



## The Anti-Federalists Predicted Today's Political Morass, And Can Help Us Get Out

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In October 1787, only a month after the Constitutional Convention ended its deliberations and sent the finished Constitution to the states for ratification, Robert Yates, a judge from upstate New York, penned a prescient essay arguing against ratifying the Constitution. Yates worried the proposed constitution would create a government unaccountable to the people and that those in power would use it for the “purposes of gratifying their own interest and ambition.” “It is scarcely possible,” Yates wrote, “in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.”

Yates was an Anti-Federalist, the name given to opponents of ratifying the Constitution. History is written by the winners, the saying goes, so nowadays the Anti-Federalists are taught as a footnote in junior high American history class. Given our national reverence for the Constitution, they're remembered as opponents to progress, as enemies to a government ordained and established by the people. At worst they're considered knuckle-dragging philistines who allowed their parochial concerns about states' powers to trump the good of the nation. They're the Pharisees of our political religion.

But the Anti-Federalists are always with us, if in spirit rather than name, and we ignore them at our own peril. Country judges who complain about the highfalutin ways “back East,” populist governors who rail against the temerity of an overweening federal government, and the millions of people who just want to be left alone by Washington are all examples of the Anti-Federalist impulse. Sometimes that political impulse sits in the background of the American political conversation, and sometimes it becomes the most popular show in town.

This crazy election year, the wispy-haired, demagogic blowhards who came to prominence on both the left and the right—inciting the people against “the establishment,” attacking banks and Wall Street (i.e. “stockjobbers”), and generally calling the entire government stupid and disconnected from the average man—carry the Anti-Federalist impulse in their veins. When the political establishment ignores Anti-Federalist sentiments for too long, it can rise up and take over, which is partially what happened during the long, surreal election of 2016.

## What the Anti-Federalist Got Right

The original Anti-Federalists were wrong on many things—the federal government, for example, did not obliterate and override states’ powers to tax their citizens—but they got three basic ideas right, and all ideas have become increasingly relevant in modern American politics.

First, the Anti-Federalists predicted that the federal government the Constitution created would increase its power until states were merely secondary considerations. Second, that this powerful federal government would be too big and distant for the people to effectively control, and thus vainglorious men of ambition and avarice would control it to enrich themselves off the common people.

Third, that it was unwise to govern a diverse and large population from a remote and distant government that would hold such immense power over the daily lives of common people, and, as a result, politics would become something more primitive than civilized, characterized by constant discord and fighting as different factions tried to control the lives of their fellow citizens.

These three ideas can be combined into one salient and perceptive question: Will a remote and distant government that wields a large amount of power over a vast land and a diverse people increasingly be seen as not representing the people, and, in the process, sow discord between them?

This essay will discuss these three Anti-Federalist ideas in modern context. I implore you not to think of this as a partisan plea for “states rights.” Questions about proper government structuring—that is, how government should act and at which level, local or national—are different than the more partisan “What should government do?” Maybe there should be a single-payer health-care system, or maybe there should be a school voucher program, but which level of government should implement those programs? That question is one of good governance, not partisanship.

It is time to remove the Anti-Federalists from the historical refuse pile where we’ve traditionally placed failed prognosticators such as Neville “peace in our time” Chamberlain or Thomas “I think there is a world market for maybe five computers” Watson. Rather than continuing to ignore the Anti-Federalists, this is a perfect time to find wisdom in the words of our “other” founders. Sometimes, the folk remedies of old are the best prescription to present ills.

### A Federal Government of ‘Great and Uncontrollable Powers’

Robert Yates actually attended the first five weeks or so of the Constitutional Convention in Philadelphia, having been chosen along with John Lansing Jr. and Alexander Hamilton to be the delegation from New York. Lansing and Yates were “Clinton-men”—meaning they supported populist New York Gov. George Clinton, an Anti-Federalist and strong supporter of states’ rights—and they had been sent to the convention to counterbalance and overrule Hamilton, who was decidedly neither a Clinton-man nor an ardent defender of states’ rights.

Yates and Lansing watched the delegates vote to replace rather than amend the Articles of Confederation, something they believed was beyond the convention’s authority. They watched as

delegates passed resolutions that would give great power to a new national government. They would have none of it. Both decided to leave the convention in early July, believing the delegates were creating an illegitimate and uncontrollable national government. When Yates saw the final version of the Constitution, it confirmed his fears.

Yates picked up his pen. In the fashion of the time, he wrote anonymously under the pseudonym “Brutus,” and choosing the name of Caesar’s assassin was certainly no accident. In his mind, he had a potential king to slay.

Under the proposed Constitution, Yates wrote, the government “has authority to make laws which will affect the lives, the liberty, and property of every man in the United States.” That power, in Yates’s view, was so great that it would eventually swallow the state governments, “for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it.”

Yates understood the temptations of power. “It is a truth confirmed by the unerring experience of ages,” he wrote, “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.”

Perhaps, in a modern context, we should think of this in less dastardly terms than the kind of encroaching despotism Yates seems to imply. As any government official knows, local control and individual freedom can stand in the way of the well-meaning designs of government programs. A painter cannot create a beautiful, harmonious picture if another painter controls part of the canvas, and he certainly can’t do so if some of the paint keeps moving around of its own accord. To paint his harmonious picture, something has to be done about the other painter and the disobedient paint. They’re “clogs upon the wheels.”

For Yates and other Anti-Federalists, the Constitution’s Necessary and Proper Clause, which grants the federal government power to make all laws “necessary and proper” to executing government’s powers, contained the seeds of absolute control.

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“Under such a clause as this,” asked an Anti-Federalist writing as “An Old Whig,” “can any thing be said to be reserved and kept back from Congress?” “The Federal Farmer” (thought to be Richard Henry Lee or Melancton Smith) wrote that “it is impossible to have a just conception of [Congress’s] powers, or of the extent and number of laws which may be deemed necessary and proper.”

The Anti-Federalists were proved correct. When combined with other clauses, in particular the Commerce Clause, the Necessary and Proper Clause has been used precisely as they predicted. Applying the Necessary and Proper Clause to the Commerce Clause has permitted Congress to reach nearly every non-commercial activity imaginable, turning the Commerce Clause into more of a general powers clause.

Whether or not that is a good thing, it is certainly different than what the Framers contemplated, which was a government of limited and enumerated powers that left most questions of local governance—such as education and health care—to the states.

### A Government of the ‘Base, Idle, Avaricious and Ambitious’

For the Anti-Federalist “Cato” (probably Clinton himself), a large and powerful government was particularly prone to being captured by “ambitious people” of “large fortunes” who will realize that they can become “happy, great, and glorious by oppressing [their] fellow citizens.” Such a person would “raise himself to grandeur, on the ruins of his country” because in a large republic “the public good is sacrificed to a thousand views.”

Furthermore, given “the vast extent” of the United States’ territory, as well as “the complication of interests” reposed in the government, “the science of government will become intricate and perplexed, and too mysterious” for the average person to “understand and observe.”

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The Federal Farmer thought representatives in the federal government would be “too far removed from the people, in general, to sympathize with them, and too few to communicate with them.” It is a “consideration well worth pursuing,” he asked, “how far this house of representatives will be liable to be formed into private jundos,” creating groups of “unprincipled men, often distinguished for their wealth or abilities,” who will “combine together and make their object their private interests and aggrandizement.”

Centinel (probably Samuel Bryan) concluded that “the organization of this government... is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a *permanent* ARISTOCRACY.”

A majority of members of Congress are millionaires. Eighty-one percent of people think the government can be trusted to do what’s right only some of the time or never, and 75 percent see widespread government corruption. We seem to have reached peak animosity and disappointment toward those in Washington, with the ire coming from both the left and the right. Increasing numbers of Americans believe Washington DC does not represent their views.

For many, the city on the Potomac has might as well be a later-stage Rome, sliding into decadent splendor and orgiastic self-absorption. Or, in the words of Cato, the “federal city” would be “the asylum of the base, idle, avaricious and ambitious,” that would “possess a language and manners different from yours.”

### A People ‘Constantly Contending with Each Other’

A national government imbued with unrestrained power would be a bad idea, thought Yates, because the people of the country were too diverse to be effectively centrally governed. A remote, national government given such great powers would cause a “constant clashing of opinions; and the representatives of one part will be continually striving against those of the other.”

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This was because 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 heterogeneous and discordant principles, as would constantly be contending with each other.”

Quoting the Constitution’s preamble, Cato sounded the same concerns:

Whoever seriously considers the immense extent of territory comprehended within the limits of the United States, together with the variety of its climates, productions, and commerce, the difference of extent, and number of inhabitants in all; the dissimilitude of interest, morals, and politics, in almost every one, will receive it as an intuitive truth, that a consolidated republican form of government therein, can never form a perfect union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to you and your posterity.

No, thought Cato, such a government would be “unkindred,” and the constant clashing would “emphatically be like a house divided against itself.”

Here the Anti-Federalists were perhaps the most prescient. Political polarization has reached a fever pitch, and it shows no signs of abating. As Pew recently concluded:

Across 48 different questions covering values about government, foreign policy, social and economic issues and other realms, the average difference between the opinions of Republicans and Democrats now stands at 18 percentage points...nearly twice the size of the gap in surveys conducted from 1987-2002.

Congressional polarization is no better, having increased to the point where the two parties essentially always vote in lockstep with one another and rarely overlap. The “representatives of one part” are truly “continually striving against those of the other.”

There have been many theories and solutions offered for increasing polarization. Some solutions are rooted in controlling political information, whether through campaign finance laws, lawsuits against those who spread “disinformation,” or trying, in some way, to hold media accountable. At best these seem overly optimistic, and at worst they are blatant violations of the First Amendment. Given the way the Internet is personalizing our “feeds” in music, movies, art, and, well, everything, it seems wiser to conclude that, for the foreseeable future, political opinions will become more idiosyncratic, personal, and disparate.

But during the founding era, unlike perhaps any other time except for our own, political opinion was idiosyncratic, personal, and highly disparate. Newspapers and pamphlets by the hundreds were the primary source of political information, and those sources were biased to the extreme. There was no mass media, only private “feeds.” Maybe, therefore, the wisdom of the Anti-Federalists is even more relevant to soothing our currently polarized soul.

## The Constitution as Peacekeeper

What can we learn from these three prescient Anti-Federalist predictions? Primarily, that the Constitution is a peacekeeper. Good fences make good neighbors, but why? It's less about keeping things out than keeping things in, that is, defining who has control over your yard, your house, and the things that happen inside.

The Framers believed they had created a government that would not encroach too far into the internal politics of the states.

A Trump supporter and a Clinton supporter living next door to each other can get along cordially due to the separation between the two houses. If either one were allowed to control the internal "policies" of the other house, however, things would get ugly. It's no different in politics. The Constitution, as it was originally conceived, also tried to keep peace between neighbors, that is, between the different states that make up the union.

The Framers partially understood what the Anti-Federalists argued: the more that government gets involved in the daily lives and values of common people, the more it will sow discord if those people are dissimilar. The Framers, however, believed they had created a government that would not encroach too far into the internal politics of the states—that the Constitution effectively limited the federal government to questions of truly national, not local, importance. The Anti-Federalists predicted that government would eventually jump the constitutional guardrails and assert local authority over a diverse and numerous people.

The Anti-Federalists were right. Those constitutional guardrails are almost non-existent and, insofar as they still exist, they are often based on tradition or maintained at the sufferance of the national government. The federal government, for example, merely tolerates marijuana use in states that have legalized it, the DOJ having instructed its officers to not generally enforce the national drug laws within those states.

If a President Chris Christie, however, decided to bring the full force of the federal government into the legalizing states, and to essentially override local governance, there would be no principled, constitutional reason he couldn't. The only protection would be the unpopularity of such an action, which seems an awfully thin reed to rest our freedoms upon.

Regardless of your views on the proper size and scope of the government—whether the government should provide health care, prohibit drugs, guarantee education, create social safety nets, engage in environmental protection, or whatever—this situation should concern you. Americans are at war with each other, an increasingly primitive and tribal war, over fundamental questions that implicate our deepest values—which education plan we should have, which health-care plan we should have, and what drugs we're allowed to ingest, just to name a few.

But why should Georgia and Massachusetts have the same health care, education, and drug laws? Many people in those states can hardly stand to be in the same room together, so why would we let them govern each other?

## Congressional Majorities Don't Authorize Dictatorships

This problem is bipartisan. On April 23, 2006, President Bush signed the Student Protection and Affordable Education Act, better known as the AEA or just “Bushucation.” The law creates a school voucher program in every state, and, in so doing, seeks to make education better and more affordable through the introduction of market competition.

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The law is incredibly complex. It mandates that states expand their education spending to fund a massive school voucher program or, if they choose not to, to lose all current federal education funding. There are extensive subsidies for families of lesser means, and states are required to set up “education marketplaces” where parents can trade their school vouchers and efficiently shop for the best education options.

Finally, it requires everyone to pay into a mandatory school voucher fund, even if those people don’t have or don’t plan to have children. Without a single Democrat vote, the Republicans pushed the law through.

I’m lying, of course. That law doesn’t exist as an education law signed by President Bush. It does exist, however, as a health-care law signed by President Obama. On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act, better known as the Affordable Care Act or just “Obamacare.”

The law is incredibly complex. States were mandated to expand their Medicaid coverage or lose all current Medicaid funding (the Supreme Court struck this down). There are also extensive subsidies for those with lesser means. One essential part of the law’s structure was the so-called “individual mandate,” which required certain people who were not insured through their jobs or other programs to purchase health insurance.

Aside from the policy questions, arguably the most culturally significant thing about the ACA is that it is the most consequential national law ever passed without a single vote from the opposing party. In some sense, half the country imposed health-care policy on the other half. Of course, if George W. Bush could have done the same with an education law, perhaps Common Core, he might have imposed an education policy on half the country.

In the Affordable Care Act (and the hypothetical school vouchers law), the federal government once again used its “limited” powers how the Anti-Federalists predicted. Local, state-level control of health insurance was seen as a “clog upon the wheels,” in the words of Yates, to a great national plan. Moreover, an individual decision to not purchase health insurance was also seen as a “clog” that needed to be overridden.

That ‘house divided’ can create real problems, and not just in terms of political backlash.

Yes, the Democrats won the 2008 election and controlled Congress and the presidency, and some might argue that elections authorize majorities to rule over minorities. Yet, in a system of limited government, majorities aren’t dictatorships authorized to impose their unfettered will on the minority. Furthermore, even if something is allowed, it might still be unwise.

Such unfettered majoritarianism can be dangerous in a large and diverse country. As Cato warned, a country with the “immense extent of territory” as the United States, that contains people with a “dissimilitude of interest, morals, and politics,” should not be brought under one general government. Otherwise, we would have “a house divided against itself.”

That “house divided” can create real problems, and not just in terms of political backlash. Laws like the ACA don’t magically self-execute—rules need to be written, programs developed, and thousands of administrators and politicians around the country need to be involved in implementing them.

Furthermore, the ACA includes numerous provisions that necessitate state-level involvement. As much as Democrats would wish otherwise, some of those state-level politicians charged with implementing the law would be Republicans, and many of them resisted the law, just as many Democrat state officials would have resisted the hypothetical school voucher law. But partisan political division is a reality to be confronted, not an obstacle to be bulldozed. Major pieces of legislation require compromise, not ramming it down the throats of the opposition.

This is not to say that Republicans have done and would do the exact same. But this is where the lessons of the Anti-Federalists can be applied in the most salutary manner. If we stop trying to control each other in our local and personal matters, if 51 percent of the country stopped trying to impose its will on the 49 percent, then maybe we could get along better. To do that, however, we need to have a concerted and nonpartisan move toward localism.

### We Need to Start Leaving Each Other Alone

Let me ask the question again: Will a remote and distant government that wields a large amount of power over a vast land and a diverse people increasingly be seen as being unrepresentative of the people, and, in the process, sow discord between them? Yes.

We rightly revere our Constitution, but, apart from debates over how it should be interpreted, it is a “living document” in at least one sense: The attitudes of the people breathe life into its words, which carry no real force of their own. But the Anti-Federalists didn’t go away; their ideas still help animate the Constitution’s words, and their concerns have merged into ongoing the political conversation of the country.

The Anti-Federalists taught us valuable lessons about good government that have always been relevant and will never go away.

The Anti-Federalists taught us valuable lessons about good government that have always been relevant and will never go away. Yet it seems there is something different about this election. Two of the most unpopular major-party candidates in history are vying for our votes. Given that a majority of Americans dislike both, whoever wins, most of us will be unhappy.

Yet, at his or her respective victory party, the victor will still claim that “the people have spoken.” When he or she sits down in the Oval Office, the new president will feel emboldened by “a mandate from the people,” even though more than half of his or her fellow citizens find this president unacceptable.



Nevertheless, he or she will take that sense of purpose into the most powerful office on the planet—as the head of the most powerful organization in the history of humankind—and will start pulling levers and flipping switches that will drastically affect the daily lives of Americans, for good or for ill. In four years, will we have overcome our malaise? Will this be seen as a bout of temporary insanity? For reasons that the Anti-Federalists first articulated, I think not.

Good government is not just about the question “What should be done?” It’s also about the question “What can we do together, cooperatively rather than combatively?” We are stronger together, yes, but someday soon the only way we can continue living together might be by leaving each other alone.

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