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IDEAS

Trump's Indifference Amounts to Negligent Homicide

The president's behavior may not meet the term's legal definition, but it captures the horror a government is visiting upon its people.

By James Fallows

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Negligent homicide has a specific meaning in the law books. The standards of proof and categories of offense vary from state to state. But the essence is: Someone died because someone else did not exercise reasonable care.

An adult leaves loaded weapons where children can find them. A factory owner or amusement-park operator ignores the safety standards for their equipment. A motorist in a hurry, or heading back from a bar, roars through a school-crossing zone full of children. A parent leaves an infant "just for a few minutes" in a car with rolled-up windows on a baking-hot day. Prosecutors and juries draw the line between cases like these and murder, based mainly on intent. Did the person who caused the death actually mean to do harm? It's a distinction that matters a lot to the defendant, but not to the victim. Whatever the legal outcome, a person who—except for another's indifference to risks that should have been foreseen—would still be living and

learning and loving, instead is dead.

That's the law of negligent homicide. The ultimate legal reckoning for what we are now living (and dying) through will be a matter for legal authorities to take up, or decide to drop, when they have the evidence; I have no standing to do so. Instead, I want to consider the nonlegal, commonsense meanings of the term, and of its more gruesome-sounding cousin, *manslaughter*.

Many terms that have legal connotations can be useful in their plain everyday sense as well. Not everything we'd call an *assault* matches the state-by-state standards that define that crime. Not everything we call *theft*—or *blackmail*, or even *rape*—would count as such in an indictment or could be proved in court. Similarly, when removed from their courtroom and legal implications, terms like *negligence* and *manslaughter* and, yes, *homicide* are useful right now. They give us a way of assessing the horror a government is visiting upon its people.

More than a year ago, I argued in these pages that if Donald Trump held virtually *any* other position of responsibility in modern society, he would already have been removed from that role. The article was called "If Trump Were an Airline Pilot," and the examples ranged from CEOs to nuclear-submarine commanders to surgeons in an operating room. If any of them had demonstrated the impulsiveness, the irrationality, the vindictiveness, the ceaseless need for glorification that all distinguish Trump, responsible authorities would long ago have suspended them. The stakes—in lives, legal exposure, dollars and cents, war and peace—would be too great to do otherwise.

At the time of that comparison, the main case against Trump involved his temperamental, intellectual, and moral unfitness for the job. But since then we've moved into the realm of manslaughter. Yesterday nearly 2,000 Americans died of COVID-19. By Thanksgiving Day, another 10,000 to 15,000 will have perished. By year's end, who knows? And meanwhile the person in charge of guiding the national response does nothing.

Or worse than nothing. He tweets in rage. He fires anyone suspected of disloyalty. He

encourages endless lawsuits that are tossed out of court one after another but that, one after another, do cumulative damage to confidence in elections and democracy. His cat's-paw in charge of the General Services Administration does what none of her predecessors ever dared, pretending that the outcome of the election is still in doubt. Thus she blocks Joe Biden's transition team from receiving the funding or cooperation it needs during the rapidly dwindling days until inauguration. (Rapidly dwindling from an incoming administration's perspective, with so many plans to prepare and staffers to select. Moving like molasses from other perspectives.)

We're beyond the range of my earlier comparisons to a leader of a museum "who routinely insulted large parts of its constituency" or a CEO "making costly strategic decisions on personal impulse." The problem with finding analogies to illuminate the Trump administration's reckless disregard for national welfare now is that all of them seem so extreme.

- Is this like Nero fiddling while Rome burns? That's too mild and clichéd, and it implies a more cultured form of distraction than Trump's tweeting about Fox and OAN.
- Is it like the Allied generals during the grimmest trench-warfare stage of World War I, sending wave after wave of young troops "over the top" and to certain death from German machine guns? At least the generals and the troops thought they were fighting for something larger than themselves.
- Is it like an armed school security guard who hears gunfire inside the school building but doesn't go in to protect the children, not wanting to get shot himself? Something like this has happened, but at least such a guard would be acting on the natural if nonheroic instinct for self-preservation. (Today's government figures, by contrast, would face no physical risk by making the pandemic the center of their efforts. Their only risk is criticism for defying the will of Trump.)
- Is it like an airline captain who stops looking at the instruments because he is wrapped up in a Twitter war, while the plane heads straight into a mountain? No, because under long-developed airline protocols, the other pilot in the cockpit would already have grabbed the controls.
- It is like a nurse or doctor strolling past an emergency room just as a patient goes into cardiac arrest—and nonchalantly continuing to stroll to the break room? Or like a Marine Corps medic letting a wounded comrade bleed out on the battlefield while the medic paused for a smoke? Yes, it would be like that—except that such things are impossible to imagine. It's similar when you try to imagine a firefighting crew, outside an apartment-building inferno, deciding to go home even as residents scream desperately from upstairs windows amid the flames. You can't

imagine it. It wouldn't occur.

But it is happening with the pandemic. These examples are the equivalent of an administration looking the other way, leaving states and cities and hospitals and families to their own resources—even as first those hospitals, and then the mortuaries, fill up, and medical workers serve endless shifts, knowing that they may be next to succumb. And all of this with the pandemic taking a cruel and disproportionate toll on racial minorities, and on families that are already under pressure from an unequal economy.

In these circumstances a "normal" national leader would be doing several things urgently, and all at once. One is restoring cooperation outside the country—on early detection of new outbreaks; on lessons of failed and successful containment strategies, or travel controls; on the other necessary global responses to a global threat. The next is restoring cooperation within the country—so that equipment availability, quarantine and distancing plans, vaccine rollouts, and countless other measures don't remain a battle of each against all. The next would be giving a clear, steady, and believable account of where the country stands in this grim journey: how much longer things will get worse, when and where they might get better, what sensible steps should be taken in the meantime. (Imagine, for instance, the president assigning Anthony Fauci or another credible figure to have daily briefings, with no politicians at the microphone whatsoever.) And the next would be using every bit of political leverage to get new financial aid to businesses, families, schools, and city and state governments that are about to be plunged into new economic desperation. (Instead, the U.S. Senate has convened to ram through judicial appointments, and do nothing else.)

Of course, none of those things has happened, nor can, until January 20 at the earliest. The deaths go on, and our national leader looks the other way—at Fox, and in the mirror.

One more parallel to our current predicament comes to mind. It is very different in its legal implications, but evocatively similar in its emotional tenor.

This past summer, viewers around the world saw eight minutes and 46 seconds on video that few of them can ever forget. That's how long a Minneapolis police officer kept his knee on the neck of the prone George Floyd. The officer's face was impassive, barely showing interest, as his victim pleaded, and struggled, and choked, and died. The officer's affect was like that of a fisherman, watching his catch flop helplessly toward death as it ran out of breath on the pier. Legally, the courts have yet to determine what those eight minutes and 46 seconds meant; the officer has pleaded not guilty to second-degree manslaughter and second-degree murder. But the video

had such power because people around the world understood what they were seeing. One man was in control of another. One man calmly watched as another died. In the layman's sense of the term, these were images of manslaughter, of homicide.

The face in the White House is snarling rather than impassive, gaudily made up rather than unadorned, craving the limelight rather than operating outside it. But as it turns to the public, it reveals the same careless indifference toward lives it should have spared.

ABOUT THE AUTHOR

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