

CATO HANDBOOK FOR CONGRESS

POLICY RECOMMENDATIONS FOR THE 108TH CONGRESS

CATO
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1. Introduction

Seven years ago, President Bill Clinton informed the nation in his State of the Union address that the “era of big government” was over. It now appears that his pronouncement may have been premature. Turning Clinton’s statement on its head, Sen. Charles Schumer (D-N.Y.) wrote in December 2001, “The era of a shrinking federal government has come to a close.” Schumer was hardly alone. Well before the wreckage of the World Trade Center had stopped smoldering, such pundits as Francis Fukuyama and George Will were eagerly heralding the “fall” of libertarianism and the “death” of small-government conservatism. September 11 had proven—had it not?—the necessity of a muscular central government with sweeping powers. The wave of corporate scandals beginning with Enron’s collapse had proven it again by demonstrating the need for robust regulation to comfort increasingly skittish investors.

In light of this new conventional wisdom, it might seem anachronistic, even quaint, to echo President Reagan’s famous claim that “government is not the solution to our problem; government *is* the problem.” Who, in these chaotic times, could seriously suggest that we need, not larger and more flexible government, but fewer federal programs, less spending, fewer regulations?

Well, the Cato Institute. Not merely because we have been committed to the principles of limited government, respect for individual rights, and open markets since our inception, but because the new orthodoxy is grossly at variance with reality. Our military and intelligence forces must, of course, focus their full energies on dismantling the al-Qaeda terrorist network and preventing any future attacks against the homeland. But neither public sentiment nor the public good demands a wider scope for government in general. If anything, the great challenges the United States now faces require, more than ever, that its government respect the boundaries set by the Constitution, so that it may focus more vigorously on its core functions.

As poll watchers well know, there was a paradoxical surge of public trust in government following the attacks of September 11, 2001, just

when the failure of government to carry out its most central obligation—the protection of the homeland—had been made terrifyingly clear. Perhaps the rise in trust can best be interpreted as a sort of prospective vote of confidence, a reflection, not of our belief in what government had been doing, but in our expectation of its capabilities when put to the test. Optimism has its limits, however, and the most recent data show that long-term trends toward lower public trust in government, and policy preferences favoring smaller government, are beginning to reassert themselves.

Plus Ça Change: The Public Mood

The 1960s and 1970s saw a continual decline in public support for more government activism, a trend that bottomed out in 1980. Support for activism then climbed throughout the 1980s, perhaps because of the prosperity of the era and the perceived success of the Reagan administration. Since 1990, however, the overall trend has been away from support for government activism; in recent years, the policy mood measure has declined steadily and about as steeply as it did during the 1970s. The Washington establishment seems not to realize that, as the 108th Congress convenes, the political mood of Americans is every bit as skeptical as it was in 1981 at the start of the Reagan revolution.

Conventional wisdom notwithstanding, data compiled by University of North Carolina political scientist James Stimson reveal no perceptible shift in this trend as a result of the 2001 terror attacks. Stimson's latest data, from 2002, indicate a continued move away from support for expansive government. The evidence also indicates a renewed decline in public trust in the federal government. For many years survey researchers have asked citizens how much they trusted the federal government to do the right thing. The proportion that answered “just about always” or “most of the time” provides a rough measure of public trust in the federal government. Trust has declined most of the time since its historic high point in the 1960s.

About a month after September 11, Princeton Survey Research Associates posed the trust question to a sample of Americans. They found 57 percent of those polled trusted the federal government to do the right thing “just about always” or “most of the time”—strikingly higher than the recent trend. But this trust soon faded: the same question posed in May 2002 showed that only 40 percent of respondents trusted the federal government. This fits well with a public mood skeptical of expanded

federal power. After all, a public that trusts government less and less will hardly demand that it do more and more.

The willingness of a frightened polity to sacrifice civil liberties for the sake of increased security has also ebbed. Early in 2002, a Gallup/CNN/USA Today poll found that 47 percent of those polled thought the government should take all necessary steps to prevent terrorism even if the respondent's civil liberties suffered; 49 percent opposed such steps if the price included their basic civil liberties. By June 2002, 56 percent opposed preventing terrorism at the cost of civil liberties, and 40 percent supported "all necessary steps" against terrorism. Americans seem to be moving back toward their pre-September 11 views on civil liberties.

On a wide variety of issues, citizens are increasingly willing to seek innovative private-sector solutions to problems government has failed to ameliorate. An annual Phi Delta Kappa/Gallup poll on school choice found a dramatic leap in support for vouchers: a majority of those polled would now support a proposal to "allow parents to send their school-age children to any public, private, or church-related school they choose," with government paying part or all of the tuition. Perhaps most surprising, a Cato Institute/Zogby International poll conducted during the stock market slump in the summer of 2002, mere weeks after news of the WorldCom scandal broke, found that more than 68 percent of likely voters favored "changing the Social Security system to give younger workers the choice to invest a portion of their Social Security taxes through individual accounts." Clearly, the prophets of a new "era of big government" are less skilled at gauging voter opinion than they are at projecting their own policy preferences onto the electorate.

The Beltway Cocoon

What explains this massive disparity between what the public wants and what pundits and elected officials seem to think the public wants? In part, it may simply be that the panicked call to "do something" and the resurgence of faith in government following the attacks on New York and Washington, D.C., understandably made a more palpable impression on most observers than the cooling off that followed. The more troublesome explanation, though, is that there exists in Congress a systemic bias toward seeing the expansion of government as a solution to almost every problem. That bias is not a fluke but a direct consequence of the current structure of American electoral politics.

Whereas the Founders of the American republic envisioned a government of citizen legislators for whom public service would be a solemn but *temporary* charge, we now see a regime composed almost exclusively of professional politicians. It was not always this way: average congressional tenure has risen steeply over the past century. Chief among the culprits responsible for this change is the huge and growing advantage enjoyed by House incumbents, who in recent years have seen reelection rates rise above 98 percent. In addition to all the traditional privileges afforded incumbents—a staff devoted to constituent service, the power of franking, access to Congress’s television studio, to say nothing of the ability to name hospitals and highways after oneself—sitting legislators are now protected by increasingly stringent campaign finance laws, which limit the ability of challengers to overcome those advantages through vigorous political speech. Even redistricting, which historically led to dozens of more competitive congressional races, has deteriorated into a bipartisan, computer-driven process of incumbent protection.

Incumbent advantage leads to a vicious cycle, wherein the most competent potential challengers are deterred from entering contests, except those for open seats, further tightening the incumbent’s hold on power. As incumbent protection drives up average tenure, the amount of time one must be willing to commit to politics in order to build support or secure an influential committee chair also increases. Decades of this process have transformed politics into a game worth playing only for those determined to make a career of it.

This may not be entirely bad: some such people may just be unusually committed to public service. But whatever their motives, those who find the prospect of spending their lives in government attractive are also likely to have an inflated view of the role and importance of the state in American life. An old story about the chess genius Bobby Fischer has him interrupting a conversation about politics between some fellow players with the demand, “What’s that got to do with chess?” Entrenched political classes are afflicted with a parallel sort of myopia. For them, discussion of any public benefit bubbling up from civil society or the private sector provokes the response, “What has that got to do with a new federal program?” To promote real political leadership, it will probably be necessary to change the institutional constraints that give rise to that kind of tunnel vision. In the meantime, however, legislators who sincerely desire to serve the public trust must force themselves to notice this pervasive bias and to overcome it.

Terror and Scandal

The two developments most frequently cited as evidence for the necessity of enlarging government power are the War on Terror and the spate of corporate accounting scandals that began with Enron's collapse. Legislators have been eager to propose new laws intended to combat both terror and corporate malfeasance, but there has been far less examination of how existing laws contributed to both problems. While new laws may in some instances be both necessary and proper, we should put first things first. Before we contemplate what else we can do to make things better, we ought to ask what we may already be doing to make things worse.

Crooked CEOs are wholly responsible for defrauding investors, but as William Niskanen observes in Chapter 22, legal incentives increased both the likelihood of the bankruptcies that fraud was intended to cover and the lack of managerial accountability that made the fraud itself possible. Biases in the tax code encourage corporations to take on excessive debt and to compensate CEOs in the form of stock options. Since option holders can win big on a dramatic rise in the price of their companies' stock, but lose nothing if it drops further below the exercise price, options encourage them to take larger risks than they otherwise might. Moreover, corporate governance rules—an inscrutable tangle of federal securities laws, state regulations, and policies particular to each company—have left managers increasingly insulated from the shareholder scrutiny and control that might check unsound business practices. In the long term, fixing these structural imbalances will do more to prevent future scandals than will parading a few handcuffed CEOs before the evening news cameras.

Of course, when malfeasance does occur, there is surely a place for government in punishing deception. However, instead of asking why the Securities and Exchange Commission failed to use its already ample powers to catch that deception earlier on, Congress, eager to demonstrate its “toughness,” tipped the balance too far in the other direction by effectively criminalizing corporate risk taking and created a redundant Accounting Oversight Board of dubious constitutionality.

The government's response to terror has in many ways been equally unreflective. There has been no serious examination of how government failed on September 11. We have not yet had an independent investigation of intelligence and other failures. But we know that poor communication between intelligence agencies led to the neglect of numerous warning signs that an attack was imminent. We know that the Immigration and Naturalization Service was not keeping track of people who entered on temporary visas. We know that for more than a year, both before and

after September 11, the FBI kept 10 agents employed conducting a full-time wiretap of a New Orleans brothel. We know that at the moment the planes crashed into the World Trade Center, the president of the United States was in an elementary school classroom in Florida—a striking example of the federal government’s loss of focus on its essential functions in an endless and diffuse morass of programs.

It would be natural to conclude that federal law enforcement has used its existing powers ineffectively—perhaps because it has been forced to squander its energies on prying in the bedrooms of adults, breaking down the doors of sick people who smoke marijuana, and carrying out police functions that both intelligent policy and constitutional fidelity demand be left to the states. Instead, Congress’s response has been to fiddle a bit with the Federal Emergency Management Agency and the INS and create new layers of bureaucracy—apparently on the theory that nothing speeds along the smooth flow of information like more red tape—while leaving the major structural problems unaddressed. Instead of finding ways to make better use of existing police and intelligence powers, it has recklessly added to those powers. It is almost as though endless discussions of the “tradeoffs between liberty and security” have led us to infer that constricting liberty automatically increases security. Yet as Robert Levy and Timothy Lynch argue in their analyses of current threats to civil liberties in Chapters 12 and 13, proposals to introduce a national ID or to try “enemy combatants,” as determined via executive fiat, by military tribunal would do little to make Americans safer. They would, in fact, have only one absolutely certain effect: the evisceration of citizens’ rights to privacy and due process.

No less troubling is our newly bellicose approach to foreign affairs. The kind of hysterical overreaction to hypothetical worst-case scenarios that was once the exclusive province of the most radical fringe of the environmental movement has apparently found a home at the heart of the current administration. At a time when we have more than enough proven threats with which to cope, advocates of “preemption” would have us swing erratically from perceived enemy to perceived enemy. This disastrous prescription would blur our collective focus, undermining our efforts to break the back of the terrorist networks that are our most pressing concern, and, indeed, swelling their ranks. Osama bin Laden would surely like nothing better than an American attempt to establish an imperial caliphate in the heart of the Muslim world; the administration’s reasons for sharing his eagerness are opaque.

Conclusion

Fidelity to our founding principles of respect for civil liberties and limited government is easy when times are easy, as they were through much of the tech boom of the 1990s. The true test of our faith in those principles comes now, when we are beset by diabolical assaults from without and economic turmoil within, when public anxiety may temporarily make it seem expedient to put those principles aside.

We know that the Constitution is functioning properly when it frustrates us. Bland and innocuous speech has little need of constitutional protections; the First Amendment exists to safeguard the contentious, provocative, and even offensive speech that stirs censorious impulses. By the same token, the importance of paying scrupulous deference to the Constitution's limits on federal power, of respecting its careful system of checks and balances, is greatest precisely when the temptation to flout them is strongest. The enemies of freedom have made their horrifying statement already. By demonstrating a commitment to the core ideals of a constitutional republic, the defenders of freedom now have an opportunity to make theirs. This *Handbook* provides the policy vocabulary from which that statement can be constructed. In these pages, our scholars survey the major issues confronting the 108th Congress and provide concrete recommendations with the goal of preserving both the security to which Americans are entitled and the freedom that serves as a beacon to the world and a reproach to our enemies.

Suggested Readings

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