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New Book by Philip K. Howard Argues That Public Employee Unions Have Undermined Democratic Governance and Should Be Unconstitutional

Foreword by Mitch Daniels Praises Howard’s “Strong Case” That the Nation’s Lurch into Public Unionization Was Not Only Misguided but Unconstitutional

New York, NY—On January 24, 2023, Rodin Books will publish *Not Accountable: Rethinking the Constitutionality of Public Employee Unions* by Philip K. Howard. In *Not Accountable*, the respected lawyer, author, and public intellectual argues that public employee unions have undermined democratic governance and should be unconstitutional. American voters elect governors and mayors who, under union agreements, have been disempowered from managing schools, police departments, and other public agencies. This is why schools can’t work, bad cops can’t be fired, states struggle under the weight of unaffordable pensions, and frustrated voters reach for extremist solutions. Politicians can’t break the union stranglehold because, among other reasons, they’ve sold their souls for union political support.

In this searing five-point indictment, Philip Howard makes a case that constitutional government can’t work when elected leaders lose control over public operating machinery. The Constitution requires a “republican form of government” where elected executives are empowered to run government operations. Under the Constitution, public employees have a duty to serve the public, not organize politically to harm the public.

In the foreword to *Not Accountable*, former Indiana Governor Mitch Daniels writes: “Calling on the deep legal knowledge that took him to the top of his profession, the author crafts a strong case that the lurch into public unionization, dismissed as unthinkable by such labor champions as Franklin Roosevelt and George Meany, was not only misguided but unconstitutional. His multilayered indictment challenges both the executive branch’s delegation of its authority to run the government and the Congress’s legal power to ratify that delegation.”

Q & A with Philip K. Howard

Q: What inspired you to write this book?

A: I’ve been involved in civic issues nationally and in New York for decades, and I’ve always been interested in why government officials can’t act on their best judgment. Common sense disappears into the quicksand of thick rulebooks, lengthy processes, and claimed rights. Teachers can’t maintain order,



officials can't approve new transmission lines, mayors can't fire rogue cops. I've written five books exploring legal, philosophical, economic, and political aspects of the problem, and tried to explain why the problem can't be solved without a simpler, goals-oriented framework: one that re-empowers people to take responsibility and empowers other people to hold them accountable. But that's impossible as long as public employee unions have a stranglehold on the operating machinery of government.

Q: Why is accountability so important?

A: Democracy is basically a process of accountability—that's what elections are for. Accountability all around is the protective system of the Constitution. The branches hold each other accountable. The ballot box is how voters hold elected officials accountable. Accountability down the line is how elected leaders manage the public employees performing the work. But collective bargaining agreements with public employee unions have broken the links in that chain. Government has become an accountability-free zone. Officials elected by the public no longer have the authority to manage public operations sensibly.

Q: How do collective bargaining agreements with public unions undermine elected officials?

A: Collective bargaining agreements effectively bar the most important management tool—accountability. They also preclude basic management choices—including reassigning personnel and allocating responsibilities for projects. They restrict mundane managerial prerogatives, such as dropping in on a classroom or asking people how to improve things.

Voters elect officials who have been disempowered by union controls. Problems don't get fixed. Bad public employees can't be fired. Public resources are squandered. Leadership has turned into finger-pointing. Extremism flourishes as institutions flail. Citizens are justifiably cynical and distrustful, because modern government is organized to fail.

No plausible public purpose is served by restrictive union micromanagement. Nor is there any public purpose for abusive fiscal entitlements in public union contracts—including overstaffing, massive overtime for minor schedule changes, and pensions "spiked" by rigged overtime in the last year of work. Government can't possibly deliver what taxpayers deserve until elected executives are re-empowered to make basic management decisions.

Q: What are the other ways that public unions undermine democracy?



A: Officials are regularly confronted with challenges and crises that no one predicted. In these situations, officials need to adapt and to redeploy resources. But public unions see their responsibilities as bounded by the literal terms of their contracts. Any deviation in routine, no matter how insignificant or how large, provides a basis to refuse to pitch in. The COVID pandemic exposed the true colors of the teachers' unions. While nurses, grocery store clerks, deliverymen, and other essential workers went to work so the rest of society could function, teachers refused to come back for almost two years.

Similarly, every public dollar involves a moral choice. A dollar wasted is a dollar not available for some other worthy goal. Every neglected public need—whether to help the hungry, deal with climate change, fix the roads, or reduce tax burdens—has been compromised by the budgetary grip of public employee unions. Public unions' indifference to wasteful inefficiency is matched by their rapacity in demanding benefits in the future that are not reasonably affordable.

Inefficient government is viewed as a union prerogative. It's an odd phenomenon, in which unions promote a work culture aimed at doing what's wrong. Like a warped personal relationship, public unions seem preoccupied with showing who's really in charge, not doing what's best for society.

Q: How is *Not Accountable* different from other critiques of public sector unions?

A: In *Not Accountable*, I analyze the effect of public unions on democratic governance. Voters elect governors and mayors who no longer have authority to run schools, fire bad cops, and otherwise fulfill their constitutional responsibilities.

Not Accountable then frames these governance defects as a violation of basic constitutional principles. Prior critiques of public unions—particularly by Stanford political scientist Terry Moe (*Special Interest*, 2011) and City College professor Daniel DiSalvo (*Government Against Itself*, 2015)—have done an excellent job describing how public unions have made it practically impossible to manage schools and other public operations, and provided powerful evidence of the political conflict of interest. *Not Accountable* frames the argument as an unconstitutional impairment of democratic governance.

Q: What makes public union collective bargaining unconstitutional?

A: Executive branch officials no longer have the authority needed to fulfill their democratic responsibilities. Eliminating accountability and supervisory judgment removed the main tools of public managers. What is left are facades of governing institutions without the activating powers for executive officials to make things work.



For federal government, the Supreme Court has repeatedly held that Congress cannot remove “executive power” under Article II of the Constitution especially the authority to hold federal officers accountable. For state and local government, the “Guarantee Clause” in Article IV guarantees “to every state ... a Republican Form of Government”—meaning that officials cannot cede governing authority to any “faction” or other group not elected by voters.

I also argue that organized political activity by public unions is a breach of public employees’ constitutional duty of loyalty. What are public unions organizing against? They’re organizing against the public good, as determined by elected executives in managing government.

Q: Hasn’t public union collective bargaining been around for a long time?

A: No, public union collective bargaining was not allowed until the 1960s, because of the conflict of interest with the public good. That’s why FDR—a fervent supporter of labor unions in industry—was an equally fervent opponent of public sector bargaining: “Meticulous attention should be paid to the special relationships and obligations of public servants to the public itself and to the Government ... The process of collective bargaining, as usually understood, cannot be transplanted into the public service.”

Public union power is basically a creature of the 1960s’ rights revolution. But there was no scandal or moral awakening that prompted collective bargaining. Civil service systems already regularized pay and personnel procedures. But public union leaders had been angling for bargaining power for decades, and the strong incoming tide of individual rights provided cover for the unions’ political patrons to enact laws claiming to protect the rights of public employees.

Q: Aren’t public union collective bargaining agreements approved by duly-elected officials?

A: A basic constitutional principle is that officials may not cede governing authority to any private group. In our constitutional republic, legislatures are not authorized to pass laws that gut executive power. Nor do governors and mayors have authority to abdicate or delegate their executive power, even when they want to for political gain.