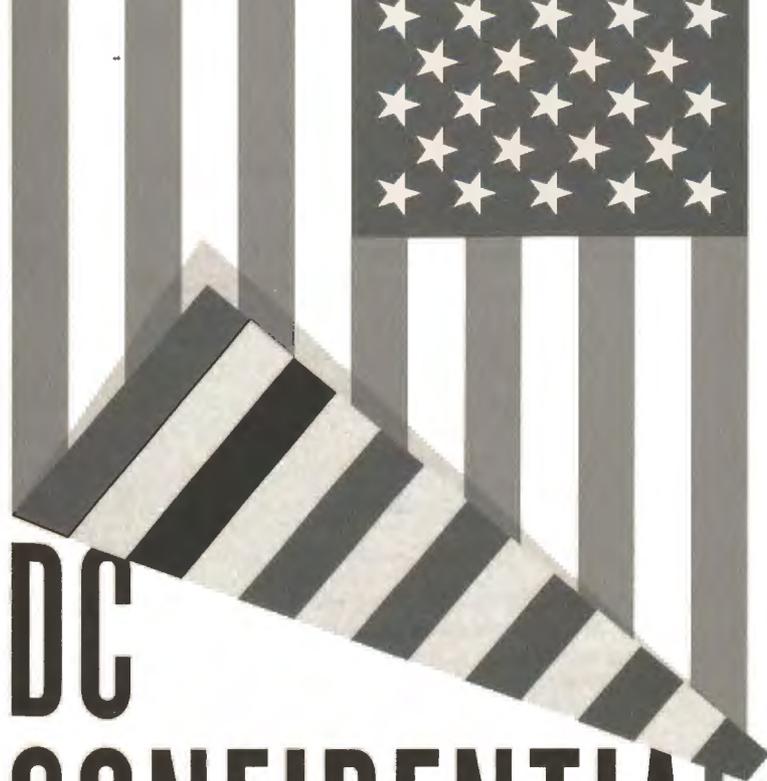


2017

DC Confidential: Inside the Five Tricks of Washington

David Schoenbrod



DC CONFIDENTIAL

INSIDE THE FIVE TRICKS OF WASHINGTON

DAVID SCHOENBROD

WITH FOREWORDS BY GOVERNOR HOWARD DEAN
AND SENATOR MIKE LEE

Illustrations by Stephen Fineberg



ENCOUNTER BOOKS
New York • London

JF
1525
.A26
S35
2017
c.2



© 2017 by David Schoenbrod

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of Encounter Books, 900 Broadway, Suite 601, New York, New York, 10003.

First American edition published in 2017 by Encounter Books, an activity of Encounter for Culture and Education, Inc., a nonprofit, tax exempt corporation.
Encounter Books website address: www.encounterbooks.com

Manufactured in the United States and printed on acid-free paper. The paper used in this publication meets the minimum requirements of ANSI/NISO Z39.48-1992 (R 1997) (*Permanence of Paper*).

FIRST AMERICAN EDITION

LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Names: Schoenbrod, David, author.

Title: DC confidential : inside the five tricks of Washington / by David Schoenbrod ; foreword by Howard Dean.

Other titles: D.C. confidential

Description: New York : Encounter Books, 2017. | Includes bibliographical references and index.

Identifiers: LCCN 2016040156 (print) | LCCN 2016059669 (ebook) | ISBN 9781594039119 (hardback) | ISBN 9781594039126 (Ebook)

Subjects: LCSH: Government accountability—United States. | Political culture—United States. | Political corruption—United States. | BISAC: POLITICAL SCIENCE / Government / General. | POLITICAL SCIENCE / Political Ideologies / Democracy.

Classification: LCC JF1525.A26 S35 2017 (print) | LCC JF1525.A26 (ebook) | DDC 320.973—dc23

LC record available at <https://lccn.loc.gov/2016040156>

Interior page design and composition: BooksByBruce.com

Table of Contents

<i>Foreword by Governor Dean</i>	vii
<i>Foreword by Senator Lee</i>	ix
Introduction: Rabbits, Hats, and Sleights of Hand	1
1 The Left and the Right Agree on One Thing: Congress Misrepresents	9
2 How Congress Is Supposed to Work—and Long Did	23
3 When the Five Tricks Began	39
4 Four Tricks of the Legislative Trade—and How They Deceive Us	57
5 The Tricks Harm Us Now	79
6 The Tricks Will Ruin Us Later	99
7 A Trick Even for War—and How It Deceives Us	129
8 The Honest Deal Act	139
9 An Action Plan for Us	161
<i>Appendices: A Toolkit</i>	171
<i>A Summary of the Honest Deal Act</i>	173
<i>B The Honest Deal Pledge</i>	179
<i>C How You Can Help Trigger Reform</i>	181
<i>D Organizations that Call for Accountable and Open Government</i>	185
<i>Notes</i>	189
<i>Acknowledgments</i>	229
<i>Index</i>	233

INTRODUCTION

Rabbits, Hats, and Sleights of Hand

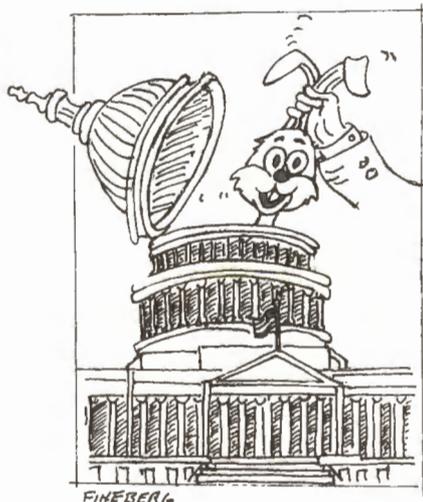


Illustration by Stephen Fineberg.

Washington at Work

You think you know why our government in Washington is broken, but you really don't. You think it's broken because politicians curry favor with special interests and activists on the left or the right. There's something to that belief and it helps explain why our politicians can't find common ground, but it misses the root cause. A half century ago, elected officials in Congress and the White House figured out a new system for enacting laws and spending programs—one that lets them take the credit for promises of good news while avoiding the blame for producing bad results. With five key tricks, politicians of both parties now avoid accounting to us for what the government actually does to us.

While most people understand that politicians seem to pull rabbits out of hats, hardly anyone sees the sleights of hand by which they get away with their tricks. Otherwise, their tricks wouldn't work. *DC Confidential* exposes the sleights of hand behind the Five Tricks of Washington. Once

the sleights of hand are brought to light, we can stop the tricks, fix our broken government, and make Washington work for us once again.



Congresses and presidents of both parties have used these tricks for so long that they now seem like natural features of Washington's landscape, but for more than a century and a half they were contrary to the ground rules of government.

The people who met in Philadelphia in the summer of 1787 to draft a constitution for the United States were not all-knowing, but they did respond sensibly to the challenge of finding a way that a population with clashing interests could get along. They put at the heart of the country's new government an elected Congress whose members would both represent different constituencies and take personal responsibility for the consequences of their decisions. Personal responsibility to voters was essential because the Declaration of Independence held that governments derive "their just Powers from the Consent of the Governed." The legislators' responsibility would spark open debate and so educate both them and their constituents about the consequences of proposed actions. This feedback would sometimes move voters to moderate their demands, but given human nature, there would still be disagreements. Nonetheless, because Congress would resolve the disagreements in the open, legislators would usually be required to balance conflicting interests and voters could generally accept the system as fair. Win some, lose some.

The circle of repeated demand, feedback, moderation, balancing, decision, and acceptance induced by the responsibility of representatives would tend to foster virtue. This virtuous circle could put the goodness in peoples' hearts into the heart of government. And so it was that Congress could legislate on such controversial issues as tariffs in the early 1800s and civil rights in the early 1960s.

Politicians began using the Five Tricks in the later 1960s, an era in which our federal government seemed capable of working wonders. It had gotten the country through the Great Depression, won World War II, invented the atomic bomb, built the interstate highway system, came to preside over the world's richest economy, and enacted meaningful civil rights legislation. In 1969, it even put humans on the moon. The government had achieved all this without needing the Five Tricks.

The successes of the government understandably led voters to demand more from it, and these demands understandably led politicians to want to please voters. So Congress and presidents (rightly in my opinion) addressed additional challenges such as pollution and haphazard health care for the poor and elderly, but (tragically in my opinion) began using tricks in writing the statutes.

The trickery, too, is understandable. Voters did not want to feel the burdens needed to produce the results they demanded from the government. Again wanting to please voters, politicians came to embrace theories, often sincerely, that enabled them to believe that they could deliver the benefits without commensurate burdens, and built such theories into statutes.¹ As I will show, however, the theories usually failed to deliver the benefits without burdens, but promising something for nothing, or very little, had become the course of least resistance. The Five Tricks had begun.

The tricks differ from the spin and deceptions with which politicians have always tried to put their actions in the most favorable light. The Five Tricks allow them to act in new ways that shift the blame for unpopular consequences to others:

- *The Money Trick* lets current members of Congress get the credit for gratifying the public's demands for tax cuts, benefit increases, and other spending increases, while shifting the blame for the inevitable tax increases and benefit cuts to their successors in office when the long-term fiscal consequences of these actions require painful adjustments. As a result, Congress has set a course that, unless soon changed, will require draconian tax increases and spending cuts across the entire population.
- *The Debt Guarantee Trick* lets current members of Congress get support from the too-big-to-fail banks and other businesses whose profits it increases by guaranteeing their debts, while shifting the blame for the eventual bailouts to their successors in office when the debt guarantees produce fiscal crises. As a result, Congress grants debt guarantees in a way that encourages these businesses to run risks that will lead to fiscal crises, lost retirement savings, unemployment, and foreclosures.
- *The Federal Mandate Trick* lets members of Congress get the credit for the benefits they require the state and local governments to

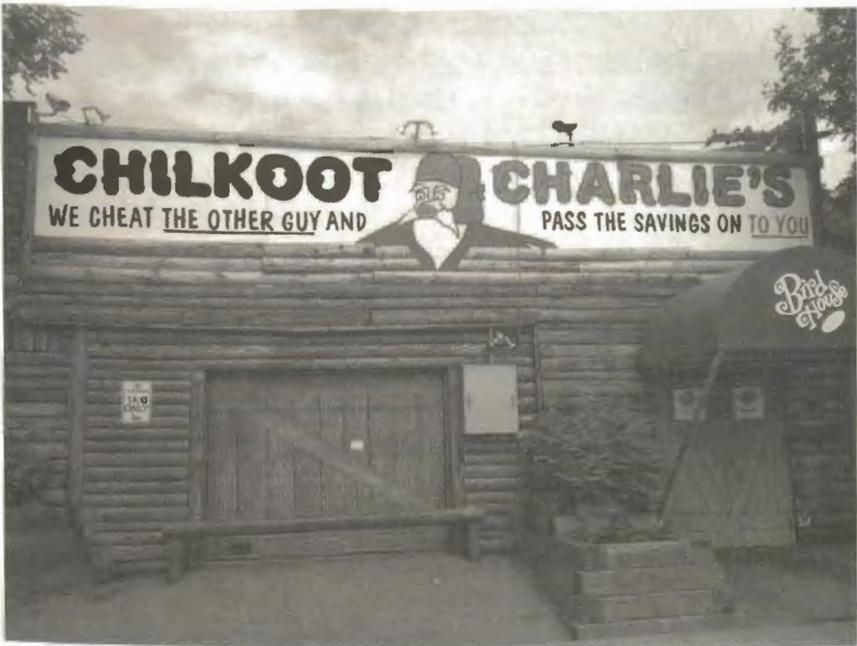
deliver, while shifting the blame for the burdens necessary to deliver those benefits to state and local officials. As a result, Congress mandates benefits without considering whether they are worth the burdens they place on us.

- *The Regulation Trick* lets members of Congress get the credit for granting seemingly rock-solid rights to regulatory protection, while shifting the blame to federal agencies for the burdens required to vindicate those rights and the failures to do so. As a result, Congress designs regulatory statutes to maximize credit for its members rather than providing us with effective, efficient regulatory protection.
- *The War Trick* lets members of Congress get the credit for having a statute that requires them to take responsibility for going to war, while colluding with the president to evade responsibility for wars that might later prove controversial. As a result, members of Congress can march in the parade if the war ends up proving popular, but put the entire blame on the president if it does not. Although the presidents must take the blame, they get the power to launch wars.

I am not arguing that deficit spending, debt guarantees, federal mandates, or regulation are always bad. Far from it. And I understand that war is sometimes necessary.

I am arguing that to make government work for us, we need a Congress whose members are responsible for the consequences their decisions impose on us. Such responsibility would give them a powerful personal incentive to produce consequences that we favor. That is why the Constitution sought to put an accountable Congress at the heart of our government. What the Five Tricks do, however, is to short-circuit legislators' personal responsibility for the consequences and, as a result, they give them a strong personal incentive to produce decisions that make themselves look good regardless of the consequences for the rest of us. The bad government hurts us deeply because the federal government controls far more of the peoples' lives than it did before the Five Tricks began.

The presidents, as the most powerful participants in the legislative process, are in on the tricks, too. The tricks also give the president a more



Photograph by Scott Finney, 2012.

FIGURE 1. Chilkoot Charlie's, Anchorage, Alaska.

powerful federal government and absolute power to start wars. This is a concern now that Donald Trump has gotten elected in 2016, but should have also been a concern had Hillary Clinton won.

With Congress and the presidents promising everyone something for nothing, the Capitol's dome might as well bear the sign that is posted in front of Chilkoot Charlie's bar in Anchorage, Alaska: "We Cheat the Other Guy and Pass the Savings on to You."

Voters, of course, sense that trickery is going on, even though they don't understand the sleights of hand that allow elected officials to seem to pull rabbits out of hats. The well-connected and the well-organized do, however, understand the sleights of hand and so know how to work the system for their own special benefit. The rest of us end up feeling cheated. All of this prevents broad agreement on the fairness of a system that can maintain legitimacy despite clashing interests.

As the tricks brought bad government and bad feeling, the public's trust in the government plummeted. In 1964, shortly before the trickery began, trust in Washington stood at 76 percent, but by 1980, with the trickery underway, trust had fallen to 25 percent. Today, only 19 percent

of Americans trust government in Washington to do what is right “just about always” or “most of the time.” Pew Research reported that we are now in “the longest period of low trust in government in more than 50 years.” According to *Wall Street Journal* columnist Peggy Noonan, “Over 80% of the American people, across the board, believe an elite group of political incumbents, plus big business, big media, big banks, big unions and big special interests—the whole Washington political class—have rigged the system for the wealthy and connected. . . . People feel they no longer have a voice.”²

Of course, the tricks are far from the only change since 1964 likely to breed distrust in the government. Other possibilities include big campaign contributions, downturns in the economy, and polarization. Yet, as I will show, the tricks contribute to these problems, especially in Washington. Meanwhile, trust in state and local government remains high.³

While voters from across the political spectrum distrust the federal government and openly blame Congress, members of Congress privately blame voters. Tim Penny wrote after serving in the House as a Democratic representative from Minnesota, “Voters routinely punish lawmakers who . . . challenge them to face unpleasant truths.” He is correct. We voters demand something for nothing. The trickery takes place in the legislative process, but We the People are complicit. *New York Times* columnist Thomas Friedman wrote that we need better citizens rather than better leaders.⁴

Yet, as I will show, we can be better citizens only if we get Congress and the presidents to stop the tricks. It is the Five Tricks that allow us to escape responsibility for weighing whether we are really willing to bear the burdens needed to produce the benefits we demand from government. We have thereby come to regard the government as a Santa Claus capable of conferring sugar plums from on high, rather than as a system through which We the People take care of ourselves.

DC Confidential holds up a mirror to the people. If we have the courage to look in that mirror, we will see a citizenry that goes along with being tricked and, as a consequence, suffers. If we see our own part in the dishonesty and stupidity, we can force the politicians to stop the tricks.

Recognizing that the selfishness inherent in the human nature of voters and officials could, unless tamed, bring bad government, the drafters of the Constitution quite consciously came up with a solution that worked in their time and long after. In recent decades, however, the Five Tricks have rendered that solution ineffective. We need to implement a solution that works for our times.

With voters frustrated with the government in Washington and members of Congress frustrated with voters and Congress itself, we have come to a crossroads at which we can stop the tricks. This would be a constructive response to the anger that Americans from across the political spectrum feel toward politicians. To point the way, I wrote this book.