

# A Light in the Bureaucratic Darkness

Can “sludge audits” or a presidential order ease the paperwork load?

## Sludge: What Stops Us from Getting Things Done and What to Do about It

by Cass R. Sunstein

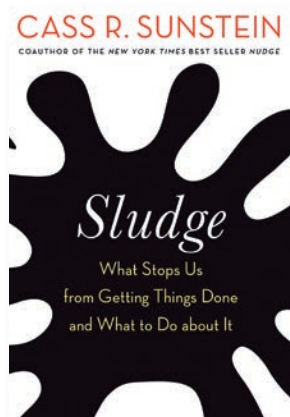
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As reviewed by Philip K. Howard

**N**O ONE LIKES BUREAUCRACY. Indeed, every winning presidential candidate since Jimmy Carter has promised to overhaul it. Yet bureaucracy keeps growing. To teachers, principals, and others frustrated by red tape, it can only be good news that distinguished law professor Cass Sunstein champions the cause of “radical simplification” in his short new book, *Sludge: What Stops Us from Getting Things Done and What to Do about It*. In his earlier book *Nudge* (co-authored with economist Richard Thaler), Sunstein looked at how legal structures and other “choice architecture” can steer people toward responsible choices—for example, making workers opt out rather than opt in to retirement plans. *Nudge* championed positive incentives. In *Sludge*, Sunstein takes aim at the negative aspects of legal structures.

*Sludge* is intended to be a call to clean out the time-wasting red tape that slows people down in many work settings, including in schools: “In education, there is far too much sludge, and it hurts students, teachers, and parents alike,” he writes. Sunstein sees sludge as a grab bag of “paperwork requirements, waiting time, reporting requirements, clearance processes, and the like.” The examples provided suggest a broad range of categories and motivations. For example, reporting requirements are imposed because public officials “need to know how programs are working.” Other mandates are aimed at “program integrity,” in an effort to deter fraud and waste. Occupational-licensing requirements for barbers, manicurists, and other specialists are notoriously imposed as barriers to deter new competitors.

Sunstein sees the main cost of red tape as diversion of time, a diversion he rightly sees as not only inefficient but also an affront to the dignity of teachers and others. An excellent recent essay by Annie Lowrey in *The Atlantic*, “The Time Tax,” similarly focuses on how red tape forces people to spend time on mindless compliance. Indeed, surveys of teachers consistently find that they feel overwhelmed by bureaucratic



compliance. One informal recent study found that, on average, teachers work more than 50 hours per week, but only half of that time is spent in front of students. Fifteen hours were devoted to tasks such as administrative compliance, including reporting requirements. The inefficiency doesn't stop there. All these reports by teachers need to be read and studied—hence the exponential growth in the number of school administrators. As Ira Stoll wrote for this publication last fall using Department of Education data, school district administrative staff grew 75 percent between 2000 and 2017, and the number of principals and assistant principals grew 33 percent. The number of teachers grew less than 8 percent.

Bureaucratic controls are far more harmful, in my view, than the diversion of time and resources. For example, bureaucratic mandates skew decisions in ways that make it almost impossible to run schools sensibly. Here are some of the constraints:

- Maintaining order in a classroom is difficult when teachers and principals have the burden of “due process” hearings to remove disruptive students.
- The performance aspect of teaching—drawing on personality and variety to hold student attention—is difficult when teachers are shackled to rigid course plans and required to “teach to the test.”
- Balancing the needs of all students when allocating time and resources is almost impossible under absolute special-education mandates and processes. Many school districts spend about 25 percent of their budgets on special education for about 14 percent of students.
- Building a school culture with energy, innovation, and pride is difficult when teachers know there's no accountability for job performance. As a former National Teacher of the Year from Alabama put it, “On a daily basis, I see teachers who start classes late, chatting on their cell phones while they eat breakfast in front of the students. . . . There are even a few classes where I have yet to see any instruction taking place. . . . I finally had to look myself in the mirror and say out loud—“There are educators who do not care!””

No one designed this system. Sunstein's instincts are correct that all these constraints, requirements, and forms accumulated like sediment in a harbor. Each new report and reform generally gets added to all the requirements from prior years. Collective-bargaining agreements reflect a similar additive process, with ever-tighter shackles on school administrators. At this point, the cumulative effect of all these bureaucratic requirements is crushing. Compliance is overwhelming, and perfect compliance is impossible.

Sunstein’s call for “sludge audits” is an important first step. America’s schools are long overdue for a spring cleaning. But why hasn’t this happened before? Sunstein doesn’t address why past efforts at reform—for example, the Paperwork Reduction Act (1980) or Al Gore’s ambitious reinventing government initiative (1993–2000)—had so little impact.

For example, consider all the reporting requirements. Does this diversion of time and resources to filling out forms serve a useful purpose? Mostly not. Its purpose is mainly to build a record proving that teachers and the school did their jobs properly. File cabinets stuffed with identical forms checking boxes are not an effective way to evaluate either quality or compliance. What’s needed is to scrap the dense rulebooks and detailed requirements, which are “inputs,” and instead hold officials accountable for *outcomes*, as measured by their success in meeting public goals and governing principles.

How would a simpler system work? Let the educators in a school focus on the learning, socialization, and health of their students. Replace red tape with accountability for results. But “results” in education are far more nuanced than what can be demonstrated by hard metrics such as test scores. Instead of obsessing over test results, give outside evaluators the responsibility of periodically inspecting and reporting on how the school is doing, including aspects of a school that are impossible to evaluate with quantitative metrics, such as school culture. A similar approach can be used to safeguard against abuses of authority. A site-based parent-teacher committee could review complaints of unfair discipline, for



Cass Sunstein

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The sludge has remained not mainly because of negligent public management, in my view, but because of an unspoken precept of modern operating philosophy: distrust of authority. All the paperwork is a pathetic effort to “make sure” educators are doing their jobs properly. The due process hearings will “make sure” no student or teacher is treated unfairly. Giving special-education students an absolute right to whatever they need will “make sure” they are not ignored. Multi-hundred-page collective-bargaining agreements will “make sure” no principal ever treats a teacher unfairly.

The modern obsession with avoiding bad choices is the Miracle-Gro for sludge. Good sense, spontaneity, indeed almost all life, has been suffocated out of schools. Conversely, put any successful school under a microscope, and you will find leadership that takes authority by ignoring or repudiating most of what Sunstein calls sludge. At one successful public school, the principal told me she meticulously kept fictional records of compliance so teachers could focus on teaching.

Sunstein presumes that the solution involves deregulation: “Elimination of sludge is not always included in the category of deregulation. It should be.” I don’t agree. Most red tape does not arise from the goals of regulation—say, overseeing effective schools or avoiding arbitrary discipline—but from an almost obsessive compulsion to micromanage those goals.

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example, without forcing educators to endure a legal gauntlet each time a student misbehaves.

The modern mind is trained to think that any authority comes with a license for abuse. Red tape proliferated mainly because we’re unwilling to give people the authority to take responsibility. *What if*. . . the teacher is unfair to a student? *What if*. . . the principal decides to serve only Twinkies at lunch? What’s needed is not trust in any particular person, however, but trust in a framework of authority where every decision can be reviewed by someone else.

An unbroken chain of accountability is key. Teachers can’t be liberated from sludge until they can be accountable. Principals can’t be liberated to manage teachers until there’s an oversight mechanism to hold principals accountable. Red tape turned into a jungle because, without accountability, the only tools for control are ever-denser rules and rights.

How can we escape from this awful snarl of sludge and legal kudzu? Who would actually conduct “sludge audits” and implement change? Sunstein calls for the president to order “a reduction in paperwork burdens and . . . federal agencies to reduce sludge.” Such an order, I think, would have only marginal impact. Insiders will never make needed changes, because they are creatures of the jungle and are unlikely to embrace a philosophical shift from bureaucratic controls to accountability based on human judgment at every level of the education hierarchy.

One common characteristic of most successful schools is that teachers and principals feel free to act on their best judgment—not trudge through sludge all day long. One way to encourage schools to embrace this approach is to give parents free choice on where to send their children. Most parents will pick successful schools. This form of accountability will leave bad schools to wither.

But reducing sludge at scale will require a structural overhaul that slashes through the bureaucratic jungle. Why shouldn’t public schools have similar freedoms as charter schools? One way to move public debate in this direction is to delegate simplification to outside “spring cleaning commissions.” Just as base-closing commissions undertake the politically difficult job of recommending which military bases to shutter, the president or a governor could appoint nonpartisan

experts and citizens to propose simplified frameworks that re-empower educators by liberating them from bureaucratic quicksand—including empowering administrators to hold teachers and others accountable. The sticking point, as noted, will be accountability. Ultimately, as I have argued elsewhere, the stranglehold of teachers unions will need to be dislodged by constitutional rulings holding that collective-bargaining agreements have preempted democratic governance. But first we must reset the public narrative—teachers and parents must understand that accountability is essential because it’s the precondition to empowerment.

Red tape and sludge are symptoms of an anti-human governing philosophy. Pruning the jungle will be, at best, a temporary solution. The cure to what Sunstein rightly decries is, in the end, human responsibility. Let people roll up their sleeves. Let other people judge how they do. Restore responsibility and accountability, and there’s little need for the paralytic tangle of forms, thick rulebooks, and legal proceedings. In *Sludge*, Sunstein shines a light in the bureaucratic darkness, and, by calling for “sludge audits,” adds his moral authority to the growing demand to clear out the bureaucratic underbrush.

*Philip K. Howard is founder of the Campaign for Common Good. His latest book is Try Common Sense. Follow him on Twitter: @PhilipKHoward.*

## SCALIA'S CONSTITUTION

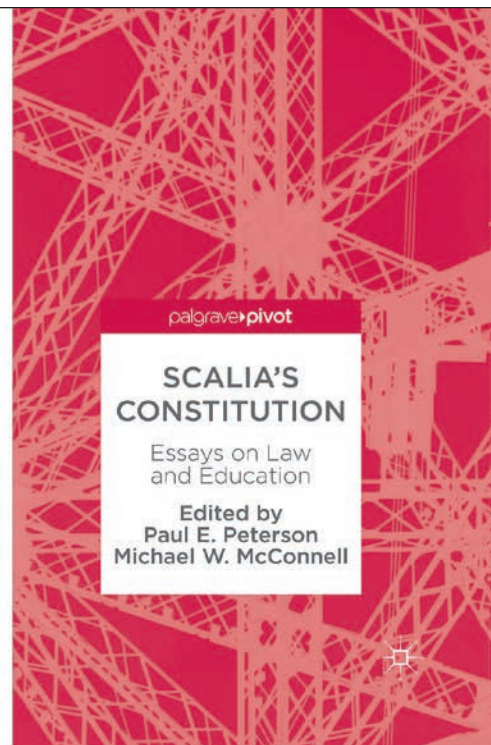
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Editors: Paul E. Peterson and Michael W. McConnell  
September 2017

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