

## Book Review

### Is a Competent Federal Government Becoming Oxymoronic?

A GOVERNMENT ILL EXECUTED: THE DECLINE OF THE FEDERAL  
SERVICE AND HOW TO REVERSE IT *by Paul C. Light.*  
Harvard Univ. Press 2008. Pp. 278. \$45.00.

PROMOTING THE GENERAL WELFARE: NEW PERSPECTIVES ON  
GOVERNMENT PERFORMANCE, *edited by Alan S. Gerber & Eric M.*  
*Patashnik.* Brookings Inst. Press 2006. Pp. 344. \$26.95.

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#### *Introduction*

Thoughtful books on governmental<sup>1</sup> effectiveness are always in short supply, and never more so than today.

The Bush Administration was a sink of incompetence (or worse). Examples abound, but I shall identify only five. Even many of the most ardent supporters of the Iraq War, such as Senator John McCain,

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<sup>1</sup> Because the books under review focus on the federal government—exclusively so in the case of PAUL C. LIGHT, A GOVERNMENT ILL EXECUTED: THE DECLINE OF THE FEDERAL SERVICE AND HOW TO REVERSE IT (2008)—my own references to government should be taken to mean the federal government, unless the context indicates otherwise.

regard the Administration's prosecution of it, at least up until the 2007 surge, as disastrous.<sup>2</sup> Its performance during and after Hurricane Katrina is almost universally condemned.<sup>3</sup> The administration of the Department of Justice by Alberto Gonzales, the former Attorney General, was notoriously inept and perhaps illegal.<sup>4</sup> A leading writer concludes (a bit hyperbolically) that "[f]ive years on, the Department of Homeland Security is still a catastrophe."<sup>5</sup> And although many factors and institutional actors (including Congress) surely contributed to the current economic meltdown, no one can doubt that the crisis is to a significant extent due to the maladministration of agencies such as Fannie Mae, Freddie Mac, and the Securities and Exchange Commission.<sup>6</sup>

Second, the Obama Administration must deal with an exceedingly daunting agenda of programmatic and administrative decisions in policy areas as diverse as energy, taxation, the environment, housing, financial reform, education, trade, national security, foreign policy, intelligence gathering, and a host of others. Its successes and failures will depend, at a minimum, on how effectively it deploys the resources at its disposal and gathers additional resources. With the administration in effect managing the nation's banking system and credit markets, there are many reasons to doubt that civil servants and their political superiors are equal to this extraordinary task.

Third, public confidence in the federal government today is very low by historic standards.<sup>7</sup> Given the unusually difficult political and

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<sup>2</sup> See, e.g., Dan Balz & Shailagh Murray, *The War Within Sen. McCain*, WASH. POST, Jan. 13, 2007, at A1 (describing McCain's sharp criticism of the Bush Administration's handling of operations in Iraq).

<sup>3</sup> See, e.g., James Dao, *Louisiana Sees Faded Urgency in Relief Effort*, N.Y. TIMES, Nov. 22, 2005, at A1.

<sup>4</sup> See U.S. DEP'T OF JUSTICE, AN INVESTIGATION INTO THE REMOVAL OF NINE U.S. ATTORNEYS IN 2006, at 356–58 (2008), available at <http://www.usdoj.gov/oig/special/s0809a/final.pdf> (concluding that the removal of nine U.S. Attorneys was done in a manner that "was unsympathetic and arbitrary, with little oversight by the Attorney General"; that one of the removals may have been illegal; and that the "primary responsibility for these serious failures" should fall upon "senior Department leaders," including former Attorney General Alberto Gonzales).

<sup>5</sup> Jeffrey Rosen, *Man-Made Disaster*, NEW REPUBLIC, Dec. 24, 2008, at 22.

<sup>6</sup> I am limiting myself here to agencies whose maladministration is indubitable, without regard to one's assessment of the merits of the substantive policies that they were charged with administering. For example, I do not include the Treasury Department's administration of the Troubled Asset Relief Program ("TARP") or the Federal Reserve Bank's bailout decisions, although both TARP and the bailouts have been severely criticized on a bipartisan basis. See, e.g., David M. Herszenhorn, *Bailout Plan Wins Approval; Democrats Vow Tighter Rules*, N.Y. TIMES, Oct. 4, 2008, at A1.

<sup>7</sup> LIGHT, *supra* note 1, at 158–60.

policy challenges that governments at all levels face today and for the foreseeable future, such confidence will be difficult, though not impossible, to regain. A relatively recent development strongly supports this prediction. As one of the books under review here clearly demonstrates, the President and other elected officials on both sides of the aisle no longer content themselves with merely disparaging this or that public policy; they now lead the chorus of systemic criticism of government competence and capacity.<sup>8</sup> Ronald Reagan was not alone in insisting that government is not the solution but the problem.<sup>9</sup> Moreover, increasingly well-educated, well-traveled, and technologically sophisticated citizens may be more receptive to such systemic criticisms of government as they hold it to ever higher standards of professional ethics, wise policymaking, and efficient administration.

The two books under review, then, are particularly welcome. To begin with, they nicely complement each other. *Promoting the General Welfare: New Perspectives on Government Performance* (hereinafter *General Welfare*), co-edited by political scientists Alan S. Gerber and Eric M. Patashnik,<sup>10</sup> is concerned with the substance of public policy. *A Government Ill Executed: The Decline of the Federal Service and How to Reverse It* (hereinafter *Government Ill Executed*), by public administration scholar Paul C. Light, focuses on how public policy is administered. Both of these different emphases, of course, are important. Indeed, one would be hard pressed to decide which is worse: a well-implemented but unwise policy, or a wise policy that is poorly implemented.

But although both books address profoundly important subjects, the bureaucratic crisis documented by *Government Ill Executed* is the more urgent in terms both of its ultimate social consequences and the relative dearth of political, academic, journalistic, and public attention that it receives. It is the substantive merits and politics of policy proposals that almost always dominates public debates, not the often invisible, mundane processes of public administration. Even political scientists, who should know better, tend to relegate public administration to a relatively obscure corner of their profession. Whereas the substance of policy design is considered sexy, the process of policy administration is usually seen as, well, boring. Alas, these two valua-

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<sup>8</sup> *Id.* at 36, 126–28.

<sup>9</sup> *Id.*

<sup>10</sup> PROMOTING THE GENERAL WELFARE: NEW PERSPECTIVES ON GOVERNMENT PERFORMANCE (Alan S. Gerber & Eric M. Patashnik eds., 2006) [hereinafter *GENERAL WELFARE*].

ble books will reinforce this unfortunate and often misleading stereotype.

### I. General Welfare

*General Welfare* is a far more interesting read than *Government Ill Executed*. *General Welfare*, which exhibits the uneven quality that afflicts almost all edited books, consists of fourteen chapters by leading political scientists and economists. The book's structure is well conceived. The first two chapters explore the problem of government failure in general, and explain how good policy analysis can improve the quality of governmental choices.<sup>11</sup> As is customary among professional policy analysts, the authors of these chapters employ the technocratic criterion of efficiency, defined as potential Pareto improvement (formally termed the Kaldor-Hicks criterion), as the measure of good policy.<sup>12</sup> In this usage, "[t]he relevant test is whether a policy change produces sufficient social benefits that winners could theoretically compensate losers and still come out ahead."<sup>13</sup> As the authors note, "[t]his concept . . . is not uncontroversial. Its implementation requires the ability to measure gains and losses in a common metric. Moreover, in practice, the transfer payments needed to compensate losers may not be made."<sup>14</sup> As sophisticated scholars, the authors are keenly aware of the normative and instrumental limitations of policy analysis so conceived. Such criticisms, after all, are a staple of professional policy debates.<sup>15</sup> Nevertheless, they ably defend it as an indispensable, but not dispositive, tool for decisionmakers confronted with complex choices.<sup>16</sup> Alas, there is no sign that such analysis had any influence on the gigantic 2009 stimulus package,<sup>17</sup> which

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<sup>11</sup> Alan S. Gerber & Eric M. Patashnik, *Government Performance: Missing Opportunities to Solve Problems*, in GENERAL WELFARE, *supra* note 10, at 3 (chapter 1); David L. Weimer & Aidan R. Vining, *Policy Analysis in Representative Democracy*, in GENERAL WELFARE, *supra* note 10, at 19 (chapter 2).

<sup>12</sup> Gerber & Patashnik, *supra* note 11, at 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., FRANK ACKERMAN & LISA HEINZERLING, PRICELESS: ON KNOWING THE PRICE OF EVERYTHING AND THE VALUE OF NOTHING (2004) (criticizing the use of cost-benefit analysis in the regulation of the environment, health, and life); RICHARD L. REVESZ & MICHAEL A. LIVERMORE, RETAKING RATIONALITY: HOW COST-BENEFIT ANALYSIS CAN BETTER PROTECT THE ENVIRONMENT AND OUR HEALTH (2008) (advocating the reform of cost-benefit analysis in regulatory decisionmaking).

<sup>16</sup> See Gerber & Patashnik, *supra* note 11, at 5; Weimer & Vining, *supra* note 11, at 19, 24–25, 31–35.

<sup>17</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115.

will likely preempt almost all other discretionary domestic policy choice for years to come.

Four chapters present detailed case studies of difficult policy decisions: whether to support a particular surgical intervention of plausible but doubtful efficacy;<sup>18</sup> how to design urban transportation systems;<sup>19</sup> how to promote affordable housing;<sup>20</sup> and how to allocate special education funds.<sup>21</sup> Each of these chapters contains much fascinating data and analysis, which greatly enriches one's understanding of the contexts relevant to that particular policy domain: its constellation of interest groups, the history of policy development in that area, the substantive and process issues that must be resolved, and the likely gainers and losers from specific policy choices.

These authors are particularly keen to emphasize the vast inefficiencies that characterize current policies. The chapter on urban transportation by Clifford Winston, an economist at the Brookings Institution, presents especially dramatic evidence of the magnitude of these inefficiencies, the inequitable ways in which current policies distribute their bloated costs and exaggerated benefits, and the formidable institutional obstacles to reform. Government's design of urban mass transit policy, Winston shows, has been utterly ineffective. Here are some of his findings. Between 1960 and 2000, a period of active governmental promotion of mass transit, its share of all trips in large urban areas fell from more than 20% to less than 3%.<sup>22</sup> Mass transit load factors are very low; in the mid-1990s (the most recent data period), rail filled only 18% of its seats with paying customers; the comparable figure for buses was 14%.<sup>23</sup> Partly for this reason, operating deficits "are a serious drain on the public purse. By 2002, transit operating expenses in the United States were about \$27 billion a year, more than twice the yearly \$13 billion in operating revenues. Continuing capital investments are swelling this deficit . . . ."<sup>24</sup> As is often true, these immense public losses redound to the economic benefit of

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<sup>18</sup> Alan S. Gerber & Eric M. Patashnik, *Sham Surgery: The Problem of Inadequate Medical Evidence*, in *GENERAL WELFARE*, *supra* note 10, at 43 (chapter 3).

<sup>19</sup> Clifford Winston, *Urban Transportation*, in *GENERAL WELFARE*, *supra* note 10, at 74 (chapter 4).

<sup>20</sup> Edgar O. Olsen, *Achieving Fundamental Housing Policy Reform*, in *GENERAL WELFARE*, *supra* note 10, at 100 (chapter 5).

<sup>21</sup> Jay P. Greene, *Fixing Special Education*, in *GENERAL WELFARE*, *supra* note 10, at 128 (chapter 6).

<sup>22</sup> Winston, *supra* note 19, at 76–77.

<sup>23</sup> *Id.* at 77.

<sup>24</sup> *Id.*

special interests: “as much as 75 percent of federal spending on mass transit ends up in the pockets of transit workers (as above-market wages) or goes to suppliers of transit capital equipment (as higher profits and interest). Just 25 percent is used to improve transit and lower fares.”<sup>25</sup> None of this should surprise any well-informed system designer acquainted with the history of mass transit policymaking: “ridership tends to be grossly overestimated at the planning stage, while capital and operating costs are underestimated.”<sup>26</sup>

Conventional wisdom blames the failures of mass transit systems on automobile usage and expenditures on the highway system, which are thought to starve the potentially more efficient mass transit systems. And indeed, much highway spending does exhibit its own inefficiencies quite apart from its deleterious effects on mass transit usage. For example, each “dollar of highway spending . . . reduces congestion costs to road users only about eleven cents,”<sup>27</sup> and “‘high-occupancy-vehicle’ (HOV) lanes sometimes carry fewer people than general-purpose lanes, attract many family members who would ride together anyway, and shift some travelers from vanpools or buses to low-occupancy carpools.”<sup>28</sup> But Winston shows that the conventional wisdom is wrong, or at least very misleading. The huge excess capacity on buses and trains “prevents transit from realizing its [theoretical] competitive advantage over the auto. Transit’s average operating costs per *seat* mile are lower than an auto’s, but its empty seats drive its operating costs per *passenger* mile above the auto’s.”<sup>29</sup> He also identifies some of the other sources of mass transit’s inefficiency. For example, the typical Metrobus driver in Washington, D.C., is paid twice as much as drivers for the handful of private bus companies there.<sup>30</sup> Transit productivity has fallen 40 percent since the public takeover in the 1960s.<sup>31</sup> And transportation legislation is filled with earmarks and pork barrel projects, whether the spending is on highways or mass transit systems.<sup>32</sup>

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<sup>25</sup> *Id.* Elsewhere, Winston notes that train operators and station agents for the BART system in San Francisco are paid more than \$40,000 a year, roughly the average household income of bus commuters. *Id.* at 85.

<sup>26</sup> *Id.* at 78.

<sup>27</sup> *Id.* at 80.

<sup>28</sup> *Id.* at 86.

<sup>29</sup> *Id.* at 83.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 83–85. Winston notes that the “Bud Shuster Highway” in Pennsylvania, named after the local congressman with immense power over appropriations for highway projects, “carries less traffic in a year than the Washington, D.C., Capital Beltway carries in three days.” *Id.* at

Winston's conclusion is that government policy has failed dismally:

[V]irtually all urban rail transit systems are not even socially desirable—that is, the benefits they provide to users and to motorists, truckers, and shippers by reducing road congestion fall short of their subsidies—but . . . these systems will continue to evolve because they enjoy strong support from urban planners, suppliers of transit capital and labor, civic boosters, and city and federal policymakers.<sup>33</sup>

Although vast efficiency gains could be achieved through policy changes such as privatization, congestion pricing, and more systematic use of cost-benefit analysis in the design of transportation policy, Winston states, “I have come to believe that it is futile to expect public officials to consider such changes, because urban transportation policy is largely shaped by entrenched political forces [that] . . . promise more of the same for the future.”<sup>34</sup> Only privatization, he predicts, could hope to weaken these forces.<sup>35</sup> These conclusions, *mutatis mutandis*, are echoed in the chapters on special education and housing.<sup>36</sup>

*General Welfare's* next two chapters elucidate two relatively recent innovations in public decisionmaking—decision markets<sup>37</sup> and policy experimentation<sup>38</sup>—that hold some promise for improving the empirical basis for programmatic designs and other government decisions. Typically, both of these techniques employ market choices to generate and aggregate information about public preferences, policy consequences, and other ingredients of rational policy design and implementation that will be more accurate than the radically deficient information and assumptions on which conventional policy decisions tend to be based.

Decision markets in which bettors use hard cash and have powerful incentives to predict accurately have been successful in a number of settings. As Robin Hanson, the author of chapter seven, explains:

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84. See also Richard L. Berke, *Lawmaker Takes Highway to Power*, N.Y. TIMES, Sept. 25, 1997, at A18 (describing Shuster's power to “dole[ ] out money” as chairman of the House Transportation and Infrastructure Committee).

<sup>33</sup> *Id.* at 86.

<sup>34</sup> *Id.* at 75.

<sup>35</sup> *Id.* at 75, 87–95.

<sup>36</sup> See Greene, *supra* note 21, at 141–44 (special education); Olsen, *supra* note 20, at 100–06, 109–12 (housing).

<sup>37</sup> Robin Hanson, *Decision Markets for Policy Advice*, in *GENERAL WELFARE*, *supra* note 10, at 151 (chapter 7).

<sup>38</sup> Charles A. Holt et al., *An Experimental Basis for Public Policy Initiatives*, in *GENERAL WELFARE*, *supra* note 10, at 174 (chapter 8).

Orange juice futures improve on National Weather Service forecasts, horse race markets beat horse race experts, Academy Award markets beat columnist forecasts, gas demand markets beat gas demand experts, stock markets beat the official NASA panel at fingering the guilty company in the Challenger accident, election markets beat national opinion polls, and corporate sales markets beat official corporate forecasts.<sup>39</sup>

Designers of artificially contrived decision markets proceed by creating test settings in which people act as market speculators deploying a stock of limited resources to make bets on possible outcomes of the policy choices that the tester wants to consider and inform. Hanson analyzes the conditions under which decision market designers might hope to generate predictions about the crucial policy-relevant facts that are more accurate than other estimating methods. The decision options must be important enough to justify the costs entailed in seeking the greater accuracy promised by a decision market.<sup>40</sup> The options tested by the decision market must have enough influence on the future outcomes that those outcomes are not swamped by random fluctuations.<sup>41</sup> The options must also be carefully defined and distinguished from one another, and the outcomes must be measureable.<sup>42</sup> The information available to the speculators must reasonably approximate the information that is available to actual policymakers.<sup>43</sup> There must be enough informed speculators to render reliable the price signals produced by their bets.<sup>44</sup> Their stakes in the bet must be high enough to give them a reason to care about its accuracy.<sup>45</sup> Speculators must be protected against retaliation, manipulation, or other improper influences on their bets.<sup>46</sup> Finally, the legal costs of market creation must be low enough, and the public must find the results credible, accurate, and politically neutral.<sup>47</sup> The author's case study of the now-defunct Policy Analysis Market, designed to improve predictions about terrorist activity, illustrates both the possibilities and the many potential pitfalls of this approach.<sup>48</sup>

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<sup>39</sup> Hanson, *supra* note 37, at 156.

<sup>40</sup> *Id.* at 158.

<sup>41</sup> *Id.* at 159.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 159–60.

<sup>44</sup> *Id.* at 160.

<sup>45</sup> *Id.* at 160–61.

<sup>46</sup> *Id.* at 161.

<sup>47</sup> *Id.* at 163.

<sup>48</sup> *Id.* at 164–70.



Public policy experiments, like decision markets, are designed to provide better factual predictions concerning the preferences, behaviors, and consequences that are crucial to the relative effectiveness in the real world of different policy choices. In their discussion of this approach, the authors describe several field and laboratory experiments using public auction techniques that either succeeded in improving programmatic effectiveness or promise to do so in the future. They involve efforts to reduce wasteful agricultural irrigation in Georgia, to allocate nitrogen oxide emissions in Virginia under a very tight regulatory time constraint, to allocate landing slots in congested airports, and the design of government strategy in an important antitrust case.<sup>49</sup> Curiously, the authors do not mention the two most important examples of federally funded experimental policy research ever conducted. The RAND Health Insurance Experiment<sup>50</sup> influenced health policy for decades and seems destined to play an important role in the Obama Administration's efforts to reform the health insurance system. The Income Maintenance Experiments conducted in various parts of the United States in the 1970s<sup>51</sup> have provided an indispensable empirical basis for predictions about the behavior of low-income individuals and families in the face of different kinds of subsidy arrangements. Indeed, its findings about the adverse effects of income subsidies on family stability contributed to the defeat in Congress of welfare reform proposals.<sup>52</sup>

Two chapters analyze federalism's capacity to utilize state-by-state variations to foster policy improvements. Legal scholar Roberta Romano shows how corporate law innovation led by the state of Delaware has generated widespread, socially desirable effects throughout the country,<sup>53</sup> while political scientist Mark Rom argues that only

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<sup>49</sup> Holt et al., *supra* note 38, at 177–91.

<sup>50</sup> This experiment spawned many publications. See RAND's Health Insurance Experiment (HIE): Bibliography of HIE Publications, <http://www.rand.org/health/projects/hie/hiepubs.html> (last visited Feb. 2, 2009).

<sup>51</sup> IRP Negative Income Tax Archive: Information Sources for Income Maintenance Experiments, [http://www.irlp.wisc.edu/research/nit/NIT\\_index.htm](http://www.irlp.wisc.edu/research/nit/NIT_index.htm) (last visited Feb. 27, 2009).

<sup>52</sup> Email from Henry J. Aaron, Bruce and Virginia MacLaury Senior Fellow, The Brookings Institution, to Peter H. Schuck, Simeon E. Baldwin Professor of Law, Yale Law School (Feb. 1, 2009) (on file with author); see also *Welfare Reform Proposals: Hearings Before the Subcomm. on Public Assistance of the S. Comm. on Finance*, 95th Cong. 23–28 (1978) (statements of Sen. Daniel P. Moynihan, Chairman, Subcomm. on Public Assistance; Hon. Joseph A. Califano, Secretary, Dept. of Health, Education, and Welfare; and Dr. Henry Aaron, Assistant Secretary, Dept. of Health, Education, and Welfare).

<sup>53</sup> Roberta Romano, *The States as a Laboratory: Legal Innovation and State Competition for Corporate Charters*, in *GENERAL WELFARE*, *supra* note 10, at 282 (chapter 13).

under limited conditions can states operate as Brandeisian laboratories of innovation fostering imitation by others.<sup>54</sup>

The remaining chapters of *General Welfare* turn to the ability of political institutions—specifically Congress, the political parties, and the states—to design and implement effective policies in the public interest. These excellent, often provocative chapters are full of interesting observations and specific examples of good and bad policymaking, and about the possible behavioral and structural reasons for each kind. Sarah Binder cites a number of legislative successes that appear to have confounded the public choice, rent-seeking model that now dominates political economy debates—the 1990 emissions-trading program aimed at acid rain, the 1986 tax reform law, the 1996 welfare and agricultural reforms, and military base closing laws—and emphasizes the importance of correctly designing Congress’s incentives, information flows, and institutions.<sup>55</sup> David Mayhew distinguishes problem-solving from other kinds of policymaking, such as redistribution, and then identifies ten attributes, many reflecting the Progressive Era’s technocratic, accountability, and non-partisanship values, that he thinks conduce to problem-solving.<sup>56</sup> Finding that Congress’s “report card is not very favorable,”<sup>57</sup> Mayhew proposes a number of changes designed to push politicians away from partisanship and toward the center.<sup>58</sup> Morris Fiorina boldly reassesses his earlier endorsement of strong, politically responsible parties,<sup>59</sup> a widely-held position among political scientists until quite recently. His wish having been fulfilled, he now laments that political conditions have changed in ways—higher electoral stakes, greater conflict, a gap between moderate voters and an ideologically polarized political class, more mobilized single-issue interest groups, and increased disinformation and outright lies—that engender a kind of buyer’s remorse on his part.<sup>60</sup> A duly chastened Fiorina declines to make broad recommen-

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<sup>54</sup> Mark Carl Rom, *Taking the Brandeis Metaphor Seriously: Policy Experimentation Within a Federal System*, in *GENERAL WELFARE*, *supra* note 10, at 256 (chapter 12).

<sup>55</sup> Sarah A. Binder, *Can Congress Serve the General Welfare?*, in *GENERAL WELFARE*, *supra* note 10, at 199 (chapter 9).

<sup>56</sup> David R. Mayhew, *Congress as Problem Solver*, in *GENERAL WELFARE*, *supra* note 10, at 219–220, 224–30 (chapter 10).

<sup>57</sup> *Id.* at 224.

<sup>58</sup> *Id.* at 230–34.

<sup>59</sup> Morris P Fiorina, *Parties as Problem Solvers*, in *GENERAL WELFARE*, *supra* note 10, at 237 (chapter 11).

<sup>60</sup> *See id.* at 239–51.

dations for reform, concluding with the rather unhelpful point that parties will inevitably change to meet new conditions.<sup>61</sup>

In the concluding chapter, political scientist Eugene Bardach distinguishes the two general approaches used in the book—public choice and problem-solving—and seeks to explain why political scientists have given so much more attention to the former than to the latter.<sup>62</sup> He cogently reminds liberal academics who favor redistribution to the poor that the kinds of inefficient policies documented in the first part of the book tend to favor the already advantaged and thus should be challenged in the name of distributive justice, not only efficiency.<sup>63</sup> By the same token, those who emphasize efficiency should recognize the limitations of their analytical tools, particularly as applied to policies with strong symbolic and redistributive content.<sup>64</sup> Bardach closes on a cautionary note that applies to the book as a whole: in the extraordinarily complex world of politics, it is very difficult to establish reliable empirical propositions about the causal relationships between particular institutions and the behavior of political actors,<sup>65</sup> propositions on which any sound reform agenda must ultimately depend.

Two examples demonstrate Bardach's point. Leading political scientists like Mayhew and Fiorina are remarkably tentative and circumspect in making any empirical claims about precisely how the variable of party strength actually affects voters, politicians, and other policymakers. The same can be said about the effects of legislative transparency, which may increase accountability but leave less room for compromise.<sup>66</sup> A similar predictive modesty should apply to predictions about the political effects of structural and policy variables such as campaign finance law,<sup>67</sup> ideology, voter turnout, media coverage, issue framing and aggregation,<sup>68</sup> social diversity,<sup>69</sup> politicians' subsequent career opportunities,<sup>70</sup> and a host of others.

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<sup>61</sup> See *id.* at 251–52.

<sup>62</sup> Eugene Bardach, *Two Perspectives on Governmental Underperformance*, in *GENERAL WELFARE*, *supra* note 10, at 309 (chapter 14).

<sup>63</sup> See *id.* at 310.

<sup>64</sup> *Id.* at 313–15.

<sup>65</sup> *Id.* at 322.

<sup>66</sup> See Mayhew, *supra* note 56, at 224.

<sup>67</sup> Cf. *id.* at 223–24, 232.

<sup>68</sup> Cf. Binder, *supra* note 55, at 210–13; Fiorina, *supra* note 59, at 249.

<sup>69</sup> Cf. Mayhew, *supra* note 56, at 228.

<sup>70</sup> Cf. *id.* at 233.

## II. *Government Ill Executed*

If *General Welfare* analyzes how government officials can design more efficient public policies in order to accomplish more social good with a given level of resources, Paul Light's *Government Ill Executed* warns that even optimally designed policies would be undermined or distorted by a poorly functioning bureaucracy. Light's message is crystal clear—and profoundly dismaying. The federal career service, he maintains, is in serious crisis, experiencing a long-term decline in quality, accountability, vision, energy, and professional commitment.

The book's "Light"-motif is a conflict between Alexander Hamilton and Thomas Jefferson concerning the values that ought to shape the emerging federal bureaucracy. In the *Federalist Papers*, Hamilton both advocated an "energetic" civil service capable of animating the energy in the executive that he considered the defining virtue of the presidency, and established what he hoped would be a model of such a service in the Department of the Treasury.<sup>71</sup> From this model, Light deduces seven necessary characteristics of an energetic federal service: "[m]issions that matter for the public benefit," "[c]larity of command," "[p]osts of honor," "[v]igor and expedition," "[a] spirit of service," "[s]teadiness in administration," and "[s]afety in the executive" (defined by Hamilton as "responsibility to the people").<sup>72</sup> In contrast, Jefferson advocated a limited federal service in which frequent rotation in office would avert sinecures, privilege, and rigidity.<sup>73</sup> He argued that "'drudgery and subsistence' would be 'a wise and necessary precaution against the degeneracy of the public servants.'"<sup>74</sup> Events, of course, would confound both of their visions.

Light organizes the bulk of his book according to Hamilton's just-listed administrative values. While these values seem generally unexceptionable—even Jefferson would probably accept most if not all of them as an abstract matter—they nevertheless constitute an awkward and somewhat artificial skeleton for structuring the book.<sup>75</sup> First, they significantly overlap—for example, clarity of command, steadiness in

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<sup>71</sup> LIGHT, *supra* note 1, at 6 ("He pursued a tight chain of command from the top of his department to the bottom, placed experienced officers at key intersections in the hierarchy, recruited federal employees with the competence to do their jobs well, tried to establish a pipeline of future recruits, argued for steadiness in administration, and endorsed the need for transparency and competence as a guarantee of responsibility to the public.").

<sup>72</sup> *Id.* at 7–9.

<sup>73</sup> *Id.* at 9–12.

<sup>74</sup> *Id.* at 9–10 (quoting 7 THE WRITINGS OF THOMAS JEFFERSON 14 (Paul Leicester Ford ed., New York, G.P. Putnam's Sons 1896)).

<sup>75</sup> For example, chapter seven is entitled "Safety in the Executive," which pays homage to

administration, and vigor. Because of this extensive overlap, the discussion is highly and annoyingly repetitious, with Light making the same points over and over again, albeit under different rubrics. Second, these Hamiltonian values are not well-defined, as befits the embryonic stage of democratic and bureaucratic development during which Hamilton set pen to paper.

Light's database mobilizes several different types of information. The most frequently deployed category consists of responses by citizens and federal officials to survey questions posed by Light and other researchers about government performance,<sup>76</sup> responses that he thinks help to confirm the decline of the federal service proclaimed in the book's subtitle.

In addition, Light distills from the federal statutes enacted between 1943 and 2000 a list of the government's most important missions.<sup>77</sup> This list demonstrates the quite remarkable growth in the government's programmatic ambitions during this period,<sup>78</sup> a growth that even President Ronald Reagan could only slow, not reverse.<sup>79</sup> He also shows that various techniques that *every* modern president has instituted in order to eliminate bad programs, reduce wasteful spending, narrow the agenda by devolving authority to the states, and "starve the beast" through deep tax cuts, have failed to turn the tide.<sup>80</sup>

In another empirical effort, Light distills and lists the federal government's fifty greatest programmatic missions as of 2000, and then searches—unsuccessfully, it turns out—for some consensus among historians and political scientists about which of these missions are most and least important, most and least difficult to achieve, and most successful and unsuccessful.<sup>81</sup> This lack of consensus probably explains the disjunction he found in his 2006 survey between the expressed anxieties of Americans about certain long-term problems—for example, entitlement program solvency, global warming, infrastructure, terrorism, and immigration—and Congress's ability to enact policies that might require the short-term sacrifices in the form of higher taxes, benefit cuts, or polarization necessary to solve the

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Hamilton's schema but, being concerned with ascertaining government's true size, has only the most tenuous bearing on safety.

<sup>76</sup> See, e.g., *id.* at 149–53 (surveying graduates at leading professional schools of public service about their experiences with federal service).

<sup>77</sup> *Id.* at 24–27.

<sup>78</sup> *Id.* at 22–29.

<sup>79</sup> *Id.* at 36.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 38–46.

problems.<sup>82</sup> The big exception here is terrorism, about which congressional attention is fairly congruent with public concern.<sup>83</sup>

Perhaps his most interesting and consequential data concerns the “thickening” of the federal bureaucratic hierarchy—“more layers of leaders and more leaders per layer”—among both political appointees and the senior career service.<sup>84</sup> Much of this thickening, Light says, reflects two factors that together increase pressures for promotion: the rapid aging of the federal workforce as baby boomer employees unleash what one study calls a “retirement tsunami,” and the desire to circumvent frequent congressional pay freezes.<sup>85</sup> Even the supposedly management-oriented George W. Bush Administration has presided over “a significant expansion in both the height and width of the federal hierarchy well beyond best practices anywhere else, most notably in the business sector.”<sup>86</sup> This is evident in his list of titles open for occupancy by senior (and not so senior) officials. I’ll bet that you did not know that there are now many officials who are denominated “[d]eputy deputy assistant secretary,” “[a]ssociate deputy assistant secretary,” “[d]eputy associate deputy administrator,” and “[c]hief of staff to the associate deputy assistant secretary,” and that this thickening has occurred in almost every department.<sup>87</sup> “Bluntly put,” Light writes, “you are nobody in Washington, D.C., if you do not have a chief of staff.”<sup>88</sup>

This thickening would merely be amusing fodder for Jon Stewart, talk radio hosts, and other bureaucracy-bashers were the public policy consequences not so grave. Citing the examples of the Challenger and Columbia tragedies and the FBI’s failure to heed its low-level agents’ warnings about specific terrorist threats before 9/11, Light attributes these calamities to thickening and implies that these are only the fail-

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<sup>82</sup> See *id.* at 46–47. Light’s reading of his own data regarding the differences between the major parties on the need for swift action seems inconsistent. After stating that their priority rankings for these issues differ, *id.* at 47, he says that the party differences are “small.” *Id.* at 49.

<sup>83</sup> *Id.* at 48.

<sup>84</sup> *Id.* at 53.

<sup>85</sup> *Id.* at 54, 57, 132. Light notes that more than 450,000 federal jobs were cut during the 1990s. *Id.* at 137. He notes that “40 percent of the Homeland Security Department’s managers will be eligible for retirement in 2009, 42 percent of the Senior Executive Service is expected to retire by 2010, and the attrition rate among air traffic controllers is expected to triple by 2012.” *Id.* at 134–35. In total, “the federal government will hire roughly 200,000 new employees a year until the 2020s, only a third of them in response to the retirement tsunami.” *Id.* at 134.

<sup>86</sup> *Id.* at 58.

<sup>87</sup> *Id.* at 59–61. “Once established somewhere in government, titles spread like kudzu as departments and agencies copy each other at will.” *Id.* at 57. Late Senator Daniel Patrick Moynihan called this the “iron law of emulation.” *Id.* at 72 (quotation omitted).

<sup>88</sup> See *id.* at 65.

ures that come to public attention, surely just the tip of the iceberg.<sup>89</sup> He finds that in those categories of frontline federal jobs providing the most important public services (e.g., air traffic controllers and IRS agents), employees in 1996 reported upward through *sixteen* layers; on policy and budget questions, “the average federal employee received guidance through nearly *sixty* layers of decision makers.”<sup>90</sup> Even in the Clinton Administration, which reduced overall federal employment significantly (largely through the post-Cold War peace dividend), the middle levels of government grew relative to the lower levels,<sup>91</sup> which impedes a fair allocation of accountability for failure and credit for success.<sup>92</sup> This growth and widening occurred despite the new orthodoxy of hierarchical flattening and decentralized authority in the private and non-profit sectors.<sup>93</sup>

Light’s data also serves to indict the very process by which presidential appointees are vetted. This process, which applies to some officials who are many layers below the top,<sup>94</sup> is not merely sluggish,<sup>95</sup> centralized, and bureaucratic; it is also a minefield for aspirants to public service, one that treats candidates as “‘innocent until nominated.’”<sup>96</sup> President Obama’s remarkably quick start in nominating his Cabinet and key sub-Cabinet subordinates made the subsequent withdrawals of several of them in the first month after his inauguration all the more humbling.<sup>97</sup> This might be acceptable if the process produced higher quality officials, but Light, after considering various indices of quality, finds that the opposite is true.<sup>98</sup> The state of the federal service, he concludes, has been declining since the Carter years when presidents and other top officials began to attack the bu-

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<sup>89</sup> *See id.* at 56.

<sup>90</sup> *Id.* at 67 (emphasis added). Reorganization can actually magnify this thickening. Light finds that splitting an existing department “can produce a hierarchy greater than the sum of its former parts.” *Id.* at 70.

<sup>91</sup> *Id.* at 75, 197–99.

<sup>92</sup> *Id.* at 76.

<sup>93</sup> *Id.* at 73.

<sup>94</sup> *Id.* at 81–82.

<sup>95</sup> Whereas President Kennedy needed about two months to get his appointees confirmed by the Senate, it took President George W. Bush more than nine months. *Id.* at 87–88.

<sup>96</sup> *Id.* at 79.

<sup>97</sup> As Professor Light recently told the *New York Times*, “[t]hey were really fast in the first 100 meters, . . . ‘but this is a 10,000-meter process, and they’ve slowed down quite dramatically. I would have bet you the farm they’d break the recent record, but now they’re on pace to become the slowest.’” Peter Baker, *Obama Team Has Billions to Spend, but Few Ready to Do It*, N.Y. TIMES, Feb. 18, 2009, at A17.

<sup>98</sup> LIGHT, *supra* note 1, at 96–99.

reauracies that they led.<sup>99</sup> Officials' morale is lower than that of their private non-profit counterparts.<sup>100</sup> None of the resources needed to perform their jobs well are sufficiently available.<sup>101</sup> Especially at the middle and lower levels where most of the work of government gets done, they criticize the competence of their own colleagues and rate their organizations unfavorably in terms of spending money wisely, helping people, acting fairly, and being worthy of trust.<sup>102</sup> No wonder, then, that they say they work for the government for the pay, benefits, and security, rather than out of public spiritedness;<sup>103</sup> that for Americans entering the job market "[t]he federal services comes in last in almost every indicator, from the motivation to make a difference to organizational resources" well behind private non-profit organizations;<sup>104</sup> that the graduates of the top professional schools of public administration and the select corps of Presidential Management Fellows express similarly negative views;<sup>105</sup> and that this chorus of criticism by these most knowledgeable people has increased over the years.<sup>106</sup>

This situation cries out for reform, and Congress has responded with lots of it—indeed, as Light shows, far too much of it, given the forms that it has taken. He counts no fewer than 177 “major reform statutes” enacted between 1945 and 2002, which he divides into four reform philosophies, two of which are trusting of government (he terms them “scientific” management and “liberation” management) and two of which are distrustful (“war on waste” and “watchful eye”).<sup>107</sup> Although the pace of reform has accelerated in recent decades,<sup>108</sup> it is the nature of these reforms that is most significant. Increasingly, Congress has emphasized the distrustful variety, with more detailed, rule-based requirements and reorganizations.<sup>109</sup> Moreover,

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<sup>99</sup> See *id.* at 106, 126–28. Light views President George H.W. Bush as the exception, who he characterizes as having “genuine affection for the federal service.” *Id.* at 128.

<sup>100</sup> *Id.* at 111.

<sup>101</sup> *Id.* at 113.

<sup>102</sup> *Id.* at 113–20.

<sup>103</sup> *Id.* at 110, 119–20.

<sup>104</sup> *Id.* at 139, 143.

<sup>105</sup> *Id.* at 149–55. “Eighty percent [of the Fellows] said their organization did a poor job of disciplining poor performers.” *Id.* at 155. Approximately 150 schools of public administration exist. Jason DeParle, *A Plan to Lift the Lowly Bureaucrat to a Status of Cherished Public Servant*, N.Y. TIMES, Jan. 7, 2009, at A14.

<sup>106</sup> LIGHT, *supra* note 1, at 149–58.

<sup>107</sup> *Id.* at 166–68.

<sup>108</sup> Forty-one percent of these “major reform statutes” were passed between 1985 and 2002. *Id.* at 168.

<sup>109</sup> *Id.* at 176.



Congress's perennial institutional distrust of, and fierce competitiveness with, the administration has limited the president's role in reforming "his" bureaucracy.<sup>110</sup> Light, quoting political scientist Terry Moe, explains why we can therefore expect most bureaucratic reforms to be ineffective: "In the economic system, organizations are generally designed by participants who want them to succeed. In the political system, public bureaucracies are designed in no small measure by participants who explicitly want them to fail."<sup>111</sup> Light shows how Congress ensures this failure by not enhancing—indeed often crippling—the bureaucracy's capacity to comply with the new requirements. For example, it distracts federal employees from their substantive work, diverts scarce programmatic resources, undermines other administrative values, and creates constant chaos in management.<sup>112</sup>

Even the size of the federal government is opaque, and one of Light's contributions is to penetrate the fog in order to reveal the "hidden workforce"—including government contractors, grantees, and state and local government employees who operate under federal mandates—and thus to gauge its true magnitude.<sup>113</sup> According to his calculations, which he properly surrounds with the appropriate methodological and statistical caveats, the federal government in 2005 consisted of approximately 1.8 million civil servants, 7.6 million contract jobs, 2.8 million grant jobs, 1.4 million military personnel, and almost 0.8 million postal service jobs, for a grand total of 14.6 million.<sup>114</sup> This total represented a growth of 2.5 million in just the three years between 2002 and 2005, of which the greatest increase was in contract employees.<sup>115</sup> Although the latter consisted disproportionately of workers in Iraq and Afghanistan, the increase occurred in all areas of government and mostly involved services.<sup>116</sup> As Light explains, the federal government's strong preference for contract employees and (usually unfunded) mandates to state and local governments has a straightforward explanation: the chronic hiring freezes promoted by contractors (who are often lavish campaign contributors) and politi-

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<sup>110</sup> *Id.* at 176–77.

<sup>111</sup> *Id.* at 178 (quoting Terry M. Moe, *The Politics of Structural Choice: Toward a Theory of Public Bureaucracy*, in *ORGANIZATION THEORY: FROM CHESTER BARNARD TO THE PRESENT AND BEYOND* 116, 127 (Oliver E. Williamson ed. 1995)).

<sup>112</sup> *See id.* at 170–74, 182–84.

<sup>113</sup> *Id.* at 190–91.

<sup>114</sup> *Id.* at 197 tbl.7.1.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 202–03.

cians of both parties wielding anti-bureaucracy and pro-outsourcing rhetoric.<sup>117</sup> At the same time, however, official oversight of these contracts is grossly inadequate, undermining transparency and accountability to the public.<sup>118</sup>

As is usually true of analyses of really tough problems, Light's descriptions are more convincing than his prescriptions. Like many reformers, he would eschew incrementalism in favor of comprehensive reform, citing the massive impending baby boom retirements as an unparalleled opportunity to launch change.<sup>119</sup> He proposes, first, to set priorities among competing missions according to their importance, past success in problem solving, and the difficulty of achieving results.<sup>120</sup> Next, he would impose a temporary moratorium on filling vacant jobs in order to "thin" the bureaucracy with a goal of having no more than six layers between top and bottom, reducing the number of "alter-ego" titles, and redistributing jobs toward operations at the bottom.<sup>121</sup> Even more controversially, he would reduce by half the number of presidential appointments, and would address the problem of delays by abolishing any appointee position that is not filled within six months of a vacancy.<sup>122</sup> Light would seek higher quality employees by modeling the federal service on the private non-profit model that, as noted earlier, enjoys higher regard among current and potential officials.<sup>123</sup> He would also encourage more lateral entry, especially at middle and senior levels, and would "insourc[e]" all "inherently government jobs that have slipped out of the civil service" unless private contractors can prove a significant cost advantage.<sup>124</sup> In this same spirit, President Obama's budget hopes to reduce reliance on private contractors, but his ambitious plans for rapid economic stabilization—including the financial bailouts, mortgage renegotiations, and massive stimulus—may require more, not less, outside expertise.<sup>125</sup>

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<sup>117</sup> *Id.* at 206–08. Five large contractors "received more than 20 percent of all contracts awarded in 2005," and contracts were "the fastest growing component of discretionary spending." *Id.* at 208–09.

<sup>118</sup> *Id.* at 210–11.

<sup>119</sup> *Id.* at 214–16.

<sup>120</sup> *Id.* at 227–28.

<sup>121</sup> *Id.* at 227–29.

<sup>122</sup> *Id.* at 230–31.

<sup>123</sup> *Id.* at 233.

<sup>124</sup> *Id.* at 233–37. For a new analysis of outsourcing, see *GOVERNMENT BY CONTRACT: OUTSOURCING AND AMERICAN DEMOCRACY* (Jody Freeman & Martha Minow eds., 2009).

<sup>125</sup> See Cam Simpson & Christopher Conkey, *Obama Aims to Use Fewer Contractors*, *WALL ST. J.*, Feb. 28, 2009, at A4.

### *Conclusion*

The advent of the Obama Administration makes both of these books particularly timely, if not urgent. We are clearly entering an era of expansive government, one that in terms of the sheer magnitude of governmental influence over the economy may eventually dwarf that of the New Deal. This fact, in combination with the new President's remarkable magnetism and the unusual number of vacancies that will occur, makes the prospect for reinvigorating the federal career service as bright as it has been for 75 years.<sup>126</sup> As more evidence that the time is ripe for fundamental renovation, former Senator Hillary Clinton and some of her former colleagues proposed legislation to create a public service academy modeled on West Point.<sup>127</sup>

Still, skepticism is amply warranted; as Light points out, the government has long been "awash in reform" and we have little to show for it.<sup>128</sup> The problems of public bureaucracy may go deeper than even Light realizes, inhering in the task structure and political environment that inevitably surround it.<sup>129</sup> These deficiencies, which both feed and reflect a culture and ideology of contempt for bureaucracy, make it that much harder for reformers to persuade politicians and the public that more resources, prestige, and trust are warranted—a classic chicken-and-egg dilemma. Although the civil services of some other nations—Britain, France, and Singapore, for example—are reputed to be of higher quality, their constitutional systems differ significantly from our public administration, and many of these differences seem to enhance their performance and social status while diminishing ours.<sup>130</sup>

Nevertheless, the dawn of a promising new presidency is not a time for pessimism. If progress can be made in improving the quality of our national government, these books will certainly help to chart the way.

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<sup>126</sup> There is some preliminary evidence that young people are responding to these conditions. See June Kronholz, *Help Wanted: Massive Bureaucracy Promises Exciting New Opportunity*, WALL ST. J., Dec. 4, 2008, at A6 (noting, in an article discussing young workers in government, that 300,000 people applied for jobs on the Obama website during the first month of the transition).

<sup>127</sup> DeParle, *supra* note 105.

<sup>128</sup> See LIGHT, *supra* note 1, at 187.

<sup>129</sup> See generally JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT (1989) (finding that the work of bureaucratic rank-and-file employees and managers is shaped by individual beliefs, peer expectations, embedded interests, the impetus of founding members, and the political environment).

<sup>130</sup> Cf. *id.* at 295–301 (describing the differences in bureaucratic behavior created by parliamentary democracy).