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A Madisonian Reform

Greg Weiner

IN 1992, NEWS BROKE that the House of Representatives' bank allowed members of Congress to overdraw their accounts without penalty, sometimes for thousands of dollars, in a scheme of systematic check kiting. That was also the year the House Post Office scandal broke. It featured embezzlement and money-laundering and eventually sent Democratic representative Dan Rostenkowski of Illinois, the legendary chair of the Ways and Means Committee and one of the lions of Capitol Hill, tumbling from grace and toward federal prison.

Out of such incidents, the contemporary movement for congressional term limitation grew. In the earthquake election of 1994, House speaker Tom Foley, a Democrat from Spokane, Washington, who had successfully sued to block term limits imposed by the state, went down to defeat at the hands of newcomer George Nethercutt, who campaigned on a pledge to serve only three terms—a commitment that, having tasted the pleasures of public office, he later found himself unable to keep.

The public sense was that members of Congress had lost touch with their constituents, and the exclusive privileges—financial and otherwise—they had granted themselves served as proof. The term-limit movement wanted to renew the concept of the citizen-legislator and forcibly evict the corrupt and entrenched.

This was inauspicious soil in which to plant the reform. The citizen-legislator is a romantic ideal probably never approximated in American history and certainly not practiced at the founding. More important, properly understood, term limits are not punitive. As George

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Will suggested in the title of his definitive 1992 study of the subject—*Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy*—they are restorative. They are an imperfect but Madisonian reform that targets what should be the motive force of constitutional government: the desire to exercise power.

Without both restoring this motive for congressional service and impeding other ones, no reform of Congress can succeed. The most commonly cited legislative reforms, such as restoring the regular order or reviving the war power, assume Congress will make use of them. In the argot of Federalist No. 51, they are constitutional means without personal motives.

The best argument for term limitation is that it might restore the desire for power by altering the kind of person attracted to congressional service: not careerists who serve for the sake of careerism, or those entranced by the aura of empty authority, but rather those interested in power's actual exercise. By compressing congressional service into a limited span of time, term limits would help to close off un-Madisonian motives for seeking the office.

We need not assume those motives are either venal or virtuous. Edmund Burke wisely counseled the Sheriffs of Bristol against cheap cynicism: "I hope there are none of you corrupted with the doctrine taught by wicked men for the worst purposes, and received by the malignant credulity of envy and ignorance, which is, that the men who act upon the public stage are all alike, all equally corrupt, all influenced by no other views than the sordid lure of salary and pension.... Never expecting to find perfection in men, and not looking for divine attributes in created beings, in my commerce with my contemporaries I have found much human virtue."

There is surely much virtue in Congress too. The predominant issue is not corruption but rather indifference to power. Some members are surely interested in the lucrative opportunities that accrue to well-connected former members of Congress. Others may believe loyalty or opposition to the president rather than fealty to their own branch of government is genuinely the best means of achieving their policy objectives. Nor would it be surprising or scandalous if many simply like the job and want to keep it.

In any of these instances, the irony of careerism is that it has corroded the substance of the very office that members of Congress seem so

eager to retain. Put otherwise, members of Congress are clinging to the shells of their offices while emptying them of power. Term limits offer the promise—though not a guarantee, and not without risk—of restoring the motive for power by altering the incentives for those who serve while inducing a different kind of person to pursue congressional office.

The case distills to this: With a limited tenure awaiting a new member, and the returns on any given election thus diminishing, why serve unless it is to assert one's authority for purposes that conduce to a view of the public good? Glamour is always attractive but is less likely to be addictive when administered in limited doses. Term-limited members of Congress would be less able to monetize relationships of short duration. The knowledge that one cannot be re-elected permanently reduces the urgency of each intervening election, freeing members of Congress to, as Federalist No. 10 puts it, refine and enlarge the public's views rather than punting the responsibility to executive agencies or courts.

Put in terms of another passage from Federalist No. 10, enlightened statesmen will not always be at the helm. But those at the tiller for brief periods rather than leisurely journeys may be likelier to try to steer the ship.

POWER POWERS THE REGIME

In Federalist No. 51, Madison famously maintains the separation of powers—the combination of which he described in Federalist No. 47 as “the very definition of tyranny”—by matching means with motives: “The interest of the man must be connected with the constitutional rights of the place.” But what is the “personal motive” to which he refers, the “[a]mbition [that] must be made to counteract ambition”?

To see what it was and how it has changed, it is necessary to revisit the late-18th and early-19th centuries. The United States was an infant nation, not an imperial power. Washington, D.C., when it was built, was better known for malaria than for the high culture of a world capital. Foreign diplomats needed hazardous-duty pay to be induced to serve there. Members of Congress were neither celebrities nor villains. They served in relative anonymity, spending months away from home and family, in an office that was neither directly nor indirectly lucrative.

That is not to say they were citizen-legislators: Madison's ideal legislator is a “fit character” who is a cut above the community, not the neighbor next door. Many served for lengthy spans. Madison himself spent nearly all his working life in political office, though he interspersed

his federal with state service. But none of them would have seen a seat in Congress as an end unto itself.

Instead, Federalist No. 51 assumes the motive for serving is political man's ambition to exercise power. That is the personal motive that induces him to utilize his available constitutional means. In his seminars, Georgetown professor George Carey illustrated the point by challenging students to imagine a president who tells members of Congress they can exercise executive power so long as they continue to supply all he really wants: a luxury jet, a Praetorian Guard, a prestigious address, and other trappings of authority.

The thought experiment fails precisely because we assume presidents want power. Power, to be sure, is morally neutral: Presidents need it whether they want to do good or ill, but regardless, they almost invariably seek it. Some historians' standard of presidential success is whether an occupant of the office managed not to merely defend but actually to expand its power. The idea of a president being motivated primarily by the perquisites that accrue to the office, and not at all by its authority, seems absurd.

Is such a view of contemporary members of Congress so unthinkable? The legislature that Madison called an "impetuous vortex" that would absorb all powers if not limited has instead been eager to surrender them. There are ample illustrations, from the Clean Air Act to the Occupational Safety and Health Act, of Congress declaring broad goals yet leaving to the executive branch the actually meaningful power to make the tradeoffs and specify the policies they entail. Congress does not declare wars anymore and largely does not object when presidents circumvent the treaty power with executive agreements. Even the feeble War Powers Act has been eviscerated by persistent presidential practice without serious congressional objection. Meanwhile, legislators are equally eager to dodge responsibility by deferring to the courts, which now routinely make quasi-legislative decisions—and sometimes patently legislative ones—and must referee disputes over the separation of powers.

Why, then, serve? Running for Congress is surely unpleasant. Sitting in the body—with its manic schedule and manifold opportunities for engendering enmity—cannot be much better, and neither is it especially remunerative. Yet even as they peddle such bromides as "giving back" and "serving the public," members of Congress pursue re-election with a frantic urgency that suggests some personal need for the job.

There are several possible incentives Madison may not have foreseen from his late-18th and early-19th century perch. Status — the unhealthy iteration of the “love of fame” that Hamilton’s Federalist No. 72 called “the ruling passion of the noblest minds” — is almost certainly a prominent one that often seduces even those who come to the capital with wide-eyed sincerity.

Even if they do not exercise power, members of Congress inhabit an atmosphere suffused with it, fueled by the country’s global status as well as the national government’s inflated authority. They receive lapel pins designating their office. They brush past security barriers manned by police officers whose deference enhances the members’ sense of importance. Their proximity to the power of the president, swollen beyond recognition, is a further inducement evident in perquisites ranging from invitations to the White House to rides on Air Force One.

As Yuval Levin has observed, their function is now largely performative, which is consistent with a love of status rather than an ambition for power. Members of Congress have access to platforms, from cable news to social media, that cause them to be seen in ways their distant predecessors never were. Today’s members are heroes to some and villains to others, but they rarely go unnoticed.

There are pecuniary motives for serving as well, though one suspects these are only occasionally determinative. In few cases does this mean either the job’s salary — which is usually modest compared to what individuals of their motivation and talent can earn in the private sector — or its generous retirement benefits, without which interrupting a career for even a brief period would be irrational. The payoff generally comes later, and it is inseparable from careerism. The fact that so many former members of Congress follow their tenure in office with profitable jobs in lobbying, government contracting, or other fields related to their service suggests their employers or clients value their relationships at a premium.

For the Madisonian machinery to operate according to plan, motives like these must be curtailed while the one that matters — power — is restored. There are reforms short of term limits that would help. Prying open the notoriously lock-jawed amendment processes that have recently stymied both the House and Senate, for example, could give members a taste of power that might encourage its further exercise. But these reforms still assume a certain type of power-seeking person will covet legislative

office, and they do not solve the riddle of why members who are so frustrated in the exercise of power continue to seek re-election. It seems safe to say that whatever their primary motive may be, power is not it.

THE AURA OF POWER

John Adams wrote in his *Discourses on Davila* that all men were moved by “the *passion for distinction*. A desire to be observed, considered, esteemed, praised, beloved, and admired by his fellows, is one of the earliest, as well as keenest dispositions discovered in the heart of man.” The key word here is “observed,” for Adams, like Lincoln in the Lyceum Address, felt that anonymity was so painful that political man would prefer distinction in villainy to obscurity with honor.

When the passion for distinction is achieved by the pursuit of truth and virtue, Adams calls it “emulation”; when by power, it is “ambition.” What is it when it is simply vapid: the desire to occupy a position of potential power not for its exercise but rather for its aura? Adams seems to lack a category for the desire for celebrity or the temptation of power’s mere shell without its contents. For Adams, the desire to be observed was conjoined with the desire to be admired. In contemporary politics, the terminus of the motive is often the desire simply to be known and to breathe the same air as those with actual power.

Perhaps it has long been so; in any case we should beware the assumption of a golden age of legislating. As early as his 1885 treatise *Congressional Government: A Study in American Politics*, the young political scientist Woodrow Wilson painted a pathetic image of the freshman entering the House:

The newly-elected member, entering its doors for the first time, and with no more knowledge of its rules and customs than the more intelligent of his constituents possess, always experiences great difficulty in adjusting his preconceived ideas of congressional life to the strange and unlooked-for conditions by which he finds himself surrounded after he has been sworn in and has become a part of the great legislative machine.

Nevertheless, as Wilson complained, this was an age of congressional dominance. There is little reason to assume the travails of the new member have changed, or changed much, except for one decisive fact:

Despite, in Wilson's words, the freshman being not merely disappointed but also "disgust[ed] and dispirit[ed]," he seeks, often to the point of desperation, to stay. Members of Congress overwhelmingly seek re-election even as they complain about their lack of influence.

In historical terms, this is new. The Congressional Research Service has found that the average tenure of a House member during the 19th century varied between 18 months and three years. In the 49th Congress, which sat when Wilson published his broadside against congressional power, the average length of service in the House barely topped two years, and more than one in five members chose not to seek re-election. Resignations were likewise common.

Congressional tenure mounted over the course of the 20th century to today's average of nearly 10 years in the House, with nearly 90% of members seeking re-election. Yet therein lies a Madisonian mystery: This is precisely the period over which Congress was steadily drained of power. The position seems to have become more alluring precisely as it has become less powerful.

Why? It may be because something else happened over the 20th century: The United States became a global power; the domestic responsibilities of the national government swelled; and consequently the aura of Washington's power shone more brightly. Theodore Lowi noted that at the beginning of the 20th century, most citizens could go from cradle to grave without interacting with the national government, while the State Department could fund its budget solely through consular fees.

Those days are gone, of course, but the change has arguably altered the motives of members of Congress, for whom the attraction of status is now a possible motive when it was empirically unattainable before. Why surrender power? Because shedding the content protects the shell, and it is the shell that creates the aura. Exercising power means making choices; making choices, in turn, makes enemies. The member of Congress who can issue bromides without being responsible for choices has a unique electoral advantage.

Of course, there are exceptions to this, as there are to all rules. There are both conscientious members of Congress and periods of intense partisanship — as at the present — when they seem ideologically if not institutionally loyal. Both explanations, however, go only so far.

In the former case, we should expect members of Congress who arrive hoping to exercise power to leave when they find it is unavailable

to them. Instead we find them clinging fervently to the office, which suggests they are either in the grip of perpetually disappointed hope, or else driven by some other motive.

The explanation of ideological rather than institutional loyalty, meanwhile, commodifies members of Congress. If the thesis of ideological loyalty is true, one member should be as good as another, provided his name is followed by the desirable partisan label. The next man up ought to suffice, which suggests the principled explanation's utility is limited: A member of Congress devoted to a principle of supporting or opposing the president should not care whether he or someone else of the same party occupies the job. Yet, ardently, they cleave to it.

There are exceptions, of course. Senator Pat Toomey of Pennsylvania has fought to recover congressional authority over tariffs, in the course of which he was recently compelled to remind his colleagues, "We are not potted plants." The need to specify this suggests that some considerable number of members of Congress are content with such a passive role. Why endure the indignities of campaigning in order to simply be a cog in the Wilsonian machine? The best that can be said is that they are biding their time to attain one of the leadership positions, which provide the few true perches for exercising congressional power. But this is a long game that few win, and the leadership, too, has been complicit in the erosion of congressional power.

Another explanation is the competitive nature of political people, which expresses itself through the relentless campaigns to which members of Congress are now subjected. Washington has been called Hollywood for ugly people. Yet to the extent members of Congress are celebrities, they are political Kardashians: famous not for any notable achievement but rather known for being known.

RESTORING THE POWER MOTIVE

Term limits might curtail these illicit motives for serving. They are, in fact, more promising for this negative purpose than for any affirmative ideal of the citizen-legislator. In brief, they make illicit motives less attractive. Under a regime of term limitation, the power motive is the last one standing, and there would be little reason to run for Congress save for it.

We may begin with the simple case. Because they make it impossible, term limits supply a *de facto* solution to the desire for careerism

qua careerism. Equally simple, former members of Congress often win lucrative contracts with employers or clients because they have long-standing friendships on which they can call. Term limits depreciate the currency of these relationships both because they will not develop for as long and, with friends rotating out of office on short timetables, they will not be as valuable. After years of failed attempts to restrict influence peddling, which have focused on regulating the peddling rather than devaluing the influence, term limits are the most powerful lobbying reform available.

To the extent members of Congress are motivated by their competitive impulses, term limits simply short-circuit them, at least after an interval. Here, the point that the impossibility of limitless terms makes it less urgent to win every intervening election is especially important: Term limits may, in this sense, also be the most powerful campaign-finance reform available, because they would reduce the monomaniacal focus on winning. They may not eradicate competitive motives, but term limits can help to dissipate them.

The most difficult case is what appears to be the most attractive motive: the aura of power and the status that attends it. Yet the psychology of celebrity is based on the perceived power of the person under contemplation. Term limits can help redirect this motive by encouraging the actual exercise of power while defusing celebrity that attaches only to its longevity.

To be sure, the typical length of proposed term limits—12 years for both chambers—is ample time in which to enjoy the allure of status. But public knowledge that these members are temporary might require them to do something to merit their fame. Were there a term limit on residence in Hollywood, celebrities would be forced to make enduring names for themselves quickly. They would consequently resist retaining a shell of celebrity status through outlandish behavior or small roles. They would, in short, arrive at Hollywood and Vine on the clock and meaning business.

Term limitation thus operates by a process of elimination. Illicit motives for serving would be unavailable. Ambition would be the last motive standing, and its compression would heighten its intensity. The results, again, might be twofold. The first is an alteration of the motives of those already in power. The second is that those altered motives might attract a different breed of politician to elected office who is interested

in exercising power for a brief period, not retaining office for a lifetime. This is not the citizen-legislator. It is the power-driven one.

OPPOSITION TO TERM LIMITS

It may seem strange at first glance to call term limits a Madisonian reform. There is no record of his supporting it, and Federalist No. 49's call for constitutional "veneration" warns against casual tinkering with the document. The framers themselves discussed term limits only in the context of the presidency. The circumstances of that office, which concentrate the whole power of the executive branch in a single person, differ from those of Congress. But the arguments are still instructive.

Federalist No. 72 notes that frequent rotation in office will lead to instability because of the inherent propensity of the new occupant of an office "[t]o reverse and undo what has been done by a predecessor." This argument seems less applicable to members of Congress, who do not have the individual power to impose their will on their branch of government. Similarly, the essay holds forth the prospect of corruption: A president who knows his time is short "might not scruple to have recourse to the most corrupt expedients to make the harvest as abundant as it was transitory." Yet the corruption of which members of Congress are accused pertains more to the endless pursuit of re-election.

Hamilton's argument that re-eligibility for office encourages good behavior is more pertinent, but still requires close attention. "This position will not be disputed," he writes, "so long as it is admitted that the desire of reward is one of the strongest incentives of human conduct." That ambition, he says, will be diminished if presidents cannot formulate long-term plans and see them to fruition.

But even the most generous proposals for congressional term limitation—12 years in each chamber—exceed the voluntary limits practiced by presidents until Franklin Roosevelt and the compulsory one since. It seems especially a stretch to say that House members, whose time horizons are supposed to be short, would be consigned to short-range plans.

Madison addresses this issue in Federalist No. 63, concluding that short House terms are an appropriate means for holding members accountable for the immediate consequences of their choices, while a six-year tenure for senators allows voters to hold them responsible for the long-range effects of policy. It is significant that, in either case, Madison associates the long run with a six-year Senate term, not limitless service.

The short-range perspective might, however, manifest itself in another harmful way: diminished attachment to the institution. That is, a member of Congress who serves briefly will be less institutionally loyal than one who can serve indefinitely. Yet the personal ambition Madison harnesses to move the constitutional mechanism does not require a love of the institution, only a desire to exercise the power it makes immediately available.

Others have argued that term-limited members of Congress would lack expertise and that power would therefore shift to staff and lobbyists who would possess the knowledge needed to govern. If it is true that governing is so complicated that members of Congress who serve less than 12 years are incompetent to the task, then the regime has become too convoluted and detailed to be compatible with self-government. If anything, the complexity of government may be a case for longer but not unlimited House terms.

Regardless, it seems unlikely that assertive members of Congress, guided by clear principles and assisted by robust staff, could not manage the task of governing. Presidents hit the ground running rather than waiting to compile expertise, as members of a freshman class of the House often do. Federalist No. 53 bolsters this case by noting that successful legislators must have “upright intention,” “sound judgment,” and “a certain degree of knowledge of the subjects on which he is to legislate.” Some of this knowledge, Madison says, is “within the compass of men in private as well as public stations.” But two years, he argues, should be sufficient for that portion of expertise one must acquire on the job, especially given the limited number of issues that lie within the authority of the national government.

There is a danger, to be sure, of a tyranny of unaccountable expertise. But this view treats initial terms for members of Congress like apprenticeships for the professional service that comes later. Given that the average tenure in the House is less than that envisioned by most proposals for term limits, this suggests such a tyranny is already in place. The best solution to that problem is devaluing the expertise by simplifying government.

Opponents of term limitation have also pointed out that the results of such measures with respect to state offices have been mixed at best. Term limits do not appear to limit spending or produce measurably better policy, for example. A study of term limits in California and

Michigan also concluded that they do not produce citizen-legislators. Rather, Stanley Caress and Todd Kunioka found that most offices continued to be occupied by career politicians who ran for another position when term limits precluded them from seeking re-election.

But the Madisonian case for term limits is not intended to alter policy in any particular direction; it is to alter the constitutional balance of powers. It does not disparage career politicians; indeed, the results of such studies parry the claim that term-limited members of Congress would be ignorant and easily manipulated. Nor does the Madisonian case seek amateur legislators. Rather, the idea is to alter the motives for holders of an office while they occupy it, regardless of where they came from or to what position they may later aspire.

In this sense, term limits would aim to alter the culture of Congress. That culture inherently differs from state legislative offices because of the gap in status that separates them. Regardless, from a Madisonian perspective, the question is not whether term-limited legislators are career politicians but rather whether they are more assertive and whether the legislatures in question are more powerful vis-à-vis governors.

That said, term limits are a radical reform that would require altering the constitutional text. Conservatives are right to treat the idea as suspect. That is why it is so important to grasp its Madisonian character.

A MADISONIAN REFORM

In *Reflections on the Revolution in France*, Burke distinguishes reformation from revolution. The former looks back to origins while the latter looks ahead to aspirational uplands. He opposes revolution so understood but recognizes that regimes must sometimes change for the crucial purpose of maintaining their original principles. “I would not exclude alteration neither,” Burke explains, “but even when I changed, it should be to preserve.” Term limits are a conserving reform of this variety.

They are the product of a Madisonian political science that takes people as they are and, without excluding the practice of virtue, harnesses their interests. Madison’s political science more closely resembles Aristotelian induction from observed practice than the ground-up constructions of Hobbes, Locke, Rousseau, or Paine.

Term limits seek to emulate the Madisonian method, and they are a reform for restoring Madisonian principles. The interests of members of Congress have palpably changed since Madison explicated an

American variant on the separation of powers. A conserving reform is thus necessary to restore Madison's machinery for maintaining the separation of powers—means and motives—while taking account of new variants of the latter. It is Madisonian not simply in method but in substance: The theoretical core of the American regime entails separation of powers maintained by counteracting ambition with ambition. Term limits aim to revive ambition and thus restart the machinery as originally designed.

They are not guaranteed, nor are they cost-free. George Will dedicated *Restoration* to “Pat and Liz Moynihan and Jack and Sally Danforth. Were more of the people who came to Washington like these four, this book would not have been written.” There are unquestionably talented and conscientious statesmen who would be swept up in and excluded from service by a reform targeted at those whose motives are less noble.

But term limits must be viewed through an institutional rather than an individual lens. The benefit the nation gets from the conscientious few is outweighed by the erosion of the separation of powers at the hands of the careerist many. Term limits are ultimately a gamble on a long-term shift in legislative culture. It would be too glib to say we cannot do worse than the status quo: We can, and term limits might. But they are rooted in timeless Madisonian arguments about maintaining the separation of powers. To the extent those assumptions are compelling, term limits are a Madisonian reform that could induce a revival of Madisonian politics. They are worth a chance.