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Report

Escape from Quicksand: A New Framework for Modernizing America

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Executive Summary

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The Manhattan Institute is a community of scholars, journalists, activists, and civic leaders committed to advancing economic opportunity, individual liberty, and the rule of law in America and its great cities.

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In 2021, Congress allocated \$42.5 billion to expand broadband coverage to “unserved” areas. So far, no services have been provided. This is just one example in a pattern of attempts to modernize American infrastructure. Massive appropriations and ample private capital are waiting on the sidelines. But not much gets built.

Part of the problem is the labyrinthian permitting processes at the state, local, and federal level, containing multiple mandates and serial veto points for opponents to challenge projects. But there is a deeper problem: the belief that it is dangerous, or even illegal, to allow officials to exercise human judgment to weigh costs and benefits—a danger we seek to avoid by legally mandating a supposedly neutral process that micromanages every aspect of every decision.

There are rarely “correct” answers to the tradeoffs that must be made in every project. What is the “correct” amount of degradation of a seaside vista to allow in exchange for offshore wind energy generation? This is ultimately a choice that should be accountable politically. It cannot be answered by law, because legal rules and processes can’t answer this question.

Laws don’t govern. People do. Laws should provide the framework within which elected and appointed officials have room to make the decisions needed for the public good. Attempts to streamline regulations by cutting red tape are futile—an exercise akin to trying to prune the jungle.



Instead, real reform requires granting officials authority to achieve results. They should be accountable politically for the wisdom of their choices, but judicially only when they violate the boundaries of their authority.

In this report, I propose fixing America's torpid infrastructure with a three-part approach:

- A new legal framework that designates lead agencies with final authority to approve projects, requires processes mainly as tools for transparency rather than rules mandating strict compliance, and constrains judicial review to overseeing the scope of authority.
- A new institution—the National Infrastructure Board—to provide oversight and public trust, shielding officials from political backlash and inspiring public trust.
- A nonpartisan recodification commission, modeled on commissions for base closures, to design and propose the details of these reforms.

Without these fundamental changes, public-sector progress will stall. Common sense shouldn't fall into the quicksand of 150 million words of federal laws and regulations and conflicting bureaucratic silos. The solution isn't more or even less process—it's restoring the authority to act.

Introduction

In the 2021 Infrastructure Investment and Jobs Act, \$7.5 billion was allocated to build out a national network of electric vehicle charging stations. By July 2024, three years later, 11 charging stations had been built.¹ The same act allocated \$42.5 billion to expand broadband coverage to “unserved” areas. So far, no services have been provided.² This is a pattern. In 2009, Congress allocated \$5 billion to weatherproof older homes, estimating that 2,500 homes per month would be fixed in California alone. At the end of 2009, the total number of homes weatherproofed in California was 12.³

Modernizing America's infrastructure is universally recognized as a vital national goal. Massive appropriations and ample private capital are waiting on the sidelines. But not much gets built.

Most observers, including myself, have fingered labyrinthian permitting processes, often involving state and local approvals as well as federal approvals. But the culprit is not just lengthy processes: Multiple mandates by federal, state, and local agencies often preclude officials from weighing costs and benefits sensibly, and provide serial veto points for opponents to challenge projects. There's also now a flaw in America's public culture: officials see their job as caretakers of these processes, not decision-makers. Giving and exercising the authority to make ultimate decisions is considered dangerous, even illegal.

Saying “Go” to infrastructure requires a value judgment about trade-offs. Every project causes environmental harm of some sort—transmission lines and wind turbines defile the natural landscape, offshore platforms disturb the seabed and risk significant environmental damage if they fail, mines destroy land and pollute wherever tailings are stored, and so forth. These trade-offs rarely have a “correct” answer. What is the “correct” amount of degradation of a seaside vista to allow in exchange for offshore wind energy generation? These choices are ultimately political in character.



Environmentalists and officials are suffering from what environmentalist Michael Gerrard calls “tradeoff denial”⁴—striving to mollify every objector while refusing to recognize the far greater environmental costs of delay.

They’ve sunk into a kind of regulatory quicksand, flailing in rules, processes, and legal challenges, without any line of sight to the public goal. Years go by as experts discuss the minutiae of each objection. Courts then repeat the scrutiny. Cutting short these processes is like violating a religious ritual. In the temple of environmental scrutiny, mandarins with graduate degrees analyze each objection, striving for a result that achieves one best result. No pebble is left unturned.

Even the president feels powerless to interfere. President Obama, for example, sold the \$800 billion 2009 stimulus package as a way to modernize infrastructure: “I think we can get a lot of work done fast.” But then he discovered that “there’s no such thing as shovel-ready projects.”⁵

The failure of the 2009 stimulus to jumpstart infrastructure spending highlighted the need to shorten the processes that must be exhausted before anyone breaks ground. In a 2015 white paper for Common Good, “Two Years, Not Ten Years,” we calculated that delays commonly double or triple the effective cost of infrastructure.⁶ We also found that lengthy environmental reviews often cause dramatic environmental harm—prolonging polluting bottlenecks and delaying access to sustainable energy.

In December 2015, President Obama signed the FAST (Fixing America’s Surface Transportation) Act, designed to consolidate road and rail approvals and move projects along.⁷ It sought to reduce duplicative reviews, created a public dashboard for following the intricate steps in the process, and formed a 16-agency Federal Permitting Steering Council to coordinate agencies and resolve disagreements among them. The FAST Act, proponents claimed, would “improve the federal permitting process to promote expansion [and] economic growth.”⁸

A few months later, I was summoned to a meeting of the White House Council on Environmental Quality, where 20 or so officials explained to me how the FAST Act was resolving the delays. I had a question: If one or more of the 16 agencies don’t agree, who has authority to make a decision? The response was immediate: “Oh, no one has that authority. That would be too dangerous.”

Herein lies the nub of the problem. Only people, not processes, can make the decisions needed to govern. The year before the FAST Act was passed, the average time to complete an environmental impact statement (EIS) was 4.7 years. Four years later, in 2019, the average time to complete an EIS was ... 4.7 years.⁹

Additional reforms in 2021 and 2023 contained a number of changes recommended in “Two Years, Not Ten Years,” such as page limits on environmental reviews, time limits for approval, the designation of one lead agency, shorter statutes of limitations for court challenges, and limiting agency analysis to only “reasonably foreseeable” impacts.¹⁰

Early indications suggest that these reforms have not worked—for example, the three-year lag (so far) in building electric charging stations. Better process is no cure for a system that sees process as an end in itself. There is always another objection and something else to study. The time and page limits get stuck in the muck of countless competing regulatory requirements.

Modernizing infrastructure—indeed, reforming government to work sensibly in almost every area—requires a new framework based on a different operating philosophy. Public choices should be made by officials who are accountable, not by navigating a legal labyrinth. Instead of cutting red tape here and there, reform must start with defining official authority to make ultimate decisions. Processes and regulations should then be remade to set goals, guiding principles, and lines of accountability within which these designated officials are allowed to act.



In November 1933, FDR created the Civil Works Administration (CWA) to give jobs to the unemployed, and he put Harry Hopkins in charge. By the end of December, less than two months later, more than 2 million Americans had been hired by CWA.¹¹ What would FDR have done if he had been told that there were “no shovel-ready projects”? A day or so later, Congress likely would have been presented a short bill authorizing the executive branch to fund any projects deemed in the public interest.

The governing philosophy of the New Deal was to give officials “grants of power with which to act decisively.”¹² The New Deal projects worked not only because officials had the legal authority to push ambitious projects forward, but also because those officials viewed their responsibility as achieving results.

Laws don’t govern. People do. Laws are supposed to provide the framework within which elected and appointed officials have room to make the decisions needed for the public good. “It is one of the most prominent features of the constitution, a principle that pervades the whole system,” as James Madison explained, “that there should be the highest possible degree of responsibility in all the Executive officers thereof.”¹³

Today, the focus on process and compliance has fostered an official culture of avoiding decisions. Taking clippers to the current thicket can never work, because what’s left is designed to supplant human judgment. Years go by and costs multiply as officials neglect the public good in the pursuit of legal compliance.

How Process Replaced Good Government

The utility of environmental review, mandated by the National Environmental Policy Act of 1970 (NEPA),¹⁴ is broadly accepted. The idea is to inform official decisions by presenting benefits and harms of proposed projects and to promote political accountability through greater transparency. NEPA’s legislative sponsors thought that reviews would be a few dozen pages in length and be completed in a matter of months.¹⁵ The act provided no right to judicial review.

But judicial activism was in vogue in the 1970s, and federal courts demanded that agencies take a “hard look” at environmental impacts.¹⁶ The “hard look” doctrine allowed courts to reject any project with which they disagreed. Under the guise of requiring further analysis, courts signal to agencies that a different judgment is needed to pass judicial muster.

Courts ostensibly are mandating compliance with NEPA. But environmental review is different from, say, fire and safety codes. A safety regulation has a clear purpose and leaves only a narrow scope for official interpretation. Disclosure of environmental effects and alternatives, by contrast, is open-ended. There’s always something else to study. Whatever strikes the court as harmful can be sent back for further review.

In the name of better disclosure, courts undermined the authority of the executive branch. The ability of an official to act on his or her best judgment was replaced by a court demanding that officials must demonstrate the correctness of their judgments.

Congress and state legislatures piled on by enacting laws to protect this or that. Modern government is organized into scores of discrete silos overseeing emissions, fish and wildlife, wetlands, deserts, historic buildings, public lands, tribal lands, civil rights, and so forth. The laws enacting these



regulations sometimes require that environmental reviews specify how projects “minimize the impact” on, say, historic buildings or endangered species—putting the thumb on the scale for those goals over others and disregarding the reality that public goals are often in conflict.¹⁷

Public transparency—the main goal of NEPA—has been drowned in a tsunami of often unintelligible detail. The project to raise the roadway of the Bayonne Bridge over the entrance to Newark Harbor, for example, would allow for the passage of the new generation of post-Panamax ships, which are more efficient as well as greener. Raising the roadway had minimal environmental impact because it used the same foundations and rights-of-way. The permit was granted—but only after five years and an environmental assessment of 20,000 pages, including exhibits.

You might wonder what possibly was in all that material. Though the project affected no buildings, a state mandate required the sponsor to study the impact on historic buildings within a two-mile radius. It also had to solicit input from Native American tribes around the country whose ancestors might once have lived on the land.

Then came the litigation. An environmental group challenged the project on the grounds that the 20,000-page assessment was inadequate. But, as in many of these situations, the objectors were not really interested in more disclosure. It turned out that the challenge was funded by the Teamsters union, which hoped to use the delay of litigation as a lever to make the Port Authority agree to ban independent truckers.¹⁸

On average, as noted, federal environmental approval takes over four years.¹⁹ Lawsuits challenging review on large projects consume another 3½–4½ years.²⁰ Important projects—such as transmission lines over new rights-of-way, or urban projects that affect a neighborhood, or disturbing a natural habitat—often take much longer. A permit to dredge the Savannah River took 16 years.²¹ Paralysis by analysis leads to many projects being abandoned, such as controlled burns in California to deter fires.²²

Despite recent reforms that limit the time for permitting and size of review documents, courts continue to see their job as scrutinizing the completeness of disclosure. In 2024, the D.C. Circuit Court of Appeals blocked a liquefied natural gas facility on the basis that the environmental review did not sufficiently study the “environmental justice” of a facility located near a low-income neighborhood.²³ Another court blocked offshore drilling in the Gulf of Mexico because the effects on Rice’s whales were insufficiently studied.²⁴

How Process Became Quicksand: The Microeconomics of Avoiding Human Judgment

The premise of the “legal process” movement that remade public decision-making in the 1960s was that officials should not assert “final answers” but oversee a process that is “content neutral” and provides “an agreeable procedure for getting acceptable answers.”²⁵ All the information piles up, interested parties make their arguments, and eventually some version of the project gets a green light.

Without human responsibility linked to actual results, however, this process guarantees failure. That’s because facts and arguments don’t automatically congeal into a decision.²⁶ There’s always an argument for a different result. Agencies with conflicting priorities will argue for a different



analysis. Motivated interest groups will press hard for their position.²⁷ Officials in charge find themselves in a defensive posture, knowing that their decisions will be reviewed by a court. They focus not on making the best decision but a decision that minimizes the chance of reversal.

When officials lack authority to act in the public interest, decisions that emerge from the process will usually undermine the public interest. *New York Times* columnist Ezra Klein decided to look into why a small public toilet in San Francisco—which cost only about \$200,000—was budgeted to cost \$1.7 million. The answer was layers of process and approvals:

There's the planning and design phase, which requires bringing the design for the public toilet to 'community engagement stakeholders' and refining it based on their feedback. That typically takes three to six months. Then the Public Works Department can solicit bids from outside contractors. That takes six months. Construction takes four to six months more, depending on whether a prefab toilet is used or one is constructed on site. The toilet also needed approval from the Department of Public Works, the Planning Department, the Department of Building Inspection, the Arts Commission, the Public Utilities Commission, the Mayor's Office on Disability and PG&E, the local electric utility.²⁸

Instead of a mechanism for better public choices, process itself becomes the goal. Jennifer Pahlka from the Niskanen Center describes the numerous sub-procedures that Congress and agencies have imposed. As one official summarized it: "Congress tells us to do something by a deadline. The compliance offices stop us from doing it." Processes work like tripwires, not a hierarchy for achieving goals:

They start to hire a team, but the Office of Personnel Management tells them they've used the wrong authorities, or used them incorrectly, and they need to start over. They need to collect information from grant applicants, but the Paperwork Reduction Act review process takes an average of nine months. They need to hire a firm to build an online application, but it will take far longer to get to a contract than it will for the firm to build the form.²⁹

Almost every choice and sub-choice has its own process—not only to decide what environmental effects to study but to resolve disagreements among agencies, to keep to deadlines, to decide which consultants to hire, and to weigh benefits and costs for the ultimate decision. After the project is approved, the processes start all over again with contracting procedures.

The result is a parody of inept government. Officials are like Charlie Chaplin characters, taking this step and that, constantly diverted from acting by one more requirement: But have you studied that? Can you demonstrate that your decision wasn't motivated by favoritism or bias? How does the association of birdwatchers feel about it?

Why do we accept this failed system? On some deep level, we no longer believe in human judgment. Pahlka sees the "fetishization of process as a sort of talisman" that verifies officials' virtue.³⁰ "Strict adherence to a process" means that "no judgment can be questioned, because no judgment was used."³¹ In his study of federal procurement, public-management scholar Steven Kelman describes a public culture that has been brainwashed: "Our system for managing in the public sector may rob the people in it of their faculties to such an extent that, like a person on a mind-numbing drug, they no longer even realize that they are missing anything."³²

Czech statesman and philosopher Václav Havel saw the obsession with finding external justifications—rather than trusting our own judgment—as a deep insecurity of modern society that is striving for "an objective way out of a crisis of objectivism."³³ Instead of taking responsibility, we prove our virtue by refusing to take responsibility.



The compulsive drive to purge human judgment has a clear history.³⁴ Coming out of the upheavals of the 1960s, we wanted to create a government better than people. No more discrimination, pollution, or other abuses of authority by officials like Robert Moses. We not only came to distrust other people, particularly people with authority, but also to distrust ourselves. Who are we to judge? Every aspect of the process must be free from the taint of subjective judgments. So we cling tightly to processes that relieve us of the burden of deciding almost anything.

It's a downward spiral. Distrust of human judgment leads to disempowerment, which causes paralysis, which leads to greater failure and distrust.

Burning Money: How Procurement Processes Compound the Waste

Delays in infrastructure permitting are compounded by procurement procedures that are also designed to replace an official's judgment with neutral, objective processes. The idea is to minimize fraud or favoritism. There is hardly any action that engenders more distrust than spending public money, but, as with permitting, the procedural approach generally guarantees the waste that it seeks to prevent.

Just as permitting requires judgments about trade-offs, implementation requires making countless decisions to adapt to unforeseen circumstances and glitches. Management theorist Chester Barnard thought that “nine-tenths of all organization activity is on the responsibility, the authority . . . of those who make the last contributions, who apply personal energies to the final concrete objectives.”³⁵

Businesses understand the need for flexibility. That's why they contract with vendors whom they trust and, instead of specifying every detail, leave room to work out unanticipated issues. In design-build contracts, they kick all these choices on implementation to the contractor.

The public sector, by contrast, uses formalistic procurement processes aimed at purging human judgment at all steps. Detailed specifications are set forth in a “request for proposals” (RFP); then there is an advertisement for all qualified bidders; then an evaluation of bids by a mathematical formula; and then the contract is awarded to the bidder with the most points. Losing bidders can challenge the award as noncompliant with any of the formal criteria.³⁶

These procurement processes generally result in worse products at higher prices, for reasons that are self-evident to any practical person:

- Specifying all details in advance consumes time and leaves no flexibility for unforeseen complications. Each change order then requires a separate process and price negotiation. Specifying details in advance also precludes the trial and error and collaborative engagement essential for most information-technology projects. Artificial intelligence cannot be developed or used effectively, for example, without ongoing exercise of human intelligence.
- Formalistic processes require bidders to raise prices to compensate for the inefficient rigidities. Building “affordable housing” in California, for example, often requires loans from multiple public programs—each with a separate contract and duplicative compliance requirements to ensure that the developer stays within rent guidelines. As a result of these and other formal requirements, the cost of an “affordable housing” apartment in California is about \$750,000—about triple the cost of comparable apartments built by private developers in Dallas.³⁷



- Neutrality toward bidders—meant as a check against favoritism—means that government sometimes awards bids to contractors who have performed poorly in the past. In his study of procurement, Kelman quotes an official who felt proud that he was “objective enough” to ignore that a bidder had performed poorly in previous contracts.³⁸

These complexities are multiplied by other requirements aimed at pursuing collateral goals irrelevant to the completion of a project. The Biden administration’s inability to expand broadband service, for example, was partly due to a tangle of requirements regarding whom should be given contracts. Implementation of the project, according to FCC commissioner Brendan Carr, was “chaotic” because “[i]nstead of focusing on delivering broadband to unserved areas, the administration has ... adopted regulations that include diversity, equity and inclusion requirements, climate-change rules, price controls, preferences for union labor, and schemes that favor government-run networks.”³⁹

Apologists for the procurement process argue that inefficiency is a small price to pay to avoid favoritism and corruption. But the procedures breed a kind of corruption by interest groups who know how to play the game. Partly because labor unions successfully lobbied for procurement rules that require overstaffing, the Second Avenue subway in New York cost \$2.5 billion per mile—five times the cost of a similar subway in Paris.⁴⁰

Studies on corruption uniformly conclude that the best safeguard is not the avoidance of human responsibility but a transparent hierarchy that empowers officials and thereby creates a clear sightline of accountability.⁴¹ The public procurement process does the opposite, obscuring accountability in a maze of procedures. The public gets worse products at higher prices, with no accountability.

The alternative way of awarding contracts is not unfettered discretion. Principles of competitive bidding are important in most circumstances. But they must ultimately be activated by responsible officials who have authority to use their judgment.

The Miracle of Letting Officials Take Responsibility

On June 11, 2023, a truck delivering 8,500 gallons of gasoline crashed underneath an elevated section of I-95 in Philadelphia and burst into flames, causing a section of the highway to collapse.⁴² Initial reports suggested that traffic in the Northeast Corridor would be snarled for months. Twelve days later, the highway was reopened.

The key to the speedy repair was Pennsylvania governor Josh Shapiro’s declaration of an emergency, which suspended all regulations that “would in any way prevent, hinder, or delay necessary action.” Ignoring procurement rules, the state immediately hired a reputable local highway contractor to perform “extra work” on existing contracts, thus avoiding the need for competitive bids.

The quickest way to build temporary lanes on an elevated road is to pave on top of landfill, but 12,000-plus tons of dirt and rock might cause underlying water and sewer mains to collapse. Michael Carroll, head of the state’s Department of Transportation, proposed using recycled glass, one-sixth the weight. Based on this quick engineering assessment, a deal was made with a nearby recycled-glass company, which started delivering recycled glass around the clock. Again, procurement rules were ignored. All these decisions also require permits from numerous state and local agencies. Carroll spent his days at the site, issuing or waiving permit requirements.



Escape from Quicksand: A New Framework for Modernizing America

On June 23—12 days after the accident—I-95 reopened. The quick repair was not a miracle. The people in charge simply took responsibility to get the job done, using common sense, existing commercial and community relationships, and a little creativity. “We showed . . . good government action,” Governor Shapiro declared.

Governor Shapiro’s quick action has been widely viewed as heroic because Americans loathe traffic jams more than they fear the exercise of executive authority.

This was an emergency, of course. But emergencies should not be the only situation where officials are allowed to use their judgment. The public good requires judgments on the trade-offs of benefits against harms, not wringing our hands over all possible harms. These choices are rarely right or wrong. Studying impacts and alternatives is useful—but only to a point.

The history of America’s economic growth is highlighted by transformational public infrastructure investments:

- The Erie Canal, which New York governor DeWitt Clinton built with public funds, was a risky bet, widely derided as “Clinton’s big ditch.” After the canal opened in 1825, transportation costs to midwestern markets fell by 95%, stimulating jobs and prosperity across the Midwest and the East.⁴³
- Transcontinental rail lines, built in the 1860s, were subsidized by giving railroad companies 6,400 acres of adjacent land per mile of track to entice the huge investment. These rail lines, replacing Conestoga wagons, created a national marketplace and fostered growth in areas that were little more than prairie outposts.⁴⁴
- The Interstate Highway System, promoted by President Eisenhower as essential to national defense, was authorized in 1956 by a statute that was 29 pages long.⁴⁵ A decade later, with 90% federal funding, over 21,000 miles had been built.⁴⁶

None of those projects could have been built today. Would environmentalists, if given a time machine, insist on canceling them? Some could certainly have been done better—for example, avoiding interstate highways through the heart of cities. But even knowing those harms, would it have been smart to delay the Interstate Highway System for a few decades while the impacts of the first 20,000 miles were studied?

America’s economy today consists of millions of moving parts that come together on the spine of our nation’s infrastructure. Most of that infrastructure was built by our ancestors without the wisdom imparted by environmental review. Roads, rail, ports, power, electric lines, water, waste disposal, and other shared resources allow markets to hum, entrepreneurs to innovate, defense to mobilize, and citizens to be safe and comfortable. Those demanding a “hard look” at details of projects are doing so from the comfort of a society that never could exist on the terms they demand.

Ironically, the paralytic quest for perfect process has driven officials back to zero process as the only viable way to make timely infrastructure decisions, as with fixing I-95.⁴⁷ Broad categorical exclusions are a core feature of the pending Manchin-Barrasso bill—including exclusions from review for “low disturbance” projects, transmission lines, geothermal drilling, and more.⁴⁸

The right balance, which NEPA originally sought, is one in which official choices are first exposed to public scrutiny. No one who reads *The Power Broker*, Robert Caro’s magisterial biography of Robert Moses, wants to cede unilateral power to officials without public transparency. But Moses also left an astonishing legacy of exemplary public works. What’s missing today is a framework that is activated by officials who take responsibility and are accountable up a political hierarchy for the results.



The Cure: A Framework with Humans in Charge

On November 15, 1933, one week after CWA was created, Harry Hopkins summoned a group of governors and mayors to discuss possible projects. On November 20, Hopkins approved 122 projects; on November 21, he approved another 109 projects, and so forth. Funds were released to local governments. Four months later, over 1,000 miles of water mains and 12 million feet of sewage pipes had been laid, 255,000 miles of roads had been paved, and numerous other public works built or improved. Auditors reviewing the projects found that, overwhelmingly, the funds had been used as intended.⁴⁹

The solution to infrastructure paralysis is a legal framework that empowers designated officials to make multiple trade-off judgments. Choices need to be made. This requires replacing balkanized approvals by multiple agencies and multiple levels of government with one decision-making hierarchy. The designated officials and agency can differ by type of project. The deciding agency would receive input from other interested departments, but must have authority to make trade-offs that weigh benefits and harms.

This framework would be a radical simplification—replacing the labyrinth of accumulated mandates and procedures with single hierarchies, all overseen by the White House in the case of federal permits and projects. Process would be understood as a tool for making judgments, not an end in itself. Officials must be re-empowered to make judgments about trade-offs at every step. A \$200,000 public toilet should cost that amount, not \$1.7 million.

Judgments can be made poorly, of course. That's why oversight and accountability are critical. Instead of avoiding human judgment, the checks and balances in a coherent framework must also be built on the foundation of human judgment—giving supervisory officials the authority to oversee or approve decisions. Years of *ex ante* process can be replaced by weeks of *ex post* review.

Governing effectively is impossible until designated officials are empowered to make ultimate decisions. By contrast, reforms that strive to streamline process and cut unnecessary rules are doomed to failure—an exercise akin to trying to prune the jungle. Any disagreement among officials will cause delay, and any inconsistency among the myriad regulations will be a basis for a legal challenge.⁵⁰

America must return to the human-responsibility operating philosophy envisioned by the framers. The current system is built on the wrong idea of law. Law cannot make public choices. Moreover, while law can protect against arbitrary choices, it cannot validate which choice is best among a wide range of plausible options. Law instead is supposed to frame the responsibility of officials who, within legal boundaries, make choices that are politically accountable. The role of courts is not to second-guess the wisdom of these judgments but to ensure that officials do not transgress the legal boundaries—say, by conducting an environmental review so shoddy that it is arbitrary and capricious.

Three major changes are needed to restore the authority to achieve results: a new legal framework, a new institution that can inspire trust in ongoing decisions, and a special commission to design the details of these changes.

New legal framework defining official authority. Here's a sketch of what a new infrastructure decision-making framework might look like:



1. Separate agencies should be designated as decision-makers for each category of infrastructure. The head of that agency should have authority to approve permits. For federal approvals, all decisions should be subject to White House oversight. For projects with national or regional significance, federal decisions should preempt state and local approvals.
2. Fifty years of accumulated mandates from multiple agencies should be restated as public goals that can be balanced against other public goals. As will be discussed below, a recodification commission is needed to reframe thousands of pages of detailed regulatory prescriptions into codes that are goal-oriented and honor public trade-offs. But until this can happen, Congress should authorize the executive branch to approve permits “notwithstanding provisions of law to the contrary”—provided the executive branch identifies the relevant provisions and provides a short statement of why the approvals are in the public interest.
3. Processes should be mainly tools for transparency and should be understood by courts as general principles reviewed for abuse of discretion, not as rules requiring strict compliance. NEPA has been effectively rewritten by judicial fiat, so it should be amended to return to its original goals—to provide environmental transparency, public comment, and a political judgment.
4. The jurisdiction of courts must be sharply limited. Lawsuits should be allowed for approvals that transgress boundaries of executive responsibility, not inadequate review or process, unless these are so deficient as to be arbitrary.⁵¹

Changing law is always politically difficult, but the second challenge is perhaps even harder: creating new institutions that can inspire trust.

Oversight by a national infrastructure board. The public is conditioned to think the worst of officials. For officials, partisan acrimony creates powerful incentives to avoid judgment altogether—every approval has objectors, and no official wants to be put under klieg lights at a congressional committee.⁵² The bureaucratic process today, with nearly endless meetings and legal bickering, operates like an invisible shield protecting officials against political backbiting.

Re-instilling officials’ confidence to make decisions requires a new oversight institution that officials and the public can trust to validate permitting and contracting decisions. I propose creating an independent “national infrastructure board” to advise political leaders and the public on the priorities and progress of infrastructure projects. Just as base-closing commissions provide a foundation of moral support for difficult choices, a national infrastructure board could validate sensible trade-off judgments and defuse politically motivated attacks.⁵³ A critical role of a national infrastructure board would be to provide “cover” for officials who are sure to be attacked by project opponents.

Specific responsibilities of a national infrastructure board would be:

- Maintain a running list of national and regional infrastructure priorities, as a similar commission does in Australia.⁵⁴ The board could discourage wasteful projects such as the infamous “bridge to nowhere.”
- Track and comment on delays in infrastructure approvals, and provide backing for projects that may be opposed by NIMBY interests.
- Oversee and certify the reasonableness of contracting procedures. Most infrastructure projects are managed by state and local governments that, as with the Second Avenue subway, have adopted wasteful procedures and work rules. The one official power that a national infrastructure board should have is to withhold infrastructure funds from project sponsors that do not conform to commercially reasonable contracting practices.



A nonpartisan recodification commission. The third and final step in this reform is to create a credible recodification committee or commission to design and propose the details of these reforms. Changes this dramatic are unlikely to emerge from backroom negotiations in Congress. There are too many conflicting interests and too much distrust.

The job of devising new simpler infrastructure codes should be delegated to a nonpartisan commission. There is a long history of recodification commissions that are charged with modernizing legal codes that have become convoluted and complex, including, for example, the creation of the Uniform Commercial Code in the 1950s.⁵⁵

In times of war and crisis, Congress delegates the job of making decisions to small groups or commissions, as it did with the War Production Board in World War II or with Operation Warp Speed to devise Covid vaccines. In situations fraught with political conflicts, as noted above, Congress has delegated the task of making recommendations of which military bases should be closed to independent “base-closing commissions.”⁵⁶

Moral authority goes a long way toward avoiding the frictions of distrust. Members of such a recodification commission could be appointed, as with base-closing commissions: experts selected by majority and minority leaders in Congress and by the president. The special commission must make the proposal, and Congress can take it from there.

Conclusion

In June 2024, a commuter train in New York was stuck for nearly three hours in one of two Hudson River rail tunnels connecting Manhattan to all points west.⁵⁷ The tunnels were built in 1910, are in fragile condition, and provide only about half the capacity to service rail traffic in the twenty-first century. They need to be closed down to be rebuilt and hardened against events such as Superstorm Sandy, which shut them down and paralyzed commuting from New Jersey for two months in 2012.⁵⁸ Plans for new tunnels were announced beginning in 2009, but a combination of political disincentives for long-term investments and lengthy permitting deterred serious proposals.⁵⁹ In 2024, construction finally began on parts of the project. The new tunnels are expected to be in service in 2038, 29 years after they were first announced.⁶⁰

America is operating on road, rail, water, and electric infrastructure largely built by our great-grandfathers, including by Harry Hopkins’s CWA. The 2021 status report by the American Society of Civil Engineers (ASCE)⁶¹ rates American infrastructure as a C-minus, marginally better than the D-plus from 2017,⁶² but not good. The worst areas, each earning a D, are roads, dams, levees, storm water, and wastewater. Two additional categories of critical infrastructure are not separately rated by ASCE but deserve a poor rating: local electric distribution, which, in many places, consists of wires strung on rickety wooden power poles; and mining of rare earth and other essential metals, which is necessary to avoid dependence on China.

The social benefits of modern infrastructure are clearly visible at the end of the rainbow, if only government could make deliberate choices to move forward. High-speed transmission lines would promote more renewable power development in low-occupancy areas and also modular nuclear power. Low-lying cities would be protected from storm surges. Flexible zoning and building codes would allow new housing to sprout in underutilized urban areas. Water and wastewater distribution would be modernized. Artificial intelligence could transform public services.⁶³



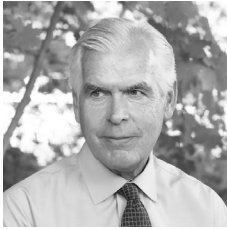
The economic benefits of modern infrastructure are also clear. Upgrading and expanding transmission lines alone yields a return of more than double the project costs.⁶⁴ ASCE estimates that addressing the \$81 billion investment gap in water and wastewater infrastructure could save Americans almost \$500 billion from decreased business disruptions, reduced waste, and improved public health.⁶⁵ They could be partly funded by user costs. America's competitiveness and security would be dramatically enhanced.

None of this can happen until the U.S. updates its legal framework to empower officials to make necessary choices. The point of environmental review should not be to avoid "subjective judgments" but to inform those judgments. The point of democracy is to elect and appoint officials to oversee and make these decisions. Without this authority, democracy can't do its job.

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About the Author



Philip K. Howard is a leader of government and legal reform in America. He is Chair of Common Good and a bestselling author, and has advised both parties on needed reforms. In his new book, *Everyday Freedom* (Rodin Books, 2024), he pinpoints the source of powerlessness that is fraying American culture and causing public failure, and offers a bold vision of simpler governing frameworks to re-empower Americans in their daily choices.

Philip is the author of the bestseller *The Death of Common Sense* (Random House, 1995), *The Collapse of the Common Good* (Ballantine Books, 2002), *Life Without Lawyers* (W.W. Norton, 2009), *The Rule of Nobody* (W.W. Norton, 2014), *Try Common Sense* (W.W. Norton, 2019), and *Not Accountable* (Rodin Books, 2023). His commentaries are published frequently in major media outlets.

In 2002, Philip formed Common Good, a nonpartisan coalition dedicated to simplifying laws so that Americans can use common sense in daily choices. His 2010 TED Talk has been viewed by more than 750,000 people. His 2015 report, "Two Years, Not Ten Years," exposed the economic and environmental costs of delayed infrastructure approvals, and its proposals have since been incorporated into federal law. Philip has appeared often on television and radio, including several times on Jon Stewart's "The Daily Show."

The son of a minister, Philip got his start working summers at the Oak Ridge National Laboratory for Nobel laureate Eugene Wigner. He has been active in public affairs his entire adult life. He is Senior Counsel at the law firm Covington & Burling, LLP. A graduate of Yale College and the University of Virginia Law School, Philip lives in Manhattan with his wife Alexandra. They have four children.



Endnotes

- ¹ See Shannon Osaka, “Biden’s \$7.5 Billion Investment in EV Charging Has Only Produced 7 Stations in Two Years,” *Washington Post*, Mar. 28, 2024; Grant Schwab, Kalea Hall, and Luke Ramseth, “\$5B for EV Infrastructure Yields Just 11 Charging Stations,” *Governing*, July 2, 2024.
- ² “The Harris Broadband Rollout Has Been a Fiasco,” editorial, *Wall Street Journal*, Oct. 4, 2024.
- ³ Michael Grunwald, *The New New Deal: The Hidden Story of Change in the Obama Era* (New York: Simon & Schuster, 2012), 305–10.
- ⁴ Michael B. Gerrard, “A Time for Triage,” *Environmental Forum* 39, no. 6 (Nov.–Dec. 2022): 38–44. See also Johanna Bozuwa et al., “Planning to Build Faster: A Solar Energy Case Study,” Roosevelt Institute, Oct. 1, 2024. This report, which explicitly disavows the need to make trade-offs, demonstrates the disconnection from reality of some environmentalists: “Our approach to looking for land-sparing opportunities draws from research on technological synergies, offering opportunities to multi-solve across ecological and technological domains to *avoid trade-offs* and instead embrace multifunctional landscapes” (emphasis added).

In a review of the report, Matthew Yglesias, “Tradeoffs Are Real,” *Slow Boring* (blog), Oct. 15, 2024, writes that he “felt like I’d gone insane” because “every recommendation the report makes would make solar slower and more expensive to make.”
- ⁵ Michael D. Shear, “Obama Lesson: ‘Shovel Ready’ Not So Ready,” *New York Times*, Oct. 15, 2010. See also Jonathan Alter, *The Promise: President Obama, Year One* (New York: Simon & Schuster, 2010), 89, which notes that then-president-elect Obama was “appalled” to learn that his proposal for a national smart grid would require the approval of at least 231 state and local agencies. “We went to the moon!” he said.
- ⁶ Philip K. Howard, “Two Years, Not Ten Years: Redesigning Infrastructure Approvals,” *Common Good*, Sept. 15, 2015.
- ⁷ Fixing America’s Surface Transportation (FAST) Act, Pub. L. No. 114-94, 129 Stat. 1312 (2015).
- ⁸ Senator Joe Manchin, “Manchin, Portman, Sinema, Sullivan Introduce Bill to Improve Federal Permitting Process, Create Jobs” (July 13, 2021).
- ⁹ Philip Rossetti, “Addressing NEPA-Related Infrastructure Delays,” R Street Policy Institute, July 2021.
- ¹⁰ Among many other things, the Infrastructure Investment and Jobs Act of 2021 (IIJA) imposed two-year time limits on environmental reviews for transportation infrastructure projects, as well as page limits for the environmental impact statement (EIS) for those projects. However, both these requirements are relatively easy to waive. IIJA also reiterated the FAST Act’s judicial review reforms (two-year statute of limitations and requirement that lawsuits be filed only by parties who had submitted a comment during the environmental review). Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 80503, 135 Stat. 429, 1336 (2021) (to be codified at 26 U.S.C. § 7451).

Two years later, the Fiscal Responsibility Act of 2023 (FRA) directly modified the



National Environmental Policy Act (NEPA) by imposing time and page limits on all federal environmental reviews, not just those in the transportation sector, although here, too, the requirements are easy to waive. FRA also allows agencies to share categorical exclusions they have developed and allows project sponsors to sue to compel agencies to stick to established permitting timelines. FRA, Pub. L. No. 118-5, 173 Stat. 10 (2023).

As of the time of this essay’s publication, two noteworthy permitting reform bills are working their way through Congress. In the Senate, the Energy Permitting Reform Act of 2024, sponsored by Senators Manchin and Barrasso, would expand the use of categorical exclusions for a variety of energy projects, empower the Federal Energy Regulatory Commission to issue permits for regionally significant transmission projects (preempting state authority), impose deadlines on several permitting processes, and tighten statutes of limitations for challenges to agency actions. Energy Permitting Reform Act, S.4753, 118th Cong. (2024).

In the House, an as-yet-unnamed bill introduced by Congressman Westerman would limit environmental reviews to issues within the lead agency’s jurisdiction, exempt grants and loans from the NEPA process, and limit injunctive relief only to those situations where there is a risk of “proximate and substantial environmental harm” from allowing the project to proceed. A discussion draft of this untitled, unnumbered bill: <https://docs.house.gov/meetings/II/II00/20240911/117585/BILLS-118pih-ToamendtheNationalEnvironmentalPolicyActof1969andforotherpurposes.pdf>.

- 11 Harold Meyerson, “Work History,” *American Prospect*, May 2, 2010.
- 12 James M. Landis, *The Administrative Process* (New Haven, CT: Yale University Press, 1938), 75. See discussion in Philip K. Howard, “From Progressivism to Paralysis,” *Yale Law Journal Forum* 130, (Jan. 6, 2021): 370–97. (2021).
- 13 James Madison, speech in Congress on the Removal Power, May 19, 1789, in *Writings* (New York: Library of America, 1999), 435.
- 14 National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–47 (1970).
- 15 See, e.g., Daniel A. Dreyfus, “NEPA: The Original Intent of the Law,” *Journal of Professional Issues in Engineering Education and Practice* 109, no. 4 (1983): 252–53.
- 16 *Kleppe v. Sierra Club*, 427 U.S. 390 at 410 (1976).
- 17 See Marc J. Dunkelman, *Why Nothing Works* (New York: Public Affairs, 2025), 266–68. California’s environmental review law requires that “cities *mitigate* whatever environmental impacts might occur from local land use decisions” (227), including “to address nearly one hundred issues—noise, endangered species, traffic.... And opponents simply need to find a flaw in one to put the entire project on ice. A plan to turn an old, polluted aircraft manufacturing facility in Los Angeles onto a vibrant new development with housing, office space, and a park was subject to twenty CEQA suits over twenty years” (231).
- 18 Dunkelman, *Why Nothing Works*, provides numerous examples of how “project opponents invok[e] environmental concerns as the thinnest veneer for naked self-interest.”
- 19 Council on Environmental Quality, “Environmental Impact Statement Timelines, 2010–2018,” June 12, 2020.



- ²⁰ See Nikki Chiappa et al., “Understanding NEPA Litigation,” Breakthrough Institute, July 11, 2024, which finds that, on average, 4.2 years elapsed between the filing of a final EIS and conclusion of related litigation.
- ²¹ Adam Van Brimmer and Zachariah Chou, “Timeline: The Savannah Harbor Expansion Project Was a Deep—and Lengthy—Dig,” *Savannah Morning News*, Feb. 25, 2022. Dunkelman, *Why Nothing Works*, provides detailed biopsy of decade-long efforts to block a transmission line running from Canada across Maine—including 38 permits, multiple lawsuits, and voter referenda (279–91).
- ²² See Shawn Regan, “The L.A. Wildfires Should Be a Wake-Up Call,” *City Journal*, Jan. 10, 2025; Scott Dittrich, “A Malibu Official on the California Wildfires,” letter to the editor, *Wall Street Journal*, Jan. 21, 2025. Cape Wind, which would have been the country’s first offshore wind farm, survived more than two dozen lawsuits over 16 years, but was scrapped in 2017 after the delay made it economically unviable. See Katharine Q. Seelye, “After 16 Years, Hopes for Cape Cod Wind Farm Float Away,” *New York Times*, Dec. 19, 2017; Cynthia E. Stead, “The Hypocrisy of Cape Wind Opponents,” *Cape Cod Times*, Jan. 13, 2015.
- ²³ See *City of Port Isabel v. Federal Energy Regulatory Comm.*, 111 F.4th 1198, 1206–11 (2024). See also Greg LaRose, “Appeals Court Sends Louisiana LNG Terminal Project Back to Regulators,” *Louisiana Illuminator*, July 16, 2024; *Healthy Gulf v. FERC*, 107 F.4th 1033 (U.S. Ct. of Appeals, D.C. Cir., July 16, 2024).
- ²⁴ Cathy Landry, “Court Orders Federal Agency to Better Protect Rice’s Whales from Oil, Gas Drilling in Gulf of Mexico,” *Oil & Gas Journal*, Aug. 21, 2024; *Sierra Club v. Nat’l Marine Fisheries Service*, Civ. No. DLB-20-3060 (U.S. Dist. Ct., D. Md., Jan. 9, 2024).
- ²⁵ See Philip K. Howard, *Everyday Freedom: Designing the Framework for a Flourishing Society*, (New York: Rodin, 2024). 20.
- ²⁶ The conceit of procedural decision-making is that a correct solution will emerge from all the study and discussion. But it’s impossible to demonstrate, as a matter of objective evidence, the wisdom of necessary choices. The powers of reasoning, as neuroscientist Antonio Damasio explains, will spin endlessly unless people can access a different part of the brain, where people draw on their emotions and decide how to act. Antonio Damasio, *Descartes’ Error: Emotion, Reason and the Human Brain* (New York: Penguin, 1994). Information can inform these judgments, but usually only to modest degree. Timing also requires a value judgment about trade-offs—whether the costs of further process outweigh the potential benefits. Some official must have authority to make these judgments.
- ²⁷ People generally make poorer decisions, organizational psychologists have found, when they know they must give reasons to justify their judgments. Throw in the near-certainty of a legal challenge, and the illusory standard of objective proof, and the result is inexorable pressure toward the lowest common denominator. The process skews decisions toward mollifying the squeaky wheels. After a while, officials lose any clear line of sight toward the greater good. After 17 years, BNSF railroad finally gave up on building a large intermodal transfer facility near the port of Long Beach, which would have dramatically reduced truck congestion and pollution, because of an inability to overcome local objections.
- ²⁸ Ezra Klein, “A Close Examination of the Most Infamous Public Toilet in America,” *New York Times*, Apr. 28, 2024.
- ²⁹ Jennifer Pahlka, “Democrats Should Be the Party of Go,” *Eating Policy* (Substack blog), Aug. 26, 2024.



- ³⁰ Ibid.
- ³¹ Jennifer Pahlka, “AI Meets the Cascade of Rigidity,” in *The Digitalist Papers*, ed. Angela Aristidou (Stanford, CA: Stanford Digital Economy Lab, 2024).
- ³² Steven Kelman, *Procurement and Public Management: The Fear of Discretion and the Quality of Government Performance* (Washington, DC: AEI Press, 1990), 52.
- ³³ Václav Havel, “The End of the Modern Era,” *New York Times*, Mar. 1, 1992.
- ³⁴ See Howard, *Everyday Freedom*.
- ³⁵ Chester I. Barnard, *The Functions of the Executive: Thirtieth Anniversary Edition* (Cambridge, MA: Harvard University Press, 1968), 232.
- ³⁶ See discussion on procurement procedures in Philip K. Howard, *The Death of Common Sense: How Law is Suffocating America* (New York; Random House, 1995), 62–76.
- ³⁷ Author interviews with housing developers from Los Angeles and Dallas.
- ³⁸ Kelman, *Procurement and Public Management*, 52.
- ³⁹ Brendan Carr, “Kamala Harris’s Rural Broadband Flop,” *Wall Street Journal*, Oct. 14, 2024.
- ⁴⁰ Brian M. Rosenthal, “The Most Expensive Mile of Subway Track on Earth,” *New York Times*, Dec. 28, 2017.
- ⁴¹ See discussion and sources in Philip K. Howard, *The Rule of Nobody: Saving America from Dead Laws and Broken Government* (New York: W.W. Norton & Co., 2014), 116.
- ⁴² See Howard, *Everyday Freedom*, 59–63.
- ⁴³ See, e.g., Brad L. Utter, *Enterprising Waters: The History and Art of New York’s Erie Canal* (Albany: State University of New York Press, 2020).
- ⁴⁴ See, e.g., *After Promontory: One Hundred and Fifty Years of Transcontinental Railroading*, ed. Keith L. Bryant, Jr. (Bloomington: Indiana University Press, 2020).
- ⁴⁵ Federal Aid Highway Act of 1956, Pub. L. No. 84-627 (1956).
- ⁴⁶ See Jim Hook, “I-81 History: States Scramble to Be the First as Construction Begins,” *The Sentinel*, Jan. 15, 2011.
- ⁴⁷ Former EPA general counsel E. Donald Elliott has counted more than 50 statutes that grant “categorical exclusions” in critical situations, plus “hundreds” more created by agencies for a wide variety of actions—e.g., asbestos abatement, refueling nuclear reactors, or decommissioning naval vessels. See “Hearing on Permitting Litigation Efficiency Act of 2018 Before H. Comm. on the Judiciary, Subcomm. on Regulatory Reform, Commercial and Antitrust” (statement of E. Donald Elliott), 115th Cong. (Apr. 12, 2018); see also Council on Environmental Quality, “List of Federal Agency Categorical Exclusions.”
- ⁴⁸ See Energy Permitting Reform Act.



- 49 See Meyerson, “Work History”; Charles Peters and Timothy Noah, “Wrong Harry: Four Million Jobs in Two Years? FDR Did It in Two Months,” *Slate*, Jan. 26, 2009.
- 50 See Jennifer Pahlka and Andrew Greenway, “The *How* We Need Now: A Capacity Agenda for 2025 and Beyond,” Niskanen Center, December 2024, a report proposing a four-step approach to expediting decisions: “hire the right people and fire the wrong ones”; “reduce procedural bloat”; “invest in digital infrastructure”; and “close the feedback loop between policy and implementation.” But it offers no theory of authority to resolve disagreements, no authority to waive or modify the countless regulations that might prevent trade-off judgments, and no principle to limit judicial review and delay.
- 51 Former EPA General Counsel E. Donald Elliott has suggested removing the power of courts to issue preliminary injunctive relief, as provided in Section 307 of the Clean Air Act:

“(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.”

Litigation should also be expedited. In order to quickly resolve insinuations of bad faith, without years of legal discovery, all non-privileged files by litigants should be publicly disclosed at the outset of litigation. Complete transparency not only saves years of litigation but largely obviates the need for corrective environmental statements. All arguments will be in the open.

- 52 Businesses make investments in infrastructure and assets all the time, but the dynamics of accountability are completely different. Avoiding decisions is not an option, and accountability is unavoidable: What did the investment return to the bottom line? How do businesses figure out the right decision? They accept the unavoidable uncertainty, discuss differences of opinion, and make a decision. A leadership principle at Amazon is: “Have Backbone: Disagree and Commit.” Sometimes it works out, sometimes it doesn’t, and usually the projects must be altered in some way to meet unforeseen complications.
- 53 Diplomat George Kennan once proposed a fourth branch of government that would have no power but would report on how the other branches were doing. His “Council of State” comprised nine citizens “of high distinction” without political position or aspiration; its role was to provide a pillar of moral authority to reduce the incentives for political grandstanding. See George F. Kennan, *Around the Cragged Hill: A Personal and Political Philosophy* (New York: W. W. Norton, 1993), 238–48.
- 54 See “Infrastructure Australia: About Us,” <https://www.infrastructureaustralia.gov.au/about-us>. Australia is not the only country with an infrastructure board. See, e.g., “Our Work,” New Zealand Infrastructure Commission / Te Waihanga, <https://tewaihanga.govt.nz/our-work>; National Infrastructure Commission of the United Kingdom, “What We Do”; Infrastructure South Africa, “Our Vision and Mission.”
- 55 The Uniform Commercial Code was drafted in the 1950s by a group of leading commercial law experts, led by Karl Llewellyn. Inspired by recodifications in Germany at the turn of the twentieth century, the code was adopted by almost every state and is a cornerstone of U.S. commercial law. See Lawrence M. Friedman, “Business Law in an Age of Change,” in idem, *American Law in the 20th Century* (New Haven, CT: Yale University Press, 2022).



- ⁵⁶ See, e.g., U.S. Dept. of Defense, “DoD Base Realignment and Closure,” April 2022.
- ⁵⁷ Aaron Gordon, “NJ Transit Train Fiasco Traps Commuters for Hours with No AC in Tunnel,” *Bloomberg*, Aug. 2, 2024.
- ⁵⁸ See Philip K. Howard, “Billions for Red Tape: Focusing on the Approval Process for the Gateway Rail Project,” *Common Good* (May 2016).
- ⁵⁹ In 2017, environmental review was complete and needed only official approval from the secretary of transportation. But Trump reputedly didn’t want to give a “win” to Democratic senators from New York and New Jersey, and the application languished until Biden was elected. Trump’s refusal to move the project forward should have been a scandal, but there was no oversight body, such as a national infrastructure board, to call him on it. See Tara Golshan, “Gateway, the Infrastructure Project Trump Hates So Much He Threatened a Shutdown, Explained,” *Vox*, Mar. 22, 2018.
- ⁶⁰ Kevin R. Wexler, “Gateway Hudson Tunnel Project on Track for 2038 Completion,” *Bergen Record*, May 21, 2024.
- ⁶¹ American Society of Civil Engineers (ASCE), 2021 Infrastructure Report Card.
- ⁶² ASCE, 2017 Infrastructure Report Card.
- ⁶³ Jennifer Pahlka has documented how the bureaucratic culture is already busy weighing down decisions on artificial intelligence with “controls and mandates designed primarily to keep bad things from happening”
- ⁶⁴ Aaron Bloom et al., “The Value of Increased HVDC Capacity Between Eastern and Western U.S. Grids: The Interconnection Seam Study,” *IEEE Transactions on Power Systems* 37, no. 3 (May 2022): 1760–69.
- ⁶⁵ ASCE, “Wastewater 2021.”