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Willmoore Kendall and the Demise of Congressional Deliberation

THE ONE TEACHING of Willmoore Kendall's toward which all his early thought tended and from which radiated all his later thought was this: America's vindication of the capacity of men for self-government rests upon its devotion to the idea of a virtuous people, under God, determining national policy by the deliberations of a supreme legislature composed of representatives who should reflect the moral beliefs of the people and should deliberate under conditions free, open, rational, and accountable. How does that teaching fare today, and how might it serve to guide us in our present predicament? The time is seasonable for a reassessment of the grounds of our trust in representative democracy for we have cause to feel concern that recent alterations in the way Congress conducts its business have corrupted its ability to deliberate and threaten to erode the very foundations of rule of law.

A Pre-Lockean Tradition

Kendall undertook to examine the founding documents of the nation—The Declaration, Constitution, Bill of Rights—in the light of political developments native to America. This native tradition for the most part antedated John Locke or could be considered apart from Lockean influence. Kendall went back to the Mayflower Compact, The General Orders of Connecticut and the Massachusetts Body of Liberties in order to locate the ideas—he called them "symbols"—which would carry forward to the Virginia Declaration of Rights, the Declaration of Independence and the Constitution.[1] Kendall constantly emphasized the non-Lockean character of this tradition insisting against the prevailing contemporary view that America's first principles derive not from European contractarian theory but from the country's indigenous experience because he had concluded that the form of government developed out of this experience rectified what was faulty in contract theory.

In his earliest book, *John Locke and the Doctrine of Majority Rule*, Kendall identified the problem which in various forms would occupy him throughout his career: how can one reconcile majority rule with justice, especially justice conceived as the rights of the minority? Not by the doctrine taught in the *Two Treatises*, for Kendall detected two incompatible concerns in Locke's thought: an affirmation of the right of the majority to rule yet an insistence upon the inviolability of individual rights. Locke, he thought, provided no reasonable assurance that government founded upon majority rule would secure the rights of individuals, or of the minority.[2] Yet Kendall believed that America had been uniquely successful in reconciling democracy with liberty, that it had achieved simultaneously majoritarian government and protection of rights proper to human nature. He was interested therefore in the question what in the American experience enabled this people to solve the problem Locke had left unanswered.

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America's success in solving the Lockean problem owed, Kendall thought, to the special character of the people. Majority rule in America looked to a standard beyond the mere expression of a majority will, and that standard was the law of God as the divine law could be known through the Judaeo-Christian tradition. Kendall emphasized the combination of secular and sacred ends proposed for civil society in the *Mayflower Compact*: 1) the signers of the Compact engage themselves to observe certain rules for "our better ordering" and 2) they also conceive their ultimate end to be "the glory of God" and "the Advancement of the Christian faith." One observes that this religious aim was dispersed throughout the colonies north and south, Puritan or Cavalier, and one can show that promoting Christianity continued to be a chief purpose espoused by Americans down through the Virginia Declaration of Rights of 1776. The last mentioned document declares that all those bound by its provisions have a mutual duty "to practice Christian forbearance, love, and charity, towards each other." From such statements pointing to a continuity of religious belief from the first settlement to the Revolution, Kendall concluded that the American political tradition conceived the right to free exercise of religion as correlative to the duty to worship God. Persisting beyond the New England congregational theocracies this understanding of civil society's reliance upon religious foundations carries forward to the Northwest Ordinance with its statement that "Religion, morality, and knowledge [are] necessary to good government and the happiness of mankind" (Art. 3).

Now for Kendall the religious character of America's colonial experience had an importance beyond establishing piety in the narrow sense. Religious belief provided access to a higher moral law, access to principles of natural right which could not be grasped so readily or so broadly by an entire populace outside the frame of scripture or without the authority of churchmen. The foundation of that moral law is the principle just glanced at in respect to right to worship, namely, rights are always understood as correlative to duties. Duties are prior, rights derivative. Without duty no right; whenever a right is asserted it is asserted on behalf of some duty. Hence the Bill of Rights of the Masssachusetts Constitution lays it down "It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being the Great Creator and Preserver of the universe." In that same state constitution, moreover, we read that no citizen shall be hindered in worship "provided he doth not disturb the public peace, or obstruct others in their religious worship." In other words, the freedom of religious worship, although based on nature, nevertheless admits of those limitations necessary to harmonize its exercise with other ends of civil society, here the public peace and the liberty of others. Kendall laid a certain emphasis upon such qualifications first because he observed they appeared in every colonial and state constitution, second, because the limits placed upon one liberty with a view to protecting others points to the necessity for constant deliberation upon the scope and exercise of rights and, hence, raises the issue what is the appropriate governmental body for such deliberation. The answer to this question is the considered will of the community determined by its representatives in a deliberative assembly—the congregation in the earliest colonial experience, thereafter the colonial and state legislatures, thereafter Congress, or the state legislatures as adjustors of rights withdrawn from Congressional action under the first ten amendments. One can see incidentally that Kendall found in the pre-1787 tradition an anticipation and confirmation of the argument the *Federalist Papers* directs against charters of inviolable rights. Since rights depend not in their origin, perhaps, but in their scope, upon situation and circumstance, the business of lawmaking ordinarily and continuously turns out to be defining, adjusting and harmonizing claims to rights.

A Virtuous People

Kendall maintained that the heart of this pre-Lockean tradition was the notion of a vir-

tuous people. What did he mean by virtue? Part of what he meant I've just indicated in speaking of the conception of a people under God. To recognize the Judaeo-Christian deity is to acknowledge an authority and, to some extent, a rational principle which sets limits to human will whether the human will resides in individuals or in sovereign majorities. Human wills answer to the picture of the world that stands behind those wills. So long as Americans allow scriptural religions to shape their picture of the world they remain proof against reductionist views of human nature which degrade human beings to the level of animals and by so reducing the foundation for responsibility remove all restraints upon will. Put positively, just so long as Americans keep faith with the teachings of the prophets and Christ they *believe* themselves capable of virtue, and this moral self-respect is the indispensable condition of living virtuously, which is to say, responsibly.

Kendall also conceived the virtue of the virtuous people in a way more particularly connected with representative democracy. He credited Americans with initiative, public-spiritedness at the level of the local community, and a self-reliant love of liberty that resists governmental paternalism. These moderate and self-regarding qualities of the people enable free government at the national level by producing a populace composed of individuals who, one by one, practice self-government over their own passions. The "blessings of liberty" which the Preamble says the Constitution is to seek for ourselves and our posterity if considered negatively means confining the operation of the national government. Considered positively these blessings of liberty are the energies of men working with their neighbor to take care of their common affairs. In the essay "How to Read the *Federalist*" Kendall maintained that underlying the arguments on behalf of a far-flung and diverse sphere and the mechanisms of representation was the tacit premise of a people already confirmed in these habits of self-rule and moderation.

A standard for assessing the present plight of Congressional government is offered by the third aspect of Kendall's portraiture of a virtuous people: his conception of the relationship between the people and their representatives in Congress. Both his direct experience of localities all across America as well as his study of the records of America's colonial experience led Kendall to the conclusion that local communities were hierarchical. This is not to say we have laws supporting squires and identifying yeoman and peasant but only that in every community a certain number of natural leaders will make their way to the top. This is perhaps the natural outcome of protecting the liberty of people to exercise their diverse faculties for acquiring property. Exercising freedom to acquire or, for that matter, exercising freedom to organize, to speak, and generally to influence public policy, all will result in natural distinctions. The more enterprising, energetic, and competent figures will tend to prevail. If the electorate in addition to being free is also informed by religion, then the energy and competence of its leaders will have to show itself compatible with these religious principles. A state member of the legislature or, derivatively, a representative elected to the House, and possibly the U.S. Senators as well, will prove to be men known as the better sort by their native communities.

So the third aspect of the virtue of Kendall's virtuous people is partly a matter of the people's deference, partly a matter of their confidence in the powers of discussion to bring forth justice. We the people defer to the better sort among us when we elect to Congress, and the sign of this deference is the liberty we give Congressmen to consult their own prudence rather than prior, binding instructions. Congressmen are not given instructions to which they are bound but are left free to deliberate, or as Kendall put it, they take part in a continuing dialectical relationship with their constituents. The very essence of free government lies in the characters of the members of Congress, for not only does the quality of legislation depend upon their ability to deliberate but the meaning of rule of law itself will depend upon Congressmen's understanding their

responsibilities as representatives of the deliberate will of the community.

A Representative Deliberative Assembly

We arrive therefore at the final feature of what I've proposed is Kendall's most important teaching—legislative supremacy. The virtuous people under God arrange public policy by having delegates who represent the people at their best conduct deliberation under certain procedures intended to perfect discussion. What were Kendall's grounds for asserting Congressional supremacy? Today as we witness a new kind of contest among the coordinate branches of the government—a contest over control of the bureaucracy—we may discover standards for assessing the conduct of Congress in Kendall's teaching on deliberation and its responsibilities.

Equally from historical and constitutional considerations Kendall maintained that American tradition prescribes legislative supremacy. The historical evidence turns on two developments: first the assigning of the responsibility for determining rights to the assembly rather than, say, to courts in all the colonial frames of government; second, the clear subordination of the Governors to their legislative counterparts in all of the early state constitutions. Despite Federalist imprecations against irresponsible popular legislatures, the Philadelphia Convention reaffirmed legislative superiority. Both judicial and executive subordination to Congress were secured by provisions of the Constitution of 1787, and because in a regime of laws all measures of public policy must take the form of regularly enacted statutes, the lawmaking body will take precedence over the executing and judging bodies. Because, moreover, most important actions undertaken by the central government require spending money, the power over appropriations vested in Congress ensures its sway over the other branches. Add to these the impeachment, supervisory, and ratifying powers, the ability to change the size of the Court by mere statutory enactment and the authority to expand or contract all the inferior federal courts and regulate their appellate jurisdiction—add together all these weapons and one has assembled a healthy arsenal. Besides, Congress has such a hold upon the trust of the people that it is likely to win over the people in contests with the other branches.

What justifies this ascendancy of Congress over the Executive and Judiciary? Solely the fact that Congress is the body wherein the best deliberation takes place. The discussion process answers the dilemma of majoritarianism which Kendall had confronted in Locke. That is to say, the best protection for the liberties of individuals and minorities is to be found in the way Congressional majorities come about in the first place, and then in the way such majorities must conduct themselves in order to get legislation through the two chambers of the legislature. With respect to the formation of Congressional majorities through elections Kendall, following Madison, stressed impediments to the rise of unjust popular movements, i.e., bicameralism, staggered Senate elections, a farflung and diverse electorate. Beyond these institutional considerations, however, he observed an important cause of moderation not anticipated by the Federalist argument: the internal regulation and customs of the two houses, especially the committee system, seniority, the filibuster and the unwritten but highly effective code of Senatorial deference—the clubishness of Senators. The net effect of these internal arrangements within Congress is to fragment and diffuse power, or to grant power to groups in excess of their numbers, thereby placing a further restraint upon majorities.

From the operation of these various moderating influences upon the majority will one has reasonable cause to think that the conditions for responsible democratic deliberation will usually result. These conditions are: 1) that the majority take care to win the consent of the minority; 2) that discussion be slow in coming to decision; 3) that discussion be open and subject to scrutiny; 4) that it be principled, which is to say addressed to reason rather than to mere will; 5) that it be circumspect, which is to require that all alter-

natives be canvassed and that the consequences of intended policy be thoroughly weighed including the likelihood of the law's being disobeyed. This is the meaning of full, open, and free debate, the soul of all parliamentary government, and the heart of our ideal of rule of law. Not charters of rights but real constraints upon arbitrariness continuously in operation offer the best guarantee of American liberties.

Congress produces one version of the will of the people, but what about the Presidency? What is the relation between the majority which takes form in Congress and the majority which expresses itself every four years in Presidential elections? In his essay "The Two Majorities" Kendall argued that we make too much of presidents and presidential elections ascribing to elections the voicing of a mandate when in truth nothing so definite as a mandate can be legitimately inferred from elections of presidents.[3] Here one has to wonder whether Kendall gave due weight to those three or four presidential elections that did seem to set the course of national policy for generations and which did so by elevating one political party decisively over the others precisely because that party recaptured the founding principles of equality and liberty. Be that as it may, we have the following good reasons for preferring Congressional to Presidential expressions of the popular will.

First, whereas the heterogeneity of opinion expressed in presidential elections weakens the claim of a mandate, the heterogeneity of views represented in Congress is a source of strength. That is, diversity encourages thoroughness of deliberation, accommodation through mutual adjustment and moderation. Prudence and realism are more likely to prevail.

Second, whereas the opinion voiced in the election of presidents moves, so to speak, by jolts recorded every fourth November, the expression of the people's mind through Congress is more or less continuous as well as simultaneous with the policy decisions which it produces. The member of Congress consults his constituency constantly and is subject to their continual pressure. Congress seems to have the edge over the Executive in responsibility. It is more open to popular influences. Kendall was not unaware that from another point of view this could mean a liability, but he thought built-in safeguards against demagoguery were adequate to protect against too much pliancy to popular clamors.

Third, Congressional deliberation places emphasis on morality because it relies upon the people's having chosen their representatives with a view to their virtue and with intent of holding these representatives faithful to the moral principles that prevail in the local communities, principles which, remember, Kendall held to be still religious, or at least not morally relativistic.

Fourth, the people when they elect members of Congress act on better knowledge than when they elect presidents. They are more likely to know what men in their localities are worthy than they are to know the worth of presidential candidates. From this Kendall draws the conclusion that congressional elections tend to be aristocratic and informed whereas presidential elections tend to be uninformed and democratic.

The Abdication of Congress

In view of the present condition of Congress what might Kendall say of its claims to precedence as the more worthy of the two majorities? Kendall could hardly be pleased with the present Congress. His disgust would not be solely or even chiefly over its particular policies for although it is true that when Kendall wrote, conservative Congresses were resisting liberal presidents claiming to act upon popular mandates, and it is certainly true that Congress is now more liberal than the president, another reversal has emerged that threatens larger consequences than the turnabout whereby now a conservative Republican is gored by a liberal Democratic Congress. Today a new outlook upon the nature of lawmaking accompanied by changes in the daily business of Congressmen raise doubts of Congress's credentials as a deliberative body.

Doubts arise on the grounds of what Con-

gress does *not* do and on the grounds of what, more and more, Congress does. What it does *not* do is deliberate upon the pressing moral issues of our day. What are these issues? For a start we can list: measures to roll back Communist takeovers in Central America; Acquired Immune Deficiency Syndrome, how to deal with those who contract and spread the disease; affirmative action, is it just, is it consistent with provisions against quotas of the 1964 Civil Rights Act; abortion, to what moral and legal limitations should abortion be subject; religion and public education, does the First Amendment prohibit the national government from acting to preserve religious belief among its citizens. These are the issues the determination of which will decide the course of our life as a nation. The difficulty is not that these matters have gotten decided in a leftward manner but rather that they have not been deliberated at all by those whom the system charges with the responsibility for deliberation. One cannot name a Congressional debate on an issue of large moral consequence since the Civil Rights legislation of the mid 1960s. The Watergate orgy was no exception for several reasons, not the least of which was that it was not a debate over a law, a public policy. It seems fair to say Congress has come to prefer other means of doing business to the one means proper to parliamentary bodies: full and free debate addressed to principles. Right, wrong, or indifferent, prudent, extravagant, or timid, Congress is, at all events, reluctant to air principles.

So what Congress has abdicated is its obligation to represent the moral sense of the people. Before considering the cause of that abdication let us note its effect: the Court fills the vacuum left by Congress or, worse still, quasi-independent regulatory agencies. Most of the issues set down just now as proper subjects for principled deliberation in Congress have been left to the Courts, as though Congressmen had come to believe only the Courts worthy of deciding matters on grounds of principle. It cannot be salutary for citizens to receive encouragement in the opinion, often enough voiced by friends of the Court, that judges are above politics and hence more worthy to decide on principles than politicians. The Court anyway tends more and more to reject an undertanding of law as resting on moral grounds. And even if this were not so and the Court possessed all the integrity and wisdom one could wish for, the proper body for resolving policy in the light of principle in a government of laws is surely the lawmaking body.

Moreover the particular range of issues Congress has declined to deliberate should cause us special concern, for these are exactly the matters we would expect to be critical to a people that intended to preserve itself as "a people under God." What can it mean to be a citizenry respectful of a higher divine law if not to take a stand on such questions as the spread of communism, homosexuality, abortion, the status of religion in public education? Congressional abdication of responsibility for debating these questions determinative of the character of the regime seems to throw doubt on both the proposition that America acts through the deliberations of its representatives and that when it does so, it acknowledges the teachings of Judaeo-Christianity.

What stands back of this abdication? The cause nearest at hand and easiest to see lies in a change in the internal arrangements and daily business of Congress. John Marini, John Wettergreen and others have made us aware of these recent developments.[4] I confine myself to drawing a few conclusions from their findings.

Around the time Willmoore Kendall died in 1967 big government entered Congress. First under the Great Society program of Lyndon Johnson, and thereafter in every subsequent administration, the number of federal regulatory agencies proliferated. I recall in the 1960s the common complaint of both friends and enemies of congressional government was that Congress lacked the specialized knowledge to compete with the ever-growing bureaux of the executive branch. It was said that the business of modern government was beyond the scope and competence of Congress, that only managerial expertise could cope with modern needs,

and that the only organs capable of these complexities were agencies stocked with experts. Kendall disputed such claims saying that Congress need only decide the principles which would regulate the regulators and this, Kendall maintained, Congress was well-equipped to do. Congressmen, however, had other ideas. They responded to the challenges of managerialists by becoming themselves managers, surrounding themselves with enormous staffs and setting up subcommittees with *their* particular staffs to shadow the various regulatory agencies of the executive. This shadowing now seems to have become the chief business of Congress. Through his subcommittees and staffs today's congressman is virtually a co-director of one or more federal agencies. He exercises his authority to oversee almost on a day to day basis working his will on the bureaucrats by calling them up to give accounts, by monitoring their budgets, by pressuring individuals. The rewards for this shadow work are seductive since it offers opportunities for patronage, pork barrel, and ingratiating service to particular constituents. Some observers attribute the rise of incumbency to the exploitation of these levers on voters and donors. I suspect just as damaging is the affect upon the Congressman's character, the temptation to enjoy easy triumphs. In private a congressman is pretty certain to have his way with the bureaucrat who must answer to him, and in committee also the Senator or Representative can throw his weight about more freely than when he has to confront opponents his own size in debate on the floor of the Capitol. Add to this the consideration that the large staffs congressmen have assembled themselves require constant management and you can see what members of Congress are doing. They are brokering, canvassing, scrutinizing and poking about among executive agencies while struggling to keep together, improve, and, no doubt, enlarge, their own groups of experts which are their tools for the activities first mentioned. Congress does not deliberate because congressmen are preoccupied with other, more direct, more profitable, less risky and less open methods of rule. Congress is administering rather than governing. Legislative agents and executive personnel are having their functions intermix, and the trouble with their so doing is that responsibility grows confused. More troubling, as congressmen grow fonder of administering, they will more and more neglect the work for which we sent them to Washington. Government by more or less secret, more or less unaccountable, committees and staffers is not what we had the right to expect.

An unholy wedding of an executive with a congressional bureaucracy may be the most evident cause of decline in deliberative virtue. Whether there may also prove yet more deep-seated causes I do not know. For example, assuming that Congressional districts once did select representatives according to some estimate of their virtue, is it true that the districts do so today? Remember that Kendall distinguished the Congressional elections from the presidential on the ground that the election to Congress took place in communities small enough and definite enough in their hierarchy of public characters to allow for judgment of moral and intellectual superiority. Does the size of contemporary districts take away much of the force of the distinction? And what of today's members of Congress? Once Henry Adams could remark of New England elections:

> . . . society was still directed by the professions. Lawyers, physicians, professors, merchants . . . acted not as individuals, but as though they were clergymen and each profession were a church. In politics the system required competent expression; it was the old Ciceronian idea of government by *the best* that produced the long line of New England statesmen. They chose men to represent them because they wanted to be well represented, and they chose the best they had. [emphasis in the original][5]

Do Congressmen today conceive themselves to be men and women selected for their virtue and charged with responsibility to deliberate? If they subscribe to the currently fashionable debauch of the parliamentary ethos known as "interest-group liberal-

ism" they will consider themselves rather the spokesmen for partisan interests, obliged only to replicate desires of constituents or at most to broker their constituents' interest among 534 other similarly motivated brokers. I should stress that what Kendall meant by the virtue he imputed to the representatives of local communities was something not greatly exalted but nonetheless crucial to constitutional government: namely the ability to conceive and the will to conduct deliberation as a rational process aimed at justice. But if deliberation is no longer so conceived and so practiced but instead Congress has come to think of its business as the mere agitation of interests, then not reason but mere will must stand behind public law. As committees and staffs prevail and open debate diminishes, arbitrariness and unchecked, or at least unaccountable, will must have its way.

The Missing Mandate

Nowadays Conservatives claim a national mandate signalled by Reagan's victories suffers frustration from a Congress mindful only of particular interests. That Congress now labors under a new sort of divisive self-interest appears demonstrable. Yet that a conservative mandate along the lines of the aims espoused by the "moral majority" propelled Reagan twice into office once seemed obvious but now must be open to doubt. Those issues listed earlier as neglected by the present Congress are precisely the issues one would expect to galvanize the moral majority. Yet the same electorate which returned Reagan also deprived him of a Senate and did nothing to help him in the House, and the turnabout suggests the possibility that Reagan's victories carried no such mandate as was supposed. If not, do we then conclude that the populace at large will no longer require of its congressmen a fidelity to principles imparted by Judaeo-Christian teaching? Are we no longer a "people under God?" If indeed the nation has come to such a pass we shall have to confront the until now deferred question of whether the safeguards against democratic despotism provided by the separation of powers and a diverse society suffice in and of themselves without the assistance of a firm absolute morality in the citizens.

We cannot credit the people with their choice of a president and not debit them with having chosen the present Congress. Yet before concluding that the will of the people accepts a non-deliberating Congress and acquiesces in policies the tendency of which opposes traditional moral principles one should give thought to an anomaly of Reagan's Presidency. From the outset the Reagan administration shrinked from asserting itself. While he still had the Senate the President did little to promote legislation directed against affirmative action, abortion, homosexuality. Talk against affimative action proved cheap when it became clear Reagan would not, or could not, clear out bureaucrats responsible for continuing affirmative action regulations. One has the impression Reagan was habitully talked out of risking all-out confrontations in Congress. He and his advisors seem to have been reluctant to force the issue at the level of lawmaking. Consistent with the executive timidity of the first term and fully as demoralizing to supporters who had hoped for new principles was the breakdown of presidential leadership in the Congressional elections of 1986. Reagan's one chance, to say nothing of his duty to his office, was to see to it that he do all in his power to persuade the public that in these elections everything was at issue that had been at issue in the last two presidential elections. It was his responsibility to elevate to the level of principle the differences among candidates for seats in the House and Senate and to make the vote a choice between his policies on all fronts and those of his opponents on all fronts. Large moral issues, domestic and foreign, lay at hand to be seized as levers upon the mass of public opinion, levers to be used by a President who grasped the need to revive traditional understandings of liberty and equality and to combat recent perversion of those founding ideals. Yet instead of striving to make the elections more general in their significance, Reagan took the opposite course. In 1986

Reagan appeared intent upon holding aloof so the better, presumably, to preserve his personal popularity. He guarded his popularity at the expense of those political principles which had been, one would hope, the cause of his popularity. Consequently, it may be that the strength of morality and religion in the populace still has not revealed itself because this president has not possessed statesmanship sufficient to bring it to a test. What, then, emerges from these considerations is yet another constitutional responsibility attaching to the presidential office. The Chief Executive is the chief custodian of Congressional deliberation. He should see to it that Congress face the music and debate national policy at the level of principle when indeed the principles of the regime are at stake. In discharging this responsibility the president ought to be prepared to risk his popularity for the sake of guarding the integrity of the lawmaking bodies. We may not have an adequate test of the residual virtue of Kendall's virtuous people until we have presidents who will live up to their constitutional role by defending the Constitution at its citadel, in the deliberative process itself.

How then does Kendall's chief teaching fare at the present day? In one respect one can say it has certainly been confirmed. Ours is a system of legislative supremacy. The legislative branch proves its supremacy even when, as now, the reason for its supremacy—rule of law—is being undermined by Congress itself. On the other hand, Kendall's confidence in a virtuous people must now confront the possibility Tocqueville foresaw, that individualism would so dilute religion and republican virtue as to leave us subject to a soft despotism. Then, as to the question whether Congress affords an adequate forum wherein the virtue of the populace, such as it may be, can show itself in deliberation, we meet with two uncertainties. First, was it ever so? Has Congress hitherto deliberated upon moral issues as deep-seated as abortion and homosexuality? Or has the homogeneity of moral opinion that obtained out over the country until recent times prevented divisions on such matters from ever reaching the floor of Congress? Slavery was an issue comparable in scope. But was the design and character of Congress adequate to deliberate upon slavery? It has been said that our system simply cannot take on issues that descend to first principles of morality. If that is true, then we are left with the somewhat awkward conclusion that the virtue of the virtuous people suffices for their government except in those instances when it is most needed, when morality is at issue. However that may be, one can say with respect to Congressional debate over slavery that it *was* open; it *was* deliberative and addressed to principle, and the various spokesmen could be held to account, *and* that it did enact legislation—the Missouri Compromise and, later, the Wilmot Proviso—which probably would have produced a proper resolution of the slavery problem. Today we face the more disturbing prospect of seeing the very terms of parliamentary deliberation altered, corrupted rather, by the changes brought in the wake of the massive expansion of the bureaucracy. Can these changes be offset by a President more determined than Reagan has been to restore deliberative virtue to Congress? It is ironic that we should have to depend on the President to strengthen Congress. But from what other quarter could come the statesmanship necessary to promote the recovery? Kendall's analysis of the two majorities was not calculated to increase the moral prerogatives of the president. But if Kendall's ideal of democratic responsibility can still guide us, it must guide us in electing presidents who will force congressmen to govern by lawmaking rather than by inquisition, private pressure, or *ex parte* negotiation.

1. Willmoore Kendall & George W. Carey, *The Basic Symbols of the American Political Tradition* (Baton Rouge: LSU Press, 1970).

2. *John Locke and the Doctrine of Majority Rule* (Urbana: Univ. of Illinois Press, 1959).

3. "The Two Majorities," *Willmoore Kendall Contra Mundum,* ed. Nellie D. Kendall (New Rochelle, NY: Arlington House, 1971), 202-27.

4. John Marini, "Congress: Representation and Deliberation," in Sarah Thurow, ed., *E. Pluribus Unum: Con-*

stitutional Principles and the Institutions of Government (Lanham, MD: University Press of America), forthcoming; "Administrative Centralization and the Legislature: Why Congress Cannot Govern," paper presented at the American Political Science Association Annual Meeting, Washington, DC, August 31, 1986. John Wettergreen, "Constitutional Problems of American Bureaucracy in *I.N.S. v. Chadha*," paper presented at the American Political Science Association Annual Meeting, New Orleans, Louisiana, September 1, 1985; "The Political Character of the Charges Against Nixon," paper presented at the American Political Science Association Annual Meeting, Washington, DC, September 1, 1984.

5. *The Education of Henry Adams* (New York: Time Inc. repr. 1964), Vol. I, 33.