

## Limited Government after 9-11

by Tom G. Palmer  
and John Samples

**W**hat are the likely long-term effects on American government of the terrorist attacks of September 11? What do changes in polls about “trust in government” mean? And how should advocates of limited government respond to the changes brought about by the attacks?

Not surprisingly, some observers see the ultimate outcome of the attacks as bigger and more powerful government. For example, Sen. Charles Schumer (D-N.Y.) declared that “the era of a shrinking federal government is over” and proposed taking advantage of the attacks to create a “‘new’ New Deal.” Comparing the present with the mid-1930s, Schumer said, “For the foreseeable future, the federal government will have to grow.”

Senator Schumer is quite pleased at the prospect. Regardless of whether a “new” New Deal is appropriate to defeat terrorism, the attacks may spur increases in government power. Historical studies show that government tends to grow both in power and in size during war. World Wars I and II and the Cold War provided tremendous opportunities for growth in government power and size, as historians Robert Higgs (in his book *Crisis and Leviathan*) and Charlotte Twight (in her new book from the Cato Institute, *Dependent on D.C.*) have thoroughly documented.

As evidence of the possibilities, we have only to turn to President Bush’s State of the Union address, in which he promised, “We’ll increase funding to help states and communities train and equip our heroic police and firefighters.” The heroism of police

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Former Federal Trade Commission chair James C. Miller III (right) moderates a debate on the Microsoft antitrust case. Attorney Kenneth Starr (left) and Jeffrey Eisenach of the Progress and Freedom Foundation squared off against Cato’s Robert Levy (center) and Jonathan Zuck of the Association for Competitive Technology.

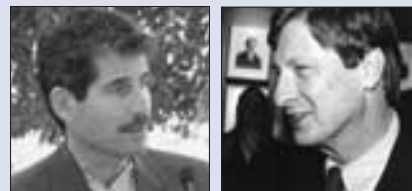
and firefighters in responding to the terrorist attacks on the World Trade Center and the Pentagon is presented as sufficient reason to promote federal funding (and inevitably some control) of what has always been considered a responsibility of local government. According to the president, “Stronger police and fire departments will mean safer neighborhoods.”

It gets worse. In a speech before the National Cattlemen’s Beef Association, the president observed that “this nation has got to eat” and thus that farm subsidies are a national security issue: “It’s in our national security interests that we be able to feed ourselves. Thank goodness, we don’t have to rely on somebody else’s meat to make sure our people are healthy and well-fed.” If police and fire departments are to be federalized, and if paying cattlemen to raise beef is a matter of national security, what is to be left to local government or to the voluntary efforts of free people?

Virtually every special interest in Wash-

*Continued on page 12*

### In This Issue



Stossel, O'Rourke, May 9, p. 3

Niskanen on Bush	2
25th Anniversary Dinner	3
Ken Starr, P. J. O'Rourke, and James Woolsey at Cato	4
Perspectives on the war: Afghanistan, Iraq, and military tribunals	6
Studies: Argentina, Social Security, defense pork	10
Cato Calendar	9
New book: how government got so big	15
New book: globalization and the dead hand	15

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**AFTER 9-11** *Continued from page 1*

ington has been hard at work crafting specious justifications for more subsidies on the grounds that they will be helpful in combating terrorism. As White House spokesman Ari Fleischer noted, Washington is filled with an “unlimited number of groups coming out of the woodwork seeking money.” And Congress has responded. After September 11, a Congress determined to protect our nation moved quickly to increase the federal peanut subsidy by \$284 million. Americans can now rest assured that every additional peanut subsidized by the taxpayer will be another peanut at work fighting terrorism.

Additional vigilance will be necessary to combat such raids on the public treasury, but that’s the price of liberty. The budget analysts at the Cato Institute will be kept even busier than usual in the coming year.

## **In Government We Trust?**

Many pundits cite the surge in “trust in government” in the biennial National Election Studies poll taken after September 11 as evidence of a profound change in public attitudes toward government. Since 1958 the NES has asked Americans, “How much of the time do you think you can trust government in Washington to do what is right—just about always, most of the time, or only some of the time?” When the question was put to respondents after the terrorist attacks, 60 percent answered “just about always” or “most of the time”—a jump of 16 percentage points above the previous poll and the highest level in 30 years. Other polls showed similar responses, although levels have fallen in subsequent months. The sharp jump in public trust in government has been celebrated by advocates of expanding governmental power, after years of bemoaning low levels of public trust in government.

However, there seems to be little correlation between “trust in government,” as measured by the NES poll, and the actual size of government, attitudes toward the proper scope or use of governmental powers, or the functioning of government generally. As David W. Moore, senior editor of the Gallup Poll, pointed out recently, “For

all of the punditry’s angst about the allegedly ‘low’ levels of trust, there appear to have been no demonstrable consequences to the operation of democracy in America.”

A recent poll by ABC News gives us a more useful picture of public trust in the federal government. The NES poll simply asks respondents if they trust the federal government to do what is right. The ABC News poll took a different tack and asked half the respondents a question about national security and half the respondents a question about domestic policy. The responses were markedly different: 68 percent said they trust the government to do what’s right “when it comes to handling national security and the war on terrorism,” and only 38 percent indicated the same level of trust “when it comes to handling social issues like the economy, health care, Social Security, and education.” Another ABC News poll showed little change after September 11 in attitudes about the role of government, with those who prefer “smaller government with fewer services” going from 59 percent to 54 percent and those who prefer “larger government with many services” going from 34 percent to 41 percent. If they persist, these changes may be significant, but they may also be ambiguous, for the reasons spelled out below.

The public may now have more trust in the federal government’s provision of national security, which may seem somewhat odd after such a disastrous failure of the federal government to do one of the core tasks set forth in the Constitution—to provide for the common defense. But expressions of “trust” (and even the slight upward tick in desire for “more government”) can quite plausibly be interpreted as statements about the willingness of respondents to delegate powers to government to achieve certain limited ends, namely defense of the country from terrorists. That is, such responses may be less of a prediction about the likely success of government action than a statement about the willingness of citizens to entrust government with certain limited powers.

Poll results echo the constitutional faithfulness of the American public. The Constitution grants the federal government the power to provide for the common defense.

As such, national security is among the proper functions of the federal government, as enumerated in the Constitution. There is a reason that art. 1, sec. 1, does not state, “All legislative Powers shall be vested in a Congress of the United States” but instead “All legislative Powers *herein granted* shall be vested in a Congress of the United States.” If a power is not granted in the Constitution, the federal government doesn’t have it. To make the point even more explicit, the Tenth Amendment quite clearly states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Precisely that idea of limited powers seems to show up in poll responses.

Many more Americans are willing to entrust the federal government with those powers necessary to defend them from terrorists than are willing to entrust Washington with greater authority over health care or education. And in this regard, at least, the events of September 11 seem to have had little effect on public attitudes. Advocates of expanded governmental powers eagerly claim that support for vigorous pursuit of terrorists should be translated into support for more and larger governmental programs and subsidies. But such grabs for money and power are transparent to most Americans, who are not taken in.

## **Governmental Size and Governmental Powers**

Even if changes in measures of “trust in government” do not indicate a sea change in public opinion about the proper powers of government, a national security crisis nevertheless provides countless opportunities to camouflage expansions of government power or spending as necessary for the common defense. That is all the more reason for advocates of limited government to distinguish between the size of government and the powers of government, matters that are often confused.

Government that is limited in power may expand or contract and yet remain limited. If another police officer is hired to stop criminals, that increases government’s size but not its powers. But if the police

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department is, in addition, authorized to arrest citizens for drinking wine or smoking marijuana, without hiring more officers, that increases government’s powers without increasing its size. A more powerful government is typically a larger government, but its size is a feature of its powers, not the other way around.

If Congress were to increase the military or intelligence-gathering budget of the federal government to meet new threats, that would represent an increase in the size of government but not its powers. But federalizing fire departments or calling additional “transfer payments” national security expenses represents an increase in government’s powers. In order to avoid seeing another American city shattered and thousands or millions of people killed, whether by hijacked planes or nuclear bombs hidden in suitcases, Americans support spending more resources on providing for the common defense. That may be a call for “more government” but not for more governmental power. The difference is important.

What Congress and the administration seem unwilling to do, despite majority support of the population, is to make choices. If we need to spend more on security and defeating terrorists, on what do we need to spend less? The answer from the politicians is, nothing. The political classes want to spend more money on everything. They are shirking their responsibilities.

There is a multitude of federal programs and exercises of power that are neither authorized by the Constitution nor, even if valued by some constituencies, comparable in value to the protection of our nation from terrorist attacks. Rather than simply increase spending on virtually all current federal programs, we should terminate or drastically cut at least some programs and transfer the funds to a constitutionally legitimate function of the federal government—defense of the lives, liberties, and property of citizens of the United States.

For example, the federal government spends nearly \$20 billion each year on a war against drugs that has jailed 400,000 offenders. All of those arrests have not stopped the use and abuse of drugs, the drug trade, or the crime associated with black-market exchanges. What’s more impor-

tant, catching pot smokers or catching people intent on blowing up airplanes? Drug enforcement agents with useful skills should be reassigned to apprehending terrorists, not peaceful drug users.

The Corporation for Public Broadcasting is budgeted to give \$375 million per year to “qualified public television and radio stations to be used at their discretion for purposes related primarily to program production and acquisition.” Some of that money is then used to support National Public Radio and the Public Broadcasting Service. Wouldn’t that \$375 million be better spent on training Defense Intelligence Agency agents to speak Arabic, Pushtun, and Farsi so that they could better monitor potential enemies and communicate with potential allies?

The federal government spends some \$87 billion per year subsidizing for-profit businesses through grants of “corporate welfare.” For example, the Agriculture Department gives farmers \$90 million a year to promote their products overseas. Wouldn’t that \$90 million be better spent on training and equipping intelligence agents who could infiltrate terrorist cells and give us advance warning of their murderous plans?

Taking constitutional government seriously means assigning resources efficiently to secure certain limited ends. Choices must be made. Advocates of limited government need to make those choices clear and to support eliminating spending and programs to free the funds and personnel to carry out government’s proper functions.

### Fulfilling Government’s Purposes within the Law

At the same time that supporters of limited government should encourage government to fulfill its proper role—including stopping terrorist attacks—the limits set by the Constitution must also be respected. The concluding clause of art. 1, sec. 8, of the Constitution grants Congress the power “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.” Laws should not be passed unless they are necessary—that is, without them the authorized powers of government could not be carried out at

all. And they must be proper—that is, government may not in executing its powers violate enumerated or unenumerated rights guaranteed by the Constitution. To say that the federal government is responsible for protecting us from attack does not authorize any and all actions in the name of fulfilling that purpose. Some of the recent proposals to change law enforcement procedures are clearly constitutionally questionable, including establishing military tribunals on American soil to try legal residents who are not citizens of the United States on charges of terrorism. The Fifth Amendment to the Constitution does not specify that only citizens shall have the right to due process of law or that an indictment from a grand jury is necessary only in cases involving citizens. It states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall *any person* be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation [emphasis added].

There are constitutional limits to what means are appropriate to combat terrorism. Americans should insist on those limits and not fear being branded as enemies for insisting on the application of the supreme law of the land. This is contrary to the message of Attorney General John Ashcroft, who stated in prepared testimony before Congress:

To those who scare peace-loving Americans with phantoms of lost liberty; my message is this: Your tactics only aid terrorists—for they erode our national unity and diminish our

*Continued on page 14*

# “It is time for the American government to stop robbing some to benefit others, jailing some to satisfy others, and arrogating to itself additional powers not authorized by the U.S. Constitution.”

**AFTER 9-11** *Continued from page 13*

resolve. They give ammunition to America's enemies and pause to America's friends.

Impugning the patriotism of anyone concerned about “phantoms of lost liberty” is not merely arrogant; it is repugnant. Ashcroft seeks to secure “national unity” by undermining and violating the very foundation of American unity, the Constitution of the United States, with its authorization of limited powers and its simultaneous limitation on the means appropriate to carry out those powers. The rule of law does not impede national security; ultimately it is our national security.

## **Individualism and the Pursuit of Happiness**

Sen. Edward M. Kennedy (D-Mass.) used the occasion of the New England Patriots' Super Bowl victory to offer a remarkable description of the war against the al-Qaeda terrorist network:

Since September 11, the courageous acts of countless Americans have set a new standard for the nation. Indeed, a new American spirit has been forged. That spirit is characterized by sacrifice, humility, and a refusal to quit in the face of adversity. At a time when our entire country is banding together and *facing down individualism*, the Patriots set a wonderful example, showing us all what is possible when we work together, believe in each other, and sacrifice for the common good [emphasis added].

The enemy, as Senator Kennedy sees it, is not intolerant fanatics bent on murdering those innocently engaged in the pursuit of happiness. The enemy is the very individualism that Osama bin Laden and his followers seek to destroy. In effect, the enemy is America itself. The senator from Massachusetts interprets the victory over the Taliban regime in Afghanistan as a case of “facing down individualism,” not facing down terrorists.

Others have also taken aim at Ameri-

ca's individualism. Televangelist Jerry Falwell blamed feminists, homosexuals, and civil libertarians for the attacks and stated, “What we saw on Tuesday, as terrible as it is, could be minuscule if, in fact, God continues to lift the curtain and allow the enemies of America to give us probably what we deserve.” Professor Lamin Sanneh of Yale University, a naturalized American citizen, stated, “By separating church and state, the West—and America in particular—has effectively privatized belief, making religion a matter of individual faith,” which, he said, “is an affront to the certainty of fundamentalist Muslims.” The solution? “The West needs to overcome its insistence that the nation-state must be secular to be legitimate.” Falwell, Sanneh, and Kennedy see American individualism as their foe.

The normally much more thoughtful columnist George F. Will concluded, “The events since September 11 have underscored the limits of libertarianism,” which he identified with the view that “freedom exists where government compulsion does not, and that freedom generally and easily trumps all other political goods.”

It seems not to occur to Senators Kennedy and Schumer, the Reverend Falwell, Professor Sanneh, George Will, and various critics of individualism and limited government that free people may band together in order to defend individualism, the right of each and every person to life, liberty, and the pursuit of happiness. That concept should not be so surprising. The rights to life, liberty, and the pursuit of happiness were, after all, the common good in defense of which the American Founders mutually pledged to each other their lives, their fortunes, and their sacred honor.

There is a reason why advocates of individual liberty are called libertarians. They have something in common: they believe that individual liberty is the common good and that defense of liberty from aggressors is justified as a collective effort. Subsidizing peanut farmers or cattlemen may be good for peanut farmers or cattlemen, but it is bad for taxpayers; it is not a common good. Throwing pot smokers into prison may be desired by certain busybodies

and bureaucrats, but it is not desired by pot smokers (or by plenty of other taxpayers); it is not a common good. Defending Americans from being blown up by fanatical terrorists is a common good. Under the American Constitution, government exercises certain delegated, enumerated, and therefore limited powers to secure the common good. As James Madison, the primary author of the Constitution, stated before the House of Representatives:

Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

The benefit of the people requires limited government. It is time for the American government to turn its formidable resources to protecting Americans and to stop robbing some to benefit others, jailing some to satisfy others, and arrogating to itself additional powers not authorized by the fundamental social contract, the U.S. Constitution. The events of September 11 should lead us to redouble our efforts to restore constitutional government, equipped with the powers and resources to protect us from aggressors but strictly limited to the exercise of enumerated powers through laws that are both necessary and proper, as the plain text of the Constitution so clearly demands. ■

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