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052154873X - Term Limits and the Dismantling of State Legislative Professionalism

Thad Kousser

Excerpt

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PART I

THE MANY DESIGNS OF AMERICAN
STATE LEGISLATURES

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Introduction

This is a story about legislative design – how the structure of democratic institutions can affect the behavior of their members and ultimately the policies that they produce. It focuses on one specific aspect of design, defined here as the set of rules governing a democratic body’s composition and operation.¹ This is the answer to a question that needs to be asked whenever a polity designs (or redesigns) its legislature: Whom do we want our leaders to be? Should they be part-time lawmakers who take a turn in government and then rejoin the populace? Or should they be professionals who make governing their permanent career?

Once this question is answered, the answer must somehow be enforced. Two key aspects of a legislature’s design can serve to lock in a polity’s decisions about the nature of its leaders. The most direct mechanism is to place a formal limit on the number of terms for which representatives may serve. The Athenians did this, and Aristotle argued explicitly for term limits that placed “All over each and each in turn over all.”² Venice’s Ducal Councillors were term-limited, and America’s first Congress under the Articles of Confederation included a provision requiring “rotation in office” (Petracca, 1992).

¹ I use the term “design” here in much the same way that many scholars discuss a legislature’s “structure.” However, as Collie (1994) explains, the definition of “structure” is very flexible and has often been given a broader range of meaning than I want to signify with “design.” I use “design” to mean the rules and institutions – but not the norms or behaviors – that govern the composition and operation of legislatures.

² Thorley (1996, pp. 27–31) provides a discussion of term limits in the *Boule*, Athens’s “Council of 500.” Aristotle’s viewpoint is quoted and discussed in Petracca (1992), which presents an intellectual history of the debate over term limits.

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Another way to enforce a decision is to provide legislators with the resources to make politics their professional career or to deny them this ability. Senators in the Roman Republic had to leave their previous jobs and work as full-time legislators (Abbott, 1902). By contrast, the democracies of Renaissance Florence included many legislators with independent livelihoods (Schevill, 1936). The U.S. Congress has become a model of the professional legislature over the past century by paying its members well for a job that requires their year-round attention and supporting them with sizable staffs. The historical record shows that there has been experimentation with term limits and with levels of professionalism for as long as there have been democracies.³

Does any of this variation in legislative design matter? Driving centuries of debate over the design of democratic bodies is the assumption that these choices count, that they help to shape both a legislature's form and its function. I test this assumption. By "form," I refer to the internal organization and dynamics of a legislature, while "function" signifies external factors such as interactions with other branches of government and policy outputs. This book investigates whether term limits and professionalism affect the behavior of legislators, how they organize themselves, their roles in the legislative and budgeting processes, and the type of policies that they produce.

These are difficult questions to answer in a broadly comparative perspective, because there are so many other important differences between Athenian democracy and the Roman Republic or between medieval Italy and today's United States. Fortunately, the gentler variation across the American states in recent decades provides a more tractable research design. Over the past forty years, some state legislatures have transformed themselves into bodies that are almost as professional as Congress (Thompson and Moncrief, 1992), while others remain citizen houses, operating much as they did in the nineteenth century. In the last ten years, twenty-one states have adopted limits on legislative terms that have recently begun to take effect (National Conference of State Legislatures (hereafter NCSL), 2003).

In other important respects, though, lawmaking bodies in the states are remarkably similar. All state legislatures share power with executive and

³ Linking term limits to professionalism and noting that the reforms move legislatures in opposite directions is not an original notion. It is featured both in the political debate over term limits (Petracca, 1991; Will, 1992; and Jacob, 1995) and in the academic study of their effects (Cain, 1995; Garrett, 1996; Clucas, 2000; and Van Vechten, 2000).

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judicial branches, all currently use district-level, candidate-based elections to determine their membership, and all but one are bicameral and allow candidates to declare an official party affiliation.⁴ The societies in which they operate are also roughly comparable. While there might seem to be vast differences between New York and Alaska or between Louisiana and Wyoming, today's states do not in fact diverge very far in their socioeconomic profiles. Incomes in the richest state are less than double those in the poorest state, at least six in ten residents are non-Hispanic whites in every state but Hawaii, and the largest gap in any state between George W. Bush and Al Gore's portions of the 2000 presidential vote was 40 percentage points.⁵ In these features, states are different but not incommensurable. The basic similarities in political and social structures allow us to study the key characteristics that do vary across states. They make it possible to isolate the effects of a legislature's professionalism and its limits on terms, to answer ancient questions about the impact of a legislature's design on its form and function.

Except in small pieces, a comparative investigation of the effects of variation in the design of state legislatures has not been undertaken in the academic literature. The heyday of state policy studies came before the professionalization movement brought significant increases in the salaries, staffing levels, and session lengths of some houses.⁶ Only a smattering of journal articles – such as those by Ritt (1973, 1977), Carmines (1974), Karnig and Sigelman (1975), LeLoup (1978), Roeder (1979), and Thompson (1986) – have investigated the impacts of professionalism on

⁴ The exception to these latter two characteristics is Nebraska, with its single, nonpartisan house. Because of these important differences, many comparative studies of state politics analyze only forty-nine cases. Although it is ignored in such works, the Nebraska Legislature has attracted its share of individual attention. See Goehlert and Musto (1985, pp. 146–149) for a bibliography of works on Nebraska's Legislature.

⁵ All of these data were found in U.S. Census Bureau (2002). Personal income per capita, in 1996 dollars, ranged from \$19,763 in Mississippi to \$38,289 in Connecticut (Table 643). Aside from Hawaii, California had the lowest white population proportion in 2000, at 59.5 percent (Table 22). In the 2000 presidential race, George Bush beat Al Gore by approximately 40 percent of the vote in Idaho, Utah, and Wyoming, while Gore won by about 30 percent in Rhode Island and Massachusetts (Table 374).

⁶ "Professionalization" refers to the movement toward greater legislative professionalism, a trend that greatly accelerated in the states over recent decades. A useful starting point for this movement is California's passage of Proposition 1A, which in 1966 allowed legislators to greatly increase their salaries and session lengths (Bell and Price, 1980, pp. 186–193). However, advocacy of the "modernization" of legislatures has a much longer history, which can be seen in works such as those by Kennedy (1970) and Herzberg and Rosenthal (1971).

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political linkages or policy making. Most study has focused on election results, minority and female representation, legislator attitudes, and career paths. Similarly, the literature on term limit laws has so far covered primarily these electoral (Gilmour and Rothstein, 1994; Caress, 1996; Daniel and Lott, 1997), representational (Thompson and Moncrief, 1992; Petracca, 1996), and attitudinal (Carey, Niemi, and Powell, 1998, 2000) effects. Comparative investigations of changes in legislative behavior are rare (Drage et al., 2000; Tothero, 2000). A new survey of legislator attributes and behavior promises to reveal many important lessons, but its authors are just beginning to analyze it (Carey et al., 2003). According to Cain and Levin (1999), “we tend to know more about the characteristics of pre- and post-term limit candidates than we do about the impact of term limits on legislative competence or the balance of power between the governmental branches.”

Put differently, we know much about the inputs of professional and term-limited bodies but less about their operation and their policy outputs. These are the gaps in the existing literature that this book attempts to fill. It looks at the behavioral effects of changes in legislative design, considering both the imposition of term limit laws and the rise of professionalism that often preceded them. Why study these distinct “reforms” together? As I have argued already, they are linked as different answers to the same question, moving legislatures in opposite directions. Consequently, they can be expected to have countervailing effects on the ways that lawmaking bodies work. Whatever the three-decade project of professionalization brought more of in a state should be reduced when term limits are implemented. Each change could be studied separately, but a piecemeal approach would give no sense of the relative scales of the two possible effects.

Do term limits and professionalism reshape the workings of state legislatures in measurable ways? Do their effects move in predictably opposite directions? Can their influences cancel each other out? These are the empirical questions that I address. This introduction describes the structure of the book, beginning with its scope. I introduce more formally the two causal factors that unite my investigation, showing how term limits and professionalism vary across the American states. Next, I set forth the potential effects on a legislature’s form and function that I probe and tell why I have chosen them. After laying out the book’s scope, I present the methods that I use, both theoretical and empirical. The introduction ends by sketching the book’s outline.

SCOPE OF THE BOOK

Causal Factors: Mechanisms of Legislative Design

The two causal factors that drive this analysis are the conflicting answers to the question of “Whom do we want our leaders to be?” This section introduces the discussion by detailing how a polity can enforce answers such as “Representatives should be temporary servants” or “Legislating should be a professional, full-time job.” Although there is little mystery in how the enforcement mechanisms of term limits and legislative professionalism work, it is worthwhile to give each concept a clear definition and to mention both its power and its limits. I then consider the variation in these aspects of legislative design across the American states. It is remarkable. Neighboring states such as Ohio and Indiana have given completely different answers to a fundamental question about the role of their representatives,⁷ and even states with similar responses can differ in the crucial details of their term limit laws or their approaches to professionalization. After showing how basic choices about legislative design color America’s political map, I present data that reveal the more subtle state-to-state variations.

Any law that prevents legislators from serving for more than a given number of terms or years constitutes a legislative term limit. In the American states today, these laws place separate constraints on the length of service in each house (except in Oklahoma and in Nebraska’s unicameral legislature). They are legal and binding. In its 1995 *U.S. Term Limits, Inc. v. Thornton* decision, the U.S. Supreme Court ruled that states could not limit the terms of their federal representatives. State supreme courts have also overturned a series of “Scarlet Letter” laws,⁸ which would have noted on ballots whether state candidates pledged to support term limits on the federal level. But after a series of conflicting decisions, the constitutionality

⁷ Similar in many other regards, Ohio and Indiana are states that have designed their legislatures quite differently. Ohio’s is the much more professional body, meeting for almost twice as long, paying its members 50 percent more than Indiana legislators, and providing them with three times as many staff members, according to the Council of State Governments (2000c) and National Conference of State Legislatures (2001). Yet Ohio legislators face term limits of eight years in each house, while Indiana careers are not constrained.

⁸ In 1998, state and federal judges overturned provisions of Colorado and Missouri initiatives that would have labeled congressional candidates with phrases such as “disregarded voters’ instructions on term limits” if they did not pledge to support a federal term limits amendment.

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of a state law limiting terms in the *state* legislature has been affirmed.⁹ Despite a now-overturned federal appeals court ruling striking down lifetime limits in California,¹⁰ and state court decisions invalidating specific initiatives,¹¹ current judicial precedent clearly supports the constitutionality of state legislative term limits in principle.

While term limit laws can prevent legislators from returning to a house, there are limits to their power over representatives. They do not guarantee that politicians will again become ordinary citizens in the rotation of authority that Aristotle promoted. Although a basic premise of the term limits argument is that limits alter behavior by freeing legislators from reelection concerns, state political systems provide many opportunities to run for other offices.¹² Politicians do take advantage of these opportunities. A study of California legislators over the past three elections shows that between 50 and 69 percent of termed-out assembly members ran for another office, including the Senate, the U.S. Congress, or local government (Yang, 2002b). While California's termed-out politicians certainly have more job opportunities than those in other states, anecdotal evidence suggests that careerism has survived elsewhere as well. The bicameral structure of forty-nine of America's state legislatures, many of which serve as "springboards" to federal or statewide office (Squire, 1988), prevents term limit laws from removing reelection incentives entirely.

Despite this potential limitation, the term limits movement has been widely successful in getting measures passed during the last decade. As of November 2003, twenty-one have passed term limits, though they have subsequently been overturned in Massachusetts, Oregon, Washington, and Wyoming and repealed in Idaho and Utah (NCSL, 2002d, 2003;

⁹ For chronologies of these court decisions, see National Conference of State Legislatures (1997, pp. 26–28), Chi and Leatherby (1998, pp. 14–16), and National Conference of State Legislatures (2002b).

¹⁰ In *Bates v. Jones, Secretary of State of the State of California* – U.S. District Court Opinion, April 23, 1997, Judge Claudia Wilkens ruled that the lifetime limits on service contained in California's Proposition 140 violated the first and fourteenth Amendments to the U.S. Constitution. Her decision was upheld, 2-1, by the 9th U.S. Circuit Court of Appeals in October 1997 but overturned, 9-2, by an en banc panel of the 9th Circuit two months later. The U.S. Supreme Court refused to hear the case (National Conference of State Legislatures, 2002b).

¹¹ A recent example of this came in Oregon, where an initiative imposing term limits on members of both houses of the state's legislature was struck down because it violated the state's "single-subject" rule (Wong, 2001b).

¹² In national legislatures with term limits, the goal of preventing any attempt at reelection can often be fulfilled, as Carey (1996) notes.

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Cooke, 2004). Successful 1990 campaigns to impose limits in California and Oklahoma, and an unsuccessful one the next year in Washington, began as mostly homegrown efforts.¹³ Since then, however, the role of national groups such as U.S. Term Limits in organizing the next wave of state actions justifies labeling it as a “movement.” Working almost exclusively through the initiative process, professional campaign groups based in Washington, D.C., helped to spread the populist idea (Rothenberg, 1992; Rausch, 1996). By the fall of 2003, term limit propositions had been successful on the ballots of nineteen states. Of the states allowing initiatives, only four – Alaska, Illinois, Mississippi, and North Dakota – had not imposed limits.¹⁴

The movement has been less popular among elected officials themselves. While Utah legislators voted in 1994 to restrict their careers to a dozen years of consecutive service in each house, this came only under the threat of a proposition with harsher time limits.¹⁵ Yet on March 17, 2003, Utah’s governor signed a bill – passed on the last day of the session – that repealed term limits for legislative and executive officials (NCSL, 2003). Louisiana’s legislature imposed limits of the same type on itself in 1995 by passing a constitutional amendment that was then approved by voters, making it the sole state to enact term limits without the public pressure of an initiative process. Lawmakers in many states filed suits seeking to invalidate term limit initiatives and succeeded in having them thrown out on technical grounds in Oregon, Massachusetts, Washington, and Wyoming (NCSL, 2003; Cooke, 2004). Influenced by a 1994 initiative that had only advisory status, the Idaho legislature passed limits on its members through a statute that year. Yet because no initiative formally bound legislators to this decision, they were able to stop the limits from taking effect by passing a bill and overriding Governor Dirk Kempthorne’s veto of it on February 1, 2002 (Marshall and Murphy, 2002).

Because the reluctance of most lawmakers to curtail their own careers has forced term limits advocates to work through the initiative process,

¹³ Price (1992) discusses the passage of Proposition 140 in California, and Olson (1992) describes the failure of Washington’s Initiative 553. The next year, Washington voters passed term limits (National Conference of State Legislatures, 2002c).

¹⁴ The listing of states with initiative provisions is taken from Magleby (1984, p. 37) and updated using the Initiative and Referendum Institute’s website (www.iandrinstute.org, accessed on March 4, 2002).

¹⁵ According to Harrie (1994, p. B5), “Legislators were candid in acknowledging they passed their own watered-down term limits to head off Cook’s (initiative) effort.”

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almost every limit in the states is now enshrined in a proposition. These cannot be undone without the passage of another proposition.¹⁶ The movement seems to have run its course in the initiative states, and legislators elsewhere are unlikely to place limits on themselves.¹⁷ For these three reasons, the map in Figure 1.1 should be a fairly stable representation of the reach of term limits across the American states. It uses data from NCSL (2003) to show that limits, like initiative provisions, are most prevalent in the Mountain West.¹⁸ Their isolation to this region is not complete, though. States in the Northeast (Maine), South (Arkansas, Florida, Louisiana, and Oklahoma), and the Midwest (Michigan, Missouri, and Ohio) have imposed limits.

The term limit laws depicted on this map are not uniform in their lengths or the permanence of their bans on service. As Table 1.1 shows, the lengths of the careers allowed in each house range from six to twelve years, which can significantly impact the number of new members in any given cohort (Cohen, 1995). Limits can ban a legislator from a house for life or simply restrict his or her years of consecutive service. Although having to sit out a session may make regaining a seat more difficult, legislators in the states that have only continuous-service bans could conceivably return to their houses and their old positions of power. So there are important variations in the provisions of term limit laws.

To explain the current effects of term limits on legislative behavior, however, much of this variation can be ignored. One reason is that the term limit laws that have gone into effect so far are the shorter ones: None of the twelve-year limits has removed any legislator from office yet. Another reason is that sufficient time has not passed since the implementation of most consecutive-service bans to see many termed-out members return to a house and to gauge their impact. At the time of this writing, it makes sense to view term limits as a dichotomy, an all-or-nothing characteristic of a state.

¹⁶ Although no initiatives overturning term limits have been passed, recent measures have been proposed to amend them. California's Proposition 45, which would have allowed legislators to run for election for another four years if they collected the signatures of 20 percent of their districts' voters, failed 58 to 42 percent on the March 2002 ballot.

¹⁷ The nearly automatic appearance of term limits in the initiative states makes the reform something like a natural experiment, because what these states have in common is not the attitude of their citizens toward term limits or their legislature but simply their initiative rules.

¹⁸ As this book went to press, the Wyoming Supreme Court overturned the state's limits on the grounds that they were passed by a statutory initiative when a full constitutional amendment was in fact required (Cooke, 2004).

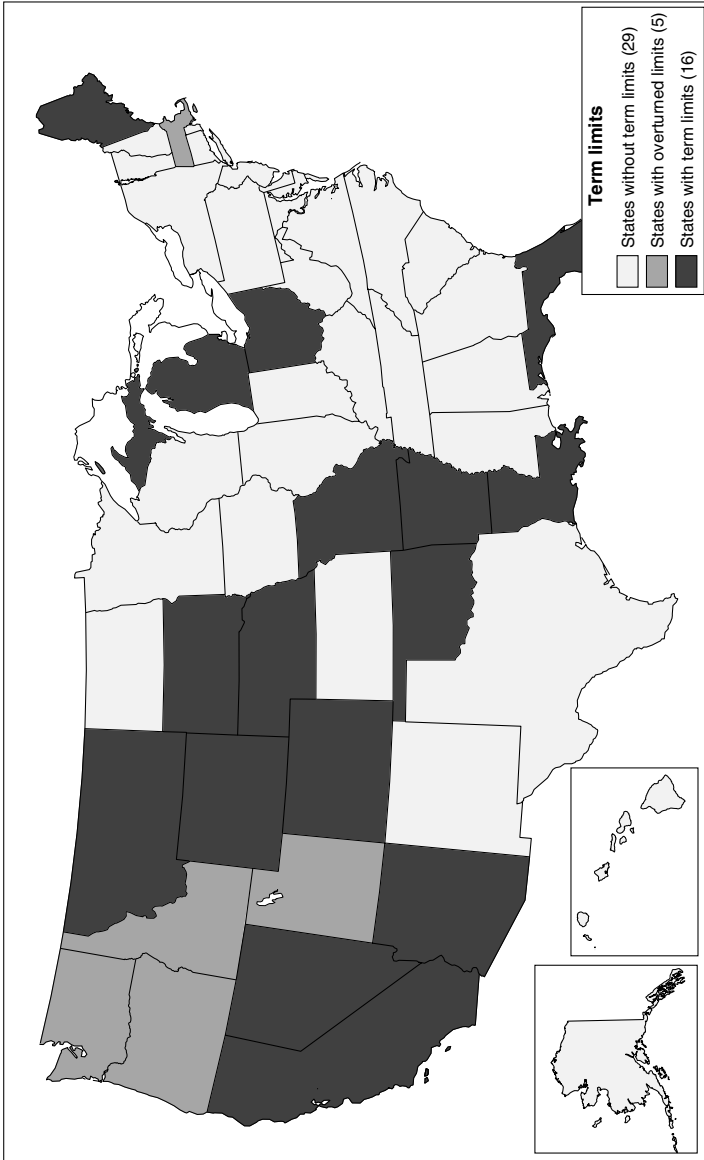


FIGURE 1.1 Term limits states.