

THE ANTI-FEDERALISTS: PLANTING THE SEEDS OF AMERICAN POPULISM?

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I am very happy and honored to be here. I am particularly humbled to be flanked by scholars of such eminence. And I'm really looking forward to today's talks, because today is one more instance of the grand American tradition of talking about what it means for the people to engage in good self-government. This tradition, if I may call it that, is not the exclusive province of lawyers. But as law students, as lawyers, and as judges we have a special place in this conversation. Insofar as law has a role to play in any government (and within a republican government especially), I think that we have both the opportunity and the duty to apply our intellectual capacity to the relationship between law and good self-government.

I wouldn't normally start a talk this way, with an affirmation of the importance of the event that we are all attending. But such an affirmation seemed more than normally relevant in light of this week's news about the war in Ukraine.¹ Earlier this week, as I was writing about Anti-Federalists and populists, I kept stopping my work to check BBC News. Alternating between American political

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1.. See BBC World Serv., *Russian Forces Continue Attacks on Ukraine*, BBC NEWS (Mar. 5, 2022), <https://www.bbc.co.uk/programmes/w172xytptnbf8b1> [<https://perma.cc/N9ZT-TB5R>].

thought, on the one hand, and Ukraine's struggle to maintain independence, on the other, I was repeatedly forced to confront the fact that there are aspects of self-government that I typically take for granted. Watching current events unfold alongside preparing these remarks reinvigorated my commitment to my scholarship and to trying to understand and speak to others about the role of law in democratic government. The news reminded me, in a most visceral way, that self-rule is a precious thing.

Today's topic is the relationship between the thought of the Anti-Federalists and populism. I propose to answer two questions. First, can we identify common ground between Anti-Federalists and populists? Second, does their common ground justify characterizing the Anti-Federalists as the philosophical ancestors of populists? I conclude that there is significant common ground: both favor a more direct form of democracy controlled by the common citizen and therefore both harbor deep suspicions of elites and complex institutions. Yet we cannot fairly categorize the Anti-Federalists as proto-populists: their advocacy for more direct government and the prominence of the will of the people was premised on beliefs about the function of a political community's size that populists do not share. Indeed, I suspect that the Anti-Federalists, who rejected outright the idea of one national government for even the original thirteen states, might have been more critical of populism than they were of the Federalists themselves.

By and large, both Anti-Federalists and populists favor a more direct form of democracy.² They don't necessarily favor direct democracy in the sense that it requires that all citizens get together

2. See W.B. Allen et al., *Interpretative Essay*, in THE ESSENTIAL ANTIFEDERALIST, at vii (W.B. Allen et al., eds., 2d ed. 2002) [hereinafter THE ESSENTIAL ANTIFEDERALIST] ("The Antifederalists warned that 'delegated republicanism' bestowed unrestrained powers on the representatives and, when coupled with long terms in office, invited public officials to substitute their own independent will for the consent of the governed."). Compare Jennifer Nedelsky, *Confining Democratic Politics: Anti-Federalists, Federalists, and the Constitution*, 96 HARV. L. REV. 340, 343 (1982) (reviewing HERBERT J. STORING, THE COMPLETE ANTI-FEDERALIST (1981) and noting the Anti-Federalists' emphasis on "a close

and vote directly on all laws, but they favor a more direct form of democracy than is set forth in the Constitution (or, in the case of today's populists, in the Constitution as it is currently implemented).³

Both Anti-Federalists and contemporary populists want a more direct role for the common citizen and for the middle class; they harbor deep suspicions of elites, who they understand as experts—or those who might be seen (by some, not by Anti-Federalists or populists) as having a better capacity to rule.⁴ It's not necessarily just about preventing the rule of wealthy elites; it's also—perhaps even more strongly—about preventing the rule of those who claim to have either a special expertise or heightened moral capacity for rule.⁵

and active relation between the citizen and his government”), with Sherman J. Clark, *A Populist Critique of Direct Democracy*, 112 HARV. L. REV. 434, 437 (1998) (“The populist case for direct democracy is straightforward and appealing: direct democratic processes are at some level more democratic, more legitimate, than representative institutions, because they are more directly responsive to the people.”).

3. See THE FEDERALIST NOS. 10, 47, 51 (James Madison).

4. Brutus I (Oct. 18, 1787), reprinted in THE ANTI-FEDERALIST: AN ABRIDGMENT BY MURRAY DRY, OF THE COMPLETE ANTI-FEDERALIST EDITED, WITH COMMENTARY AND NOTES, BY HERBERT J. STORING 116 (Herbert J. Storing ed., 1981) [hereinafter THE ANTI-FEDERALIST: AN ABRIDGMENT] (“In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them.”); see also Ignatius Donnelly, *People's Party Platform*, OMAHA MORNING WORLD-HERALD (July 5, 1892), <https://wwnorton.com/college/history/eamerica/media/ch22/resources/documents/populist.htm> [<https://perma.cc/AQF3-FGFK>] (“The fruits of the toil of millions are badly stolen to build up colossal fortunes for a few, unprecedented in the history of mankind; and the possessors of these, in turn, despise the Republic and endanger liberty.”).

5. Kenneth P. Miller, *Constraining Populism: The Real Challenge of Initiative Reform*, 41 SANTA CLARA L. REV. 1037, 1039–43 (2001) (comparing the anti-elitist tendencies of American populists to the elitist and moralistic tendencies of American progressives); Nedelsky, *supra* note 2, at 342, 345–46, 348–50 (stating Anti-Federalists were critical of the belief that the elite would pursue the public good).

They also are both suspicious of complex institutions.⁶ I think something that oftentimes gets overlooked in discussions about institutional complexity is the role of complex laws. Anti-Federalists and populists embrace the idea that laws—as well as institutions—ought to be simple and understandable by everybody.⁷ I’m guessing that, whatever stage you’re at in law school right now, you’re beginning to see that simplicity might not be one of the advantages of our system.

Nonetheless, I don’t think that we can fairly categorize the Anti-Federalists as a variety of proto-populist. Their advocacy for simple institutions, direct government, and the preeminence of the will of the common citizen was premised on beliefs about the function of a political community’s size that populism doesn’t share.⁸ So at the end of the day, I suspect that the Anti-Federalists might actually be more critical of populism than they were of the Federalists. And by the end of my talk, I hope I will have explained why.

Of course, American populism varies over time, and it varies around the globe.⁹ So, before proceeding to distinguish the Anti-Federalists from the populists, I’ll take just a moment to clarify the facets of populism that I am focusing on and mean to refer to when I say “populist” or “populism.” I thought that for today’s purpose the best thing to do was to try to sketch populism as broadly as I

6. Miller, *supra* note 5, at 1051 (describing the populist use of the ballot initiative as a means to cut through the “slow, careful, iterative, and compromise-oriented nature of legislative action”); HERBERT J. STORING, *WHAT THE ANTI-FEDERALISTS WERE FOR* 53–63 (1981).

7. Miller, *supra* note 5, at 1051; STORING, *supra* note 6, at 53–63.

8. STORING, *supra* note 6, at 15–23. “It was thought to have been demonstrated, historically and theoretically, that free, republican governments could extend only over a relatively small territory with a homogenous population.” *Id.* at 15. In contrast, the Populists entered the political arena as the United States was expanding into a nation far exceeding the size of the fledgling Union that the Anti-Federalists thought too large.

9. See Mark Tushnet & Bojan Bugarič, *Populism and Constitutionalism: An Essay on Definitions and Their Implications*, 42 *CARDOZO L. REV.* 2345, 2348 (2020) (“[P]opulisms may share a family resemblance, but the family is an extended one whose dispersal around the world has produced members who could have little to say to each other at a family reunion.”).

can, so that we can focus on some of its aspects that are relevant to today's political movements. So what's my extremely simplified version of populism? Well, it has two elements or, if you will, a two-prong test: (1) direct rule (2) by the citizenry.¹⁰

Let me first start with the simpler of these two prongs: "by the citizenry." The key quality of "the citizenry" in this test is that those who legislate and execute the government cannot be limited to the subset of the people who are either experts or any other kind of elites.¹¹ There are two reasons for this. First, populists believe that those individuals who aren't of the people are more corruptible, perhaps because they're more morally suspect because of their elite status or because of some intrinsic worth of the common citizen.¹² The second reason, I believe, is less controversial: they believe that elites—like the common citizen—will rule in their own interests.¹³ According to this logic, common-citizen rule is better because it is in the interest of the common citizen, and elite rule is worse because it will favor the elites and not the common citizen and hence not the common good.¹⁴

Then, there is the direct rule prong of the populism test that I have devised for today. I will use the federal constitution's avoidance of direct rule by way of comparison. I think we all know that our national government is designed, in a sense, to check the will of the people, because sometimes 51% of the people can be incredibly imprudent or even horrifically unjust. The complexity of our government structure is designed to maintain the will of the citizenry—

10. See Donnelly, *supra* note 4 ("Assembled on the anniversary of the birthday of the nation, and filled with the spirit of the grand general and chief who established our independence, we seek to restore the government of the Republic to the hands of the 'plain people,' with which class it originated.").

11. See Donnelly, *supra* note 4.

12. See Miller, *supra* note 5, at 1043.

13. See Miller, *supra* note 5, at 1043; see also Donnelly, *supra* note 4.

14. See, e.g., Miller, *supra* note 5, at 1043; Donnelly, *supra* note 4 (decrying political parties for struggling for power to the detriment of the people and declaring that "[c]orruption dominates the ballot-box, the Legislatures, the Congress, and touches even the ermine of the bench.").

but only ultimately. Along the way to implementation—or to complete and final implementation—the will of the citizenry is moderated through institutions that delay, that require negotiation among factions, and that bolster the rule of law when it is in tension with the will of the citizenry. By contrast, populism does not seek to delay or moderate implementation of the popular will, and to the extent that it may sometimes bolster the rule of law it does so less vigorously than the Federalists wished to see this done. The emphasis of populism is on weeding out corruption—which it defines as anything contrary to the will of the common citizen—and getting things done thoroughly and quickly. You might say that populism’s methods employ simplification, speed, and—if need be—overcoming or eradicating procedural and legal barriers (such as the Constitution) to government action.

So do the Anti-Federalists agree with this platform of a more direct rule, a rule by the common citizen? I think they do, at least by and large. Their fears and warnings about the Constitution include warnings of elite rule—whether the claim to elite rule is based on wealth, expertise, or claims about the inadequacy of the common citizen.¹⁵ The Anti-Federalists warned about the potential for corrupt rule¹⁶ that they associated with both rule by elites and with complex government. And they insist that the government must follow the will of the majority—the will of that 51%—which they think requires clear lines of division between the major branches of government and short terms.¹⁷ Clear lines of division between the

15. See Brutus I, *supra* note 4, at 109 (“tyrannic aristocracy”).

16. See Melancton Smith, Address in the Course of Debate by the Convention of the State of New York on the Adoption of the Federal Constitution (June 25, 1788), *reprinted in* THE ANTI-FEDERALIST: AN ABRIDGMENT, *supra* note 4, at 351 (“Certainly, the congress will be as liable to corruption as other bodies of men. Have they not the same frailties, and the same temptations?”).

17. See Letters from The Federal Farmer: Letter III (Oct. 10, 1787), *reprinted in* THE ANTI-FEDERALIST: AN ABRIDGMENT, *supra* note 4, at 47 (critiquing the mixing of branch functions under the Constitution); Allen et al., *supra* note 2, at xxi (“Because the Anti-federalists were dubious about being both democratic and national, they urged less

separate branches of the government are required, because you need to know who is responsible for a government action,¹⁸ and short terms are required so that once you understand who is responsible for something that is not the will of the people, you can get those folks out of office.¹⁹ They wanted, as Michael Zuckert calls it, a short-leash republic.²⁰ So, yes, the Anti-Federalists have quite a bit in common with populists: they do want more direct rule by the common citizen. But this, I believe, does not indicate that they qualify as proto-populists. I'll spend the rest of my time articulating why.

The Anti-Federalists' insistence on a simple government dominated by the will of the citizens is premised on a belief in a necessary connection between free self-government and local or regional government. I am going to call it "small government" today, but I do not necessarily mean this a government that is not doing a lot. What I mean is that the size of the territory or the number of people being governed is small. The Anti-Federalists' theories are premised on the idea that a republic must be small in this sense. This is

independence for the elected representatives. . . . For the Antifederalists, a responsible representative—the essential characteristic of republicanism—was one who was constitutionally obliged to be responsive to the sovereign people.”)

18. See *Centinel I* (Oct. 5, 1787), reprinted in *THE ANTI-FEDERALIST: AN ABRIDGMENT*, *supra* note 4, at 16 (arguing that government should be kept simple so that the people know which representatives to hold responsible).

19. *Cato V* (Nov. 22, 1787), reprinted in *THE ESSENTIAL ANTIFEDERALIST*, *supra* note 2, at 202–03.

20. See generally Michael P. Zuckert, *The Political Science of James Madison*, in *HISTORY OF AMERICAN POLITICAL THOUGHT* 149–66 (Bryan-Paul Frost & Jeffrey Sikkenga eds., 2003) (contrasting the Anti-Federalist vision of “short-leash” republicanism with the “long-leash” proposals of Madison and the Federalists). According to Zuckert, the central idea in short-leash republicanism was “not to have gaps, either within the society (i.e., all were to have the same interests so far as possible) or between government and society,” because “the development of an identity and interest separate from the people—that is, gaps—appeared to be the source of all political evil.” *Id.* at 156.

why they so vehemently respond, not only to the form of the Constitution, but to the fact of a national constitution.²¹ At the end of the day, if they have to accept the fact of a national Constitution, they want to debate that form. But they are also objecting to becoming one national government over a large expanse of land and a large population.²² I do not think we can understand their critique of the Constitution's form without understanding their critique of the size and population of the nation.

Why do they have this issue about the size of the government? Brutus I-IV is probably the best source for an encapsulated, one-stop-shopping, primary-source answer to this question.²³ But you can also find a defense of the small republic (albeit in less concentrated form) in Centinel,²⁴ Federal Farmer,²⁵ Agrippa,²⁶ Melancton Smith,²⁷ Cato,²⁸ and in other Anti-Federalist writers as well.

To return to answering this question: there are three main reasons why the Anti-Federalists believe that a small republic is the only free republic. First, the Anti-Federalists think that a free government must be a government where people assent to the rule. That was their definition of free government: A free government is a

21. STORING, *supra* note 6, at 24–28 (arguing that, as a group, the Anti-Federalists objected to the total amount of power granted to the federal government under the Constitution).

22. STORING, *supra* note 6, at 15–23.

23. See Brutus I-IV, reprinted in THE ANTI-FEDERALIST: AN ABRIDGMENT, *supra* note 4, at 108-133; see also Michael P. Zuckert & Derek A. Webb, *Introduction* to THE ANTI-FEDERALIST WRITINGS OF THE MELANCTON SMITH CIRCLE, at xiii (Michel P. Zuckert & Derek A. Webb eds., 2009) (noting Brutus's prominence among Anti-Federalist writers).

24. Centinel I, *supra* note 18, at 7-22.

25. See Letters from The Federal Farmer, I-VII & XVI-XVII, reprinted in THE ANTI-FEDERALIST: AN ABRIDGMENT, *supra* note 4, at 23–101.

26. See Letters of Agrippa, I-XI, reprinted in THE ANTI-FEDERALIST: AN ABRIDGMENT, *supra* note 4, at 227-53.

27. See Speeches of Melancton Smith, reprinted in THE ANTI-FEDERALIST: AN ABRIDGMENT, *supra* note 4, at 329–59; see also Zucker & Webb, *supra* note 23, *passim*.

28. See Cato III (Oct. 25, 1787), reprinted in THE ESSENTIAL ANTIFEDERALIST, *supra* note 2, at 26-29.

government where people assent to the rule.²⁹ And the Anti-Federalists fundamentally thought this was impossible over a large population, spread out over a large piece of land, because—as they said—there will simply be too many different interests.³⁰ You might think of this as too many types of people. But I think that phrasing it this way tends to make us focus disproportionately on specific kinds of difference, like race and ethnicity, that we focus on more than they did. Additionally, they're worried about the fact that in a larger nation, there are more different types of industrial and economic interests; similarly, the more expansive the nation, the more types of different geographic needs.³¹ Historical interests enter the picture too: there are cultural differences that spring from the different histories of Alaska relative to Virginia, relative to Manhattan.³² Even the histories of, say, Houston, Jacksonville, and the Keys—while they share a lot relative to the nation as a whole—are

29. Brutus I, *supra* note 4, at 114 (“In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few.”).

30. Brutus I, *supra* note 4, at 114 (“In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of one another. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government.”); see generally Cato III, *supra* note 28, at 26-29.

31. Brutus I, *supra* note 4, at 114 (“The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogenous and discordant principles, as would constantly be contending with each other.”).

32. Allen et al., *supra* note 2, at xxiii (“Making general laws that would apply to the needs of Maine and Georgia would neither address the important local needs of either state nor attract the support of the local inhabitants.”).

diverse and create a diverse set of history-related differences among the desires and needs of the peoples of those cities.

What the Anti-Federalists have noticed and focus on is that laws written for a broader set of differences and interests will naturally be more complex. Laws that apply to a broader set of interests—which is to say to a more diverse set of individuals and their interests—will have to be more complex because they must apply to more different scenarios. The complexity, of course, is a problem from the perspective of desiring a simpler, short-leash republic, but ultimately the Anti-Federalists simply think that—even at the cost of complex laws—it isn't possible to get a free government if you have to govern over citizens with a very broad set of interests.³³

They argue that citizens so different from one another simply would not consent to one set of rules. Their definition of free government requires consent to the law, so they therefore argue that a free government isn't possible over a nation that holds too many different types of citizens. Instead, they argue that a large nation is going to become one of two things: either it's going to be a giant homogenization machine,³⁴ or it's going to be despotic and ruled by force.³⁵ It has to be either homogenization or despotism because there's simply no set of rules that everyone can agree on. And I leave it to you to think about how those two factors (homogenization and despotism) may have been at work over the course of

33. Brutus I, *supra* note 4, at 113 (“[W]e shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these increasing in such rapid progression as that of the whole United States.”); *see generally* Cato III, *supra* note 28, at 26-29.

34. Allen et al., *supra* note 2, at vii (characterizing the Antifederalists as believing that the Constitution would promote “political homogeneity over a vast territory”).

35. Brutus I, *supra* note 4, at 115-16 (“In despotic governments . . . standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic . . . In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them.”).

American history. But to the Anti-Federalists a small nation is necessary because fewer interests are the only way to escape those two potential fates. Fewer total interests, they argue, are essential to free government and to the continuation of difference across political communities.

Fewer total interests in the country also turn out to be key to the second benefit of a small nation—the capacity for a “mirror legislature.” A mirror legislature is a legislature that actually resembles the people, and it is easiest to explain in contrast to the Federalists’ goal for Congress. In large part, the Federalists want a legislature that was better than the people. Not necessarily morally better, but more competent at least.³⁶ They thought of picking legislators almost the way you might think of picking players for a national basketball team: the bigger the country, the more likely that your large pool will contain more amazing talent.³⁷ The Anti-Federalists reject this. In contrast to the Federalists, the Anti-Federalists don’t want the best potential legislators. Instead, they want a legislature that “mirrors” the citizenry.³⁸ Thus, for example, they want all of the

36. THE FEDERALIST NO. 10, at 47 (James Madison) (George W. Carey & James McClellan eds., Liberty Fund Gideon ed. 2001) (“In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre on men who possess the most attractive merit, and the most diffusive and established characters.”).

37. *Id.* (“In the first place, it is to be remarked, that however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows, that if proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.”).

38. Brutus I, *supra* note 4, at 115–16 (“If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the

trades represented—all of the different kinds of professions represented—at least down to what we would define as lower middle class.³⁹

The Anti-Federalists want a small nation that can be mirrored in its legislature for a few reasons. This mirror legislature plan is motivated by a belief that the legislators, even if neither more virtuous nor more capable as politicians, will actually perform their functions with more expertise and more faithfulness than those in a large nation. Because they come from more walks of life and represent a smaller variety of individuals, the Anti-Federalists think that the mirror legislature has a more thorough knowledge of the people it represents and is thus going to be able to write laws better adapted to those individuals. Because the representatives in a mirror legislature can be friends and neighbors to the whole, small community, they will have warmer feelings towards constituents

sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.”).

39. Brutus III, *supra* note 23, at 124–25 (“The very term, representative, implies, that the person or body chosen for this purpose, should resemble those who appoint them—a representation of the people of America, if it be a true one, must be like the people. It ought to be so constituted, that a person, who is a stranger to the country, might be able to form a just idea of their character, by knowing that of their representatives. They are the sign—the people are the thing signified. . . . This extensive continent is made up of a number of different classes of people; and to have a proper representation of them, each class ought to have an opportunity of choosing their best informed men for the purpose. . . . In this assembly, the farmer, merchant, mechanic, and other various orders of people, ought to be represented according to their respective weight and numbers. . . . The great body of the yeomen of the country cannot expect any of their order in this assembly [the proposed Congress]. . . .”); Allen et al., *supra* note 2, at xxiv (arguing that the Antifederalists were critical of the Constitution because there “were no places in the government for the yeomen middle class, and no checks upon those who were unlikely to rule in the interests of the middle class.”).

who are literally their neighbors: they will have less desire to oppress the people living in the house next door than they would strangers living across the country.⁴⁰

The desires of the members of a mirror legislature will also be more in line with the will of the citizens, not just because of the love of one's neighbor and the legislators' superior knowledge of the issues, but perhaps most of all because of self-interest.⁴¹ By virtue of its size, the small republic simply has fewer total interests.⁴² Therefore, the mirror legislature in a small republic—if it has short term limits and simple government—will always act in the interests of the people as understood by the people.⁴³ It's not going to oppress the people, the Anti-Federalists argue, because it *is* the people. That was really the line of their argument.

40. See Brutus I, *supra* note 4, at 113–16; Brutus III, *supra* note 23, at 124–26; Cato III, *supra* note 28, at 26–29. See also Brutus IV, *supra* note 23, at 127–28.

41. See Allen et al., *supra* note 2, at xxv (noting that the “the proposed scheme of representation also excluded the power of recall, frequent elections, and rotation of office, the local interests of the yeoman citizen, or owner of small business enterprises – the middling interests of the country who genuinely have the national interest in mind – would not be constantly present to the representatives in Congress.”). See also Michael Zuckert, *The Virtuous Polity, the Accountable Polity: Liberty and Responsibility in “The Federalist,”* in PUBLIUS: THE JOURNAL OF FEDERALISM 22, 132–37 (1992) (explaining the mirror-image theory of representation and comparing the Federalist theory of representation to the Anti-Federalist insistence on the identity of ruler and ruled).

42. See Brutus I, *supra* note 4, at 113 (quoting MONTESQUIEU, THE SPIRIT OF THE LAWS 124 (Cohler et al. eds., Cambridge Univ. Press 1989) (1748) (“It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected.”)

43. Brutus III, *supra* note 23, at 124–25. See also Brutus III, *supra* note 23, at 126 (referring to “[t]he well born, and highest orders in life, as they term themselves, will be ignorant of the sentiments of the midling class of citizens, strangers to their ability, wants, and difficulties, and void of sympathy, and fellow feeling.”).

Finally, the Anti-Federalists argue that national size impacts national virtue.⁴⁴ I think this is one of the more overlooked—but most intriguing—ideas about small republics. So populists tend to have a rhetoric that says elite bad, ordinary person good.⁴⁵ They indicate that there's a moral difference between an elite and an everyday person. You can also find that rhetoric in the Anti-Federalists, but I think that their more profound point, and a point that they do make over and over again, is that there is something corrupting about power itself.⁴⁶ This more profound point, when applied to nation size, is the one that the populists miss: if power corrupts, then to avoid corruption, it is imperative to avoid becoming a powerful nation.

Fundamentally, the Anti-Federalists want a smaller nation so that it will have less power. They want their nations to have less power, so that their nation's citizens and its leaders will be less corrupted by power.⁴⁷ In other words, they think that life in a large nation—which will necessarily be led and culturally shaped by its more powerful officers—will fan ambition and love of glory in the human heart.⁴⁸ If you create a great nation, they argue, great leaders will come forward to lead it away from its true common good.⁴⁹

44. See generally Brutus I, *supra* note 4, at 113; Brutus III, *supra* note 23.

45. See Donnelly, *supra* footnote 4 (“The fruits of the toil of millions are badly stolen to build up colossal fortunes for a few, unprecedented in the history of mankind; and the possessors of these, in turn, despise the Republic and endanger liberty.”).

46. See Brutus I, *supra* note 4, at 113 (“Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature. . .”).

47. Brutus I, *supra* note 4, at 113 (quoting BARON DE MONTESQUIEU, *THE SPIRIT OF THE LAWS*); Cato III, *supra* note 28, at 26-29.

48. Brutus I, *supra* note 4, at 116 (“When [great offices] are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit of them.”); see also Brutus II, *supra* note 23, at 119.

49. Brutus I, *supra* note 4, at 116 (“In so extensive a republic, the great officers of government would soon become above the control of the people, and abuse their power to the purpose of aggrandizing themselves . . .”).

You will create a culture in which people are rewarded and praised for being powerful and therefore aspire to power.⁵⁰ In such a nation, both the quality of the leaders and the quality of the people they lead will be lower because of the capacity of the presidency (especially) to attract those susceptible to the love of glory.⁵¹ The human heart craves glory, and this is not a love that should be tempted, they thought.⁵²

I don't think that today's populists take any of these concerns about large republics seriously. To the best of my knowledge, populists are not concerned that a large nation with many interests cannot be ruled freely; I doubt very much if they are concerned with the possibility that it must be ruled either by despotism or homogenization. I don't think the relationship between nation size and inability to have a mirror legislature is among their concerns. But more troubling yet, I think, is their lack of concern about combining the large republic created by the Federalists with the short-leash republic ideas that they—the populists—share with the Anti-Federalists. As either the Anti-Federalists or the Federalists could have told them, this is a dangerous combination: it's the most important reason why the Anti-Federalists should not be thought of as proto-populists.

Heading to D.C. to clean up the government in the fashion that today's populists desire to do might have some effects that the populists don't foresee. The danger is that, in taking back the nation, they clear the way for a power-loving tyrant that a large, powerful, and efficient nation has nurtured. Ancient history teaches, and the Anti-Federalists therefore well knew, that after a mob takes over, a tyrant steps forward to rule that mass movement. In other words, populists step into—or worse yet, create—positions of power to tear down the rights protecting devices necessary for a large nation (those very devices put in place by our friends the Federalists). To

50. See Brutus I, *supra* note 4, at 116. See also Brutus IV, *supra* note 23, at 127–28.

51. Brutus III, *supra* note 23, at 125–26; Cato V, *supra* note 19, at 201–03.

52. Cato V, *supra* note 19, at 201–03; see also Brutus II, *supra* note 23, at 119; see generally Brutus I, *supra* note 4, at 113–17.

simplify the government and make it more responsive to the people, the populists wish to tear down the devices designed by the Federalists to prevent their new invention from falling into the hands of a tyrant.

In the imagination of the Anti-Federalists, a tyrant is far more likely to be raised in the glory-loving culture of a large nation. And when a tyrant steps forward to direct and dominate the people, the tyrant's will is far less likely to be checked if the populists have first cleared the path for him by flattening the obstacles to tyranny erected by the Federalists.

A large nation is not just dangerous because of the difficulty of governing it well, the Anti-Federalists would argue; it is dangerous because, insofar as it is governed well, it creates an enormous temptation to those who love power in a culture that (because of its long-term exposure to the love of power) loves power.⁵³ Thus, I think the Anti-Federalists and the Federalists could agree that the populists might just clear the way for the next Caesar.

Thank you.

53. Cato V, *supra* note 19, at 202 ("Americans are like other men in similar situations, when the manners and opinions of the community are changed . . . and your political compact inexplicit, your posterity will find that great power connected with ambition, luxury, and flattery will as readily produce a Caesar, Caligula, Nero, and Domitian in American as the same causes did in the Roman empire.").