Account	\$431,800	For the cost of disaster assistance loans [106 Stat. 1142]
<b>Total</b>	<b>\$5,767,116</b>	

<sup>A</sup> For administrative expenses and costs of direct loans. <sup>B</sup> To be derived from the Airport and Airway Trust Fund. <sup>C</sup> \$33 million to be derived from the Highway Trust Fund. <sup>D</sup> To be derived from the Mass Transit Account of the Highway Trust Fund. <sup>E</sup> \$183 million to be transferred from the FEMA disaster relief account.

## **Emergency Appropriations, FY 1993**

### **Hurricane Andrew and Other Flooding**

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
Student Financial Assistance	\$40,000	Authority to waive or modify statutory or regulatory provisions to assist individuals who suffered financial harm from natural disasters [106 Stat. 1150]
<b>Subtotal Education</b>	<b>\$82,500</b>	
<b>Department of Health and Human Services</b>		
Public Health and Social Services Emergency Fund	\$105,600	For public health emergencies created by natural disasters [106 Stat. 1149]
<b>Department of Housing and Urban Development</b>		
Housing Programs	\$377,897 <sup>A</sup>	For housing assistance and other costs associated with presidentially-declared disasters [106 Stat. 1157]
<b>Department of Interior</b>		
Bureau of Reclamation	\$30,000	For emergency drought needs [106 Stat. 1130]
National Park Service	\$300	For costs associated with Hurricane Andrew [106 Stat. 1147]
Minerals Management Service	\$1,200	For leasing and royalty management, to cover incremental costs arising from the consequences of Hurricane Andrew [106 Stat. 1147]
<b>Subtotal Interior</b>	<b>\$31,500</b>	
<b>Department of Justice</b>		
Federal Prison System	\$26,559	For building and facilities costs associated with Hurricane Andrew and other disasters [106 Stat. 1141]

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
Agricultural Stabilization and Conservation Service	\$27,000	To repair damages to farmland resulting from natural disasters [106 Stat. 1135-36]
Farmers Home Administration	\$160,056	For the costs of the consequences of natural disasters [106 Stat. 1136]
Food and Nutrition Service	\$400,000	For making benefit payments to individuals under the Food Stamp Act, to meet the needs resulting from natural disasters [106 Stat. 1138]
Forest Service	\$4,140	For state and private forestry [106 Stat. 1148]
<b>Subtotal Agriculture</b>	<b>\$668,196</b>	
<b>Department of Commerce</b>		
Economic Development Administration	\$75,000	To assist states and local communities in recovering from the consequences of Hurricane Andrew, and other disasters [106 Stat. 1138-39]
Minority Business Development Agency	\$2,000	To respond to the consequences of Hurricane Andrew and other disasters [106 Stat. 1139]
National Oceanic and Atmospheric Administration	\$18,691	For costs associated with Hurricane Andrew and other disasters [106 Stat. 1139]
United States Travel and Tourism Administration	\$5,000	For costs arising from Hurricane Andrew and other disasters [106 Stat. 1140]
<b>Subtotal Commerce</b>	<b>\$100,691</b>	
<b>Department of Defense (Military)</b>		
Military Personnel	\$79,600	For costs associated with Hurricane Andrew and Typhoon Omar [106 Stat. 1143]
<i>Operation and Maintenance</i>	\$423,700	For costs associated with Hurricane Andrew and Typhoon Omar [106 Stat. 1144-45]
Military Construction, Air Force	\$83,600	For costs associated with Hurricane Andrew and Typhoon Omar [106 Stat. 1150-51]
Family Housing, Air Force	\$37,200	For costs associated with Hurricane Andrew and Typhoon Omar [106 Stat. 1150-51]
Military Construction, Navy	\$81,530	For costs associated with Typhoon Omar [106 Stat. 1151]
Family Housing, Navy and Marine Corps	\$87,200	For costs associated with Typhoon Omar [106 Stat. 1151]
<b>Subtotal Defense (Military)</b>	<b>\$792,830</b>	
<b>Department of Defense (Civil)</b>		
Army Corps of Engineers	\$46,100	For flood control and for costs associated with Hurricane Andrew and Hurricane Iniki [106 Stat. 1145-45]
<b>Department of Education</b>		
Impact Aid	\$42,500	For carrying out disaster assistance activities related to Presidentially-declared natural disasters [106 Stat. 1149]



CBO calculations, Congress appropriated a total of \$1.91 billion in supplemental funding in the statute<sup>13</sup>

**Table 8. Los Angeles Riots, Chicago Flood  
FY1992 (P.L. 102-302)**  
(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
<b>Federal Emergency Management Agency</b>	\$300,000	For disaster relief [106 Stat. 249]
<b>Small Business Administration</b>	\$169,650	To carry out the disaster loan program [106 Stat. 248]
<b>Total</b>	<b>\$469,650</b>	

### **Hurricane Andrew; Hurricane Iniki; Typhoon Omar**

Just 10 days after President George H.W. Bush requested emergency funding, and a month after Hurricane Andrew devastated parts of Florida, Congress passed an billion aid package for victims of Andrew, Hurricane Iniki in Hawaii, and Typhoon Omar in Guam. The statute also included an additional \$4.1 billion for unrelated defense programs, and returned to the U.S. Treasury most of the \$15 billion appropriated to pay for war-related costs not met by U.S. allies.<sup>14</sup> According to CBO calculations, Congress appropriated a total of \$12.775 billion in supplemental funding in the statute.<sup>15</sup>

**Table 9. Hurricane Andrew I, Hurricane Iniki, Typhoon Omar  
FY1992, (P.L. 102-368)**  
(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
<b>Department of Agriculture</b>		
Agriculture Research Service	\$15,000	For restoration of federal research facilities destroyed or damaged by natural disasters [106 Stat. 1134]
Soil Conservation Service	\$62,000	To repair damages to waterways and watersheds resulting from natural disasters [106 Stat. 1135]

<sup>13</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.

<sup>14</sup> Congressional Quarterly Almanac, *102<sup>nd</sup> Congress 1<sup>st</sup> session 1991*, Vol. XLVII, (Washington: Congressional Quarterly, Inc., 1992), p. 583

<sup>15</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
Bureau of Land Management	\$176,800	Wildfire suppression and emergency rehabilitation [104 Stat. 228]
<b>Subtotal Interior</b>	<b>\$184,079</b>	
<b>Federal Emergency Management Agency</b>	\$50,000	For disaster relief [104 Stat. 214]
<b>Executive Office of the President</b>	\$5,000	For needs arising from natural disasters [104 Stat. 243]
<b>Total</b>	<b>\$670,412</b>	

<sup>A</sup> Derived from the Oil Spill Emergency Fund.

## Emergency Appropriations, FY 1992

### Hurricane Bob

The request of President George H.W. Bush for supplemental funds for FY1992 for Operation Desert Shield/Desert Storm included \$693 million for FEMA. As enacted, the law totaled \$6.849 billion and included \$943 million for FEMA to provide assistance to communities stricken by floods, fires, and Hurricane Bob, among other disasters. Of that total, \$193 million could not be made available until the President designated it emergency funding. The legislation established an “historical average” of \$320 million a year for FEMA disaster relief assistance. Under this provision “emergency” funds would be defined as those that exceeded the \$320 million threshold or the original budget request submitted by the President.<sup>11</sup>

**Table 7. Hurricane Bob, FY1992 (P.L. 102-229)**  
(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
<b>Federal Emergency Management Agency</b>	\$943,000	For disaster relief [105 Stat. 1711]

### Los Angeles Riots; Chicago Flood

Congress’ first response to the riots in Los Angeles occurred when the House passed a \$494.7 million supplemental appropriation bill. Included in the bill were measures designed to direct small-business loans and emergency grants to the City of Los Angeles after the riots, and to the Chicago region after flooding occurred in the city. The final version of the bill signed by the President called for \$1.1 billion, with more to be available only on further request by the president.<sup>12</sup> According to

<sup>11</sup> Congressional Quarterly Almanac, *102<sup>nd</sup> Congress 1<sup>st</sup> session 1991*, Vol. XLVII, (Washington: Congressional Quarterly, Inc., 1992), p. 661-667.

<sup>12</sup> Congressional Quarterly Almanac, *102<sup>nd</sup> Congress 1<sup>st</sup> session 1991*, Vol. XLVII, (Washington: Congressional Quarterly, Inc., 1992), p. 579-582.

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
<b>Department of Transportation</b>		
Federal Highway Administration	\$1,665,000	For expenses arising from the January 1994 earthquake in Southern California and other disasters [108 Stat. 9]
<b>Department of Veterans Affairs</b>		
Veterans Health Administration	\$66,600	For medical care costs associated with the January 1994 earthquake in Southern California, and for construction costs resulting from that & other disasters [108 Stat. 10]
<b>Executive Office of the President</b>	<b>\$550,000</b>	For emergency expenses resulting from the January 1994 earthquake in Southern California [108 Stat. 14]
<b>Federal Emergency Management Agency</b>	<b>\$4,724,000</b>	For disaster relief, and for activities authorized by the Earthquake Hazards Reduction Act “to enhance seismic safety throughout” the country [108 Stat. 13]
<b>Small Business Administration</b>	<b>\$309,750</b>	For emergency expenses resulting from the January 1994 earthquake in Southern California and from other disasters [108 Stat. 5]
<b>Total</b>	<b>\$8,837,952</b>	

## Emergency Appropriations, FY 1995

### Northridge Earthquake, Tropical Storm Alberto

FY1995 appropriation legislation for the Veterans Administration, Department of Housing and Urban Development, and related agencies, included an emergency supplemental appropriation title, Title VI. This title provided funding for community development purposes for the cities of Los Angeles and Santa Monica, California, and for “state, local communities, and businesses” (primarily in Georgia) affected by Tropical Storm Alberto.<sup>22</sup> According to CBO calculations, Congress appropriated a total of \$357 million in supplemental funding in the statute.<sup>23</sup> **Table 13** reflects the total amount included in Title VI, some of which was not scored as supplemental funding by CBO.

<sup>22</sup> *Congressional Quarterly Almanac*, 103<sup>rd</sup> Congress 2<sup>nd</sup> session 1994, vol. L (Washington, Congressional Quarterly, Inc., 1995), pp. 541-547.

<sup>23</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.

**Table 13. Northridge Earthquake, Tropical Storm Alberto, FY1995 (P.L. 103-327)**

(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds [citation]
<b>Department of Housing and Urban Development</b>		
Community Planning and Development <sup>A</sup>	\$405,000	For emergency expenses resulting from the January 1994 earthquake in Southern California, and to assist in recovering from Tropical Storm Alberto & other disasters [108 Stat. 2335]
<b>Federal Emergency Management Agency</b>		
Direct Loan Program <sup>B</sup>	\$12,500	To assist local governments in recovering from flooding and damage caused by Tropical Storm Alberto & other disasters [108 Stat. 2336]
<b>Total</b>	<b>\$417,500</b>	

<sup>A</sup> The appropriation included a \$50 million transfer specified for costs associated with the Northridge earthquake, from the Department of Education Impact Aid program, to fund the Community Development Block Grant program

<sup>B</sup> For the cost of direct loans, the principal amount not to exceed \$50 million

## Oklahoma City Bombing; California Disasters

The “largest package of rescissions in U.S. history” (\$16.3 billion) included \$7.2 billion in emergency funding for recovery after the destruction of the Murrah federal building and disasters in California.<sup>24</sup> According to CBO calculations, Congress appropriated a total of \$7.453 billion in supplemental funding in the statute.<sup>25</sup>

**Table 14. Oklahoma City Bombing, FY1995 (P.L. 104-19)**

(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds [citation]
<b>Department of Housing and Urban Development</b>		
Management and Administration	\$3,200	For emergency expenses resulting from the bombing [109 Stat. 253]
Community Planning and Development	\$39,000	To assist property damaged by, and in economic revitalization following, the bombing [109 Stat. 253]

<sup>24</sup> *Congressional Quarterly Almanac*, 104<sup>th</sup> Congress 1<sup>st</sup> session 1995, vol. LI (Washington, Congressional Quarterly, Inc., 1996), pp. 11-96 to 11-105.

<sup>25</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.





**Table 17. Hurricanes Georges and Bonnie and Other Disasters, FY1998  
(P.L. 105-277)**

(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
<b>Department of Defense (Civil)</b>		
Army Corps of Engineers	\$102,200 <sup>A</sup>	For emergency costs associated with flooding [112 Stat. 2681-575]
<b>Department of Defense (Military)</b>		
Operation and Maintenance	\$259,853	For emergency expenses resulting from storm damage or other natural disasters [112 Stat. 2681-559]
Military Construction/ Family Housing	\$127,324	For costs associated with Hurricane George and Hurricane Bonnie [112 Stat. 2682-560 to 2682-563]
<b>Subtotal Defense (Military)</b>	<b>\$387,177</b>	
<b>Department of Housing and Urban Development</b>		
Community Planning and Development	\$250,000	For disaster relief, long-term recovery, and mitigation in communities affected by Presidentially-declared natural disasters [112 Stat. 2681-578]
<b>Department of Interior</b>		
Fish and Wildlife Service	\$25,000	To repair damage due to hurricanes, floods and other disasters [112 Stat. 2681-576 to 2681-577]
National Park Service	\$10,000	To repair damage due to hurricanes, floods and other disasters [112 Stat. 2681-577]
U.S. Geological Survey	\$1,000	To repair damage due to hurricanes, floods and other disasters [112 Stat. 2681-577]
<b>Subtotal Interior</b>	<b>\$42,000</b>	
<b>Department of Transportation</b>		
Coast Guard	\$12,600	For facility replacement or repair costs resulting from Hurricane Georges [112 Stat. 2681-578]
<b>Executive Office of the President</b>	<b>\$30,000</b>	For a grant to the American Red Cross for reimbursement of disaster relief costs, recovery expenditures, and emergency services [112 Stat. 2681-576]
<b>Small Business Administration</b>		
Disaster Loans Program Account	\$101,000	For the cost of disaster loans and associated administrative expenses [112 Stat. 2681-574]
<b>Federal Emergency Management Agency</b>	<b>\$906,000</b>	For disaster relief [112 Stat. 2681-579]

Federal Agency	Funding	Intended Use of Funds [citation]
<b>Total</b>	<b>\$1,830,977</b>	

<sup>A</sup> The statute included an additional \$35 million for specified flood mitigation activities in South Dakota and \$154.4 million for flood damage reduction and recreation in North Dakota and Minnesota.

## Emergency Appropriations, FY 1999

### Hurricanes Mitch and George; Tornados

President Clinton requested over \$7 billion in supplemental funding to pay for military operations in Kosovo and to meet other needs. Funds were also sought to help victims of Hurricanes Mitch and Georges. While these storms had little impact on the United States, they devastated Caribbean islands and parts of Central America. As enacted, the FY1999 Supplemental Appropriations Act, P.L. 106-31, included funds for victims of tornados in Kansas and Oklahoma, as well as other disasters.<sup>31</sup> According to CBO calculations, Congress appropriated a total of \$13.097 million in the statute.<sup>32</sup>

**Table 18. Hurricanes Mitch, George, Tornados, FY1999**  
**(P.L. 106-31)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended use of Funds (citation)
<b>Department of Agriculture</b>		
National Resources and Conservation Service	\$95,000	Watershed and flood prevention [113 Stat. 58-59]
Rural Development	\$32,000	Rural development programs in response to hurricane damage [113 Stat. 60]
Office of the Agriculture Secretary	\$20,000	Grants to assist low-income migrant and seasonal farm workers [113 Stat. 57]
<b>Subtotal Agriculture</b>	<b>\$147,000</b>	
<b>Federal Emergency Management Agency</b>		
	\$900,000	For disaster relief [112 Stat. 73]
	\$230,000	Disaster assistance, for unmet needs in communities affected by Presidentially declared disasters [113 Stat. 74]

<sup>31</sup> For more information on the statute see CRS Report RL30083, *Supplemental Appropriations for FY1999: Central America Disaster Aid, Middle East Peace, and Other Initiatives*, by Larry Nowels. For background on the congressional debate see *Congressional Quarterly 1999 Almanac*, 106<sup>th</sup> Congress 1<sup>st</sup> session, vol. LV (Washington: Congressional Quarterly, Inc., 2000), pp. 2-147 to 2-165.

<sup>32</sup> U.S. Congressional Budget Office, *Supplemental Appropriations in the 1990s* (Washington: 2001), p. 8 available at [<http://www.cbo.gov/ftpdocs/27xx/doc2768/Report.pdf>], visited Oct. 28, 2005.



<b>Federal Agency</b>	<b>Funding</b>	<b>Intended use of Funds (citation)</b>
<b>Subtotal FEMA</b>	<b>\$1,130,000</b>	
<b>Department of Interior</b>		
Bureau of Reclamation	\$1,500	Emergency water purchase [113 Stat. 87]
Forest Service	\$5,611	Reconstruction and construction to address damages from Hurricane Georges [113 Stat. 71]
Fish and Wildlife Service	\$12,612	Repair damage from disasters, and replace & repair power generation equipment [113 Stat. 71-72]
<b>Subtotal Interior</b>	<b>\$19,723</b>	
<b>Total</b>	<b>\$1,296,723</b>	

## Emergency Appropriations, FY 2000

### Hurricanes Dennis and Floyd

In early September, 1999, two hurricanes affected several states on the east coast. North Carolina was significantly affected by the rainfall associated with Hurricanes Dennis and, to a greater extent, Floyd. Because these hurricanes occurred at the close of the fiscal year, funding was included in the FY2000 appropriations legislation; supplemental appropriations were not required. However, of the \$3.4 billion appropriated for the Disaster Relief Fund (DRF) administered by FEMA, \$2.5 billion was designated as emergency funding.<sup>33</sup>

**Table 19. Hurricanes Dennis and Floyd, FY2000 (P.L. 106-74)**  
(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended use of Funds (citation)</b>
<b>Federal Emergency Management Agency</b>	\$2,480,425	For disaster relief [113 Stat. 1085]

## Emergency Appropriations, FY 2001

### Nisqually Earthquake and Storms

President George W. Bush submitted a request for Department of Defense (DoD) supplemental funding in FY2001, primarily for operations in Kosovo. Disaster related funding eventually incorporated into the legislative branch appropriations act included relief for victims of storms in Arkansas and Oklahoma, firefighting in Alaska, the repair of DoD facilities, and the

<sup>33</sup> For more information on the statute see CRS Report RL30204, *Appropriations for FY2000: VA, HUD, and Independent Agencies*, coordinated by Dennis W. Snook. For background on the congressional debate see *Congressional Quarterly 1999 Almanac*, 106<sup>th</sup> Congress 1<sup>st</sup> session 199, vol. LV (Washington: Congressional Quarterly, Inc., 2000), pp. 2-135 to 2-146.

reconstruction of transportation systems after the Nisqually earthquake struck the Seattle, Washington area.<sup>34</sup> According to CBO calculations, Congress appropriated a total of \$8.979 million in supplemental funding in the statute.<sup>35</sup>

**Table 20. Nisqually Earthquake and Storms, FY2001**  
**(P.L. 107-20)**  
(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended use of Funds (citation)</b>
<b>Department of Agriculture</b>		
National Resources and Conservation Service	\$35,500	To repair damages to waterways and watersheds resulting from natural disasters [115 Stat. 165]
<b>Department of Defense (Civil)</b>		
Army Corps of Engineers	\$145,500	For flood repair costs [115 Stat. 173-174]
<b>Department of Defense (Military)</b>		
<i>Operation and maintenance</i>		
Army	\$6,500	For costs associated with natural disasters [115 Stat 161]
Navy	\$23,000	For costs associated with natural disasters [115 Stat 161]
Air Force	\$8,000	For costs associated with natural disasters [115 Stat 161]
Army Reserve	\$200	For costs associated with natural disasters [115 Stat 161]
Air Force Reserve	\$200	For costs associated with natural disasters [115 Stat 161]
Army National Guard	\$400	For costs associated with natural disasters [115 Stat 161]
Air National Guard	\$400	For costs associated with natural disasters [115 Stat 161]
Defense Health Program	\$1,200	For costs associated with natural disasters [115 Stat 161]
<b>Subtotal Defense (Military)</b>	<b>\$39,900</b>	
<b>Department of Housing and Urban Development</b>		

<sup>34</sup> For more information on the statute see CRS Report RL31012, *Appropriations for FY2002: Legislative Branch*, by Paul Dwyer. For background on the congressional debate see *CQ Almanac Plus*, 107<sup>th</sup> Congress 1<sup>st</sup> session, vol. LVII (Washington: Congressional Quarterly, Inc., 2002), pp. 2-55 to 2-58.

<sup>35</sup> U.S. Congressional Budget Office, *CBO Data on Supplemental Budget Authority for the 2000s* available at [<http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprop.pdf>], visited Oct. 28, 2005.

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended use of Funds (citation)</b>
Public and Indian Housing	\$5,000	For emergency housing assistance and to address mold at Turtle Mountain Indian Reservation [115 Stat. 189]
<b>Department of Interior</b>		
Fish and Wildlife Service	\$17,700	Repair damages caused by floods, ice storms, and earthquakes [115 Stat. 176]
Bureau of Indian Affairs	\$50,000	Indian programs & electric power costs [115 Stat. 176]
<i>Forest Service</i>		
State and Private Forestry	\$22,000	For costs associated with ice storms [115 Stat. 176-177]
State and Private Forestry	\$1,750	For emergency firefighting response to wildfires [115 Stat. 176-177]
State and Private Forestry	\$750	Emergency response [115 Stat. 176-177]
National Forest System	\$12,000	To repair damages caused by ice storms [115 Stat. 176-177]
Capital Improvement and Maintenance	\$4,000	To repair damages caused by ice storms [115 Stat. 176-177]
<b>Subtotal Interior</b>	<b>\$108,200</b>	
<b>Department of Transportation</b>		
Coast Guard	\$4,000	For repair of damaged facilities, and for costs associated with asset relocation [115 Stat. 186]
Federal Highway Administration	\$27,600	For costs associated with the Nisqually earthquake [115 Stat. 186]
<b>Subtotal Transportation</b>	<b>\$31,600</b>	
<b>Total</b>	<b>\$365,700</b>	

## September 11 Attacks I

Within days of the September 11 terrorist attacks Congress passed the first of three supplemental appropriations bills to provide disaster assistance and to fund the war on terror and protect transportation systems, notably airports and airlines. This legislation (P.L. 107-38) appropriated all funds to the Executive Office of the President and provided broad, but not unlimited, authority for the use of those funds. Of the \$40 billion appropriated, the President was authorized to spend \$10 billion at his discretion, another \$10 billion after providing notification of intended expenditures to Congress, and the remainder after subsequent congressional action was taken to allocate the funds already appropriated. The legislation specified that at least \$20 billion was appropriated for disaster recovery purposes. **Table 21** presents the summary information on the first supplemental act.

**Table 21. September 11 Attacks I, FY2001 (P.L. 107-38)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended use of funds (citation)
Executive Office of the President	\$20,000,000	For disaster recovery activities related to the September 11 terrorist acts, "not less than one-half of the" \$40 billion [115 Stat. 221]

## Emergency Appropriations, FY 2002

### September 11 Attacks II

The second of the three emergency statutes enacted by Congress (P.L. 107-117) did not appropriate additional funding but transferred the funds already appropriated in P.L. 107-38 to specific accounts. **Table 22** shows the distribution of disaster relief and recovery fund, as approved by Congress in the second supplemental.

**Table 22. September 11 Attacks II, FY2002, Division (P.L. 107-117)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended use of Funds (citation)
<b>Department of Commerce</b>		
<i>National Telecommunications and Information Administration</i>		
Public telecommunications facilities, planning & construction	\$8,250	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38. [115 Stat. 2294]
<i>National Institute of Standards and Technology</i>		
Construction of research facilities	\$1,225	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38. [115 Stat. 2295]
National Oceanic and Atmospheric Administration	\$2,750	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. [115 Stat. 2295]
<b>Subtotal Commerce</b>	<b>\$12,225</b>	
Department of Defense (Military)	\$775,000	Pentagon Renovation Revolving Fund (in response to September 11 terrorist attack), to be obligated from funds made available in P.L. 107-38 [115 Stat. 2299]

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Federal Agency	Funding	Intended use of Funds (citation)
<b>Department of Defense (Civil)</b>		
Army Corps of Engineers	\$139,000	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2307]

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<b>Federal Agency</b>	<b>Funding</b>	<b>Intended use of Funds (citation)</b>
<b>Department of Energy</b>		
Nuclear Weapons Activities	\$131,000	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2307]
Nuclear Nonproliferation	\$226,000	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2307]
<b>Subtotal Energy</b>	<b>\$357,000</b>	
<b>Department of Health and Human Services</b>		
Centers for Disease Control and Prevention	\$12,000	For disease control, research, and training, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2313]
Office of the HHS Secretary	\$140,000	For health care related expenses or lost revenues directly attributable to the public health emergency resulting from the September 11 terrorist acts, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2313]
Office of the HHS Secretary	\$2,504,314	For emergency expenses to counter potential biological, chemical, and other disease threats to civilian populations, to be obligated from funds made available in P.L. 107-38 [115 Stat 2314]
National Institutes of Health	\$10,500	For emergency expenses for carrying out worker training, research, and education activities, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2337]
<b>Subtotal HHS</b>	<b>\$2,666,814</b>	
<b>Federal Emergency Management Agency</b>		
Disaster Relief	\$4,356,871	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2338]
Salaries and Expenses	\$25,000	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2338]
Emergency Planning, Management, and Assistance	\$220,000	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L.107-38 [115 Stat. 2238]
<b>Subtotal FEMA</b>	<b>\$4,601,871</b>	
<b>Department of Agriculture</b>		

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended use of Funds (citation)</b>
Animal and Plant Health Inspection Service (APHIS)	\$105,000	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2290]
<b>Department of Housing and Urban Development</b>	\$2,000,000	To compensate for economic losses resulting from the terrorist attacks of September 11, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2336]
<b>Department of Labor</b>		
Employment and Training Administration	\$32,500	For an Emergency Employment Clearinghouse in New York City, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2312]
Employment and Training Administration	\$4,100	For State Unemployment Insurance and Employment Service Operations, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2312]
Employment and Training Administration	\$175,000	For "Workers Compensation Programs" to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2312]
<b>Subtotal Labor</b>	<b>\$211,600</b>	
<b>Department of Transportation</b>		
Coast Guard	\$209,150	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2327]
<b>United States Postal Service</b>	<b>\$500,000</b>	To protect against exposure to bio-hazardous material, and to replace or repair Postal Service facilities destroyed or damaged in New York City as a result of the September 11 terrorist attacks, to be obligated from funds made available in P.L. 107-38 [115 Stat. 2334]
<b>Department of Veterans Affairs</b>		
Departmental Administration	\$2,000	For emergency expenses to respond to the September 11 terrorist attacks, to be obligated from amounts made available in Public Law 107-38. [115 Stat. 2338]
<b>Total</b>	<b>\$11,579,660</b>	

## September 11 Attacks III

P.L. 107-206, the third supplemental appropriations legislation enacted after the terrorist attacks of September 11, primarily addressed defense and homeland security needs. One-third of the roughly \$32 billion appropriated targeted disaster recovery needs, largely in New York City. Funds were also appropriated for flood recovery and firefighting expenses elsewhere in the United States.<sup>36</sup> According to CBO calculations, Congress appropriated a total of \$26.554 billion in supplemental funding in the statute.<sup>37</sup>

**Table 23. September 11 Attacks III, FY2002 (P.L. 107-206)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended use of Funds (citation)
<b>Department of Agriculture</b>		
National Resources and Conservation Service	\$144,000	Watershed & flood protection, and emergency recovery operations [116 Stat. 822]
<b>Department of Health and Human Services</b>		
Centers for Disease Control and Prevention	\$1,000	For emergency funding [116 Stat. 870]
Administration for Children and Families	\$500	For emergency funding [116 Stat. 870]
Office of the HHS Secretary	\$90,000	For Public Health and Social Services Emergency Fund [116 Stat. 871]
<b>Subtotal HHS</b>	<b>\$91,500</b>	
<b>Federal Emergency Management Agency</b>		
Disaster Relief	\$2,650,700	For emergency expenses to respond to the September 11 terrorist attacks [116 Stat. 894]
Disaster Assistance for Unmet Needs	\$23,200	For disaster relief, and long-term recovery in communities affected by Presidentially declared natural disasters [116 Stat. 895]
Emergency Management, Planning, and Assistance	\$447,200	For emergency expenses to respond to the September 11 terrorist attacks [116 Stat. 896]
Cerro Grande Fire Claims	\$61,000	For claims resulting from the Cerro Grande fires, [116 Stat. 896]
<b>Subtotal FEMA</b>	<b>\$3,182,100</b>	

<sup>36</sup> For more information on the statute see CRS Report RL31005, *Appropriations and Authorization for FY2002: Defense*, by Amy Belasco and Stephen Daggett. For background on the congressional debate see *CQ 2002 Almanac Plus*, 107<sup>th</sup> Congress 2<sup>nd</sup> session, vol. LVIII (Washington: Congressional Quarterly, Inc., 2003), pp. 2-40 to 2-44.

<sup>37</sup> U.S. Congressional Budget Office, *CBO Data on Supplemental Budget Authority for the 2000s* available at [<http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprop.pdf>], visited Oct. 28, 2005.



<b>Federal Agency</b>	<b>Funding</b>	<b>Intended use of Funds (citation)</b>
<b>Department of Housing and Urban Development</b>	<b>\$783,000</b>	For assistance for properties and businesses damaged by the terrorist attacks of September 11 in New York City [116 Stat. 889]
<b>Department of Transportation</b>		
Federal Highway Administration	\$167,000	For emergency expenses in response to the September 11 terrorist attacks [116 Stat. 882]
Federal Transit Administration	\$1,800,000	To replace, rebuild, or enhance the public transportation systems serving Manhattan, in response to the September 11 terrorist attacks [116 Stat. 883]
<b>Subtotal Transportation</b>	<b>\$1,967,000</b>	
<b>Total</b>	<b>\$6,167,600</b>	

## Emergency Appropriations, FY 2003

### Tornados, Space Shuttle *Columbia*

President George W. Bush requested almost \$1.6 billion for the Disaster Relief Fund (DRF) to provide assistance after wildfires in western states and for costs associated with the recovery of debris from the destruction of the space shuttle *Columbia*. In addition, tornados and winter storms resulted in expenditures that required supplemental funding for the DRF.<sup>38</sup> According to CBO calculations, Congress appropriated a total of \$984 million in supplemental funding in the statute.<sup>39</sup>

**Table 24. Tornados, Space Shuttle *Columbia*, FY2003 (P.L. 108-69)**  
(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds [citation]</b>
<b>Federal Emergency Management Agency</b>	<b>\$983,600</b>	For disaster relief [117 Stat. 885]

### Storm, Floods, and Wildfire Suppression

The FY2004 appropriations act for the legislative branch included supplemental funding of almost \$1 billion for FY2003, which was targeted primarily to recovery from storms and floods and

<sup>38</sup> For more information on the statute see CRS Report RL31999, *Disaster Relief and Response: FY2003 Supplemental Appropriations*, by Keith Bea. For background on the congressional debate see *CQ 2003 Almanac Plus*, 108<sup>th</sup> Congress 1<sup>st</sup> session, vol. LIX (Washington: Congressional Quarterly, Inc., 2004), pp. 2-31 to 2-32.

<sup>39</sup> U.S. Congressional Budget Office, *CBO Data on Supplemental Budget Authority for the 2000s* available at [<http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprop.pdf>], visited Oct. 28, 2005.

for wildfire suppression.<sup>40</sup> The White House originally requested twice that amount for disaster assistance; \$984 million of the original request was approved earlier in P.L. 108-69. As enacted, Congress included disaster funding in P.L. 108-83, the FY2004 Legislative Branch appropriations Act. According to CBO calculations, Congress appropriated a total of \$933 million in supplemental funding in the statute.<sup>41</sup>

**Table 25. Storm, Floods, and Wildfire Suppression FY2003 (P.L. 108-83)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds [citation]
<b>Department of Defense (Civil)</b>		
Army Corps of Engineers	\$60,000	For flood control and coastal emergencies [117 Stat. 1036-1037]
<b>Federal Emergency Management Agency</b>	\$441,700	For disaster relief [117 Stat. 1037]
<b>Department of the Interior</b>		
Bureau of Land Management	\$36,000	Wildfire suppression and emergency rehabilitation services [117 Stat. 1037]
Forest Service	\$283,000	Repay advances for wildfire suppression and for emergency rehabilitation
<b>Subtotal Interior</b>	<b>\$319,000</b>	
<b>Total</b>	<b>\$820,700</b>	

## Emergency Appropriations, FY 2004

### Hurricane Isabel

P.L. 108-106 provided supplemental funds for the costs of the wars in Iraq and Afghanistan, the “largest supplemental spending bill in U.S. history,” according to the *Congressional Quarterly*. The appropriation totaled approximately \$87.5 billion. The act included funds for disaster relief

<sup>40</sup> For more information on the statute see CRS Report RL31999, *Disaster Relief and Response: FY2003 Supplemental Appropriations*, by Keith Bea. For background on the congressional debate see *CQ 2003 Almanac Plus*, 108<sup>th</sup> Congress 1<sup>st</sup> session, vol. LIX (Washington: Congressional Quarterly, Inc., 2004), pp. 2-69 to 2-71.

<sup>41</sup> U.S. Congressional Budget Office, *CBO Data on Supplemental Budget Authority for the 2000s* available at [<http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprop.pdf>], visited Oct. 28, 2005.

following the damage caused by Hurricane Isabel in the fall of 2003.<sup>42</sup> According to CBO, all of the funds appropriated in the statute constituted supplemental funding.<sup>43</sup>

**Table 26. Hurricane Isabel , FY2004 (P.L. 108-106)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds (citation)
<b>Department of Defense (Military)</b>		
<i>Operation and maintenance</i>		
Army	\$47,100	For recovery and repair of damage due to natural disasters including Hurricane Isabel [117 Stat. 1215]
Navy	\$87,600	For recovery and repair of damage due to natural disasters including Hurricane Isabel [117 Stat. 1215]
Marine Corps	\$6,700	For recovery and repair of damage due to natural disasters including Hurricane Isabel [117 Stat. 1215]
Air Force	\$169,300	For recovery and repair of damage due to natural disasters including Hurricane Isabel [117 Stat. 1215]
Other Procurement, Air Force	\$2,300	For recovery and repair of damage due to natural disasters including Hurricane Isabel [117 Stat. 1215]
<b>Subtotal Defense (Military)</b>	<b>\$313,000</b>	
<b>Federal Emergency Management Agency</b>	<b>\$500,000<sup>A</sup></b>	For disaster relief [117 Stat. 1220]
<b>Total</b>	<b>\$813,000</b>	

<sup>A</sup> P.L. 108-199 rescinded \$225 million of the \$500 million appropriated for Emergency Preparedness and Response in P.L. 108-106.

<sup>42</sup> For more information on the statute see CRS Report RL32090, *FY2004 Supplemental Appropriations for Iraq, Afghanistan, and the Global War on Terrorism: Military Operations & Reconstruction Assistance*, by Stephen Daggett, Larry Nowels, Curt Tarnoff, and Rhoda Margesson. For background on the congressional debate see *CQ 2003 Almanac Plus*, 108<sup>th</sup> Congress 1<sup>st</sup> session, vol. LIX (Washington: Congressional Quarterly, Inc., 2004), pp. 2-83 to 2-86.

<sup>43</sup> U.S. Congressional Budget Office, *CBO Data on Supplemental Budget Authority for the 2000s* available at [<http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprop.pdf>], visited Oct. 28, 2005.

## Wildfire Suppression

P.L. 108-287, the FY2005 DoD Appropriations Act, totaled roughly \$417 billion. The enacted bill included FY2004 supplemental funds largely to support continue armed forces operations in Iraq and Afghanistan. In addition, \$500 million was included to meet wildfire suppression requirements.<sup>44</sup> According to CBO calculations, Congress appropriated a total of \$28.256 million in supplemental funding in the statute.<sup>45</sup>

**Table 27. Wildfire Suppression, FY2004 (P.L. 108-287)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds (citation)
<b>Department of the Interior</b>		
Bureau of Land Management	\$100,000	Urgent wild land fire suppression [118 Stat. 1012]
Forest Service	\$400,000	Urgent wild land fire suppression [118 Stat. 1012]
<b>Total</b>	<b>\$500,000</b>	

In response to the devastation in Florida caused by Hurricane Charley, the President requested an emergency supplemental appropriation to meet immediate funding needs of FEMA. Congress enacted a \$2 billion supplemental appropriations bill, all of which was directed to disaster relief purposes.<sup>46</sup> **Table 28**, below, summarizes this information.

**Table 28. Hurricane Charley, FY2004**  
**(P.L. 108-303)**  
(Nominal dollars in thousands)

Federal Agency	Funding	Intended Use of Funds (citation)
<b>Federal Emergency Management Agency</b>	\$2,000,000	For disaster relief [118 Stat. 1124]

## Emergency Appropriations, FY 2005

Weeks after Hurricane Charley, Florida was hit by three other hurricanes (Frances, Ivan, and Jeanne) that resulted in FY2005 supplemental funds being included in the FY2005 funding for

<sup>44</sup> For more information on the statute see CRS Report RL32783, *FY2005 Supplemental Appropriations for Iraq and Afghanistan, Tsunami Relief, and Other Activities*, by Amy Belasco and Larry Nowels. For background on the congressional debate see *CQ 2004 Almanac Plus*, 108<sup>th</sup> Congress 2<sup>nd</sup> session, vol. LX (Washington: Congressional Quarterly, Inc., 2005), pp. 2-51 to 2-52.

<sup>45</sup> U.S. Congressional Budget Office, *CBO Data on Supplemental Budget Authority for the 2000s* available at [<http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprop.pdf>], visited Oct. 28, 2005.

<sup>46</sup> For more information on the statute see CRS Report RL32581, *Supplemental Appropriations for the 2004 Hurricanes and Other Disasters*, by Keith Bea and Ralph M.Chite. For background on the congressional debate see *CQ 2004 Almanac Plus*, 108<sup>th</sup> Congress 2<sup>nd</sup> session, vol. LX (Washington: Congressional Quarterly, Inc., 2005), pp. 2-53.

military construction (P.L. 108-324). **Table 29**, below, presents information on the latter. According to CBO calculations, all of the funding in P.L. 108-303 constituted supplemental funding, while \$14.528 million of P.L. 108-324 was classified as such.<sup>47</sup>

**Table 29. Hurricanes Frances, Ivan, Jeanne, FY2005  
(P.L. 108-324)**  
(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds (citation)</b>
<b>Department of Defense (Civil)</b>		
<i>Army Corps of Engineers</i>		
General Investigations	\$400	Emergency expenses for update of studies necessitated by storm damage to shore projects [118 Stat. 1245]
General Construction	\$62,600	Emergency expenses for repair of storm damage [118 Stat. 1245]
Flood Control	\$6,000	Emergency expenses for levee repair and for emergency dredging [118 Stat. 1245]
General Operation and Maintenance	\$145,400	Emergency expenses for repair of storm damage [118 Stat. 1245]
Flood Control and Coastal Emergencies	\$148,000	Emergency expenses for repair of damage to flood control & shore protection projects [118 Stat. 1246]
<b>Subtotal Defense (Civil)</b>	<b>\$362,400</b>	
<b>Department of Agriculture</b>		
Forest Service	\$113,096	To address damages from natural disasters [118 Stat. 1248]
Farm Service Agency	\$100,000	For Emergency Conservation Program, to address expenses resulting from natural disasters [118 Stat. 1230]
Rural Housing Service	\$35,000	For housing rebuilding loans and grants [118 Stat. 1231-1232]
Natural Resources Conservation Service	\$250,000	For Emergency Watershed Protection Program [118 Stat. 1231]
<b>Subtotal Agriculture</b>	<b>\$498,096</b>	
<b>Environmental Protection Agency</b>		
Buildings and Facilities	\$3,000	For expenses related to recent natural disasters [118 Stat. 1254]

<sup>47</sup> U.S. Congressional Budget Office, *CBO Data on Supplemental Budget Authority for the 2000s* available at [<http://www.cbo.gov/ftpdocs/66xx/doc6630/SuppApprop.pdf>], visited Oct. 28, 2005.

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds (citation)</b>
<b>Executive Office of the President</b>	<b>\$70,000</b>	For disaster relief & recovery expenditures, and emergency services associated with Hurricanes Charley, Frances, Ivan, and Jeanne [118 Stat. 1251-1252]
<b>Federal Emergency Management Agency</b>	<b>\$6,500,000</b>	For disaster relief [118 Stat. 1247]
<b>Department of Homeland Security</b>		
Coast Guard	\$33,367	For emergency operating expenses resulting from recent natural disasters in the southeastern United States [118 Stat. 1247]
<b>Department of Housing and Urban Development</b>		
Community Development Block Grants	\$150,000	For disaster relief, long-term recovery, and mitigation activities related to hurricanes [118 Stat. 1253]
<b>Department of the Interior (and related agencies)</b>		
Fish and Wildlife Service	\$40,552	To address damages from natural disasters [118 Stat. 1247]
National Park Service	\$50,802	To address damages from natural disasters [118 Stat. 1247]
United States Geological Survey	\$1,000	For emergency surveys, investigations, and research [118 Stat. 1248]
<b>Subtotal Interior</b>	<b>\$92,354</b>	
<b>Department of Justice</b>		
Federal Prison System	\$5,500	For emergency hurricane-related expenses [118 Stat. 1237]
Buildings and Facilities	\$18,600	For emergency hurricane-related expenses [118 Stat. 1237]
<b>Subtotal Justice</b>	<b>\$24,100</b>	
<b>Department of Defense (Military)</b>		
<i>Operation and Maintenance</i>		
Army	\$8,600	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1238]
Navy	\$458,000	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1238]
Marine Corps	\$1,300	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1239]
Air Force	\$165,400	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1239]
Defense-Wide	\$100,000	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1239]

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds (citation)</b>
Army Reserve	\$1,400	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1240]
Navy Reserve	\$1,000	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1240]
Air Force Reserve	\$2,400	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1240]
Army National Guard	\$10,500	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1240]
Air National Guard	\$2,200	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1241]
<i>Procurement</i>		
Air Force	\$2,500	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1241]
Defense-wide	\$140,000	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1241]
Revolving and Management Funds	\$4,100	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1242]
Defense Health Program	\$12,000	For emergency hurricane and other natural disaster-related expenses [118 Stat. 1242]
<b>Subtotal Defense (Military)</b>	<b>\$909,400</b>	
<b>Department of Health and Human Services</b>		
Public Health and Social Services Emergency Fund	\$50,000	In response to natural disasters [118 Stat. 1249]
National Aeronautics and Space Administration	\$126,000	To repair assets damaged and take other emergency measures due to the effects of hurricanes and other disasters [118 Stat. 1254]
<b>Small Business Administration</b>		
Disaster Loans Program Account	\$501,000	For the cost of direct loans [118 Stat. 1238]
Administrative expenses	\$428,000	Additional amount for Disaster Loans Program Account [118 Stat. 1238]
<b>Subtotal Small Business Administration</b>	<b>\$929,000</b>	
<b>Department of Transportation</b>		
<i>Federal Aviation Administration</i>		

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds (citation)</b>
Facilities and Equipment	\$5,100	For expenses resulting from the recent natural disasters in the southeastern United States [118 Stat. 1250-1251]
Emergency Assistance to Airports	\$25,000	Emergency capital costs to repair or replace public use facilities at airports damaged by hurricanes Charley, Frances, Ivan, and Jeanne [118 Stat. 1251]
Federal Highway Administration	\$1,202,000	Emergency expenses resulting from Hurricanes Charley, Frances, Gaston, Ivan, and Jeanne [118 Stat. 1251]
<b>Subtotal Transportation</b>	<b>\$1,232,100</b>	
<b>Department of Veterans Affairs</b>		
Medical Services	\$38,283	Expenses related to recent natural disasters in the Southeast [118 Stat. 1252]
Medical Administration	\$1,940	Expenses related to recent natural disasters in the Southeast [118 Stat. 1252]
Medical Facilities	\$46,909	Expenses related to recent natural disasters [118 Stat. 1252]
<b>Departmental Administration</b>		
General Operating Expenses	\$545	Expenses related to recent natural disasters [118 Stat. 1252-1253]
National Cemetery Administration	\$50	Expenses related to recent natural disasters in the Southeast [118 Stat. 1253]
Construction	\$36,343	Expenses related to recent natural disasters [118 Stat. 1253]
<b>Subtotal Veterans Affairs</b>	<b>\$124,070</b>	
<b>Total</b>	<b>\$11,103,887</b>	

## Hurricane Katrina

In an immediate response to Hurricane Katrina, Congress passed a \$10.5 billion supplemental appropriations bill, all of which was for disaster relief purposes. Due to the high costs anticipated from the devastation caused by Hurricane Katrina, a second supplemental was enacted within days of the first, the “largest non-war supplemental spending package in U.S. history.”<sup>48</sup>

**Table 30. Hurricane Katrina I, FY2005 (P.L. 109-61)**

<sup>48</sup> For more information on the statute see CRS Report RS22239, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, by Jennifer E. Lake and Ralph M. Chite. For background on the congressional debate see Steven T. Dennis and Liriel Higa, “\$62 Billion and Counting,” *CQ Weekly*, vol. 63, Sept. 12, 2005, pp. 2412-2418.



(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds (citation)</b>
<b>Federal Emergency Management Agency</b>	<b>\$10,000,000</b>	For disaster relief [119 Stat. 1988]
<b>Department of Defense (Military)</b>		
Operation and Maintenance, Defense-wide	\$500,000	For emergency hurricane expenses [119 Stat. 1988]
<b>Total</b>	<b>\$10,500,000</b>	

**Table 31. Hurricane Katrina II, FY2005 (P.L. 109-62)**

(Nominal dollars in thousands)

<b>Federal Agency</b>	<b>Funding</b>	<b>Intended Use of Funds (citation)</b>
<b>Federal Emergency Management Agency</b>	<b>\$50,000,000</b>	For disaster relief [119 Stat. 1991]
<b>Department of Defense (Military)</b>		
Operation and Maintenance, Defense-wide	\$1,400,000	Costs associated with Hurricane Katrina [119 Stat. 1990]
<b>Department of Defense (Civil)</b>		
Army Corps of Engineers	\$200,000	Emergency expenses for repair of storm damage [119 Stat. 1991]
Army Corps of Engineers	\$200,000	Emergency expenses for repair of flood damage [119 Stat. 1991]
<b>Subtotal Defense (Civil)</b>	<b>\$400,000</b>	
<b>Total</b>	<b>\$51,800,000</b>	



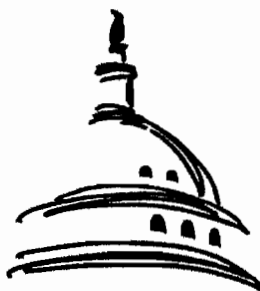
# CRS Report for Congress

## Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data, FY1989 to FY2007

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Congressional  
Research  
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Prepared for Members and  
Committees of Congress

# Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data, FY1989 to FY2007

## Summary

This report provides summary information on emergency supplemental appropriations enacted after major disasters since 1989. During the 19-year span from FY1989 through FY2007, Congress appropriated more than \$206 billion for disaster assistance. Most of the appropriations were preceded by a presidential request for supplemental funding. Some appropriations have been offset by rescissions.

The most recent and costly disasters occurred in the summer of 2005 when Hurricanes Katrina, Rita, and Wilma made landfall in Gulf Coast states. To date, Congress has appropriated more than \$117 billion in five supplementals, largely in response to those hurricanes. Portions of the appropriations were offset by rescinding over \$34 billion in previously appropriated funds, explained in the section titled "Hurricanes Katrina, Rita, and Wilma."

Prior to FY2005 and the hurricanes, only the terrorist attacks of 2001 led to supplemental appropriations legislation that exceeded \$20 billion. Congress appropriated a total of more than \$26 billion for disaster assistance in response to the attacks. Other supplemental appropriations legislation enacted after catastrophic disasters (or several significant disasters that occurred in short time intervals) range from almost \$366 million in FY2001 before the terrorist attacks (largely due to the Nisqually earthquake in the summer of 2001) to more than \$12 billion for the Midwest floods of 1993 and the Northridge earthquake of 1994. In the latter instances, Congress appropriated funds to address the needs caused by more than one disaster.

At times, the supplementals enacted by Congress have included only disaster funding. The supplementals enacted after Hurricane Hugo and the Loma Prieta earthquake, in addition to the first two enacted after Hurricane Katrina, serve as examples. On other occasions, however, disaster funding has been part of larger pieces of legislation that appropriated funds for purposes other than disaster assistance. In the latter category of statutes, disaster funding ranges from less than 1% (wildfires and Hurricane Isabel, FY2004) to almost 90% of the total appropriations (Oklahoma City bombing of 2005).

President Bush submitted a request to Congress for FY2007 supplemental funding along with the FY2008 budget request. The majority of the supplemental funds enacted on May 25, 2007, in P.L. 110-28 are for the military operations in Iraq and Afghanistan. The enacted legislation includes \$6.9 billion for Gulf Coast recovery costs associated with Hurricane Katrina.

This report will be updated as events warrant to reflect any additional supplemental disaster assistance appropriations in the 110<sup>th</sup> Congress.

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# Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data, FY1989 to FY2007

## Overview

From FY1989 through FY2007, Congress appropriated more than \$206 billion for disaster assistance in 31 appropriations measures, primarily supplemental appropriations acts, after significant catastrophes occurred in the United States.<sup>1</sup> The median annual funding during the 19-year period FY1989 through FY2007 was \$2.2 billion; the mean annual funding was \$6.7 billion (\$206 billion/19). The mean funding for all 31 enacted emergency supplemental bills was \$2.2 billion (\$206 billion/31).<sup>2</sup> Disasters during 2001 and 2005 were especially costly. In FY2001 and FY2002, supplemental appropriations for disaster assistance exceeded \$26 billion, most of which went toward recovery following the terrorist attacks of September 11, 2001. In FY2005 and FY2006, after Hurricanes Katrina, Rita, and Wilma struck in 2005, supplemental appropriations for disaster assistance reached an all-time high of \$117.5 billion — roughly 57% of the total appropriated for disaster assistance for the entire period.

Recently, Congress passed and the President signed into law P.L. 110-28, on May 25, 2007. The legislation provides \$120 billion in emergency FY2007 supplemental spending for military operations in Iraq and Afghanistan, additional relief for victims of Gulf Coast hurricanes, and other matters. Of the \$120 billion in total enacted appropriations, the legislation provides approximately \$7.7 billion in additional relief for victims of Gulf Coast hurricanes and other disasters. The measure appropriates \$1.6 billion for the Corps of Engineers' projects, levee repair

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<sup>1</sup> This amount does not include disaster assistance funding made available through regular annual appropriations legislation (with one exception in FY2000 after Hurricane Floyd) or funding enacted for agricultural disasters. For information on emergency agricultural funding, see CRS Report RL31095, *Emergency Funding for Agriculture: A Brief History of Supplemental Appropriations, FY1989-FY2006*, by Ralph Chite.

<sup>2</sup> Mean annual funding reflects the total funding for the period divided by 19, representing each of the 19 fiscal years in FY1989-FY2007. The mean funding for the set of all of the enacted bills reflects the total funding for the period divided by the total number of 31 enacted measures.

and flood control. This funding includes \$6.9 billion specifically for additional Gulf Coast hurricane relief.<sup>3</sup>

P.L. 110-28 is the culmination of a \$103 billion FY2007 supplemental request submitted by the Administration to Congress along with the FY2008 budget.<sup>4</sup> The President's request for continued relief for the Gulf Coast states amounted to \$3.4 billion. The \$6.9 billion in Gulf Coast recovery funds in P. L. 110-28 increased the hurricane relief funding requested by the President by approximately \$3.5 billion.

This report provides summary information on emergency supplemental appropriations legislation enacted since 1989 after significant catastrophes. It includes funds appropriated to the Disaster Relief Fund (DRF) administered by the Federal Emergency Management Agency (FEMA), as well as funds appropriated to other agencies.<sup>5</sup> Emergency assistance funding includes appropriations for disaster relief, repair of federal facilities, and hazard mitigation activities directed at reducing the impact of future disasters. DRF appropriations are obligated for all major disasters and emergencies issued under the Stafford Act,<sup>6</sup> not only those significant events that lead to supplemental appropriations. Counterterrorism, law enforcement, and national security appropriations are not included in this compilation. Unless otherwise noted, this report does not take into account rescissions approved by Congress after funds have been appropriated for disaster assistance.

As reflected in **Table 1** below, supplemental appropriations have been enacted as stand-alone legislation. However, in some instances, emergency disaster relief funding has been enacted as part of regular appropriations measures, continuing appropriations acts (continuing resolutions), or in omnibus appropriations legislation. Requested funding levels noted in the third column of **Table 1** reflect House Appropriations Committee data on total requested funding for the entire enacted bill. Where possible, Office of Management and Budget (OMB) data taken from

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<sup>3</sup> The figure of \$6.9 billion for Gulf Coast relief for disaster assistance is based on CRS' interpretation of the statutory provisions included in P.L. 110-28 for disaster assistance funding. Details concerning the types of appropriations that are included in disaster assistance funding as defined within this report appear in the text above.

<sup>4</sup> See U.S. President, *Budget of the United States Government, Fiscal Year 2008 Appendix* (Washington: 2007), [<http://www.whitehouse.gov/omb/budget/fy2008/pdf/appendix/sup.pdf>].

<sup>5</sup> Disaster relief funding allocated in P.L. 107-117 is not included in **Table 1** because it was an allocation of funding appropriated in P.L. 107-38. The majority of federal emergency assistance funding listed in this report was provided through the Disaster Relief Fund. More information on the emergency funding provided to the DRF appears in CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

<sup>6</sup> The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.

correspondence to Congress requesting emergency supplemental funding are used to identify dates of Administration requests for supplemental funding.<sup>7</sup>

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<sup>7</sup> The Office of Management and Budget (OMB) Website on Supplementals, Amendments, and Releases [<http://www.whitehouse.gov/omb/budget/amendments.htm>] contains a list of the presidential submission transmittals from calendar year 2003 to the present. Calendar year OMB 2004 submissions are available at [<http://www.whitehouse.gov/omb/budget/04amendments.htm>]; calendar year OMB 2003 submissions and estimates are available at [<http://www.whitehouse.gov/omb/budget/03amendments.htm>].



**Table 1. Presidential Requests and Appropriations, Emergency Appropriations for Disaster Assistance, FY1989-FY2007**  
(dollars in thousands)

<b>Fiscal Year</b>	<b>Disaster Event and Date of Major Disaster Declaration <sup>a</sup></b>	<b>Administration Request, by Date and Amount <sup>b</sup></b>	<b>Date Signed into Law and P.L. Number</b>	<b>Total Appropriation in Current Year Dollars</b>	<b>Emergency Assistance Funding and Percentage of Appropriation Current Year Dollars</b>	<b>Emergency Assistance Funding in FY2007 Dollars</b>
2007	Hurricane Katrina Aug. 29, 2005	Feb. 5, 2007 \$3,400,000	May 25, 2007 P.L. 110-28	\$120,000,000	\$7,679,000 6.4%	\$7,679,000
2006	Hurricanes Katrina, Rita, Wilma Aug. - Sept. 2005	Feb. 16, 2006 \$19,800,000	June 15, 2006 P.L. 109-234	\$94,520,000	\$19,340,000 20.4%	\$19,764,722
2006	Hurricanes Katrina, Rita, Wilma Aug. - Sept. 2005	Oct. 28, 2005 \$17,100,000 <sup>c</sup>	Dec. 30, 2005 P.L. 109-148	\$453,500,000	\$29,046,985 6.4%	\$29,684,880
2005	Hurricane Katrina Aug. 29, 2005	Sept. 7, 2005 \$51,800,000	Sept. 8, 2005 P.L. 109-62	\$51,800,000	\$51,800,000 100%	\$54,800,000
2005	Hurricane Katrina Aug. 29, 2005	Sept. 1, 2005 \$10,500,000	Sept. 2, 2005 P.L. 109-61	\$10,500,000	\$10,500,000 100%	\$11,000,983
2005	Hurricanes Ivan, Jeanne Sept. 1, 2004	Sept. 14, 2004 \$3,100,000	Oct. 13, 2004 P.L. 108-324	\$14,500,000	\$11,103,887 76.6%	\$11,633,636

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<b>Fiscal Year</b>	<b>Disaster Event and Date of Major Disaster Declaration <sup>a</sup></b>	<b>Administration Request, by Date and Amount <sup>b</sup></b>	<b>Date Signed into Law and P.L. Number</b>	<b>Total Appropriation in Current Year Dollars</b>	<b>Emergency Assistance Funding and Percentage of Appropriation Current Year Dollars</b>	<b>Emergency Assistance Funding in FY2007 Dollars</b>
2004	Hurricanes Charley, Frances Sept. 1, 2004	Sept. 6, 2004 \$2,000,000	Sept. 8, 2004 P.L. 108-303	\$2,000,000	\$2,000,000 100%	\$2,153,126
2004	Wildfires various dates	<sup>d</sup>	Aug. 8, 2004 P.L. 108-287	\$417,500,000	\$500,000 0.12%	\$538,281
2004	Hurricane Isabel Sept. 18, 2003	\$87,000,000 Sept. 17, 2003 <sup>e</sup>	Nov. 6, 2003 P.L. 108-106	\$87,500,000	\$813,000 0.93%	\$875,246
2003	Storms various 2003 dates	July 7, 2003 (continued from \$1,900,000 request below)	Sept. 30, 2003 P.L. 108-83	\$3,500,000	\$820,700 23.4%	\$904,714
2003	Tornadoes May 6, 2003	July 7, 2003 \$1,900,000	Aug. 8, 2003 P.L. 108-69	\$983,600	\$983,600 100%	\$1,084,290
2002	Terrorist attacks Sept. 11, 2001	Mar. 21, 2002 \$27,100,000	Aug. 2, 2002 P.L. 107-206	\$26,600,000	\$6,167,600 23.2%	\$6,933,229
2001	Terrorist attacks Sept. 11, 2001	Sept. 12, 2001 \$20,000,000	Sept. 18, 2001 P.L. 107-38	\$40,000,000 <sup>f</sup>	\$20,000,000 50%	\$22,913,247
2001	Nisqually Earthquake	<sup>g</sup>	July 24, 2001 P.L. 107-20	\$8,980,000	\$365,700 4.9%	\$418,969

## CRS-6

<b>Fiscal Year</b>	<b>Disaster Event and Date of Major Disaster Declaration <sup>a</sup></b>	<b>Administration Request, by Date and Amount <sup>b</sup></b>	<b>Date Signed into Law and P.L. Number</b>	<b>Total Appropriation in Current Year Dollars</b>	<b>Emergency Assistance Funding and Percentage of Appropriation Current Year Dollars</b>	<b>Emergency Assistance Funding in FY2007 Dollars</b>
2000	Hurricane Floyd Sept. 16, 1999	Sept. 21, 1999 \$97,500 <sup>h</sup>	Oct. 20, 1999 P.L. 106-74	\$99,500,000	\$2,480,425 2.5%	\$2,908,794
1999	Tornadoes various dates	<sup>i</sup>	May 21, 1999 P.L. 106-31	\$13,100,000	\$1,296,723 9.9%	\$1,551,384
1999	Hurricanes Georges, Bonnie flooding various dates	\$7,780,000 <sup>j</sup>	Oct. 21, 1998 P.L. 105-277	\$21,000,000	\$1,830,977 8.7%	\$2,190,560
1998	El Niño floods Feb. 9, 1998	Mar. 24, 1998 \$22,560,000	May 1, 1998 P.L. 105-174	\$6,006,000	\$2,602,173 43.3%	\$3,154,076
1997	Dakotas flooding Apr. 7, 1997	Mar. 19, 1997 \$3,480,000	June 12, 1997 P.L. 105-18	\$9,163,000	\$5,863,883 64%	\$7,193,823
1995	Oklahoma City bombing Apr. 25, 1995	<sup>k</sup>	July 27, 1995 P.L. 104-19	\$7,453,000	\$6,599,531 88.6%	\$8,395,823
1995	Northridge Earthquake, Tropical Storm Alberto various dates	\$90,100,000 <sup>l</sup>	Sept. 28, 1994 P.L. 103-327	\$90,100,000	\$417,500 <sup>m</sup> 0.46%	\$531,137

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Fiscal Year	Disaster Event and Date of Major Disaster Declaration <sup>a</sup>	Administration Request, by Date and Amount <sup>b</sup>	Date Signed into Law and P.L. Number	Total Appropriation in Current Year Dollars	Emergency Assistance Funding and Percentage of Appropriation Current Year Dollars	Emergency Assistance Funding in FY2007 Dollars
1994	Midwest floods, CA fires, and Northridge earthquake Jan. 17, 1994	Sept. 28, 1994 \$11,430,000	Feb. 12, 1994 P.L. 103-211	\$11,535,000	\$8,837,952 76.6%	\$11,480,135
1993	Midwest floods June 11, 1993	July 14, 1993 \$3,980,000	Aug. 12, 1993 P.L. 103-75	\$4,411,000	\$3,494,750 79.2%	\$4,637,128
1993	Hurricanes Andrew, Iniki various dates	<sup>n</sup>	July 2, 1993 P.L. 103-50	\$3,500,000	\$52,345 1.5%	\$69,456
1992	Hurricanes Andrew, Iniki Aug. 24, 1992	Sept. 8, 1992 \$6,530,000	Sept. 23, 1992 P.L. 102-368	\$12,775,000	\$5,767,116 45.1%	\$7,825,847
1992	L.A. riots/Chicago flood various dates	<sup>o</sup>	June 22, 1992 P.L. 102-302	\$1,191,000	\$ 469,650 39.4%	\$637,305
1992	Hurricane Bob various dates	June 28, 1991 \$693,000	Dec. 12, 1991 P.L.102-229	\$6,849,000	\$943,000 13.8%	\$1,279,630
1990	Hurricane Hugo/Exxon Valdez various dates	<sup>p</sup>	May 25, 1990 P.L. 101-302	\$4,300,000	\$670,412 15.6%	\$967,621
1990	Hurricane Hugo Loma Prieta Earthquake Oct. 18, 1989	<sup>q</sup>	Oct. 26, 1989 P.L. 101-130	\$ 2,850,000	\$2,850,000 100%	\$4,113,471

Fiscal Year	Disaster Event and Date of Major Disaster Declaration <sup>a</sup>	Administration Request, by Date and Amount <sup>b</sup>	Date Signed into Law and P.L. Number	Total Appropriation in Current Year Dollars	Emergency Assistance Funding and Percentage of Appropriation Current Year Dollars	Emergency Assistance Funding in FY2007 Dollars
1989	Hurricane Hugo Sept. 20, 1989	r	Sept. 29, 1989 P.L. 101-100	\$1,108,000	\$1,108,000 100%	\$1,658,606
1989	Fires on federal lands various dates	s	June 30, 1989 P.L. 101-45	\$3,564,000	\$348,969 9.8%	\$522,384

**Sources:** Supplemental funding totals based on compiled CRS data on emergency appropriations after disasters, FY1989-FY2007. Other supplemental funding totals obtained from Congressional Budget Office (CBO) Supplemental Appropriations series, including "CBO Data on Supplemental Budget Authority for the 2000s" at [<http://cbo.gov/ftpdocs/66xx/doc6630/SuppApprop.pdf>].

Totals for Administration requests were obtained from OMB correspondence to Congress and from the House Appropriations Committee Budget Estimates volumes, Table VIIIa. Editions for recent Congresses through the 107th are on the Government Printing Office GPO Access Congressional Documents site at [<http://www.gpoaccess.gov/serialset/cdocuments/budgets.html>], visited Feb. 27, 2007.

FY2007 dollar conversions were calculated using GDP Chained Price Index data in Table 10.1, FY2007 budget *Historical Tables* volume.

- Data in this column represent the date the President issued a major disaster declaration for the disaster that appeared to be the primary catalyst for the supplemental appropriations legislation. In a series of disasters (such as the Midwest floods of 1993), this date represents the first of several declarations associated with that particular disaster. In some instances, identifying which disasters were primarily associated with consideration of the supplemental appropriations was not possible.
- Data in this column represent the date the President submitted a request to Congress for supplemental funds. In some instances, funding was not requested by the White House but was included by Congress in regular appropriations measures.
- On October 28, 2005, the President submitted to Congress a request to "reallocate" \$17.1 billion previously appropriated for FEMA. See [[http://www.whitehouse.gov/omb/budget/amendments/rescission\\_package\\_10\\_28\\_05.pdf](http://www.whitehouse.gov/omb/budget/amendments/rescission_package_10_28_05.pdf)]. Congress modified this request by redirecting roughly \$12 billion to the request in provisions in P.L. 109-148, the FY2006 Department of Defense Appropriations Act. Because Congress appropriated the rescinded funds, the funding is considered supplemental appropriations for the purpose of this report, even though some might contend that this does not represent an additional cost to the Treasury. The President also submitted that same day a budget amendment that sought the rescission of "\$2.3 billion from lower-priority federal programs and excess funds." See Executive Office of the President, Office of Management and Budget, "Estimate No.14," at [[http://www.whitehouse.gov/omb/budget/amendments/rescission\\_package\\_10\\_28\\_05.pdf](http://www.whitehouse.gov/omb/budget/amendments/rescission_package_10_28_05.pdf)].

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- d. FY2004 supplemental funds to meet wildfire suppression requirements were included in the FY2005 Department of Defense Appropriations Act, P.L. 108-287. For more information on the statute, see CRS Report RL32783, *FY2005 Supplemental Appropriations for Iraq and Afghanistan, Tsunami Relief, and Other Activities*, by Amy Belasco and Larry Nowels.
- e. The President submitted a supplemental request of \$87 billion for ongoing military operations and for reconstruction assistance in Iraq, Afghanistan, and elsewhere. During conference on H.R. 3289 (P.L. 108-106, the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan Act, 2004), \$500 million for FEMA for disaster relief for Hurricane Isabel and the California wildfires was added to the legislation, bringing the total enacted funding for P.L. 108-106 to \$87.5 billion.
- f. P.L. 107-117 allocated funds appropriated in P.L. 107-38, which was enacted shortly after the terrorist attacks of September 11, 2001. Under P.L. 107-38, \$20 billion was available immediately, whereas the remaining \$20 billion became available when allocated in P.L. 107-117, enacted on January 10, 2002. Of the second half of the \$40 billion, \$11.579 billion was provided for emergency disaster assistance.
- g. An OMB supplemental request for the Nisqually earthquake could not be identified.
- h. The appropriations associated with Hurricane Floyd were not supplemental appropriations but were incorporated into the regular FY2000 appropriations legislation, P.L. 106-74, Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000. These data are included because Congress increased FY2000 DRF funding primarily in response to Hurricane Floyd.
- i. The initial Administration request of \$687 million was submitted on February 16, 1999 (see discussion in H.Rept. 106-064, p. 7) for relief funding for Hurricanes Georges and Bonnie. However, additional emergency disaster funding was later sought to address tornado damage and other natural disasters during 1999.
- j. Emergency relief funding for flooding caused by Hurricanes Georges and Bonnie was included in P.L. 105-277, the FY2000 Consolidated Appropriations Act.
- k. P.L. 103-211 provided \$11.53 billion in DRF appropriations largely in response to the Northridge earthquake in California. See White House press release from FEMA Director James Lee Witt, Jan. 12, 1995, at [<http://www.ibiblio.org/pub/archives/whitehouse-papers/1995/Jan/1995-01-12-fema-director-witt-on-california-flood-relief.text>], visited, Feb. 27, 2007. Administration supplemental request correspondence to Congress for subsequent funding for Northridge and Oklahoma City could not be identified.
- l. An OMB supplemental request or requested Administration funding level for Tropical Storm Alberto could not be identified. Tropical Storm Alberto disaster funding was included in P.L. 103-327, the FY1995 Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act.
- m. The CBO scored supplemental funding as \$357.0 million.
- n. An OMB supplemental request for Hurricanes Andrew and Iniki could not be identified.
- o. An OMB supplemental request for the Los Angeles riots and Chicago flood could not be identified.
- p. An OMB supplemental request for Hurricane Hugo and the Exxon Valdez incident could not be identified.
- q. No OMB request for this funding could be identified. Disaster funding in P.L. 101-130 was enacted as a continuing resolution, which amended the previous continuing resolution enacted as P.L. 101-100 to extend its provision until November 15, 1989.
- r. No request could be identified.
- s. An OMB supplemental request for the 1989 fires on federal lands or the requested Administration funding level could not be identified.

## Hurricanes Katrina, Rita, and Wilma

In response to the widespread destruction caused by three catastrophic hurricanes at the end of the 2005 summer, the 109<sup>th</sup> Congress enacted four emergency supplemental appropriations bills.

Two of the statutes were enacted as FY2005 supplementals after Hurricane Katrina devastated parts of Florida and Alabama and resulted in presidential major disaster declarations for all jurisdictions in Louisiana and Mississippi. The two supplementals (P.L. 109-61 and P.L. 109-62) together provided \$62.3 billion for emergency response and recovery needs; most of the funding in these two bills was provided for the Disaster Relief Fund (DRF) administered by FEMA.

After Hurricanes Rita and Wilma struck, Congress enacted two other supplementals; the costs of both were offset by rescissions. The FY2006 appropriations legislation for the Department of Defense (P.L. 109-148) rescinded roughly \$34 billion in funds previously appropriated (almost 70% of which was taken from funds previously appropriated to the Department of Homeland Security) and appropriated \$29 billion to other accounts primarily to pay for the restoration of federal facilities damaged by the hurricanes.<sup>8</sup> Also in FY2006, Congress agreed to an Administration request for further funding; \$19.3 billion was appropriated in supplemental legislation (P.L. 109-234) for recovery assistance, with roughly \$64 million rescinded from two accounts (\$15 million from flood control, Corps of Engineers, and \$49.5 million from Navy Reserve construction, Department of Defense). On May 25, 2007, the President signed into law P.L. 110-28, which appropriated \$120 billion in emergency supplemental funding for Iraq, Afghanistan, and other matters, including \$6.9 billion for continued Gulf Coast relief. The measure was a successor to previous emergency supplemental legislation in the 110<sup>th</sup> Congress, H.R. 1591, vetoed by the President on May 1, 2007. This is the fifth supplemental measure enacted containing disaster assistance specifically provided in response to Hurricanes Katrina and Rita.

As a result, the total amount appropriated by Congress in supplemental funding after the 2005 hurricanes surpassed the \$117 billion mark<sup>9</sup>. **Table 2** provides information on the appropriations made in the five supplementals enacted after Hurricanes Katrina, Rita, and Wilma. **Table 3** identifies the departments and agencies from which funds were rescinded in P.L. 109-148.

In addition to these rescissions and appropriations, Congress enacted other funding changes by transferring \$712 million from FEMA to the Small Business Administration for disaster loans (P.L. 109-174).

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<sup>8</sup> In requests to Congress, President Bush termed the sequence of events as a “reallocation” of funds.

<sup>9</sup> **Table 1** figures in this report indicate appropriations for all disaster relief in the bill, which is approximately \$7.7 billion. **Table 2** figures in this report indicate appropriations for Gulf Coast relief in response to Hurricanes Katrina, Rita, and Wilma of approximately \$6.9 billion.

**Table 2. FY2005-FY2007 Supplemental Disaster Appropriations After Hurricanes Katrina, Rita, and Wilma**  
(thousands of dollars)

Department	FY2005		FY2006		FY2007
	P.L. 109-61	P.L. 109-62	P.L. 109-148	P.L. 109-234	P.L. 110-28
Agriculture			\$1,183,000	<sup>a</sup> \$152,000	
Commerce			\$55,000	\$150,000	\$110,000
Defense-Military	\$500,000	\$1,400,000	\$5,754,000	<sup>b</sup> \$1,488,000	
Defense-Civil/Corps of Engineers		\$400,000	\$2,900,000	<sup>c</sup> \$3,686,000	\$1,433,000
Education and related agencies			\$1,600,000	\$285,000	\$60,000
Health and Human Services			\$640,000	\$12,000	
Homeland Security	\$10,000,000	\$50,000,000	\$285,000	\$6,662,000	\$4,110,000
Housing and Urban Development			\$11,890,000	\$5,200,000	\$7,000
Interior			\$70,000	\$256,000	\$10,000
Justice			\$229,000	\$9,000	\$50,000
Labor			\$125,000	\$16,000	
Transportation			\$2,798,000	<sup>d</sup> \$702,000	\$906,020
Veterans Affairs			\$658,000	\$586,000	\$14,500
<i>Agencies</i>					
Armed Forces Retirement Home				\$176,000	
Corporation for National and Community Service				\$10,000	
Environmental Protection Agency			\$8,000	\$13,000	
General Services Administration			\$38,000	\$37,000	
Historically Black Colleges Capital Financing				\$15,000	
National Aeronautics and Space Admin.			\$350,000	\$35,000	\$20,000
The Judiciary			\$18,000		
Small Business Administration			\$446,000	\$542,000	\$181,070
Total	\$10,500,000	\$51,800,000	\$29,047,000	\$19,300,000	\$6,901,590
<b>Grand Total</b>	<b>\$117,548,590</b>				

Source: CRS calculations from amounts presented in P.L. 109-61, P.L. 109-62, P.L. 109-148, P.L. 109-234, P.L. 110-28.

- a. Does not include authority for \$500 in direct assistance to be drawn from the Commodity Credit Corporation, authorized in Title III of P.L. 109-234.
- b. Includes rescissions and military construction accounts.
- c. Includes rescissions.
- d. Department of Transportation funds derived from Highway Trust Fund rescission.



**Table 3. Rescissions and Offsets, P.L. 109-148**  
(thousands of dollars)

Department or Agency	Amount Rescinded or Offset
Department of Agriculture	\$66,100
Department of Defense	\$80,000
Export-Import Bank	\$25,000
Department of Homeland Security	\$23,669,833
Department of the Interior	\$3,500
Department of Commerce	\$7,000
Department of State	\$30,000
Department of Transportation	\$1,143,000
Government-wide <sup>a</sup>	\$9,045,998
<b>Total</b>	<b>\$34,070,431</b>

**Source:** CRS calculation of rescissions and offsets presented in Division B, Title III, conference report H.Rept. 109-359 to accompany H.R. 2863.

- a. Data for the 1% rescission obtained from Letter from Joshua Bolten, Director, Office of Management and Budget, to Senator Thad Cochran, Chairman, Senate Appropriations Committee, Feb. 8, 2006, at [<http://www.cq.com/flatfiles/editorialFiles/budgetTracker/reference/docs/20060213omboneperc.pdf>].

## **Selected CRS Reports**

- CRS Report RL33330. *Community Development Block Grant Funds in Disaster Relief and Recovery*, by Eugene Boyd.
- CRS Report RL31999. *Disaster Relief and Response: FY2003 Supplemental Appropriations*, by Keith Bea.
- CRS Report RL33053. *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.
- CRS Report RL33900. *FY2007 Supplemental Appropriations for Defense, Foreign Affairs, and Other Purposes*, by Stephen Daggett, Amy Belasco, Pat Towell, Susan Epstein, Connie Veillette, Curt Tarnoff, and Rhoda Margesson.
- CRS Report RL33298. *FY2006 Supplemental Appropriations: Iraq and Other International Activities; Additional Hurricane Katrina Relief*, coordinated by Paul Irwin and Larry Nowels.
- CRS Report RL32783. *FY2005 Supplemental Appropriations for Iraq and Afghanistan, Tsunami Relief, and Other Activities*, by Amy Belasco and Larry Nowels.
- CRS Report RL32581. *Supplemental Appropriations for the 2004 Hurricanes and Other Disasters*, by Keith Bea and Ralph M. Chite.