



BY DAVID BOAZ

“Liberals long ago dismissed the Constitution’s restraints on government. Conservatives are now aggressively ignoring them.”

Editorial

Remember the Constitution?

A front-page article in the *Wall Street Journal* erroneously told millions of readers that “the Constitution guarantees a public-school K-12 education for every child in the U.S.” Two weeks later the *Journal’s* usually reliable editorial page deplored the “states’ rampant noncompliance with the 2002 No Child Left Behind Act” and the “lax enforcement of NCLB” by Education Secretary Margaret Spellings.

Meanwhile, the Heritage Foundation is endorsing federal education vouchers for children in low-performing schools as proposed in President Bush’s America’s Opportunity Scholarships for Kids initiatives. Both the *Journal* and the Heritage Foundation seem to have forgotten that the U.S. Constitution grants no authority over education to the federal government. Education is not mentioned in the Constitution of the United States, and for good reason. The Founders wanted most aspects of life managed by those who were closest to them, either by families, businesses, and other elements of civil society or by state or local government. Certainly, they saw no role for the federal government in education.

Once upon a time, not so very many years ago, Congress understood that. *The History of the Formation of the Union under the Constitution*, published by the United States Constitution Sesquicentennial Commission, under the direction of the president, the vice president, and the Speaker of the House in 1943, contained this exchange in a section titled “Questions and Answers Pertaining to the Constitution”:

Q. Where, in the Constitution, is there mention of education?

A. There is none; education is a matter reserved for the states.

Not only is the Constitution silent on the subject of education, but the U.S. Supreme Court has also refused to recognize any right to a taxpayer-funded education. As Timothy Sandefur, author of Cato’s forthcoming book *Cornerstone of Liberty: Property Rights in 21st-Century America*, points out, in *San Antonio Independent School District v. Rodriguez* (1973), the Court specifically declared that education, though important, “is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.” Nine years later, in *Plyler v. Doe*, the Court held that *if* a state chooses to give such an education to citizens, it must also offer it to the children of illegal aliens. But it has consistently recognized that taxpayer-funded education is a privilege, not a right.

The case against federal involvement in education is not based simply on a commitment to the original Constitution, as important as that is. It also reflects an understanding of *why* the Founders were right to reserve most subjects to state, local, or private endeavor. The Founders feared the concentration 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 than to have one decision made for the entire country. Each state can innovate and can observe and copy successful innovations in other states,

and just as important can avoid failed policies tried in other states. As the country gets bigger and more complex, and especially as government amasses more power, the advantages of decentralization and divided power become even greater.

That’s why it was a mistake to further centralize the control of our local schools in the No Child Left Behind Act. And why conservatives, who are usually committed to the virtues of federalism and decentralization, should be applauding the several states’ resistance to federal intrusion, not calling for a crackdown.

The Constitution has few friends in Washington these days. As Gene Healy and Tim Lynch demonstrate in their impressive paper “Power Surge: The Constitutional Record of George W. Bush”:

In its official legal briefs and public actions, the Bush administration has advanced a view of federal power that is astonishingly broad, a view that includes . . .

- a president who cannot be restrained, through validly enacted statutes, from pursuing any tactic he believes to be effective in the war on terror; . . . and
- a federal government with the power to supervise virtually every aspect of American life, from kindergarten, to marriage, to the grave. President Bush’s constitutional vision is, in short, sharply at odds with the text, history, and structure of our Constitution, which authorizes a government of limited powers.

Liberals long ago dismissed the Constitution’s restraints on government. Conservatives are now aggressively ignoring them. So who still speaks for the Constitution? Well, the Cato Institute and its Center for Constitutional Studies, of course. That’s why we’ve distributed more than three million pocket copies of the Declaration of Independence and the Constitution, and why we consistently ask that embarrassing question, “Where in the Constitution is the exercise of this power authorized?”

And now that the Bush administration “has repeatedly sought to strip out the limits the document places on federal power,” as Healy and Lynch put it, some liberals are—*mirabile dictu!*—rediscovering the benefits of constitutional government. Two writers in the left-wing *Nation* magazine recently proposed the establishment of a left-right-and-libertarian Constitutional Protection League, modeled after the broad-based early-20-century Anti-Imperialist League. That’s a fine idea. But we would remind our friends on the left that in 1997 and 2000 Cato published critical studies on the Clinton administration’s abuse of the Constitution. Where were they then? And will they join us a few years hence should another Clinton administration engage in similar abuses?

My friend Fred Smith of the Competitive Enterprise Institute likes to say, “The Constitution isn’t perfect, but it’s a lot better than what we’ve got now.” The good news is that if the American people still want it, we’ve still got it. All we have to do is enforce it.