Life Without Lawyers: Liberating Americans from Too Much Law by Philip K. Howard

How to restore the can-do spirit that made America great, from the author of the best-selling The Death of Common Sense. Americans are losing the freedom to make sense of daily choices—teachers can’t maintain order in the classroom, managers are trained to avoid candor, schools ban the game of tag, and companies plaster inane warnings on everything: Remove Baby Before Folding Stroller.

Philip K. Howard’s urgent and elegant argument is full of examples, often darkly humorous. He describes the historical and cultural forces that led to this mess, and he lays out the basic shift in approach needed to fix it. Today we are flooded with rules and legal threats that prevent us from taking responsibility and using our common sense. We must rebuild boundaries of law that affirmatively protect an open field of freedom. The stories here will ring true to every reader. The analysis is powerful, and the solution unavoidable. What’s at stake, Howard explains in this seminal book, is the vitality of American culture.

My Personal Review:
This excellent book explains how excessive litigation has lead to excessive caution. Frightened individuals and institutions adapt their decisions and actions to avoid potential lawsuits, undermining our economy and our free society. Three especially interesting insights I got from this book were:

1. Sometimes the ability to anticipate and prevent a bad outcome should not be enough to establish liability for that outcome. The social value of an activity in which a risk inherently resides may outweigh the cost of that risk. For example, the few but inevitable accidents on school playgrounds have lead to lawsuits, which have compelled many schools to ban running at
recess or eliminate playground equipment altogether. Kids should not be deprived of healthy and developmentally necessary play to prevent accidents that are few and far between.

2. Due process, once used to prevent the coercive power of the state from being abused, has been extended to institutions like schools and businesses, eviscerating the authority that individuals need to run their institutions. Teachers can no longer maintain order in most public schools, as their ability to discipline students is highly restricted and students know they won't be held accountable.

3. Objective rules cannot replace discretion and judgment. Most of human life is just too complex to be reduced to rules and regulation. There must be room for intuition and creativity, and in every institution some individuals must have the authority to make judgments. Out of fear and distrust of authority we have attempted to eliminate all discretion with rules, which instead has lead to stultifying bureaucracy and a decline in personal responsibility.

The book is sometimes not as rigorous as I would have liked, often relying on examples and anecdotes where I would have liked to see comprehensive data. Howard often writes that many studies show, and although there is a bibliography, there are no footnotes to refer the reader to those specific studies. But these issues are minor compared to the strength of the book as a whole.

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