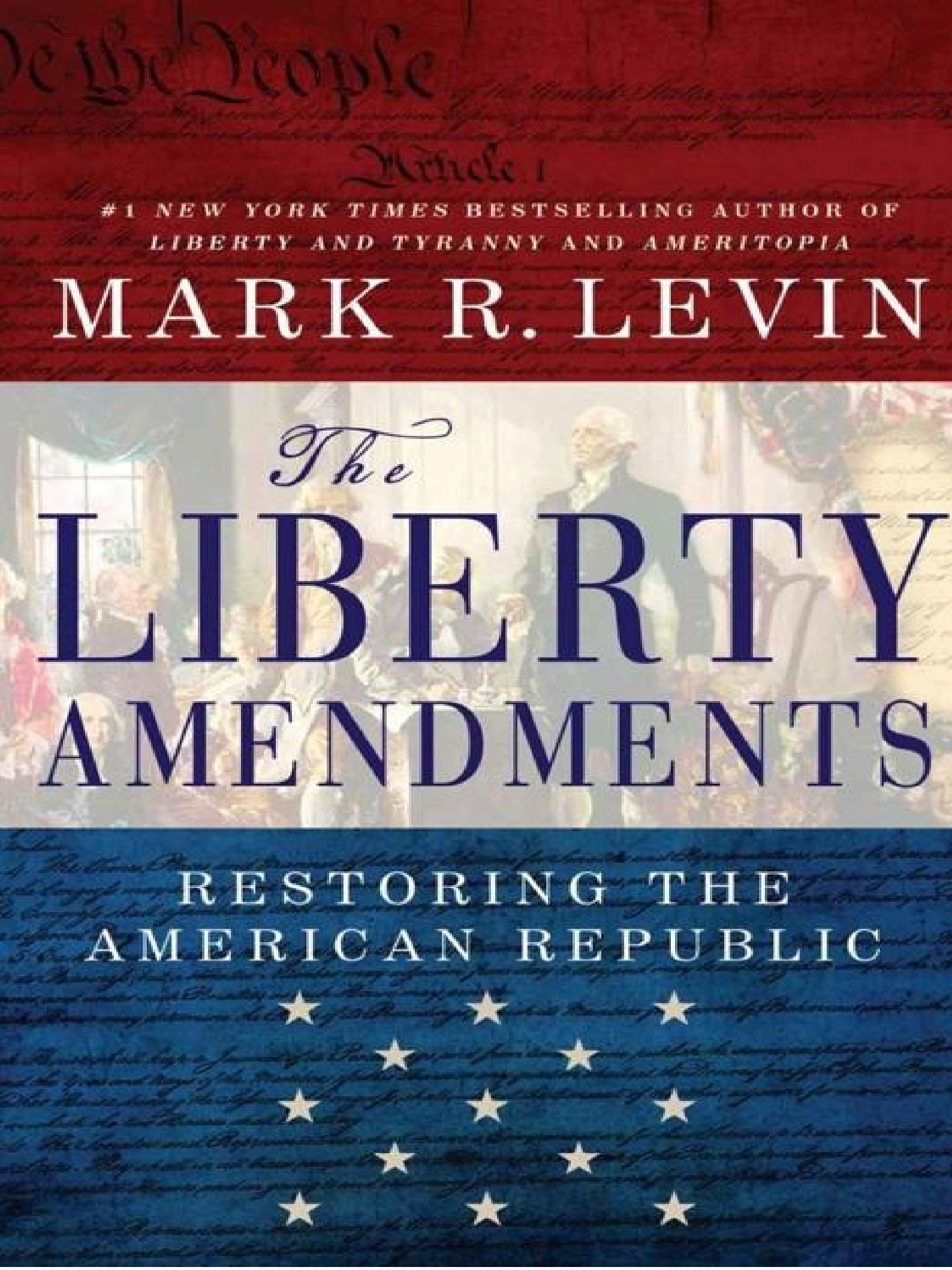
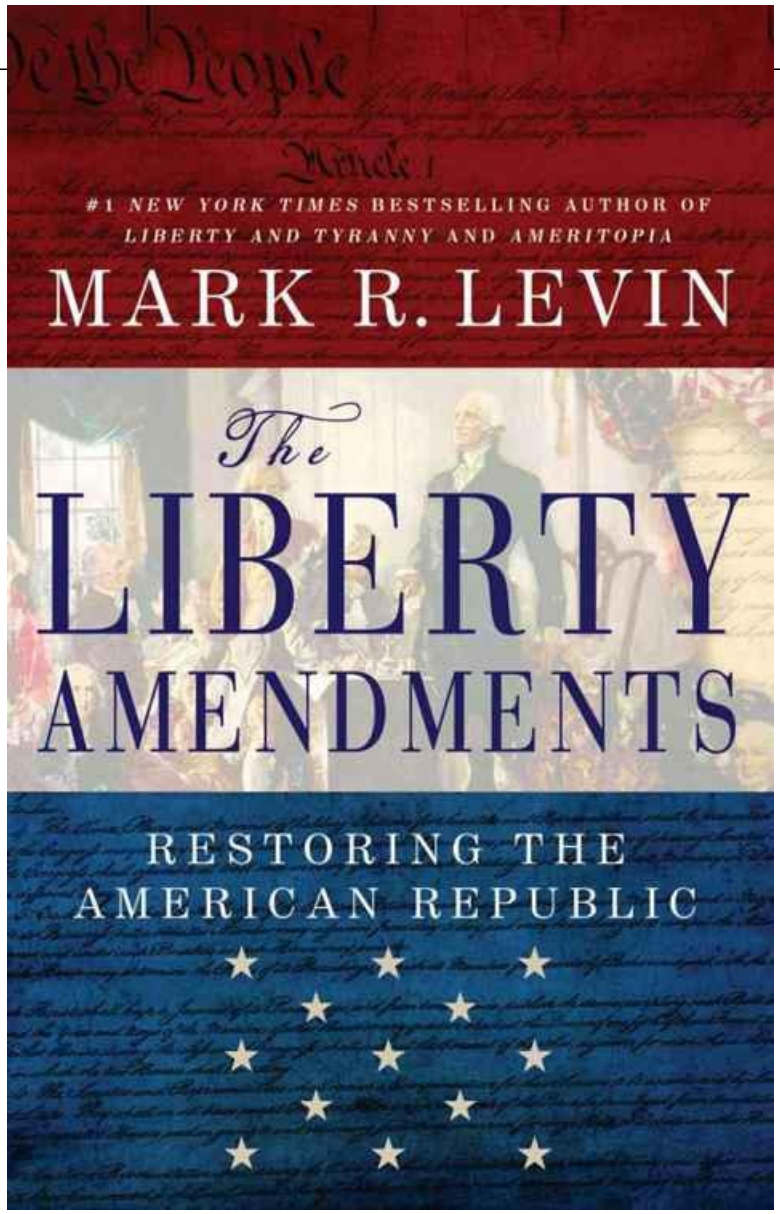


#1 *NEW YORK TIMES* BESTSELLING AUTHOR OF
LIBERTY AND TYRANNY AND *AMERITOPIA*

MARK R. LEVIN

The LIBERTY AMENDMENTS

RESTORING THE AMERICAN REPUBLIC


We the People
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THE LIBERTY AMENDMENTS

RESTORING THE AMERICAN REPUBLIC

Mark R. Levin

THRESHOLD EDITIONS
New York London Toronto Sydney New Delhi

CONTENTS

CHAPTER ONE

I UNDERTOOK THIS PROJECT *not* because I believe the Constitution, as originally structured, is outdated ar outmoded, thereby requiring modernization through amendments, but because of the *opposite*—th is, the necessity and urgency of *restoring* constitutional republicanism and *preserving* the civil socie from the growing authoritarianism of a federal Leviathan. This is not doomsaying or fearmongerin but an acknowledgment of fact. The Statists have been successful in their century-long march disfigure and mangle the constitutional order and undo the social compact. To disclaim the Statist campaign and aims is to imprudently ignore the inventions and schemes hatched and promoted open by their philosophers, experts, and academics, and the coercive application of their designs on th citizenry by a delusional governing elite. Their handiwork is omnipresent, for all to see—a centralize and consolidated government with a ubiquitous network of laws and rules actively suppressin individual initiative, self-interest, and success in the name of the greater good and on behalf of th larger community. Nearly all will be emasculated by it, including the inattentive, ambivalent, ar disbelieving.

The nation has entered an age of *post-constitutional soft tyranny*. As French thinker and philosoph Alexis de Tocqueville explained presciently, "It covers the surface of society with a network of sma complicated rules, minute and uniform, through which the most original minds and the most energet characters cannot penetrate, to rise above the crowd. The will of man is not shattered, but softene bent, and guided; men are seldom forced by it to act, but they are constantly restrained from actin Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresse enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than flock of timid and industrious animals, of which the government is the shepherd."[1]

Social engineering and central planning are imposed without end, since the governing masterminc drunk with their own conceit and pomposity, have wild imaginations and infinite ideas for reshapin society and molding man's nature in search of the ever-elusive utopian paradise. Their clums experiments and infantile pursuits are not measured against any rational standard. Their piousness ar sanctimony are justification enough.

Tocqueville observed further, "It would seem as if the rulers of our time sought only to use men i order to make things great; I wish that they would try a little more to make great men; that they wou set less value on the work and more upon the workman; that they would never forget that a natio cannot long remain strong when every man belonging to it is individually weak; and that no form combination of social polity has yet been devised to make an energetic people out of a community pusillanimous and enfeebled citizens."[2]

Today Congress operates not as the Framers intended, but in the shadows, where it dreams up i most notorious and oppressive laws, coming into the light only to trumpet the genius and earnestne of its goings-on and to enable members to cast their votes. The people are left lamebrained ar dumbfounded about their "representatives' " supposed good deeds, which usually take the form omnibus bills numbering in hundreds if not thousands of pages, and utterly clueless about the effec these laws have on their lives. Of course, that is the point. The public is not to be informed b indoctrinated, manipulated, and misled.

Congress also, and often, delegates unconstitutionally law-making power to a gigantic yet eve growing administrative state that, in turn, unleashes on society myriad regulations and rules at such rapid rate the people cannot possibly know of them, either—and if, by chance, they do, they cann

possibly comprehend them. Nonetheless, ignorance, which is widespread and deliberately so, is n
excuse for noncompliance, for which the citizen is heavily fined and severely punished.

Not to be outdone, the current occupant of the Oval Office sees his primary duty as "fundamental
transforming the United States of America."[3] By this, of course, President Barack Obama did n
mean a fresh allegiance to the nation's founding principles and a new respect for the Constitution
limits on federal authority, but the converse. He is more blatant and aggressive than his twentiet
century predecessors, but faithfully follows the footsteps of the most transgressive among them. Th
metamorphosis of the executive branch into an immense institution exercising a conglomeration
powers, including lawmaking and decreeing, is clearly without constitutional origin, a quaint notio
mostly derided these days.

Having delegated broad lawmaking power to executive branch departments and agencies of its ov
creation, contravening the separation-of-powers doctrine, Congress now watches as the preside
inflates the congressional delegations even further and proclaims repeatedly the authority to rule b
executive fiat in defiance of, or over the top of, the same Congress that sanctioned a domineerin
executive branch in the first place. Notwithstanding Congress's delinquency, but because of it, a
unquenched President Obama, in a hurry to expedite a societal makeover, has repeatedly admonishe
Congress that "[i]f [it] won't act soon to protect future generations, I will!"—that is, if Congress wi
not genuflect to his demands, and pass laws to his liking, he will act on his own.[4]

And the president has made good on his refrain. On a growing list of matters, he has, in fac
displayed an impressive aptitude for imperial rule. With the help of a phalanx of policy "czars," fro
immigration, the environment, and labor law to health care, welfare, and energy, the president ha
exercised his executive "discretion" to create new law, abrogate existing law, and generally contriv
ways to exploit legal ambiguities as a means to his ends. He has also declared the Senate in rece
when it was not, thereby bypassing the Senate's constitutional "advice and consent" role to insta
several partisans in top federal posts.

Today this is glorified and glamorized as compassionate progressivism. The Framers called
despotism. In *Federalist* 48, James Madison, considered the father of the Constitution, wrote, "A
ELECTIVE DESPOTISM was not the government we fought for; but one which should not only b
founded on free principles, but in which the powers of government should be so divided and balance
among several bodies of magistracy, as that no one could transcend their legal limits, without bein
effectually checked and restrained by the others."[5]

The third branch of the federal triarchy, the judiciary, is no better. Among the biggest myths is tha
the men and women of the judiciary, operating under monklike conditions, would dutifully an
faithfully focus their undivided mental faculties toward preserving the Constitution. They would app
their expertise, experience, and insight free from the political pressures and biases of elections and th
legislative and executive branches of government, and within a narrow scope of authority and purpos
Moreover, it was assumed there was little to fear from this part of government. In *Federalist* 7
Alexander Hamilton explained, "Whoever attentively considers the different departments of pow
must perceive, that, in a government in which they are separated from each other, the judiciary, fro
the nature of its functions, will always be the least dangerous to the political rights of th
Constitution; because it will be least in a capacity to annoy or injure them."[6] Yet, having seized fo
itself in the early years of the nation the final word on all matters before it, the Supreme Court wi
just five of its nine members can impose the most far-reaching and breathtaking rulings on the who
of society, for which there is no effective recourse.

It turns out that justices are also God's children; and being of this world, their makeup consists o
actual flesh and blood. They are no more noble or virtuous than the rest of us, and in some cases le
so, as they suffer from the usual human imperfections and frailties. And the Court's history proves i

In addition to delivering the routine and, in some cases, exceptional rulings, the Court is responsib for several notorious holdings, including *Dred Scott v. Sandford*[7] (endorsing slavery), *Plessy Ferguson*[8] (affirming segregation), and *Korematsu v. United States*[9] (upholding the internment Americans), among others. During the last eighty years or so, the justices have rewritten sections the Constitution, including the Commerce Clause (redefining noncommerce as commerce) and the ta provisions (redefining penalties as taxes), to accommodate the vast expansion of the feder government's micromanagement over private economic activity. Moreover, the justices have laced th Court's jurisprudence with all manner of personal policy preferences relating to social, cultural, an religious issues, many of which could have been avoided or deferred.

What was to be a relatively innocuous federal government, operating from a defined enumeration specific grants of power, has become an ever-present and unaccountable force. It is the nation largest creditor, debtor, lender, employer, consumer, contractor, grantor, property owner, tenant insurer, health-care provider, and pension guarantor. Moreover, with aggrandized police powers, wha it does not control directly it bans or mandates by regulation. For example, the federal governme regulates most things in your bathroom, laundry room, and kitchen, as well as the mortgage you ho on your house. It designs your automobile and dictates the kind of fuel it uses. It regulates your baby toys, crib, and stroller; plans your children's school curriculum and lunch menu; and administers the student loans in college. At your place of employment, the federal government oversees everythin from the racial, gender, and age diversity of the workforce to the hours, wages, and benefits pai Indeed, the question is not what the federal government regulates, but what it does not. And it mak you wonder—how can a people incapable of selecting their own lightbulbs and toilets possess enoug competence to vote for their own rulers and fill out complicated tax returns?

The illimitable regulatory activity, with which the federal government torments, harasses, an coerces the individual's private and economic behavior, is the progeny of a colossal federal edifi with inexhaustible energy for societal manipulation and change. In order to satisfy its gluttono appetite for programmatic schemes, the federal government not only hurriedly digests the Treasury annual revenue, funded with confiscatory taxes on a diminishing number of productive citizens, b desserts on the wealth not yet created by generations not yet born with unconstrained indebtednes And what havoc has this wrought.

The federal government consumes nearly 25 percent of all goods and services produced each ye by the American people.[10] Yearly deficits routinely exceed $1 trillion.[11] The federal government ha incurred a fiscal operating debt of more than $17 trillion, far exceeding the total value of the annu economic wealth created by the American people, which is expected to reach about $26 trillion in decade.[12] It has accumulated unfunded liabilities for entitlement programs exceeding $90 trillio which is growing at $4.6–6.9 trillion a year.[13]

There is not enough money on the planet to make good on the federal government's financi obligations. Hence, the Federal Reserve Board has swung into action with multiple versions "quantitative easing," which is nothing more than the federal government monetizing its own debt— buying its own debt—with a combination of borrowing, issuing itself credit, and printing mone amounting to trillions of dollars.[14] Of course, this has the eventual effect of devaluing the currenc fueling significant inflation or deflation, and destabilizing the economy at some future point.

But like the laws of physics, there is no escaping the laws of economics. As these fiscal an monetary malpractices escalate, for there is no end in sight, the federal government will tu increasingly reckless and demanding, taking an even harder line against the individual's accumulatio of wealth and retention of private property. For example, when the federal income tax was institute one hundred years ago, the top individual income tax rate was 7 percent. Today the top rate is about 4 percent, with proposals to push it to nearly 50 percent. There is also serious talk from the governi

elite about instituting a national value-added tax (VAT) on top of existing federal taxes,[15] which is form of sales tax, and divesting citizens of their 401(k) private pension plans.[16] Even th rapaciousness of these policies will not be enough to fend off the severe and widespread misei unleashed from years of profligacy. Smaller nations such as Cyprus, Spain, and Greece provide window into the future, as their borrowing has reached its limit. Moreover, unable to print mone their day of reckoning is either looming or arrived. Therefore, bank accounts, other investments, an wealth generally are subject to governmental impoundment, sequester, and theft. The individual liberty, inextricably linked to his private property, is submerged in the quicksand of a government th is aggregating authority and imploding simultaneously.

What, then, is the answer? Again, Tocqueville offers guidance. Looking back at the Constitution Convention some fifty years afterward, he observed that "it is new in history of society to see a gre people turn a calm and scrutinizing eye upon itself when apprised by the legislature that the wheels its government are stopped, to see it carefully examine the extent of the evil, and patiently wait tw whole years until a remedy is discovered, to which it voluntarily submitted without its costing a te or a drop of blood from mankind."[17]

It is asking too much of today's governing masterminds and their fanatical adherents to reform th product of their own fatuity—that is, the continuing disassembly of the Constitution and society. Aft all, despite one credible source after another, both within and outside the federal government, ringin alarm bells about the nation's hazardous track—describing it as unsustainable, desperate, and immor —they are blinded to reason, experience, and knowledge by their political DNA and ideologic invincibility and therefore are intransigent to effective ameliorative steps. They long ago renounce by word and action their adherence to the Constitution's confinements since the Statists' utopia an the Framers' Constitution cannot coexist.

However, it is not asking too much of "a great people [to] turn a calm and scrutinizing eye upo itself" and rally to their own salvation. It is time to return to self-government, where the people a sovereign and not subjects and can reclaim some control over their future rather than accept inevitable a dismal fate. Unlike the radicalism of the governing masterminds, who self-serving oversee a century-old, perpetual counterrevolution against the American dawn, the people must hav as their goal the reestablishment of the founding principles and the restoration of constitution republicanism, thereby nurturing the individual and preserving the civil society. This requires, first, a acknowledgment of the federal government's unmooring from its constitutional foundation; secon an acceptance that the condition is urgent and, if untreated, will ultimately be the death knell of th American Republic; third, the wisdom to rebalance the government in a way that is without novel and true to the Framers' original purpose; and, fourth, the courage to confront—intellectually an politically—the Statists' stubborn grip on power.

There is a path forward but it requires an enlightened look back at our founding. And what we fin is that the Framers rightly insisted on preserving the prominent governing role of the state legislatur as a crucial mechanism to containing the power of the proposed new federal government. In fact, oth than the limited, specified powers granted to the federal government, the states retained f themselves plenary governing authority. The debates during the Constitutional Convention and th state ratification conventions are unequivocal in this regard. During the ratification period, th Federalists repeatedly assured the Anti-Federalists and other skeptics of the proposed feder government's limits. For example, Madison argued in *Federalist* 14, "In the first place, it is to b remembered, that the general government is not to be charged with the whole power of making an administering laws: its jurisdiction is limited to certain enumerated objects, which concern all th members of the republic, but which are not to be attained by the *separate* provisions of any."[18] *Federalist* 45 he insisted, "The powers delegated by the proposed Constitution to the feder

government are few and defined. Those which are to remain in the State governments are numerou
and indefinite."[19] In *Federalist* 46, Madison asserted that "the powers proposed to be lodged in th
federal government are as little formidable to those reserved to the individual States, as they a
indispensably necessary to accomplish the purposes of the Union; and that all those alarms which hav
been sounded, of a meditated and consequential annihilation of the State governments, must, on th
most favorable interpretation, be ascribed to the chimerical fears of the authors of them."[20]

Madison's declarations were not unique among the Constitution's proponents but rather wer
commonplace. And without these assurances—and the additional pledge that the First Congress woul
offer amendments to the Constitution further ensuring that individual and state sovereignty would b
safeguarded against the new federal government (what became the Bill of Rights, including the Nin
and Tenth Amendments)—the Constitution would not have been ratified. Thus, the Constitutio
drafted by delegates who were sent by the states to Philadelphia in 1787 and ratified subsequently b
delegates in the state conventions, preserved the decisive role of the states in the American Republic.

It requires emphasis that *the states* established the American Republic and, through th
Constitution, retained for themselves significant authority to ensure the republic's durability. This
not to say that the states are perfect governing institutions. Many are no more respectful
unalienable rights than is the federal government. But the issue is how best to preserve the civ
society in a world of imperfect people and institutions. The answer, the Framers concluded, is
diversify authority with a combination of governing checks, balances, and divisions, intended
prevent the concentration of unbridled power in the hands of a relative few imperfect people.

• • •

Unlike the modern Statist, who defies, ignores, or rewrites the Constitution for the purpose
evasion, I propose that we, the people, take a closer look at the Constitution for our preservation. Th
Constitution itself provides the means for restoring self-government and averting societal catastroph
(or, in the case of societal collapse, resurrecting the civil society) in Article V.

Article V sets forth the two processes for amending the Constitution, the second of which I hav
emphasized in italics:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propos
> Amendments to this Constitution, or, *on the Application of the Legislatures of two thirds of th
> several States, shall call a Convention for proposing Amendments*, which, in either Case, *shall b
> valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures
> three fourths of the several States or by Conventions in three fourths thereof*, as the one or th
> other Mode of Ratification may be proposed by the Congress . . .[21]

Importantly, in neither case does the Article V amendment process provide for a constitution
convention. It provides for two methods of amending the Constitution. The first method, where tw
thirds of Congress passes a proposed amendment and then forwards it to the state legislatures f
possible ratification by three-fourths of the states, has occurred on twenty-seven occasions. Th
second method, involving the direct application of two-thirds of the state legislatures for *a Conventio
for proposing Amendments*, which would thereafter also require a three-fourths ratification vote by th
states, has been tried in the past but without success. Today it sits dormant.

The fact is that Article V expressly grants state legislatures significant authority to rebalance th
constitutional structure for the purpose of restoring our founding principles should the feder
government shed its limitations, abandon its original purpose, and grow too powerful, as man

delegates in Philadelphia and the state conventions had worried it might. The idea was first presente at the Constitutional Convention on May 29, 1787, by Edmund Randolph, governor of Virginia, as proposal in the so-called Virginia Plan drafted by Madison.

> Resd. that provision ought to be made for the amendment of the Articles of Union whensoever shall seem necessary, and that the assent of the National Legislature ought not be require thereto.[22]

On June 11, George Mason of Virginia—who had earlier drafted Virginia's Declaration of Right the precursor to the Declaration of Independence—responded to some of the delegates who did not s the necessity of the proposal, by strongly advocating for it.

> Col: Mason urged the necessity of such a provision. The plan now to be formed will certainly b defective, as the Confederation has been found on trial to be. Amendments therefore will b necessary, and it will be better to provide for them, in any easy, regular and Constitutional wa than to trust to chance and violence. It would be improper to require the consent of the Na Legislature, because they may abuse their power, and refuse their consent on that ver account. . . .[23]

Later, when the delegates returned to the issue, Roger Sherman of Connecticut—who had been member of the Committee of Five, which helped draft the Declaration of Independence, and wh coauthored the so-called Connecticut Plan, which served as the basis for our bicameral Congress- offered an alternative in which Congress would propose amendments and the states would ratify ther Madison suggested dropping the state convention altogether.

On September 15, Mason, alarmed that Congress would have the sole power to propo amendments, continued to insist on state authority to call for conventions. Mason explained that a oppressive Congress would never agree to propose amendments curtailing its own tyranny:

> Col: Mason thought the plan of amending the Constitution exceptionable & dangerous. As th proposing of amendments is in both the modes to depend, in the first immediately, and in th second, ultimately, on Congress, no amendments of the proper kind would ever be obtained b the people, if the Government should become oppressive, as he verily believed would be th case.[24]
>
> Mr. [Gouverneur] Morris [of Pennsylvania] & Mr. [Elbridge] Gerry [of Massachusetts] move to amend the article so as to require a Convention on application of 2/3 of the Sts [states].[25]

Earlier, Pennsylvania's James Wilson, among the most active participants at the Constitutiona Convention, had "moved to insert 'three fourths of' before the words 'several States,' " which wa adopted and then ultimately added as a requirement for both amendment processes under Article V. Consequently, under both amendment procedures, the Constitution requires that three-fourths of th states ratify amendments, either by their state legislatures or state conventions.

I was originally skeptical of amending the Constitution by the state convention process. I fretted could turn into a runaway caucus. As an ardent defender of the Constitution who reveres the brilliand of the Framers, I assumed this would play disastrously into the hands of the Statists. However, today am a confident and enthusiastic advocate for the process. The text of Article V makes clear that ther is a serious check in place. Whether the product of Congress or a convention, a proposed amendme has no effect at all unless "ratified by the Legislatures of three fourths of the several States or b Conventions in three fourths thereof. . . . " This should extinguish anxiety that the state conventio

process could hijack the Constitution.

After more research and reflection, the issue crystallized further. If the Framers were alarmed th states calling for *a Convention for proposing Amendments* could undo the entire undertaking of t Constitutional Convention, then why did they craft, adopt, and endorse the language? In *Federalist* 4 Madison considered both Article V amendment processes equally prudent and judicious. He wrote, part, "That useful alterations will be suggested by experience, could not but be foreseen. It w requisite, therefore, that a mode for introducing them should be provided. The mode preferred by t convention seems to be stamped with every mark of propriety. It guards equally against that extrem facility, which would render the Constitution too mutable; and that extreme difficulty, which mig perpetuate its discovered faults. It, moreover, equally enables the general and the State governmen to originate the amendment of errors, as they may be pointed out by the experience on one side, or the other. . . . "[27]

There are other reasons for assuaging concerns. Robert G. Natelson, a former professor of law at t University of Montana and an expert on the state convention process, explains that "a convention f proposing amendments is a *federal convention*; it is a creature of the states or, more specifically, the state legislatures. And it is a *limited-purpose convention*. It is not designed to set up an entire new constitution or a new form of government. How do we know that it's a federal convention? [I was the only kind of interstate convention the Founders ever knew, or likely ever considered. Indee when they talked during the ratification process about conventions for proposing amendments, th always talked about them as representing the states."[28] Moreover, the state legislatures determine they want to make application for a convention; the method for selecting their delegates; and t subject matter of the convention.[29]

In addition, Congress's role in the state application process is minimal and ministerial. It could n be otherwise, as the Framers and ratifiers adopted the state convention process for the purpose establishing an alternative to the congressionally initiated amendment process. It provided constitutional solution should "the [federal] Government . . . become oppressive."[30] The text and pla meaning of Article V are inarguable. In *Federalist* 85, Alexander Hamilton—a leading advocate of robust federal government—explained that "the national rulers, whenever nine [two-thirds] Stat concur, will have no option upon the subject. By the fifth article of the plan, the Congress will *obliged* 'on the application of the legislatures of two thirds of the States [which at present amount nine], to call a convention for proposing amendments, which *shall be valid*, to all intents a purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, by conventions in three fourths thereof.' The words of this article are peremptory. The Congress '*sha* call a convention.' Nothing in this particular is left to the discretion of that body. And of consequenc all the declamation about the disinclination to a change vanishes in air."[31]

I have no illusions about the political difficulty in rallying support for amending the Constitution this process. After all, all past efforts have fallen short. And the governing masterminds and the disciples are more powerful and strident than ever. There is no doubt that their resistance will stubborn and their tactics desperate as they unleash the instrumentalities of the federal governme and the outlets of a corroboratory media to vanquish such a movement and subdue the public. Havi rejected the Constitution's limits, they will not be persuaded by references to its text and histor Their evasion has been their design. Others who self-identify as originalists, constitutionalists, a conservatives in asserting allegiance to the Constitution, as I do, might nonetheless be wary of opposed reflexively to the state convention process for several reasons, including their unfamiliari with its history and workings. Perhaps, in time, their high regard for the Constitution will persua them of the judiciousness in resorting to it before there is little left of it. Still more may be resigned a grim future, preferring lamentation to the hard work of purposeful action. And, of course, there a

always the unmindful and content.

Whatever the reasons, there are also untold numbers of citizens who comprehend the perilousne of the times and circumstances, and the urgency of drawing the nation's attention to the restoration constitutional republicanism. This book is an appeal to them. The Framers anticipated this day mig arrive, for they knew that republics deteriorate at first from within. They provided a lawful and civ way to repair what has transpired. We, the people, through our state legislatures—and the sta legislatures, acting collectively—have enormous power to constrain the federal governmen reestablish self-government, and secure individual sovereignty.

• • •

What follows are proposed amendments to the Constitution—*The Liberty Amendments*. It is m hope and aspiration for our country that these amendments can spur interest in and, ultimatel support for the state convention process. In any event, should there come a time, sooner or later, whe the states convene a convention, these amendments or amendments of the same nature—as I make n claim of unassailable knowledge—may prove useful and find their way into the debate. But a plan what is needed, as is a first step. This is mine.

CHAPTER TWO

AN AMENDMENT TO ESTABLISH TERM LIMITS FOR MEMBERS OF CONGRESS

SECTION 1: No person may serve more than twelve years as a member of Congress, wheth such service is exclusively in the House or the Senate or combined in both Houses.

SECTION 2: Upon ratification of this Article, any incumbent member of Congress whose ter exceeds the twelve-year limit shall complete the current term, but thereafter shall be ineligib for further service as a member of Congress.

IN 2010, THE YEAR of a Republican tidal wave, 85 percent of incumbents from both parties were reelecte Three hundred ninety-seven members of the House of Representatives in the 111th Congress ran f reelection and 339 won. The story in the Senate was almost a mirror image of the House. A third the seats in the Senate were up for election. Twenty-five incumbents stood for reelection and twenty one won. The Senate's incumbent reelection rate was 84 percent.[1]

In 2008, the year Barack Obama was first elected president, the reelection percentage for Hou members was 94 percent. The Senate's was down a hair to 83 percent. In fact, you can look at almo any congressional election cycle in the last two decades and find similar results.[2]

Ronald Rotunda, Chapman University law professor and constitutional expert, made the point a fe years ago that "turnover in the House of Lords has been greater than the turnover in the House Representatives. There was even more turnover in the membership of the Soviet Politburo."[3] And litt has changed since.

In theory, there is nothing wrong with keeping a good public servant in office for as long as th official and we, the voters, want him there. New does not necessarily mean better, and often it ca mean worse. And in our country, where the people regularly get to vote for members of the House an Senate—within very basic qualifications like age, citizenship, and residency—whomever vote choose to represent them should be up to them, right?

The problem is that theory can be a cruel mistress when it comes to reality, in which unexpecte consequences often prevail. America has never been a pure democracy and majoritarianism ha always been as much feared as monarchism. Moreover, our supposedly broad parameters of "choice at the ballot box have actually caused a dramatic narrowing of electoral options for voters. Puttin aside the media histrionics over "divided" government and the "dysfunctional" relationships betwee the two houses of Congress, these institutions are populated by a class of elected officials wh jealously covet the power of public office.

Through gerrymandering of House districts, patronage, a barrage of self-serving free and pa media, and fund-raising advantages, incumbents are able to extend their hold on federal offic Furthermore, incumbents often use their positions as lawmakers to promote federal spending and leg initiatives that benefit their personal longevity in office, making it increasingly difficult for successf electoral challenges. For example, part of the unsustainable growth of the federal government can b attributed to members of Congress treating federal spending, borrowing, and taxing as a person prerogative used to award funds and assign legal rights to various political and electo constituencies and would-be constituencies. There are undoubtedly other reasons for their behavio including and most certainly ideology, but there is no denying that the instrumentalities of the feder

government are used to build political constituencies and supporters—that is, to reshape the natu
and mind-set of the electorate. Therefore, Congress has become less of a representative body as i
members are more insulated.

The consequences of these and other practices addressed by *The Liberty Amendments* have bec
extremely detrimental to our society, as measured by, among other things, the ever-more-centralize
and coercive power of the federal government, unsustainable fiscal and monetary policies, and myria
statutes and regulations issued by a maze of federal departments and agencies. The ultimate costs a
borne by the individual in lost liberties and property. Thus, while there are a host of comple
circumstances that brought us to our current state, much of it would not be possible but for a
increasingly insulated class of governing masterminds who use lawmaking and the public purse
empower themselves. It is apparent that in Washington and most political capitals *TIME* in office
POWER.

An important antidote is congressional term limits, which slowly displaces a self-perpetuatin
ruling class populated by professional politicians—which is increasingly authoritarian in its approac
to governance—with a legislative body whose members are, in fact, more representative of the peopl
for they are rotated in and out of Congress over a generally shorter and defined period of tim
University of California, Irvine, professor Mark P. Petracca explains that this rotation of citizen
representatives is central to a republic. “The oft-touted expertise of professional politicians
representatives stands in stark contradiction to the essential function of political representation in
democratic republic, namely, to connect the people to the government through representatives wh
share their values and stay in touch with the reality of their day-to-day lives.”[4] Congressional term
limits alone are not enough to rebalance our governing system, but they are a necessary and critic
building block.

Term limits were not included in the Constitution as originally adopted and ratified, but they wer
recognized commonly as curbing the use and abuse of governmental power at the time of th
Constitutional Convention. Benjamin Franklin, the primary author of the Pennsylvania Constitutio
included an article preventing anyone from serving in the Pennsylvania General Assembly more tha
four years out of any seven.[5] The twelve-member executive council for the commonwealth als
required that members serve no more than one three-year term, and then be off the council for a
additional four years.[6]

In addition, the Articles of Confederation, the first governing document the nascent republ
adopted shortly after declaring its independence, also included a restriction on service in the Congres
the unicameral governing body made up of delegates from the thirteen states. Article V of the Article
stated that “no person shall be capable of being a delegate for more than three years in any term of s
years. . . . ”[7]

The prevailing concern at the outset of the Constitutional Convention was that the new centr
government possess sufficient authority to overcome the weaknesses of the Articles of Confederatio
but not denude the states of their independent and exclusive authority to administer a broad array
governmental functions. Hence, more attention was focused on devising the “checks and balance
within the federal government and securing state sovereignty through federalism to prevent abuse.

In the Constitutional Convention, on June 2, only days after it convened, Franklin offered h
opinion about the question of paying legislators and executive officers of the federal government. H
opposed the idea. But his speech is relevant respecting the effect of power on public officials, whic
can be read today as a prescient and compelling warning about human behavior.

> Sir, there are two passions which have a powerful influence on the affairs of men. These a
> ambition and avarice; the love of power and the love of money. Separately each of these has gre

force in prompting men to action; but when united in view of the same object, they have in mar minds the most violent effects. Place before the eyes of such men, a post of honour that shall l at the same time a place of *profit*, and they will move heaven and earth to obtain it. The va number of such places it is that renders the British Government so tempestuous. The struggles f them are the true sources of all of those factions which are perpetually dividing the Natio distracting its Councils, hurrying sometimes into fruitless & mischievous wars, and ofte compelling a submission to dishonorable terms of peace.

And of what kind are the men that will strive for this profitable pre-eminence, through all th bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces th best of characters? It will not be the wise and moderate; the lovers of peace and good order, th men fittest for the trust. It will be the bold and the violent, the men of strong passions an indefatigable activity in their selfish pursuits. These will thrust themselves into your Governme and be your rulers—And these too will be mistaken in the expected happiness of their situatio For their vanquished competitors of the same spirit, and from the same motives will perpetual be endeavouring to distress their administration, thwart their measures, and render them odiou to the people.

Franklin continued:

> Besides these evils, Sir, tho' we may set out in the beginning with moderate salaries, we sha find that such will not be of long continuance. Reasons will never be wanting for propose augmentations. And there will all always be a party for giving more to the rulers, that the rule may be able in return to give more to them.—Hence as all history informs us, there has been every State & Kingdom a constant warfare between the governing and the governed: the on striving to obtain more for its support, and the other to pay less. And this has alone occasione great convulsions, actual civil wars, ending either in dethroning of the Princes, or enslaving th people. Generally indeed the ruling power carries its point, the revenues of princes constant increasing, and we see that they are never satisfied, but always in want of more. The more th people are discontented with the oppression of taxes; the greater the need the prince has of mone to distribute among his partisans and pay the troops that are to suppress all resistance, and enab him to plunder at pleasure. There is scarce a king in a hundred who would not, if he could, follo the example of the Pharaoh, get first all the people's money, then all their lands, and then mak them and their children servants for ever. It will be said, that we don't propose to establish King I know it. But there is a natural inclination in mankind to Kingly Government. It sometim relieves them from Aristocratic domination. They had rather have one tyrant than five hundred. gives more of the appearance of equality among Citizens, and that they like. I am apprehensiv therefore, perhaps too apprehensive, that the Government of these States, may in future time end in a Monarchy. But this Catastrophe I think may be long delayed, if in our proposed Syste we do not sow the seeds of contention, faction & tumult, by making our posts of honor, places o profit. . . .[8]

What Franklin was trying to do was use two of the forces that animate individuals to actio ambition and avarice, to make federal office unattractive to people who are motivated solely primarily by those character traits. In essence, he was arguing for a de facto term limit on governme service by making the act of service a genuine sacrifice for an incumbent. And that was, and is mo so today, a valid objective.

In fact, as Professor Petracca recounts, there was a tradition of rotation that grew during th

American Revolutionary period. “[T]he expectation or requirement that elected officials would soo ‘return’ to ‘private life’ or ‘private station’ was contained in the bills of rights accompanying six o the new state constitutions adopted from 1776 to 1780. The Virginia Bill of Rights . . . provided th members of the legislature and executive ‘may be restrained from oppression, by feeling an participating the burdens of the people, they should, at fixed periods, be reduced to private statio (1776, section 5). Similar provisions appeared in the bills of rights accompanying the constitutions Pennsylvania (1776, articles 19 and 11); Delaware (1776, article 4); New York (1777, article 11) South Carolina (1778, article 9); and Massachusetts (1780, article 8).”[9]

Thomas Jefferson was a longtime proponent of rotation. In a reply letter to James Madiso commenting on the proposed Constitution, he wrote in December 1787, in part, that “I dislike, an strongly dislike . . . the abandonment, in every instance, of the principle of rotation in office, and mo particularly in the case of the President. . . . ”[10] In February 1800, Jefferson explained to Samu Adams that “[a] government by representees, elected by the people at short periods, was our objec and our maxim at that day was, ‘Where annual election ends, tyranny begins’; nor have our departur from it been sanctioned by the happiness of their effects. . . . ”[11]

Numerous delegates to the Constitutional Convention supported rotation in office. And they debate terms of office for each of the newly created public offices. But, as Jefferson pointed out in his lett to Madison, he was concerned that there was no provision in the draft Constitution for mandato rotation or term limits. However, it would be erroneous to conclude from its absence that the matter term limits was considered and rejected. The concept of representation at the time was not one “professional” or lifetime “public service” but citizen participation and part-time service. Moreove the relatively short terms established for members of the House and the president, and even the si year term for senators elected by the state legislatures, was thought to ensure a regular and steac turnover of officeholders. And life expectancy was much shorter than today.

As Petracca explains, “throughout most of the nineteenth century, not very many members Congress sought reelection. Not until 1901 . . . did the average number of terms served by Hou members prior to the present session rise above two terms. There were few occasions in which th average length of service approached two terms, but no more than a handful out of some 5 sessions. . . . During the 25 elections between 1850 and 1898 . . . turnover averaged 50.2 percent. O average, more than half the House during any given session in the second half of the nineteen century was made up of first term members.”[12]

George Washington’s approach to the presidency reflected the mind-set of the period. While ther was no constitutional stricture at the time on how many terms a president may serve, Washington s the precedent that reflected both the public’s general perception of how long a president should serv —two four-year terms—and how long the body politic would consider someone electable.

This perspective, respecting presidential power in particular, operated for almost a century and half, until Franklin Roosevelt ran for and won a third term in 1940. He went on to win a fourth term 1944, but served only a few months of that term before he died in office on April 12, 1945.

Shortly after World War II, when the Republican Party captured control of both houses of Congres there was strong sentiment that President Washington’s precedent of serving only two terms should b codified in order to prevent future presidents from holding power too long. This led to the Twenty Second Amendment to the Constitution, which was ratified on February 27, 1951.[13] It limits president to two terms or, in the case of a vice president who has assumed the office because of th death, resignation, impeachment conviction, or disability of a predecessor, two terms and th predecessor’s term, if the term is more than half over.[14] A vice president may serve only one term an the remainder of the previous incumbent’s term, if that term is less than half completed.[15] Althoug limiting a president’s term of service, Congress did not address the longevity of its own members.

There are really only two ways to curb prolonged incumbency: 1) limit who is eligible to seek an hold a position of power; and/or 2) establish explicit, definitive mechanisms in the operation government that constrain the power of the officeholder. The Framers attempted to control th purview of the federal government through a carefully balanced retinue of checks on each branch the federal government's power. These divisions of enumerated authority between the branches mean that no one part of government could dominate the others or subsume the states' power. In this way the civil society and individual sovereignty could be preserved. The blueprint for this system, th Constitution, was the greatest mechanism for human governance ever created.

The problem today, however, is that we have had a century or more of elected officials who hav incrementally dismantled the Constitution's structure, leaving us—as I wrote in *Ameritopia*—in post-constitutional period. The evidence abounds, and is described at length throughout this book. Th nation's Founders believed in the concept of a "citizen/servant"—someone who had a life and a care in the private sector, but who offered his experience and talents to public service for a limited tim and then returned to private life. In many cases, government officials, even representatives an senators, actually kept active in their private sector vocation during their tenure in public offic dividing time between the two areas of life. The size of the national government, as well as its reac was kept small and intentionally curtailed. Moreover, the notion of a career in elective office, in th context of a constitutional republic, was both foreign and incongruous.

An excellent example of the mind-set of the Founders toward government service was the mann of compensation established for our national elected officials. President Washington's salary wa $25,000 per year, plus expenses—a generous but not lavish sum in 1789.[16] There was, however, som debate about a fair wage for his vice president, John Adams. Some in Congress wanted to pay him on per diem basis, for each day he actually worked at being a heartbeat away from the presidency. Aft some debate, Congress provided Adams with an annual salary of $5,000.[17]

The First Congress was a bit more penurious with its own compensation. Senators an representatives were given six dollars for each day Congress was actually in session. And up until th beginning of the twentieth century, Congress was seldom in session more than an average of abo four months per year. In fact, between the beginning of the First Congress in 1789 and 1855, membe of Congress were paid the same six-dollars-per-diem salary—except for 1815–17, when Congre voted itself a $1,500 annual paycheck. After 1855, members were paid $3,000 per year.[18]

The citizenry's basic antipathy against marshaling power in a single individual's hands was als reflected in their choices for president. From 1836 to 1868, only one candidate was elected to th presidency more than once—Abraham Lincoln.

Not surprisingly, the timeline for congressional tenure burgeoned concurrently with the rise of th Progressive movement in the United States. As the Progressives grew in influence in state and feder governments, the federal government—by necessity, from the Progressives' perspective—grew mor dominant and intrusive. A top-down centralized government was required to pursue utopian objective of economic, social, and cultural egalitarianism and reformation. Thus, the adoption of the Sixteen Amendment and the federal income tax and the repeal of the Seventeenth Amendment and sta representation in the Senate, among other things, contributed to the unleashing of infinite an unfinished acts of centralized government. The very nature of representative government under th Constitution, with its structural limits on federal governmental action and respect for individu sovereignty and local community interests denoted in the Ninth and Tenth Amendments, was altere fundamentally. Today it reveals itself in relentless social engineering and lifestyle calibrations.

Consequently, citizen legislators, rotating back to their communities after a short period of publ service—considered an indispensable and routine characteristic and design of representativ government at the time of the founding, and for a century thereafter—have been replaced with

professional ruling class led by governing masterminds. For the most part, they are isolated from th communities from which they hail and are consumed with the daily jockeying for position and pow within their ranks. Moreover, they both pander to and lord over their constituents.

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This proposed amendment limits the length of time an individual can serve in Congress to up to total of twelve years, whether such service is exclusively in one House or combined in both House Beyond that, an incumbent is ineligible to run again. Although imperative to reestablishing th American Republic, this amendment is not extraordinary. Voters are used to the impact of the Twenty Second Amendment on presidential elections, and thirty-six of the fifty states have some form of ter limits for their governors.[19] Some states have limits on the number of terms a governor may serv throughout his life, while others have limits on serving consecutive terms. For example, Virgin prohibits reelection after a single gubernatorial term.[20] Only one state, Utah, has no term limits sinc the legislature repealed the state's term limits statutes.[21] In addition, fifteen states have term limits f state legislators.[22] There are also term limits on members of several municipal, county, and tow governing bodies.

Benjamin Franklin put term limits in the proper context. On July 26, 1787, at the Constitution Convention, he said: "It seems to have been imagined by some that the returning to the mass of th people was degrading the magistrate. This he thought was contrary to republican principles. In fr Governments the rulers are the servants and the people their superiors & sovereigns. For the form therefore to return among the latter was not to *degrade* but to *promote* them. And it would b imposing an unreasonable burden on them, to keep them always in a State of servitude, and not allo them to become again one of the Masters."[23]

The consent of the governed is the hallmark of a constitutional republic. Yet it seems the America people have lost faith in Congress as an institution. Congress, which is supposed to reflect the will the people better than the other branches of the federal government, is consistently rated very poor by the citizenry. The level of public disenchantment is significant. Congress's approval averaged 1 percent for the first part of 2013, 15 percent in 2012, 17 percent in 2011, and 19 percent in 2010.[24] Th longevity of incumbency has created a class of professional politicians who operate at an increasin distance from their constituents. Term limits, and the more frequent rotation of individuals in and o of Congress, provide a remedy consistent with the Framers' intent and approach to representativ government.

CHAPTER THREE