

## Can government be limited?



Written by Tom Clougherty

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Last week I bemoaned the fact that the EU's Lisbon Treaty fails to set any real limits on the size and scope of EU government. This is a significant failing: surely defining and limiting the proper role of an institution is one of the primary roles of any constitutional document? That said, it is also worth asking whether constitutional limits on government actually work, or whether they are ultimately powerless when faced with a state intent on expansion.

Political theorist Anthony de Jasay would [argue](#) that the latter statement is the more accurate one. To use his example, a government accepts constitutional limits to gain the confidence of its subjects in much the same way a lady agrees to "wear a chastity belt to reassure her lord". However, with the key to the belt always within reach, "it can occasion delay, but cannot stop Nature". When government itself has the ability to amend a constitution, that constitution cannot absolutely limit its power. Indeed, outright amendment is rarely even necessary – an expansive 'interpretation' of the constitution can often achieve much the same end.

The American example is instructive here: as the Cato Institute's William Niskanen has [pointed out](#), the US Constitution only authorizes the Federal Government to exercise "18 rather narrowly defined powers". And yet since the 1930s, the powers of that Federal Government have "expanded enormously without a single amendment to the Constitution". Much of this is due to the 'interstate commerce clause', which is today interpreted in a way that would horrify the Founding Fathers. The result is a Federal Government that "acts as if it has the authority to define its own powers" and seems to grow faster with every passing year.

On the other hand, it might be that there are some constitutional devices that could succeed where others have failed. The best would probably be those that limited the ability of government's to tax, spend, or print money. Government spending could be strictly limited to projected revenues, while any tax rises or new taxes could be made subject to affirmation in a referendum. Likewise, the long-term growth in the money supply could be strictly limited by a constitutional rule like the one Milton Friedman suggested.

Another idea is the 'non-discrimination clause' advocated by James Buchanan. As John Meadowcroft has [put it](#), this would make "legislation that discriminated on the basis of sex, race, age or religion, or on the basis of occupation, income or wealth" unconstitutional. Such a clause would outlaw the allocation of government privileges, and would only allow a flat tax. It would also require any benefits to be universal. The result, in theory, would be to prevent the exploitation of particular groups via the political process, while also balancing the incentives in the democratic system – people would in future only be able to 'vote themselves more money' by also voting themselves a higher rate of tax.

Whether or not these measures would work in practice is difficult to predict in advance. The democratic state tends naturally to grow, and de Jasay may be right that attempts to constitutionally limit its size are doomed to eventual failure. But despite that, I'd say it was still worth trying.

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