

INTRODUCTION

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 more than 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 and members of Congress of both parties when they seek to expand freedom, limit government, or protect the Constitution. Of course, our scholars will not hesitate to criticize unwise, imprudent, or dangerous initiatives from any source.

This *Handbook* details hundreds of policy recommendations for state and federal policymakers in some 80 chapters. But the most urgent task for our constitutional republic is to foreclose opportunities to interrupt the peaceful transfer of power after a vote of the people, as Walter Olson outlines in the chapter titled “Election Law.” In particular, Congress should clarify and tighten the poorly crafted Electoral Count Act of 1887, which lays out rules for Congress’s handling of certified electoral votes following a presidential election. State legislators should pursue best practices for both ballot security and voter convenience and ideally adopt tabulation methods that yield a substantially complete result on Election Night, to avert confusion or misrepresentation about which candidate has won. In the chapter “Congress, the Courts, and the Constitution,” Roger Pilon calls on members of Congress to examine the constitutionality of proposed laws and to summon the fortitude to tell constituents when necessary, “I have no authority to do what you want me to do.” To those tasks we might add that members must resolve not to support baseless allegations of stolen elections. We should remember something Milton Friedman used to tell us: “Freedom is fragile; we can’t take it for granted.” It is up to every citizen and especially policymakers to act in such a way as to support and defend our constitutional order.

Policy Challenges

Many chapters of the *Cato Handbook* propose big, systemic changes that would address fundamental policy problems. Other chapters, and sometimes the same ones, offer very detailed, specific ideas for policy improvement. Here I'll touch on just a few big ideas.

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 ongoing global intervention. For the past 30 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—metastasized into a regionwide campaign of regime change and nation building.

The White House and the State Department 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 superpower involvement.

See especially chapters by Justin Logan titled "Restoring Realism and Restraint in U.S. Foreign Policy" and "Middle East Security," along with other chapters on 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 slight drops during the recession and the COVID-19 pandemic. But Americans know that our economy is not working as well as it should. They fear that their children might not live as well as they did. This slow growth matters most to those who are not yet well-off. Policymakers should take the problem of growth more seriously and recognize that faster growth

would help achieve not only higher living standards, but also stronger public finances and less ugly conflict among people who feel their well-being is at risk.

Ryan Bourne proposes reforms in his chapter “Prioritizing Economic Growth.” In other chapters, he and other authors suggest more reforms that could increase growth, such as stabilizing monetary policy; liberalizing trade; reducing the burden of taxes, borrowing, and regulations; freeing up housing markets; 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 80 years, government has been assuming greater control over consumers’ health care dollars, either by inducing workers to contract for medical care through their employers or by direct expenditure. 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 several chapters, 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 and the national debt have soared under our past four presidents. Trends like this are unsustainable, as Jeffrey Miron notes in “Averting National Bankruptcy.” Yet elected officials continue to promise more spending on everything from new weaponry and college tuition to very loosely defined infrastructure. The economist Herbert Stein famously said, “If something cannot go on forever, it will stop.” The question is how it will stop—through deliberate restraint and reform or through sudden crisis. Congress

and the administration must find a way to rein in this profligacy. Budget-cutting ideas can be found throughout this *Handbook*.

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 half the federal budget, and they account for two-thirds of projected spending growth. The unfunded liability of Social Security and Medicare is some \$160 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. Several chapters 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. Recently, they have found plenty of candidates ready to propose policies to restrict trade and immigration. That's the wrong approach.

If economists agree on any topic, 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? In 2016, columnist Bret Stephens answered that question:

In its milder form, economic nationalism means state subsidies for national-champion companies, giant infrastructure projects, targeted tariff protections 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. Scott Lincicome and others discuss a smarter trade policy in “International Trade and Investment Policy,” and David J. Bier and Alex Nowrasteh point the way to immigration reform in the chapter “Immigration.”

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. Members of 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 and our local schools to the COVID-19 response. 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; and 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, the president 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 70 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 330 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 Mississippi, New York, and Wyoming have to have the same abortion laws, the same environmental regulations, the same school bathroom 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, while Congress ignores two-thirds of the people. Finding resistance in recent years to new federal legislation on gun control, environmental regulation, and minimum wage increases, liberals have turned to the states and cities. The beginning of wisdom on the role of the national government is to read Article I, Section 8, and the Tenth Amendment.

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 diffuse 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 and 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 several tasks, discussed in the following sections.

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 have increasingly done. Clinton aide Paul Begala boasted: "Stroke of the pen, law of the land. Kind of cool." President Barack Obama declared: "We're not just going to be waiting for legislation. . . . I've got a pen, and I've got a phone." President Donald Trump upped the ante: "I have an Article II, where I have the right to do whatever I want as president." Supporters of President Biden urge him to rule by executive order on matters ranging from a student loan bailout to sweeping energy and climate regulation, acting once again as if Congress's unwillingness to pass the president's agenda is justification for executive fiat. 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, as Gene Healy discusses in the chapter "Emergency Powers."

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, as William Yeatman explores in the chapter "Reining in the Administrative State."

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 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 and unpaid internships to fracking and 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 commitment to those principles comes when public anxiety or our own insistence 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 those limits 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

Bastiat, Frédéric. *The Law* [1850]. Irvington, NY: Foundation for Economic Education, 1998.
 Boaz, David. *The Libertarian Mind: A Manifesto for Freedom*. New York: Simon & Schuster, 2015.
Cato Handbook for Policymakers. Washington: Cato Institute, 2023.
 Constitution of the United States of America.
 Friedman, Milton. *Capitalism and Freedom*. Chicago: University of Chicago Press, 1962.

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