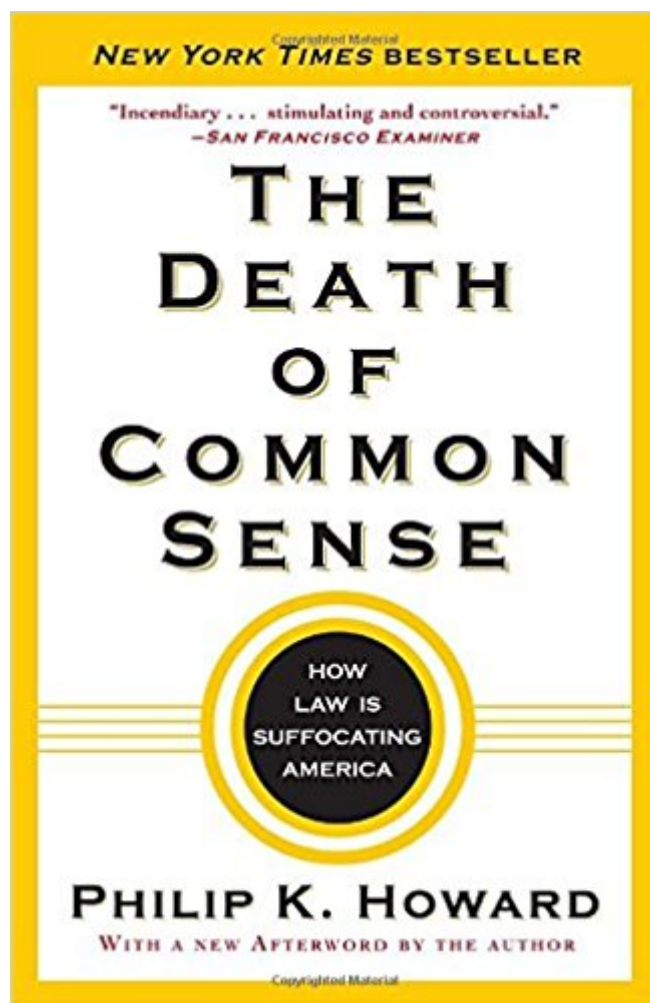


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The Death Of Common Sense: How Law Is Suffocating America



Synopsis

NEW YORK TIMES BESTSELLER • We need a new idea of how to govern. The current system is broken. Law is supposed to be a framework for humans to make choices, not the replacement for free choice. • So notes Philip K. Howard in the new Afterword to his explosive manifesto *The Death of Common Sense*. Here Howard offers nothing less than a fresh, lucid, practical operating system for modern democracy. America is drowning in law, lawsuits, and nearly endless red tape. Before acting or making a decision, we often abandon our best instincts. We pause, we worry, we equivocate, and then we divert our energy into trying to protect ourselves. Filled with one too many examples of bureaucratic overreach, *The Death of Common Sense* demonstrates how we—and our country—can at last get back on track.

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Customer Reviews

Lawyer Howard's indictment of governmental bureaucracy and excessive regulations was a PW bestseller for 25 weeks. Copyright 1996 Reed Business Information, Inc. --This text refers to an out of print or unavailable edition of this title.

The nuns of the Missionaries of Charity believed two abandoned buildings in New York City would make ideal homeless shelters. The city agreed and offered to sell the building for one dollar each. Yet the shelter project faltered: the city's bureaucracy imposed such expensive remodeling requirements on the buildings that the shelter plans were scrapped. To Howard, an attorney practicing in New York City, this is but one of many examples of the law's suffocating Americans by

extensive decrees on what may and may not be done. His book is truly a catalog of horror stories, actually quite engrossing and adding to the story of public inefficiencies chronicled by David Osborne's *Reinventing Government* (Addison-Wesley, 1992). What Howard does not do as well, however, is offer guidance on remedies. His answer seems to be that we should take personal responsibility, gather up our courage, and step out into the sunlight away from government's shadow. More highly recommended as a study of the negative impact of law is Walter K. Olson's *The Litigation Explosion* (LJ 2/15/91) even though its focus is on lawsuits and the courts. Jerry E. Stephens, U.S. Court of Appeals Lib., Oklahoma City Copyright 1995 Reed Business Information, Inc. --This text refers to an out of print or unavailable edition of this title.

The bloated bureaucracy; the rules; the laws; the regulations; are so integral to our lives that we no longer would recognize a life without these burdensome evils. We continue blindly with no discretion, a growing behemoth, with no end in sight; this was never meant to be. With the thousands upon thousands of pages of rules and regulations we believe we can remove all conceivable risks, contemplate every eventuality, plan for everything; all in the name of "rights", and fairness. What is meant for good, and to bring about harmony, only results in stagnation, closed businesses, higher prices, less choice, rise of litigation, etc. We all pay a price. Ingenuity pays a price. Ironically, "[t]he more precise we try to make law, the more loopholes are created". Mandated perfection only ends in the opposite, along with an incredible waste of money and manpower, not to mention it treats individuals as criminals. This Expansion of law into agencies and programs was never meant to be. Three big culprits (though there are many) are OSHA, EPA, and the USDA. Howard says this emotionally based attitude has replaced humanity; and, that it has its roots in rationalism. He gives numerous examples, with many rulings so ridiculous even to the point of laughable. Although Wilson's "Great Society" and Roosevelt's "New Deal" (whom he quotes) spawned this form of bureaucracy it still took many more presidents to bring us to this point. These two progressives probably never envisioned it to this degree. It takes more than an individual, it requires an unbridled beast--the first beast--government. His sources are lengthy for so compact a volume. There is also a lengthy bibliography, but it would have been helpful to add endnotes. We need to get back to individual responsibility; the direction we're headed is simply not attainable. "The virtue of rights, at least to the advocates, is that they are absolute. What's a little inefficiency when there is complete justice for me? Absolutes sound good, but generally leave behind a landscape of paradoxes and bruised victims."

This is a panoramic review of government regulation run amok, with many arresting examples. The material seems somewhat dated, e.g., references to the Bush era refer to Bush 41, but still relevant. There has been little progress in solving any of the issues that are discussed, if memory serves, aside from occasional suspension of burdensome, time-consuming rules during emergencies. (Thus, as related on p. 172, the Santa Monica freeway was rebuilt in 66 days after the 1994 earthquake in Los Angeles.) "The Death of Common Sense" consists of four long chapters, presented without an introduction or conclusion. They deal with (1) the impossibility of devising laws and regulations that will sensibly address every variation and permutation of a given problem without the need for human judgment; (2) the pitfalls of elevating legal process over objectives; (3) the destructive consequences of creating "rights" for more and more disadvantaged groups without much heed to the burdens imposed on the rest of the population; and (4) the author's proposed solution to the problems discussed, which is for all concerned to stop looking to the law as a source for "final answers." Howard is not averse to government regulation as such; indeed he lauds the accomplishments of the New Deal (pp. 77-78) when administrators could act with lightning speed because their brand new agencies were writing on a blank slate. The passage of the Administrative Procedure Act shortly after World War II (p. 78) started things on a downward track, in his telling, from which it has never recovered. It is refreshing that an attorney would write a book so critical of his own profession, and most of the specifics ring true. However, Howard gives insufficient attention to the possibility that the government has spread itself too thin. Empowering unelected bureaucrats to exercise seat of the pants judgment in addressing all of the issues in which the government is involved might be more efficient than the present arrangement, but would the country like the results?

So often in books, concerning issues we face as a society, only a definition of the particular issue is provided. Perhaps some weak attempt is made at providing a direction or conversely the author spins off into the depth of the universe never to return to reason. In "The Death of Common Sense," Mr. Howard leaves others behind and gives us an example of how to do it right. Rather than providing some drab history on our national problems, Mr. Howard gives us an informative, and dare I say entertaining, cause and effect model to help us understand just how we ended up with a government that hardly functions. Moreover, it is not some sort of blame game that suits some hidden agenda or political party's attempt to keep the status quo. It is obvious Mr. Howard understands there is plenty of blame for everyone, even us (the public) that willingly fiddles while our metaphoric version of Rome burns. Though published in 1995, the addition of an addendum for

the 2011 release updates us on how we have progressed (or regressed as the case may be) since. Mr. Howard shows us the problem and suggests a process to end the problem. The only question remaining is if you will read his book and help do something about the problem.

MH Benton
Freelance writer and editorial cartoonist and award-winning author of *Life's About the Adjectives*

Read this almost 20 years ago and found it to be very informative. Reread it recently and was motivated to pursue his next two books and have not been disappointed. This along with "The Collapse of the Common Good" and "The Rule of Nobody" should inspire all of us to take action toward change in our country.

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