

1. *Introduction*

The years since the 1994 election have been a great disappointment for those people who thought that election heralded a rebirth of limited government. Since that election the federal budget has grown and the scope of federal power has expanded. The 105th Congress alone passed the largest highway-pork bill ever, revived flagging federal support for arts programs, brought farm subsidies back to life, widened federal involvement in local schools, gave another \$18 billion to the International Monetary Fund, and loaded everything but the kitchen sink into a 4,000-page budget bill.

Anyone who didn't realize it before now must surely now recognize that there are systemic forces driving government growth. It seems to be the nature of democracy that those who seek power and privilege from government are more energetic in the political arena than those who seek only to be left alone. That reality has been described many times. Thomas Jefferson wrote, "The natural tendency of things is for liberty to yield and government to gain ground." The public choice economists have explained how every government program provides benefits to a few people while diffusing the costs over all taxpayers or consumers. Congress is more likely to hear from those who receive the concentrated benefits than from those who pay the diffused costs.

In *The Culture of Spending*, James L. Payne quantified the situation in which members of Congress find themselves: At 14 randomly selected appropriations hearings, there were 1,060 witnesses, 1,014 of whom supported the programs in question, while only 7 opposed them. Even members of Congress committed to limited government will find it difficult to remember their commitment after such a constant litany of pleas for government services. Indeed, two Cato Institute studies found that senior members of Congress vote for more taxes and spending than do junior members.

Milton and Rose Friedman argued in *The Tyranny of the Status Quo* that Congress typically debates a new program at some length. But after

the program is implemented, subsequent Congresses debate only the amount by which its budget should be increased. And in the case of “entitlements” programs, members of Congress tend only to wring their hands about “uncontrollable” growth.

The nature of government is to grow. Only rarely can a sustained assault by the nonpolitical forces of civil society present a successful challenge to the entrenched interests of political society. But the absence of a truly reprehensible state against which to rebel, as in Eastern Europe and South Africa, or a looming fiscal collapse, such as those that fostered reform in New Zealand and Argentina, should not blind us to the real costs of excessive government.

One obvious cost of our gargantuan government is reduced economic growth. In a world of global markets and rapid technological progress, we struggle along with annual growth rates far below what we achieved from World War II until the mid-1970s. With less taxation and less regulation, we could be far wealthier. While we are indeed a wealthy society, and more prosperous than we were only a generation or even a decade ago, most Americans would appreciate the greater comfort, cheaper travel, better health care, and all the other benefits of the greater wealth that would be produced with a less burdensome government.

Another cost is the loss of our freedom. We still live in one of the freest countries in the world, but each new government program takes just a little of that freedom away—the freedom to spend our money as we choose, to go into the businesses we choose, to negotiate with our employers over compensation and benefits, to choose the way we live our lives. Some government programs, of course, take away large parts of our freedom—such as the freedom to choose how much to invest for our retirement and where to invest it, or the freedom to choose the schools that are right for our children, or the freedom of doctors and patients to choose appropriate medicines.

A related cost of big government, but one not so often recognized, is the harm it does to morality and responsibility. Expansive government undermines the moral character necessary to both civil society and liberty under law. Too many people in Washington want to treat Americans as children—or grandchildren, as Vice President Gore infamously put it—who can’t be expected to manage their own lives. To be an adult is to take responsibility for one’s own actions and for the consequences of those actions. The values of work, thrift, sobriety, prudence, fidelity, and self-reliance are undermined when government undertakes to provide for our children, our job training, our moral development, and our retirement.

As it takes away money, liberty, and responsibility, the growth of government necessarily shrinks civil society. Civil society is that whole network of relationships among people, from families to businesses to churches and synagogues to charities and nonprofit associations, that is formed on the basis of consent. It is contrasted with political society, or government, the distinguishing characteristic of which is coercion. When government spends more money, assumes new functions, or forbids peaceful private actions, it narrows the realm of civil society and thus reduces the ability of people to come together to accomplish their mutual goals. Communitarians who deplore the decline of community and cooperation should consider looking to big government for an explanation.

Controlling Government

The Constitution of the United States is the best device ever created for limiting government. It was designed by remarkably wise men to solve the problem that had vexed lovers of freedom for centuries: how to establish a government that could protect individuals from each other without giving it the power to take away their freedom. The Constitution provided for a federal government that would protect the United States from foreign enemies, guarantee the citizens of every state a republican form of government, protect freedom of trade among the states, issue a common currency, and do very little else. The basic functions of punishing criminals and enforcing contracts were left to state and local governments. The challenge was to create a federal government strong enough to accomplish the tasks for which it was intended but constrained by the Constitution from assuming additional powers.

Over the years, however, we have let the federal government exceed the bounds that the Founders wisely placed on it. We have moved from James Madison's statement on the floor of Congress in 1794 that he could not "undertake to lay his finger on that article of the Federal Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents" to Franklin Roosevelt's 1935 plea to the House Ways and Means Committee, "I hope your committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation." Today, Congress has gotten into the habit of hardly bothering to search the Constitution for authority before passing legislation.

The Constitution divided power between the branches of the federal government, and between the states and the federal government. One of the values of federalism, of course, is that it keeps power closer to the

people and allows the 50 states to experiment with policies that best meet the needs of their citizens. With free movement of people between different jurisdictions, the states to some extent compete to attract citizens by providing the best laws. About 50 years ago, the need to confront the problem of racist laws in some states led to an increase in the exercise of power by the federal government. The lingering effects of that struggle discredited “states’ rights” and federalism, and federal power continued to grow beyond that necessary to guarantee individual rights in the states. With the ugly history of state-sponsored racism behind us, restoring proper limits on the federal government should now be the most urgent task for those who want to live in a world characterized by liberty and the rule of law.

If we wish to live once again under limited government—and we believe the American people do—then the Constitution is our guide to getting there. Congress should examine every proposed piece of legislation and every existing agency and law in the light of the delegated, enumerated, and thus limited powers granted it by the Constitution. It is important to not get caught up in partisan battles, in ephemeral and essentially minor issues, but rather to step back, get a sense of perspective, and begin to make American public policy conform to the Constitution and its design for limited government.

Although this is not a Handbook for the Supreme Court, we urge the Court as well to remain mindful of its obligation under the Constitution to protect the liberties of the people from intrusion by the political branches. As Alexander Hamilton wrote in *Federalist* no. 78,

Where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. The prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the tribunals to adhere to the latter and disregard the former.

If members of Congress conclude that the powers granted to them under the Constitution are inadequate for undertaking the tasks that ought to be performed by the federal government on the eve of the 21st century, they should abide by the rule of law and propose amendments to the Constitution granting them the desired new powers. Believing that the strength of a federal system is that it divides power and offers a natural scope for experimentation, we would likely oppose such a request for new powers;

but the debate over Congress's power would be in keeping with the amendment process established in the Constitution.

Eternal Vigilance

Thomas Jefferson warned us that “the price of liberty is eternal vigilance.” A constitution of delegated, enumerated, and thus limited powers is important for constraining government and protecting liberty. But the commitment to liberty must be sustained by the people and consistently conveyed to their elected representatives. In our comfortable modern world we have apparently forgotten the need for eternal vigilance. A vigilant people would have been outraged last January by the utterly promiscuous view of the federal government displayed by President Clinton in his State of the Union Address. It seemed that there was no interest too large or too small to escape the president’s attention, from a massive funding increase for the International Monetary Fund to federally funded after-school programs. The speech promised such things as 100,000 new teachers in school districts across the country, an end to social promotion in schools, mandated time off to meet with your child’s teacher, higher tobacco taxes, more environmental regulation, more local prosecutors, more health care regulation, more border guards, more job-training funds, more regulation of political speech, free television time for political candidates, and a ban on human cloning research.

Sadly, congressional Republicans have adopted too much of that promiscuity. The speaker and the Senate majority leader led their colleagues late last year in hailing Congress’s passage of funding for 100,000 teachers for local school districts. Despite their rhetorical devotion to the Tenth Amendment, Republicans have federalized everything from marriage law to building Boys and Girls Clubs to penalties for church burning and distribution of “date rape drugs.” And the Omnibus Consolidated and Emergency Supplemental Appropriations Act was no less promiscuous than President Clinton’s State of the Union Address. That \$520 billion package included such gems as

- a revival of the mohair subsidy program,
- \$250,000 for research on caffeinated gum,
- \$100,000 for Vidalia onion research,
- \$2.5 million for the Office of Cosmetics and Color,
- \$20 million to “limit domestic competition” in Alaskan fishing,

- \$40 million for a new Gulfstream executive jet that the FBI never asked for,
- a sixfold increase in the counterdrug budget of the Agricultural Research Service,
- \$2 million for a magnetic levitation project in Blacksburg, Virginia,
- an extension of the hunting season in Mississippi,
- \$18 billion for the International Monetary Fund, and
- \$25.8 billion for highways on top of the earlier budget-busting \$219 billion highway bill.

Sens. John McCain and Daniel Patrick Moynihan pointed out that no member of Congress could possibly know what was in that bill, making a mockery of representative government and the deliberative process. Moynihan noted that the traditional rules of Congress have broken down: Congress failed to pass a budget resolution in 1998. Items that were not passed by either house may now be added in conference committee. Legislative riders on appropriations bills have become rampant. The Senate has “deemed” bills passed before they are received from the House of Representatives. Members of Congress who rightly insist that the president obey the law should apply the same standard to themselves.

Abuses of the law have become far too widespread. Many Americans noticed that no one was punished for the outrages at Waco and Ruby Ridge; in a more honorable era, top law enforcement officials would have resigned—or been fired—after such egregious misconduct. Other abuses of civil liberties are more subtle. Many members of Congress, with wide support in the media, have tried to outlaw criticism of congressional candidates within 60 days of an election, or indeed to forbid outside groups entirely from expressing their opinions of issues and candidates during the election season. Congress has effectively barred senior citizens from paying their own money for Medicare-covered services from any doctor who also receives money from Medicare. Money-laundering rules impose high costs on people doing business internationally, and the increasingly severe civil forfeiture rules allow police to seize property on an unprecedented scale, often from innocent owners.

Restoring Limited Government

One of the reasons for low voter turnout in recent elections is a widespread sense that government is out of control. Elections don’t change public policy—the voters have repeatedly voted for smaller government

over the past 30 years—and both Congress and the president simply ignore the law when it is convenient.

But the preservation of freedom, civil society, and the rule of law requires that both elected officials and voters take more seriously the need to restore limits on government. Our first task is to take the Constitution seriously, as Roger Pilon argues in Chapter 3. We need to recall that the Constitution established a federal government of powers that were *delegated* by people who possessed individual rights prior to forming the government, *enumerated* in the Constitution, and thus *limited* in scope. Every member of Congress, before voting on a bill, should ask, “Where in the Constitution is the federal government authorized to take this action?” And every citizen, when reading about a proposed law, should ask the same question.

The Constitution is the blueprint for limited government. This *Handbook* is offered as a more detailed guide to a reform agenda. The chapters of the *Handbook* proceed logically through the vast expanses of the federal government with suggestions for comprehensive change. In Chapter 2, Tom G. Palmer lays out the historical development of liberty and limited government and shows what a rare and valuable treasure they are. In Chapter 3, Roger Pilon expands on the need for adherence to the Constitution.

In the next section, our “Urgent Action Agenda,” we recommend five major reforms that need urgent attention: Social Security privatization, fundamental tax reform, protecting political speech from those who would outlaw it, eliminating corporate welfare, and dealing with the Year 2000 problem. Then two needed structural reforms are suggested: an end to the delegation of legislative powers to unelected, unaccountable bureaucrats and limits on the terms of members of Congress.

The next section offers an “abolition agenda.” When the federal government has so far exceeded its constitutional bounds, the goal of members of Congress should be not simply to trim federal spending but to abolish agencies and departments that are not authorized in the Constitution, or have failed in their purpose, or have outlived their usefulness, or are an unwarranted expense.

The chapters in the following section deal with a troubling trend in contemporary policy: a growing infringement on civil liberties in America. From the Communications Decency Act to proposed “anti-terrorism” measures, from the restrictions on election-related speech to intrusions on our privacy, from the assault on the rule of law in the name of discouraging

smoking to the narrowing of protections for criminal defendants, the federal government is restricting too many of our traditional freedoms. Both liberals and conservatives should be concerned about the intrusion of federal power into every corner of society.

In the next few sections, Cato's scholars recommend reforms in the whole range of domestic policy—health care, welfare, regulation, the environment, and more. Finally, we return to the main constitutional function of the U.S. government—foreign and defense policy—and offer some recommendations for keeping Americans at peace and safe from foreign threats, which these days are less likely to be from other great powers than to involve the use of weapons of mass destruction by terrorists.

Conclusion

For those who go into government to improve the lives of their fellow citizens, the hardest lesson to accept may be that often there is no good reason for Congress to *do* anything about a problem—such as education, crime, or church burning. The advice given here may seem negative. Critics will object, do you want the government to just stand there and do nothing while this problem continues? Sometimes that is exactly what Congress should do. Remember the ancient wisdom imparted to physicians: First, do no harm.

Members of Congress must recognize, understand, and then defend the limited role of the federal government. It isn't just the Supreme Court that is enjoined to enforce the Constitution; the president and members of Congress also take an oath to uphold the Constitution, and they should also take care to see that the government's actions are not just prudent but constitutional. We are all tempted from time to time to demand something of government—limits on speech we find offensive, a subsidy for our business, compensation for a failed investment, or whatever. That's why we agree at the constitutional level that none of us will be able to use government in that way. There is no higher duty for members of Congress than to remind us of the constitutional limits on government when we forget them.

Suggested Readings

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