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# 1

## Naming It

Ungoverning is an unfamiliar name for an unfamiliar phenomenon: the attack on the capacity and legitimacy of government, especially the part of government that goes by the term “administrative state.” The administrative state consists of a vast array of government agencies that shape, implement, adjudicate, and enforce public policies of every kind. It encompasses all those who carry on the day-to-day work of government: the ordinary and routine, the wars and emergencies. The legislature may pass bills, the executive may sign them, the judiciary may pass judgment on them—but it is the appointed officials and civil servants who translate laws on paper into action. “Administration,” or shaping, implementing, and enforcing laws by officials charged specifically with the task, is unavoidable. Every modern state is an administrative state.

Yet, the administrative state is besieged. Not only because of the threat this book explores—willful ungoverning—but because of the full range of forces that undercut the effectiveness of government. Progressives, moderates, conservatives,

and even libertarians known for their insistence on minimal government are focused on the question of state capacity. From every political quarter, people doubt whether government can succeed at addressing urgent public problems like global warming, housing and homelessness, education, transportation, and health care, and the problem is compounded when we consider actions that require international cooperation.

At the very moment that building state capacity is most essential, a new force is attacking the administrative state: ungovernance.

Ungovernance exploits the wave of frustration with government bureaucracy and government performance. Its objective is not institutional reform, but “deconstruction.” One example crystallizes this—the intention to abolish the Internal Revenue Service; without steady and sufficient revenue, government cannot function. There are innumerable others: sidelining senior officials and diplomats in the State Department even at high-level meetings with adversaries like North Korea’s dictator Kim Jong Un (Ward 2019); demanding personal loyalty and special treatment for favorites from the director of the Federal Bureau of Investigation (FBI) (Comey 2017, 3); threatening to deny Covid aid to states whose governors were critical of the president (Cohen 2020).

The atmospherics of acts of deconstruction changed from situation to situation. Some were sudden and insouciant—unplanned. Others followed weeks or months of fury—deliberated threats and firings and disruption of regular business. The motive is animus toward government itself (Lobosco 2023). Ungovernance is the undoing of the administrative state. It is the reversal of already highly developed state capacity. It is a kind of backward evolution. It is a rarity, distinct from state failure due to incapacity or what Francis Fukuyama calls “political

decay” because it is chosen (Fukuyama 2014, 455–466). What replaces governing is not more freedom but the arbitrary rule of personal will.

Americans have suffered a close encounter with the unanticipated and dangerous disabling of government during the presidency of Donald Trump. He clarified it as no one else could by forming the first presidential administration that was anti-administration. This was not just provocative talk. Procedures for decision-making were circumvented, experts were silenced or fired, and public purposes were abandoned, without any justification beyond thwarting “enemies” who opposed the president’s will. Ungoverning is the intentional disruption of regular order for reasons unrelated to public welfare.

But ungoverning is not just about Donald Trump. Although his presidency clarified it as none other, it did not come out of nowhere. Trump brought decades of cultivated hostility toward government to a crescendo (Campbell 2023, 11–14). Ungoverning has a history before Trump, and it will have a future after him. It is not the work of one person.

Nor do we mean to claim that Trump had no interest in policy or governing at all. There were important domains in which he aimed to change existing policies on trade, immigration, and the war in Afghanistan, for example. And many of the policies his administration set in motion on those subjects were continued by his successor. Ungoverning was not the whole of Trump’s administration, even if it was its defining character.

Ungoverning is part of the constellation of actions that make up illiberal, anti-democratic politics and result in “democratic backsliding” (Bermeo 2016). It joins other assaults on the essential securities of liberal democracy: constitutionalism, rule of law, and democratic norms. Like these, ungoverning indicates a new kind of assault: not a military coup but an attack

on democratic essentials led by an elected leader with popular support. In some cases, like the disruption of election administration, ungoverning aims directly at the core of democracy. Ungoverning can be more indirect, however; by degrading the machinery of government it creates a state that cannot respond to public needs. Ungoverning can go anywhere. No single agency or program stands alone in its sights. No department, no policy, and no public servant is immune.

The idea that those entrusted with responsibility for governing would intentionally make the state less capable—degrading its ability to collect taxes, to deliver mail, to conduct diplomacy, to prosecute violations of civil rights—is almost unthinkable. It is unthinkable because it seems irrational.

State capacity is simply the “ability of a government-in-place to develop and implement policies that its leaders believe will improve national well-being” (Khosla and Tushnet 2022, 97). Capacity is a matter of degree, and more is not always better. Courts may set boundaries for what states can do for the sake of protecting rights or delineating the proper scope of different branches and levels of government. It might be coherent and convincing for leaders to argue that the state should reduce its activities in particular areas of policy. But destroying state capacity in an errant way is almost without precedent.

There are cases of tyrants like Hugo Chávez in Venezuela who, because of the distorted reality they create all around them, unintentionally destroy the states they rule (Neuman 2022). But even tyrants and authoritarians generally want a state that works (for them). Those hungry for personal power want to command the instrument that conveys power—the machinery of government. Even Marxist revolutionaries who imagined a utopian “withering away of the state” sought in the first instance to take over a functioning state, not to destroy it.

Behind ungoverning in the United States is a tale of two conflicts, intertwined.

The first is a story of substituting personal will for governing. Governing is about the authority that adheres to an office, whereas rule is about empowering the will of a particular person or group. Invoking a medieval image, it is the difference between the crown and the king's head on which the crown sits. The assault on governing and substitution of will is comprehensive.

Our challenge is to understand why a president would declare war on the machinery of government. Our answer: to throw off the constraints that the machinery imposes on the exercise of personal power. In telling this story, we argue that ungoverning grew out of Trump's unchained impulse to command and his need to "own" reality and impose it on the nation. The vehicle is an imagined conspiracy, the malignant "deep state." And because the ethos of ungoverning has come to define the Republican Party, the threat it poses goes beyond one person.

The second story is about a reactionary counterculture movement that wants from politics what no liberal democratic government could deliver: a restoration of America as a Christian nation, a white nation, a nation that subordinates women, a sovereign nation divorced from the "new world order." The deep state conspiracy has a constituency. This constituency got its collective identity as a movement from a magnetic authoritarian leader. Like other movements, it is "presentist." The demand is for change *right now*. Whereas designing and implementing policies takes time, ungoverning can happen immediately. The reactionary counterculture is primed to act right now—to intimidate and threaten and turn to violence.

These two stories come together to produce ungoverning. To understand it, we need to name it, which is why we

introduce this term into the political lexicon. Ungoverning has a history; everything does. It has a path forward, too.

As we have said, we should not be tempted to think that ungoverning is exclusive to Donald Trump. It has come to define a reactionary movement and the Republican Party. The shared intention is “a sweeping expansion of presidential power over the machinery of government.” Identifying and eliminating “pockets of independence” in the administrative state is the aim. The objective is to dismantle agencies staffed by “the sick political class that hates our country” (Swan, Savage, and Haberman 2023). Unless the reactionary movement is defused and the Republican Party reinvents a philosophy of governing, deconstruction of the administrative state is not safely in the past. Another like-minded president, a Congress controlled by bring-it-all-crashing-down extremists, a Supreme Court that seizes the reins of the administrative state in order to eradicate capacities developed since the New Deal—any of these could carry on the project of ungoverning.

Ungoverning is vandalism, a willful sabotage of the institutions that do the work of government. But it has not yet been entrenched. We are no longer complacent about the robustness of liberal democratic institutions or of popular support for them. Our vigilance, now focused on the high ground of constitutionalism and “the soul of the nation,” must extend to the unlovely institutions that do the day-to-day work of governing. The future of liberal democracy depends on many things: the rule of law, the legitimacy of political opposition, accountability, representation. It depends, too, on a government that can govern.

### **Ungoverning Is Its Own Thing**

Any addition to the political lexicon, like “ungoverning,” will face challenges. Some new terms are esoteric and do not live

outside a narrow sphere of like-minded political theorists and comparative political scientists. But some frame how we think about the political moment at hand and orient our sense of what is to be done. A summary of ungoverning includes the following:

- Degrading existing state capacity by derailing, displacing, hijacking, and circumventing administrative departments and agencies
- Wholesale attacks on administrative experience and specific subject expertise
- Wholesale attacks on regular administrative procedure
- Indiscriminate degradation of state capacity rather than targeted reform of rules, regulations, programs, agencies, or departments

The critical adjectives that mark ungoverning are “wholesale” and “indiscriminate.” The critical verbs are “attack” and “degrade.” Ungoverning is not an attempt to make government work better. It is an attempt to make government not work.

Our story is about how skepticism about the effectiveness of government and support for small government became freestanding hostility to government and a comprehensive attack on governing institutions. Our purpose is to show how features of U.S. politics that are familiar morphed into a rare kind of threat. The familiar elements are altering the scope of government, deregulation, and obstructing the political opposition. All of these can be deployed in a bounded, purposeful, strategic, and constructive way. Ungoverning is indiscriminate and unbounded, and its principal objective is personal rule. It is important, then, to distinguish ungoverning from these familiar elements of democratic politics.

## The Scope of Government

Policy innovation can require undoing the status quo, including sometimes also undoing the departments and agencies responsible for bringing existing policy agendas to life in the world. Throughout two-hundred-plus years, the vicissitudes of history, ideology, politics, and the compounding needs of the nation have prompted leaders to shape and reshape the administrative state. Its reach, organization, and level of funding have changed. Over time, presidents and Congresses create, abolish, alter, and consolidate departments and their agendas.

Undoing policies—a Congress or party reversing its own measures or the opposition’s—is standard business and may entail abolishing traditional agency functions, or even shutting down entire departments; the first regulatory agency, the Interstate Commerce Commission, was established in 1887 and abolished in 1995. Departments are also added: the Department of Homeland Security was created in 2002. That involved shuffling the places and work of other agencies, notably putting Immigration and Customs Enforcement (ICE) under its aegis. Sixty-two percent of the agencies created after 1946 had been “terminated or substantially reorganized” by 1997 (Selin and Lewis 2018, 85).

Reducing the scope of government is not on its own the same as ungoverning. Nor is ending policies and programs inherited from the past. The best example from U.S. politics is also the first. Following the election of Thomas Jefferson in 1800—which represented not simply a change of personalities but a comprehensive change, known as “the revolution of 1800”—Jefferson reversed core policies he inherited from Washington and Adams. He ended, for example, Hamilton’s

excise tax program of 1791, and eliminated the internal revenue administration. And he aimed to restrict the scope of national authority. But Jefferson did not disable the state. He wanted what he called the “machine of government” to work (Cunningham 1978, 24), and he involved himself in the details of administration. He relied on the efficient administration he created, first to incorporate the vast Louisiana Territory—“a test of the administrative capacity of the national government” (118)—and later, to enforce the Embargo of 1807, a policy that created an enormous and ultimately impossible administrative burden.

Andrew Jackson, too, wanted what we would now call “small government,” and consistent with this philosophy, he destroyed the Second Bank of the United States in 1833. As a result, he was censured by the opposition Whigs, who saw his corollary decision to move the nation’s deposits to state banks as an abuse of presidential power (Wilentz 2005, 398–401). Yet, whatever one thinks in retrospect of the constitutional controversy concerning the federal government’s ability to charter a national bank—a controversy that began when Alexander Hamilton first proposed establishing a national bank in 1791—the decision to end the bank was a legitimate if contentious exercise of governmental power. It was not ungoverning.

Eliminating a policy or program takes enormous effort. Undoing anything is difficult, even when the undoing seems to make sense to almost everyone. Ending an agency or a program imposes immediate, concentrated, traceable costs on identifiable constituencies that in turn can organize, lobby, and defend their interests (Arnold 1992). Consider the National Technical Information Service (NTIS), which was created after World War II as a repository to make available scientific studies conducted by the government. By 2010, documents that the NTIS was charging citizens hundreds of dollars to obtain were

available for free on the internet. In 2014, senators from both parties co-sponsored legislation to eliminate the NTIS, the Let Me Google That for You Bill (S. 2206, 113th Cong. [2014]). Congress failed to make this change, even though over 90 percent of the documents the agency sold could be found by a simple internet search and downloaded by anyone for free.

But there are cases where the frustration with the difficulty of reform can provoke calls for destruction. Take “Defund the police,” the cri de coeur from the grassroots Black Lives Matter movement following the police murder of George Floyd in 2020 by Officer Derek Chauvin in Minneapolis, Minnesota. Taken literally, the slogan suggests we can do away with policing. Police brutality is so intransigent and racism so engrained that the only solution seems to be eradication: “The only way we’re going to stop these endless cycles of police violence,” advocates of “defund” argue, “is by creating alternatives to policing” (McHarris and McHarris 2020).

Some advocates of “defund” insisted that it stood for a nuanced set of reforms, not abolishing law enforcement. What they wanted was rather “to see the rotten trees of policing chopped down and fresh roots replanted anew” (Ray 2020). The objective was to diminish the scope of the authority of law enforcement, decreasing police resources and increasing funding for public services more appropriately assigned to other professionals. Social workers and medical experts, not police, in this view, are the appropriate responders for problems that stem from social disorder due to homelessness, mental illness, addiction.

But as a slogan, “defund” suggested destruction over reform. Born of rage against repeated episodes of police brutality, it appealed to a sense that no new wave of reform could work, no matter how carefully planned or well intentioned.

When problems go deep, reform is rarely simple, and solutions are rarely fast. For frustrated activists and citizens, any real reform may come to seem impossible. Destruction offers to do what reform cannot. Destruction seems like the only path to change. That is the promise of ungoverning, which is a false promise, as we show. And it is a distortion of what reformers who seek to constrict the scope of government aim for—a government that is more efficient and more effective.

Summing up current controversies surrounding the administrative state, one conservative economist put it this way: “We’ve been having a debate for decades now about the size of government. The more interesting debate is the scope of government” (Wright 2020, 40). In fact, more disturbing today than the scope of government is the capacity to preserve and to use, as governing requires, a functioning administrative state at all. And it is not just a matter of “interesting debate,” but of facing up to the tremendous political damage ungoverning inflicts on liberal democracy.

## **Deregulation**

It is also important to distinguish ungoverning from ordinary policies of deregulation. In many cases, deregulation is justified by arguments that markets serve public needs more effectively than government regulations. For instance, the Airline Deregulation Act of 1978, spearheaded by Senator Edward Kennedy, aimed to make air travel more affordable. Kennedy teamed up with Steven Breyer, then a professor at Harvard Law School, to create a plan that would abolish the Civil Aeronautics Board, which since the 1930s had controlled airline routes and pricing, and even regulated the size of the sandwiches served for lunch on flights (Derchin 2022; Eizenstat 2018). Deregulation was

subsequently applied to a range of other industries such as trucking and telecommunication.

But there are other cases that look less like policy reform and more like degrading the agency's capacity to do its work—in other words, ungoverning. At the start of his first term, Ronald Reagan's appointment to head the Environmental Protection Agency (EPA), Anne Gorsuch, set out to incapacitate her own agency. She proposed to cut its budget by over 25 percent and to cut full-time staffing by a similar amount (Mintz 1995, 45). Her principal target was enforcement: agency officials were told to focus their efforts on "informal attempts at encouraging voluntary compliance" (43). Appointments were based on loyalty to Reagan, not on qualifications—or even a candidate's interest in the job. As the deputy associate administrator for enforcement reflected, "I handled Reagan's stop in Youngstown as a candidate and when they were recruiting, they asked for my resume. The EPA was the last agency I wanted to go to, and enforcement was the last job I wanted at the Agency" (42). Constant reorganization of enforcement divisions coupled with an absence of any clear policy goal cultivated pervasive confusion among civil servants charged with implementing environmental laws (51). The aim was not to design a more effective and efficient organization, but to incapacitate it. As one official said, there was "very obviously a deliberate plan to paralyze if not totally dismantle the enforcement program" (43, 254n11)—and to do this quickly and invisibly, before the public noticed (Landy, Roberts, and Thomas 1990, 245). Congress, however, did notice. Gorsuch was forced to resign.

Reagan's attempt to hobble the EPA was not an effort to reform an existing policy regime, as was Carter's dismantling of the Civil Aeronautics Board in 1978. Nor was it a case of

“capture,” where industries control the agencies that have the authority to regulate them. It was ungoverning—an attempt to comprehensively incapacitate an agency so that it would be unable to serve its statutory mission. Reagan failed at the EPA, but not for lack of effort. He failed only because public opinion and Congress wanted government to require industry to clean its toxic waste and stop poisoning the ground, water, and air. To expose the Reagan administration’s effort to undo the agency was enough to defeat it. At that moment, there was no constituency for ungoverning. There was no reactionary movement to celebrate his deconstruction as there would be later under Trump—who revived Reagan’s effort to disable the EPA openly and successfully.

In an early act of his presidency, Trump signed an executive order requiring that for every new federal regulation implemented, two must be rescinded (McCaskill and Nussbaum 2017). It had a cost component: the net incremental cost for fiscal 2017 should be “no greater than zero.” We call this ungoverning not because deregulation was bad policy, but because it was indiscriminate. It was unclear: the order asks agencies to “‘identify’ two rules to be revoked and find ways to offset costs of new rules.” Its result was not efficiency but confusion. It appeared “arbitrary” and “not implementable” (Plumer 2017). And behind it was a veiled threat to withhold cost of living adjustments for agency personnel until they obeyed the order (Crews 2016). It was careless, confusing, and disabling: “The mere existence of a perplexing directive like this, experts say, could bog down work at various regulatory agencies like the Environmental Protection Agency or Food and Drug Administration.” As a Harvard Law School professor told *Vox*, “It is primarily an instrument for hassling the agencies and slowing the regulatory process” (Plumer 2017).

Indiscriminate deregulation is not a targeted strategy. While he was running for the Republican presidential nomination in 2023, Florida governor Ron DeSantis pledged to entirely eliminate a raft of federal agencies, including the Departments of Commerce, Education, and Energy and the Internal Revenue Service. The journal *Government Executive* observed, “The Florida governor did not specify how he would manage the dissolution of those agencies, which collectively employ more than 150,000 workers, nor what would happen to key components such as the Commerce’s National Weather Service or Energy’s oversight of the nuclear weapons program” (Katz 2023). Nor did DeSantis explain how the government would collect taxes in the absence of the IRS—or whether it would tax at all.

To be sure, the web of overlapping federal regulations can be dysfunctional in various ways. It does not follow, however, that because overregulation can be a problem, even *the* problem, then the regulatory authority of government should be degraded or abolished. The solution is relaxing, rewriting, and reforming regulations. This is what the federal government did to meet the crisis brought by the Covid pandemic. Through the innovation of advance purchase agreements and through “emergency use authorizations,” the government both underwrote the discovery of vaccines and made them available to every citizen in less than a year (Frank, Dach, and Lurie 2021). One might call it a miracle. In fact, it was government, doing its work. When nothing can do the job except government—and when government works—citizens notice.

Ungoverning is not a rational response to the inertia that afflicts existing policies, programs, and agencies. Indiscriminate attacks and degradation of the administrative state—as in the two-for-one Trump deregulation policy or the “eliminate four agencies” slogan—will not make government more

efficient, only more chaotic. Candidates and parties could develop comprehensive proposals for reforming the administrative state, as Al Gore did when he was vice president under Bill Clinton. Accomplishing comprehensive reform would be enormously difficult. Doing things is extraordinarily difficult in democratic politics. So is undoing them, unless it is by slash and burn.

### **Obstruction and Delegitimation**

Finally, in naming ungoverning as its own thing, we want to distinguish it from the normal politics of obstruction. Partisans often want to obstruct the opposition, and obstruction is an expected part of democratic politics. Obstruction becomes ungoverning when it aims at incapacitating government in a comprehensive way. Obstruction becomes ungoverning when its consequence is degrading the institutions that bring every policy to life. When it offers neither alternative policies nor reasons to think *any* policy is necessary. Obstruction becomes ungoverning when it is a party's entire political agenda. And key to arrant obstruction as ungoverning is disregard for consequences.

Ungoverning obstructionists do not shy from imposing devastating costs on the nation—opposing the Affordable Care Act without offering a substitute plan, for example. Shutting down the government with no purpose and no willingness to negotiate. Baldly refusing to negotiate raising the debt limit and driving the country to default.

It can be difficult to identify the point at which familiar tactics of undoing, deregulation, and obstructionism become ungoverning. All are normal and sometimes appropriate elements of democratic politics. But they can become disjoined from any constructive purpose. Opposition to “big government” can lead to disdain for governing, and then to opposition to government

itself: If “government is the problem,” as Ronald Reagan said at his first inaugural, why have government? Why try to make it work? Why design policies that aim to solve problems or hammer out compromises with the opposition?

While picking out what counts as ungoverning can in some cases be challenging, in other cases there is dispositive evidence. The arousal and launch of private violence can be seen as the ultimate act of ungoverning because it degrades the defining characteristic of the modern state: the monopoly of legitimate violence and with it the responsibility to protect citizens. That is the message when a candidate or president arouses followers to threaten and intimidate the political opposition—and not just officials, but also private citizens in all sorts of social settings. Or when a president makes an unsubtle death threat against the disloyal Senate leader of his own party (Richards 2022). Or when he mobilizes and calls out private militias and armed followers.

The cumulative effect of ungoverning is delegitimation. Delegitimation is not the equivalent of criticism of bureaucracy or criticism of a particular agency, policy, or goal. It refers to something deeper and more destructive than even the plague of distrust of political institutions. Legitimacy says that an institution has meaning, value, and authority. Delegitimation negates all three. The message of delegitimation is that the workings of departments and agencies have no authority, and their rules and regulations need not be complied with. Legitimacy is a warrant for compliance; ungoverning removes the warrant.

### **The Administrative State: Unlovely and Unloved**

Ungoverning is a recent phenomenon, precipitated by Trump, and many leaders in the Republican Party are poised to continue

it into the future. The necessary background condition is the long-standing vulnerability of administrative institutions. This cracks open the door for the forces of deconstruction. In the United States, these vulnerabilities arise from the sheer illegibility of the vast structure of the machinery of government and from its anomalous place among the three constitutionally defined branches of government. Even attentive citizens can seldom specify what the phrase “administrative state” refers to or describe where it sits in the constitutional order. Its illegibility and uncertain constitutional status are fertile ground for ungoverning. And underlying everything is the personal experience of subjection to administrative authority, which—as fictional accounts of bureaucratic power testify—often leaves a residue of fear and frustration.

Disaffection often arises when citizens have close encounters with the offices and civil servants who stand between them and what they need from government. We know this from accounts of experience that span time and place. Because this is so common, it is not surprising that government bureaucracy has inspired enduring cultural representations. In nineteenth-century England, Charles Dickens built drama around the inanity and cruelty of state bureaucracy, yet we can recognize something of our own experience in his description. Under conditions of twentieth-century communism, Václav Havel’s theater of the absurd told the story in a different key, but we can recognize our own experience there as well. Literature has given us a mythology about bureaucracy, which revolves around two axes: irrationality and tyranny.

Charles Dickens’s novel *Little Dorrit* features the all-powerful Circumlocution Office. “No petitioner, whether attempting to do the plainest right or to undo the plainest wrong, can do so without the express authority of the Circumlocution Office,”

Dickens starts out (Dickens [1857] 2021, 71). And as the name of the office indicates, the civil servants who work there are dedicated to a negative mission: “HOW NOT TO DO IT” (71, all caps in original). The department’s output is always “no.” In office after office, petitioners get the response “Can’t inform you” or “Don’t know anything about it.” There is no answer, anywhere, to the inquiry “How shall I find out?” (76). Petitioners need the correct forms, but each department refers them to another, and the bureaucrat’s accusatory position is that “if the—Public does not approach it according to the official forms the—Public has itself to blame” (75). “Numbers of people were lost in the Circumlocution Office,” Dickens writes. “Unfortunates with wrongs, or with projects for the general welfare . . . who in slow lapse of time and agony had passed safely through other public departments . . . got referred at last to the Circumlocution Office . . . and never reappeared in the light of day” (72). In the preface to the 1857 edition, Dickens insists that as regards government, *Little Dorrit* is not pure melodrama; it is a realistic depiction of irrationality. “If I might offer any apology for so exaggerated a fiction as . . . the Circumlocution Office,” he wrote, “I would seek it in the common experience of an Englishman” (9).

The twentieth-century bureaucratic state that is often taken as a microcosm of tyranny has a literary form of its own: theater of the absurd. Inefficiency, red tape, and incompetence all register, but the thrust is the sheer unfathomability of bureaucratic thinking and purpose. Here, too, everyone is caught up in the irrational world of administration—both ordinary people and officials themselves.

Václav Havel’s 1963 play *The Garden Party* is set in the Czech Communist Office of Inauguration and Liquidation (Havel [1963] 1992). Hugo Pludek, a young man looking for

employment, seeks a meeting with a high-level government official who is attending a garden party. Hugo also attends and quickly discovers that the organizing committee of the garden party has mixed up large and small dance floors A, B, C, and D, so that scheduled events don't have adequate venues. He offers helpful advice that would sort things out. It takes just a moment, however, for Hugo to grasp the illogic of the office's enterprise, the impenetrability of its business, for which there can be no sorting things out. And no desire to do so. The work of Inauguration and Liquidation is a closed system with no purpose: "Liquidating a Liquidation Office is no easy matter!" (45). Remote from any practical activity in the world, the enterprise distorts the minds of its officials and the lives of its victims.

Literary portraits of men and women in the maws of bureaucracy have power because they both set and confirm expectations of coercion and unreason. They comprise a mythology that identifies government bureaucracy with irrationality and indifference on one side, tyranny and abuse on the other. The store of literature, along with personal experience, lends credence to distrust and resentment of the machinery of government. The administrative state has few ready defenders. People subject to the administrative state—that is, all people—bring these inherited attitudes to their own close encounters.

### **Close Encounters**

On one hand, the administrative state is an alien entity, its shape and function often illegible. On the other hand, citizens encounter it up close. "Bureaucracy" is not a neutral reference to a form of organization. The term evokes demanding, dispiriting encounters between citizens and civil servants. Applications

go unanswered, responses to questions take forever. Remedying errors eats up time and exhausts patience. Waiting is a constant, on hard chairs in dreary Dickensian rooms. We exchange stories of our latest travail: walking in the door of an agency or attempting to talk to a live civil servant on the phone and being ill served or treated disrespectfully, our case misplaced, or pushed aside, or dealt with arbitrarily—or at least without an explanation that makes sense to us. This is as true for the state-run registries of motor vehicles as it is for the Internal Revenue Service. As a practical matter, for most citizens, “the state meets the street” episodically and in bits and pieces—at the post office, the social security office, the unemployment office (Zacka 2017). An experience of being ill-treated or thwarted comes to color views of other departments and offices and services—the whole wide world of the work of government.

Not all encounters where “vulnerability meets authority” are critical for people’s day-to-day lives, as they are in state welfare offices, for example (Zacka 2017, 8). But if most administrative failings are mundane and corrigible, others are life-altering, even life-threatening. For some citizens (and noncitizens), the offending department is a site of rank injustice. For some, offices are a site of prejudice and social denigration: registrars and clerks are imperious, impertinent, dismissive, rude, impervious. Demeanor weighs along with outcomes. The quality of close encounters depends on whether each client’s business is seen to with respect and care, and whether agencies are supported and staffed so that attention and responsiveness are possible.

This requirement is essential, because dealing with the administrative state demands things of us. We must gather paperwork, document claims, and know our social security number or Medicaid enrollment number, and when we don’t, our needs cannot be well served. Functioning bureaucracy

depends on cooperation and on a modicum of good faith in the professional efforts of the civil servants who attend to us when we finally arrive at the head of the line. It depends on appreciating that the impersonality of procedures serves fundamental values of fairness—or should. Bureaucracy holds this truth for everyone seeking a license, facing a tax audit, or needing emergency aid; relational values matter. As the political theorist Bernardo Zacka puts it, “The administrative state does not just serve citizens, it also makes them” (Zacka n.d., 38).

The administrative state is vulnerable because citizens often do not see it as necessary or legitimate. A bureaucracy that is experienced as irrational and coercive invites fury. It induces helplessness. When close encounters smack of irrationality and coercion, ground is softened for ungoverning. It matters, then, whether citizens understand the value and purpose of the administrative state—and that its defects call for reform, not destruction.

## **Legibility**

Administration, Woodrow Wilson wrote in 1887, is where laws, which exist only on paper, become real. It is “government in action” (Wilson 1887, 198). We can see government doing some things: filling potholes, rescuing sailors caught in a storm, building bridges, fighting wars. Everything government does, it does by virtue of administration. But if some effects of administration are readily seen, most are not. Administrative institutions are vulnerable because the public cannot see much of the business of government. Often enough, citizens do not recognize benefits and services as the work of government at all. When we inhale, we are not aware of the background of

regulation and enforcement that make clean air a reality. Safe drinking water appears to flow naturally; we don't think of it as the product of a complex of physical and administrative infrastructure effectively managing and enforcing control of toxins (at least not until we are sickened: think Detroit). A name for invisibility is "the submerged state" (Mettler 2011).

The textbook picture of government also contributes to the invisibility of administration. Generations of schoolchildren have learned how a bill becomes a law. But they do not learn what follows after Congress says, "Let there be clean water." How is the law translated into specific rules that can be applied to every household in every town and city across the country? The implicit assumption in the textbook view of government is that decisions are self-executing, and all that is necessary is police to enforce laws and judges to decide on violations. But laws are not self-executing. Everything that is required to give laws content and bring them into the world is administration—and much of it is unseen.

Even where the work of administration is visible, the administrative state itself is illegible (Rosanvallon 2018, 146–67). The terms "administrative state" and "public administration" come from the Progressive Era and the New Deal, when administrative institutions were developed in earnest (Waldo [1948] 2007; Dudley 2021, 34). To the extent that these terms convey anything, the takeaway is often negative; the sound of the words conjures an overbearing edifice, a Hobbesian colossus.

The administrative state's illegibility also owes to the fact that it has no moment of founding. It has grown by accretion; it has been altered by accretion, and it still is. Americans can celebrate the founding of their country on July 4, and they can read the Constitution. But when they do, they will not find a description of the machinery of government. The three branches of

government are inscribed in the Constitution in Article I (the legislature), Article II (the executive), and Article III (the judiciary). Where does the administrative state fit? Where is the Securities and Exchange Commission? The Central Intelligence Agency?

The institutional location of the administrative is in fact very complicated. There are fifteen cabinet-level departments, ranging from the Department of Agriculture to the Department of Veterans Affairs, that include more familiar ones, such as the Departments of Defense, State, and Treasury. Yet, much of the administrative state lives outside cabinet departments, in the Executive Office of the President or in independent agencies, some of which are in the executive branch and some of which are not (Office of the Federal Register 2022).

The authors of *Sourcebook of United States Executive Agencies*, the U.S. government's own description of executive agencies, concede that they have difficulty describing what the administrative state is. The *Sourcebook* authors refer to the "executive establishment," which, because few others use the term, only functions to make what they describe more elusive. What is the "executive establishment"? The *Sourcebook* lists 457 agencies and cautions that this includes "hundreds of bureaus, administrations, divisions, offices, working groups, and committees" (Selin and Lewis 2018, 15). "There is no authoritative list of government agencies," the authors concede. "Every list of federal agencies in government publications is different" (11, 12).

Over 2.2 million civilian employees work for the federal government, not including employees of the U.S. Postal Service or the uniformed military (Congressional Research Service 2022, 5). It is hard to envision or place 2.2 million people, or even one department—like the Department of State, with over seventy thousand employees. By contrast,

in the familiar textbook description the three constitutional branches comprise only 546 people (435 members of Congress, 100 senators, 9 Supreme Court justices, 1 president, and 1 vice president). They can fit in one room—and almost all of them do every year during the State of the Union Address.

Even the number of high-level appointments that require presidential nomination is so large that journalists and scholars can barely keep track of them. The president makes more than a thousand appointments that require Senate confirmations, and several thousand more that do not (Partnership for Public Service 2023; U.S. House of Representatives Committee on Oversight and Reform 2020). The number of “political managers at the top” (and assistants, deputies, and deputy assistants) is growing (Skowronek, Dearborn, and King 2021, 7), and identifying them all at any moment in time may be impossible. Vacancies are common, due in part to the difficulty of Senate confirmation in a divided Congress, and service is generally for brief stints and focused on “short-term political objectives rather than long-term agency capacity” (Lewis 2021, 82).

Adding to illegibility is the way that responsibility for implementing public policy reaches beyond government employees to encompass what political scientist John DiIulio calls “a vast and complex array of public and private institutions, for-profit and non-profit organizations, contractors, agents, and facilitators.” His understated observation strikes home: “An accurate measure of government’s full scope is thus very difficult to come by” (DiIulio 2012).

Illegibility provides an opening for conspiracism, in the charge that civil servants and disloyal presidential appointees comprise a secret force pursuing an agenda hostile to the public good. The bureaucracy is cast as a nest of liberals, socialists, enemies of the president, and enemies of the people. This

powerful cabal of civil servants and appointees constitutes the “deep state.” The forces of ungoverning appropriate the term “administrative state” as a term of abuse (Peters 2018b). Trump strategist Steve Bannon famously announced that the new president would appoint cabinet members committed to “the deconstruction of the administrative state” (Morris 2017).

Naming it—the phenomenon of ungoverning—is critical in part because administrative institutions are hard to see. The damage may be publicly announced, but that does not inspire resistance or even concern if the consequences are obscure. When citizens do not know what administrative institutions are or what they do, their work remains opaque. The first step is to identify ungoverning for what it is. The next step is to unpack it—to show what it involves and where it leads.

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