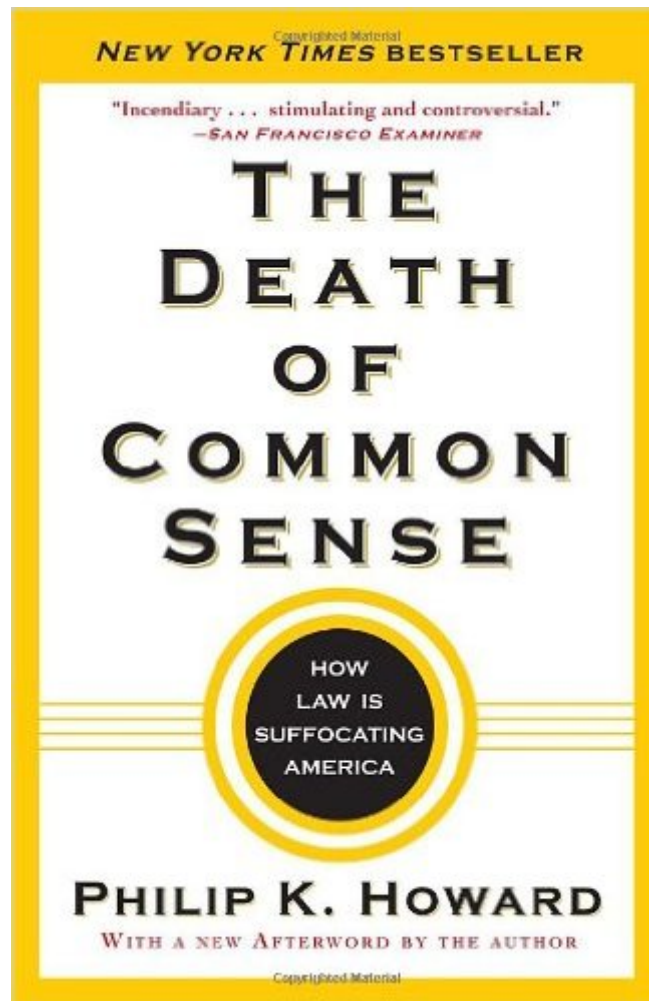


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# The Death Of Common Sense: How Law Is Suffocating America



## 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.

## Book Information

Paperback: 256 pages

Publisher: Random House Trade Paperbacks (May 3, 2011)

Language: English

ISBN-10: 0812982746

ISBN-13: 978-0812982749

Product Dimensions: 5.2 x 0.6 x 8 inches

Shipping Weight: 7.2 ounces (View shipping rates and policies)

Average Customer Review: 4.3 out of 5 stars • See all reviews • (132 customer reviews)

Best Sellers Rank: #245,976 in Books (See Top 100 in Books) #9 in Books > Law > Rules & Procedures > Remedies #48 in Books > Law > Ethics & Professional Responsibility #367 in Books > Politics & Social Sciences > Politics & Government > Specific Topics > Law Enforcement

## Customer Reviews

Philip Howard's insights help us understand why government appears arbitrary, almost never able to deal with real-life problems in a way which reflects an understanding of the situation. Peppered with pointed anecdotes about absurd regulatory inflexibility and the lack of the use of judgement, Howard's book reveals that we have concocted a system of regulation that "goes too far while it does too little." In the decades since WWII, specific legal mandates designed to keep government in check have proliferated. The result is not better government, but more and poorer government. In a free society, we are supposed to be free to do what we want unless it is prohibited. But highly detailed regulations proscribing exactly what to do turn us toward centralized uniformity, Howard

says, where law has replaced humanity. Detailed rules and uniform procedures have nonuniform effects when applied to specific situations. Our old system of common law recognized the particular situation and invited the application of common sense. Common law evolved with the changing times and its truth was relative, Howard tells us, not absolute. But in this century statutes have largely replaced common law, and in recent decades regulations have come to dominate the legal landscape. Howard observes that the Interstate Highway System (still the nation's largest public works program) was authorized in 1956 with a 28-page statute. Now, we attempt to cover every situation explicitly. He cites one contract lawyer who received a proposed definition of the words and/or that was over three hundred words in length. (Let alone the more recent and prominent lawyer who parsed carefully over the definition of what the word "is" is.

I wouldn't agree with the categorization of this book as an "explosive manifesto" (back cover), nor would I call this "incendiary ... stimulating" (front cover). As an American who too often cringes when our country's regulatory red tape strangles expediency and constructive decision making, I'd say "The Death of Common Sense" offers some poignant anecdotes in describing today's bureaucratic morass. Beyond this, author Philip K. Howard documents well the mentality which has spawned our dependency and passivity, and how we can refocus on how democracy is supposed to function. Mr. Howard's messages, evident throughout, are very obvious: we have substituted innovation with process, created enemies instead of cooperative societies, and squashed case-by-case reasoning under mountains of procedural law. There are so many "rights" covering every interest group that very little gets done for the benefit of the majority. "Trusting in the law" now means being wary of nearly everyone. Although sounding a bit rant-stricken at times, Mr. Howard offers up lots of food for thought ... some amazing stories. It's all pretty interesting and easy to read. In my opinion, the last (and shortest) of the book's four parts, entitled "Releasing Ourselves," falls short of hitting on a way to get out from under suffocating law. I agree that initiative and responsibility are admirable attributes for executives in both the public and private arenas, and further, that universally applied policies that regulate the most minute procedural detail should instead have flexibility for more real-world applications. However, what happens when the most innovative of directives winds up injuring or killing someone? Will Joe Citizen give up his right (there's that word) to sue? I doubt it.

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