

Constitutional Limits on Government vs. Popular Democracy by Stephen Lazarus

In a review of Anthony King's book, *Running Scared: Why Politicians Spend More Time Campaigning Than Governing*, journalist Michael Rust describes the lamentable state of politics as usual in Washington:

Special interests demand pork-barrel rewards; lobbyists increase their presence and influence; legislators learn to love symbolism above substance; any decision that can be put off will be; and politicians learn to regard tough decisions with the same pleasure that vampires regard sunlight. (Washington Times, March 12, 1997.)

Rust points out that democratic government — as good and essential as it is — is prone to abuse and misuse by friends and foes alike. The genius of the Founders, argues Dr. William Mitchell in Public Interest Institute's *Limiting Leviathan*, was to establish a special form of democracy, one in which the powers of government were strictly limited by constitutional rules to prevent these abuses as much as possible. Rust's description suggests, however, how far short we have fallen from their original vision.

In his chapter "Constitutionally-Limited Government Versus Popular Democracy," Dr. Mitchell explains how this is possible. Certain features of democratic government can conflict with the aim of maintaining a government limited in size and power as the Founders intended. These features include the particular roles played in a democracy by fickle and uninformed voters, narrowly self-interested lobby groups, and politicians more concerned about re-election than the public good.

First, Mitchell examines the odd results that voting and elections sometimes yield. The "will of the people" is not as easy to discern as it might seem, he explains. For example, voters in Oregon in 1996 overwhelmingly and simultaneously approved both significant increases in government spending and deep property tax cuts. They also voted to build new prisons, but "the very districts that provided the largest majorities for this expenditure refuse to have prison facilities of any kind located in their districts."

Voters in a democracy often want to have their cake and eat it too. In economic terms, argues Mitchell, voting on these matters divorces costs from benefits. People want the benefits of more government spending, but they prefer for others to pay the costs. However, in government, as in life, there are no free rides. Someone always pays the cost. The challenge in a democratic government is to make sure that those who receive benefits do not pass off the costs of those benefits to others.

According to Mitchell, a second, similar dynamic explains the dramatic rise of interest groups in American democracy. Voters learn that the most effective way to obtain financial benefits from the public trough of tax money is not to vote, but to organize special interest groups and political action committees (PACs) to pressure and make campaign donations to candidates. Whether their aim is protect a federal

subsidy, tax break, or social program, Mitchell explains, the work of most lobby groups promotes the pursuit of the private gain of a select group of people at the expense of individual citizens. Furthermore, when one group begins lobbying, their opponents are necessarily drawn into an expensive political game of currying legislative favors. "It is an arms race in which the sum total of costs will outweigh the benefits," he writes, "but once started, it is irrational for any group not to participate."

Taxation and government spending in a democracy generate prizes to be won by interest groups. They also provide "pork barrel" benefits which politicians can distribute liberally to help them gain re-election. The same democratic system which encourages citizen involvement encourages politicians to collaborate with interest groups, or voters in general, to offer government policies, services, and tax dollars for sale to those who will promise their political support. A politician's ability to build a new bridge in the home district, or obtain more federal highway dollars proves to the voters that as an incumbent candidate, he or she can successfully "bring home the bacon" from Washington, D.C. Politicians can solidify their support with voters and interest groups this way and attempt to ward off political challengers. "They opt for programs," Mitchell explains, "that will be highly visible to specific groups, especially economic groups, and expect to be rewarded with campaign resources — money, votes, and labor contributions."

Constitutional rules such as limits on government taxing and spending and balanced budget requirements can help remedy these defects of democratic politics. They reduce the amount of tax dollars taken each year from hard-working American families and put up for grabs by organized special interest groups and politicians seeking re-election. They further the one central aim of constitutional limits on the powers of government: to protect citizens from exploitation by government and their fellow citizens, whatever form it may take. In so doing, Mitchell concludes, these constraints help control those features of our noble democratic system which often make "good people do bad things, and bad people do even worse things."

This Institute Brief is one in a series on the chapters of an upcoming book, Limiting Leviathan, edited by Dr. Don Racheter, Executive Director of Public Interest Institute, and Dr. Richard Wagner, Economics Professor at George Mason University and Chairman of the Institute's Academic Advisory Board. Limiting Leviathan makes a case for limited government and discusses the types of limitations on government that are appropriate and necessary.

The author of this chapter is Dr. William Mitchell, Professor Emeritus of the University of Oregon.

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