

**W**e Hold These Truths

# Powers Congress Cannot Delegate

**T**homas Jefferson feared the tendency for government to grow and for liberty to yield. The Founders' solution was to create a central government with explicitly limited powers delegated by the people and enumerated in a binding constitution.

Today the power of the federal government is nearly boundless. But even the critics of Big Government have overlooked an equally serious problem. Over the years, Congress has increasingly delegated its lawmaking powers to unelected and politically unaccountable bureaucrats.

A general principle of American jurisprudence, called the doctrine of

of congressional power since 1935.

Today, evidence abounds that Congress has slipped its constitutional moorings. The Americans with Disabilities Act tells employers to make "reasonable accommodation" of handicapped workers unless there is an "undue hardship," but leaves it to the Department of Justice to determine what is reasonable (and required).

The Occupational Safety and Health Act calls for workplace standards that are "reasonably necessary or appropriate to provide safe and healthful employment" but allows the secretary of labor to decide what that means. The Clean Water Act's mandate to protect

mental link between voter and lawmaker has been obliterated by unelected regulators hiding behind bad laws. A handful of broadly written laws has spawned an alphabet soup of government agencies and an overwhelming regulatory burden that undermine the very idea of representative government.

Several bills now before Congress seek to rein in unaccountable regulatory agencies. Unfortunately, these reforms aim only to improve regulations by imposing additional procedural requirements on the agencies. In effect, they seek to regulate the regulators.

Instead, Congress should act to restore accountability in government by requiring itself to comply with Article I. The Congressional Responsibility Act would subject all regulation to Congressional approval. Under the bill, a regulation can be approved in one of two ways: (1) through an expedited process designed to limit debate and amendment and allow for a quick vote on uncontroversial regulations; (2) through the regular legislative process, whenever a majority of members agree to waive the expedited method. Regulations would only take effect if approved by both houses of Congress and signed by the president. There would be no need to impose additional procedural requirements on agencies. The bill would not be retroactive.

Sounds radical? This is an ideologically neutral and nonpartisan reform. Concerns about legislative delegation have been voiced by people as politically diverse as Judge Robert Bork and Nadine Strossen, the president of the American Civil Liberties Union.

If we are to restore constitutional government, Congress must first recover its legitimate powers and rein in the regulatory agencies of the executive branch. After all, rebuilding a limited federal government, whose elected representatives are accountable for the laws they pass, is the first step toward restoring the faith of the American people in their leaders and returning to the republic envisioned by our Founders.

**by J.D. Hayworth**

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**Federal agencies now make the law in many areas;  
the remedy is to subject all regulation to congressional approval.**

"nondelegation," is that delegated powers cannot be redelegated. That is, Congress does not have the authority to give away its fundamental lawmaking powers. The Framers wisely followed John Locke's admonition that "the legislative cannot transfer the power of making law to any other hands." Thus Article I of the Constitution begins, "All legislative Powers herein granted shall be vested in a Congress . . ." For generations, the Supreme Court held that the transfer by Congress of any of these legislative powers to another branch or agency is unconstitutional.

In the late 1930s, however, the Court reversed itself, and upheld laws by which Congress merely instructed agencies to make decisions that served "the public interest." Since then, Congress has ceded its basic legislative responsibility to executive agencies that craft and enforce regulations with the full force of law. The Supreme Court has not invalidated a single delegation

"navigable rivers" permits the Army Corp of Engineers and the EPA to exercise control over any land that has a certain minimum water content. By law, commercial banks and investment firms can only affiliate if they are "well capitalized," a vague determination made by the Federal Reserve Board and the FDIC. In 1994, the General Accounting Office measured the economic, social, and environmental cost of all regulations at more than \$647 billion.

The dangers of delegating congressional authority to unelected bureaucrats are many. For one, it allows Congress to exercise its lawmaking authority and enjoy the plaudits from popular laws without taking responsibility for their legal consequences or their costs.

But the chief victim is accountability in government. Originally designed to be the most accountable branch of government, Congress has grown increasingly irresponsible. The funda-



## Knight Vision

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In the fall of 1881, Father Michael J. McGivney gathered a small group of men in the basement of St. Mary's Church in New Haven, Connecticut, to start an association to help his Irish immigrant parishioners in their new homeland. No one could have imagined that he was founding what would become one of the largest and most successful private philanthropic service organizations in the world.

As a young assistant pastor, McGivney was not only the spiritual but also the civic leader of his church community. Like many clergymen during the great 19th-century wave of immigration, he was deeply concerned about the unique social burdens and heavy economic pressures faced by his ever-growing immigrant flock. He was equally troubled by the rise of American "secret societies" that tended to be both anti-foreigner and anti-religious.

The son of poor Irish workers, McGivney believed that, to be successful, immigrants had to assimilate into American society without weakening their religious identity and strong sense of family. He had long been active with the youth of his parish, and had earlier organized a total-abstinence society to combat alcoholism.

At the age of 29, McGivney set out to establish a Catholic men's organization that would draw immigrants into American society while strengthening their Catholic faith and pride—a transforming institution that would loosen Old World ties and build new civic bonds informed by a Catholic heritage.

The result was the Knights of Columbus. McGivney named the organization after Christopher Columbus, the Catholic discoverer of the New World, to emphasize the Catholic con-

tribution to America. Members called themselves "knights" to emphasize their service to God and country.

The economic backbone of the organization was a program for life insurance and sick benefits that helped meet the basic expenses of families overwhelmed by illness or the death of the breadwinner. Early membership dues supported a benevolent fund that paid members \$5 a week during illness, and a levy of \$1 a head funded an endowment that paid \$1,000 to a member's family upon his death. These benefits attracted new members and provided financial stability for the organization.

The Knights of Columbus were built upon four principles—Charity, Unity, Fraternity, and Patriotism—that are reflected in their activities to this day. They defend their faith in a pluralistic nation while welcoming all nationalities and building fellowship by means of their religious, social, and educational activities.

Over the years, the Knights have promoted American and Catholic history, and have supported Church activities and programs throughout the world (such as Pope John Paul II's recent trip to the United States). They encourage patriotism and loyalty to the country that defends their liberties. At the same time, they will fight for religious freedom (leading a 1922 battle to overturn Oregon's ban on private and parochial schools) and civic piety (spearheading a petition drive in 1954 to add the words "under God" to the Pledge of Allegiance).

But the heart of the organization, as McGivney intended, has always been charity: supporting members and the community through private benevolence. In 1884, the Knights had 429

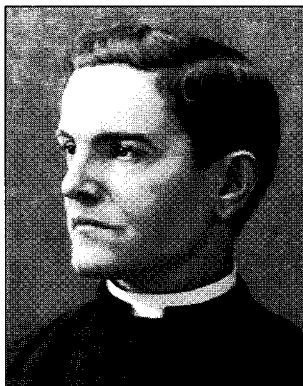
members and a budget of \$168.60. Today, the Knights number more than 1.5 million members in 10,000 local councils and assemblies, mostly in the United States but also in Canada, the Philippines, Mexico, and several Central American and Caribbean countries. In 1994, the Knights gave more than \$100 million in charitable contributions and 48.8 million hours in volunteer service. Over the last 20 years, their philanthropy worldwide has totaled \$1.2 billion in contributions and 438 million hours of service.

The vast majority of charitable activities and community projects—from food distribution, blood drives, and helping the elderly and retarded to pancake breakfasts and bowling leagues—are designed and led by the local councils and assemblies and tailored to local needs. All this is accomplished without government aid.

McGivney insisted that the organization be business-like and financially stable. "Make all returns regularly, promptly, and correctly," he directed. "Invest all surplus funds profitably, safely, and legally." Today, the once-meager insurance program is a thriving enterprise with \$6 billion in assets and \$30 billion in policy coverage. The profits from invested assets provide a solid base (\$20 million in 1994) for annual charitable programs. The rest—\$80 million in 1994—is raised each year.

Born in Waterbury, Connecticut, McGivney was the oldest of 13 children, six of whom died in childhood. He was never of strong health, and died of consumption at the age of 38.

His 13 busy years as a priest have resulted so far in 114 years of good works and community service. "He was a man of the people," wrote one close associate. "He was ever zealous for the people's welfare and all the kindliness of his priestly soul asserted itself most strongly in his unceasing efforts for the betterment of their condition."



**Fr. Michael McGivney, the first Knight of Columbus.**

Photo courtesy of the Knights of Columbus