

RESTORE THE 9TH AND 10TH AMENDMENTS

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“Politicians invariably respond to crises—that in most cases they themselves created—by spawning new government programs, laws and regulations. These, in turn, generate more havoc and poverty, which inspires the politicians to create more programs . . . and the downward spiral repeats itself until the productive sectors of the economy collapse under the collective weight of taxes and other burdens imposed in the name of fairness, equality and do-goodism.”

—“Atlas Shrugged: From Fiction to Fact in 52 Years” *The Wall Street Journal*, 2009

FEW THOUGHTFUL AMERICANS today would disagree that Americans are at crossroads in their relationship with the federal government. The most visible manifestation of this is the tea party movement. There is an undercurrent of emotions running from anger to concern to malaise among American citizens that cuts across party and ideological lines. Americans feel their way of life, their liberties and futures are at risk, and feel their own federal government is incapable of addressing the problems.

This essay briefly addresses the issues that are concerning Americans, which are fairly evident and have been discussed at great length in the past few years. They are non partisan, cutting across party and ideological lines. The second part of the essay addresses what I consider to be the only workable solutions to a developing crisis that if unaddressed threatens to overwhelm this great nation.

THE PROBLEMS

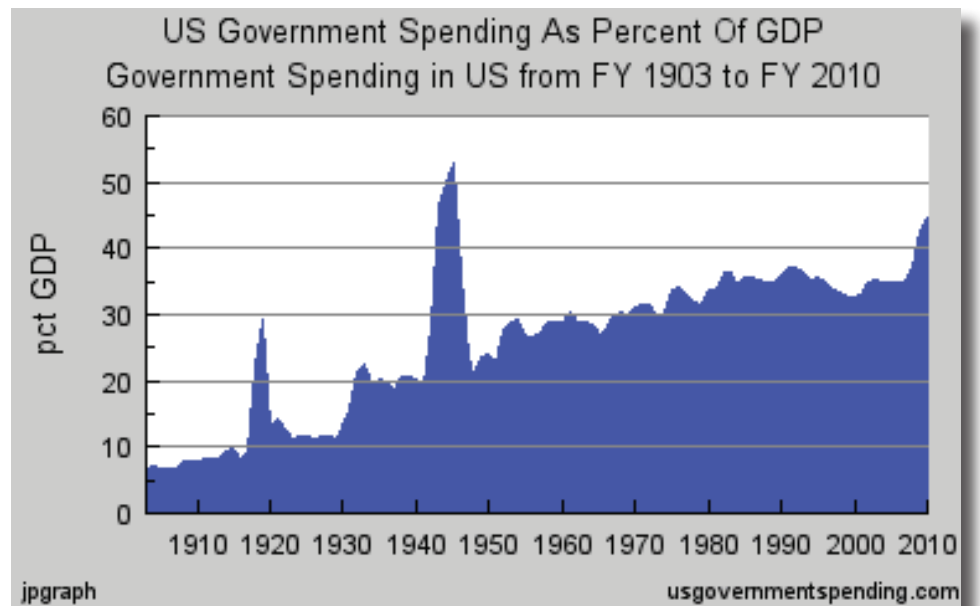
Federal government spending is out of control.

Fiscal year 2010 spending is projected to be \$3,552 trillion, the deficit is projected to be \$1,171 trillion and gross public debt is projected to be \$14,078 trillion (compare this with a gross domestic product (GDP) of \$14,902 trillion). As bad as these numbers are, they are only a harbinger of what is to come. The Congressional Budget Office (CBO) cumulative deficit estimate for President Obama’s 2010-2019 budgets is \$9.3 trillion. Although Mr. Obama inherited a large deficit, something like \$5 trillion dollars of this deficit may be allocated to his and the Congress’s additional spending and programs. The recent Obama

aCare “reform” of health care in America potentially adds billions more to the deficits. These deficits (as far as the eye can see) are unprecedented for a prosperous nation in peacetime. These deficits, at least three times safe levels, could reduce America to near banana republic status.

The federal government has promised far more in benefits than the taxpayers can afford.

The federal government has made commitments to citizens that it cannot possibly meet. The most obvious future commitments are to Social Security and Medicare. At a time when the “baby boom” generation is reaching retirement age, Social Security trustees inform us that the federal government has promised more than \$100 trillion (in present



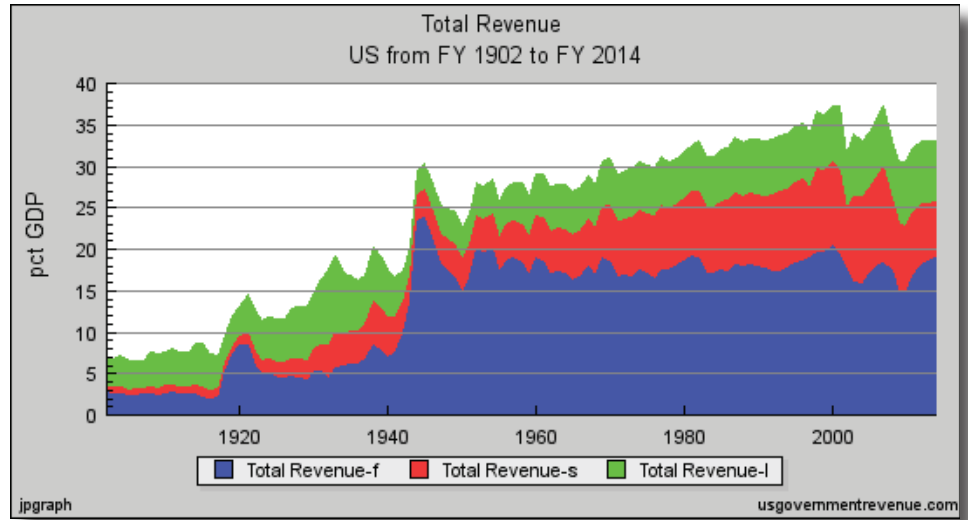
dollars) in Social Security and Medicare benefits over and above dedicated taxes and premiums (the number is about seven times the size of our economy). The CBO estimates that Medicare and Medicaid will crowd out all other federal programs by mid-century. And of course a huge new unknown has been created with ObamaCare, as 30 million Americans will now be forced on to the system, or pay a fine for not purchasing insurance.

In 1945 there were over 40 workers per social security recipient (in a much more limited program). By 2020 there will be less than three workers per social security recipient, and the system is about to be overrun by retiring baby boomers. A program that cost just over \$100 billion in 1980 is now six times that. And the social security “trust fund” is more than \$9 trillion in debt, as your senators and representatives have been dipping into it for years to fund general government operations and pork. Medicare is in much more trouble financially.

The Medicare trustees issued a report in 2007 which stated that, “[Medicare’s] financial difficulties come sooner—and are much more severe—than those confronting social security.” Medicare’s costs are going up much faster than Social Security’s (Medicare spending will increase five times faster than Social Security’s in the next couple of decades, according to the Congressional Budget Office). It won’t take long before Medicare consumes the entire federal budget at current projections.

Congress spends all new revenues created and more.

There is a general belief that President Reagan’s tax cuts caused the budget deficits of the 1980s. In fact, real tax revenues increased 28 per cent during the 1980s, but spending increased 36 per cent. This is a problem that cuts across party lines; while the Republicans were in control of the Congress and George W. Bush was president discretionary spending increased 44 per cent in his first term. Tax hikes are a drag on the economy, are



morally wrong (because the money belongs to the people and businesses that earned it, not the government), and will only be spent for more government.

Runaway federal spending and deficits erode the freedoms we hold so dear.

Few would argue that money is power, and few would disagree with Lord Acton’s dictum: “Power tends to corrupt and absolute power corrupts absolutely.” The American federal government spending is approaching **\$4 trillion per year**, and the federal government has become the dominant power in American life. The Founding Fathers did not intend that all direction and spending come from Washington, D.C. If, as is often argued, the federal government were genuinely improving the life of citizens one could at least make an argument for the spending. However as Voltaire said, “In general, the art of government consists in taking as much money as possible from one class of citizens to give to the other.” If the “redistributionist” argument held true, passing wealth from the wealthy to the poor would “equalize” America. Unfortunately, the rich have remained rich and the poor poor. Here Voltaire has it right—the transfer is not from the rich to the poor, but from the government to the politically connected to reward their friends and punish their enemies.

The most dramatic example of the erosion of state power is the shift in total

state spending versus that of the federal government. All government spending has exploded, but federal spending is now over two and half times total (50 state) spending. A major source of state spending is the federal government, which extracts taxes from the citizens and businesses of the 50 states and then transfers the money back with federal dictates attached. Few would argue that as one moves from local to state to the federal level control and accountability diminishes directly in proportion to the distance from the problems (and most problems are ultimately local).

A further erosion of state power results from federally unfunded mandates, the expedient of a near-bankrupt federal government forcing states and localities to carry out Washington’s programs without Washington having to pay for them. Examples abound, but a few here will suffice: Medicaid (states pay from 20 to 50 per cent of the cost); No Child Left Behind; Individuals With Disabilities Acts; Environmental Protection Agency programs; Federal Clean Air Act; Endangered Species Act; Emergency Medical Treatment and Active Labor Act (which requires all hospitals in states and localities to pay for treatment of indigents, including illegal immigrants); Bilingual education programs; special education programs for disabled children; and the list goes on and on. The problem, of course, is the people of the individual states may not want to participate in

these programs, may want to do them another, more effective way, or may want to spend their money as **they** see fit.

Constitutional constraints on the federal government are no longer effective.

The ninth and tenth amendments to the U.S. Constitution were added to reserve power to the states and to the people. Federal government powers were specifically constrained by the Constitution. Unfortunately, the federal government has added powers never intended or imagined by the Founding Fathers. As Ayn Rand said in *The Nature of Government*, “it cannot be repeated too often that the Constitution is a limitation on the government, not on private individuals, only the conduct of the government—that it is not a charter for government power, but a charter of the citizens’ protection *against* the government.” Rand went on to say: “The clause giving Congress the power to regulate interstate commerce is one of the major errors in the Constitution. That clause, more than any other, was the crack in the Constitution’s foundation, the entering wedge of statism . . . the framers of the Constitution could not have conceived of what that clause has now become.” The commerce clause has been used by the federal government, aided and abetted by the courts, to exponentially increase power over the states, and the people.

The recent ObamaCare legislation is a glaring but not unusual usurpation of powers reserved to the people. Under the guise of the commerce clause the government has required 30 million people to either purchase a private product (health insurance), or face a fine. Those at certain income levels will be added to the Medicaid rolls, a vast increase in an entitlement that is already heading for collapse. The absurdity of the government’s position may be easily illustrated. Since the federal government has the power to force people to buy a private service, what is to stop it from requiring that citizens buy a General Motors automobile? The government has an interest in the survival of

that firm, as it has an interest in health care reform. Or, under the guise of addressing alleged global warming, the federal government could require that you buy an electric car, or pay a fine.

Some would argue that the system of checks and balances protects us from abuses by the federal government. The problem is that rather than checking one another, the legislative, executive and judicial branches (along with the fourth leg of government, the federal bureaucracy) conspire together to keep power centralized in Washington, D.C. Checks and balances now chiefly operates as a power struggle over who wields the most power in Washington, D.C., all at the expense of the states and the people.

Incumbency is now a sinecure at the federal level.

Over 90 per cent of congressmen and women are returned to office; our electoral system is not working. Even if there is a change in 2010, the system is loaded in favor of the incumbents. At a time when congress is held in such low regard congressmen and senators are routinely reelected. The reasons for the lack of turnover are many, including fundraising advantages, gerrymandering (in the House, to ensure safe seats), name recognition, and the abuse of pork barrel spending. These advantages discourage a good candidate from running.

An example from my state of Montana will suffice. Max Baucus has been returned to the Senate by the voters of Montana for 30 years, despite being somewhat of a mediocrity. He is a liberal Democratic senator from a relatively conservative state. His reelection in 2008 (for another six year term) is instructive. In the cycle from his last reelection in 2002, through 2008, Senator Baucus raised \$11,602,479 for reelection (this in a backwater, rural state with less than one million residents). His big money was mostly raised out of state, and his top five contributors were Schering-Plough Corp., New York Life Insurance, KKR & Co., Goldman Sachs and DaVita Inc, hardly bellwether Montana

industries. The top five industries to contribute to Mr. Baucus were securities and investments (\$833,918); lawyers/law firms (\$671,004); Insurance (\$588,185); Health professionals (\$537,141); and Pharmaceuticals/Health products (\$523,313). Nearly \$5 million came from PAC contributions.

To go up against this juggernaut, the Republicans sent up the “winner” of a six person primary, Bob Kelleher, a Butte lawyer, whose major issue, at age 85, was converting the federal government into a two house parliament, where the speaker of the house would be the chief of government (it’s frightening enough that Nancy Pelosi is now *third* in line to be president). Baucus swamped Kelleher.

Federal programs and policies conspire to divide rather than unite Americans, and we are losing our sense of what it means to be an American.

The federal government has implemented programs over the past 45 years that have fragmented the American people into various groups, while at the same time the federal government has become the power arbiter (through its vast resources) as to who wins and loses among these many groups. With immigration, abortion, bi-lingualism, political correctness, “diversity,” affirmative action (race quotas), and an assault on constitutional, religious and cultural values, the federal government has inserted itself into almost every aspect of American life. This has created voting blocks, rather than unified American citizens. So unions are set against corporations, whites against Hispanics and other minorities, rich against the poor, liberals against conservatives, Republicans against Democrats and on it goes.

Our education system is failing America at all levels.

Our students are coming out of our public education system with a lack of fundamental skills to compete in an increasingly technologically driven world. Our colleges are passing students through a system that is no longer grounded in a tra-

ditional education. Our students are not grounded in traditional American values, and in fact much of our educational system promotes an attack on those values. Our students are ill-informed on American history and our constitutional form of government. They don't understand the foundation of America (government by the people; free enterprise; and moral and spiritual values). They are not learning the value of good citizenship; moral relativism renders them unable to make ethical judgments. To them, the American experience is not superior, only different from other countries and other forms of government.

Both the young and the American dream lose under this utter failure. It encourages failure through lack of skills to compete, and it encourages more of what caused the failure in the first place: an uninformed, easily fooled citizenry. As Thomas Jefferson said, "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be."

THE SOLUTIONS

Amendment 9: Construction of Constitution. Ratified 12/15/1791.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10: Powers of the States and People. Ratified 12/15/1791.

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.

In the process of ratifying the Constitution, there was a sense that the Constitution, without a Bill of Rights (the first ten amendments to the Constitution), did not adequately protect the rights of the citizenry. And so the Bill of Rights amended the Constitution to guarantee that our



liberties as individuals would be maintained against a powerful central government. The 9th and 10th Amendments were designed to retain all rights not expressly granted to the federal government. As we have already seen, there has been a serious erosion of the protections provided by these two vital amendments.

There have been many proposals to address the problems delineated above. They range from sweeping incumbents out of office through the electoral process, constitutional amendments instituting term limits, balanced budget requirements, and requiring congress to live under the same laws that the rest of us must obey. Quite frankly, none of these have much likelihood of success. There are simply too many entrenched power interests in Washington, D.C. to ever let go of the accumulation of control that has shifted to Washington since the beginning of the "progressive" era (the administration of Teddy Roosevelt).

There are short run solutions that can and must be taken, that are useful, and are things every concerned American can participate in. The most obvious is turnout for all elections. Incumbency is a problem, and in the short run it won't matter if Republicans or Democrats are in control. Until either or both parties begin to come up with serious proposals

to address the above problems, **and take serious steps to implement them**, neither party will serve America well.

We need a better informed citizenry. Our mainstream media has failed to adequately inform voters about the issues, and as a result America is fragmenting toward news sources that in some cases reinforce uninformed views. It is incumbent on all of us to seek the facts—it is the greatest weapon we have against political demagoguery. We all need to read and understand the Constitution, and understand what common American values we hold dear, and **promote them**.

Finally, as citizens, we have to get involved, get out of our comfort zone and fight for the values we hold dear. Business men and women have to stand up for our free enterprise system at every opportunity. Inform, educate, and contribute to candidates that hold the same business values as you do. Don't let a vocal minority intimidate you from expressing your informed views. All of us can influence our friends, families and associates, but only if we deal with **facts**. Getting sidetracked into issues of party, personalities, ideological issues, and racial issues only detracts from a factual argument.

I was involved in a citizen effort in 2004 that may have been the determining factor in the presidential election (Swift Boat

Veterans and POWs for Truth). Whatever the merits of our efforts, the encouraging aspect of it for all citizens should be that 350 very average American Swift boat veterans, from all over the country, allied with Vietnam POWs, without money or power, demanded and got attention for our issue from a political establishment and media that wanted to ignore us. If we as citizens could have such an impact, any committed group, with the facts on their side, can do the same.

Even with all of the above efforts (which must be undertaken in the short run), we will fail in the long run to turn around the federal juggernaut, if we don't come up with a long range solution to return power to the states, and the people.

In searching for a long range solution, we should first and foremost look to the wisdom of our Founding Fathers. It is clear to me there were two amendments to the Constitution that had a deleterious impact on our federal system and accelerated the loss of freedoms from which we suffer today. The first is the 16th Amendment to the Constitution, which permitted the levy of an income tax on individuals and businesses without apportionment on the basis of the population of the states. Like mainstreaming heroin to a drug addict, the income tax has fueled the modern behemoth that the federal government has become. The first graduated rates as set by the government were one to six per cent; they far exceed that today.

Income taxes fuel modern government and few thoughtful people would argue that this amendment should be overturned. However, it is crucial that Americans fight to keep these rates as low as possible, for reasons delineated above.

Tax increases fuel more government spending, which fuels more demand for tax increases, and on it goes.

As a sidelight, Americans must fight to reform the income tax structure (there are many good proposals on the table, particularly as articulated by Steve Forbes). Also, Americans must resist by all means possible an idea that is gaining traction in Washington, that of a Value Added Tax (VAT). The worst kind of tax, a sales tax on production, it also is a hidden tax imposed on every level of production.

The second amendment that dramatically eroded the power of the states and the people was the 17th Amendment, which changed the method of electing Senators. Before the amendment, Senators were selected by the various state legislatures, and as such were directly accountable to them. The 17th amendment called for the direct election of Senators by all the voting citizens of a state, as is done in the election of representatives.

The Founding Fathers saw the House of Representatives as the voice for the popular concerns of the citizens, and as such was to be the most responsive to the popular will (hence the two year limit on terms, after which they would have to face the voters). The Senate was to provide the check on the House, be the deliberative body that checked popular passions and protected our liberties from those passions. Unfortunately, with the 17th Amendment, the Senate has become a co-conspirator with the House, administration and bureaucracy to confine power in Washington at the expense of the states and the people.

The 17th Amendment was justified by deadlocks that delayed senate representa-

tion, corruption in the legislative bodies, and some idea of "fairness" or "democracy," even though our system of government was designed as a republic, not a direct democracy.

The direct election of senators has led to the financial abuses that are now rampant in our senatorial elections. The stakes are so high (six year term, 100 senators, massive federal spending and power), and the senate races have become moneyed interest magnets, full of abusive "buying" of senators. The power of incumbency is most evident in senate races, where huge amounts of money pour into state contests from national power interests.

Many complaints about the abuses of state legislatures selecting senators are no longer valid. First, with today's fragmented media, politicians at the state level may no longer hide behind a compliant media. Second, many states have enacted term limits, which ensures their legislatures regularly turn over. If they abuse the power of selection, it is much easier for the voters in a state district to get rid of a politician than it has been at the federal level. Finally, returning the selection of senators to the state legislatures would ensure that senators are then beholden to the states (and the people), and not the national interest. It will be harder for national power groups to influence state legislators than it would be to flood a state with media buys and money to influence (and buy votes).

A constitutional solution that relies on the wisdom of the Founding Fathers: **Repeal the 17th Amendment to the Constitution of the United States.**

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