

# **1. Introduction**

We have just been through a most unusual election year, and the direction of public policy seems less clear than it usually is after a presidential election. We know that Americans are dissatisfied with the direction of the country and were not happy with the choices presented to them in November. Still, as we noted in the 2009 edition of the *Handbook*, we can take some satisfaction in observing that something normal happened: a party that had given Americans overregulation, slow growth, and endless (if limited) war, led by an unpopular candidate, was defeated. A republic requires that failed parties be turned out of office. The American Founders believed firmly in the principle of rotation in office. They thought that even successful officeholders should go back home to live under the laws they enacted after a short period in office. No doubt, more members of the 114th Congress would have been given that privilege were it not for the vast complex of laws and regulations and subsidies that protect incumbents.

Once again, the Republican Party has unified control of the House, the Senate, and the White House. The last time that happened, during the George W. Bush administration, they delivered massive overspending, the biggest expansion of entitlements in 40 years, centralization of education, a war that has lasted longer than World War II, an imperial presidency, civil liberties abuses, the intrusion of the federal government into social issues and personal freedoms, and a \$700 billion bailout of Wall Street and the automobile industry. Voters who believe in limited government had every reason to reject that record.

At the Cato Institute, we stand firmly on the principles of the Declaration of Independence and the Constitution—on the bedrock American values of individual liberty, limited government, free markets, and peace. Throughout our 40 years, we have been willing to criticize officials of both parties when they sought to take the country in another direction. But we have also been pleased to work with administrations of both parties when they seek to expand freedom or limit government. For example, in

recent years, we worked with the Clinton administration on free trade, welfare reform, and a few tentative steps toward Social Security reform; with the Bush administration on tax cuts, the initial response to the 9/11 attacks, health savings accounts, immigration reform, and Social Security accounts; with the Obama administration on government transparency, surveillance reform, immigration, criminal justice, and the Trans-Pacific Partnership. We look forward to opportunities to work with the Trump administration should it move to reverse the worst mistakes of the Obama years or otherwise advance policies that enhance peace, freedom, and prosperity. Of course, our scholars will not hesitate to criticize unwise, imprudent, or dangerous initiatives from any source.

We urge members of both parties to remember a few policy proposals that have recently been more popular than either presidential candidate or either political party:

- balancing the federal budget,
- school choice,
- legalizing marijuana,
- marriage equality,
- repealing the Affordable Care Act,
- a path to citizenship for illegal immigrants, and
- trade agreements.

The next section elaborates on some of the main policy challenges discussed in this volume. Subsequent sections address broad areas of concern. And near the end of this introduction, I outline four major tasks for Congress.

## ***Policy Challenges***

This edition of the *Cato Handbook* contains 80 chapters of policy advice on a wide range of issues. Here I'll touch on just a few.

### *Peace and Security*

The historical foreign policy of the United States, going back to the Founders, was expressed by Thomas Jefferson in his first inaugural address: "Peace, commerce, and honest friendship with all nations—entangling alliances with none." In the 20th century, we moved away from that historical noninterventionist stance to a policy of global intervention. For the past 25 years, we have been involved in a seemingly endless war in the Middle East. Wars that began with limited purposes—to block Saddam

Hussein's takeover of Kuwait and to retaliate against al Qaeda and the Taliban in Afghanistan for the 9/11 attacks—have metastasized into a regionwide campaign of regime change and nation building.

During his campaign for president, Donald Trump criticized this “failed policy of nation building and regime change.” He promised that in his presidency, “war and aggression will not be [his] first instinct.” As president, Trump should work with Congress to undertake a comprehensive review of the foreign policy of the United States, the most secure power in world history, protected by two oceans and friendly neighbors. In an interconnected world, with terrorism and nuclear weapons, military conflicts should be kept limited and regional, not escalated through super-power involvement.

In Chapter 65, Christopher Preble and Trevor Thrall recommend a foreign policy of prudence and restraint. More broadly, in Chapters 9 and 66–77, Cato's defense and foreign policy scholars explore terrorism, regional issues, and a defense budget appropriate for a constitutional republic.

### *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. That trend has only worsened with the very slow growth that followed the Great Recession. We are by any measure a very wealthy country. Our gross domestic product (GDP) has risen every year, with the exception of a slight drop during the recession. But Americans know that our economy is not working as well as it should. Even before the recession, they feared that their children might not live as well as they did. This slow growth matters most to those who are not yet well off.

In Chapter 6, Brink Lindsey examines the growth slowdown. In Chapter 7, he proposes one particular way to raise the growth rate that should appeal across the political spectrum: taking on “‘regressive regulation’—regulatory barriers to entry and competition that work to redistribute income and wealth up the socioeconomic scale.” Other chapters suggest more reforms that could increase growth, such as stabilizing monetary policy, reducing the burden of taxes and regulations, and reducing federal spending.

### *Health Care*

Health care has been a major issue in American politics for many years. Dissatisfaction with the Affordable Care Act of 2010 may have played a

role in several recent elections. America leads the world in medical innovation. Yet research indicates that much of what Americans spend on medical care, through both government programs and a private sector heavily dominated by government interference, offers no benefit to patients. As research also indicates, this is in large part because American health care is so often unsafe.

The fundamental problem with U.S. health care is that the consumer does not control the money spent in the sector; the system, instead, serves those who do control the money. For 70 years, government has been assuming greater control over consumers' health care dollars, either by giving workers' earnings to employers or by spending that money itself. When consumers lose control of their health care dollars, they lose control of their health care decisions. Consumers cease to be cost-conscious, and prices rise. Government decides what kind of health insurance we get, where we get it, and how doctors will practice medicine—and more patients end up falling through the cracks. The Affordable Care Act didn't do anything to take us off that path.

In Chapter 4 and Chapters 35–39, Michael Cannon proposes reforms that would make health care higher quality, more affordable, and more secure by putting patients in charge of their health care dollars and decisions.

### *Fiscal Reform*

Federal spending increased by more than a trillion dollars during the George W. Bush years, and then by another trillion dollars during the Obama administration. The national debt rose even more sharply, from \$5.7 trillion to more than \$10.6 trillion under Bush, and it has almost doubled again under the Obama administration. Trends like this are unsustainable, as Jeffrey Miron notes in Chapter 31. Yet elected officials continue to promise more spending on everything from new weaponry to college tuition to infrastructure. Congress and the administration must find a way to rein in this profligacy. Budget-cutting ideas can be found throughout this *Handbook*, most notably in Chapter 32.

The current rates of spending don't yet reflect the acceleration of entitlement spending that is occurring as baby boomers start to retire. Entitlements are already more than 60 percent of the federal budget, and they continue to grow. The unfunded liability of Social Security and Medicare is nearly \$80 trillion, an unfathomably large number. Entitlement spending will accelerate as baby boomer retirement picks up in

coming years and America continues to age. Congress needs to think seriously about this problem. Are members prepared to impose the taxes necessary to fund such levels of transfer payments? Do we want that many Americans dependent on a check from the federal government? Eventually, the projected level of entitlements will not be feasible. Now is the time to make changes—rationally, rather than in a panic a few years hence. Chapters 4 and 35–40 discuss health care and Social Security reform.

### *Trade and Immigration*

Americans sense that our economy isn't working right. Too many of them look for some external force to blame, especially imports, outsourcing, and immigration. And in 2016 they found plenty of candidates ready to propose policies to restrict trade and immigration. That's the wrong approach.

If there's any topic that economists agree on, it is that free trade benefits the whole society. Free trade ensures that goods and services are produced at the lowest cost possible, benefiting consumers. It directs investors, entrepreneurs, and employees toward firms at which they can produce the most value and earn the most income. As trade barriers have come down since World War II, more people in more countries have been able to participate in the global economy and move out of poverty.

Immigration is more controversial, but it too has benefited this nation of immigrants. Immigrants move to the places where opportunities are greatest. They come as producers of goods and services for all Americans and as consumers of the things other Americans produce. Both free trade and immigration can cost particular people their jobs and investments, and that is a painful process. But so can technological development. The invention of farm machinery and the automobile destroyed millions of jobs, but it created more and better jobs. That's a continuing process. There is surely no point in the past—1900, 1950, 1975—at which we should have frozen technology and trade in an attempt to prevent future job losses. Nor is today such a point. The solution for suffering communities in the so-called Rust Belt is not the vain hope of bringing back lost jobs; the solution is to reduce tax and regulatory obstacles to business expansion and job creation.

The term “economic nationalism” has cropped up lately. It may sound good to many ears. Why wouldn't we want our nation's economy to succeed? But what does the term mean? *Wall Street Journal* columnist Bret Stephens answered that question recently:

In its milder form, economic nationalism means state subsidies for national-champion companies, giant infrastructure projects, targeted tariff protec-

tions for politically favored industries, “Buy American” provisions in government contracting, federal interventions against foreign takeovers of “sensitive” companies. . . .

In France, it has meant bailouts for failing industrial giants like Alstom. In Japan, it has meant 800% tariffs on imported rice, decades of blowout spending on airports, roads and bridges, and chronic hostility to immigration. Russia passed more protectionist measures in 2013 than any other country, according to the *Moscow Times*.

What do these and other countries that practice variants of economic nationalism have in common? France, where the state accounts for 57% of the economy, hasn’t seen annual GDP growth top 3% since the turn of the millennium. Japan, which has the world’s oldest population along with the highest debt-to-GDP ratio, experienced no fewer than five recessions between 2008 and 2015. Russia’s GDP contracted by 40% between 2013 and 2015. Its economy is now half the size of Great Britain’s.

Economic nationalism, in other words, means economic ruin—along with all the political favoritism, crony capitalism and inefficiency that Americans usually associate with Solyndra, the Synfuels Corp., or the Port Authority of New York and New Jersey.

That is not a road the United States should go down. Dan Ikenson discusses a smarter trade policy in Chapter 8, and Alex Nowrasteh points the way to immigration reform in Chapter 13.

## ***The Role of Federalism***

Defending the life, liberty, and property of Americans is the fundamental responsibility of the federal government. Clearly, that task requires the focus of the president, federal agencies, and Congress. A government that tries to do everything will do nothing well. Congress should read Article I, Section 8, of the Constitution, which lays out the powers granted to the federal government, and resolve to begin shedding tasks that are inappropriate for the federal government. A good place to begin is by shedding responsibilities that more properly belong to the several states.

Recent administrations have moved us away from our heritage as a federal constitutional republic, with a government of limited powers, and toward a centralized, national plebiscitary democracy with an essentially unconstrained national government. Some people on both the left and the right, particularly when they view themselves as dominant in national politics, seem to want the national government to run everything from our health care system to our local schools. But many Americans still appreciate that the Constitution establishes a government of delegated,

enumerated, and thus limited powers; that most political decisions should be made in the states and communities; that liberty and federalism are still the best foundation for freedom, prosperity, and social harmony.

The philosophy of “centralized nationalism,” so alien to the American Founding and our heritage, underlies much of contemporary politics. Who, it is asked, can best comprehend the general will? Why, the national government, of course, and especially the one official elected by all the people—the president of the United States. Unlike Congress, he represents the national interest. The voters have chosen the president, we are told, and Congress should carry out his “mandate.” If Congress refuses, then the president may increasingly claim the power to rule by decree, through executive orders. Such a theory would replace the constitutional safeguards against majoritarianism with a president virtually unconstrained in his ability to do good—as he sees it—for the people.

Those who claim the mantle of “liberalism” shouldn’t be so quick to toss aside federalism and constitutionalism, because divided powers protect minorities against the whims of the majority. We constrain our government because we know that any of us might be the minority in some dispute and also because we know that—when we’re in the majority—we might be tempted to abuse our power. We seek to keep governance close to the people, partly because local government is more responsive and, even more important, because that gives individuals the chance to leave, to vote with their feet, and to find communities that better reflect their individual needs and preferences. About 60 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 grew beyond its necessary use to guarantee individual rights in the states. With that period behind us, centralizing the government of 320 million people in a distant capital is a tragic reversal of our liberal Founding. We should remember that the states are “laboratories of democracy” and let them make their own decisions about a wide range of policies.

Conservatives rightly charge liberals with overriding federalism to achieve their policy goals. They ask why New York, Mississippi, and Wyoming have to have the same abortion laws, the same environmental regulations, the same special education rules. But in recent years, conservatives, heady with the thrill of national power, have also used that power to impose their own policy preferences. In the name of accountability and choice, the No Child Left Behind Act further centralized education. The

Bush administration used its administrative powers and the federal courts to block state initiatives on medical marijuana and assisted suicide. Liberals began to see the wisdom of federalism and diversity among the states.

State courts and then state electorates led the way to marriage equality. States are now moving toward decriminalization of marijuana. Finding resistance in a Republican Congress to new gun control measures and minimum wage increases, liberals have turned to the states and cities. During the 2016 campaign, Trump often suggested that decisions should be left to the states—for example, on minimum wages, marijuana, and transgender policy. That’s the beginning of wisdom on the role of the national government.

Federalism is not just a good idea for the side that is currently in the minority in Washington. It’s the basis of the Constitution. The Founders feared concentrations of power. They believed that the best way to protect individual freedom and civil society was to limit and divide power. Thus, it was much better to have decisions made independently by 13—or 50—states, each able to innovate or to copy successful innovations in other states, than to have one decision made for the entire country. As our population grows and the country becomes more complex, and especially as the government amasses more power, the advantages of decentralization and divided power are even greater.

### ***The Costs of Big Government***

Rising numbers of Americans tell pollsters that big government is the biggest threat to America and indeed that the federal government poses “an immediate threat to the rights and freedoms of ordinary citizens.” A popular desire for less government is always difficult to translate into substantive reform. 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. Thomas Jefferson wrote, “The natural progress of things is for liberty to yield and government to gain ground.” 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.

But we must recognize the real costs of excessive government. One obvious cost of our gargantuan government is reduced economic growth, as previously noted. With less taxation and less regulation, we could be far wealthier. 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 away just a little of that freedom—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.

A related cost of big government, but one not often recognized, is the harm it does to morality and responsibility. Expansive government undermines the moral character that is necessary to civil society. The “bourgeois virtues” of work, thrift, sobriety, prudence, fidelity, self-reliance, and a concern for one’s reputation developed and endured because they are necessary in a world where wealth must be produced and people are responsible for their own flourishing. Government can’t do much to instill those virtues in people, but it can do much to undermine them. People should be free to make their own decisions and to bear the consequences of those choices. When we take away freedom and responsibility, we get a society characterized not by thrift, sobriety, diligence, self-reliance, and prudence but by profligacy, intemperance, indolence, dependence, and indifference to consequences.

By taking away money, liberty, and responsibility, the growth of government necessarily shrinks civil society—the whole network of relationships among people, from families to businesses to charities and nonprofit associations that are formed on the basis of consent. Communitarians who deplore the decline of community and cooperation should look to big government for an explanation.

## ***The Role of Congress***

In our system of government, Congress plays an important role, as many of the chapters of this *Handbook* point out. Too often, we assume that only the Supreme Court has the duty to uphold the law and the Constitution. In fact, every person elected or appointed to office takes an oath to “support and defend the Constitution of the United States.” The first duty of every official is to act within the authority of the Constitution and ensure that other officials do so as well. Recent presidents have blithely exceeded the powers granted to them under the Constitution. But thanks to its negligence, Congress bears a significant part of the blame for presidential excesses. To live up to their oath of office, members of Congress should turn their attention to four tasks, which I discuss in the following sections.

### *Rein in the President’s War Powers*

In affairs of state, no more momentous decision can be made than the decision to go to war. For that reason, in a democratic republic, that

decision *must* be made by the most broadly representative body: the legislature. That is where our Constitution lodges the power to declare war. Recent administrations have espoused a view of executive war-making authority that is as unconditional and unconstrained as that claimed by any president in American history. In fact, presidents from Lyndon Johnson and Richard Nixon through George H. W. Bush and Bill Clinton asserted their authority to put American troops in harm's way without the consent of Congress. The Authorization for the Use of Military Force passed by Congress after the 9/11 attacks delegated sweeping powers to President George W. Bush, and President Barack Obama relied on that aging resolution for authority to engage in military actions far beyond what was envisioned in 2001. 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. As Gene Healy notes in Chapter 27, Sen. Tim Kaine (D-VA) and Sen. Jeff Flake (R-AZ) have introduced legislation to begin that process.

### *Stop the Abuse of Executive Orders*

Lawmaking by the president, through executive orders, is a clear usurpation of both the legislative powers granted to Congress and the powers reserved to the states. The president's principal duty under the Constitution is to "take care that the laws be faithfully executed"—not to make laws, as presidents increasingly have done. Clinton aide, Paul Begala, boasted, "Stroke of the pen, law of the land. Kind of cool." President Obama declared, "We're not just going to be waiting for legislation. . . . I've got a pen, and I've got a phone." Thus have presidents openly dismissed the legislative process. Both President George W. Bush and President Obama used executive orders to grant themselves extraordinary powers to deal with terrorism. No matter what agenda the president seeks to impose by executive order, Congress should stop him. The body to which the Constitution delegates "all legislative powers herein granted" must assert its authority.

### *Stop Delegating Lawmaking Authority to the Federal Bureaucracy*

Executive orders, however, are only part of the problem. The Constitution clearly grants Congress the power to make laws and grants the executive branch the power to execute the laws. That separation of powers is a key element of the constitutional design. The Founders feared nothing

more than the concentration of powers in one set of hands. But since the 1930s, Congress has gotten into the habit of passing broad laws and leaving the details to administrative agencies. Congress likes to proclaim noble goals, promise good results, and leave the rest to unelected bureaucrats—who must deal with the inevitable tradeoffs and costs of such goals. Congress cannot constitutionally delegate its lawmaking authority to any other body, nor should it want to do so. Congress should accept its responsibility for making law and cease delegating legislation to the bureaucracy.

### *Consider the Constitutionality of Every Proposed Law*

Ours is a government of delegated, enumerated, and thus limited powers. If a power is not granted to Congress in the Constitution, then Congress lacks the authority to legislate in that area. For too long we have drifted toward the idea that everything from our retirement insurance to our local schools to our marriage law is a proper subject for federal legislation. Members of Congress must not leave it to the Supreme Court to decide whether laws are constitutional. Every member must live up to his or her oath of office by considering the constitutionality of every proposed law. Before voting for any bill, each member should ask, “Where in the Constitution is the authority to pass this law?” If the authority cannot be found, members should not vote for the bill. If Congress accepts its responsibility in this way, it will begin the renaissance of constitutional government in the United States.

Of course, the administration can play a role, too. It can stop issuing executive orders, regulations, and agency guidance that usurp Congress’s legislative function. It can rescind or withdraw lawless and imprudent rules on topics ranging from school locker rooms to unpaid internships to fracking to presidential authority to kill American citizens without judicial review.

### **Conclusion**

Fidelity to our founding principles of respect for civil liberties and limited government may be easy when times are easy. The true test of our faith in those principles comes 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. 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.

For those who go into government to improve the lives of their fellow citizens, the hardest lesson to accept may be that Congress should often do nothing about a problem—such as education, crime, or the cost of prescription drugs. 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. And have confidence that free people, left to their own devices, will address issues of concern to them more effectively outside a political environment.

***Suggested Readings***

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