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Book Review

Restoration Comedy

Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy. By George F. Will.* New York: Free Press, 1992. Pp. x, 260. \$19.95.

Nelson W. Polsby†

The unhealthy tendency that today requires constitutional correction is the distortion of government and the demotion of Congress in the regime. That distortion and that demotion have been produced by legislative careerism predicated on constant abuse of the power of the purse.¹

These sentences are as good as any to introduce the main themes of George F. Will's rambling and untidy argument in favor of congressional term limitations. Unlike many advocates of term limitations,² Will portrays himself as a friend of Congress, and his argument contains at least the rudiments of a causal theory. Legislative careerism is held to be the cause of a number of

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1. GEORGE F. WILL, *RESTORATION: CONGRESS, TERM LIMITS, AND THE RECOVERY OF DELIBERATIVE DEMOCRACY* 182 (1992) [hereinafter cited by page number only].

2. Such as John H. Fund, *Term Limitation: An Idea Whose Time Has Come*, in *LIMITING LEGISLATIVE TERMS* 231 (Gerald Benjamin & Michael J. Malbin eds., 1992); Jonathan Alter, *The World of Congress*, *NEWSWEEK*, April 24, 1989, at 28-34; Irving Kristol, *Twelve Years and Out!*, *WASH. POST*, June 10, 1990, at C7; *Review and Outlook: Lawmakers for Life*, *WALL ST. J.*, April 18, 1990, at A22.

things that are wrong with Congress and that weaken the influence of Congress in the political system. Term limits are introduced as the cure that will strengthen Congress by abolishing legislative careerism.

An unusual feature of Will's argument is his eagerness to part company with a fair number of advocates of term limitations on various points that heretofore have been regarded as salient. For example, he professes indifference to the larger partisan or policy consequences of term limitations beyond an allegedly salutary effect on the pork barrel. Advocates frequently take the view that congressional term limits will help Republicans, since more Democrats are currently entrenched in Congress, and conservatives, because the longer members stay the more likely they are to vote for appropriations for governmental functions.³ Will also refuses to praise legislative amateurism as a proper or relevant goal that term limits can achieve.⁴

Will enumerates a longish list of complaints about Congress and its operations that nobody heretofore has had the ingenuity to link with a lack of term limits. And for good reason; Will's case with respect to each is quite weak. He is annoyed, for example, with the redrawing of congressional district boundaries to create majorities for minority voters. These districts, Will says, "represent a new dimension of Washington arrogance and bipartisan cynicism in the service of incumbents."⁵ In fact, redistricting is generally handled in the several states by state legislatures, and not in Washington at all. Members of Congress can only seek to influence the process indirectly. Redistricting has unseated incumbents in several cases, and threatened incumbents in many others.⁶

There are at least four other similar loose ends in Will's argument: (1) Will rightly observes that the operations of the legislative schedule make normal family life difficult for members of Congress. How will term limits help current members overcome this problem? Evidently by separating members from Congress, and hence from operations of the legislative schedule.⁷ Will does not show how, if term limits were adopted, the same problem would not plague members who succeed the current crop. (2) Will notes that incumbent members use franked mail heavily, especially to help get reelected.⁸ Term limits would solve this problem, he argues, by decreasing the number of incumbents running at each election. (3) "Term limitation," says Will, "would also help to reinvigorate our understanding of citizenship by

3. See JAMES L. PAYNE, *THE CULTURE OF SPENDING* 175-81 (1991) (advocating term limits as a means of limiting government expenditures).

4. Pp. 140-42.

5. P. 48.

6. For example, in 1992, Steven Solarz in New York, Ben Erdreich in Alabama, and Robin Tallon in South Carolina were unseated by redistricting. For a general overview, see Bob Benenson, *Arduous Ritual of Redistricting Ensures More Racial Diversity*, CONG. Q. WKLY. REP., October 24, 1992, at 3355-3413.

7. Pp. 50-53.

8. Pp. 93-96.

reemphasizing the value of civic participation.”⁹ He suggests that this would be accomplished because long-term legislators monopolize public office, a form of civic participation, for long periods of time; but short-term legislators would not.¹⁰ (4) Finally, Will argues that:

The rise of the career legislator is another reason for the rise of judicial activism in a climate of rights talk. This is so because legislative careerism begets in legislators an unsavory prudence, which in turn begets the impulse to solve society’s problems by judicial fiat rather than political deliberation. Therefore term limits for legislators would help to limit the imperial judiciary.¹¹

These arguments make for difficult reading because their relevance to term limits is hard to fathom, or because Will’s facts are wrong, or because Will thinks getting rid of incumbents will get rid of problems that hang around Capitol Hill regardless of how long incumbents serve.

The core of Will’s argument lies elsewhere, and can conveniently be examined by considering three questions to which he returns affirmative answers:

1. Will term limits improve congressional deliberation?
2. Will term limits reduce congressional interest in seizing local advantage?
3. Will term limits increase the power of Congress in the political system?

I. DELIBERATION

Will defines deliberation, in the abstract, as “a disposition to reason about policies on their merits.”¹² He describes it as an attribute of individual members’ thought and judgment, as whatever it was that Burke recommended to the electors of Bristol, and as not merely obtaining goodies for the home folks.¹³ Will contrasts deliberation with ratification.¹⁴ He traces it to its linguistic root in Greek as “to weigh.”¹⁵ One member of Congress (Charles Vanik, D., Ohio) is called to witness that members have no time to do it.¹⁶ A deliberative institution, Will says:

9. P. 163.

10. P. 164.

11. Pp. 176-77.

12. P. 110.

13. Pp. 115-17, 142.

14. P. 123.

15. P. 123.

16. Pp. 112-13.

[I]s one in which members reason together about the problems confronting the community and strive to promote policies in the general interest of the community. The deliberative process involves identification and investigation of social needs, the evaluation of programs currently attempting to meet these needs, and the formulation of new legislative remedies for recalcitrant problems. On the surface, Congress seems to be in the business of informing and persuading—the essence of a deliberative process.¹⁷

According to Will, however, this is not what Congress is actually doing: it is engaging in “mere posturing in the service of careerism.”¹⁸

How can Will possibly know this? Even if it were to be the case—which no careful observer of Congress could possibly concede—that each and every participant in each and every congressional transaction—committee hearings, mark ups of legislation, floor debates, conferences—was personally motivated by nothing but career concerns, venality, selfishness, and/or other base motives, it still would not follow that the collective result would discourage deliberation. Ever since 1776, when Adam Smith described how a market supplying goods useful to the community might arise from the self-interested behavior of many actors, social observers have had to confront the possibility of a gap between individual motives and collective outcomes.¹⁹ Not even a good case about individuals and their motives can exempt an author from a serious look at the institution and its workings.

But Will’s case about individuals is not especially good; he delves only anecdotally into individual actions, some horrible, some trivial, invariably assigning base motives.²⁰ As to the absence of deliberation from the actual collective work of Congress, some of which any of us can observe on C-SPAN, he makes no case at all.²¹ And so we must ask: Does Congress, as

17. Pp. 110-11.

18. P. 111.

19. See ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 119 (Penguin Books 1986) (1776) (“[I]t is not from the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard for their own interest. We address ourselves not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.”).

20. For instance, he describes Rep. Newt Gingrich (R., Ga.) campaigning in Georgia and promising to “do more for Cobb County,” including giving up the chauffeured automobile to which he was entitled as Republican Whip. Pp. 97-99. Or Rep. Patricia Schroeder (D., Colo.) seeking and getting a \$3 million appropriation to subsidize midnight basketball leagues for at-risk urban youth. Pp. 33-34. From this latter example, Will concludes that Rep. Schroeder has become “deranged” by her presence in Washington since 1972. P. 34.

21. Here is one possible exception. Will says: “To those who dismiss such examples [as midnight basketball] as ‘merely anecdotal’ a proper response is that a sufficiency of anecdotes makes a pattern that confirms a theory. The pattern, in this case, is the federal budget. . . .” P. 141. Needless to say, Will’s book is not about the federal budget’s contents, the budgetary process, or—what he seems to advocate here—zero-based budgeting. There are such books. See, e.g., JOHN GILMOUR, RECONCILABLE DIFFERENCES?: CONGRESS, THE BUDGET PROCESS, AND THE DEFICIT (1990); ALAN SCHICK, CONGRESS AND MONEY: BUDGETING, SPENDING, AND TAXING (1980); AARON WILDAVSKY, THE POLITICS OF THE BUDGETARY PROCESS (4th ed. 1984); A ZERO-BASED LOOK AT ZERO-BASED BUDGETING: WHY ITS FAILURES IN STATE GOVERNMENT ARE BEING DUPLICATED IN WASHINGTON (Thomas H. Hammond &

currently constructed, deliberate? If we can think of deliberation as the introduction and consideration of alternative courses of action, as the comparison of these alternatives one against another, as the marshalling of reasons for preferring various alternatives, and as the resolution of disagreements about alternatives by some systematic means, such as voting, then Congress, as an organization, can be observed deliberating as a prominent feature of its corporate activity. Deliberation is what committees do when they mark up bills.²² It is what individual members ask of their colleagues when they introduce bills and seek hearings on them. It is what happens at hearings as witnesses are invited to state their case for and against the provisions of a measure under consideration. It is what members are contributing to when they consult one another on the substance of legislation, when they seek the guidance of committee staff, when they make speeches on the floors of their respective houses, and when they engage in colloquy with one another.²³

C-SPAN viewers can also observe that not all such colloquies are brilliant or edifying, and not all members take the lead on every issue. But neither of these conditions—workaday averageness in levels of rhetorical performance and a strong propensity to divide labor—can conceal the plain fact that Congress as an organizational entity does its work by deliberating.

Even if we were to take the dim view of congressional deliberation proposed by Will, how would congressional deliberative work be improved by limiting the terms of members? Since Will does not discuss very much of the actual work of Congress directly, he makes no case that directly addresses this question. I suppose we could imagine that the continuous infusion of new members might be good for the fresh consideration of issues that are perennially on the congressional agenda and might promote the raising of new issues. But even without term limitations, normal electoral and actuarial processes operating on Congress produce a 10% to 25% turnover every two years.²⁴ Term limits are only one method—and a rather clumsy method—of introducing new perspectives into Congress.

The clumsiness of term limits arises by virtue of the fact that, in any organization, old hands have virtues complementary to those of new. Knowing where the bodies are buried in a large and confusing bureaucracy, familiarity

Jack H. Knott eds., 1980. These books do not confirm Will's implied claims that the budget consists mostly of pork, or predominantly reflects congressional careerism. It is true, however, that the federal budget is not annually deliberated over in full. Because of its size and complexity, institutionally defensible economizing devices are necessary, and they are used both in the executive branch and in Congress.

22. There are not many. Here is one: CLEM MILLER, *MEMBER OF THE HOUSE 13-15* (John W. Baker ed., 1962). A classic careful description of a bill becoming a law is STEPHEN K. BAILEY, *CONGRESS MAKES A LAW* (1950). More recent examples are RICHARD E. COHEN, *WASHINGTON AT WORK: BACK ROOMS AND CLEAN AIR* (1992); and PAUL C. LIGHT, *FORGING LEGISLATION* (1992).

23. See MILLER, *supra* note 22, at 33-41.

24. NORMAN J. ORNSTEIN ET AL., *VITAL STATISTICS ON CONGRESS, 1991-1992* at 58 (1992). The last line in the table gives turnover in the House excluding deaths from 1946 (24.6% not reelected) to 1990 (10.3% not reelected).

with the arguments of lobbyists, technical expertise, and experience at making judgments in a well-publicized legislative arena are all factors that may contribute to the wisdom of the collective product.²⁵ Term limits arbitrarily deprive Congress, and the nation, of these contributions. It thus seems doubtful that term limits will improve congressional deliberation.

II. THE PORK BARREL

The bulk of Will's complaints about current congressional operations have to do not with deliberation at all, but with what he sees as a poisonous relationship between members of Congress and interest groups leading to outrageous grabs at the public purse. If at short intervals we were to send members home and replace them, he reasons, this cozy relationship would not grow up. Members would deliberate instead of grab.

"If people served in legislatures only briefly," he says, "going to them from other careers, to which they would return in a few years, they would have less incentive to shovel out pork."²⁶ "Of course," he says, "'everybody does it.' Always have, always will, to some degree. But surely senators would do it less if they were limited to, say, two terms. In six of their twelve years they might think of something—the national interest, perhaps—other than buying votes with the voters' money."²⁷

The logic underlying this argument seems to me hopelessly muddled. It is tenable only if predicated on the assumption that all congressmen retreat to a life of idleness at the end of their terms. If, on the other hand, members knew that after a term of service in Congress they would have to do something to make a living, and provide for their families, their relations of dependency toward interest groups, or other outside influences, would increase sharply. Indeed, with a future outside of Congress near at hand, anticipations of future need might well impinge upon their performance as public servants to a degree currently unheard of.

This seems to me true whether departing members go home or stay in Washington (working, for example, in Washington law firms). Why would a prescribed, limited time in office diminish members' incentives to help the constituents back home among whom they would soon be living? For members who stay in Washington, as so many departing members now do, limited

25. See JOHN R. HIBBING, *CONGRESSIONAL CAREERS 177-181* (1991). Hibbing concludes in his systematic study of legislative careers:

[R]equiring representatives to leave after a set number of years would likely result in a devastating loss of legislative acumen, expertise, and activity. . . . [I]ncreasing tenure is strongly and positively related to legislative activity as well as to legislative specialization and efficiency.

Tenure in and of itself helps members to be focused and successful legislative players. . . .

Id. at 180.

26. P. 36.

27. P. 32.

service would sharpen the incentives to make deals that might have some reciprocal payoff in their new lives.

I daresay that many members, being decent public servants, would have no difficulty ignoring these incentives, as many members do today. Today, however, an honorable career in congressional service is among the well-settled rewards for good behavior. Will acknowledges the possibility of such careers in the dedication of his book to two public-spirited senators, John Danforth and Daniel Patrick Moynihan. Has he noticed public officials of like probity in the House of Representatives? They exist.²⁸

In a single sentence, Will rejects this construction of reality. It flies in the face, he says, of the alleged fact that lobbyists "are passionate opponents of term limits because they have valuable investments in long-term relationships of mutual aggrandizement with career legislators."²⁹

Whether or not all or many or a few lobbyists see their short-run interests as Will casually reports seems to me not wholly dispositive of the underlying issue, which is this: on the whole, do lobbyists have more influence on experienced legislators or inexperienced legislators? Even if it were the case that lobbyists are lazy and prefer to do business with old allies, an independent look at the question might lead us to conclude that rapid turnover in a legislature gives more power to lobbyists. I have mentioned one set of circumstances in which this might occur: term limitations would put at risk the independence of legislators contemplating exit who, rather than returning Cincinnatus-like to their waiting plow, prefer some sort of future elsewhere. Even Cincinnatus might be tempted to send a farm subsidy or two homeward in advance of his return. None of this seems to me far-fetched; term limitations are already adversely affecting the independence of the recently term-limited California State Legislature.³⁰ In modern society, not many jobs wait for legislators to return to them after six or eight or twelve years in politics.³¹ So long as retiring legislators are not taken out behind the barn and shot, they will have to think about their futures.

28. See RICHARD F. FENNO, JR., *WATCHING POLITICIANS: ESSAYS ON PARTICIPANT OBSERVATION* 95-111 (1990); DAVID E. PRICE, *THE CONGRESSIONAL EXPERIENCE* (1992).

29. P. 57.

30. The *New York Times* for Friday, August 28, 1992 reports as follows:

The [budget] settlement that is emerging reflects the fiendishly complex world of California politics: the Governor and the Democratic Speaker of the State Assembly . . . are like two scorpions in a bottle; the 250,000-member California Teachers Association holds enormous political power . . . and the powerful Democratic President pro tem of the State Senate, David A. Roberti of Los Angeles, seems to want Governor Wilson to make him a judge when term limits force him to retire in two years.

Robert Reinhold, *After Two Month Standoff, California Appears on Verge of Passing a Budget Deal*, N.Y. TIMES, Aug. 28, 1992, at A12.

31. Such jobs may, however, belong disproportionately to Republicans. I deduce this from the arresting argument of Alan Ehrenhalt in his book, *THE UNITED STATES OF AMBITION* (1991). We might imagine that term-limited Republicans, therefore, would be more likely as members to feather their nests at home, whereas Democrats would make deals with Washington interest groups. I do not see much to choose between these possible outcomes.

Exit is only one point, and perhaps not even the most significant point, at which interest groups gain an advantage over legislators as the result of term limits. Consider the problem that candidates for Congress might have in assembling resources to run for office in the first place. Even those congressional districts that are not especially competitive between the parties require some campaigning and some advertising. A safe open seat may well attract several candidates and hence force competition at the level of the primary. Where would the resources to conduct these elections come from if not from interest groups?

It may be argued (though it is not by Will) that entrance via the normal nomination processes is the prerogative of political parties and that term limits, over the long run, would therefore strengthen parties in the electorate. This is a dubious proposition at best since, in most constituencies, it is interest groups and not parties that hold most of the resources. On the whole, members of Congress today are not nominated by strong local parties but by processes of entrepreneurship in which candidates put themselves forward and gather up resources as best they can. Party endorsements may well help. But in most constituencies, they are not decisive.³²

It is not uncommon to see veteran members of Congress build up substantial war chests to discourage electoral competition, and interest groups most assuredly contribute to these. It is quite right therefore to observe that well-entrenched members maintain alliances with interest groups. A casual inspection of Federal Election Commission print-outs shows that interest groups having business before the committees on which Members of Congress sit are prominent among the contributors to their campaigns. This points to the possibility that as time goes on interest groups become more dependent upon legislators than the other way around.

A distinction may be drawn between interest groups operating exclusively at the district level, which presumably would predominate in helping new legislators get elected in the first place, and nationally organized interest groups which tend to be the lobbyists feeding the coffers of non-term-limited legislative veterans. Are local interests good guys and national interests bad guys? This is shaky as a general proposition, I think. Readers can make up their own horrible examples. Here is one: in 1964, White Citizens' Councils

32. The most germane scholarly work on this question is LOUIS SANDY MAISEL, *FROM OBSCURITY TO OBLIVION: RUNNING IN THE CONGRESSIONAL PRIMARY* (1982). See also the encyclopedic accounts of members of Congress and their districts in MICHAEL BARONE & GRANT UJIFUSA, *THE ALMANAC OF AMERICAN POLITICS 1992* (1991), and CONGRESSIONAL QUARTERLY'S *POLITICS IN AMERICA 1992* (Phil Duncan ed., 1991). In Costa Rica, where parties are strong and terms are limited, constituency service and what the author, Michelle Taylor, calls "delivering pork" are given a very high priority by sitting legislators. Michelle M. Taylor, *Formal Versus Informal Incentive Structures and Legislative Behavior: Evidence from Costa Rica*, 54 J. POL. 1055 (1992). This result is roughly the opposite of the behavior predicted by Will, and is consistent with my argument. "So we learn," Taylor concludes, "that a career incentive does dominate the behavior of legislators even when they cannot be reelected." *Id.* at 1072.

(local) played an active part in defeating Alabama Representative Carl Elliott, principal sponsor in the House of the National Defense Education Act (national).³³

The issue here is not whether members of Congress are going to have relationships at all with interest groups, but rather under what conditions interest groups will be relatively powerful vis-à-vis members. The argument I am pressing simply says that the newer the member, the more dependent he or she is on the interest groups that helped elect him or her in the first place. The more Congress consists of new members, the more dependent Congress is upon interest groups that helped the members get elected.

So entrance to and exit from Congress are two points at which members are especially vulnerable to interest group influence; therefore, the more entering and exiting, the more outside influence. Term limits are intended to promote more entering and exiting, and therefore, if this analysis is correct, would worsen the very conditions of which Will complains.

III. CONGRESS IN THE POLITICAL SYSTEM

Entrance and exit do not exhaust the points at which interest groups might gain unusual influence. Far more significant than either of these is the process of lawmaking itself. Members of Congress gain most of their influence on public policy, and most of their competence in exercising that influence, by attending to their committee work over a sufficiently long period of time that the issues and the interests before their committees become familiar to them. It should come as no surprise at all that experience on the job helps liberals and conservatives alike to do their jobs better.³⁴ Not all members of Congress have the desire or the ability to become subject matter experts, and significant players in the making of national policy. But some do, and they make important contributions. The perspectives they bring frequently differ from those of bureaucrats and political appointees in the executive branch. The capacity of Congress as an institution to render judgments independent of undue interest group or executive branch influence resides largely in the work of these expert members. Term limits, I fear, is a proposal to wipe that influence out. They seem to me on this account alone to be extremely short-sighted.

33. CARL ELLIOTT, SR. & MICHAEL D'ORSO, *THE COST OF COURAGE: THE JOURNEY OF AN AMERICAN CONGRESSMAN* 177, 241-58, 261 (1992); see Pub. L. No. 88-665, 78 Stat. 1100 (1964).

34. See RICHARD F. FENNO, JR., *THE MAKING OF A SENATOR: DAN QUAYLE* (1989) (portraying the role of personal growth and the usefulness of experience in the legislative career of Dan Quayle); HIBBING, *supra* note 25, at 178-80.

Will scoffs at this concern.³⁵ There is, after all, no magic number of years before experience begins to matter in a member's deliberations. For many members, no amount of sitting there and listening to the testimony of the same old lobbyists year after year will make any difference. Expertise acquired by other means will come to be valued more. And so on. All of these propositions seem to me to be true, but largely irrelevant. What makes congressional experts players in the policy world is the fact that they have an independent base of power, rooted in independent access to knowledge, independent access to their own electorates, experience, and the expectation in Washington that all of these factors are mostly beyond the direct control of others. If the date of members' departure from the scene is fixed and known, the way the other players treat them changes, and, from the standpoint of members' influence, greatly for the worse.

What term limits attack is not the constitutional right of Congress to make judgments but rather the capacity of the institution—and by this I mean elected members, as they organize themselves into caucuses and committees—to make well-informed and independent judgments. Congress can always hire experts, and increasingly it does. Some of these experts hang around Capitol Hill for a generation, and become genuinely devoted to the institution. Most cycle in and out of congressional employ more rapidly, and keep Congress in touch with points of view drawn from their professional training.³⁶ Term limits empower these people at the expense of members.³⁷ So, too, do they increase the power of bureaucrats, lobbyists, and executive branch politicians and their entourages. And newspaper columnists. With the notable exception of executive branch political appointees, who do not, on average, last very long, all of these classes of Washington actors reap the benefits of experience on the job. In addition, they may also have specialized training highly relevant to the mastery of subject matter. On the whole, members of Congress do not possess such training. Acquiring on-the-job experience is the only way open to them if they intend to participate knowledgeably and independently in policy making. Will, protesting all the while his friendship for Congress, advocates the drastic attenuation of the principal means through which Congress maintains its independence in the policy-making process.

Is there a more general public interest in Congress having an independent capacity to influence public policy? Most legislatures in democratic nations, after all, do not. In this respect Congress is nearly unique in the world today,

35. P. 59 ("If you accept the premise that government is like neurosurgery, only more so, what do the rest of us have to say to these wizards once we are given 'access' and ushered into their presence?").

36. P. 57.

37. It may be argued that they have plenty of power already. See MICHAEL J. MALBIN, *UNELECTED REPRESENTATIVES* (1980).

and in world history.³⁸ A separation of powers system that works, as ours does, spreads power very widely. This is arguably appropriate in a continent-wide nation as diverse and as large as the United States. The need for members to seek votes and voter support in the course of Congressional nominations, primary elections and general elections, the multitude of ombudsman-like activities performed at the individual, retail level in each and every congressional office, the mail—to members as well as from members—all provide opportunities for ordinary citizens to gain access to their government via members of Congress. Much of this access is available whether members are new or old, but the fact that Congress, in aggregate, is an influential body means a great deal in energizing federal bureaucracies to be responsive to the concerns of members and their constituents. This might lead to Keating Five scandals, to be sure. But hundreds of other legal, appropriate, and helpful transactions must be put onto the other side of the scale.

The existence of an independent deliberative capacity in Congress raises the possibility of gridlock within the federal government, as different preferences from time to time animate the coalitions dominating different branches of government. And since Congress maintains a considerable independent capacity to form and articulate views of public policy different from the President, sometimes stalemates will result. This possibility was entirely foreseen by the Framers, and is a necessary consequence of a system of governmental checks and balances. Every two years Americans have an opportunity to vote on this. Mostly, of course, they return incumbents to office, as currently is their right under the Constitution.

It is also and simultaneously true that Congress is unpopular and congressional term limits are popular. This is the testimony not only of public opinion polls,³⁹ but also what we can learn from the recent passage of initiatives providing for congressional term limits in fifteen states.⁴⁰ Of course these initiatives raise constitutional questions, since by denying ballot access to incumbents they may be construed as adding qualifications for congressional service beyond the three (age, citizenship, residence) mentioned in the Constitution.⁴¹ Congress is explicitly forbidden to add such qualifications,⁴² and courts will undoubtedly be asked whether state initiatives may do what has been forbidden to Congress.

38. For an overview, see Nelson W. Polsby, "Legislatures," in 5 HANDBOOK OF POLITICAL SCIENCE 257-319 (Fred I. Greenstein & Nelson W. Polsby eds., 1975).

39. Pp. 2-3, 189. See also polls summarized in *Public Opinion Report: Term Limits*, AM. ENTERPRISE, Nov.-Dec. 1992, at 81, 89.

40. Thomas Galvin, *Term Limits: Limits Score a Perfect 14 For 14 But Court Challenges Loom*, 50 CONG. Q. WKLY. REP., November 7, 1992, at 3593. A similar initiative was passed two years earlier in Colorado. Robert Pear, *The 1990 Elections: Ballot Proposals*, N.Y. TIMES, November 8, 1990, at B1.

41. U.S. CONST. art. I, § 2, cl. 2.

42. *Powell v. McCormack*, 395 U.S. 486 (1969).

As it happens, Will does not discuss this constitutional issue.⁴³ Moreover, he rather trivializes the consideration of another issue of constitutional dimension, namely the conditions under which one electorate can restrict the choices available to future electorates. "If term limits are un-American because they limit popular sovereignty," Will says, "then so, too, is the First Amendment un-American."⁴⁴ Since current electorates, while voting for term limits, also regularly and freely vote in large numbers for members of Congress who have served for many terms, this problem does have some reality.

If we are to resort to term limits as a way of intervening in all this, I suppose the foremost obligation of those who would advise us in this matter would be to cast all these considerations, somehow, into a balance, rather than relying excessively upon horrible examples, so that we might see what the social, political, and constitutional costs are of depriving one particular senior member of the Senate Appropriations Committee of the power to feed federal grants and transfer federal employees in large numbers from Bethesda to West Virginia.⁴⁵ George Will has managed to write a book in which he gives little or no serious consideration to such a balance. Most of what he has to say about Congress consists of complaints about the venality, greed, and triviality that can be observed there. What Congress gives us, he says, is "bad government by the bushel."⁴⁶ This is an exaggeration, the sort of rhetoric he piously deplures in others,⁴⁷ but regularly indulges in himself. In fact, there is much else to be observed in Congress, which he neglects. He fails to show how term limits will change any of what he dislikes about Congress. It seems to me highly probable that term limits would make many of these very things much worse.

Will's goals of promoting disinterested deliberation, public-spirited appropriations, and a more influential Congress are decent and greatly to be applauded. His means for achieving them, term limits, won't do any of these jobs.

43. He does, however, discuss, of all things, a balanced budget amendment. Pp. 190-99.

44. P. 122.

45. Pp. 29-31, 62.

46. P. 209.

47. Pp. 56-57.