

The Small Republic

The Anti-Federalists' defense of federalism and of the primacy of the states rested on their belief that there was an inherent connection between the states and the preservation of individual liberty, which is the end of any legitimate government. Robert Whitehill of Pennsylvania, for example, feared that the proposed Constitution would be "the means of annihilating the constitutions of the several States, and consequently the liberties of the people. . . ."¹ "We are come hither," Patrick Henry urged his fellow Virginians, "to preserve the poor Commonwealth of Virginia, if it can be possibly done; Something must be done to preserve your liberty and mine."² The states have to be preserved because they are the natural homes of individual liberty. As Luther Martin had argued in Philadelphia:

At the separation from the British Empire, the people of America preferred the Establishment of themselves into thirteen separate sovereignties instead of incorporating themselves into one: to these they look up for the security of their lives, liberties, & properties: to these they must look up—The federal Govt. they formed, to defend the whole agst. foreign nations, in case of war, and to defend the lesser States agst. the ambition of the larger. . . .³

The governments instituted to secure the rights spoken of by the Declaration of Independence are the state governments. They do the primary business that governments are supposed to do. The government of the Union supplements the state governments, especially by giving them an external strength that none of them could manage on its own. But in principle the general government is subordinate to the state governments.

Why must the essential business of government be done by governmental units like the states? Primarily this was, in the Anti-Federalist view, a question of size. It was thought to have been demonstrated, historically and theoretically, that free, republican governments could extend only over a relatively small territory with a homogeneous population.⁴ Even among the states this rule was evident, for "the largest States are the Worst Governed."⁵ One problem is that in large, diverse states many significant differences in condition, interest, and habit have to be ignored for the sake of uniform administration. Yet no genuine equality of government is possible in such a large state. The capital city, to take the prime example, will be close to some parts of the large state, but it will be remote, in every relevant sense, from the extremities.⁶ A national government would be compelled to

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impose a crude uniform rule on American diversity, which would in fact result in hardship and inequity for many parts of the country.

Behind the administrative defects of a large republic lie three fundamental considerations, bearing on the kind of government needed in a free society. Only a small republic can enjoy a voluntary attachment of the people to the government and a voluntary obedience to the laws. Only a small republic can secure a genuine responsibility of the government to the people. Only a small republic can form the kind of citizens who will maintain republican government. These claims are central to the Anti-Federalist position.⁸⁷

It should be noted at the outset that there is a complication in the practical conclusions drawn from these considerations. Assuming the soundness of the case for the small republic and assuming that nothing but republican government is to be seriously considered for the United States, the obvious conclusion is that no attempt should be made to extend a single republican government over the whole United States. But if one republican government over the whole United States should nevertheless be unavoidable, despite serious disadvantages, then the Anti-Federalist arguments for the small republic serve the practical purpose of revealing and helping to minimize these disadvantages. Cognizance of the advantages of the small republic may be helpful in avoiding the worst disadvantages of a large one. In the discussion that follows we shall be meeting both kinds of arguments. Some defend the idea of the small republic simply; others (drawn from the same theoretical source) aim to improve or mitigate the dangers of the large republic that American circumstances seemed to require. The different kinds of arguments will be clear enough as we go along, but both the distinction and the common source should be kept in mind.

The dependence of any republican government on the confidence of the people was one of the reasons given by the nationalists in the Constitutional Convention, notably James Wilson, for resting the general government directly on the people. Wilson "was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential."⁸⁸ The Anti-Federalists emphatically endorsed this principle. "The great object of a free people," The Federal Farmer argued, "must be so to form their government and laws, and so to administer them, as to create a confidence in, and respect for the laws; and thereby induce the sensible and virtuous part of the community to declare in favor of the laws, and to support them without an expensive military force."⁸⁹ But the Anti-Federalists denied that the simple expedient of having the people elect federal representatives was enough to secure their attachment. In a large republic the people "will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass."⁹⁰ Both reason and experience prove,

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Richard Henry Lee wrote, that so extensive and various a territory as the United States "cannot be governed in freedom" except in a confederation of states. Within each state, "opinion founded on the knowledge of those who govern, procures obedience without force. But remove the opinion, which must fall with a knowledge of characters in so widely extended a country, and force then becomes necessary to secure the purposes of civil government. . . ." The general rule is that government must exist, if not by persuasion, then by force.*¹¹ In a large empire standing armies are necessary "to cure the defect of the laws" and to take the place of popular confidence in and respect for the government.*¹²

The second characteristic of the small republic is its capacity to ensure a strict responsibility of the government to the people. In a direct democracy, responsibility is ensured by the absence of much differentiation between the people and their government. However, most of the Anti-Federalists admitted the need, under American conditions at least, for a system of representation as a substitute for the meeting together of all the citizens.¹³ The problem, then, was to keep the representatives responsible, in the rather narrow meaning of that term, that is, directly answerable to and dependent on their constituents.¹⁴ This is the reason for the concern with short terms of office, frequent rotation, and a numerous representation.¹⁵ The Anti-Federalists understood, however, that such devices are insufficient. Effective and thoroughgoing responsibility is to be found only in a likeness between the representative body and the citizens at large. Thus "a full and equal representation is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled. . . ." According to Melancton Smith, representatives "should be a true picture of the people; possess the knowledge of their circumstances and their wants; sympathize in all their distresses, and be disposed to seek their true interests."¹⁶ This describes the state legislatures reasonably well, it was claimed, but the federal legislature could not even come close to being representative in this genuine sense, at least not without a sharp increase in its number. Federal elections will present the voters with a choice among representatives of the well-known few, or the "natural aristocracy" as the Anti-Federalists often called them.*¹⁷ "It is deceiving a people to tell them they are electors, and can chuse their legislators, if they cannot, in the nature of things, chuse men from among themselves, and genuinely like themselves."¹⁸

What is wanted in a representative system is not "brilliant talents" but "a sameness, as to residence and interests, between the representative and his constituents." No great talents are necessary for government, and the men of great abilities are, on the whole, a danger rather than a benefit to a republic.*¹⁹ If, however, the Anti-Federalists distrusted "great abilities," they were willing to admit that "sameness" in a representative body is not literally possible. Every representative body is more aristocratic than the

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body of the people by whom it is chosen,²⁰ and any representative body covering the whole United States would inevitably be highly selective. Here the argument shifts from the desirability of the small republic to the mitigation of the evils of the large one.²¹ Given the need, especially in the general government, for some considerable compromise of the principle of sameness, the Anti-Federalists' secondary, more practical goal was a representation large enough to secure a substantial (if not proportionate) representation of the middling classes, in particular the sturdy yeomanry. This view was based not on a presumption of intrinsic superiority in the yeoman but on the political consequences of his peculiar situation. Melancton Smith gave the Anti-Federalist argument in his classic confrontation with Alexander Hamilton on the subject of representation.

The same passions and prejudices govern all men. The circumstances in which men are placed in a great measure give a cast to the human character. Those in middling circumstances, have less temptation—they are inclined by habit and the company with whom they associate, to set bounds to their passions and appetites—if this is not sufficient, the want of means to gratify them will be a restraint—they are obliged to employ their time in their respective callings—hence the substantial yeomanry of the country are more temperate, of better morals, and less ambitious than the great. . . . When . . . this class in society pursue their own interest, they promote that of the public, for it is involved in it.²²

All are agreed, Sydney argued, "that the rights and liberties of a country were ever in danger from the rich and poor, and their safety in the middle sort or yeomanry of the country. . . ."²³ An adequate representation of the middling classes serves, then, as a practical and effective substitute for a full representation of the people; for it does not require an excessively large body, and yet in pursuing their own interests the middling classes tend to pursue the interests of the public at large. However, the proposed House of Representatives failed not only the strict test of sameness but the looser test of adequate representation of the middling classes. Given the number of representatives and the proportion of representatives and people, few if any of the members of this class could expect to be elected.²⁴ The Anti-Federalists generally saw this as an inherent deficiency of any nationwide government, yet, as we shall see, they accepted the need for such a government. If this was a contradiction it was not, they thought, due to any deficiency in their reasoning, for it lay at the heart of the American situation. The prudent course was to confine the contradiction to the narrowest possible scope by, on the one hand, making the representation in the first branch of the national legislature as full as circumstances permitted and, on the other hand, leaving as much of the power as possible in the states, where genuine responsibility could exist.

A related aspect of the question of responsibility concerned the much-discussed issue of jury trial, which it was alleged the Constitution would weaken or destroy. There is no need here to go into detail, but the crux of

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the objection lay in the political significance of the jury trial. While an adequate representation in at least one branch of the legislature was indispensable at the top, law-making, level, the jury trial provided the people's safeguard at the bottom, administrative, level. "Juries are constantly and frequently drawn from the body of the people, and freemen of the country; and by holding the jury's right to return a general verdict in all cases sacred, we secure to the people at large, their just and rightful control in the judicial department."²⁵ A [Maryland] Farmer argued, indeed, that the jury trial is more important than representation in the legislature, because "those usurpations, which silently undermine the spirit of liberty, under the sanction of law, are more dangerous than direct and open legislative attacks. . . ."²⁶ The main point, however, is that the democratic branch of the legislature and the jury trial are the means of effective and lawful popular control. They "are the means by which the people are let into the knowledge of public affairs—are enabled to stand as the guardians of each others rights, and to restrain, by regular and legal measures, those who otherwise might infringe upon them." The often extreme and apparently unfounded claims by the Anti-Federalists that the proposed Constitution would destroy the trial by jury should be seen against this background. The question was not fundamentally whether the lack of adequate provision for jury trial would weaken a traditional bulwark of individual rights (although that was also involved) but whether it would fatally weaken the role of the people in the *administration of government*.²⁷

The third part of the Anti-Federalist defense of the small republic concerned the kind of citizens a free republic needs. The Anti-Federalists emphasized repeatedly that the character of a people is affected by government and laws, but that that relation had been dangerously ignored in the framing of the proposed Constitution. In the words of Melancton Smith, "Government operates upon the spirit of the people, as well as the spirit of the people operates upon it—and if they are not conformable to each other, the one or the other will prevail. . . . Our duty is to frame a government friendly to liberty and the rights of mankind, which will tend to cherish and cultivate a love of liberty among our citizens." "If there are advantages," The Federal Farmer argued, "in the equal division of our lands, and the strong and manly habits of our people, we ought to establish governments calculated to give duration to them, and not governments which never can work naturally, till that equality of property, and those free and manly habits shall be destroyed; these evidently are not the natural basis of the proposed constitution."²⁸

A republican citizenry must be free and independent-minded, but it must also be homogeneous. "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 the other. This will retard the opera-

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tions of government, and prevent such conclusions as will promote the public good." Only within the relatively small communities formed by the individual states could such homogeneity be found. Given the variety of climates, productions, laws, and customs among the United States, a legislature formed of representatives from all parts of the country "would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other."²⁹ The preservation of homogeneity required, for many of the Anti-Federalists, protection against foreign contamination. "To what purpose have you expended so freely the blood and treasures of this country? To have a government with unlimited powers administered by foreigners?"³⁰ Arguing that the general government should not be given the power to naturalize aliens, Agrippa pointed to the contrasting results of Pennsylvania's policy of open immigration and the eastern states' freedom from foreign mixture. Whereas Pennsylvania purchased her size and population at the expense of religion and good morals, "the eastern states have, by keeping separate from the foreign mixtures, acquired their present greatness in the course of a century and a half, and have preserved their religion and morals." At the same time they have preserved "that manly virtue which is equally fitted for rendering them respectable in war, and industrious in peace."³¹

Homogeneity implied, for the Anti-Federalists, not only likeness but likeness of a certain kind: a society in which there are no extremes of wealth, influence, education, or anything else—the homogeneity of a moderate, simple, sturdy, and virtuous people.³² Republican government depends on civic virtue, on a devotion to fellow citizens and to country so deeply instilled as to be almost as automatic and powerful as the natural devotion to self-interest. Many Anti-Federalists joined Patrick Henry in praise of the Swiss, who "have retained their independence, republican simplicity and valour."³³ These qualities are encouraged in the restricted sphere of the small republic, which offers little inducement or opportunity for the exercise of divisive and corrupting talents and which daily reminds each man of the benefits derived from and the duties owed to his little community.

Wherever they looked in the new Constitution the Anti-Federalists saw threats to civic virtue. The federal city provided for would breed monarchical institutions and courtly habits, with their oppressive tendencies and with the effect "above all [of] the perpetual ridicule of virtue."³⁴ The standing army would be not only a potential instrument of oppression but a source of moral corruption. With interests and habits different from the rest of the community, a standing army "will inevitably sow the seeds of corruption and depravity of manners. Indolence will increase, and with it crimes cannot but increase. The springs of honesty will gradually grow lax, and chaste and severe manners be succeeded by those that are dissolute and vicious. When a standing army is kept up, virtue never thrives."³⁵ Commerce itself, the benefits of which were one of the major reasons for the American Union,

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seemed to threaten republican simplicity and virtue.³⁶ Commerce is the vehicle of distinctions in wealth, of foreign influence, and of the decline of morals. "As people become more luxurious, they become more incapacitated of governing themselves."³⁷ Anti-Federalists constantly complained of America's hankering after European luxury. They agreed generally with John Adams that "frugality is a great revenue, besides curing us of vanities, levities, and fopperies, which are real antidotes to all great, manly, and warlike virtues."³⁸

Implicit in all of these opinions relating to republican citizenship is a concern with civic education, broadly conceived. Mercy Warren, who saw as deeply into this question as any of her contemporaries, flirted with the isolationism that tempted many of the Anti-Federalists. Could the pure republican spirit of the Americans be preserved, she reflected, by walling the country off from European luxury, on the one hand, and western empire on the other? It could not. However high the walls of separation, the fingers of avarice and ambition would find their ways through or around them. The danger to the republican spirit of America was illustrated by American attraction to European luxury and skepticism; but the source of the danger was not external. It lay, as it always lies, in the restless ambition and avarice in the heart of every man and every people; and that is where it must be met, principally by education. "[I]f the education of youth, both public and private, is attended to, their industrious and economical habits maintained, their moral character and that assemblage of virtues supported, which is necessary for the happiness of individuals and of nations, there is not much danger that they will for a long time be subjugated by the arms of foreigners, or that their republican system will be subverted by the arts of domestic enemies."³⁹ A few Anti-Federalists made specific proposals. Thus A [Maryland] Farmer proposed the establishment of local "seminaries of useful learning, with professorships of political and domestic œconomy." The citizens should be instructed not in "the philosophy of the moon and skies," but in "what is useful in this world—the principles of free government, illustrated by the history of mankind—the sciences of morality, agriculture, commerce, the management of farms and household affairs." If this were done in a short time "the people instead of abusing, would wade up to their knees in blood, to defend their governments."⁴⁰ More often the Anti-Federalist thought of the whole organization of the polity as having an educative function. The small republic was seen as a school of citizenship as much as a scheme for government. An important part—much more important than we are today likely to remember—of their argument for a federal bill of rights was the educative function of such a document in reminding the citizen of the ends of civil government and in strengthening his attachment to it. The provisions of a bill of rights "can inspire and conserve the affection for the native country, they will be the first lesson of the young citizens becoming men, to sustain the dignity of their being. . . ."⁴¹

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Finally, many Anti-Federalists were concerned with the maintenance of religious conviction as a support of republican government. "Refiners may weave as fine a web of reason as they please, but the experience of all times," Richard Henry Lee wrote to James Madison in 1784, "shews Religion to be the guardian of morals."⁴² The opinions of men need to be formed "in favour of virtue and religion. . . ."⁴³ Religious support of political institutions is an old idea, and here again the Anti-Federalists tended to be the conservatives. The view was well expressed by an anonymous Massachusetts writer in 1787.⁴⁴ He explained that there are but three ways of controlling the "turbulent passions of mankind": by punishment; by reward; and "by prepossessing the people in favour of virtue by affording publick protection to religion." All are necessary, but especially the last. "[I]t is not more difficult to build an elegant house without tools to work with, than it is to establish a durable government without the public protection of religion." By 1787, however, the opinion seemed to be growing that organized religion could be dispensed with or taken for granted. This was, at any rate, the Anti-Federal reading of the situation. The indifference of the Constitution and its main defenders to organized religion was striking. In the words of Federalist writer Elihu, "the light of philosophy has arisen," and "mankind are no longer to be deluded with fable." "Making the glory of God subservient to the temporal interest of men, is a worn-out trick. . . ."⁴⁵ Anti-Federalists saw quite clearly the implications of such arguments and challenged them. They would have agreed with an anonymous Virginian who urged that steps be taken to revitalize religion: "Whatever influence speculative vanity may ascribe to the indefinite principle termed honor, or political refinement, to an artful collusion of interest, sound reason as well as experience proves that a due sense of responsibility to the Deity, as the author of those moral laws, an observance of which constitutes the happiness and welfare of societies as well as individuals, is the mean most likely to give a right direction to the conduct of mankind."⁴⁶ The Anti-Federalists feared that the Americans would follow the example of the Europeans as described by Mercy Warren: "Bent on gratification, at the expense of every moral tie, they have broken down the barriers of religion, and the spirit of infidelity is nourished at the fount; thence the poisonous streams run through every grade that constitutes the mass of nations." Warren insisted that skepticism is not, as some hold, necessarily fostered by republican liberty. Indeed, the history of republics is the history of strict regard to religion.⁴⁷

It is less easy to say what concrete form the Anti-Federalists thought this concern with religion ought to take. They favored religious toleration and sometimes criticized the Constitution for the absence of protection of liberty of conscience; but this was assumed to mean, in practice, toleration of Christian (or only Protestant) sects and was rarely extended even in principle to the protection of professed atheists. They saw no inconsistency be-

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tween liberty of conscience and the public support of the religious, and generally Protestant, community as the basis of public and private morality. Many Anti-Federalists supported and would even have strengthened the mild religious establishments that existed in some states. Richard Henry Lee wrote in 1784 that "he must be a very inattentive observer in our Country, who does not see that avarice is accomplishing the destruction of religion, for want of a legal obligation to contribute something to its support. The [Virginia] declaration of Rights, it seems to me, rather contends against forcing modes of faith and forms of worship, than against compelling contribution for the support of religion in general."⁴⁸ More generally, the Anti-Federalist position was not so much that government ought to foster religion as that the consolidating Constitution threatened the healthy religious situation as it then existed. The religious diversity of the whole United States seemed so great as to strain to breaking point any publicly useful religious foundation for the nation as a whole. Consolidation would require, then, substituting for religion some other foundation of political morality—which the Anti-Federalists foresaw would be an aggregate of selfish interests held together by force. This tendency would be strengthened by the absence from the Constitution of any religious test for officeholding, which seemed intended to further undermine the public significance of religious conviction.⁴⁹ The Constitution and its defenders deliberately turned away from religion as the foundation of civil institutions. Among the Anti-Federalists, on the other hand, there was a great deal of sympathy with views like those of Charles Turner: "without the prevalence of *Christian piety and morals*, the best republican Constitution can never save us from slavery and ruin." Turner hoped that the first Congress under the Constitution would recommend to the states the institution of such means of education "as shall be *adequate to the divine, patriotick purpose* of training up the children and youth at large, in that solid learning, and in those pious and moral principles, which are the *support, the life and SOUL* of republican government and liberty, of which a free Constitution is the body. . . ." He expressed a central Anti-Federal thought when he urged that the new rulers should turn their attention to the task, which surpasses the framing of constitutions, of fostering religion and morals, thereby making government less necessary by rendering "the people more capable of being a *Law to themselves*."⁵⁰ Such self-government was possible, however, only if the center of gravity of American government remained in the states.