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November 15, 1992

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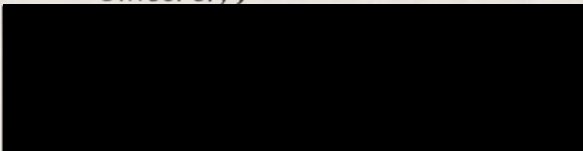
Dear Sir,

Once again C-Span has had another author talk on his book; this time George Will, another partially educated journalist, this one one who wears his grudges on his Wasp sleeves. Once again C-Span seemed not inclined to challenge, yeah even question, him on his contraversial views.

Hopefully you will appreciate the article sent herewith, which not only does challenge Will's position but also raises doubts about the extent of his erudition. Why not have Garry Wills on your Booknotes program to present his insights into the matter? (He is Adjunct Professor of History at Northwestern University.)

More first rate historians aired on C-Span might give us welcome relief from the stream of politicians and journalists your network airs - give us also some broadened illumination.

Sincerely,



at the prospect of being addressed as "Lady Nicolson." During her first pregnancy, Vita instructs her husband in how to distribute her baubles should she not survive the accouchement: "my emerald chain, my string of pearls..."; "my other tiara, the one with the leaf pattern in emeralds and diamonds..."; "my diamond crystal watch..."; "the seven big diamonds, the emerald ornament...and one or two of my rings..."

But the gardens of Vita's more modest second castle, Sissinghurst, now, like Knole, the property of the National Trust, are the Nicolson's proudest possession. He is more snobbish than she about the flowers that should and should not be cultivated there: "Rhododendrons are to us like large stock-brokers whom we do not want to invite to dinner"; "I don't feel that azaleas are very Sissinghurst... They are Ascot, Sunningdale sort of plants"; "Anything with the suggestion of suburbia should be excluded," and "Shrubbery is a great problem if one is to avoid the suburban"; "I quite see that those big pale yellow things... would look very well [but] they must be faint pallid yellow—nothing that shouts or raises its voice."

Both writers award themselves top marks on their culture, but the evidence of artistic appreciation in the letters is exiguous. Ballet, in the Diaghilev era, is mentioned only once, and while Harold is "really wild about Cézanne" at one time, and at another dislikes Ingres more than any other great artist, the names of few other painters occur, and these in passing. Vita visits Rodin, "a commonplace little French bourgeois" with "the Légion d'Honneur in his buttonhole," but confides to her diary, not to her husband, that the bedint sculptor had tried to seduce her, as he did every woman who ventured into his atelier.

Both Nicolson's were unmusical. Vita describes an escape from the laureate Robert Bridges' twee "tinkling away at Handel" on his clavichord. And Harold describes his discovery, in Mozart, not of the superfetation of ideas but merely that one thing leads to another. (He actually wrote elsewhere that "musical people possess fantasy but no constructive imagination.") Arriving late at "the Aberconway party," he sits outside the door of a room in which the Quartet K 464 is being performed: "On and on they went Mozart is just like Bunny [a neighbor of theirs]. He says, 'Well I must be going now,' and then thinks of something else to say, and goes on and on till I could have struck the door with angry fists." One of Harold's letters reveals that he contemplated writing a biography of Ludwig II, a subject perfectly suited to his talents and temperament, except that Wagner meant nothing to him.

As represented here, many of the Nicolson's literary judgments are dubious, while their critical principles presuppose sanctuaries for those who belong to "a definite class, by birth..."; thus Edmund Wilson's adverse article, "Through the Embassy Window: Harold Nicolson," falls "into a common error of critics...to demand that a writer shall be something he is not," and to expect "a gentle person of sensibility and culture to care for the rough and tumble." She recoils from "the dunghill despair of Eliot,"

and "his 'combinations drying in the sun.'" And he peevish about not having been able to "disinfect myself from the slime of *Lolita*." Both of them profess high opinions of her poems, one of which inspires him to an allocution beginning, "If there was ever a work of art about which I felt certain, it is this," after which, by way of demonstration, he cites the Kilmer-ish couplet "How delicate in spring they be / That mobled blossom and that wimpled tree." Robert Bridges also praises her poetry, or may have intended to, with "not a woman's writing at all—damn good."

The best passages in the correspondence are the cameo portraits—in G. B. Shaw's case, of his "white ashes" only (commingled with Mrs. Shaw's), which Harold goes to see in "a car which was very rich and American...central heating and so on"; "Shaw was there, in the garden. Still in the shape of ashes...just like the stuff [you put] down for slugs." Sinclair Lewis, wassailing, is a "red-faced noisy young man, who called me Harold from the start...and drank and drank... He said he was too tight to dress" for a ball, and "asked me did he look very tight because Edith [Dorothy Thompson] minded." "Cyril [Connolly] is not perhaps the ideal guest. He is terribly untidy.... He leaves dirty handkerchiefs in the chairs and fountain pens (my fountain pens) open in books." Joyce "told me that a man had taken Odissays to the Vatican and had hid it in the shape of a prayer book—and that it had been blessed in such disguise by the Pope."

Minna Curtiss, with whom Harold stays in the Berkshires, tells him that Lindbergh was "no more than a mechanic" who, if he had not flown the Atlantic solo, "would now be in charge of a gasoline station on the outskirts of St. Louis." Harold, after spending considerable time with the "lone eagle," finds him "shrewd and intelligent," if "quite uneducated," but wickedly quotes him in his native dialect: "these old dames...just because I flew alone to Purris...they think I am a safe pilot"; and on President Coolidge's medal presentation ceremony at the White House, "the fust time I was kind of moved by the thing...[but] we had to go through the whole damned show over again in the yard, I mean lawn..."

As one of his country's delegates to the Versailles Peace Conference, Harold Nicolson attended closed meetings between Lloyd George, Wilson, and Clemenceau, "three ignorant and irresponsible men cutting Asia Minor to bits as if they were dividing a cake...the happiness of millions being decided in that way." Nicolson's *Peacemaking, 1919*, with its devastating picture of Wilson affecting a laugh to cover "the slowness of his mental movements," reveals much more than the letters of the behind-the-scenes behind the Treaty. More pertinent are the chapters in his biography of Lord Carnock, his diplomatist father, on the Bosnian crisis of 1909, which, though no substitute for *Black Lamb, Grey Falcon*, are enlightening on the background of the siege of Sarajevo, 1919, particularly concerning "national egotism" in the Balkans and Turkey's recognition of the Austrian annexation of Bosnia and Herzegovina despite the Slav minorities. □

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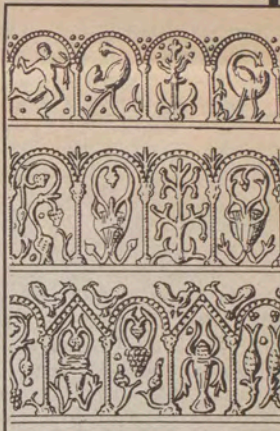
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Undemocratic Vistas

Garry Wills

**Restoration:
Congress, Term Limits and the
Recovery of Deliberative Democracy**
by George F. Will.
Free Press, 260 pp., \$19.95

Democracy, Chesterton said, is like blowing your nose—you may not do it well, but you ought to do it yourself. George Will (with many others) has decided that Americans blow their noses so abominably that we must snatch away their handkerchiefs this instant. If the American people continue sending bozos back to Congress, then the power to do so must be taken from them.

We are not talking, here, about the right of people to get rid of congressional bozos. They already possess that. All 535 members of the House, along with thirty-three senators, can be turned out of office in any federal election year. Constitutionally, there was no necessity to have a single incumbent left in the House after this fall's election. People have never been denied the right to reject candidates. But they have mistreated (we are told) the right to choose them again; and so legislators, after serving a specified number of years, should not have the right to be reelected. In this year's elections, proposals to limit the terms of senators and congressmen were put on the ballot in fourteen states, including California, Florida, Missouri, and Ohio.

Some, including George Bush, urge this antidemocratic step on apparently democratic grounds—that the people are showing in polls and referendums that they want term limits. What is stopping them? They can limit terms any time they reject their own representatives—a chance they get every two years, the most frequent opportunity in our federal system. Does this mean that they register a velleity with the pollsters but a compulsion in the voting booth? Are they saying, with the cry of a serial killer, "Stop me before I vote again?" Are they votaholics asking that someone make them go cold turkey?

Well, say that is so. What does that tell us about our democracy? The constituents of Candidate A, able to oust that candidate if only they can summon up the will, keep voting for the person; but they want, simultaneously, to deny the constituents of Candidates B through Z the chance to vote for their MC (member of Congress). That is: the constituents of the one candidate they have the best means of knowing and controlling, because they fail to do either, tell other candidates' constituents—in districts they have no means of assessing—that they must forfeit their constitutional right of voting for whomever they wish. Voters for A, confessing misuse of their own vote, want to take away the freedom of voters for B through Z—a strange exercise in vindication of democracy or even of basic equity.

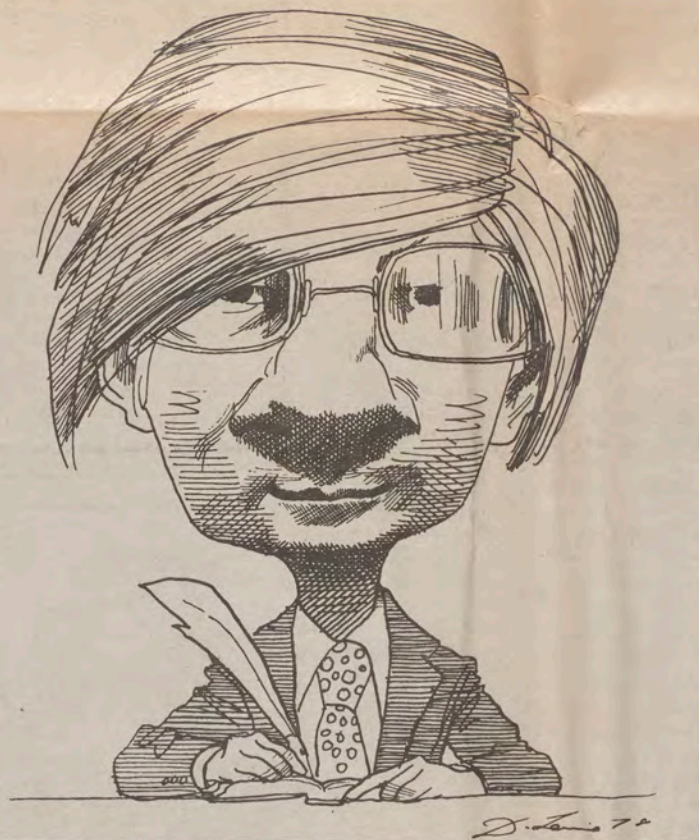
The vote for a candidate from one's own district was considered by the Constitution's drafters the most democratic element in the whole Con-

stitution—James Wilson called it the broad popular base on which alone the pyramid of republicanism could rise.¹ The right to choose one's own representative from one's own district—in the circumstances that best allow local scrutiny and accountability—creates what the framers considered the "first chamber" of the supreme body of our government. All the other elections were indirect in the original system—senators through state legislatures, president through the electoral college, federal judges through the presidential-senatorial process of nomination and confirmation. Only the

raised; there for ever to remain, unless a faithful discharge of their trust have established their title to a renewal of it.²

Now that means of self-correcting communication between the people and their representatives is to be removed. The people's prior favor is proof of some innate flaw attaching to the objects of that favor. Not even the best of representatives can be exempted, henceforth, from the damning fact that he or she is a representative—and must therefore, irrespective of merit (or the lack thereof), cease to

George Will



House of Representatives could be chosen directly by the people—and now even that right is to be circumscribed. The people flunked their test. They blew their noses badly. Now a right to reject, always there, is to be imposed as a duty to reject elected members of Congress, whose only basis for ineligibility is the fact that they have been chosen by the people. That prior choice constitutes a mark against a candidate, though the founders thought it was a sign of favor to be renewed if the chosen and the choosers found their first alliance fruitful. Re-election was treated as a means of discipline by Madison, who said it would keep representatives in accord with their popular masters:

[Office holders] will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were

be a representative at the end of a prescribed term. Madison boasted of the free access the Constitution gave to membership in the House:

Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession, is permitted to fetter this judgment or disappoint the inclination of the people.³

Yet now we would impose a disqualification even though that will fetter the judgment of voters.

This is a doctrine strange enough in itself, but even stranger when it is advanced by George Will as a return to the values of the founders (whence his title, *Restoration*). If the founders wanted term limits on Congress, it was an easy matter to impose them, in

a document that offered far riskier positions to ratifiers in the states. Will says that the subject was raised—Madison even included it in his first draft ("the Virginia Plan")—but Will claims it was set aside so that delegates could attend to more urgent matters. Later he quotes various people in and around the time of the founding who called "rotation" (periodic removal from office) a good thing; so, on his showing, term limits simply complete a process the framers began but were too distracted to complete.

The picture he has given us is false through and through. Rotation was not a peripheral concern but a central one. It was a fighting matter raised constantly by opponents of the Constitution and resolutely fought off by the draft's defenders (including Madison). Will could have checked, very easily, the issue's salience by a simple look at the index to Herbert Storing's *The Complete Anti-Federalist*, to its many entries under the headings "reelection" and "rotation."

This is the essential thing to note about the rotation struggle—that friends of rotation were enemies of the Constitution, who said they would not accept the latter without the former. The enemies of rotation were the friends of the Constitution, who won their fight for the latter by (among other things) keeping out the former. To present rotation as a thing no one cared enough about to pursue for the moment, but would have agreed on if they did, shows little acquaintance with the Constitution's history. All Will's references to rotation in the founding period are to a few secondary sources, most of them assembled by intellectual lobbyists for term limits.

In order to sort out the mishmash of fleeting references used by Will (i. e., by his sources), it is necessary to consider the role of rotation in the different schemes of government where it was used or proposed. Term limits were not simply a Good Thing wherever used. Even when they were imposed, they were imposed on certain offices to complement the role of other (unfettered) offices in the same system.

1. Rotation in the States

Will quotes as a general recommendation of rotation the praise of that principle in the 1780 constitution of Massachusetts.⁴ It is true that seven states, forming new constitutions in the early days of independence, adopted some kind of rotation, but six of them limited it to one office, the executive.⁵ Stung by the experience of royal governors they could neither dismiss nor control, the fledgling states adopted charters that attempted to restrict executive powers. Most governors were

⁴Will's source here is a paper on term limits submitted to the Massachusetts legislature earlier this year (Mark P. Petracca, "Rotation in Office: The Massachusetts Commitment").

⁵Five states (Delaware, Maryland, North Carolina, Pennsylvania, Virginia) passed constitutions with a rotation provision in 1776, one (Georgia)

¹James Wilson, "Lectures on Law," in *The Works of James Wilson*, edited by Robert Green McCloskey (Harvard University Press, 1967), pp. 402–403.

²James Madison, *Federalist* No. 57 (Bantam, 1982), p. 291, italics added.

³Madison, *Federalist* No. 57, p. 290, italics added.

ected only for a year, and limited, typically, to three terms in six or seven years; some were also subject to recall. But the experience of war made people unhappy with the limits placed on the governor (who was commander in chief of the militia). When states were required to dismiss successful governors in mid-campaign, they came to regret the limits they had placed on the office, as even Jackson Turner Main, an admirer of the revolutionary constitutions, had to admit:

By 1783 most people had perceived the perils of withholding essential executive powers and recognized the benefits that a strong governor could bestow. Enthusiasm for the principle of rotation in office diminished when constitutions forced six of the above twelve [successful governors] to retire. The revolutionary reaction against the monarchical principle had run its course, and would give way now to a resumption of authority.⁶

So the state's experience with rotation was largely an unhappy one—a fact that would be cited when some people tried to rotate the federal executive. Jefferson, it is true, clung to an ideal that had proved impractical when, in suggestions for a new Virginia constitution in 1783, he limited governors to a single term. But Madison criticized the idea with vigor:

It takes away one powerful motive to a faithful and useful administration, the desire of acquiring that title to a re-appointment. By rendering a periodical change of men necessary, it discourages beneficial undertakings which require perseverance and system, or, as frequently happened in the Roman Consulate, either precipitates or prevents the execution of them. It may inspire desperate enterprises for the attainment of what is not attainable by legitimate means. It fetters the judgment and inclination of the Community [a preview of Madison's language in *Federalist* No. 57]; and in critical moments would either produce a violation of the constitution, or exclude a choice which might be essential to the public safety. Add to the whole that by putting the Executive Magistrate in the situation of the tenant of an unrenovable lease, it would tempt him to neglect the constitutional rights of his department, and to connive at usurpation by the Leg-

islative department, with which he may connect his future ambition or interest.⁷

in 1777, and one (South Carolina) in 1778. All these rotated the chief executive. Those with executive councils (Delaware, Pennsylvania, South Carolina) naturally rotated those as well. Only Pennsylvania put term limits on its legislators; Pennsylvania was the odd man out, with a unicameral legislature and other untypical features (like its Council of Censors). See Ben Perley Poore, *The Federal and State Constitutions* (Government Printing Office, 1878), pp. 274–275, 379–380, 819–825, 1,412, 1,542–1,548, 1,617–1,618, 1,910–1,911). Some states used rotation in the upper chambers not in the sense of reeligibility but of staggered elections (as in the federal Senate).

⁶Jackson Turner Main, *The Sovereign States, 1775–1783* (Franklin Watts, 1973), p. 194.

But what of the 1780 constitution of Massachusetts, with which Will began this consideration of rotation at the state level? It is true that Article VIII of the Declaration of Rights in that document says that “the people have a right, at such periods and in such manner [here unspecified] as they shall establish by their frame of government, to cause their public officers to return to private life” (emphasis added).⁸ But the Massachusetts constitution goes on to spell out “the frame of government,” and it contains no provision for rotation. The document says that a right is retained, though the commonwealth no longer wants to exercise it—the Article was clearly a sop thrown to those who favored rotation. This experience of the states could never be guessed from Will's sketchy references to the principle of rotation in state documents.

2. Rotation in the Articles

The Articles of Confederation, unlike most state constitutions, rotated legislators in the federal Congress. But that, too, was the function of a very specific situation. Congressmen under the Articles were the creatures of the state legislatures, who appointed them annually, paid their salary, instructed them, and could recall them. The rotation rule, however, was not meant merely to tie them to their own legislatures but to protect other states as well. By establishing that no delegate could serve “for more than three years in any term [period] of six years,” the Articles prevented any state's delegates from sitting continuously enough to outweigh the others in experience or contacts.⁹ No delegate could serve on a committee between sessions without the permission of his home legislature (which paid him even for this service).

Again, one would not guess this was the situation from Will's approving reference to the Massachusetts desire “not to depart from the rotation established in the Articles of Confederation” (emphasis added).

3. Rotation and the Constitution

Here is Will's version of rotation at the federal constitutional convention of 1787:

Term limits were included among the fifteen resolutions of the Virginia Plan submitted to the

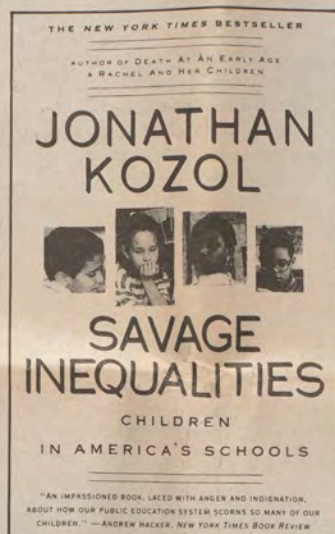
⁷Madison, “Observations on Jefferson's Draft of a Constitution for Virginia,” in Julian Boyd, editor, *The Papers of Thomas Jefferson*, Vol. 6 (Princeton University Press, 1952), p. 312. Hume's essay “Idea of a Perfect Commonwealth,” whose influence on Madison was demonstrated by Douglass Adair, opposed rotation as “throwing men of whatever abilities, by intervals, out of public employments” (*Essays, Moral, Political, and Literary*, edited by Eugene F. Miller, *Liberty Classics*, 1985, p. 515).

⁸Text as printed in Ronald M. Peters, Jr., *The Massachusetts Constitution of 1780: A Social Compact* (University of Massachusetts Press, 1978).

⁹Article V of the Articles of Confederation, printed in Merrill Jensen, editor, *The Documentary History of the Ratification of the Constitution*, Vol. 1 (State Historical Society of Wisconsin, 1976), p. 87.

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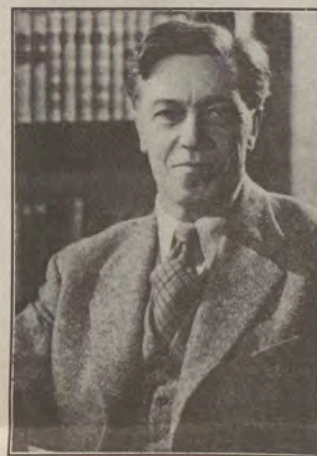


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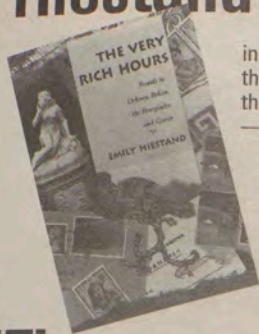


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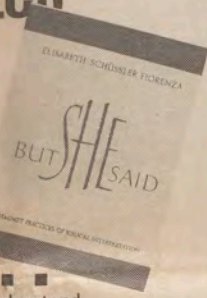
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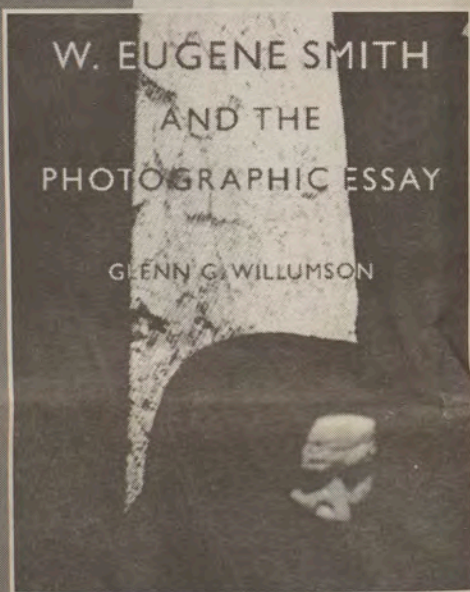
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Constitutional Convention in Philadelphia. But term limits were put aside and characterized "as entering too much into detail for general propositions." It is interesting that what looks to Americans today like a matter of potentially large consequence looked in 1787 like a mere matter of "detail," a subject not sufficiently momentous to merit the gravity of being addressed in the nation's fundamental law.

Will is relying here on an inaccurate 1989 paper drawn up by Sula Richardson, one that Richardson had to correct in a later publication. The quote about "too much detail" comes from the opening debates, where the whole question of "the qualifications of the National Legislature" was postponed—a matter of obviously vital importance, and not confined to the issue of term limits.¹⁰ Richardson misled Will by confining it in this way, and Will did not check the source of the quote he uses.¹¹

Still, Madison did put rotation in his suggested draft. Will does not ask why Madison, of all people, should have done that. We have already seen Madison's opposition to rotation in the Virginia governorship (the only place where it arose as a possibility) in 1783—an opposition he would repeat at the federal level, using similar language, in *Federalist* No. 57. What happened in the interval that could have made him favor rotation?

Once again, it is not enough to say one opposes or supports "rotation" in general. The specific form of rotation Madison proposed was part of his initial effort to cut state legislatures completely out of the federal election system. He had been frustrated in the Continental Congress by the way all delegates had their hands bound by the legislatures that sent them. So he proposed to have the people elect the popular branch of the federal Congress, and then let that branch elect the Senate, since he was creating the stable representative body the legislatures had opposed. Madison allowed rotation in the popular branch, but *not in the other* (where it would have made more sense by the rationale used at the state level), presumably as a way of accommodating complaints that the whole system was now too removed from state governments. When it became clear that the other delegates would not try to eliminate the state legislatures' role—they were allowed to choose senators in the completed draft—Madison abandoned the rotation that he had proposed only in

¹⁰Max Farrand, *The Records of the Federal Convention of 1787*, revised edition, Vol. 1 (Yale University Press, 1974), pp. 50–51.

¹¹Sula P. Richardson, "Congressional Tenure: A Review of Efforts to Limit House and Senate Service" (Congressional Research Service, 1989), p. 3. Richardson errs in saying Madison suggested term limits for the Senate as well as the House, and in saying that "the clauses limiting service" were the object of postponement because of their detail. Both these errors are silently corrected in the same author's "Congressional Terms of Office and Tenure: Historical Background and Contemporary Issues" (Congressional Research Office, 1991), pp. 43–44.

conjunction with his former scheme.¹²

But others were in favor of rotation, especially for the president, and it is not true that the convention simply dropped the subject as a "detail" of no consequence. In fact, one of Benjamin Franklin's most famous comments in the convention was uttered in favor of term limits for the president—a matter that would come up again and again in the ratifying conventions and the pamphlet warfare over the Constitution.¹³

George Mason, like Franklin, wanted to limit presidential terms. According to Madison's notes on the July 26 debate, "he held it as an essential point, as the very palladium of Civil liberty, that the great officers of State, and particularly the Executive, should at fixed periods return to that mass from which they were first taken."¹⁴ Madison was content to register the arguments of Gouverneur Morris, which coincided with his own:

Mr Govr. Morris was agst. a rotation in every case. It formed a political School, in wh. we were always governed by the scholars, and not by the Masters...this Rotation in office will not prevent intrigue and dependence on the Legislature... If the magistrate does not look forward to his reelection to the Executive, he will be pretty sure to keep in view the opportunity of his going into the Legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the Legislature, on his influence over which the figure he is to make will depend.¹⁵

Although all rotation was excluded from the draft completed by the federal convention, the Anti-Federalists continued their fight for it in the ratifying conventions of the states (which alone gave force to the Constitution, making them the true lawgivers). In Virginia, Patrick Henry claimed that, absent rotation, "a very small minority may continue forever unchangeably this government."¹⁶ William Grayson argued that "the President will be continued in office for life."¹⁷ Like many

¹²That Madison's first scheme was entirely constructed to counter the state legislatures can be seen from the fact that he proposed a veto on their legislation to be exercised by the federal Congress (Farrand, *Records*, Vol. 1, p. 211).

¹³"In free Governments the rulers are the servants, and the people their superiors & sovereigns. For the former therefore to return among the latter was not to *degrade* but to *promote* them—and it would be imposing an unreasonable burden on them, to keep them always in a state of servitude, and not allow them to become again one of the masters." Madison's notes for July 26, in Farrand, *Records*, Vol. 2, p. 120.

¹⁴Madison's notes in Farrand, *Records*, Vol. 2, pp. 119–120.

¹⁵Madison's notes in Farrand, *Records*, Vol. 2, pp. 112–113.

¹⁶Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, second edition, Vol. 3 (reprinted by the Michie Company, 1941), p. 58.

¹⁷Elliot, *Debates*, Vol. 3, p. 491.

Anti-Federalists, Grayson wanted to reduce the president's term—to two years or even to one—as well as to rotate it. In New York, Melancton Smith did not want to confine rotation to the executive: "It is certainly inconsistent with the established principles of republicanism that the Senate should be a fixed and unchangeable body of men... A rotation I consider as the best possible mode of effecting a remedy."¹⁸ The Federalists kept repeating their Madisonian arguments. Robert Livingston, for instance, said:

The people are the best judge who ought to represent them. To dictate and control them, to tell them whom they shall elect, is to abridge their natural rights. This rotation is an absurd species of ostracism—a mode of proscribing eminent merit and banishing from stations of trust those who have filled them with the greatest faithfulness. Besides it takes away the strongest stimulus to public virtue—the hope of honors and rewards. The acquisition of abilities is hardly worth the trouble unless one is to enjoy the satisfaction of employing them for the good of one's country. We all know that experience is indispensably necessary to good government. Shall we then drive experience into obscurity? I repeat that this is an absolute abridgement of the people's rights.¹⁹

The division on this, as on most matters, was between trust in the people, voiced by the Federalists, and suspicious distrust on the part of the Anti-Federalists. The classic confrontation in this struggle was between Patrick Henry's pessimism and James Madison's optimism about "the virtue of the people." Jefferson, looking on from France, thought Madison was bound to lose in this confrontation with Henry, and predicted that Virginia would not ratify the constitution.²⁰ Henry had reports of Jefferson's criticisms of the Constitution, and used them against Madison.²¹ As Madison summed up his case for representative government at the Virginia ratifying convention:

I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks, no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people is a chimeric ideal. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men, so that we do not depend on their virtue, or put confidence in our rules, but in the people who are to choose them.²²

It is a vulgar error that the framers of the Constitution distrusted the peo-

¹⁸ Elliot, *Debates*, Vol. 2, p. 310.

¹⁹ Elliot, *Debates*, Vol. 2, p. 293.

²⁰ Boyd, *Papers of Thomas Jefferson*, Vol. 12, p. 424.

²¹ Boyd, *Papers of Thomas Jefferson*, Vol. 13, pp. 354–355, 412.

²² Elliot, *Debates*, Vol. 3, p. 357.

ple.²³ That was the position of the Anti-Federalists, one that Madison repeatedly rejected—as in *Federalist* No. 55:

I am unable to conceive that the people of America in their present temper, or under any circumstances which can speedily happen, will chuse, and every second year repeal the choice of sixty-five or an hundred men, who would be disposed to form and pursue a scheme of tyranny or treachery... As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust: So there are other qualities in human nature, which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these [later] qualities in a higher degree than any other form.

It was the Anti-Federalists, the enemies of the Constitution, who did not trust the people to choose their own rulers. Will is advocating a return to their plans, not to those of the framers, when he tries to take the discretion of choice from voters.

4. Rotation and the President

But we *do* have one kind of limited term in our system. We have had it from the outset, with the force of custom. Since 1951, when the Twenty-Second Amendment was ratified, it has had the force of law. If term limitation is good here, why not everywhere?

Will praises Jefferson for honoring the spirit of rotation in his own presidency. Since John Adams did not win a second term, Jefferson was the first president who had the opportunity to observe or break Washington's precedent of not seeking a third term.²⁴ But the situation is more complicated than Will gives any evidence of knowing. If Jefferson had been true to his own doctrine on rotation, he would have refused to serve a second term. We

²³It is an error repeated by Will in his earlier book, *Statecraft as Soulcraft: What Government Does* (Simon and Schuster, 1983), pp. 25–46. He dismisses Madison's comments on virtue and republicanism in *Federalist* 55 as a "cool" exception to his general argument, ignoring not only Madison's passionate defenses of human virtue in the ratifying convention but his optimism in other sections of *The Federalist* itself—in, for instance, No. 14:

I submit to you my fellow citizens, these considerations, in full confidence that the good sense which has so often marked your decisions, will allow them their due weight and effect, and that you will never suffer difficulties, however formidable in appearance or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scene into which the advocates of disunion would conduct you.

²⁴Will says that Jefferson embraced rotation because he was a classical republican, and we have to embrace it for the same reason. But Madison was as clearly a classical republican as Jefferson, and he opposed rotation; while some who were not classical republicans advocated rotation. There is no necessary connection between the one and the other.

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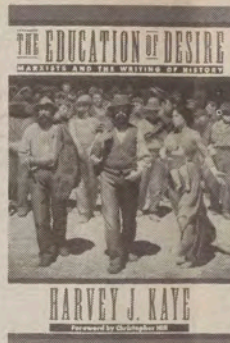
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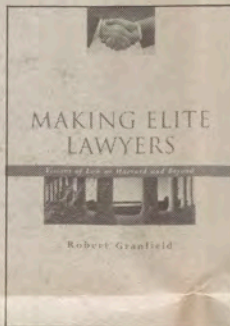


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have seen that he proposed a single term for the state executive in Virginia. His reasons should have made him, a fortiori, limit the federal executive—and they did: one of two points in the Constitution that he persistently, heatedly criticized (along with the absence of a bill of rights) was its failure to limit the president to one term.

[The drafters'] President seems a bad edition of a Polish king... I wish that at the end of the 4 years they had made him for ever ineligible a second time.

They have abandoned rotation in office: and particularly their president may be re-elected from 4 years to 4 years for life, so as to render him a king for life, like a king of Poland, and have not given him either the check or the aid of a council.

The second feature I dislike [after the lack of a Bill of Rights], and dislike greatly, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President.²⁵

The ratifiers, some of whom knew about Jefferson's objection, did not honor it. But it was understood that the presidency was a special case. Only the president holds one of the three departments of government in his single person. This disturbed people so much that, both in the drafting and the ratifying conventions, there was extensive discussion of creating an executive council, with him at its head—as Pennsylvania, Delaware, South Carolina, and New York had done at the state level. But it proved hard to define responsibilities on this council—the plan submitted by Gouverneur Morris and Charles Pinckney offended the principle of separated powers by including the Chief Justice on the council.²⁶

Yet many feared the concentration of power in what Jefferson and Henry considered too monarchical an office. Several remedies were debated—shortening the president's term, weakening his veto, providing for a recall on easier terms than impeachment. Some classical republicans wanted two presidents, on the model of Rome's two consuls. Franklin proposed a plural executive, and Edmund Randolph wanted three men to preside over the executive.²⁷

Madison and his allies contended that impeachment was the guarantor against executive tyranny. In this respect, the president is more like judges, who have life tenure, than like other elected officials. For legislators, it is considered sufficient that they be turned out at the next election, since the harm they can do is limited by their dozens of confreres (dozens at that time—hundreds now). But a president out of control can do such harm that a measure is provided for removing him before he has to face the electorate again (even though his term is shorter than a senator's, who cannot

²⁵Boyd, *Papers of Thomas Jefferson*, Vol. 12, pp. 351, 425, 440.

²⁶Elliot, *Debates*, Vol. 2, pp. 342–343.

²⁷Elliot, *Debates*, Vol. 2, pp. 102–103, 66, 88.

be reached by impeachment).

Nonetheless, misgivings remained, and Washington was aware of them. He meant to serve only one term, and had Madison prepare a farewell address toward the end of it. He was prevailed on to remain in office—the government had not even been completely established for part of his first term. Yet he resisted similar pressures at the end of his second term, and issued the farewell address prepared by Hamilton. It is interesting to speculate what would have happened if he had retired when first he planned to. Would that have set a one-term precedent? It is quite possible. If we assume that John Adams, even when elected earlier, would not have been re-elected (a safe though not a certain guess), then it would have been impossible for Jefferson, with his prior record of argument for single-term executives, to depart from Washington's example or for Madison to defy the pattern set by his fellow Virginians.

It was inevitable, perhaps, that a president would in time attempt a third term. Wilson planned to, but his stroke intervened; Roosevelt finally did it. The Twenty-Second Amendment, adopted in 1951, has been called a Republican-inspired act of vengeance against the dead Roosevelt. But even some who loved Roosevelt—including his wife—thought the third term (let alone the fourth) was a bad idea.²⁸ Posthumous revelations about his health in the third term reinforce those concerns. Impeachment does not cover mental or physical disabilities, and the examples of both Wilson and Roosevelt showed that a modern president could conceal his deterioration from the public. The Twenty-Fifth Amendment, adopted in 1967, provides for presidential disability but has already proved hard to apply. The presidency is now a full-time and very taxing job. The increasing speed of communications, the hair trigger on a huge arsenal of weapons, the imperial role America has played in world affairs—all these factors make the executive office far more powerful than was foreseen in the eighteenth century. The president with least self-knowledge or self-criticism would be the one most tempted to stay on. (Ronald Reagan wanted a third term.)

Given a glimpse of such circumstances, it is possible that the framers would have limited the term on the only single-person department of government. After all, they almost did it without foreknowledge of these developments. The same could not be said for the legislative department. Term limitation of the president did not depart from the values of the framers. But a limit there, for that very special condition, just strengthens the arguments for trusting the voters to choose their local representatives in what Madison called an "unfettered" way.

5. Professionalism

But, of course, what the framers had in mind is not the sole and controlling consideration (unless one holds to the extremes of "original intent" espoused by Will's friend Robert Bork). The amending process was provided precisely for change, rather than for

²⁸Joseph P. Lash, *Eleanor and Franklin* (Norton, 1971), pp. 614–615.

return to the past. Though Will makes the framers' values his main point, he also raises other arguments for term limits. One of his principal attacks is on the "careerism," the professionalization, of the modern Congress. Even here, he tries to sneak in an appeal to the original Constitution, noting that the early representatives were amateurs, gentleman-statesmen of the eighteenth-century sort. The problem with that argument is that those office holders came overwhelmingly from an elite, much of it slaveholding. The amateur with a private fortune can often be more cultured, versatile, and free from obligations to "interests." Some originally thought the president should serve without pay (as Washington had during the war)—which would have excluded people from that office on class and financial grounds.

Nonetheless, the argument against careerism can be separated from nostalgia for the good old days. Many resent political careerism. George Bush used this resentment against Bill Clinton. Bush contrasted his time in the private sector with Clinton's long career in office—punishing him, in effect, for becoming the youngest governor of his day and winning reelection five times. Bush did not notice that his own running mate had been in politics for most of his adult life (if any).

The anticareerist argument for term limits is really three arguments, all of which must be valid if term limits are to be required: 1) that professionalism in politics is bad, 2) that professionalism in politics is avoidable, and 3) that term limits are the means of avoiding professionalism in politics. Even if (1) is true, it does not matter unless (2) is also true. But even if (2) is true, term limits should not be attempted unless (3) is also true. Actually, all three are dubious or worse.

Begin first with the second proposition. Whether good or bad, professionalism is a law of modern life, as true of the judicial and executive parts of government as of the legislature—and as true of business, the sciences, education, law, and other professions as it is of government. Supreme Court justices originally served on lower courts as well as on the supreme branch, rode circuit, taught college courses. Early presidents like Washington and Jefferson oversaw their complex plantation businesses, and spent long stretches of time doing so. Short sessions and limited business made senators and congressmen part-time legislators. The scale and complexity of modern life has changed all that. All three branches of government now have large professional staffs of researchers, writers, and advisers. Will argues that there is turnover in such staffs; but that is not a datum at odds with professionalization. One of the briefest and most regular turnovers is of Supreme Court justices' clerks, but that is a sign of professional processing. The clerk is a higher-class apprentice acquiring desirable professional credentials.

Romantics of business like Ross Perot claim that theirs is still the world of the enterprising amateur; but he could not run his business without being able to identify, acquire, and keep highly professional accountants, tax lawyers, researchers, and technicians. He claimed he would be

an amateur politician; but he found he had to use some professionals, including legal specialists, on his petition drives in the several states. The day when one can dispense with professionals is largely gone. Specialization is a law of growth in all areas, and specialists are highly trained and self-credentialing. A nonprofessional government in such a world would be hopelessly outgunned in dealing with modern conditions. Dr. Franklin was one of the leading scientists of his day, as Jefferson was one of the leading architects. Neither man, if he observed a proportionate preparation and commitment of time, could make any serious contribution to such fields today. Franklin, to be a leading scientist, would have to give up all or most of the many other things he was. The



state of knowledge is such that amateurs cannot master it in their spare time. This is a fact of life, whether we like it or not.

But why should we dislike it? Going back to point (1) of the argument, is professionalism, overall, a bad thing? (This is not the same thing as asking whether it has bad aspects—as does amateurism, or most human activity.) Some have considered professionalism a qualification for office, not a disqualification. One of those who put that most firmly was—George Will. In his 1983 book, *Statecraft As Soulcraft*, Will wrote:

The most recent populist who tried to run the United States (Jimmy Carter) learned to his sorrow that Washington politics is a complex profession—a vocation, not an avocation. He was dealing in Congress with professionals, many of whom were there before he came to town, and who planned to be there long after he left. The day of the “citizen legislator”—the day when a legislator’s primary job was something other than government—is gone. A great state cannot be run by “citizen legislators” and amateur administrators.²⁹

It was not until he got on the term-

²⁹Will, *Statecraft as Soulcraft*, p. 16. Even in 1920, Speaker Champ Clark of Missouri wrote, “A man must learn to be a Representative or Senator, just as he must learn to be a farmer, carpenter, blacksmith, merchant, engineer, lawyer, doctor, preacher, teacher or anything else.” *My Quarter Century*

limits bandwagon that Will decided professionalism, the rule everywhere else, should be made the exception in politics.

Besides, a call for amateurism at this date would favor an elite, as it did in the eighteenth century. Specialization in other fields means that qualified people without independent means would be less inclined to interrupt their own demanding careers for a detour into politics, where they could expect no lasting opportunities. This would be especially true of minority professionals, as those whose access to or promotion in the professions is recent or still being fought for. Why, after all, should a woman lawyer or a black professor create a hiatus in his or her career, often at a crucial stage, if she or he must return, in four or six

years, to face younger competitors or filled slots? This would not trouble the candidate of independent means or assured status.

Admittedly, all candidates face the prospect that they will lose, even now, and their political career be aborted. But at least there is some hope that a career exists in politics. Most people enter politics—as they do other fields—because they like it and feel they would be good at it. Would we trust a doctor who hated medicine? Yet some seem to hope for politicians who will not like politics, who feel contempt for themselves and their colleagues in taking up the task, and hope to rise by blackguarding their fellows. That is hardly the way to find or encourage excellence in our representatives.

6. Grudges

Will’s other arguments against congressional abuses turn out to be only tenuously (if at all) connected with term limits. Four pages are filled entirely with ink-blot outlines of outrageously gerrymandered congressional districts. What has this got to do with Congress (the prime target of Will’s book)? State legislatures do the redistricting. Will says that sometimes they do this to protect incumbent MCs. True, but that is just one of the political considerations they have in mind. All right, he says, then limit state legislators’ terms. But that will not end gerrymandering—since protection of an incumbent is only one motive for it, often subsidiary to protection of the

of *American Politics*, Vol. 1 (Harper and Brothers, 1920), p. 220.

party’s advantage, or of a minority’s, or of local interests. If gerrymandering is evil, attack the evil directly. Term limits will not solve that problem. In most cases they will not even affect it.

Another section repeats Will’s argument (which I find convincing) that public broadcasting is a subsidy to the better-off. Again, what has that to do with Congress? Will answers, vaguely, that public broadcasting is an example of “government lobbying itself” and that incumbents are more responsive (than limited termers would be) to interest groups which are as careerist as they are. This latter point is dubious in itself and irrelevant to correction of the abuse he spends nine pages on. Many people who are not incumbent MCs or paid lobbyists think public broadcasting is a good idea. I know that because I agree with Will on this point, and most people I talk to are in disagreement with us both. There is no way to make sure such people would not enter Congress and vote for public broadcasting even as one-termers. The remedy does not address the abuse that Will is attacking.

In fact, much of the book is filled with what might be called George Will’s favorite grudges, already amply aired in his columns, and here presented as problems term limits would solve. There is, for instance, his indignation at the rejection of Robert Bork (at whose wedding Will was an usher) as a Supreme Court justice. Does Will prove that incumbents of limited term would have voted for Bork (assuming that to be a good thing)? No. He does not even give us a breakdown of the vote to show whether short-term senators voted in a significantly different way from longer-term ones. He contents himself with saying that, even if the outcome were not changed, the senators would have comported themselves with more dignity if their terms were limited. Unprovable, of course; and resting on highly contested views of what was dignified in this case. Will is offering a partisan view of a highly controversial event, and hoping that term limits would somehow favor his view. Yet most of the American people, by the end of Bork’s hearing, opposed his confirmation, and even first-termers would presumably have some of the same reactions to Bork under scrutiny. One did not have to be an incumbent in Congress to think Bork should have been rejected. Will is addressing a policy matter with a procedural recommendation—an illogical and useless exercise.

Will claims that he wants to strengthen Congress so it can face up to an overextended executive. He argues that the Bork hearings weakened Congress. Yet simultaneously with the publication of his own book, Will is quoted on the back jacket of a book by a conservative colleague that says the Bork hearing showed Congress was too strong in its dealings with the President on this issue.³⁰ One should be

³⁰Terry Eastland, *Energy in the Executive* (Free Press, 1992), pp. 245–252. Eastland, unlike Will, finds most of the undignified behavior outside the Senate—in ads by Gregory Peck, in the nonendorsement by the ABA, etc. To prevent these activities, limiting terms is insufficient. The only preventative would be repeal of the First Amendment.

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cautious about Will's claim that he is trying to strengthen Congress and weaken the president. He blames the growth of presidential power on a post-Wilson emphasis on “the rhetorical presidency”—as if presidents acquired extraconstitutional authority by giving more speeches. Actually, Wilson began the aggrandizement connected with a war presidency. Presidential authority to wage secret wars, to conceal bombings and weapons development, to meddle in other government's elections, has been part of the trend that makes even ordinary citizens now look on the president as their commander in chief. Four years of war expanded Franklin Roosevelt's power vastly more than did eight years of the Depression. The Supreme Court would overthrow a dubious measure like the National Recovery Act, but it let stand the internment measures used against American citizens of Japanese descent.

Will, for all his rhetoric against the rhetorical president, has been a hearty supporter of the war president. His time as an aide to Senator Gordon Allott of Colorado was spent calling for more and bigger weapons. Though Will likes to be a conservative with a difference, he is part of a largely conservative and utterly predictable call for acts that are in fact punitive of Congress. This is as inevitable as were liberal beratings of Congress from the 1940s to the 1960s—one aspect of which, Truman's 1948 campaign, was recently celebrated in fuzzy ways. When a liberal president dealt with a conservative Congress, we had James MacGregor Burns saying that “deadlock” could only be broken by measures against the filibuster, the seniority system, the chairmanships, the rural overrepresentation. The conservative ideologue Willmoore Kendall, on the other side, defended all these “obstructionist” aspects of a Congress whose views he shared.³¹

Actually, many of the reforms Burns called for have occurred in the interval—but the millennium they promised has not been ushered in. Redistricting has occurred; cloture is easier; the seniority system is no longer as rigid; and the chairmanships are no longer monopolized by southern gerontocrats. Yet Congress is still the enemy to an executive with different ideological priorities, and the Congress is always an easy target for criticism.

It has always been the least glamorous part of our government. It deals with messy details; it bargains for pork; it services constituents on a micro-scale compared to the lofty activities of justices on the bench and the president in his executive mansion. People do not like Congress as a spectacle, and never have. Tocqueville

³¹James MacGregor Burns, *The Deadlock of Democracy* (Prentice Hall, 1963); Willmoore Kendall, *The Conservative Affirmation* (Henry Regnery, 1963).

wrote in the 1820s: “On entering the House of Representatives at Washington, one is struck by the vulgar demeanor of that great assembly. Often there is not a distinguished man in the whole number.”³² Presidents like Nixon and Bush neglect domestic affairs because they are too mundane—a luxury Congress cannot indulge. Even a president will, at election time, fly around the country giving out bribes to the voters in the form of government contracts, exemptions, or programs that benefit key constituencies; but an MC must do that all the time, and for a narrower constituency. City councils, county boards, state legislators do the same thing, but somehow it looks less shady when done far away from the nation's capital. Still, if the president in our system is Don Quixote—in Willmoore Kendall's useful analogy—the Congress is Sancho Panza, with Sancho's instinct “of not liking to be tossed up in a blanket even for a high principle.”³³

Everyone has always denounced “pork barrel” politics—especially the opponents of democracy, from Plato's time down to ours. But the MC gets re-elected partly on pork issues because the constituency approves of that. This is the obvious explanation for the fact that people in general disapprove of MCs in general but continue to reward their own MC. They see other representatives as taking pork from the common store away from them, while the local MC brings pork home to them. Pork is bad—is indeed pork—only when the other person gets it. Pork flowing in one's own direction is a “just return” on taxes or a just consideration of local needs. If pork politics succeeds, this is not because evil incumbents, with the help of evil lobbyists, heap it on a resisting people. If the people do not resist, that too is a form of blowing one's own nose, however badly.

Will assumes that young and innocent first-termers will have less motive or talent for servicing “interests.” Perhaps. But they might be even better at the game than old-timers who take their deals for granted. The lobbyists might have to work harder cultivating newcomers—or grooming them. If a candidate has only one term (or one more), the deals could be more ruthless (to be rewarded with jobs or contracts after service). Or an MC can throw support to a chosen successor, with the connection of party, club, PAC, lobby, and donors. The demand for pork will create its own supply. If the evil is sufficient, it should be attacked from the demand end, in the citizenry. Changing the elected players will not change the structure of the game as it is played.

Are we to surrender, then, to the denigration of Congress as a constant

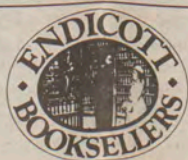
³²Alexis de Tocqueville, *Democracy in America*, Reeve-Bowen translation (Knopf, 1976), Vol. 1, p. 204.

³³Kendall, *The Conservative Affirmation*, p. 48.

in our system? Before we become thus resigned, it is well to remember what this Congress, as opposed to earlier ones, is obstructing by the “gridlock” George Bush denounced. In the 1950s Congress was obstructing the passage of civil rights bills; in the 1980s it tried to prevent the gutting of civil rights measures already achieved. In the 1950s Congress protected local fiefdoms that were segregated, disproportionately represented, and opposed to equality (one-man-one-vote). In the 1980s, Congress tried to protect equality—of voting rights, of women, of minorities. In the 1950s, Congress hunted for security risks at home and voted for huge military expenditures abroad. In the 1980s, Congress tried to open up secretive recesses of government like the CIA, and the FBI, and to reduce the military budget. Congress has not been hugely successful in its endeavors; but it is anger at even partial success in these areas that has prompted the conservative attack on Congress. The call for term limits is ideologically driven, though some people support that call from considerations of good government. Will claims that he is strengthening Congress, though the more typical argument for term limits is punitive toward Congress—eg., *Cleaning House*, a book supported by conservative foundations and put out by a conservative publisher.³⁴ Dan Quayle, a leading proponent of term limits, was not concerned that the system is not working; he was frustrated because it is not working in the conservative direction he favors.

Reforms even less intrusive than term limits have, in the past, created unforeseen side effects and disappointed the reformers in their original goals. And less was at stake in them. Nothing much is lost if reforms like regulated financing, ethics committees, or limits on outside income do not spectacularly improve Congress (though they have improved it unobtrusively). But exasperation at Congress, supported mainly by a mood and by bad or irrelevant arguments like Will's, should not lead us to alter the basic elements in our constitutional scheme of representation. Madison's advice against fettering the people's choice is embattled today, as it was when he gave it. But it remains good advice. □

³⁴See *Cleaning House: America's Campaign for Term Limits* by James K. Coyne and John H. Fund (Regnery Gateway, 1992). Will also admits that federal term limits probably do and should require a constitutional amendment—an argument made stronger when we consider the constitutional history he neglected or distorted. In the debate with Clinton on October 15, Bush said “amendments” would be necessary. The authors of *Cleaning House* blithely argue that the Tenth Amendment lets the states do anything not expressly prohibited by the Congress—a view that few constitutional scholars would endorse.



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