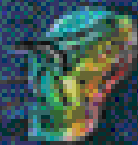
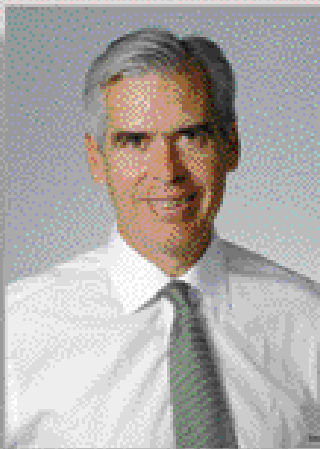


THE BUCK NEVER STOPS



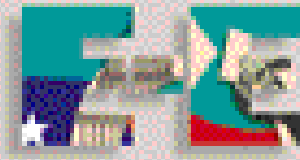
redacted from *The Death of Common Sense*
by Philip K. Howard

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Philip K. Howard is Vice-Chairman of Covington & Burling and Chairman of Common Good, a bipartisan coalition dedicated to restoring the foundation of reliable law. He is the author of *The Death of Common Sense: How Law is Suffocating America* (Random House 1995) and *The Collapse of the Common Good: How America's Lawsuit Culture Undermines Our Freedom* (Ballantine 2002). Howard is a periodic contributor to the op-ed pages of *The New York Times*, *The Wall Street Journal* and *The Washington Post*.

IN THE EARLY MORNING HOURS OF April 13, 1992, in the heart of Chicago's downtown Loop, the Chicago River broke through the masonry of an old railroad tunnel built in the last century. Several hundred million gallons of water from the river were diverted from Lake Michigan into the basements of downtown office buildings, knocking out boilers, short-circuiting countless electric switches, ruining computers, and turning files into wet pulp. Total losses were over \$1 billion. Several weeks before the accident, the leak in the tunnel had come to the attention of John Laplante, Chicago's transportation commissioner, a public servant with thirty years of exemplary service. He knew that the river was immediately overhead and that a break could be disastrous. He ordered his engineers to shore the tunnel up. As a prudent administrator, he also asked how much it would cost. The initial guess was about \$10,000. His subordinates then went to a reputable contractor, who quoted \$75,000. Although the amount was a drop in the bucket in his huge budget, the discrepancy, seven times the original estimate, gave Commissioner Laplante pause. He



knew exactly what to do. He put the job out for competitive bids. Two weeks later, before the process had even begun, the ceiling collapsed.

Bureaucrats don't seem to be looking in the right direction. What we would consider the goals—fixing the leak right away, for instance—apparently are not important. Something else is: How things are done has become far more important than what is done. Process now has become an end in itself. It has become the orthodoxy of government.

The Carroll Street Bridge in Brooklyn, built in 1889, was the nation's first retractable bridge; it slid back and forth across the Gowanus Canal on heavy rails, like a slide rule. By the mid 1980s, it was in disrepair; it could no longer carry traffic and was a barrier between neighborhoods. In 1988 the city budgeted \$3.5 million for an overhaul. Under procurement procedures, it was estimated that bidding would take two years and that the work itself would take at least five years. But with the bridge's 100th anniversary coming up, Sam Schwartz, the deputy commissioner responsible for bridges, had the idea that the Carroll Street Bridge should be fixed within the year, in time for a centennial party. Schwartz called in his chief engineer and asked him to draw up a repair plan, ignoring the contracting procedures. He also told him to try to fix up all its architectural decoration, not part of the approved work plan. Without much trouble, notwithstanding all the oversight agencies supposedly checking up to make sure everything is done by the book, Schwartz got the money and let the contracts.

Eleven months later, at a cost of \$2.5 million, the bridge was fixed up. Practically the entire neighborhood participated in the centennial party, by all accounts a wonderful affair. For his leadership in completing the job in one seventh of the time and at 70 percent of budget, Deputy Commissioner Schwartz received an official reprimand.

The procedures Schwartz ignored—over thirty-five steps, involving six agencies and

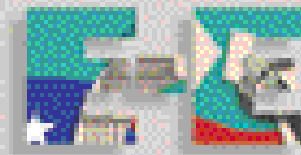
likely to require at least two years before any work could begin—exist to ensure complete neutrality and to protect against fraud. The fact that Schwartz was willing to stand up and take responsibility (and save the city an estimated \$1 million) was irrelevant. The ritual had been violated.

Irregularities are dangerous, someone might argue; these procedures serve important practical purposes, like preventing fraud and getting the best price, and it would be unwise to permit exceptions. But serving practicality, as anyone within ten miles of a government contract knows, is the last thing these procedures do. Their inefficiency, for reasons we will visit, is legendary. Fraud, notwithstanding all the procedural layers, happens all the time. A deputy Commissioner Schwartz certainly had no trouble getting around all the oversight procedures.

Orthodoxy, not practicality, is the foundation of process. Its demons are corruption and favoritism, but the creed of this orthodoxy is a perfect conformity. Only if all things are done the same way can government be fair. Sameness, everywhere for everybody, is the operating instruction of modern government. It was not fair for Mr. Schwartz just to go out and negotiate a contract with whomever he and his engineers trusted.

Well, why not? Government should lean over backward, many will suggest, to make sure everything it does can satisfy a broader goal of equal treatment of all its citizens. But concepts like equality and consistency are absolute; they have no logical stopping point; there is no place where they say, "The Chicago commissioner shouldn't worry about bidding procedures with the river only a few feet above the leak." Where do you draw the line? No one wants to take that risk, so the line is never drawn. Shuffling to the rhythms of process, answering any potential complaint with one more procedure, becomes what government does.

We have deluded ourselves into thinking that the right decisions will be ensured if we build enough procedural protection. We have



accomplished exactly the opposite: Decisions, if they happen at all, happen by default. Public decisions are not responsible because no one takes responsibility.

The effect is to drive everyone away except those who want to “game” the system. Denise Norberg, a small contractor appearing before Congress in 1989 on behalf of the American Subcontractors Association, said government work is avoided because of the “paperwork burdens” and the “confusing, and often contradictory, array of regulations ... that have no relationship to construction” or, she noted, “even to common sense.” Only 1 of 535 companies invited to bid in New York on a \$9 million contract for car services even bothered.

Higher prices, often significantly higher, are the norm. Ms. Norberg testified that

the members who do endure the process “routinely bid government work 10 to 30 percent higher than similar work in the private sector,” because there is “at least eight times more paperwork than on a similar private job.” This is moderate. The cost of elevator work done for New York City is “three to four times the cost in the private

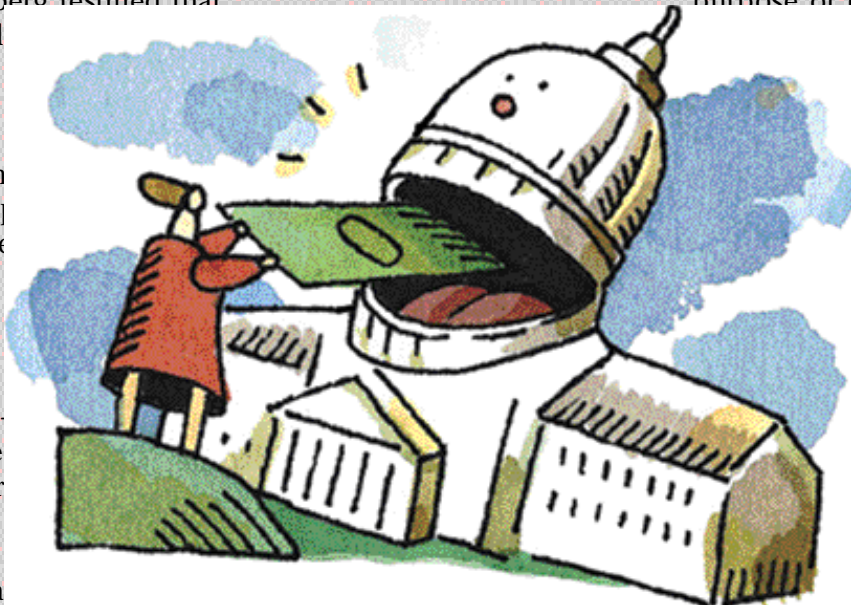
Paying the bureaucrats who prepare the forms and attend the meetings is also costly. One report calculated that a simple purchase of twelve off-the-shelf personal computers at a contract price of \$75,000 had an internal processing cost of \$65,000. Fixing a \$50 lock in a New York public school takes ten steps over a six-month period, including review by someone called the “supervising supervisor.”

“Otherwise,” reporter Terry Golway observed, the “bureaucracy could not function at peak inefficiency.” The federal government has esti-

mated that, annually, 289 million hours are spent complying with its procurement procedures.

The amounts at stake are impressive. New York City lets almost 9,000 contracts per year, for \$6 billion. For the federal government, the total was over \$200 billion in 1994. For all government entities, the total was \$450 billion, or about one tenth of our gross national product. The waste is probably not possible to calculate precisely. Is it twenty percent? Thirty percent? More? Whatever the amount, it can be fairly described as a chunk out of the budget of every American family. And this is only for the waste attributable to procedures of procurement.

What again, perhaps we should ask, is the purpose of modern process?



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Mayor Richard Daley of Chicago complained that his staff spends four thousand hours a year—the equivalent of two full-time jobs—just signing his name to forms. Is that personal accountability? Never mind. Everything is documented and visible to a mythical central power.

All this governmental process has spilled over into our daily lives, and it diverts us from doing our jobs. We fill out forms: Making sure everything is documented precisely is



critical to modern process. Indeed, a tidal wave of forms has engulfed the country. Keeping up with OSHA's MSDS forms, like the ones caked with dust at the Glen-Gery Brick factory, takes 54 million hours per year. (At \$20 per hour, that's about \$1 billion to catalog the dangers of Windex and Joy.) Just by changing from monthly to yearly reporting on its school lunch program, the Department of Agriculture saved schools 9 million hours of paperwork. Under one environmental statute that requires extensive record keeping, 99.5 percent of all the covered chemicals are used by 14,000 companies; but 600,000 other companies, who use the other .5 percent of the chemicals, have to fill out all the same forms. As with detailed rules, "uniform procedures" have non-uniform effects.

Most citizens do not participate in these processes, and hear only the sweet music of procedural responsibility. Although angry at government's failures, we can close our eyes and take solace in the pure strains of process. Do you have a pet goal? Government will add it to the process. Most of us haven't yet made the connection that our bureaucratic crew is so busy playing procedural hymns that, like the band on the deck of the Titanic, it has given up trying to get anywhere.

We stole the idea of avoiding individual judgment from the rationalists, not very cleverly adopting a version of central planning at the height of the cold war. The dream of an automatic government, liberated from the perils of human choice, fit neatly with our traditional fear of government. It sounded perfect: Government would regulate and provide services without its officials having to think. It is too perfect. It is utopian and, as Isaiah Berlin warned, our "determined effort to produce it" by erecting a huge monument of rules and elaborate rituals of process has led to "suffering, disillusionment and failure."

Instilling pragmatism into process requires no break from democratic traditions. Calling off the debate after a few months (instead of a few decades), for example, involves no unfair-

ness. Constitutional rights are not violated when courts limit the evidence and restrict parties to two briefs each. "Delay," as, New Dealer Jim Landis once said, "is equally an element of the lack of due process" as barring the courthouse door is. We're the ones ingesting the pesticides and breathing the benzene, and we're entitled to a decision.

To Jim Landis, an effective government was one that attracts the best possible people and gives them leadership responsibility. We have created the opposite system, one profoundly focused on the negative, obsessed with defensive formalisms and driving away good people who cannot, to quote one high level official, "grow the gills" needed to breathe in this underworld of process.

We must remember why we have process at all. Process exists only to serve responsibility. Personal responsibility is what matters. Process is only one of many tools to get there. E-E