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# Rating the Cities: Constructing a City Resilience Index for Assessing the Effect of State and Local Laws on Long-Term Recovery from Crisis and Disaster

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# Rating the Cities: Constructing a City Resilience Index for Assessing the Effect of State and Local Laws on Long-Term Recovery from Crisis and Disaster

John Travis Marshall\*

*Superstorm Sandy, the 2008 Iowa floods, and Hurricanes Katrina and Rita all supply recent reminders that U.S. cities can no longer adopt an ad hoc approach to threats presented by climate change and natural hazards. The stories detailing long-term recovery from these disasters underscore that federal, state, and local governments are struggling to appreciate the legal tools and institutions necessary to implement the large-scale infrastructure, housing, and community development programs that climate change and more frequent natural disasters demand. This Article calls for development of a tool allowing succinct evaluation of the range of community capacities that will figure critically in the implementation of long-term disaster recovery efforts. On completion, this assessment tool will provide a “snapshot” of a local government’s resiliency—its capacity to address and bounce back from disaster-related challenges. Building on recent environmental, land use, and local government law scholarship, this Article recommends creation of, and outlines several key indicators for, a City Resilience Index (CRI). The CRI evaluates cities’ legal resources, focusing on whether a local government possesses the necessary legal and institutional “toolkit” to pursue redevelopment initiatives essential to managing the challenges presented by natural hazards and climate change.*

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## I. INTRODUCTION

August 2015 marked Hurricane Katrina’s tenth anniversary.<sup>1</sup> Many believe New Orleans has turned the corner to a full recovery from the storm’s devastation.<sup>2</sup> Some believe that a complete recovery is still years away.<sup>3</sup> But very few would disagree that the city’s recovery unfolded far too slowly.<sup>4</sup>

1. See generally DOUGLAS BRINKLEY, *THE GREAT DELUGE: HURRICANE KATRINA, NEW ORLEANS, AND THE MISSISSIPPI GULF COAST* 129-35 (2006) (detailing Hurricane Katrina’s August 29, 2005, landfall).

2. See, e.g., Stacey Plaisance, *8 Years After Hurricane Katrina, The City of New Orleans on the Rebound*, HUFFINGTON POST, [http://www.huffingtonpost.com/2013/08/29/after-hurricane-katrina-new-orleans\\_n\\_3836108.html](http://www.huffingtonpost.com/2013/08/29/after-hurricane-katrina-new-orleans_n_3836108.html) (last updated Oct. 29, 2013, 5:12 AM) (detailing the neighborhood rebuilding efforts and government-led flood protection and revitalization projects that the city’s leadership believe have set a new course for New Orleans).

3. See, e.g., Nathan Kensinger, *Tracing Post-Storm Recovery in New York and New Orleans*, CURBED N.Y. (Jan. 22, 2015), [http://ny.curbed.com/archives/2015/01/22/tracing\\_post](http://ny.curbed.com/archives/2015/01/22/tracing_post)

It took two years for federal funds intended to support long-term neighborhood and community development projects to reach the City of New Orleans.<sup>5</sup> To make matters worse, it took two more years for the local government, stymied by missing or under-resourced public agencies and shortsighted legal requirements, to begin spending those federal dollars on neighborhood revitalization projects.<sup>6</sup> The delay translated directly into what can be described only as a frustratingly slow start to the city's long-term recovery.

The recovery's anemic start represents much more than an indictment of poor local, state, and federal action. The delay also had profound human and economic consequences.<sup>7</sup> While waiting for recovery to unfold, some families gave up plans to return home.<sup>8</sup>

storm\_recovery\_in\_new\_york\_and\_new\_orleans.php (documenting, through a photo essay, that “[the city’s] recovery is far from complete” ten years after Katrina).

4. *But see* Robert Olshansky, Univ. of Ill. at Urbana-Champaign, Address at the Third International Conference on Urban Disaster Reduction (Sept. 30, 2014) (contending that a slow urban housing recovery postdisaster may be good for a city’s redevelopment).

5. *See* Patrik Jonsson, *Private Dollars Leading Recovery of New Orleans*, CHRISTIAN SCI. MONITOR (June 27, 2007), <http://www.csmonitor.com/2007/0627/p01s06-usec.html> (reporting that as of twenty-two months after Hurricane Katrina made landfall, the City of New Orleans had not received any federal funds to promote neighborhood recovery). This Article focuses on obstacles to long-term recovery from crisis and disaster at the local and state levels. Another topic that is in need of attention, but beyond the scope of this Article, involves the impediments associated with federal involvement in long-term recovery from crisis and disaster. The impediments associated with federal involvement have recently received close attention from the federal government and from commentators. *See, e.g.*, John Travis Marshall, *Weathering NEPA Review: Superstorms and Super Slow Urban Recovery*, 41 ECOLOGY L.Q. 81 (2014); Press Release, U.S. Dep’t of Hous. & Urban Dev., Hurricane Sandy Rebuilding Task Force Releases Rebuilding Strategy (Aug. 19, 2013), [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2013/HUDNo.13-125](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-125).

6. *See* Kalima Rose & Laura Tuggle, *Community Action: Bringing People Home to Stronger Neighborhoods*, COMMUNITY-WEALTH.ORG 2-4 (Aug. 2010), <http://community-wealth.org/sites/clone.community-wealth.org/files/downloads/paper-rose-tuggle.pdf> (explaining that the City of New Orleans’ pre-Katrina problem of ineffectively using federal grant funds foretold the city’s poststorm struggles to deliver federal aid to flooded neighborhoods).

7. *See* Sandie McCarthy-Brown & Susan L. Waysdorf, *Katrina Disaster Family Law: The Impact of Hurricane Katrina on Families and Family Law*, 42 IND. L. REV. 721, 728, 736-38 (2009) (describing the fundamental challenges of housing New Orleans’ families four years after Katrina as a persisting and “critical humanitarian, social, economic, political, and legal problem”); *cf.* Craig E. Pollack & Julia F. Lynch, *Foreclosures Are Killing Us*, N.Y. TIMES (Oct. 2, 2011), [http://www.nytimes.com/2011/10/03/opinion/foreclosures-are-killing-us.html?\\_r=0](http://www.nytimes.com/2011/10/03/opinion/foreclosures-are-killing-us.html?_r=0) (describing the impact of the mortgage foreclosure crisis on individuals and neighborhoods, emphasizing that “[l]osing a home disrupts social ties to neighbors, schools, jobs and health care providers—ties that under better circumstances promote good health”—and concluding that “[n]eighborhoods suffer, not just homeowners”).

8. Jonathan Tilove, *Five Years After Hurricane Katrina, 100,000 New Orleanians Have Yet To Return*, NOLA.COM (Aug. 24, 2010, 9:45 PM), [http://www.nola.com/katrina/index.ssf/2010/08/five\\_years\\_after\\_hurricane\\_kat.html](http://www.nola.com/katrina/index.ssf/2010/08/five_years_after_hurricane_kat.html).

Those who moved back to New Orleans found neighborhoods still struggling to recover.<sup>9</sup> Their homes were sandwiched between vacant houses and empty lots that had morphed into 40' x 100' slices of overgrown subtropical jungle.<sup>10</sup>

There were many factors that contributed to the recovery's glacial pace: federal regulations unsuited for major urban disasters,<sup>11</sup> a local government that lacked essential administrative capacity,<sup>12</sup> political infighting from Washington D.C. to Baton Rouge to City Hall,<sup>13</sup> an episodic recovery planning process that had to unfold before federal funds could be dispensed,<sup>14</sup> and federal funding regulations that proved difficult to reconcile with the exigencies of disaster recovery.<sup>15</sup> New Orleans' tragedy, and the cautionary tale for its sister U.S. cities, is that

9. Charles Maldonado, *In Parts of New Orleans, Eyesores Remain on City's List of Fixed-Up Properties*, LENS (June 24, 2014, 12:41 PM), <http://thelensnola.org/2014/06/24/in-some-parts-of-new-orleans-eyesores-remain-on-citys-list-of-fixed-up-properties/>. The author surveyed neighborhoods that residents considered "beautiful" before Katrina; however, now "only a few houses are inhabited, and the others are falling apart," creating "an eyesore" to the residents who have returned home. *Id.*

10. *See id.*

11. *Gulf Coast Rebuilding: Preliminary Observations on Progress to Date and Challenges for the Future: Hearing Before the Subcomm. on Disaster Recovery of the S. Comm. on Homeland Sec. & Governmental Affairs*, 110th Cong. (2007) (statement of Donna Fraiche, Member of the Board, Louisiana Recovery Authority) (describing the fundamental adversities that the State of Louisiana encountered in administering the FEMA Hazard Mitigation Grant Program); *see* Marshall, *supra* note 5, at 83.

12. *See* Transition New Orleans Task Force, Housing 19 (Apr. 2010) (unpublished report) (on file with author) ("City agencies, both within and outside City Hall, are not currently staffed to operate quickly and efficiently."). For their part, City of New Orleans officials also cast blame on state and federal partners. *See* Wayne Curtis, *The Savior of New Orleans?*, ARCHITECT MAG. (Aug. 6, 2007), <http://www.architectmagazine.com/educational-projects/the-savior-of-new-orleans.aspx> (describing the frustration of the director of the city's Office of Recovery Management with the State of Louisiana's and the federal government's level of competence in administering recovery programs).

13. *See* ROBERT B. OLSHANSKY & LAURIE A. JOHNSON, CLEAR AS MUD: PLANNING FOR THE REBUILDING OF NEW ORLEANS 23-25 (2010) (recounting that the Bush Administration focused on redirecting blame to state and local actors, rather than putting the long-term recovery on track); BRINKLEY, *supra* note 1, at 531-32 (quoting New Orleans Mayor C. Ray Nagin's desperate statements that he had "no idea what [President George W. Bush and Governor Kathleen Blanco are] doing," and that "God is looking down on all this, and if they are not doing everything in their power . . . they are going to pay the price").

14. *See* OLSHANSKY & JOHNSON, *supra* note 13, at 37-71 (detailing the City of New Orleans' extended effort to craft a plan for rebuilding the city).

15. *See* Memorandum from Flozell Daniels, President & Chief Exec. Officer, La. Disaster Recovery Found., and Albert Ruesga, President & Chief Exec. Officer, Greater New Orleans Found., to Melody Barnes, Dir., Domestic Policy Council et al. 6 (Aug. 17, 2009), [http://mrhf.org/sites/default/files/images/blog/nola\\_as\\_a\\_model\\_city.pdf](http://mrhf.org/sites/default/files/images/blog/nola_as_a_model_city.pdf) (explaining that the long-term recovery process was impeded by complicated regulations and the difficulty in coordinating local, state, and federal actors).

almost all of these impediments to a quicker recovery could have been anticipated and avoided.

Cities, states, and the federal government cannot afford to let lessons learned from Katrina's troubled long-term recovery escape analysis.<sup>16</sup> The stakes associated with carrying out a city's long-term recovery efforts are high, and without improved management at the city, state, and federal levels, they are bound to be costly.<sup>17</sup> Good management of a city's long-term recovery directly influences the lives of people across an entire region.<sup>18</sup> Particularly vulnerable are individuals and families that disaster leaves without homes or jobs or whose life's savings it depletes.<sup>19</sup>

Effective management is also important because it is fiscally careless to execute long-term recovery inefficiently.<sup>20</sup> The federal

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16. See Joseph Tanfani, *Since Sandy, a Storm Pattern of Costly Stumbles in New Jersey*, L.A. TIMES (June 20, 2014, 4:00 AM), <http://www.latimes.com/nation/la-na-disaster-recovery-20140620-story.html#page=1> (observing that "there is no playbook for recovery" and detailing how, even following the well-known recovery difficulties after Hurricanes Katrina and Ike, the State of New Jersey paid private consultants hundreds of millions of dollars to implement recovery programs, despite the fact that those consultants had received mixed reviews for their work in the preceding Gulf Coast hurricane recoveries); Lukas Sundermann et al., *Mind the Risk: A Global Ranking of Cities Under Threat from Natural Disasters*, SWISS RE 1, 26 (2014), [http://media.swissre.com/documents/Swiss\\_Re\\_Mind\\_the\\_risk.pdf](http://media.swissre.com/documents/Swiss_Re_Mind_the_risk.pdf) (detailing that many of the world's major cities are located in coastal areas and explaining that the "loss potential in [these] urban areas is high and rising").

17. See James W. Fossett, *Let's Stop Improvising Disaster Recovery*, NELSON A. ROCKEFELLER INST. GOV'T (July 2013), [http://www.rockinst.org/observations/fossettj/2013-07-09-Improvising\\_Disaster\\_Recovery.aspx](http://www.rockinst.org/observations/fossettj/2013-07-09-Improvising_Disaster_Recovery.aspx) (describing generally what economists call the high "welfare cost" associated with government-led recoveries and observing that these costs are difficult to estimate with precision, but are "surely large").

18. See Sundermann et al., *supra* note 16, at 6, 26 (presenting findings regarding the potential effects of natural disasters on particular cities and evaluating the effect such a disaster would have on the entire metropolitan region and its economy).

19. After their homes have been substantially damaged by a disaster event, families often wait many months for government assistance to help fill the large financial gaps hindering a family's ability to pay for recovery. See Patrick McGeehan & Griff Palmer, *Displaced by Hurricane Sandy, and Living in Limbo*, N.Y. TIMES (Dec. 6, 2013), [http://www.nytimes.com/2013/12/07/nyregion/displaced-by-hurricane-sandy-and-living-in-limbo-instead-of-at-home.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/12/07/nyregion/displaced-by-hurricane-sandy-and-living-in-limbo-instead-of-at-home.html?pagewanted=all&_r=0). These displaced families live with relatives, "drain their savings," and face the reality of transitioning "from having a comfortable lifestyle to being totally in debt." *Id.* Those without resources before a disaster face even tougher circumstances. As Hurricanes Katrina and Rita demonstrated, many Louisiana and New Orleans families were left in peril following the storm because of significant levels of preexisting poverty. See Dominique Duval-Diop & Kalima Rose, *Delivering Equitable Development to a Recovering Louisiana: A State Policy Guide for 2008 and Beyond*, POL'Y ARCHIVE 1 (2008), <http://research.policypress.org/13692.pdf>.

20. Beginning in 1993 with long-term recovery relief from Hurricane Andrew and continuing through Hurricane Sandy in 2012, the United States Department of Housing and Urban Development (HUD) has dispersed approximately \$40 billion in congressional appropriation of disaster Community Development Block Grants (CDBG). See Antoinette

government has spent tens of billions of dollars on long-term recovery since 9/11.<sup>21</sup> In a time of tightening federal budgets and competing demands for limited federal resources, it is critical that the federal government take every step to ensure these recovery funds are spent in a way that maximizes the impact of every dollar appropriated.

There is another, more future-focused, reason it is important to analyze the efficacy of long-term recovery. Evidence suggests we are wading deeper into an era of climate change and sea level rise.<sup>22</sup> If Katrina, Rita, Irene, and Sandy are any confirmation of these fundamental impending challenges to our cities, then we can expect long-term metropolitan recovery to be a “growth industry” for governments in the coming years and decades. We cannot afford to waste the lessons learned from New Orleans’ long-term recovery.

The last decade’s experience with catastrophic storms has taught us that an arduous long-term recovery is not just a New Orleans phenomenon.<sup>23</sup> Recent reports suggest that the recovery in New Jersey<sup>24</sup> and New York City<sup>25</sup> is afflicted by some of the same problems

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M. Jackson, *Federal Funding and Financing Programs Post-Disaster*, in BUILDING COMMUNITY RESILIENCE POST-DISASTER 3, 10-11 (Dorcas R. Gilmore & Diane M. Standaert eds., 2013).

21. More than \$38 billion in disaster CDBG funds have been appropriated since 2001 and the 9/11 terrorist attacks. *See id.*

22. *See, e.g.*, Wendy Koch, *Global Warming’s Ground Zero; Rising Sea Levels Put ‘Trillions of Dollars’ at Risk*, USA TODAY, May 8, 2014, at 3A (citing the National Climate Assessment, which estimates that sea levels are “most likely to rise another 1 to 4 feet by 2100”); Kia Gregory & Marc Santora, *Bloomberg Outlines \$20 Billion Storm Protection Plan*, N.Y. TIMES (June 11, 2013), <http://www.nytimes.com/2013/06/12/nyregion/bloomberg-outlines-20-billion-plan-to-protect-city-from-future-storms.html>.

23. *See* Heather Haddon, *Irene Impact Lingers*, WALL STREET J. (Dec. 1, 2011), <http://www.wsj.com/articles/SB10001424052970203833104577070761269639868> (noting that the New Jersey Office of Emergency Management spokesperson expected that the Tropical Storm Irene recovery “could take months”); *Hurricane Sandy and New Jersey’s Poor*, N.Y. TIMES (Dec. 23, 2013), <http://www.nytimes.com/2013/12/24/opinion/hurricane-sandy-and-new-jerseys-poor.html> (discussing a complaint filed with the HUD “charging that the state plan for distributing Hurricane Sandy recovery aid discriminated against blacks and Hispanics who lost their homes in the storm”); Joe Nocera, *Rebuilding on Their Own*, N.Y. TIMES (Feb. 25, 2013), <http://www.nytimes.com/2013/02/26/opinion/nocera-rebuilding-on-their-own.html> (speculating that the Sandy recovery will advance mainly through the efforts of private residents); Romy Varghese, *Springsteen Girls Priced Out as Rich Buy N.J. Shore Homes*, BLOOMBERG (Nov. 9, 2014, 11:01 PM), <http://www.bloomberg.com/news/articles/2014-11-10/springsteen-girls-priced-out-as-rich-buy-n-j-shore-homes> (“[T]hose relying on insurance claims and government grants are sometimes unable to rebuild as quickly as their wealthier neighbors.”).

24. *See, e.g.*, Tanfani, *supra* note 16.

25. *See, e.g.*, Russ Buettner & David W. Chen, *Hurricane Sandy Recovery Program in New York City Was Mired by Its Design*, N.Y. TIMES (Sept. 4, 2014), [http://www.nytimes.com/2014/09/05/nyregion/after-hurricane-sandy-a-rebuilding-program-is-hindered-by-its-own-construction.html?\\_r=0](http://www.nytimes.com/2014/09/05/nyregion/after-hurricane-sandy-a-rebuilding-program-is-hindered-by-its-own-construction.html?_r=0) (describing the City of New York’s twenty-one-month delay in

that compromised New Orleans' recovery. The billion-dollar, long-term recovery programs rolled out following Hurricane Sandy are, in significant instances, lacking in their management, transparency, and fairness in ways that echo problems experienced during the recovery from Katrina.<sup>26</sup> Although program management, transparency, and fairness are topics that all deserve their own extended analysis, the takeaway is that federal, state, and local governments need to work together prospectively to make sure that cities are better prepared to face serious adversity.<sup>27</sup>

Until now, the federal government has been paying for long-term disaster recoveries that move slowly and produce mixed results.<sup>28</sup> It is time we not only examine the reasons for the generally low-functioning federal-state-local long-term recovery partnership but also isolate key factors that seem to contribute to sluggish long-term recoveries.

This Article commences this process with an examination of the local governmental legal landscape. It explores the ways in which local ordinances and governmental institutions, as well as state statutes and constitutions, influence a city's recovery. The goal is to identify examples of legal and institutional efficiency and accomplishment that are common across cities and states. In short, the laws that apply to long-term recovery programs, which include a range of local, state, and federal laws, and the institutions needed to implement them, make up an important part of a city's effective long-term recovery from disaster.<sup>29</sup>

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delivering funding to the "20,000 homeowners who [had] applied for help rebuilding their homes").

26. See Heather Haddon, *Rejections for Sandy Grants Are Questioned*, WALL STREET J., <http://wsj.com/articles/SB10001424052702303496804599765431674359994> (last updated Feb. 5, 2014, 9:26 PM). A public interest law group analyzed appeals from denials of long-term recovery assistance funds by the contractor hired by the State of New Jersey who processed recovery grant applications from homeowners affected by Hurricane Sandy. *Id.* The analysis asserted that the contractor may have improperly rejected up to 80% of the appealed homeowner applications. *Id.*

27. See *National Disaster Resilience Competition*, U.S. DEP'T HOUSING & URB. DEV. (Sept. 17, 2014), <http://portal.hud.gov/hudportal/documents/huddoc?id=2014ndrc-nofa.pdf> (urging potential applicants that "when federal, state, local and philanthropic goals align, community capacity and innovation can leapfrog forward").

28. See sources cited *supra* notes 23-26.

29. See Gavin Smith et al., *Assessing State Policy Linking Disaster Recovery, Smart Growth, and Resilience in Vermont Following Tropical Storm Irene*, 15 VT. J. ENVTL. L. 66, 70, 76 (2013) (referring to the role of laws as "resource rules"); David A. Super, *Against Flexibility*, 96 CORNELL L. REV. 1375, 1428-32, 1441-47, 1452-56 (2011). Super noted the ability of federal and local governments to predict and anticipate critical stress events, such as natural disasters, and stressed the importance of early, proactive lawmaking and decision



This Article calls for development of a tool that would succinctly evaluate the range of governmental community capacities that are critical for implementing long-term disaster recovery efforts by states, the federal government, and/or nonprofit and philanthropic leaders.<sup>30</sup> Much like the widely popular annual college rating index published by U.S. News and World Report,<sup>31</sup> the index would identify a group of capacities critical to long-term recovery, measure a city's track record for exercising that capacity, and ultimately combine the several capacity scores to allow for a comparative overall ranking of cities. This Index, the City Resilience Index (CRI), would be deployed to gauge the comparative capacity of cities to carry out the community and neighborhood redevelopment activities essential to successful long-term recovery. On completion of the CRI, the goal would be for this assessment tool to provide the state and federal government, as well as interested citizens and philanthropic and nonprofit stakeholders, with a "snapshot" of a local government's resiliency—its capacity to rally and channel a city's resources to bounce back from disaster and crisis.

At the outset of this Article, a word is necessary concerning the CRI's scope. The city resilience bandwagon is now so long and wide that it is populated by advocates for better architectural design and building codes,<sup>32</sup> improved ecosystem management<sup>33</sup> and family health,<sup>34</sup> and even better curricula and schools.<sup>35</sup> That all of these

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making on important policy questions, so as to avoid the mistakes and oversights that flow from crisis decision making. *Id.* at 1428-32. Super highlighted Hurricane Katrina as a tragic illustration of local, state, and federal governments failing to put laws and plans in place to address the likely risks and challenges associated with a major hurricane. *Id.* at 1428-65.

30. Although this Article focuses on governmental capacity to implement long-term recovery strategies, the nature of long-term recovery requires close partnerships between governmental and nongovernmental organizations. As development of the CRI continues, it will be expanded to include several indicators that focus more closely on the presence, or not, of nongovernmental capacities, such as the local capacity for nonprofit housing development organizations to build housing at scale.

31. See Robert Morse et al., *How U.S. News Calculated the 2016 Best Colleges Rankings*, U.S. NEWS & WORLD REP. (Sept. 8, 2015, 9:36 PM), <http://www.usnews.com/education/best-colleges/articles/how-us-news-calculated-the-rankings>.

32. See Alan Feuer, *Building for the Next Big Storm*, N.Y. TIMES (Oct. 25, 2014), [http://www.nytimes.com/2014/10/26/nyregion/after-hurricane-sandy-new-york-rebuilds-for-the-future.html?\\_r=0](http://www.nytimes.com/2014/10/26/nyregion/after-hurricane-sandy-new-york-rebuilds-for-the-future.html?_r=0) (discussing the American Institute of Architects' "Post-Sandy Initiative" report).

33. See, e.g., Rupert Seidl, *The Shape of Ecosystem Management To Come: Anticipating Risks and Fostering Resilience*, 64 *BIOSCIENCE* 1159 (2014).

34. See, e.g., Amber Lazarus, *Relationships Among Indicators of Child and Family Resilience and Adjustment Following the September 11, 2001 Tragedy* 12-13 (Emory Ctr. for Myth & Ritual in Am. Life, Working Paper No. 36, 2004).

interests have a voice in shaping the resilience paradigm is an encouraging sign. In this current stage of development, however, the CRI focuses narrowly on housing and community development.

The CRI considers factors that deal almost entirely with the “bricks and mortar” of city neighborhoods. It attempts to identify factors that are critical to neighborhood development. It is concerned with how a city best sustains and rebuilds neighborhoods. Some will say that this focus is nearsighted, insofar as it appears to focus more on “recovery” than on the important values of rebuilding “greener” or more sustainably.<sup>36</sup> It is true the CRI could have a much broader scope. As Jeffrey Hebert, Executive Director of the New Orleans Redevelopment Authority offers, resilience discussions could easily encompass far more than the built environment-related work of his city redevelopment agency.<sup>37</sup> Resilience planning, he notes, should include fundamental considerations such as the success of a city’s school district.<sup>38</sup>

There is no arguing that there are many critical concerns that need to be integrated into any comprehensive approach to building and rebuilding cities. But this sad fact is certain: at the current juncture, federal, state, and local governments are combining to do a lackluster job of simply helping cities recover when they are pummeled by disaster or crisis.<sup>39</sup> If a city cannot do the basic work of recovery with reasonable speed and efficiency, then the local government is effectively denying recovery to thousands of families who cannot return home to their old neighborhood or to some new, safer, more affordable location in their home city.<sup>40</sup> Enabling the city to regain

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35. See, e.g., *Resilience in Practice: School-Based Child Care as a Resilience-Building Tool for Adolescent Mothers and Their Children*, RESILIENCE ADVOC. PROJECT 1 (Mar. 2011), [http://resiliencelaw.org/wordpress2011/wp-content/uploads/2011/03/PolicyBrief.ChildCareandResilience.March2011.FINAL\\_.pdf](http://resiliencelaw.org/wordpress2011/wp-content/uploads/2011/03/PolicyBrief.ChildCareandResilience.March2011.FINAL_.pdf).

36. See *The Coming Storm: Has Resilience Eclipsed Sustainability as a Core Design Concept?*, ARCHITECT MAG. (Aug. 22, 2014), [http://www.architectmagazine.com/architects/the-coming-storm\\_o.aspx](http://www.architectmagazine.com/architects/the-coming-storm_o.aspx).

37. Interview with Jeffrey Hebert, Exec. Dir., New Orleans Redevelopment Auth., in New Orleans, La. (Aug. 4, 2014).

38. See *id.*

39. See Marshall, *supra* note 5 (detailing slow federal, state, and local implementation of post-Katrina long-term recovery programs in New Orleans); Fossett, *supra* note 17 (highlighting a pattern of poorly coordinated federal and state implementation of long-term recovery programs beginning with 9/11 long-term recovery, extending through Hurricane Katrina, and continuing through to the Sandy long-term recovery).

40. See Buettner & Chen, *supra* note 25 (reporting that New York City’s long delay in delivering federal recovery funds to residents caused many to “give[] up”). Out of 20,000 homeowners who applied for aid under the City’s “Build It Back” program, “[n]early 900 formally withdrew their applications, and another 5,130 stopped responding to calls from the

population or to execute plans to redevelop or repurpose neighborhoods following a disaster or crisis is critical and goes to the core of a city's resilience.<sup>41</sup>

This Article proceeds as follows. Part II describes what an index is and how it works. Part III introduces the specific idea of the CRI. It looks at the local governmental legal landscape and identifies four significant factors or index “indicators” relevant to a local government’s implementation of long-term recovery efforts. To that end, Part III.A looks at three separate and important aspects of local governmental institutions and the role they play within a local government’s legal landscape for redevelopment. Part III.B looks at local laws and policies and highlights the way in which one particular class of laws—laws authorizing local governments to exercise eminent domain—tend to be instrumental in facilitating long-term urban recovery initiatives.

## II. THE CRI AS A PREVENTIVE METROPOLITAN POLICY FOR AMERICAN CITIES

### A. *An Index Is a Potentially Valuable Tool for Improving Long-Term Urban Recovery*

In the wake of disaster, a city faces challenges in rebuilding homes, schools, and libraries; repaving its streets; and helping reopen its shopping centers.<sup>42</sup> Any one of these tasks is an enormous undertaking. But the number and breadth of redevelopment projects are not the only challenges the local government must face. Disaster and crisis also highlight the inadequacy of government institutions and the shortcomings of existing law.<sup>43</sup>

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housing recovery office.” *Id.*; accord Marshall, *supra* note 5, at 101-03, 118 (explaining how, in the context of the recovery from Hurricane Katrina, “[l]ong-term recovery delayed can be a recovery denied for residents of storm-ravaged neighborhoods”).

41. See Dorcas R. Gilmore & Diane M. Standaert, *Editors' Introduction to BUILDING COMMUNITY RESILIENCE POST-DISASTER*, *supra* note 20, at xxvii, xxvii-xxviii.

42. See Feuer, *supra* note 32 (describing New York City's long-term recovery undertakings as “enormous, comprising the construction of sea walls and bulkheads, beach replenishment, the creation of parks as buffer zones, the retrofitting of apartment buildings, commercial structures and single-family homes, and the redesign of power stations, subway tunnels, sewage treatment plants, hospitals, utility poles and even ordinary streets”).

43. See DANIEL A. FARBER, JIM CHEN, ROBERT R.M. VERCHICK & LISA GROW SUN, *DISASTER LAW AND POLICY* 345-64, 369-90 (2d ed. 2010). The basic legal and institutional challenges associated with recovery include devising interim financing vehicles to furnish local governments with money to spend on long-term recovery projects as required for some federal assistance and creating “legal capability” and “institutional capacity” to enact and pursue disaster mitigation policies and programs, such as engineering projects, hazard

It is difficult to predict exactly the type of physical and human casualties a city may suffer due to crisis or disaster.<sup>44</sup> Based on stories surrounding recent urban crises and catastrophic disasters, it is possible to highlight potential legal pitfalls and institutional impediments that undermine long-term recovery efforts. But anecdotes relating to outdated laws or the lack of necessary local governmental institutions have limited value. Unfortunately, there is no analytical framework or checklist to help cities evaluate how the presence or the absence of certain laws or institutions impact cities' capacity to rebuild.

The purpose of the CRI is threefold. The CRI is intended to create an analytical framework to evaluate the laws and institutions that could aid cities in completing vital postdisaster housing and community development work. It also provides a system for measuring how laws and institutions contribute toward advancing housing and community development goals as well as facilitating comparisons among cities and states. In addition, the CRI makes it possible to track cities' progress toward resilience over time.

The CRI is a potentially valuable tool because it can help accomplish a range of important objectives, including more responsive and transparent governance and improved public policy to help foster more successful long-term recovery efforts.<sup>45</sup> Local, state, and federal

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avoidance projects, and environmental preservation projects. *Id.* at 345-64; see DANIEL A. FARBER & JIM CHEN, *DISASTERS AND THE LAW: KATRINA AND BEYOND* 248-72 (2006). Farber and Chen discussed the wide range of legal and institutional problems that cities must address during long-term recovery: assembling land for redevelopment and the local government's authority or political will to use eminent domain; rebuilding thousands of units of housing; and the need for land use and zoning changes, such as inclusionary zoning, which help ensure that new housing options include homes affordable to low- and moderate-income families. *Id.*; see also Victor B. Flatt & Jeffrey J. Stys, *Long Term Recovery in Disaster Response and the Role of Non-Profits*, 3 Oñati Socio-Legal Series 346, 360 (2013), <http://opo.iisj.net/index.php/ols/article/view/153/195> (detailing the current shortcomings in law and institutions evidenced by recent large-scale disasters and asserting the need for "federal and state disaster planning and response laws and regulations [to] provide a legal and regulatory mechanism for effective coordination of roles, responsibilities, and funding, as well as pre-disaster planning").

44. See Fossett, *supra* note 17 (acknowledging that improving federal, state, and local coordination of long-term recovery efforts is challenging because "no two severe weather events are alike," but urging that the missteps associated with the 9/11, Katrina, and Sandy recoveries suggest numerous opportunities to improve long-term recovery coordination and streamlining).

45. Although no other indices focus specifically on the role that laws and institutions play in promoting urban resiliency, more general indices serve as similar instruments to evaluate legal institutions, processes, and outcomes. See, e.g., Mark David Agrast et al., *Rule of Law Index 2012-2013*, WORLD JUST. PROJECT (2012-2013), [http://worldjusticeproject.org/sites/default/files/WJP\\_Index\\_Report\\_2012.pdf](http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf). There are numerous nonlegal indices

governments, as well as philanthropic, nonprofit, and for-profit entities, can use the CRI to inform and spur important changes in law and policy long before disasters strike or the full impact of climate change unfolds.<sup>46</sup> If a city's important stakeholder entities can make informed predictions about a local government's challenges and competencies for implementing long-term recovery programs, then they can help push or guide policy in more productive directions.<sup>47</sup> At the same time, to the extent indices provide citizens with focused information about a local government's resilience or lack thereof, the CRI can be used as a tool for citizens to evaluate whether their local government is taking responsible steps to improve a community's resiliency.<sup>48</sup>

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that focus on topics broadly related to city resilience, including the Economic Security Index, which measures Americans' level of economic security. *E.g.*, Jacob S. Hacker et al., *Economic Security at Risk: Findings from the Economic Security Index*, ECON. SECURITY INDEX (July 2010), [http://www.economicsecurityindex.org/upload/media/Economic\\_Security\\_Index\\_Full\\_Report.pdf](http://www.economicsecurityindex.org/upload/media/Economic_Security_Index_Full_Report.pdf). The Economic Security Index measures the share of Americans who are particularly vulnerable economically because they have suffered "at least a 25 percent decline in their inflation-adjusted 'available household income.'" *Id.* at i. Further, the Commitment to Development Index measures how and whether "government policies help or hurt poorer nations." David Roodman, *Building and Running an Effective Policy Index: Lessons from the Commitment to Development Index*, CTR. FOR GLOBAL DEV. 1 (Mar. 13, 2006), [http://www.cgdev.org/sites/default/files/661\\_file\\_Essay\\_2.pdf](http://www.cgdev.org/sites/default/files/661_file_Essay_2.pdf).

46. Scholars note that one of the most important steps state and local governments can take is to plan for long-term recovery before a crisis or disaster occurs. *See* Smith et al., *supra* note 29, at 97 (emphasizing the importance of pre-event capacity building). An index is an important tool to help prompt cities to invest resources in predisaster long-term recovery planning.

47. *See* Katrin Bennhold, *Britain's Ministry of Nudges*, N.Y. TIMES (Dec. 7, 2013), [http://www.nytimes.com/2013/12/08/business/international/britains-ministry-of-nudges.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/12/08/business/international/britains-ministry-of-nudges.html?pagewanted=all&_r=0) (illustrating generally how governments can use nonlegal or regulatory interventions to "change behavior in large ways that serve both individuals and society").

48. *See* Daniel E. Ho, *Fudging the Nudge: Information Disclosure and Restaurant Grading*, 122 YALE L.J. 574 (2012). Indices have become increasingly popular as tools for helping consumers make informed choices. As part of a movement toward "focused transparency," local, state, and federal governments have created guides that furnish consumers with highly relevant, but limited, information regarding the choices they may be making in purchasing goods or services or even an interest in real property. Restaurant "report cards," for example, have proliferated in cities across the country as a means of informing consumers about a restaurant's sanitary conditions. *Id.* at 582. Their purpose is not only to encourage restaurant compliance with sanitary codes but also to serve consumers' interests in avoiding restaurants that pose food-poisoning risks. *Id.* Thus, the report card fuses policy goals with consumer goals. *Id.* at 582-83.

### B. *Selecting Indicators for Building an Effective City Resilience Index*

Generally speaking, an index works like a report card.<sup>49</sup> It distills data into succinct quantified or measured values or values concerning key capabilities or vulnerabilities.<sup>50</sup> The index may then take one or more quantified values and create a composite ranking or rating.<sup>51</sup>

For example, an index could be devoted to a policy concern, such as evaluating the financial services that banks offer to low- and moderate-income communities.<sup>52</sup> Within that selected policy area, the index identifies certain goals, proficiencies, or characteristics deemed significant to that particular policy area. For instance, a financial services index focusing on low- and moderate-income families might reasonably conclude that the number of bank branches that financial institutions operate within low- and moderate-income neighborhoods constitutes a significant data point.<sup>53</sup> This type of measurement of relevant investments, characteristics, or proficiencies would be considered one of the index's indicators.

An index can draw its indicators from a range of sources, such as sources evaluating an organization's processes for providing certain

49. See Morse et al., *supra* note 31.

50. See, e.g., Sundermann et al., *supra* note 16, at 6-9 (analyzing relevant data to produce quantitative measurements regarding (1) the population negatively impacted by a range of natural hazards as well as (2) the local and countrywide economic losses associated with the anticipated negative impact on that population and, in turn, using these two indicators to rank and order relative threats to 616 cities worldwide).

51. See, e.g., *U.S. Local Governments General Obligation Ratings: Methodology and Assumptions*, STANDARD & POOR'S (Sept. 12, 2013), [http://www.standardandpoors.com/spf/upload/Events\\_US/US\\_PF\\_logo102014.pdf](http://www.standardandpoors.com/spf/upload/Events_US/US_PF_logo102014.pdf). Standard and Poor's (S&P) maintains an index to gauge the relative creditworthiness of more than 4,000 U.S. local governments. See *id.* at 6. The index rating is determined through an evaluation of the following five general "factors" or indicators: the local government's institutional framework, economy, management, financial measures, and debt and contingent liabilities. *Id.* at 4-5, 10. Each of these five factors is weighed separately according to S&P's established standard for that factor's relevant importance. See *id.* at 5, 10. For example, the "economy" factor is weighted to account for 30% of the overall rating, whereas the local government's institutional framework makes up just 10% of the overall rating. *Id.* at 5, 10. S&P's rating for a local government may then be further modified by consideration of certain positive "overriding factors" and negative "overriding factors." See *id.* at 5, 11.

52. See Raymond H. Brescia & Sonia Steinway, *Scoring the Banks: Building a Behaviorally Informed Community Impact Report Card for Financial Institutions*, 18 FORDHAM J. CORP. & FIN. L. 339, 339-43, 361-63 (2013) (describing the formulation and implementation of the Community Impact Report Card (CIRC), which was created to give "communities across the country [the ability] to shape and improve the behavior of the banks that serve them by offering consumers an easy means to assess the quality of the bank products and services available to them").

53. See *id.* at 340, 368-69.

services.<sup>54</sup> An index examining banks' services to low- and moderate-income communities might import indicators directly from the Home Mortgage Disclosure Act's (HMDA) categories of required information that banks must report regarding their provision of mortgage lending services.<sup>55</sup> Similarly, a restaurant grading index might focus on compliance with sanitary guidelines, such as the FDA's model food code.<sup>56</sup> In short, if an index tracks an organization's success at complying with established codes or guidelines, the index indicators can be drawn directly from the applicable regulatory provisions.<sup>57</sup>

The CRI focuses on laws and public agencies or institutions that influence a city's housing and community development programs. More specifically, this initial version of the CRI focuses on characteristic types of state and local laws and institutions. There are no federal regulatory templates, such as HMDA, that enumerate local and state laws or institutions that are directly adaptable to the CRI's purposes. However, there are certain types of laws and institutions common across jurisdictions that help provide a framework for identifying issues concerning the capacity to engage in housing and community development work.

Selecting index indicators is just one step in creating the index. Another purpose of an index is to measure an organization's success at completing tasks, meeting standards, or engaging in activities that the index judges critical to achieving the desired policy result.<sup>58</sup> Measurement is only possible where each index indicator is

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54. In addition to evaluating processes, local governments could also be assessed on structural characteristics of local governance, such as the local government's organizational structure, or outcomes of local government programs, such as the effects of city programs on neighborhood residents. Cf. Avedis Donabedian, *The Quality of Care: How Can It Be Assessed?*, 260 JAMA 1743, 1745 (1988) (explaining that structure, process, and outcomes are three important factors for evaluating the quality of healthcare services).

55. See 12 U.S.C. §§ 2801-2810 (2012). CIRC uses financial institutions' responses to the HMDA reporting requirements to evaluate the performance of financial institutions under the Index's "home loan category." Brescia & Steinway, *supra* note 52, at 367.

56. See Ho, *supra* note 48, at 638.

57. See *id.*; Brescia & Steinway, *supra* note 52, at 367.

58. See Liesel Ashley Ritchie & Duane A. Gill, *The Role of Community Capitals in Disaster Recovery 4* (Mar. 2011) (unpublished manuscript) (on file with author). Ritchie and Gill explained that while it is relatively easy to measure index indicators for a community's "financial" and "built" capital, it is much more challenging to measure factors such as a community's "social, political and cultural capital." *Id.* They urged that even though the data that may be used to measure these types of capital is harder to identify and collect, this "methodological challenge[]" cannot be an excuse for researchers to ignore critical elements of recovery processes." *Id.*

differentiated in a meaningful way.<sup>59</sup> The most basic type of differentiation might be a binary “yes” or “no” measurement. For example, in the bank rating index context, if the indicator is whether bank branches in lower-income neighborhoods have at least one branch employee that speaks Spanish, the indicator would be measured in a binary manner: “yes” for the presence of a Spanish-speaking bank teller and “no” for the absence of such an employee.<sup>60</sup>

Part III outlines the proposed metrics for measuring the several CRI indicators suggested in this Article and discusses each CRI indicator.

### *C. The City Resilience Index as “Notice” and “Nudge”*

Restaurant report cards and similar consumer disclosure indices are often aimed at providing notice to target groups of consumers or citizens and gently encouraging or “nudging” individuals toward safer, smarter, and more efficient choices.<sup>61</sup> In turn, by prodding individuals in a certain direction, the index also serves the purpose of incentivizing targeted businesses (e.g., restaurants) toward compliance with regulatory standards.<sup>62</sup>

The goal of the CRI is broader in scope. The CRI informs not only the private citizens about local governments’ effective administration or implementation of policy but similarly informs their federal, state, and nonprofit partners.<sup>63</sup> Its purpose is not to inform state, federal, and philanthropic actors’ decisions to work, or not, with

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59. See Patrick S. Romano & Ryan Mutter, *The Evolving Science of Quality Measurement for Hospitals: Implications for Studies of Competition and Consolidation*, 4 INT’L J. HEALTH CARE FIN. & ECON. 131, 131-32 (2004). This Article represents an initial step in the process of choosing the best indicators or factors for the CRI to track. Index indicators are the particular variables that provide the most relevant and useful information in studying the topic of local government administration of long-term recovery programs. This early iteration of the CRI does not attempt to identify all of the possible indicators that would be helpful in assessing a local government’s resilience or preparedness for long-term recovery from crisis or disaster. That is the CRI’s ultimate goal. We are thus mindful of the fact that the indicators or factors highlighted in this Article may need to be further refined and/or expanded. See *id.* at 131 (explaining that using indicators or factors to examine important policy questions is challenging because the problem at hand likely has “multiple dimensions, [or] organizations that perform well on one dimension [but] may not perform well on others” and concluding that “[i]t is all too easy to arrive at the wrong conclusion if one focuses on a single measure, or even on multiple measures of a single dimension”).

60. See Brescia & Steinway, *supra* note 52, at 369.

61. See Ryan Calo, *Code, Nudge, or Notice?*, 99 IOWA L. REV. 773, 783-84, 787 (2014); Bennhold, *supra* note 47.

62. See Ho, *supra* note 48, at 582.

63. See, e.g., Agrast et al., *supra* note 45, at 3 (providing “information for policy makers, businesses, non-governmental organizations, and other constituencies”).



a particular city. Rather, the CRI seeks to help those partners quickly understand a jurisdiction's functional ability to implement long-term recovery programs, ranging from rebuilding public facilities to redeveloping entire neighborhoods.

A well-tuned car is often described as "running on all cylinders." Its engine is efficiently producing the power to propel the car forward. The resilience index should help a city's stakeholders determine how efficiently a city's housing and community development "engine" is working. Imagine that a city's resilience is measured with a type of dashboard gauge. That gauge ranges from very low resilience at one end, indicated by an absence of government programs and capabilities for promoting redevelopment. The middle of the gauge reflects a sort of governmental sluggishness or indifference, where some of the necessary laws and proficiencies are in place but many are lacking. At the optimal far end of the gauge, cities' laws and policies are designed and used to respond efficiently and effectively to a community's existing and potential needs and demands. The CRI aims not only to read the "gauge" in order to determine how efficiently a city deploys its housing and community development programs but also to help cities "move the needle" toward greater effectiveness and efficiency.<sup>64</sup> This forward progress, or "engine tuning," occurs when city government, local businesses, philanthropic entities, and state and local governments receive information that shows how a local government is operating suboptimally, suggesting that the city is especially vulnerable to stresses such as natural disasters or economic downturns. In short, the goal of the CRI, as with similar indices, is to look prospectively, seeking to improve future outcomes for communities.<sup>65</sup>

At the end of the day, a city resilience index is a pragmatic and incremental tool that can nudge local governments toward better policy.<sup>66</sup> It is not a tool that tries to reshape the mechanics of the federal-state-local housing and community development system.

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64. It is also an important object of the CRI to promote an active and ongoing discussion about cities' efforts to promote resilience. This function of index as facilitator of discussion is a clearly stated object of some indexing projects. See Soumitra Dutta et al., *The Global Innovation Index 2014: Nurturing New Sources of Growth by Developing the Human Factor in Innovation*, in *THE GLOBAL INNOVATION INDEX 2014: THE HUMAN FACTOR IN INNOVATION* 3, 41 (Soumitra Dutta et al. eds., 2014), <https://www.globalinnovationindex.org/userfiles/file/reportpdf/GII-2014-v5.pdf> ("The [index] helps to create an environment in which innovation factors are under continual evaluation . . .").

65. See, e.g., Ho, *supra* note 48, at 643.

66. See Sanford Levinson, *Meliorism v. "Bomb-Throwing" as Techniques of Reform*, 48 *TULSA L. REV.* 477, 488 (2013).

Rather, it helps coax local governments from “here” to “there”—from the status quo (or worse) to a place where local governments are better prepared to do the housing and community development work necessary during times of adversity.<sup>67</sup>

In this respect, the index serves four purposes: (1) it helps to define a common grammar and vocabulary regarding legal and institutional obstacles and catalysts to neighborhood recovery;<sup>68</sup> (2) it gives credit to local governments doing a good job and identifies those local governments that need to do better; (3) it helps to identify strategic investment opportunities for nonprofit, philanthropic, and government agencies so that, when disaster comes, the needs of disproportionately impacted low-income families can be addressed; and (4) it places a pressing policy problem on a local or state government’s “radar screen.”<sup>69</sup> If a city scores low on the city resilience index, this score will likely catch the attention of a local elected official in a more urgent way.<sup>70</sup>

#### *D. The Challenge of Establishing Metrics for Measuring the Positive and Negative Impacts of Housing and Community Development Laws*

A city resilience index faces at least two challenges. The first challenge is that, by definition, the index examines U.S. cities’ success, relative to one another, at implementing housing and community development programs. Although housing and community development policies represent just a narrow segment of a local government’s broad program of services,<sup>71</sup> the index’s mission is broad because it applies to dozens of local government jurisdictions. This requires data on state and local laws to be collected broadly.

The second challenge is that laws are not generally susceptible to quantitative assessment. In establishing the CRI, our challenge, and also our charge, is to identify metrics that accurately capture the vitality of a city’s housing and community development programs and systems. To do this, we must, as Dan Esty urges, “measure what

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67. Heather K. Gerken, *In Praise of Rankings*, 19 WIDENER L.J. 1, 3 (2009).

68. *See id.* at 5.

69. Heather Gerken calls this “flag[ging] policymaking priorities.” *Id.* at 16.

70. *See id.*

71. View any city government’s homepage listing of its major departments, and it is evident that local governments are responsible for providing a broad range of services, including aviation, finance, fire, police, parks and recreation, planning and community development, public works, and watershed management. *See, e.g., Departments*, CITY ATLANTA, GA., <http://www.atlantaga.gov/index.aspx?page=19> (last visited Oct. 14, 2015).

matters.”<sup>72</sup> This task is relatively clear-cut when creating an environmental quality index.<sup>73</sup> This kind of index can use information disclosed to government agencies regarding emissions of chemicals.<sup>74</sup> It is possible, therefore, to ground an environmental quality index on precisely measured factors, such as the level of particulates emitted by nearby industry into a city’s air.<sup>75</sup>

It is not as straightforward, however, to assign a numeric value to the influence that a law has on long-term recovery.<sup>76</sup> This is an important consideration because we want to base our index on indicators that provide meaningful information to cities, citizens, businesses, government agencies, and philanthropies.<sup>77</sup> An index aims to provide a certain degree of transparency to otherwise opaque policy concerns.<sup>78</sup> If the index is based on indicators that do not accurately reflect a city’s resilience, then the index would be of little use to third parties and counterproductive for the city.<sup>79</sup> Our goal in taking these

72. Gerken, *supra* note 67, at 10. Gerken was quoting Dan Esty, an author of the Environmental Performance Index. See Daniel C. Esty et al., *2008 Environmental Performance Index*, YALE U. 2 (June 16, 2008), [http://www.yale.edu/epi/files/2008EPI\\_Text.pdf](http://www.yale.edu/epi/files/2008EPI_Text.pdf).

73. See, e.g., *How Scorecard Works*, SCORECARD, <http://scorecard.goodguide.com/about/txt/technology.html> (last visited Oct. 14, 2015). Scorecard is an online rating system that draws on more than 400 data sets to compile geographically specific information and rankings on environmental pollution according to zip code. See *id.*

74. See *Frequently Asked Questions*, SCORECARD, <http://scorecard.goodguide.com/about/txt/FAQS.html> (last visited Oct. 14, 2015). Scorecard’s rankings and information on pollution levels are gathered from “publicly available data on polluters collected by federal regulatory agencies.” *Id.* Scorecard does not currently draw data on pollution sources from state or local databases. *Id.*

75. See, e.g., *About Scorecard*, SCORECARD, <http://scorecard.goodguide.com/about/about.tcl> (last visited Oct. 14, 2015).

76. See, e.g., Agrast et al., *supra* note 45, at 3–4. Although the Rule of Law Index is described as “a diagnostic tool that provides a general assessment of the health of the rule of law,” the Index evaluates countries’ laws based on surveys of citizens and scholars regarding how the laws are applied. See *id.* at 4; see also Inga T. Winkler, Margaret L. Satterthwaite & Catarina de Albuquerque, *Treasuring What We Measure and Measuring What We Treasure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, 32 WIS. INT’L L.J. 547, 547–51, 558–59 (2014) (cautioning that while indices provide powerful motivation for governments and nongovernmental organizations to act because index “[n]umbers are perceived to be professional, rational, credible, and neutral,” they can do so at the sacrifice of important policy considerations such as “quality, accountability and participation”).

77. See Ho, *supra* note 48, at 655.

78. See, e.g., *U.S. Local Governments General Obligation Ratings: Methodology and Assumptions*, *supra* note 51, at 3, 14 (explaining that S&P issued its 2013 ratings update, in part, to ensure that investors could benefit from additional transparency regarding how S&P sets its local government ratings—ratings that are in part based on local governments’ perceived institutional transparency).

79. See Ho, *supra* note 48, at 655.

first steps toward building the CRI is to choose indicators and devise metrics that give people accurate and meaningful information.<sup>80</sup>

### III. THE LEGAL LANDSCAPE FOR REDEVELOPMENT ACTIVITIES DIRECTLY INFLUENCES LONG-TERM RECOVERY OUTCOMES

The CRI is devoted to analyzing the general topic of housing and community development. When fully developed, the CRI may be divided into several housing and community development subcategories.<sup>81</sup>

The author focuses here on one of those community development subcategories: the Legal Landscape for Redevelopment Activities subcategory. This subcategory assesses potential external obstacles to, and assets for, housing development programs.<sup>82</sup> “Housing development strategies are also dictated by numerous state and local laws as well as the existence—or not—of active state, local, non-profit, and philanthropic institutions.”<sup>83</sup> Any of these factors can enrich or dampen a city’s development climate.

In this preliminary outline of the CRI’s housing category, the author provides three examples of CRI indicators that help measure the important influence of the surrounding legal environment on a resilient housing sector.

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80. *See id.* at 657.

81. *See* Romano & Mutter, *supra* note 59, at 131-32.

82. Another possible housing and community development subcategory might focus on the measures that a local government can deploy to accomplish housing and community development objectives. One measure might include comprehensive planning tools, leading to a subcategory that might be called “Local Government Housing Development Legal ‘Toolbox’: *Planning*.” John Travis Marshall & Ryan Max Rowberry, *Urban Wreckage and Resiliency: Articulating a Practical Framework for Preserving, Reconstructing, and Building Cities*, 50 IDAHO L. REV. 49, 61-68 (2014).

83. *Id.* at 63 n.59.

Table A  
*Examples of Index Categories, Subcategories, and Indicators*<sup>84</sup>

Policy Category	Subcategory	Indicator
Housing and Community Development	Local Government Legal Landscape: Institutions	Ability to Implement Federal Community Development Block Grant Programs
	Local Government Legal Landscape: Institutions	Ability to Pursue Redevelopment Objectives with Federal, State, and Private Entities
	Local Government Legal Landscape: Institutions	Existence of, and Capacity of, Land Banks and Vacant Property Management Entities
	Local Government Legal Landscape: Laws and Policies	State Prohibitions Against Use of Eminent Domain for Redevelopment

A. *Institutions Subcategory—Identifying Institutional Capacity To Successfully Manage Long-Term Recovery*

Major disasters leave cities in shambles.<sup>85</sup> In the course of a day, a disaster can destroy critical city resources that were decades in the making: its parks network, its street lights, its storm drains, its commercial shopping amenities, and its affordable homeownership stock.<sup>86</sup> Fixing these enormous losses is an overwhelming challenge for any city. It must proactively seek detailed citizen input on rebuilding efforts.<sup>87</sup> It must formulate a plan describing the hundreds of projects necessary to address the storm-related losses.<sup>88</sup> It must

84. In preparing this preliminary table of resilient city index categories and indicators, the author has been influenced by a template supplied by the Environmental Performance Index (EPI). See Esty et al., *supra* note 72, at 19-21.

85. See KEVIN FOX GOTHAM & MIRIAM GREENBERG, *CRISIS CITIES: DISASTER AND REDEVELOPMENT IN NEW YORK AND NEW ORLEANS* 58-62 (2014) (recounting the 9/11 attacks, including both the loss of life when the hijacked planes took down the World Trade Center and the economic destruction unleashed when 300,000 New Yorkers subsequently lost their jobs, as well as the historic losses incurred four years later in New Orleans, where almost 50% of the city's metropolitan area homes were flooded).

86. See *id.*; see also Raymond H. Brescia, Elizabeth A. Kelly & John Travis Marshall, *Crisis Management: Principles that Should Guide the Disposition of Federally Owned, Foreclosed Properties*, 45 IND. L. REV. 305, 328-29 (2012) (discussing the devastation caused by Hurricane Katrina).

87. See OLSHANSKY & JOHNSON, *supra* note 13, at 39-188 (describing in detail in their definitive analysis of New Orleans' post-Katrina planning process, the multistage planning process required to fashion a plan that would secure federal funding for New Orleans' long-term recovery).

88. E.g., *the City of New York Community Development Block Grant—Disaster Recovery: Partial Action Plan A*, CITY N.Y. 8, 138 (Jan. 29, 2013), <http://www.nyc.gov/html/>

procure dozens of private contractors and oversee the administration and implementation of hundreds of contracts.<sup>89</sup> It must adopt and implement thorough accounting procedures to track accurately the expenditure of every dollar of grant funds expended.<sup>90</sup>

A city's capacity to implement successful long-term disaster recovery also depends, in part, on whether it possesses local government institutions that can formulate and manage a broad range of housing, community, and economic development projects. Very few cities would have the annual budget to create and maintain large and sophisticated public sector housing and redevelopment agencies—either in-house as a city department or operated as an autonomous outside governmental authority, such as a redevelopment authority or housing authority. But as a part of a city's assessment of its resilience, a city should evaluate whether and how its existing departments or agencies can assume the significant responsibilities of redevelopment should crisis or disaster strike.

It is unlikely that a local government can lead the arduous neighborhood rebuilding process without preexisting proficiency in nurturing and revitalizing neighborhoods.<sup>91</sup> In other words, a local government must possess the institutional capacity to successfully manage long-term recovery. That institutional capacity is demonstrated in a number of ways. Among the most important indicators of a local government's capacity, two are critical competencies: (1) the

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cdbg/downloads/pdf/cdbg-dr\_full.pdf (laying out the details of New York City's comprehensive plan for spending federal disaster CDBG funds for long-term recovery projects, including house repairs and infrastructure projects); see OLSHANSKY & JOHNSON, *supra* note 13, at 39-188.

89. See, e.g., Buettner & Chen, *supra* note 25. Twenty thousand residents applied for assistance from the City of New York's Build It Back home reconstruction and repair program. *Id.* The City retained contractors to perform the home repair work, Boston Consulting Group (BCG) to assist in designing the program, other contractors to administer the program, Public Financial Management (PFM) to oversee the program's entire operation, and URS Corporation as a subcontractor to operate the program's intake centers. *Id.*

90. See, e.g., Memorandum from Nikita N. Irons, Reg'l Inspector Gen., U.S. Dep't of Hous. & Urban Dev., to Cheryl Breaux, Dir., Cmty. Planning & Dev., U.S. Dep't of Hous. & Urban Dev. 6-10, 14-15 (Apr. 8, 2011) (on file with author). The Regional Inspector General censured the Redevelopment Authority for its failure to exercise proper control over its neighborhood stabilization programs: the Authority "[d]id [n]ot [a]dequately [f]ulfill NSP 2 [r]equirements [b]efore [a]uthorizing [p]ayment to [i]ts [r]edevelopment [p]artner[s]," the agency failed to "establish an internal audit function," the Authority failed to ensure that its consortium members followed required federal procurement regulations, the agency failed to follow strict programmatic budgets, and it failed to implement an adequate cost allocation plan for its redevelopment programs. *Id.*

91. See Rose & Tuggle, *supra* note 6, at 2-4 (describing the City of New Orleans' failure to support effective housing programs prior to Hurricane Katrina).

ability to serve its most vulnerable citizens by competently utilizing public resources earmarked for housing and community development programs benefitting low- and moderate-income families and (2) the ability to deliver housing and community development programs to the greatest number of residents quickly and efficiently by leveraging the resources of state, local, nonprofit, philanthropic, and private sector entities.

1. Institutions—An Essential Aspect of Institutional Capacity Is a Local Government’s Ability To Implement Housing and Community Development Block Grant Programs at Volume

Local governments generally budget funds annually to support housing and community development projects benefitting the city’s low- and moderate-income families.<sup>92</sup> Federal block grant dollars in the form of Community Development Block Grants (CDBG)<sup>93</sup> or HOME Investment Partnerships Program (HOME)<sup>94</sup> funds ordinarily constitute a significant share of those local housing and community development funds.<sup>95</sup> Even in an era of generally sluggish direct

92. See, e.g., Office of Cmty. Dev., *Draft 2014 Annual Action Plan*, CITY NEW ORLEANS 2, 33 (June 16, 2014), [http://www.nola.gov/getattachment/Community-Development/2014-Draft-Annual-Action-Plan-\(F\).pdf/](http://www.nola.gov/getattachment/Community-Development/2014-Draft-Annual-Action-Plan-(F).pdf/) (describing the City of New Orleans’ plan for spending HUD “formula” grants).

93. The Housing and Community Development Act of 1974 established CDBG, a HUD program, to support development of housing and community development projects benefitting low- and moderate-income families. See Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. §§ 5301-5321 (2012)); see also John D. Landis & Kirk McClure, *Rethinking Federal Housing Policy*, 76 J. AM. PLAN. ASS’N 319, 321-24, 343 (2010) (situating the CDBG program in the overall landscape of federal housing policy).

94. Like the CDBG program, Congress authorized the HOME program to help low- and moderate-income families. The HOME program was created under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. See Home Investment Partnership Act, Pub. L. No. 101-625, §§ 201-29, 104 Stat. 4079, 4094-4128 (1990) (codified as amended at 42 U.S.C. §§ 12721-12840 (2012)); see also Landis & McClure, *supra* note 93, at 321-24, 340-42 (situating the HOME program in the overall landscape of federal housing policy).

95. See Jan P. Mensz, Note, *Citizen Police: Using the Qui Tam Provision of the False Claims Act To Promote Racial and Economic Integration in Housing*, 43 U. MICH. J.L. REFORM 1137, 1157-58 (2010) (stating that CDBG funding has a “widespread and sometimes substantial impact on municipal budgets”). Following a disaster, HUD funds make up the vast majority of a local government’s housing and redevelopment budget. See Bruno & Tervalon LLP, *New Orleans Redevelopment Authority Financial & Compliance Audit Together with Independent Auditors’ Report for the Year Ended December 31, 2013*, LA. LEGIS. AUDITOR 11 (Nov. 19, 2014), [http://www.la.state.la.us/PublicReports.nsf/B435404714D02B9086257D94006860B0/\\$File/00003B97.pdf](http://www.la.state.la.us/PublicReports.nsf/B435404714D02B9086257D94006860B0/$File/00003B97.pdf) (documenting that HUD funds, including CDBG and Neighborhood Stabilization Program 2 funds, pumped more than \$24 million into the Redevelopment Authority’s 2013 outlays of \$25,149,199.00).

federal investment in low- and moderate-income housing and community development projects,<sup>96</sup> these federal block grant funds usually fill critical gaps in project funding.<sup>97</sup> Although a local government may, as a matter of law, spend these federal block grant moneys beyond the particular year for which they have been allocated, this delay means that a city's low- and moderate-income families are not receiving the full measure of aid earmarked for them in a timely fashion.<sup>98</sup>

Slow deployment of block grant funds could occur for a number of reasons, but among them is a local government's lack of aptitude for using these types of funds.<sup>99</sup> This kind of ineptitude raises significant concerns for long-term disaster recovery efforts.

Federal block grant dollars are the principal vehicle for delivering long-term recovery assistance to local governments impacted by disasters.<sup>100</sup> For this reason, the housing and community development category of a city resilience index should include at least one indicator evaluating a local government's institutional ability to timely identify, manage, and complete federal block grant funded housing and community development projects.

As one of its institutional capacity metrics, the CRI proposes measuring a local government's relative success at deploying its annual allocation of federal block funds within one and two years of federal allocation. This metric is obtained by dividing the amount of federal

96. See Cushing N. Dolbeare, Irene Basloe Saraf & Sheila Crowley, *Changing Priorities: The Federal Budget and Housing Assistance 1976-2005*, NAT'L LOW INCOME HOUSING COALITION 4 graph 1 (Oct. 2004), <http://nlihc.org/sites/default/files/cp04.pdf> (illustrating that while federal housing-related tax credits and expenditures for all housing have skyrocketed since 1976, federal outlays for low- and moderate-income housing increased only modestly and plateaued in the first decade of the twenty-first century); see also Landis & McClure, *supra* note 93, at 323-48 (describing the federal government's general scaling back of initiatives to aid construction of low- and moderate-income housing beginning in the 1970s).

97. See Edward J. Sullivan & Karin Power, *Coming Affordable Housing Challenges for Municipalities After the Great Recession*, 21 J. AFFORDABLE HOUSING 297, 308 & n.84 (2012).

98. See Memorandum from Tracey Carney, Acting Reg'l Inspector Gen., U.S. Dep't of Hous. & Urban Dev., to Scott G. Davis, Dir., Disaster Recovery & Special Issues Div., U.S. Dep't of Hous. & Urban Dev. 2, 4, 12 (Aug. 4, 2010), <http://www.hud.gov/offices/oig/reports/files/ig10a1005.pdf> (criticizing the State of Louisiana and the City of New Orleans for not ensuring that federal block grant funds were spent in a timely manner and stating that this failure "delay[ed] the City's recovery from the damage caused by Hurricanes Katrina and Rita").

99. See Rose & Tuggle, *supra* note 6, at 2-4 (noting that, prior to Hurricane Katrina, the City of New Orleans' track record for spending federal resources lacked strategic coordination).

100. See OLSHANSKY & JOHNSON, *supra* note 13, at 49-51.



block grant funds spent for the year in question by the total amount of federal block grant funds allocated for that specific year.

It is critical for the CRI's Housing and Community Development Policy Category to include an indicator highlighting a local government's capacity for investing those grant funds in eligible projects on a timely basis. This capacity supplies one valuable indicator of whether the local government knows how to take necessary steps to deploy funding for essential long-term recovery projects.<sup>101</sup>

## 2. Institutions—Institutional Capacity for Creating Partnerships To Deliver Programs to Citizens in Need

It is essential that a local government have the capacity to establish and maintain intergovernmental and extragovernmental relationships that support and advance critical neighborhood redevelopment objectives. It is also critical for local governments to satisfy federal auditors by complying with voluminous technical requirements associated with deploying federal grant funds.<sup>102</sup> To do otherwise is to jeopardize the continued flow of recovery funds.<sup>103</sup> But experience or skill at handling federal redevelopment funds, while necessary to support dynamic neighborhood revitalization, is not by itself sufficient to carry out successful long-term recovery projects.<sup>104</sup>

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101. One of the important ways of evaluating the efficacy of government programs is measuring outcomes. *Cf.* Donabedian, *supra* note 54, at 1745 (explaining that outcomes are among the most important factors for evaluating the quality of healthcare services). Evaluating a local government's success at spending CDBG funds, which are the main source of funds for long-term community recovery, provides a meaningful assessment of a local government's capacity to perform long-term recovery because it provides an easily quantifiable and comparable outcome measurement for local governments.

102. A local government's failure to comply with federal regulations applicable to the use of federal block grant funds can result in the Inspector General's recommendation that the offending agency refund grant moneys to the United States Treasury or that unspent funds be taken away from the agency. *See, e.g.*, Memorandum from Gerald R. Kirkland, Reg'l Inspector Gen., U.S. Dep't of Hous. & Urban Dev., to Dan Rodriguez, Dir., Office of Pub. Hous., U.S. Dep't of Hous. & Urban Dev. 11, 13-14 (Jan. 25, 2011), <http://www.hudoig.gov/sites/default/files/documents/audit-reports/ig1161005.pdf> (recommending that the Port Arthur Housing Authority be required to return a \$725,546 allocation to the U.S. Treasury for failure to follow applicable regulations, including more than \$67,640 already expended); Memorandum from Nikita N. Irons to Cheryl Breaux, *supra* note 90, at 4, 6 (expressing concerns that part of a HUD \$29.7 million award to the Redevelopment Authority was "at risk" due to the fact that "[t]he Authority did not always use its NSP 2 funds in accordance with Federal regulations").

103. *See* sources cited *supra* note 102.

104. In support of its Federal Action Plan describing how New York City would spend more than \$1.7 billion in Hurricane Sandy long-term recovery funds, the City highlighted its "extensive experience in successfully managing the [annual federal] CDBG Entitlement

A local government must be able to tackle a wide variety of neighborhood rebuilding projects, ranging from residential repair and reconstruction programs to commercial redevelopment initiatives, parks renovations, public facility rehabilitation, hazard mitigation, and green space projects.<sup>105</sup> A local government cannot fund, much less administer, all of these projects in a manner responsive to a city's urgent needs on its own.<sup>106</sup>

A second way the CRI could measure a local government's institutional capacity for housing and community development projects is by including an index indicator that examines the local government's formal relationships with governmental and nongovernmental entities. In normal, noncrisis situations, catalytic urban redevelopment initiatives rarely mature guided solely by local governments.<sup>107</sup> Successful urban neighborhood revitalization is ordinarily initiated and fueled by collaborations between and among the local government, grassroots advocacy groups, state agencies, federal agencies, nonprofit development firms, for-profit real estate developers, and private foundations.<sup>108</sup>

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program," including a thirty-nine-year track record and staff that "collectively has 214 years of experience" administering the CDBG program. See *The City of New York Community Development Block Grant—Disaster Recovery: Partial Action Plan A*, *supra* note 88, at 7-8, 138. The City's performance in delivering federal long-term recovery funds to displaced families has been widely criticized as slow and poorly executed. See Mara Gay, Erica Orden & Ricardo Kaulessar, *Two Years Later, Sandy's Wrath Still Felt*, WALL STREET J. (Oct. 29, 2014, 8:46 PM), <http://www.wsj.com/articles/two-years-sandys-wrath-still-felt-1414630016>.

105. See, e.g., *The City of New York Community Development Block Grant—Disaster Recovery Partial Action Plan A*, *supra* note 88, at 30-31 (proposing to allocate federal recovery funds to housing (\$720 million); business recovery (\$325 million); infrastructure, such as public hospitals, schools, and beaches, as well as city services, including demolition, debris removal, and code enforcement (\$400 million); and projects to incentivize future resilience (\$327 million)).

106. See Liz Robbins, *After the Storm, 20 Months in Limbo*, N.Y. TIMES (June 20, 2014), [http://www.nytimes.com/2014/06/22/nyregion/after-the-storm-20-months-in-limbo.html?\\_r=0](http://www.nytimes.com/2014/06/22/nyregion/after-the-storm-20-months-in-limbo.html?_r=0). The article quoted a leader in Brooklyn's long-term recovery effort, Rev. Craig Miller: "Common sense says there's not enough federal money to do it all . . . . In terms of expediency, the work of the voluntary sector is critical, and crucial to a good recovery." *Id.*

107. See *Anchor Institutions & Urban Economic Development: From Community Benefit to Shared Value*, INITIATIVE FOR COMPETITIVE INNER CITY 2, 9 (June 2011), [http://www.icic.org/ee\\_uploads/publications/ICIC\\_RESEARCH\\_anchor\\_institutions\\_r2.pdf](http://www.icic.org/ee_uploads/publications/ICIC_RESEARCH_anchor_institutions_r2.pdf) (observing that one of the common urban redevelopment paradigms involves urban "anchor" [institutions being] repeatedly called upon by government and non-profit organizations to support multiple community needs" and urging that this paradigm needs to change to one where "anchors, governments, nonprofits and local businesses . . . work together" in order "[t]o create maximum shared value in inner cities").

108. See, e.g., Alan Greenblatt, *From Vacant to Vibrant: Cincinnati's Urban Transformation*, GOVERNING MAG. (Sept. 2014), <http://www.governing.com/topics/urban/gov-cincinnati-urban-transformation.html> (describing the public-private partnership that

Under such noncrisis circumstances, potentially transformative redevelopment relationships can form, grow, and, in the best cases, expand project by project.<sup>109</sup> Catastrophic disasters or crises threaten a city's fundamental well-being.<sup>110</sup> Local governments, businesses, nonprofits, and foundations are left to do their part in helping a city pick up the pieces and rebuild.<sup>111</sup> Although a strong spirit of cooperation often pervades the postdisaster landscape, this spirit would be even stronger if those redevelopment relationships predated the disaster or crisis.

In the wake of a disaster, a local government confronted with the challenge of navigating a long-term neighborhood recovery initiative is in a better position if it has proven redevelopment partners.<sup>112</sup> Without a network of these partnerships, a local government faces the dual challenges of overhauling its operations to deploy long-term recovery programs and developing trusting and the working relationships with nonprofits necessary to help facilitate neighborhood recovery.<sup>113</sup> Add

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sparked and led the redevelopment of Cincinnati's formerly blighted and high-crime Over-the-Rhine neighborhood).

109. Promoting partnerships between cities and their local nonprofit and philanthropic stakeholders is a key object of the federal Strong Cities, Strong Communities Initiative. See White House Council on Strong Cities, Strong Cmty.s., *Strong Cities, Strong Communities Initiative: 1st Annual Report*, U.S. DEP'T HOUSING & URB. DEV. 16-17 (Apr. 2013), <http://portal.hud.gov/hudportal/documents/huddoc?id=SC2AnnualReport.pdf>. Nurturing existing government-nonprofit partnerships and creating new partnerships is considered a key to expanding the effective reach of governmental urban revitalization programs. See *id.* at 18-20.

110. In the immediate wake of Hurricane Katrina, public dialogue reached the fundamental question of whether New Orleans should be rebuilt. This question was raised by then Speaker of the United States House of Representatives, Dennis Hastert, as well as commentators. See Jack Shafer, *Don't Refloat: The Case Against Rebuilding the Sunken City of New Orleans*, SLATE MAG. (Sept. 7, 2005, 3:19 PM), [http://www.slate.com/articles/news\\_and\\_politics/press\\_box/2005/09/dont\\_refloat.html](http://www.slate.com/articles/news_and_politics/press_box/2005/09/dont_refloat.html); Jill Zuckman, *Hastert Tries To Mend Rift over Words*, CHI. TRIB. (Sept. 3, 2005), [http://articles.chicagotribune.com/2005-09-03/news/0509030210\\_1\\_house-speaker-dennis-hastert-kathleen-blanco-relief-efforts](http://articles.chicagotribune.com/2005-09-03/news/0509030210_1_house-speaker-dennis-hastert-kathleen-blanco-relief-efforts).

111. See Memorandum from Flozell Daniels & Albert Ruesga to Melody Barnes, *supra* note 15, at 2-6 (describing the critical post-Katrina rebuilding roles played by residents, community groups, and nonprofit and philanthropic organizations).

112. See Flatt & Stys, *supra* note 43, at 356 ("[P]ost-disaster communities that have an existing coordination mechanism for non-profit organizations are generally better equipped to design and implement a long term recovery response."); see also Rose & Tuggle, *supra* note 6, at 1-7, 10 (recounting New Orleans as a city largely lacking housing and community development capacity prior to Hurricane Katrina due to misuse of resources, poor planning, graft, and low-capacity private sector partners and describing the post-Katrina flourishing of outside investment paired with energized local capacity for housing and community development projects).

113. See Flatt & Stys, *supra* note 43, at 356 (describing the conflict that sometimes characterizes local government interactions with nonprofits when the two parties lack predisaster relationships).

to these two challenges the fact that in a postdisaster landscape, key public and private sector decision makers are, on the one hand, channeling their energies to address immediate urgent needs and, on the other hand, focusing, literally, on rebuilding city hall as well as their family homes.<sup>114</sup> In short, the exigencies of a postdisaster recovery environment make it challenging for local governments to leverage effective partnerships with nonprofits, thus leaving neighborhoods to begin the rebuilding process with little local governmental support and guidance.<sup>115</sup>

Disaster recovery scholars use the concepts of “horizontal integration” and “vertical integration” to assess a local government’s strategic connections for deploying effective solutions to problems.<sup>116</sup> The value of this analytical framework is that it acknowledges that local governments do not, and cannot, solve major housing and community development problems in a vacuum. A local government is horizontally integrated if it can demonstrate working relationships with other organizations occupying the local landscape, including neighborhood organizations, local nonprofits, the local community foundation, local businesses, and local educational institutions. Vertical integration focuses on the existence, or not, of the local government’s connections with state and federal agencies, as well as the city’s relationship with regional or national nonprofits and philanthropic funders.<sup>117</sup> The ability of a local government to form and sustain relationships also suggests that the local government will be

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114. See Eugenie L. Birch, *Learning from Past Disasters*, in REBUILDING URBAN PLACES AFTER DISASTER: LESSONS FROM HURRICANE KATRINA 132, 147 (Eugenie L. Birch & Susan M. Wachter eds., 2006) (noting that in the months following Katrina, the City of New Orleans’ leaders were focused on the essential and basic realities of governance, including an anticipated 50% drop in tax revenues and the related decision to terminate 3,000 city employees).

115. See Memorandum from Flozell Daniels & Albert Ruesga to Melody Barnes, *supra* note 15, at 2 (explaining that “residents and community groups . . . have led much of the progress that has occurred” in New Orleans, overcoming “ongoing challenges” including “weak political infrastructure”).

116. See, e.g., Smith et al., *supra* note 29, at 80.

117. According to S&P’s local government rating system, vertical integration of local governments in the U.S. is less important in evaluating the strength and stability of local governments than it is abroad because local governments here generate so much of their own operational funding through local taxation. See *U.S. Local Governments General Obligation Ratings: Methodology and Assumptions*, *supra* note 51, at 5-7. However, in times of disaster or crisis, the importance of the federal-local and state-local relationship is critical because local governments largely lose their ability to generate local tax revenue—if even temporarily—and must rely on enormous infusions of federal and state funds to fund the community’s recovery from disaster. See Birch, *supra* note 114, at 147 (describing the City of New Orleans’ municipal funding crisis following Hurricane Katrina).

able to rally its resources and develop integrated homegrown solutions to long-term recovery challenges. This ability is sometimes described as a city's ability to "self-organize" in response to crisis.<sup>118</sup> The term "self-organize" is defined as the capacity not just to adapt to adverse circumstances but to devise responses with lesser reliance on outside resources and influences.<sup>119</sup>

The horizontal and vertical integration framework yields important insights about whether a local government possesses meaningful connections—connections that help it navigate regulatory obstacles, gather accurate information about local conditions, and disseminate that information in a manner that can bring in additional resources to target the toughest challenges.<sup>120</sup> A city's resilient recovery is greatly influenced by a local government's formal relationships with outside private and public entities.<sup>121</sup> The CRI employs the horizontal and vertical integration framework to help evaluate whether a local government has existing relationships that during a long-term recovery will give the local government the capacity to communicate and partner with organizations critical to identifying, planning, and implementing housing and community development projects.

The CRI would award credit to local governments for two types of current formal relationships with entities involved in housing and community development matters. By current relationships, we mean relationships active within the year preceding preparation of the CRI's most recent iteration.

The first category of current formal relationships includes housing and community development agreements that have a monetary measure of value, either in terms of money that a city intends to pay or loan to a third party or an agreement under which a third party is granting or lending money in exchange for certain services or programs to be provided by the city. Examples of these agreements might include:

- An agreement with a nonprofit housing developer to rehabilitate low-income housing units;

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118. See, e.g., Craig Anthony (Tony) Arnold, *Resilient Cities and Adaptive Law*, 50 IDAHO L. REV. 245, 249 (2014).

119. See *id.*

120. See Smith et al., *supra* note 29, at 80.

121. See Kalima Rose, *Bringing New Orleans Home: Community, Faith, and Nonprofit-Driven Housing Recovery*, in *RESILIENCE AND OPPORTUNITY: LESSONS FROM THE U.S. GULF COAST AFTER KATRINA AND RITA* 99, 100-02, 113-14 (Amy Liu et al. eds., 2011).

- An agreement with local attorneys to serve as outside counsel to support the city's code enforcement or eminent domain programs for assembling vacant properties; or
- A local community foundation's program-related investment (PRI) in a city's neighborhood redevelopment initiative.

The CRI would give credit for these housing and community development contracts relative to the dollar value of the contract. A critical consideration for cities when entering into contracts with third parties is whether the proposed agreements would trigger local, state,<sup>122</sup> or federal procurement requirements.<sup>123</sup> Local and state procurement laws are triggered at varying amounts. Federal procurement requirements applicable to HUD grantees attach to any contracts above \$100,000.00.<sup>124</sup> Thus, the CRI would award credits as follows:

- 1 point for a contract up to \$99,999 that triggers local or state procurement or public bid law requirements;
- 2 points for a contract worth greater than \$100,000.00 (which triggers federal procurement requirements); or
- 3 points for a contract worth more than \$1,000,000.00

The second category of current formal relationships for which the CRI would give credit are agreements *without* specific monetary value. Sometimes in-kind or interagency services are accorded no value or given nominal value. Further, a city may enter into a general agreement to coordinate and cooperate as a predicate to the investment of local government resources or to investments in local government programs. Examples of these agreements include:

- A cooperative-endeavor agreement (CEA) representing an agreement between a local government and regional or state governmental entities for technical assistance or the combination of efforts or resources to accomplish a shared objective;
- A memorandum of understanding (MOU) that memorializes a city's commitment to helping a neighborhood solve a specific problem, such as abandoned properties; or

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122. Like other states, the State of Louisiana has enacted a statute governing certain types of state procurement. *See* LA. REV. STAT. §§ 39:1551-1755 (2015).

123. Federal agencies and the state and local grantees of HUD must comply with federal procurement regulations. *See* Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. pt. 200 (2015).

124. *See* 24 C.F.R. § 84.84(e)(5)(ii) (2015).

- A consortium agreement that confirms a city's commitment to working with a group of public or private entities to achieve a common objective, such as neighborhood redevelopment.

The CRI would award credit for agreements that have no specific monetary value as follows:

- 1 point for agreements signed by the local government's chief executive or, if the local government's redevelopment efforts are administered by a redevelopment authority or other local agency, by the chair of the agency's board.

To provide the most accurate possible picture of a local government's capacity, the CRI must not only consider positive indicators of capacity, but also negative indicators of capacity. It is relatively easy to track factors that tend to suggest a local government's diminished capacity to manage housing and community development programs. Just as a local government might gain points for the type of constructive *positive* relationships that suggest its capacity for carrying out housing and community development projects, so too should the Index track *negative* indicators that would call for points to be subtracted from an Index score.<sup>125</sup>

Thus, the CRI also includes an indicator that tracks the ways in which local governments operate that may tend to impede relationships with governmental and nongovernmental organizations. In other words, the CRI also measures the presence of factors that detract from a local government's ability to form and maintain vertical and horizontal relationships.

A city's long-term recovery from disaster or crisis is characterized by an extended period of significant stress and adversity. Staff resources are stretched to cover far more substantive responsibilities than prior to the disaster. The local government's mandate for carrying out long-term recovery is generally underfunded because there is never enough money to address all of a city's neighborhoods' needs. If a local government operates at an inadequate level of efficiency prior to

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125. Adequate data and computer information systems are critical to the smooth and effective operation of any essential government unit, particularly when disaster or crisis strike. The State of Louisiana's auditors issued an audit, reprimanding the New Orleans Redevelopment Authority, an independent state agency, for relying on the information systems of another government entity, the City of New Orleans, without any written agreement memorializing this relationship between the two entities. See Bruno & Tervalon LLP, *supra* note 95, at 115.

a disaster, these predisaster deficiencies suggest the likelihood of significant problems for postdisaster implementation of housing and community development initiatives.

Further, it would be a mistake to conclude that local government dysfunction is the only sign for concern. Indeed, a potential “red flag” should be raised if a city has operated its housing and community development programs for more than a year without an audit. The lack of a current audit is a warning sign that no one has looked under the local government’s “hood” to see how well its housing agency, redevelopment authority, or community development department is running.<sup>126</sup> If sound practices cannot be confirmed prior to a disaster, then potential federal, state, and private and nonprofit partners should presume that a local government may encounter basic problems in implementing solutions for a postdisaster long-term recovery situation.

Importantly, the CRI tracks negative indicators of local government functionality. Examples of these negative factors that indicate breakdowns in basic local government functionality include:

- **Audit findings:** If a local government has difficulty properly managing its basic programs prior to a disaster or crisis event, this is a possible sign that it will falter under conditions of significantly greater adversity, such as during a long-term recovery. Further, a local government that lacks internal controls, policies, and procedures faces steep challenges to functioning as an effective redevelopment partner for state, federal, nonprofit, or for-profit entities; or
- **Failure to promptly pay contract obligations:** This failure suggests that (1) they will have problems meeting other basic contract obligations or that (2) they are partnering with agencies that are slow at furnishing reimbursement or funding—neither result being good. It is one thing for a government agency to pay invoices slowly; it is another for the agency to be sued because of it.<sup>127</sup>

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126. See, e.g., *id.* at 1-5.

127. See Michelle Krupa, *Companies that Helped N.O. Getting Paid 2 Years Later*, NOLA.COM, [http://www.nola.com/news/index.ssf/2008/03/companies\\_that\\_helped\\_no\\_getti.html](http://www.nola.com/news/index.ssf/2008/03/companies_that_helped_no_getti.html) (last updated Oct. 12, 2009, 11:22 PM); Pub. Strategies Grp., *City of New Orleans: A Transformation Plan for City Government*, CITY NEW ORLEANS 2, 6, 8, 19 (Mar. 1, 2011), [http://www.nola.gov/chief-administrative-office/documents/nola\\_transformation\\_plan/](http://www.nola.gov/chief-administrative-office/documents/nola_transformation_plan/) (“New Orleans . . . has great trouble paying its bills on time. Solving that problem would improve the city’s image with the business and nonprofit community, while helping the city hire better



Each of these indicators can be measured by reviewing the type of yearly audit that should be conducted for any entity receiving federal block grant funds.

### 3. Institutions—Land Banks as Essential Participants in Long-Term Recovery.

Hurricanes Katrina and Sandy devastated entire regions of the country, leaving in their wake hundreds of neighborhoods with scores of unoccupied and, in some cases, abandoned properties.<sup>128</sup> During the same time period, the mortgage foreclosure crisis ravaged cities from coast to coast.<sup>129</sup> Although the storms dramatically altered landscapes overnight and the mortgage crisis consumed neighborhoods slowly and steadily, the long-term effects these catastrophes have had on neighborhoods have been consistent in many important respects. For neighborhoods caught in their paths, the hurricanes and the foreclosure crisis have left block after block afflicted with burned-out residences, overgrown lots, and homes owing thousands in unpaid property taxes.<sup>130</sup>

Dilapidated properties undermine neighborhood recovery by discouraging new investment.<sup>131</sup> Comprehensive and transformative long-term disaster recovery requires that local and state governments and their redevelopment partners find a way to assemble and hold damaged or dilapidated properties until they can be redeveloped or

contractors, faster (since many will not now compete for city work because the city pays so slowly).”).

128. See Sandy Keenan, *Dark Water: A Year After Hurricane Sandy*, N.Y. TIMES (Oct. 2, 2013), <http://nytimes.com/2013/10/03/garden/dark-water-a-year-after-hurricane-sandy.html> (reporting that nearly a year after Sandy, approximately one-quarter of Long Beach, New York’s residents had not yet returned); Michelle Krupa, *New Orleans Neighborhoods that Suffered Worst Flooding Lost Most Residents, Census Data Show*, NOLA.COM (Feb. 6, 2011, 8:00 AM), [http://www.nola.com/politics/index.ssf/2011/02/new\\_orleans\\_neighborhoods\\_that.html](http://www.nola.com/politics/index.ssf/2011/02/new_orleans_neighborhoods_that.html) (explaining that Hurricane Katrina’s flood waters pushed persistent blight beyond “older neighborhoods west of the Industrial Canal [and into the city’s newer] neighborhoods such as Gentilly and Lakeview”).

129. See Sage Computing, Inc., *Revitalizing Foreclosed Properties with Land Banks*, HUD USER 1 (Aug. 2009), <http://www.huduser.org/portal/publications/landbanks.pdf>.

130. See Marsha Shuler, *Lower 9th Ward Revitalization Plan To Go Before Voters*, NEW ORLEANS ADVOC. (June 3, 2014, 10:11 AM), <http://www.theneworleansadvocate.com/news/9350879-171/ninth-ward-revitalization-goes-to> (detailing a proposed amendment to the Louisiana Constitution to allow the sale of 600 vacant and abandoned Lower Ninth Ward properties at prices significantly below fair market value).

131. See Frank S. Alexander, *Land Banking as Metropolitan Policy*, SMART GROWTH AM. 10-12 (Oct. 2008), [http://www.smartgrowthamerica.org/documents/brookings\\_land\\_banking.pdf](http://www.smartgrowthamerica.org/documents/brookings_land_banking.pdf).

repurposed.<sup>132</sup> This has proven especially true in New Orleans, which had a relatively weak housing market prestorm, with older housing in poor condition. Katrina's flood waters made the situation even worse.<sup>133</sup> Real estate development in New Orleans prestorm was already challenging, but it became almost impossible following the storm's widespread devastation.<sup>134</sup>

Prior to Hurricane Katrina, New Orleans' housing and community landscape did not support an institution devoted to comprehensive vacant property management and promotion of equitable housing development. The absence of an institution equipped to receive, hold, and transfer abandoned properties quickly became an impediment to neighborhood recovery.<sup>135</sup> The City of New Orleans and allied governmental agencies involved in the redevelopment did not have a tool at their disposal to cushion the hurricane-induced real estate market shock. Because the New Orleans real estate market no longer functioned normally, it could no longer absorb any abandoned properties. Thus, each new abandoned property had a high likelihood of becoming a hazard to surrounding homes, schools, and businesses and, further, a fiscal drag for the city—requiring additional policing and upkeep but remitting no property taxes. Precisely the same situation began to unfold across the country

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132. See, e.g., New Orleans Redevelopment Auth., Transition Report 4-11 (n.d.) (unpublished manuscript) (on file with author) (outlining in detail the New Orleans Redevelopment Authority's strategy for using federal funds to implement its several programs through a strategic framework to counter blight and abandonment).

133. See Brescia, Kelly & Marshall, *supra* note 86, at 328-35 (discussing the impact of Hurricane Katrina on New Orleans' real estate market).

134. See *id.* at 328-33 (detailing New Orleans Redevelopment Authority's strategy for New Orleans' weak, intermediate, and stronger market neighborhoods); see also Louisiana Land Trust, Louisiana Land Trust Property Redevelopment—\$52.3 Million in CDBG Allocated to New Orleans 1 (n.d.) (unpublished manuscript) (on file with author) (“Currently, developers who have responded to [New Orleans Redevelopment Authority] RFPs to redevelop Louisiana Land Trust (LLT) properties are largely stalled, unable to get product from concept to construction.”).

135. Laying the foundation for the government institutions necessary to navigate fundamental threats to public health and safety is at least in part a local government duty. The City of New Orleans failed to plan strategically for the fundamental need to manage vacant and abandoned properties following a catastrophic storm event, even though the city faced a major vacant property crisis prior to Hurricane Katrina. See Frank S. Alexander, *Louisiana Land Reform in the Storms' Aftermath*, 53 LOY. L. REV. 727, 729, 739 (2007) (explaining the city's need for a land bank authority both before and after the 2005 hurricane); see also Super, *supra* note 29, at 1443-46 (noting that “disasters sharply reduce agencies' capacity to make and implement decisions” and observing that “review of federal, state and local planning efforts before Hurricane Katrina shows both a broad awareness of the specific problems that would arise and a maddening refusal to invest decisional resources in pro-active planning”).

beginning in 2005 as the historic wave of foreclosures began to roll across cities and regions.<sup>136</sup>

The housing and community development category of a city resilience index should include at least one indicator for evaluating whether a city or surrounding region supports a land bank or institution with comparable powers for acquiring, maintaining, and disposing of abandoned properties. The CRI would award credit to a city based on the sophistication of the land bank. The CRI could give nominal credit (1 point) to a city or region where the state and local governments have passed the requisite state and local laws to create a land bank authority. An intermediate level of credit (2 points) could be given to land banks that have successfully accepted “deposits” of properties during the last calendar year and also successfully conveyed properties.<sup>137</sup> A higher level of Index credit could be given to land banks that have conveyed properties—at a volume—to support affordable housing development (3 points).<sup>138</sup> The highest level of credit (4 points) could be reserved for cities and regions that support land banks, which include all of the preceding characteristics and, in addition, function on a regional basis by encompassing an entire county or parish.

There are three reasons why it is critical for the CRI’s housing category to include an institutions indicator that includes land banks. First, in “worst case” scenarios where major disasters or real estate market crashes derail local or regional real estate markets, a land bank can help absorb the abandoned properties that are the casualties of disaster and crisis. Land banks serve as resources for holding and maintaining properties when market conditions are so unfavorable that no prospective or near-term development opportunities exist.<sup>139</sup> Under most circumstances, however, land banks could do much more than serve as a real estate market “emergency room.” Local governments can partner with land banks to help them pursue short-, mid-, and

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136. See Sage Computing, Inc., *supra* note 129, at 1; Alexander, *supra* note 131, at 10-12.

137. The Index could award points for land banks that acquire properties through two or more sources, including “(i) tax delinquencies and tax foreclosures; (ii) excess residential real estate foreclosures; (iii) nuisance abatement lien enforcement; (iv) direct market purchases; and (v) ‘deposits’ by third parties of properties to be held pending redevelopment” and, at the same time, successfully transfer banked properties for redevelopment. Alexander, *supra* note 131, at 25.

138. Cf. Rose, *supra* note 121, at 99, 102 (reflecting that New Orleans lacked critical “community development sector” assets, such as housing trust funds and community land trusts, before Katrina).

139. Alexander, *supra* note 131, at 6-7.

long-term redevelopment strategies. The second key function served by land banks is as a resource for holding properties in order to address a wide range of possible future local priorities, including holding properties for redevelopment as parks, hazard mitigation features, or urban agriculture.<sup>140</sup> But land banks are perhaps best suited to serve the fundamental goal of affordable housing development. Thus, the third reason that land banks should figure critically in the CRI is that land banks have historically been viewed as critical partners in the effort to build affordable housing and, in appropriate cases, market rate housing.<sup>141</sup>

*B. Laws and Policies Subcategory—An Indicator for Problems Posed by State Prohibitions Against Using Eminent Domain*

Of all the various government actors, state supreme courts and state legislatures may play the greatest role in dictating the success, or not, of long-term disaster recovery efforts.<sup>142</sup> Fundamental differences exist among states with regard to the laws applicable to housing and neighborhood development. One of the principal legal powers for comprehensive urban redevelopment is the state statutory and constitutional provisions authorizing local governments to take blighted properties. Eminent domain is just one of several tools that local governments might use to acquire blighted properties that are storm-damaged or are abandoned casualties of foreclosure or neglect. It is a tool that figures critically into almost any comprehensive redevelopment strategy because it can resolve a range of redevelopment obstacles, including blight and clouded title, and, if state law permits, it grants local governments the power to acquire nonblighted properties that may be critical to an area-wide redevelopment plan. This is also why the CRI proposes eminent domain as an important example of a key index indicator for evaluating the state or local legal landscape and its impact on urban redevelopment.

Katrina's thorough dismantling of New Orleans' housing stock has been well documented. The storm surge overpowered the city's

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140. *See id.* at 7.

141. *See id.*

142. *Cf.* Kathleen Tierney, Remarks at the Third International Conference on Urban Disaster Reduction (July 12, 2013). Tierney reflected that the "U.S. Supreme Court has a huge role in disaster recovery policy as it interprets the Fifth and Fourteenth Amendments to the U.S. Constitution," which set limitations on government takings of private property for public purposes. *Id.*

deficient flood protection system, flooding nearly the entire city and drowning 66,609 homeownership housing units in the process—a staggering 76% of the city's homeownership housing units.<sup>143</sup> In addition, the levee failures inundated more than 50% of the city's rental housing stock.<sup>144</sup> Katrina destroyed block after block of these homes in a matter of hours.<sup>145</sup>

By any measure, the physical destruction that New Orleans suffered was catastrophic. But what made the destruction more devastating was that many of the flooded neighborhoods were down-and-out long before the storm.<sup>146</sup> Decades of population loss, a stagnant local economy, low-wage jobs, and poor schools had already brought many New Orleans neighborhoods to their knees.<sup>147</sup> Katrina was a knockout punch. Bringing the storm-damaged neighborhoods back would require not just money and a large team of nonprofit and for-profit redevelopment firms. The effort required a range of legal tools that local governmental agencies would need to employ to acquire blighted properties, including a leading role for eminent domain or, as it is called in Louisiana, expropriation.<sup>148</sup>

This plan was not to be. As Frank Alexander writes, before the local government began using eminent domain to advance neighborhood redevelopment, the Louisiana Legislature unintentionally delivered another crippling blow to New Orleans' devastated neighborhoods.<sup>149</sup> In response to the United States Supreme Court's 2005 decision in *Kelo v. City of New London*,<sup>150</sup> Louisiana joined a number of states in limiting local governments' eminent domain powers, including the power to take blighted property and redevelop it.<sup>151</sup> At approximately the same moment, New Orleans shot to the top

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143. The 2005 hurricane season damaged an astounding 66,609 of 87,589 owner-occupied housing units in the City of New Orleans, which represents 76% of owner-occupied housing units. See U.S. Dep't of Homeland Sec. et al., *Current Housing Unit Damage Estimates: Hurricanes Katrina, Rita, and Wilma*, GREATER NEW ORLEANS COMMUNITY DATA CTR. 23, [https://gnocdc.s3.amazonaws.com/reports/Katrina\\_Rita\\_Wilma\\_Damage\\_2\\_12\\_06\\_revised.pdf](https://gnocdc.s3.amazonaws.com/reports/Katrina_Rita_Wilma_Damage_2_12_06_revised.pdf) (last updated Apr. 7, 2006).

144. 153 CONG. REC. 16,634-35 (2007) (statement of Sen. Dodd on behalf of himself and Sen. Landrieu).

145. See BRINKLEY, *supra* note 1, at 131.

146. See Shafer, *supra* note 110.

147. See *id.*; Krupa, *supra* note 128.

148. See LA. REV. STAT. § 19:2 (2014).

149. See Alexander, *supra* note 135, at 729.

150. 545 U.S. 469 (2005).

151. See 50 State Report Card: *Tracking Eminent Domain Reform Legislation Since Kelo*, CASTLE COALITION, <http://castlecoalition.org/50-state-report-card> (last visited Oct. 14, 2015); *Five Years After Kelo: The Sweeping Backlash Against One of the Supreme Court's*

of the nation's list of the most blighted cities, plagued by more than 100,000 blighted properties.<sup>152</sup> The timing could not have been worse. The constitutional amendment adopted by the Louisiana legislature in 2006 arguably barred local governments from taking blighted properties and from attempting to eliminate the blight by transferring them to third-party private or nonprofit development firms.<sup>153</sup> While eminent domain may not have been the silver bullet for solving New Orleans' blight problems, the new constitutional amendment cast serious doubt on the legal viability of what may have been the city's most effective antiblight tool.<sup>154</sup>

Louisiana voters ultimately amended the state constitution in November 2010 to give New Orleans the power to use eminent domain to eliminate blight by transferring dilapidated properties to nonprofit and for-profit development firms.<sup>155</sup> However, more than four years had passed since the storm's landfall. The moment had long passed for New Orleans to use expropriation as a catalytic neighborhood redevelopment tool. This unfortunate chapter underscores a consideration of bedrock importance to cities. If cities face crisis or disaster, the first hurdle that they must clear is making sure they know the implications of the legal obstacles that may be present in the face of existing statutory or constitutional provisions.<sup>156</sup> This is the reason why the housing category of a city resilience index should include at

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*Most-Despised Decisions*, INST. FOR JUST. (June 2010), [http://www.ij.org/wp-content/uploads/2015/08/kelo5year\\_ann-white\\_paper.pdf](http://www.ij.org/wp-content/uploads/2015/08/kelo5year_ann-white_paper.pdf). According to the Institute for Justice, a nonprofit organization that has advocated for limitations on state and local eminent domain power, legislation seeking

[t]o comprehensively reform eminent domain . . . should contain two essential elements: It should ban "economic development" takings—using eminent domain for the possibility of creating more tax revenue and jobs—while also changing so-called "blight" laws to stop blight statutes from being used as a back-door method of taking property for private development.

*Id.* at 3. The Institute adds: "Of the 43 states that changed their laws, at least 35 now do not allow condemnations for economic development. And more than half of the 43 states (22 states) went even further by reforming their laws involving condemnations to supposedly eliminate supposed 'blight.'" *Id.*

152. Jaquetta White, *Blight in New Orleans Is Back to Pre-Katrina Levels, but Challenges Remain*, NEW ORLEANS ADVOC. (Aug. 25, 2015, 7:37 PM), <http://www.theneworleansadvocate.com/news/12479530-172/blight-in-new-orleans-is>.

153. See John J. Costonis, *New Orleans, Katrina and Kelo: American Cities in the Post-Kelo Era*, 83 TUL. L. REV. 395, 406-07 (2008).

154. See *id.*

155. See *Louisiana Expropriated Property, Amendment 8 (2010)*, BALLOTEDIA, [http://ballotpedia.org/Louisiana\\_Expropriated\\_Property,\\_Amendment\\_8\\_\(2010\)](http://ballotpedia.org/Louisiana_Expropriated_Property,_Amendment_8_(2010)) (last visited Oct. 19, 2015).

156. See Costonis, *supra* note 153, at 413-14.

least one indicator for evaluating whether the state constitutional or statutory landscape poses significant impediments to a local government's neighborhood and housing development goals.

The purpose of the CRI is to gauge factors that contribute to, or detract from, a city's ability to carry out core housing and redevelopment functions. The CRI would award credit to a city based on the extent to which a state's statutes or constitution support the city's ability to implement redevelopment initiatives. In other words, a city receives more Index credits when the encompassing jurisdiction's laws allow it to incorporate eminent domain in its redevelopment strategy. A state in which cities cannot use eminent domain to take blighted properties would receive zero credits.<sup>157</sup> A state where eminent domain is permitted to take blighted properties, but where the state has narrowed the definition of blight in such a manner that it makes it difficult for cities to conduct blight-related takings at volume, receives one credit.<sup>158</sup> For example, in a few states, local governments are forbidden from taking a nonblighted property that sits amid blighted structures.<sup>159</sup> Two credits are awarded to jurisdictions that allow blight takings, but forbid or restrict transfer of those blighted properties to private parties.<sup>160</sup> Three points are awarded to states that permit taking blighted properties and transferring them to private parties for redevelopment without restrictions such as a requirement that the local government hold the property for a period of years before transferring it to a third party or a requirement that the local government offer the blighted property back to its original owner before conveying it to a private third party.

There are two reasons why it is critical for the CRI's housing and community development category to include an indicator highlighting the extent to which a state's constitution or statutes proscribes a local government's power to take private property as part of its long-term disaster recovery. The first is that a jurisdiction cannot afford to wait until after a disaster or crisis to sort through the obstacles posed by a city's inability to take blighted private properties and redevelop them

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157. In response to the *Kelo* decision, Florida and New Mexico passed laws that effectively eliminated a city's ability to take blighted properties using eminent domain. *See id.* at 415. Costonis refers to this drastic step as the "nuclear option" because it destroyed the local government's power to take blighted properties. *Id.*

158. These states include New Hampshire, Virginia, and Oregon. *See id.* at 415-16.

159. *See id.* at 416 & n.88.

160. *See id.* at 418-19.

with the aid of nonprofit and for-profit corporations.<sup>161</sup> It took Louisiana more than four years to address the impediments to redevelopment caused by the state's 2006 amendments. By that time, the city's blighted housing stock had festered for five years following Katrina and thousands of residents had not returned to their empty neighborhoods. If it suspects a possible problem with using this power, a jurisdiction should identify the problem as early as possible and move to correct it. Consider that in New Orleans, the problem was not fully realized until 2009, when a Louisiana appellate court refused to confirm that the constitutional amendment allowed takings and transfers to third parties to eliminate blight.<sup>162</sup> The second reason is to raise awareness that the more the public sector is restricted in its ability to take blighted properties, the more private sector forces will be hamstrung in their ability to participate in the redevelopment of blighted properties. This is particularly true in lower-value neighborhoods where the private market might not only encounter difficulties, but where private actors may forgo any efforts to revitalize blighted neighborhoods because of these challenges.<sup>163</sup>

#### IV. CONCLUSION

Disasters often recede from the nation's consciousness as television and Internet news coverage wane, and glossy magazine cover stories disappear from shopping market checkout lines. That is understandable. We tend to be gripped and moved by images and information that capture our attention. We are awestruck by video of sailboats lying blocks inland from the shoreline or by photos of buildings and bridges bent and shattered by seismic shocks.

Although the immediate postdisaster response phase represents a critical stage in any disaster recovery story, it is still only an early snapshot of a much longer journey. The long-term phase of that journey is generally not so well documented. It is not easy to capture people's imagination with stories of a city's legal or organizational struggles to remake and reinvent in neighborhoods.

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161. See Super, *supra* note 29, at 1443-46 (noting that "disasters sharply reduce agencies' capacity to make and implement decisions" and observing that "review of federal, state and local planning efforts before Hurricane Katrina shows both a broad awareness of the specific problems that would arise and a maddening refusal to invest decisional resources in pro-active planning").

162. See *New Orleans Redevelopment Auth. v. Burgess*, 2008-1020 (La. App. 4 Cir. 7/8/09); 16 So. 3d 569.

163. See Costonis, *supra* note 153, at 422-23.



Report cards, ratings, and rankings, however, have a track record of grabbing our attention. Whether concerning financial market matters, such as Dow and NASDAQ, or a very personal matter, such as a credit score, indices focus us on issues that might otherwise not easily catch our attention. The CRI helps spotlight legal and institutional obstacles to a city's long-term recovery.

No single index will capture every aspect of a robust urban recovery or revitalization. But the CRI is an important tool that gives a baseline understanding of the challenges that local communities and their partners—federal, state, nonprofit, for-profit or philanthropic—may face in helping a city recover from crisis or disaster.