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Regaining ground from government

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This past week, a majority of the members of the Supreme Court gave notice that there is a limit to how much of their and Congress' power they will allow the executive branch to grab. The Environmental Protection Agency (EPA) has been expanding its own definitions of what it is able to do under the Clean Air Act. The Supreme Court, in essence, said enough is enough when it put a stay on the EPA's initiative to limit carbon emissions from power plants, in response to suits brought by several dozen states and industry groups. This was just one of several recent defeats of the EPA by the courts.

The tragic loss of Supreme Court Justice Antonin Scalia did, at least, ignite a discussion of the proper way to interpret the Constitution and may cause the next president to pick more justices who respect liberty. As Justice Scalia once noted: "There is nothing new in the realization that the Constitution sometimes insulates the criminality of a few in order to protect the privacy of us all."

The American Founders created three branches of government — the legislative, judicial and executive — to serve as checks and balances on each other in order to limit the abuse of the people by those in government. They also created America as a federal constitutional republic and not as a democracy. This distinction, which too few Americans understand, is what preserves our liberties, even though many have been eroded.

After the Constitutional Convention, a Philadelphia woman asked Benjamin Franklin what kind of government they had created, and he famously answered, "A republic, if you can keep it." The American Founders had a keen understanding of (and a somewhat low regard for) their fellow citizens. The problem they faced, after the success of the American Revolution, was to create a government that both protected the people from those who would do them harm at home and abroad, and at the same time protect their basic liberties, i.e., "inalienable rights," from that same government. They were good students of history and they knew, as Thomas Jefferson put it, "the natural progress of things is for liberty to yield and government to gain ground."

Most people had been or were governed by kings, queens and various forms of dictators and theocrats. Occasionally, the people were lucky to be governed by a benevolent and wise king, but that was more the exception than the rule. The ancient Greeks experimented with democracy — most notably, the Athenians. Athenian democracy, only partial at best, with a limited voter franchise, only lasted about 200 years with interruptions. The Athenians quickly identified the problem of people voting themselves benefits on the backs of others. Or, as Jefferson put it more than 2,000 years later in his critique of democracy, "Once the people realize they can vote themselves benefits, all is lost."

The ancient Romans created a republic rather than a democracy in 509 B.C., after the overthrow of the Roman Kingdom which, amazingly, lasted 500 years until 27 B.C., when the Roman Empire was established under Octavian (Augustus). During the Republic, Rome was ruled by elected consuls, senators and appointed magistrates, and grew in size and power. Those voting were limited to the patricians (land-holding aristocracy) but, over time, were expanded to include leading plebeian families. The Roman Republic operated under the rule of law, which was increasingly codified, even though it did not have a written constitution. Some Roman law can still be found in European countries whose legal system is based on the Napoleonic Code.

In a constitutional republic, the head of state and other elected officials are representatives of the people and must govern according to the rules of the existing constitution. This is in contrast to a majoritarian democracy, in which the rules are whatever the majority at the time votes them to be. Thus, the liberties of whatever minority groups exist — racial, religious, ethnic, economic or political — are always at risk. Unbridled democracies most often end in tyranny.

In the United States, there has been a continuing loss of power from the Congress and the courts to the presidency and the administrative agencies. James Madison and the other authors of the Constitution did not fully foresee the willingness of the Congress and the courts to acquiesce and at times even encourage the taking of power by the executive.

The political class always seeks to increase its own power and usually does so by creating ever-bigger and more intrusive government. But at some point, much of government becomes too big to manage — by the executive office of the president or by congressional committees that have the responsibility for oversight — and the bureaucrats increasingly take over and run amok. Polls show that Americans are more and more resentful at being pushed around by government bureaucrats and officials. The open question is, will the electorate be sufficiently wise to elect those politicians who have the intent and realistic plans for downsizing and controlling government, or will they submit to the siren call of "more free stuff"?

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