Administrative Burden

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INTRODUCTION

After September 11, amid unimaginable grief, victims' families found themselves awash in paperwork—applying to everything from workers' compensation to private charitable support and life insurance. Meryl Mayo lost her husband in the World Trade Center. In the days following his death, she spent countless hours finding out what financial resources she was eligible for, filling out forms, pulling together documentation, and dealing with officials who offered varying levels of help and sympathy. "'Everything was scattered all over the place. And then I thought about all the things I had to do and all the laundry that was overflowing from the hamper. And I felt so overwhelmed that I broke down so badly, I couldn't even catch my breath. I sat down on the floor, just like, 'I have to do this. I have to cry now.' And I did."[1]

Yet Mayo remembered one application process as being "refreshingly simple": Social Security. She just had to make a phone call and fill out a simple form online, or, if it were more convenient, she could get help at one of the more than 1,200 Social Security Administration field offices across the country. The first Social Security checks to victims' family members were mailed out on October 3, 2001.

This is a simple example of how we want government to work. A public agency offered a helping hand at a moment when help was desperately needed. All too often, our experience with government is the opposite, characterized by confusion, delay, and frustration. This book is about these administrative burdens, their political and organizational origins, how they affect citizens, and how governments can minimize them.[2]

The term *administrative burden* may evoke images of business regulation or basic bureaucratic encounters, such as renewing a driver's license. But any context in which the state regulates private behavior or structures how individuals seek public services is a venue in which the state may impose burdens on its citizens. We focus on the costs that people encounter when they search for information about public services (learning costs), comply with rules and requirements (compliance costs), and experience the stresses, loss of autonomy, or stigma that come from such encounters (psychological costs). All policies that require citizens to engage with the state will, to varying degrees, create such frictions. Although these burdens vary by policy and by the person experiencing them, the experiences can be minimized in a number of ways. One is to simply reduce burdens, such as trusting someone's word that they are a citizen rather than requiring a document to prove it. Another is to shift burdens away from the individual, and onto the state, by, for example, requiring eligibility workers to tap into administrative databases to establish whether someone is a citizen.

Burdens matter. They affect whether people will be able to exercise fundamental rights of citizenship, such as voting; they affect whether people can access benefits that can improve quality of life, such as health insurance. Burdens can alter the effectiveness of public programs. Social programs often reach only a fraction of their target population, automatically weakening their effectiveness by shutting out those who fail to negotiate the required procedure. Ultimately, administrative burdens are the fine print of the social contract between citizens and their government. They are the nuts and bolts of policy design. The presence of administrative burdens makes the difference as to whether government is experienced as accessible or opaque, simple or bewildering, respectful or antagonistic.

Those who believe that government can act as a progressive force for good in people's lives need to understand the role that administrative burdens play. Many have pushed hard for the expansion of programs and policies that reduce growing inequality. But if those programs bury people in paperwork and fill them with frustration, it undermines not only policy outcomes, but also people's faith in the capacity of government to do anything right. These burdens might seem like the dull minutiae of administration compared with the exciting possibilities in designing a new program, but policy

designs are not self-executing. Programs must be implemented. In our current age of polarization and declining faith in government, much can be done to improve governance just by focusing on how to reduce administrative burdens in policy design and implementation. Burdens should not matter only to those with an expansive view for the role of government. For conservatives who want government to work efficiently or to cast a less intrusive shadow on the lives of its citizens, understanding administrative burden offers a way to these ends.

Three simple themes reoccur throughout this book. First, burdens are consequential—they make a difference in our lives. The right to vote or access an abortion, or the ability to receive a needed state benefit may depend on the burdens we face. Second, administrative burdens are distributive. They affect some groups more than others, and in doing so, often reinforce inequalities in society. Third, burdens, like public policies themselves, are constructed. Administrative burdens are the product of deliberate choice occurring via political processes and a function of basic administrative capacity. Sometimes the implications of these choices and capacities are understood, sometimes not, but they can always be changed.

Burdens Are Consequential

Administrative burdens are pervasive and consequential in terms of the costs that citizens bear and, in turn, how those costs influence citizens' perceptions of government. We all face some sort of burden. Take taxes: "what we pay for civilized society," according to Justice Oliver Wendell Holmes.[3] Tax preparation takes time—a lot of it. The Department of Treasury, by itself, creates 6.7 billion hours of work for taxpayers each year, accounting for nearly 75 percent of the time citizens spend completing federal paperwork.[4] A recent analysis estimated the compliance costs of filing to be about $1.2 billion, or 1.2 percent of GDP.[5]

Taxes are also one of the most universal frictions adult citizens encounter with the state. It is no coincidence the Internal Revenue Service is one of the least popular agencies in the U.S. government.[6] Americans do not like paying taxes, but they also do not like the complex process that comes with it. Albert Einstein, when asked about managing his income tax reporting, quipped, "This is a question too

difficult for a mathematician, it should be asked of a philosopher."[7] People's frustrations are justified because paying taxes could be made simpler.

Burdens matter for whether we gain access to vital resources, such as education. In the United States, burdens affect whether and where a student goes to college. The price of entry for any student requiring financial assistance for college is filling out the onerous Free Application for Federal Student Aid (FAFSA) form—and then understanding and navigating a complicated loan process subsidized by the federal government.[8] Low-income students are especially vulnerable to learning costs relative to their better-advised, higher-income peers. Lacking knowledge about expected financial aid benefits and their eligibility for application fee waivers, poorer students are less likely to apply to selective institutions. As a result, they lose out on the opportunity to win financial support provided by more selective institutions that would make college less costly.[9]

Burdens are also consequential in that they can, quite literally, determine who is and is not a member of society. Nowhere are these stakes clearer than in the area of immigration. For example, U.S. citizenship applications involve complex paperwork and demanding documentation, application fees, English proficiency, and a naturalization test that requires knowledge of U.S. history. Approximately half of individuals eligible for U.S. naturalization do not apply.[10] Some may simply not want to become U.S. citizens, but surveys suggest that administrative burdens—in the form of perceived language, personal, financial, and administrative barriers—are significant factors in their decision.[11]

Debates about how to address undocumented immigrants also center on burdens. Policymakers are more comfortable with immigrants gaining legal status only when they have overcome an array of barriers. For example, the 2013 Senate-approved bill that remains the closest bipartisan solution yet to this policy issue required immigrants to wait ten years before applying for legal status, plus three additional years for citizenship. Immigrants would also be subject to background checks, required to learn English, provide documentation that they had continuously lived and worked in the United States, and pay a $1,000 fine plus assessed taxes on top of the usual fees associated with the naturalization process.[12]

In the absence of a national framework for addressing unauthorized immigrants, states have passed their own laws, also using burdens to discourage immigration. For example, in 2010, the Texas Department of Health and Human Services stopped accepting a common and secure Mexican identification (ID) card. As a result, it became more difficult for Mexican nationals to obtain a birth certificate if they had a child in Texas. Having no birth certificate makes it nearly impossible for the child to establish U.S. citizenship and restricts access to public education and nutritional or health services that have long-term positive effects on development.[13] A simple decision on documentation thereby has potentially enormous consequences for these children and families.

For some immigrants, burdens are a matter of life and death. Take the case of Jewish people seeking to exit Germany and come to the United States in the run-up to World War II. Rather than publicly deny Jews access to the country, policymakers instead relied on the burdens inherent in immigration laws to exclude them. The United States had an annual quota of between twenty-six thousand to twenty-seven thousand slots for German immigrants between 1932 and 1938, but that quota was never filled before 1938—indeed, two-thirds of the quota was unfulfilled during that time.[14] Immigrants who sought to enter the United States were stymied by an almost impossible combination of bureaucratic demands from both the German and U.S. governments. A 1917 U.S. law that immigrants not be wards of the state was applied more aggressively with the onset of the Great Depression, requiring that immigrants had to either demonstrate ample financial resources or produce affidavits showing relatives or friends in the United States who could provide support.[15]

Would-be immigrants faced another set of administrative burdens from German officials, including ever more confiscatory fees to exit the country. Refugees had to pay a flight tax of 25 percent, which gradually increased until they were no longer allowed to remove capital when they exited. Under such circumstances, it became more and more difficult to demonstrate the resources necessary to satisfy U.S. immigration requirements, leaving immigrants in a catch-22. Simply collecting required documentation was also onerous. The U.S. Immigration Act of 1924 required the provision of police dossier, prison and military records, two copies of a certified birth certificate, and other

government records. For a German Jew fearful of a Nazi regime, collecting such documentation was rife with risk and nearly impossible for those who had already fled the country. But the U.S. State Department was unwilling to waive documentation requirements, justifying these restrictions as necessary because of the perceived public safety dangers from potential criminals entering the United States.[16]

Such burdens put would-be immigrants at the mercy of a hostile German bureaucracy that made it difficult, if not impossible, to satisfy the demands of the unwelcoming American bureaucracy. Many seeking to exit found themselves trapped. Quotas remained unfilled. Between 1933 and 1944, just over one hundred thousand German and Austrian Jews made it to the United States, a fraction of those who could have been saved under a less burdensome process.[17] Most who stayed perished.

Burdens Are Distributive

Do burdens help or hurt some groups more than others?[18] If so, who are the winners and losers? We argue that those who are least advantaged tend to face more administrative burdens, even though they have fewer resources to manage and overcome them.

Burdens reinforce inequalities in access to rights, including the most basic of citizenship in a democracy: the right to vote. As discussed in chapter 2, burdens that make voting more onerous hit black voters, poor voters, and those with disabilities the hardest. Policies targeted toward the poor are more likely to be burdensome relative to universal policies that all use. Relative to the near 100 percent take-up for more universal programs, such as Social Security and Medicare, take-up rates by eligible beneficiaries of means-tested programs typically aimed at poor people in the United States are much lower: 40 to 60 percent for Supplemental Social Insurance, about 65 percent for the Supplemental Nutrition Assistance Program (SNAP, frequently referred to as food stamps), 30 to 60 percent of Unemployment Insurance benefits, about 50 to 70 percent for Medicaid.[19] For the Earned Income Tax Credit (EITC), a reimbursable tax credit tied to work for low-income earners, the take-up rate is about 80 percent.[20] Aid to Families with Dependent Children (AFDC) had an estimated take-up

rate of between 77 to 86 percent. Participation rates declined dramatically after 1990s welfare reform. Its successor, Temporary Assistance for Needy Families (TANF), has a much lower take-up rate, between 42 to 52 percent.[21] Means-tested programs, that is, programs conditional on financial status, must do more to distinguish between the eligible and ineligible but, in creating administrative processes to do so, add more burdens. Yet, as we show in chapter 9, more accessible programs are not inherently simple; rather, they are constructed that way.

Resources matter in overcoming burdens. For example, low-income students seeking to go to college benefit more from the provision of help than their wealthier peers who are already better advised. One experiment—which provided students with information packets that included a summary of appropriate schools given the student's achievement, the net costs of different colleges for students at different income levels, and a voucher for free college applications—made low-income students 46 percent more likely to attend a selective institution than a control group that did not receive the information.[22] In some cases, having access to someone who can help negotiate the compliance burden of completing a form makes a difference. In another experiment, simply helping families complete the FAFSA form led to dramatic increases in applications and a 29 percent increase in actual college enrollment.[23] These examples illustrate both that individuals with fewer resources have more difficulty in overcoming burdens and that the resources needed to overcome burdens are not just financial. Forms of human capital, such as education, cognitive and noncognitive skills, or a social network, also matter.

For many Americans, especially poor Americans, the experience of government is the experience of burdens. Individuals applying for Medicaid are also likely to be applying for SNAP and possibly the EITC. These same individuals are also less likely to have IDs or live in neighborhoods that provide enough polling places, making it harder to access the right to vote. Poor women are disproportionately more likely to have unplanned pregnancies and also to need access to abortion services—which many states are making more difficult to access. If their children are to go on to postsecondary school, they can look forward to the overwhelming and frustrating

financial aid process. In short, not only are policies targeted at the poor more burdensome, but the poor are also more likely to experience government as routinely burdensome.

Burdens Are Constructed

Administrative burdens are the product of administrative and political choices. In some cases, burdens are necessary to protect important political values, though those making these choices may fail to understand the implications that follow. But in many cases, as we make clear in the chapters that follow, political actors often see burdens as a policy tool to achieve an ideological goal.

Such political choices can be reflected in the maintenance of burdens even when changing circumstances call for governments to minimize them. The failure of the American administrative state to adapt Depression-era burdens on immigrants in the face of an increasingly desperate situation for refugees in Europe is an example of how not acting is itself a choice. Legislative bills to ease burdens on immigrants, such as exempting refugees from the need to document that they would not become a public charge, failed to get a hearing.[24] Once the war began, Congress and the State Department increased restrictions under the justification that immigrants posed a security risk as potential spies or saboteurs.[25] In 1943, the new State Department visa application form was four feet long.[26]

Political choices about burdens can be amplified or undercut by administrative actors. In the case of immigrants, the passive response of the U.S. government was compounded by a State Department that used its discretion to harden rather than relax administrative burdens. As early as 1930, consuls in Germany were directed by the State Department to limit the issuance of visas to no more than 10 percent of the allocated quota.[27] Administrative burdens became a mechanism to achieve this goal. As World War II came to a close, and the grim fate of Jews who had stayed in Germany became apparent, the Treasury Department issued a scathing attack on the U.S. government in general and the State Department in particular. In its "Report to the Secretary on the Acquiescence of this Government in the Murder of the Jews," the Treasury identified the power of individual administrators to obstruct immigration. For example, Breckinridge Long, assistant secretary of state, described as an anti-Semite and nativist, used his

bureaucratic power to block a variety of efforts to help migrants.[28] For instance, he crafted a State Department memo in 1940 guiding the obstruction of visas. Long could take such actions in the knowledge that Congress "would certainly not object to administrative devices to limit immigration."[29]

These political choices are present not only in extraordinary circumstances. They are also present in the most mundane encounters with government that nearly all people experience. Let us return to our example of paying taxes. The friction of the tax process is largely unnecessary and represents a political choice. Taxes may be inevitable, but the process of paying them could be simpler for most people in the United States. Indeed, taxpayers in some other developed countries would find the U.S. process baffling. They do not encounter the array of forms or documentation requirements that Americans associate with April 15. For them, the cost of paying taxes is the taxes themselves. Americans pay the taxes, but also face the costs of a process that is bewildering and frustrating.

A less burdensome alternative exists. When we submit our tax returns, we are usually not giving the government much new information. Employers and financial organizations have already shared income data. For an estimated 40 percent of taxpayers, the situation is simple enough that the Internal Revenue Service (IRS) could pre-calculate the estimated tax liability or refund.[30] The taxpayer would be presented with a record of these data and decide whether they agree (by checking a box and completing the process) or not (requiring them to complete the traditional tax reporting process). Sometimes called *return-free filing*, this approach uses a strategy we discuss more in this book, which relies on a mixture of administrative data and technology to reduce burdens. A Brookings Institution report suggests that such a system could both save an estimated $2 billion and 225 million hours if implemented in the United States as well as reduce the anxiety that comes with the possibility that the taxpayer may not have included all of the relevant documentation.[31] Even taxpayers who do not use the pre-prepared form because of more complex tax situations would still benefit by being able to download government tax data, reducing their compliance burden.

In fact, such a system already exists in America, though few know about it or have benefited from it. Since 2005, the state of California piloted a program called ReadyReturn for a tiny fraction of taxpayers,

usually less than one hundred thousand. Those who used it gave the system high marks for helping them save both time and money. ReadyReturn files are vastly cheaper for the state to process relative to paper returns, and taxpayer errors are minimized.[32] So why has this model not been adopted more broadly in other states or at the national level? The answer is that it faces intense opposition, driven partly by companies who benefit from the existing process and partly by political ideology.

As the Obama administration pushed to expand return-free filing, Intuit—the maker of the tax preparation product TurboTax—spent heavily in opposition, including $13 million in federal lobbying and a million dollars to oppose a candidate for the California comptroller who supported ReadyReturn.[33] Intuit has also invested in building the appearance of a local opposition to return-free filing by hiring lobbyists to persuade trusted community leaders to write op-eds and letters to Congress against it.[34] The designer of ReadyReturn had been contacted by other states interested in adopting this innovation, but those calls stopped in light of Intuit's opposition. "It was a huge signal to politicians everywhere how much Intuit cares about this. People in other states who had been interested in it started saying, 'We just don't want to pick a fight with Intuit.'"[35]

Intuit's opposition is understandable. Burdens for taxpayers are business opportunities for tax preparers. Such burdens are also viewed as valuable to the degree that they serve the political goal of eroding support for both paying taxes and for government itself. Conservative opposition to simplifying the process of paying taxes is not new. "Taxes should hurt," declared Governor Ronald Reagan when he opposed the adoption of withholding of state taxes in California.[36] The logic behind this opposition is that when the process of paying taxes generates a more memorable and negative friction, people are more aware of and less supportive of taxation itself. Americans for Tax Reform, the most visible and effective anti-tax group in the United States, has also campaigned against return-free filing.

The example shows how burdens can be imposed by government but can also be minimized by creative design to shift burdens away from citizens and onto the government. Such a shift would require an investment in government capacity and resources but give citizens

real reason to believe their government is working to improve their lives. Austin Goolsbee, a former chair of the Council of Economic Advisers, has championed return-free filing: "For the cost of modernizing the computer matching system within the I.R.S. and the Social Security Administration, we could eliminate the compliance burden for more than one-third of American taxpayers."[37]

This same opportunity—investments in modernizing government's capacity in return for minimizing citizen's experience of burdens—exists in multiple policy settings. Throughout this book, we point to examples of burdens being increased and reduced, shifted from the citizen to the state and vice versa; in our concluding chapter, we provide a template for action. But the tax case also illustrates that burdens are often the function of political processes, sometimes maintained even when a better option is technically feasible. Further, it shows how political actors will use disingenuous arguments to rationalize the imposition of burdens. Anti-tax groups justify their opposition to simpler tax returns by saying that government cannot be trusted to estimate data it collects from its citizens, even though they must use the data reported to them by employers and made available to employees. An even more befuddling argument against simplifying tax preparation comes from Intuit: filling out needless tax forms is a form of citizen participation and empowerment.[38] By this logic, the most participatory democracy is the one that condemns citizens to spend their days wrestling with Kafkaesque bureaucracies.

Although politics matters, so does administrative capacity. Chapter 4's discussion of the Affordable Care Act (ACA), informally known as Obamacare, describes a natural experiment of sorts. States that politically opposed the ACA used administrative procedures to make it difficult for people to enroll in health insurance. The Trump administration limited ACA advertising and shortened public enrollment periods to achieve the same goal. But low administrative capacity also created burdens among governments supportive of the ACA. Most prominently, the Obama administration presided over a disastrous rollout of the federal exchange. State governments that wanted to take advantage of ACA struggled to make new processes accessible to citizens. The overriding lesson is that opportunities to shift administrative burdens away from individuals depends on a mixture of political will and administrative capacity. In some cases,

that capacity comes not just from government but also from nonprofit or private actors who can help the citizen shoulder burdens.

Basic Assumptions About Burdens

Are burdens always bad? Of course not! Some are unavoidable. The government has a legitimate interest in imposing some costs on citizens. The design of public policies reflects the often-competing values we expect from our government.[39] Citizens want government services to be efficient and free from fraud. It follows that an administrator tasked with implementing, for example, a means-tested program needs to distinguish between those eligible and ineligible for that program. Let us assume a happy scenario in which burdens deterred fraud and had no negative effect on program participation. In such a scenario, burdens are relatively easy to justify, though there may be ways that reduce costs while still protecting key values.

This book explores other cases, in which burdens are harder to justify. What about a second potential scenario, when costs imposed on individuals may provide some benefit, such as minimizing fraud, but impede other public values we care about, such as access, equality, or a program mission of reducing poverty? This is more troubling. It is fair to examine our tolerance for burdens under such circumstances. Is it justifiable if one case of fraud were prevented for each eligible person who no longer participated? Perhaps. What about one case of fraud for every ten or even one hundred eligible people who no longer received benefits? In such a case, we might decide that though burdens have an important value, the costs are too high, motivating us to find other ways to achieve the goal of deterring fraud, or even increasing our tolerance of fraud. But to make that decision, we first need a framework to identify burdens, their costs, and their benefits.

A third scenario is that burdens are imposed to achieve a purported goal but in reality have no tangible relationship with that goal. There might be little evidence of the fraud in the first place, making the burdens ineffective. Such is the case for laws that make voting harder, such as voter ID requirements (see chapter 2). It could be that the burdens are logically unrelated to the purported outcome. For example, burdens imposed on women seeking abortion are justified on the basis of protecting women's health, even though no evidence

indicates that they do so, and some suggests that they may in fact worsen women's health (see chapter 3). In this scenario, it seems fair to conclude that limiting citizen access to a service is the tacit goal being pursued.

This book addresses all of these scenarios, but we focus on cases in which the value of burdens seems at best debatable and at worse entirely unjustified. Does this imply that the book strikes a normative stance? Yes: we make a number of normative assumptions that are worth being explicit about now, and return to them in the final chapter.

First, citizens are better off when public programs are designed to be simple, accessible, and respectful of the citizens they encounter. Most people would agree that if the public sector provides a service, it should be one that is visible enough to be seen, simple enough to comply with, and not psychologically taxing.

Second, burdens should be minimized to the greatest extent consistent with protecting important public values, such as cost and program integrity. Third, considerations of burden should be evidence based, identifying the multiple values involved and the likely effects of burdens on those values, and informed by logic and empirical evidence rather than by political rhetoric.

Fourth, because burdens can affect some groups more than others, we should be especially attentive to costs on those with limited resources or in programs that are specifically to help those with limited means. One corollary to this principle is that when policies affect large numbers of people, such as voting or Social Security, reducing burdens has a greater social benefit. Broadly accessible programs can reach more people, and therefore be more likely to achieve policy goals, whether it be reducing poverty, encouraging work, or fostering better health. A second corollary is that the public officials should explicitly consider the challenges for those who have the greatest difficulties in overcoming burdens. For any particular set of burdens, some groups will struggle more than others. For example, in chapter 6, we examine the particular challenges that older adults face in accessing SNAP benefits. When possible, burdens should be designed to be minimal enough to not exclude those that struggle with them the most. Having fewer hoops to jump through implies that those with fewer resources have a greater opportunity to participate and less risk

of facing discrimination. If such populations still struggle, support should be provided to facilitate their participation.

Conclusion

Our goal in this book is to develop the concept of administrative burden as a framework for understanding how citizens and government interact with each other. In doing so, we illustrate the wide applicability of the concept across a variety of policy areas from welfare and health benefits to rights protected by the Constitution, such as the right to vote. Our examination of these policy areas shows that in some cases, political ideology or policy preferences lead politicians to use burdens to make government a source of hindrance rather than of help. In this respect, burdens contribute to dysfunction by design, making government an ineffectual and unwelcome presence in people's lives rather than an institution that solves problems.[40]

To implement the assumptions outlined in the previous section, we need to be able to ask, and answer, several basic questions. How would these principles work in practice? How do we determine when burdens are unjustified? How do we design and manage public programs in ways that shift administrative burdens away from citizens? Whose role is it to shine a spotlight on these burdens, and how do they make determinations?

To answer these questions first requires the type of conceptual language we present in this book. Chapter 1 takes on this task by offering a more detailed definition of administrative burden, and a deeper theoretical framing of how it works. Armed with that conceptual language, we make the case that although burdens are often a function of politics and power, their existence should be documented in a way that currently does not occur, tracking both their costs and benefits. State actors whose task it is to provide a rational provision of public services have a special responsibility here. We conclude by arguing for a professional norm of assessing burdens, under which policymakers and public managers regularly evaluate the benefits of burdens with a bias toward reduction, and that the administrative state should be refurbished to have the capacity to make government simple, accessible, and respectful.