

should be limited. To serve for terms, not to exceed six years, in Congress, and one term as president, increased from four to six years, would reinstate the Framers’ intention that the people and the nation be served, not the person holding office. Term limits could make government more meaningful in that no person would accumulate excessive influence. It might also help to avoid the perpetuation of the political class. Of course, a convention for a new Constitution should not avoid the issue of financing elections. For reasons of providing a level playing field, all legitimate candidates should receive equal financial support for their campaigns. All donations, however large or small, should be pooled and equally allotted to candidates. Money should never again buy a person’s office.

Commitment to the office and to performing as expected (and needed) can be expressed through a contract with the electorate. Failure to perform should have consequences. The cumbersome impeachment procedures in place are not effective and not democratic. Rigor and integrity can be achieved through a rational procedure, disregarding party considerations. A president, a member of Congress, or a member of the judiciary who performs miserably, who cannot live up to campaign promises, or who fails to live up to the exigencies of the office, runs the risk of losing office and the benefits associated with it.

### Rethinking the Presidency

Within a power structure meant to have three equally important branches of government, there is no place for any royal tendencies, which fly in the face of the “original intent” of the Union. Pomp and protocol, inspired by a past that nobody can relate to, have no place in the government’s exercise of authority in the 21st century. A one-term presidential appointment will spare the USA and the world the sorry spectacle of a president, paid to govern, taking months (now years) to peddle his own wares (at taxpayer expense) in order to be reelected. A six-year term is sufficient to carry through an agenda. If a program is truly in the people’s interest, it will be taken up by the next president, or dropped if it is not. The one and only allegiance will be to the electorate, not to party, lobbies, friends, family, business interests.

Term limits and compensation can be considered together. It is not uncommon that by the time an individual is elected president, he has served in several government positions—governor, senator, representative—or might already be wealthy in his own right. How is the president’s pension to be determined when he is entitled to multiple retirement plans? A president,

like other politicians, makes money off of his experience, during and after his term of office, through books, lectures, consultation fees, etc. The president's retirement benefits, which include Secret Service protection for him and family members, the cost of maintaining a private office, travel, his widow's pension, and the "royal" funeral, deserve to be aligned to the respect for the office, but also to the living standard of the average American. And as with the average American, his pension should start at the retirement age defined for all by Social Security.

The USA has no need for a royal presidency. The president should not act as (or give the impression of being) a beneficent monarch. The first lady (or whatever the homosexual couple might one day want to call the role) should not be considered as an extension of the president. In a day and age when husbands and wives have their own lives, Americans owe it to them to protect their freedom of choice. In a democracy, the vote is not for the spouse, and even less for privileges surpassing those of monarchs. The USA no longer lives in a time when the wife was an attachment to, or extension of, the husband, acting as unpaid help. ("My wife should be paid," demanded one president, apparently not eager to pay her out of his own pocket for having her campaign for him.) Most likely, the spouse's role will not be (and should not be) a matter of explicit concern in a new Constitution. But the spirit of the Constitution should reflect the understanding that a future president might be a woman, a partner in a homosexual union, a Buddhist or a Muslim, or an atheist. In Germany and France today, the respective presidents (not at all religious) have an unmarried partner; it can—and most certainly will—happen in America, too.

Regarding a more substantive subject: the limits of executive power and the methods of exercising it need to be defined. This will exclude situations of arbitrariness, not only under emergency situations, such as succession to the presidency when he is unable to function, or during attacks against the USA, whether at home (such as the bombing of the Twin Towers on 9/11/2001) or abroad (e.g., a terrorist attack against Americans). Who is actually responsible for declaring war: the president or Congress (as stated in the current Constitution)? Who is responsible setting the nation on a sound financial track, or for getting the nation out of a financial crisis?

More important, what is meant by "executive privilege"? Under executive privilege, measures are enacted that have consequences for every American. "Executive waivers" allow not only the president, but other federal

administrators as well, to selectively enforce laws. These are questions too serious to be left to a fuzzy notion of who is entitled to act. Should the USA decide to allow them? If yes, what restrictions should be imposed?

In the 21st century, it makes no sense to remain captive to rules of political continuity reflecting conditions of life in the early 19th century. The validated vote, in the election of president (as well as congresspersons), should result in a swift succession of power. The frenzy of lingering presidents (“lame ducks”) wasting time and energy over rules and regulations, which will be cancelled once the new Congress or president begins their respective terms, is absurd. The eleven weeks between Election Day and Inauguration Day only serve to extend influence beyond any useful term of office. The so-called “midnight rulings” that President Carter, for example, left behind exceeded 24,000 pages; Clinton’s were some 26,000 pages, and Bush, Jr. was not far behind.<sup>220</sup> Probably, no more than a month should go by for the orderly transfer of power. Either Election Day or the inauguration date should be moved accordingly.

The entire wasteful ceremonial of power transition, called the Inauguration, is politically superfluous. The Inauguration can be televised and web-cast in real time. The proper example was set in 2013 when President Obama took the Oath of Office on the official date of January 20 (a Saturday). No fanfare, no self-celebration. Inauguration Day in the USA more and more resembles the coronation of the English monarch. As a matter of record: No leader of any other modern country celebrates himself or herself as does the US president, seemingly because that’s what the people want, or are told they want. Engineering fantasies (of royal aura) is not a function of the presidency.

It might be of marginal significance that Article VI excludes the possibility of an oath based on religion. Still oaths are taken on the Christian Bible (and on the Koran). The Oath of Office written in the Constitution does not include the ending phrase “so help me God.” This flies in the face of the original intent of the Constitution. Nevertheless, the supplication, intentionally not adopted by the Constitution, never raises any qualms. Does it make all presidencies asking for God’s help invalid? What will happen when the first atheist is elected president? Or a member of a religion that does not accept oath-taking? Or a member of an idolatrous sect? This is America, where everything is possible.

Continuing the tradition, embedded in tribal practices of war, of automatically having the president assume the function of commander-in-chief is tenuous, at best, in our time. The military has become an extraordinarily specialized

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220 Carey, Maeve P. *Midnight Rulemaking*, Congressional Research Service. 18 July 2012.

enterprise. Military action takes place in a different timeframe, much faster than that of political decision-making. Furthermore, the military has acquired a worrisome political power that escapes the president's effective control, regardless of his title. To regain political control over the military does not automatically require that the president be commander-in-chief. Turning a man (actually, several men by this time) who refused to serve in the military into the commander-in-chief of those who enlisted, for whichever reason, is ultimately an act of demagoguery. There must be a better way than the one practiced by kings and dictators—all commanders-in-chief, or posing as them. They can dictate torture, assassinations, and arbitrary actions against foe and friend. The USA is getting a bit too close to such an exercise of executive power.

“President” is not a title for life. Yet every former president is addressed as though he still occupies the White House and runs the country. The unfortunate habit carries over to the senators and representatives, projecting upon them a false sense of their significance in the scheme of things. The American Revolution did not aim to create a new nobility of former presidents, representatives, senators, or Supreme Court justices. Even if it had, we do not need it.

Neither the Constitution nor the people dedicated to a new understanding of government ever supported self-aggrandizement. Presidential libraries present a skewed image of their namesakes. For all practical purposes, America is the owner of the entire historic record. In the spirit of the time, instead of individual libraries scattered all over the nation, making them harder to reach and more expensive to operate, the USA should make the records available to the public that has already paid for them. If the former office holders want to build centers, libraries, or institutes, let them do so with their own means (contributions included, but not tax-deductible). The fact that some foreign governments and corporations buy influence by donating to presidential libraries makes the need to “neutralize” such libraries by disassociating the names of former presidents from wealthy interest groups.<sup>221</sup>

### The Judiciary

Article III establishes “one supreme Court” and “inferior Courts” to be established by Congress. It describes the types of cases that the Supreme Court (a capital “S” is used today) is charged with hearing: “all Cases, in Law and Equity, arising under this Constitution.” Unfortunately, justice is not always

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<sup>221</sup> The list of donors to Clinton's and Carter's presidential libraries is indicative of the attempts to exploit all channels to promote corporate and foreign interests and ideologies.

the result of the Court’s decisions. For example, the Court sided with business interests in the 2005 takeover of homes in New London, Connecticut.<sup>222</sup> Americans will not forget that the Court also declared that “corporations are people,” especially when it comes to contributions to political campaigns.

There is no way to quarrel with the Framers who conceived a Constitution that gave more say in the Union to lawyers (many of the Framers were lawyers) than to anyone else. In the tradition of the British legal system (including the robe and wig), they established a judiciary in extension of the oligarchy. In many states, the same court officers maintained their position after the Revolution. The Constitution even adopted the formula “during good behavior,” which replaced “at the King’s pleasure,” in order to signal a status of political independence. However, the procedure for nomination to the Supreme Court—the president appoints Justices and the Senate must confirm them—does open the door to politicizing the process. A politically independent court sounds like an oxymoron. No checks are applied to the judiciary. They are beyond the bounds of the democratic process.

The role of the Supreme Court, as initially defined, is far different from the one it plays today. As cumbersome as it was, the Supreme Court was not only the “high” appellate instance, but also a place of trial. The initially weak Supreme Court acquired power that extends well beyond the initial intentions (and modest lodging). It now legislates from a pompous palace, under the guise of giving its stamp of approval to government decisions. The Court is no longer the arbiter of the Constitution, but the fierce partisan of economic interests, usually put before the interests of the country and its people. It was the Supreme Court that made elections in America an economic event (cf. *Citizens United vs. Federal Election Commission*); plutocracy can spend all it wants in order to get the government it desires (the infamous “Corporations are people”).

Current appointment procedures are highly politicized. The president nominates a judge under the influence of political correctness, more than on the basis of highest qualification. This statement is not made in order to disparage women, Blacks, or Hispanics who now serve on the Supreme Court. Robert Bork was a highly qualified appointee, but the Senate Justice Committee members interrogated him as though he were a criminal only because he

222 *Kelo v. New London, Lawsuit Challenging Eminent Domain Abuse in New London, Connecticut*. See: <http://www.ij.org/kelo-v-new-london>

would not carry out the agenda of the political party in power at that time. Clarence Thomas was also grilled, subjected to more political scrutiny than competent evaluation of his legal acumen. The Senate judicial nomination hearings of both Sotomayor and Kagan were marked more by ideological questions than by evaluation of competence. The hearings end up being highly choreographed political performances. Accountability, instead of proven party allegiance and unjustified protection from the people's dissatisfaction, is an urgent requirement.

Tenure on the Supreme Court was meant to assure the independence of the justices. An understanding of justice anchored in the present, not in English Common Law (which the Framers referred to) requires limited terms of office. Pronouncements regarding the influence of science and technology require a good combination of younger and more mature individuals willing to adapt to a time of fast change. Almost no one on the Supreme Court seems to understand that the permanence of yesteryear was effectively supplanted by transitoriness. No one asks the justices to accept abuse and destructive activities. But the legal metrics have changed. The new political activism is different from that which the Founders practiced.

The Court that remains as it was established in the 18th century has difficulty realizing that the Constitution is a document drawn up by individuals with particular goals in mind. "Original intent" is a far-fetched justification for their interpretations and rulings. On the basis of "original intent" and "contextual interpretation," the Second Amendment would be automatically repealed (that is, now that there is a national military, there is no need for militias to protect the nation, which is the basis for the right to keep and bear arms). There is no way that a person raised in the 20th century can rule on the basis of "original intent" and "contextual interpretation" because there is no way that a person, not even one as educated as a Supreme Court Justice, can relate to the circumstances of the 18th century. Of course, a Constitutional Convention will have to deal with opportunities and new methods for delivering justice corresponding to the present.

A Constitutional Convention, where lawyers, among other professionals, will be present, will have to apply the exigencies of the democratic foundation to judges, courts, and counselors. It goes almost without saying that neither the Supreme Court nor any branch of government will passively accept

the need for a new Constitution. They will fight it tooth and nail based on arguments rooted in history—to which they themselves belong. Regardless, reconsideration of basic principles—liberty, property, justice—and their clear encoding in the Constitution could bring coherence to a society pulled apart by so many reciprocally irreconcilable interests.

### Whose America?

A new Constitution has to address the issues of parties directly. Nothing speaks against individuals freely organizing themselves according to a variety of possible criteria (blue, red, whatever color or animal they like or identify with). Political values, professional interests, moral affinities, or whatever reason they consider might further define parties and party allegiance. As long as the goals and methods of parties do not contradict the principles upon which the USA came into existence or the principles upon which it decides to live, they are as legitimate as any interest group.

A new Constitution would have to be specific in defining the functions of parties, instead of avoiding the subject. American political parties are economic actors. Therefore, they should be subject to the principles guiding economic entities. They are, as history proved, in for profit, but they enjoy more than not-for-profit status. Due to the tax-exempt status of parties, Americans pay for them, regardless of whether they join them or not. If the goal of parties were to eventually become political, they would have to align with the political principles of the Union: no privileges, and instead political obligations of transparency and accountability. Despite appearances, America is much more than any party, and all parties together. In the final analysis, parties are minority groups claiming rights for which there is no foundation, neither in nature nor in religion. They are by no means entitled to the privileges they've acquired over time.

Probably the most effective way to define the relationship between the people and parties would be to pursue a separation of party and state, similar to that between church and state. No party indoctrination in schools should be permitted; no party control over voting districts, over who gets employed in the government, and over people's lives. Of course, the sovereign citizen can decide to belong to a party or not, just as religious affiliation or practice is a matter of choice. Party line should never be imposed upon others, just as religion is not imposed.