Much of the discussion of the Trump Administration’s failed handling of the COVID-19 pandemic has focused on its delayed, and then insufficiently urgent, response, as well as the President’s apparent effort to talk and tweet the virus into submission. All are fair criticisms. But the bungled initial response—or lack of response—was made
immeasurably worse by the Administration’s confused and confusing allocation of authority to perform or supervise tasks essential to reducing the virus’s damaging effects. Those mistakes hold important lessons.

The Administration’s management of the pandemic has been hampered by misallocation of authority along three different but interacting dimensions. First, it has been marred by overlapping authority that has resulted in waste, while failing to capitalize on this overlap’s potential to safeguard against shirking and inaction. Second, it has reflected a thoughtless mix of centralized and decentralized authority. Third, it has lacked a fundamentally important tool—the ability to coordinate the efforts of public and private actions to combat the crisis effectively and efficiently.

Almost from the virus’s arrival, it was unclear who was supposed to be in charge. Initially, U.S. Department of Health and Human Services (HHS) Secretary Alex Azar held the reins. Then President Donald J. Trump appointed Vice President Mike Pence to lead the Administration’s response. Not long after that, Trump handed over authority to develop and implement at least some aspects of the federal response to his son-in-law, Jared Kushner, who has operated a “shadow” pandemic response program. It is bad enough that neither the Vice President nor Mr. Kushner has any meaningful disease-related expertise.

Yet management of an unprecedented global health crisis was inexplicably allocated along three different but overlapping lines of authority. The resulting overlap might have held some value in a more competent administration—to hedge inaction by a single leader or agency. It might also have made capture of agency decision-makers by contractors more difficult by increasing the number of decision-makers in the mix. But in this case, multiple power centers left no clear chain of command and led to duplicative data-gathering efforts and conflicting directives and guidance being issued to private actors such as hospitals.

The Administration’s failures also stem from its inconsistent and apparently senseless decisions to centralize and decentralize authority. Before the coronavirus pandemic, the Trump Administration moved toward greater centralization of management, merging a directorate created by the Obama Administration specifically to prepare for and manage public health crises into an office with responsibilities relating to weapons of mass destruction, biodefense, and terrorist threats.
One expert reportedly characterized the Administration’s “streamlining” effort as “decapitating and diluting” the White House’s prior focus on pandemic threats. Perhaps the most revealing comment came from one of the most familiar faces of the Trump Administration’s COVID-19 response: Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, acknowledged that “it would be nice” if the White House pandemic response directorate “was still there.”

Once the virus spread to the United States, the Trump Administration veered toward extreme decentralization, leaving it to state and local governments to structure responses, and to the critical actors in the nation’s health care system, such as hospitals, to fend for themselves. The approach might still have worked if the Administration had effectively coordinated the efforts of these public and private entities, but federal coordination has been sadly lacking—forcing states to compete for access to ventilators and other equipment. Interstate competition has only served to drive up costs and hampered the ability of some of the hardest hit states, such as New York, to procure needed supplies. Coordinated equipment distribution by the federal government could have minimized those problems.

Likewise, better coordination could have mitigated the conflicting directives and needless duplication of effort that have resulted from the overlap among the three centers of power: federal, state, and local. Instead, the resulting overlap, senseless amalgam of centralized and decentralized authority, and lack of coordination has resulted in chaos.

A former senior U.S. official reportedly pointed out that “for the first time since 9/11, you do not have someone directly and immediately reporting to the President responsible 24/7 for the major transnational threats we face—terror, cyber, pandemics.” Even a former senior Trump Administration official reportedly acknowledged that “it is better to have one person who has the backing of the White House to coordinate.” As a senior Administration official has apparently said, “The problem is no one is sure who is in charge.” The confusion has resulted in “conflicting signals within the White House’s disjointed response to the crisis.”

How government authority is allocated can profoundly influence the fate of government programs. Managing pandemic response is challenging in the best of circumstances, but the Administration’s poor organizational choices have made those
challenges infinitely worse. It is too late to save the lives lost as a result of these decisions, but we can at least learn from the experience.

Alejandro E. Camacho is a professor of law at the University of California-Irvine School of Law.

Robert L. Glicksman is the J.B. and Maurice C. Shapiro Professor of Environmental Law at The George Washington University Law School.

This essay is part of an ongoing series, entitled Comparing Nations’ Responses to COVID-19.

Tagged: Administrative Law, COVID-19, Health Regulation, Regulatory Cooperation, Trump Administration