



BY DAVID BOAZ

“Any administration running a multi-trillion-dollar government, with its fingers in every corner of our economy and society, needs oversight and investigation.”

Editorial Dividing Power

Power. That was the problem that worried the American Founders. How do you create a government strong enough to carry out its appropriate functions without setting out on a path to despotism?

Divided power became a cornerstone of the American system. The Founders sought to protect individual freedom and civil society by limiting and dividing power. As the country gets bigger and more complex, and especially as government amasses more power, the advantages of decentralization and divided power become even greater.

We once again have divided government in Washington. Cato chairman William Niskanen has argued that spending tends to be lower and war less likely with divided government. Certainly spending has risen much faster under a unified Republican government than it did during the previous six years under divided government.

Divided government works best when the separate branches check and balance one another. A Republican Congress gave President Bush a blank check for going to war in Iraq, and it failed to provide sufficient oversight of presidential decisions affecting homeland security and civil liberties. It is now imperative that members of Congress attend to their responsibilities.

Congress should investigate executive branch abuses. Rep. Henry Waxman (D-CA), the new chairman of the Government Reform Committee, complained a few months ago: “With few exceptions, Congress has abdicated oversight responsibility altogether. Republican Rep. Ray LaHood aptly characterized recent congressional oversight of the administration: ‘Our party controls the levers of government. We’re not about to go out and look beneath a bunch of rocks to try to cause heartburn.’”

Any administration running a multi-trillion-dollar government, with its fingers in every corner of our economy and society, needs oversight and investigation. Cato studies such as “Dereliction of Duty: The Constitutional Record of President Clinton” and *The Rule of Law in the Wake of Clinton* detailed many activities of the Clinton administration—executive orders that exceeded presidential authority, petty corruption by Cabinet members, Filegate, the Waco assault, the seizure of Elian Gonzalez, the sordid pardons—that received too little attention from congressional committees. But those GOP-dominated committees have been even less willing to investigate the activities of a Republican administration—such as the use of flawed intelligence in making the case for war in Iraq, “signing statements” that amend or negate laws, the secret wiretapping and mail-opening programs, and possible illegal inducements to get members of Congress to vote for the Medicare prescription drug entitlement. The new Democratic majority should not use its investigative powers to hinder necessary functions of government, but it should not shrink from its obligation to monitor the executive branch and expose abuses.

Congress should also rein in the president’s war powers. War is the most costly and dangerous activity governments undertake. That’s why the Constitution lodged the power to declare war in the most broadly representative body. But presidents have increasingly asserted their power to make war, and Congress has supinely acquiesced. As Gene Healy noted in 2001, “The Clinton administration espoused a view of executive war-making authority that was as unconditional and unconstrained as that claimed by any president in American history.” Although President Bush did ask Congress for authorization for military activities in Afghanistan and Iraq, Congress’s resolutions delegated full authority to the president to make his own decisions about war. To ensure that we remain a constitutional republic, not a presidential empire, Congress must reclaim its power under the Constitution to make such momentous decisions and its obligation to debate and vote on war measures.

Finally, Congress should stop the abuse of executive orders. Presidents have increasingly used executive orders to make law, a usurpation of both the legislative powers granted to Congress and the powers reserved to the states. Facing a Republican Congress, President Clinton used executive orders to create a 1.7-million-acre national park, impose environmental regulations, and wage war in Yugoslavia. President Bush has used executive orders to grant himself extraordinary powers to deal with terrorism. No matter what agenda the president seeks to impose by executive order, Congress should rein in this unilateral lawmaking. The body to which the Constitution delegates “all legislative powers herein granted” must assert its authority.

As for federal spending, the Democrats have “pledged to restrain spending,” in the words of a *Washington Post* headline, but they have also promised to spend more on homeland security, education, drugs, and more. So here’s an opportunity for President Bush to demonstrate the benefits of divided government: After six years he could start vetoing excessive appropriation bills. That’s one power the president actually has.

The president should check the abuses of Congress through the veto. Congress should check the abuses of the president through budget and oversight authority. Republicans who are inclined to rally around President Bush and resist the “encroachments” of a Democratic Congress should ask themselves: Will I be happy when President Clinton II or President Obama exercises the powers that President Bush has asserted? Too many in both parties gleefully accumulate power when they are in office, forgetting that all those powers will be available one day to officeholders who will wield them in ways not previously imagined.