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The Democratic Problems with Washington as the Capital

David Fontana*

Democracy demands a capital city that represents a country and is not removed from it. If the government is to be of the people and for the people, then the capital must be able to relate to the people—and the people to the capital. In the United States, democracy struggles not just because of what happens outside of and comes to Washington, but because of what happens inside Washington. The federal government, in other words, faces democratic problems because of the type of place that Washington is. There are many factors to consider in deciding where a country should be governed from, but the ability of the capital to understand the country it governs is certainly one of the most important of these factors. The goal of this symposium article is to consider the contemporary democratic crisis in these geographical terms.

Washington was initially a rural area meant to govern a rural country. It has gradually turned into a dynamic metropolitan area meant to govern a country featuring many—and many different—dynamic metropolitan areas. During its entire history, though, Washington has remained dominated by a single company: the federal government. A company town will struggle to attract and to cultivate the large range of people featured in the United States. Given that a company town struggles to satisfy the democratic demands of a capital, the question then becomes whether other types of places would better satisfy these democratic demands.

INTRODUCTION

There are many theories explaining what can give democracies problems, ranging from the political to the social to the legal. These theories in the context of the United States largely consider what is happening outside of Washington and the effects these dynamics are having on what is happening inside Washington. However, Washington is not just the place where democracy is struggling. Democracy is struggling because of the *type* of place that Washington is. The ambition of this brief article is to frame the crisis of democracy in these geographical terms.¹

* Samuel Tyler Research Professor of Law, George Washington University School of Law. Thank you to Yishai Blank, Issachar Rosen-Zvi, Richard Schragger, and the Cegla Center for Interdisciplinary Research of the Law at Tel Aviv University for their invitation to this symposium. This article builds on my forthcoming book, as well as some of my earlier academic work, most significantly David Fontana, *Federal Decentralization*, 104 VA. L. REV. 727 (2018), and David Fontana, *The Narrowing of Federal Power by the American Political Capital*, 23 WM. & MARY BILL RTS. J. 733 (2015). It also builds on some of my magazine writing, most notably David Fontana, *Washington is Now a Cool City. That's Terrible News for American Democracy*, WASH. POST MAGAZINE, May 7, 2018, https://www.washingtonpost.com/lifestyle/magazine/washington-is-now-a-cool-city-thats-terrible-news-for-american-democracy/2018/05/04/380682da-3f40-11e8-974f-aacd97698cef_story.html and David Fontana, *Amazon's D.C. Move Threatens the Founders' Vision for America*, POLITICO MAGAZINE, Apr. 13, 2019, <https://www.politico.com/magazine/story/2019/04/13/would-the-founders-have-freaked-out-about-amazons-dc-headquarters-226653/>.

¹ There are at least two dimensions to this geographical frame, and this article will only consider one of these two dimensions. First, there is the question of the geographical *distribution or decentralization* of federal power. How many federal officials should be located in Washington in order to satisfy various constitutional

Democracy demands that the government be able to understand and to respond to citizen demands, and citizens must see the government as having this capacity to respond to these demands. A major means of linking the government and the governed is through geography. A government that lives and works among the governed creates a permanent and powerful connection between the two. One primary tool that can facilitate this connection geographically is ensuring that governments are centered in a place that enables them to actually include and understand everyone being governed, and to be perceived as doing this by their citizens. Washington has always struggled to satisfy these goals because it only features one “company” within its borders: the federal government. As such, it can be understood as what I refer to as a company town.

There were horrifying reasons for placing the American federal capital in Washington, particularly those related to Washington’s tolerance of slavery.² There were also more honorable and more democratic considerations, like ensuring that the capital could truly understand the country it was meant to govern. James Madison articulated this principle clearly in a speech to the first Congress. He said that “[i]t is important, that every part of the community should have the power of sending, with equal facility, to the seat of government, such representatives to take care of their interests.”³ This *Madisonian principle* that the capital must reflect the country has been explicitly referenced in other constitutions.⁴

These democratic issues were certainly seen as significant by those who drafted the Constitution, since they could not agree on a capital location to mention in the text because they

goals? This has been the primary focus of my earlier work, and is the focus of my forthcoming book. See generally David Fontana, *Destructive Federal Decentralization*, 29 WM. & MARY BILL RTS. J. 619 (2022) (considering how the Trump Administration used federal decentralization so poorly); David Fontana, *Federal Decentralization*, 104 VA. L. REV. 727 (2018) (considering the theory more broadly) [hereinafter Fontana, *Federal Decentralization*]. It is also the topic of influential and persuasive scholarship evaluating the geographical distribution of federal officials using other benchmarks. See Yishai Blank & Issi Rosen-Zvi, *Reviving Federal Regions*, 70 STAN. L. REV. 1895 (2018); Jessica Bulman-Pozen, *Our Regionalism*, 166 U. PA. L. REV. 377 (2018); Dave Owen, *Regional Federal Administration*, 63 UCLA L. REV. 58 (2016). Second, there is the question of *which specific* geographical location should host federal power. I have addressed some of the unique features and effects of the American system previously. See David Fontana, *The Narrowing of Federal Power by the American Political Capital*, 23 WM. & MARY BILL RTS. J. 733 (2015). This article expands on those considerations and evaluates them normatively.

² See Jeff Forrest, *The Notorious ‘Yellow House’ That Made Washington, D.C. A Slavery Capital*, SMITHSONIAN MAG. (July 22, 2020), <https://www.smithsonianmag.com/history/how-yellow-house-helped-make-washington-dc-slavery-capital-180975378/> (discussing the role of the slave economy in the founding and existence of early Washington).

³ 1 ANNALS OF CONG. 861 (1789) (Joseph Gales ed., 1834) (statement by James Madison) [hereinafter Madison, *Location of Capital*]. See also *id.* (featuring Madison noting the importance of “plac[ing] the Government in that spot which will be least removed from every part of the empire”).

⁴ See, e.g., Grundgesetz [GG] [Basic Law] art. 22(1), translation at http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0124 (Ger.) (“Berlin is the capital of the Federal Republic of Germany. The Federation shall be responsible for representing the nation as a whole in the capital.”).

cared about the issue so much.⁵ It then became one of the most significant issues debated in the first Congress.⁶ After a debate that nearly tore the new country apart, on July 16, 1790, President George Washington signed the Residence Act, establishing the District of Columbia as the “Permanent Seat of the Government of the United States.”⁷

Ten years later, a grand total of 153 federal officials relocated from the old and temporary capital (Philadelphia) to the new and permanent capital (Washington).⁸ From the moment that these officials arrived in Washington, there was criticism of whether Washington could really satisfy the Madisonian principle of a representative capital, given that the only game in town was the federal government.⁹ This is one of the reasons why there have been constant conversations about moving the capital from Washington since that time, even involving presidents from Ulysses Grant¹⁰ to Franklin Delano Roosevelt.¹¹

Elections are the primary means by which democracies—including the United States—hold leaders accountable to their citizens.¹² James Madison wrote in *Federalist 51* that a “dependence on the people” would be the “primary control of government.”¹³ If democracies are intended *always* to be accountable to their citizens, though, there is a need for democratic inputs on

⁵ Because there was not sufficient agreement to select the American capital before the Constitution was created, the placeholder phrase “District” was used in the text. The relevant parts of the Constitution talked about how the capital would operate, but not where exactly it would be. See U.S. CONST. art. I, §8, cl. 17 (“The Congress shall have power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may . . . become the Seat of the Government of the United States”); *id.* (“The Congress shall have power . . . to exercise . . . Authority over all places purchased . . . for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings.”).

⁶ See KENNETH R. BOWLING, *THE CREATION OF WASHINGTON, D.C.: THE IDEA AND LOCATION OF THE AMERICAN CAPITAL* 206 (1993) (stating that the location of the federal government was “the first major crisis” facing the new country).

⁷ Act for Establishing the Temporary and Permanent Seat of the Government of the United States, ch. 28, 1 stat. 130 (1790).

⁸ See BRIAN BALOGH, *A GOVERNMENT OUT OF SIGHT: THE MYSTERY OF NATIONAL AUTHORITY IN NINETEENTH-CENTURY AMERICA* 112 (2009).

⁹ See Whit Cobb, *Democracy in Search of Utopia: The History, Law, and Politics of Relocating the National Capital*, 99 DICK. L. REV. 527 (1995) (discussing the history of these debates); Fontana, *Federal Decentralization*, *supra* note 1, at 735-57.

¹⁰ See *The “Welcome” Demonstration*, EVENING STAR (D.C.), Dec. 22, 1870, at 4; *The Boys in Blue*, N.Y. TRIB., Dec. 21, 1870, at 1.

¹¹ See *President Shifts 10,000 Employes [sic] Out of Washington*, N.Y. TIMES, (Dec. 20, 1941), <http://www.nytimes.com/1941/12/20/archives/president-shifts-10000-employes-out-of-washington-dozen-bureaus.html>.

¹² See, e.g., Jacob E. Gersen, *Unbundled Powers*, 96 VA. L. REV. 301, 310 (2010) (“Elections are the main mechanism by which representative democracy” operates); Jane Mansbridge, *Rethinking Representation*, 97 AM. POL. SCI. REV. 515, 516-25 (2003) (discussing the different forms of representation and the different ways of providing that representation).

¹³ THE FEDERALIST NO. 51, at 321-22 (James Madison) (Isaac Kramnick ed., 1987).

what the federal government is doing in-between elections.¹⁴ One means by which democracies can retain their democratic legitimacy is when the capital can speak for the country in-between elections.

Certainly at the founding, and even now, where the capital is located shapes who holds power in the capital.¹⁵ Those in the Washington metropolitan area are more likely to serve in important positions in the federal government¹⁶ and are more likely to be able to influence those serving in important positions in the federal government.¹⁷ Consider that two of the nine Supreme Court Justices went to the same private high school—and the same one as the current head of the Federal Reserve Bank.¹⁸ Washington mattering as a place is part of the reason why over seven billion dollars are spent every year in Washington on lobbying the federal government, much of it spent on law firm lawyers' lobbying.¹⁹

Only certain types of people will wish to relocate to Washington to make their lives and their careers in the federal government. Once they are in Washington, because they are working in a company town, these federal officials are mostly hearing from those working in or working with the federal government. My research with Charles Hunt has found more generally that 58 percent

¹⁴ It should be noted that the frequency and sophistication of modern polling performs some of these functions. For a great discussion of some of these issues, see, SARAH E. IGO, *THE AVERAGED AMERICAN: SURVEYS, CITIZENS, AND THE MAKING OF A MASS PUBLIC* (2008).

¹⁵ For discussions of how place shapes who holds federal power, see Alberto F. Ades & Edward L. Glaeser, *Trade and Circuses: Explaining Urban Giants*, 110 Q.J. ECON. 195, 195 (1995); Erik J. Engstrom, Jesse R. Hammond & John T. Scott, *Capitol Mobility: Madisonian Representation and the Location and Relocation of Capitals in the United States*, 107 AM. POL. SCI. REV. 225, 225 (2013); Fontana, *Federal Decentralization*, *supra* note 1, at 735-57; Giuseppe Rossitti, *Centers of Power: US Capitals' Location and Ability Sorting of Legislators* (Nov. 4, 2019), <https://www.lse.ac.uk/economics/Assets/Documents/job-market-candidates-2019-2020/giuseppe-rossitti-US-Capitals-31-October.pdf>.

¹⁶ See Anne Joseph O'Connell, *Shortening Agency and Judicial Vacancies Through Filibuster Reform? An Examination of Confirmation Rates and Delays from 1981 to 2014*, 64 DUKE L.J. 1645, 1646 (2015) (finding that roughly one-third of political appointees are living in the Washington metropolitan area at the time of their selection).

¹⁷ See, e.g., 10 ANNALS OF CONG. 998-99 (1801) (featuring a statement by members of Congress noting that local residents in Washington could be sure that "their voice would be heard" because they were proximate to the seat of government); D.C. Fed'n of Civ. Ass'n. v. Volpe, 434 F.2d 436, 461 (D.C. Cir. 1970) (Mackinnon, J., dissenting) ("It is commonly recognized that their close proximity to the seat of Government, the influence of a favorable local press that articulates their position and the frequency with which members of Congress, long resident in the District and its environs, tend to acquire similar local interests to those of local residents, gives them more actual influence in Congress than citizens of states."). This is part of the reason why lobbyists congregate in Washington, and why the real estate where they congregate can be so expensive—because it is so valuable. See Rodriguez & Schleicher, *infra* note 55, at 651 ("Firms locate on K Street because it puts them close to their clients.").

¹⁸ See Sarah Mervosh, *Kavanaugh and Gorsuch Both Went to the Same Elite Prep School*, N.Y. TIMES, July 10, 2018, at A1.

¹⁹ See Timothy M. LaPira & Herschel M. Thomas, *Just How Many Newt Gingrich's Are There on K Street? Estimating the True Size and Shape of Washington's Revolving Door* (Apr. 5, 2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2241671.

of people believe that “most of the people who are most important to me live close to where I live.”²⁰ Nearly two-thirds of people report that most of the people they speak to most often about politics live close to them.²¹ Others have discovered similar localized interactive dynamics for political leaders in particular.²²

The Republican Party has dominated anti-Washington rhetoric for some time because its rhetoric has been focused on being both anti-government and anti-elite. This is the party whose last president, Donald Trump, wanted to “drain the swamp,”²³ and which revered a president, Ronald Reagan, who stated that “[g]overnment is not the solution to our problem; government is the problem.”²⁴ Concerns about the capital, though, should span the ideological and partisan spectrum. James Madison wrote that “[t]he accumulation of all powers . . . in the same hands . . . may justly be pronounced the very definition of tyranny.”²⁵ If the Democratic Party is concerned about a federal government that is responsive to a smaller, elite group of people, it should be considering that this is facilitated by placing federal officials in a place that undermines their ability to understand a larger, more diverse group of people.

The Madisonian principle has largely escaped notice as scholars examining the democratic nature of the American political system turn their focus to other important issues. Doctrinal areas like election law determine the rules governing elections that send officials to Washington,²⁶ while doctrinal areas like the separation of powers diffuse power between elected officials and civil servants once they are in Washington.²⁷ Neither of these areas is truly focused on how it matters what Washington is like.

²⁰ See David Fontana & Charles Hunt, *Do Voters Prefer Local Candidates? Multimethod Evidence from the U.S. Senate* (working paper under submission at a political science journal, on file with the author) (2022). For a more general discussion of these findings, see David Fontana, *America’s Hidden Crisis of Place and Power*, WASH. POST MAG. (Aug. 2, 2021), <https://www.washingtonpost.com/magazine/2021/08/02/americas-hidden-crisis-power-place/>.

²¹ See Fontana & Hunt, *supra* note 20.

²² See Filipe Campante, Quoc-Anh Do & Bernardo Guimaraes, *Capital Cities, Conflict, and Misgovernance*, 11 AM. ECON. J.: APPLIED ECONOMICS 298 (2019); Filipe Campante & Edward L. Glaeser, *Yet Another Tale of Two Cities: Buenos Aires and Chicago*, 27 LATIN AM. ECON. REV., no. 2, 33 (2018).

²³ See David Fontana, *Trump Administration Drains the Swamp the Wrong Way*, CNN (June 24, 2019, 8:18 AM), <https://www.cnn.com/2019/06/24/opinions/trump-decentralizing-government-wrong-way-fontana/index.html> [<https://perma.cc/PW39-LW2L>] (quoting President Trump).

²⁴ JOHN B. JUDIS & RUY TEIXEIRA, *THE EMERGING DEMOCRATIC MAJORITY* 151-52 (2002) (quoting the speech).

²⁵ See THE FEDERALIST NO. 47, at 270 (James Madison) (Glazier & Co., ed., 1826).

²⁶ See Pamela S. Karlan, *Constitutional Law, The Political Process, and the Bondage of Discipline*, 32 LOY. L.A. L. REV. 1185, 1187 (1999) (describing election law as involving the “legal regulation of the political process”).

²⁷ See, e.g., Heather K. Gerken, Windsor’s *Mad Genius: The Interlocking Gears of Rights and Structure*, 95 B.U. L. REV. 587, 593 (2015) (noting the existence of structural constitutional law as a field focused more on relationships between institutions).

Likewise, how much power needs to be devolved from Washington to state governments or to regions depends on how well Washington is doing understanding needs outside of Washington in the first place. There will inevitably be a need to have some policy decisions made outside of Washington because there is only so much you can understand about one place if you live in another, different place.²⁸ However, a capital that truly comprehends its country can substitute—at least in part—for decentralization.²⁹ If Washington features plenty of people from upstate New York who still are exposed to upstate New York priorities and perspectives, then there is less of a need to decentralize power there to regulate it according to its local needs.

It is important to identify two important caveats with this shorter article. First, the goal of this article is not to consider Washington as the capital given *everything* that a capital should be, but just to evaluate Washington as the capital given everything *democratic* that a capital should be. The Madisonian principle is not the only thing that matters in capital selection. For instance, one might want to consider whether the capital location can facilitate the production of technical experts that the federal government needs in order to govern effectively. These concerns are largely beyond the scope of this article, although it is worth noting that most things that people would want from a capital are harder to generate if the capital is a company town. Second, the degree to which Washington fails to understand the rest of the country will matter more or less normatively based on how much power Washington has relative to the rest of the country. If there are already state officials outside of Washington with meaningful amounts of power—and federal officials outside of Washington with power as well—then the degree of disconnection in Washington will matter to a meaningful degree, but relatively less so.

Part I considers how Washington came to be a company town. Part II considers the problems this generates. Part III very briefly considers alternatives to a company town capital, and some of the benefits and negatives of these alternatives.

I. CAPITAL CHOICE

There were many actual reasons why the United States placed its permanent capital where it did that had very little to do with ideal theories of democratic design. Many of these reasons resulted in a capital city founded in horror rather than in democracy. The District of Columbia, for instance, was a slave-friendly location, which meant that slave-owning federal officials would not need to

²⁸ See, e.g., *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (“This federalist structure of joint sovereigns preserves to the people . . . a decentralized government that will be more sensitive to the diverse needs of a heterogeneous society . . . opportunity for citizen involvement in democratic processes . . . and it makes government more responsive.”).

²⁹ See Fontana, *Federal Decentralization*, *supra* note 1, at 774-76.

change their arrangements in order to govern from Washington.³⁰ Washington remained largely a Southern city for the entirety of its pre-Civil War existence as a means of preserving the Southern hold on American federal power.³¹ Southerners held the most important positions in the federal government for the supermajority of the first fifty years of the United States.³²

There were and should have always been other reasons for selecting an American capital that sounded more in democratic theory. By choosing a city where there was very little happening at the time it became the capital, the decision to place the capital in Washington eventually resulted in a choice to place the federal government in a company town. With no other meaningful industries already in Washington—and the federal government being an attractive industry—it made it much more likely that federal power would be exercised from a place dominated exclusively by the federal government.

A. Rural Beginning

Primate cities—a single city that dominates a country—were usually the places where countries located their capitals in the late eighteenth century.³³ A world that knew Athens and Rome before and London and Paris then did not know of any comparable place in the United States. The largest metropolitan area—according to the first Census of 1790—was New York City, but it only had 1 out of every 119 residents in the country.³⁴ New York City was also not that much more significant than Philadelphia, the second-largest place in that first Census with 1 out of every 138 residents in the country.³⁵ While metropolitan areas have gradually had a greater and greater share of residents, there has never been an American primate city comparable to a Rome or a London. For instance, New York City is still the largest metropolitan area, but as of last year it still has just one out of every 14 residents in the country.³⁶ New York City and Philadelphia each featured the capital for a

³⁰ See Forrest, *supra* note 2.

³¹ See Carl Abbott, *Dimensions of Regional Change in Washington, D.C.*, 95 AM. HIST. REV. 1367, 1367 (1990) (“[Washington] took its early tone from the southern ports of Alexandria and Georgetown. The imprint of the colonial South was evident among Washington's elite in a taste for racetracks and gambling, the prestige of lawyers and placeholders, attention to social caste, and other values of plantation society.”).

³² See *id.* (“Southerners served as speaker of the House of Representatives for forty-one of the first fifty years that Washington was the seat of government, as president for forty-two, and as chief justice for fifty.”).

³³ A primate city is usually defined as not just the *single* dominant city in a country, but a city so dominant that its status is well above all other competitors. The classic definition of a primate city—from some time ago now—is one that is twice as large as the next largest city across relevant metrics. See Mark Jefferson, *The Law of the Primate City*, 29 GEOGRAPHICAL REV. 226 (1939).

³⁴ See *1790 Fast Facts*, U.S. CENSUS BUREAU, https://www.census.gov/history/www/through_the_decades/fast_facts/1790_fast_facts.html.

³⁵ See *id.*

³⁶ See *New York City, Combined Statistical Area* (2022), https://www.citypopulation.de/en/usa/combmetro/408_new_york_newark/.

period of time before it moved to the District of Columbia at the end of 1800, and both remained central contenders for permanent capital status before this matter was finally settled by federal statute in 1790.³⁷

When Congress enacted the Residence Act of 1790, placing federal power in the District of Columbia, the country was about 95 percent rural,³⁸ compared to about 19 percent today.³⁹ If the goal was to create a capital that generated a life comparable to what the rest of the country experienced, then, a rural capital made good sense. A rural country needed a rural capital.

Regardless of how representative a rural capital would be, there was also a widespread sentiment that a rural capital would be able to counterbalance any concentration of elites in a single place. The goal was to separate out the political elite from other elites.⁴⁰ If the capital was placed in a metropolitan area—particularly an important one—federal officials would be overwhelmed by the commercial elites already present in the nation’s largest commercial cities.⁴¹ When the capital was located in New York City, many had observed that even George Washington had been lured by the undemocratic temptations of the wealth located there.⁴² In the years to come, American state capitals were often placed away from commercial centers because of these concerns.⁴³ The goal was therefore for the United States to have “two centers, one governmental and the other economic [New York]. This separation of powers, as emphatic as anything in the Constitution, had no parallels in the Western world.”⁴⁴

³⁷ See BOWLING, *supra* note 6, at 206.

³⁸ The Census Bureau only began identifying “rural” as a distinctive category following the 1870 Census. See Michael Ratcliffe, Charlynn Burd, Kelly Holder & Alison Fields, *Defining Rural at the U.S. Census Bureau* (Dec. 2016), https://www2.census.gov/geo/pdfs/reference/ua/Defining_Rural.pdf. (“The Census Bureau began identifying urban places in reports following the 1870, 1880, and 1890 Censuses. In the early part of the twentieth century, the Census Bureau adopted an official definition.”). The 1790 Census used different categories than the current census, but still can be used to infer the percentage of the population residing in rural areas. *Urban and Rural Populations in the United States*, HOUSING ASSISTANCE COUNCIL, https://ruralhome.org/wp-content/uploads/storage/research_notes/Rural_Research_Note_Rurality_web.pdf.

³⁹ See *New Census Data Show Differences Between Urban and Rural Populations*, U.S. CENSUS BUREAU (Dec. 8, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-210.html>.

⁴⁰ See EDWIN G. BURROWS & MIKE WALLACE, *GOTHAM: A HISTORY OF NEW YORK CITY TO 1898*, 306 (1998).

⁴¹ See, e.g., Amos B. Casselman, *The Virginia Portion of the District of Columbia*, 12 REC. COLUM. HIST. SOC’Y WASH., D.C., 115, 116 (1909) (“[I]t was suggested that the capitol ought not to be located in the same [place as] . . . any large commercial city.”).

⁴² See BURROWS & WALLACE, *supra* note 40, at 301 (reporting how Washington hosted events that were “numerously attended by all that was fashionable, elegant and refined on society” and excluded “the more coarse and boisterous partisan”).

⁴³ See Bill Thayer, *The Removal of the Capital from Iowa City to Des Moines*, 14 IOWA J. HIST. & POL. 56 (1916) (noting the debate about how many “speculators” should be close to where government was to be located); Neil B. Thompson, *A Half-Century of Capital Conflict: How St. Paul Keep the Seat of Conflict* 43 MINN. HIST. SOC’Y 238 (1973) (noting the debate regarding how many “frontier speculators” would serve in government).

⁴⁴ BURROWS & WALLACE, *supra* note 40, at 306.

Instead of the pull of these alternative, entrenched elites, the idea was also that placing political elites together with one another and apart from other elites would start to generate a shared national loyalty to the country rather than a narrow, elite identity.⁴⁵ Chief Justice John Marshall, for instance, wanted the justices all to reside together in a single place in Washington. He wanted to “use the camaraderie of boarding-house life” to generate a loyalty towards the Supreme Court rather than to prior places and factions to which justices belonged.⁴⁶

Some of this pro-rural thinking also just reflected an anti-urban bigotry that persists to this day. Thomas Jefferson, for instance, said that he “view[ed] great cities as pestilential to the morals, the health, and the liberties of man.”⁴⁷ He wrote that a city as the capital would have been a “degeneracy” and a “canker” on any aspirations for a democratic country.⁴⁸

The eventual preference for the District was a reflection of this decision to go rural. The District of Columbia had just about 4,000 residents when the capital moved there, making it about 7 percent of the size of New York City.⁴⁹ States had made similar decisions at the same time. Albany was made the capital of New York State in 1797 even though it was far smaller than New York City, for instance.⁵⁰

B. Company Town Ending

The relatively rural origins of the American capital were fragile. Because the federal government would grow surely but steadily, Washington did as well. And since there were no other major industries already in Washington, Washington was very likely to grow into a metropolitan area dominated by a single company: the federal government.

It is far from inevitable that as a government grows enormously, so will the capital city which hosts that government as well. Albany was made the capital of New York State in 1797, not

⁴⁵ For a general discussion of these social networks as generating meaningful loyalties, see David Fontana & Aziz Huq, *Institutional Loyalties in Constitutional Law*, 85 U. CHI. L. REV. 1, 59-64 (2018).

⁴⁶ Ruth Bader Ginsburg, *The Supreme Court: A Place for Women*, 32 SW. U. L. REV. 189, 191 (2003).

⁴⁷ 10 THE WRITINGS OF THOMAS JEFFERSON 173 (Andrew A. Lipscomb & Albert E. Bergh, eds., 1904).

⁴⁸ THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 165 (William Peden ed., 1972).

⁴⁹ The District was not a defined geographical entity when the census was taken in 1790, because the capital had not yet been formally approved to be placed there, so the relevant lands were part of other jurisdictions. In the 1800 Census, though, there were roughly 4,037 residents in the district, as compared to 60,515 in New York City. For Washington, see The National Archives and Records Administration, *Federal Census Records for the District of Columbia Relating to Slavery, 1800–1860*, <https://www.archives.gov/files/research/census/african-american/slavery-in-dc-1800-1860.pdf>. For New York City, see *Census of 1800*, U.S. CENSUS BUREAU, https://www.census.gov/history/www/through_the_decades/fast_facts/1800_fast_facts.html.

⁵⁰ See, e.g., Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163, 1195 (2018) (“The distinction between the dangerous city and the pastoral country was not invented in the twentieth century, however.”).

New York City, but Albany is still not the major metropolitan area in that state. Tallahassee has been the capital of the third-largest state, Florida, since before Florida entered the union, but is likewise still not a major metropolitan area. Of the 15 largest metropolitan areas, only 2 feature state capitals: Atlanta and Phoenix.⁵¹ State governments have grown substantially, but that growth was not substantial enough to transform smaller state capital cities into major metropolitan areas.⁵²

However, the federal government has been larger and grown faster for some time, and this made Washington into a major metropolitan area. One newspaper at the time that the capital moved to Washington noted that Washington “did not have a single great mercantile house and had a total absence of all sights, sounds, or smells of commerce.”⁵³ There are now 184,300 percent more federal officials in Washington than in 1800.⁵⁴ The civilian workforce alone has expanded 300 percent since 1940. For every dollar of local economic output produced by a federal official, there are usually two dollars produced indirectly in terms of other positions. This can range from real estate agents to the lobbying industry that exists in Washington to influence the federal government.⁵⁵

The result is that Washington went from a small town to a major metropolitan area. In 1860, it was a Southern town with 61,000 people, and now it is a metropolitan area with over 6 million people.⁵⁶ Washington was one of the 10 largest cities in the country in 1820, and then again in 1950 and more constantly since that time.⁵⁷

Other metropolitan areas that are a dominant location for a particular industry nonetheless manage to feature other industries as well. New York City might be known as the domestic center of the finance industry, which is roughly one-third of its economy.⁵⁸ But its technology industry is

⁵¹ See *Metropolitan and Micropolitan Statistical Area Data Tools*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/metro-micro/data/tools.html>.

⁵² See Glenn R. Carroll & John W. Meyer, *Capital Cities in the American Urban System: The Impact of State Expansion*, 88 AM. J. SOCIO. 565 (1982).

⁵³ STANLEY ELKINS & ERIC MCCITRICK, *THE AGE OF FEDERALISM, 1788-1800*, 181 (1993) (quoting the newspaper).

⁵⁴ See Office of Personnel Management, *Federal Civilian Employment*, <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/>.

⁵⁵ See Daniel B. Rodriguez & David Schleicher, *The Location Market*, 19 GEO. MASON L. REV. 637, 651 (2012) (“A lobbyist talking to another lobbyist about congressional procedure is producing information spillovers that will improve the listener’s productivity at work.”).

⁵⁶ See Abbott, *supra* note 31, at 1368.

⁵⁷ See David Fontana, *Washington is Now a Cool City. That’s Terrible News for American Democracy*, WASH. POST MAGAZINE (May 7, 2018), https://www.washingtonpost.com/lifestyle/magazine/washington-is-now-a-cool-city-thats-terrible-news-for-american-democracy/2018/05/04/380682da-3f40-11e8-974f-aacd97698cef_story.html.

⁵⁸ See James Orr & Giorgio Topa, *Challenges Facing the New York Metropolitan Area Economy*, CURRENT ISSUES IN ECON. & FIN., Jul.-Aug. 2006, https://www.newyorkfed.org/research/current_issues/ci12-1.html.

also sizeable, also at about one-third of the economy.⁵⁹ The presence of an industry locally creates asset-specific investments in that industry that make it costly to switch industries.⁶⁰ The industry features many jobs, which encourages people to specialize in that industry since they know there will be many jobs in it.⁶¹ There are also investments in physical facilities that support the salient local industry. Washington, though, did not feature a sizeable industry already in existence when the federal government was relocated there, reducing the chances that one would be generated.

Metropolitan areas often create new industries where they did not exist previously. It is possible that Washington might not have been a company town because another company could have developed in the same town. But that was always going to be harder to do because of the unique permanence and appeal of the federal government.

In other metropolitan areas that have seen changes regarding which industries dominated locally, it has often been because a former industry disappeared. Boston was a sailing city, then a manufacturing city, and now a high technology city.⁶² Boston switched from one industry to another because larger forces made the prior industry impractical.⁶³ The federal government is never going to disappear.

There also was never quite the push away from the federal government because of the unique returns that federal employment offers federal workers. There is a literature documenting the greater public service or policy motivations that those working in or with government sometimes have.⁶⁴ At the highest levels of federal employment in particular, people are choosing power and status over the wealth that might be offered by any comparable private employment.⁶⁵

⁵⁹ See Jillian Eugenios, *The Most Innovative Cities in America*, CNN MONEY (Oct. 10, 2014), http://money.cnn.com/gallery/technology/2014/10/07/most-innovative-cities/index.html?iid=HP_Highlights.

⁶⁰ See Peter Alexis Gourevitch, *The Governance Problem in International Relations*, in STRATEGIC CHOICE AND INTERNATIONAL RELATIONS 137, 144-45 (David A. Lake & Robert Powell eds., 1999) (“[A]ctors develop investments, ‘specific assets,’ in a particular arrangement—relationships, expectations, privileges, knowledge of procedures, all tied to the institutions at work . . . [A]ctors . . . have incentives to protect their investment by opposing change.”).

⁶¹ See ALFRED MARSHALL, PRINCIPLES OF ECONOMICS 271-72 (8th ed., 1953).

⁶² See Edward L. Glaeser, *Reinventing Boston: 1640-2003* (Harv. Inst. Econ. Rsch., Discussion Paper No. 2017, 2003).

⁶³ See *id.* at 6 (“The basic pattern of Boston’s history is that the city specializes in one area and inevitably either this area declines or their dominance in the area is challenged. The survival of the city hinges on re-orientation.”).

⁶⁴ See Anthony M. Bertelli, *Determinants of Bureaucratic Turnover Intention: Evidence from the Department of the Treasury*, 17 J. PUB. ADMIN. RSCH. & THEORY 235 (2007). See generally M. Todd Henderson & Frederick Tung, *Pay for Regulator Performance*, 85 S. CAL. L. REV. 1003, 1007 (2012) (“[I]t is assumed that those individuals who self-select into regulatory jobs will value public service and will do the work of aligning performance with desired social welfare outcomes.”).

⁶⁵ See Anthony M. Bertelli & David E. Lewis, *Policy Influence, Agency-Specific Expertise, and Exit in the Federal Service*, 23 J. PUB. ADMIN. RSCH. & THEORY 223, 224 (“Our evidence suggests that acquiring

The lesser power and status of state governmental work might make it less desirable relative to private opportunities. This could be why state capital cities have grown other private-sector industries—think of Austin, Texas, and the emergence of many companies there.

Another reason why the creation of an additional industry was made more difficult was that not all—or maybe even much—of the human capital developed when working in or with the federal government is transferable to large realms of private employment. As the federal government regulated more technical areas, the work of the federal government became more technical and required those with unique technical backgrounds to regulate those areas.⁶⁶ It would not be enough to understand financial markets, for instance. One has to understand how to *regulate* financial markets. These sorts of job requirements demand asset-specific investments, and those investments cannot be fully realized in other industries that exist unrelated to financial *regulation*.⁶⁷ An expertise in financial regulation can generate many lucrative private-sector opportunities, but they will still be opportunities related to the federal government—not an expertise that lends itself to an entirely private industry developing in Washington.

II. CAPITAL CONSEQUENCES

The existence of Washington as a company town influences who precisely works for the federal government, and what influences these federal officials in their work. In both situations, these dynamics are democratically problematic. Not enough Americans can work for or with the federal government, and those might not be the ones we want with that kind of influence—all because of Washington as a company town.

A. Moving to the Company Town

Any single city will struggle to capture within its borders all of the diversity of the large American republic.⁶⁸ There are roughly 330 million people in the United States, representing so many different backgrounds and perspectives. The Census lists 270 industry codes, and that is probably

[federal] agency-specific human capital — knowledge and skills that are nontransferable to employers outside the agency — drives down turnover intention.”).

⁶⁶ See, e.g., *Crowell v. Benson*, 285 U.S. 22, 46 (1932) (talking about the importance of “experts” to the administrative state).

⁶⁷ See Rodriguez & Schleicher, *supra* note 55, at 651 (“A lobbyist talking to another lobbyist about congressional procedure is producing information spillovers that will improve the listener’s productivity at work.”).

⁶⁸ See THE FEDERALIST No. 10, at 126-28 (James Madison) (Isaac Kramnick ed., 1987) (noting the “greater number of citizens, and greater sphere of country” over which the American republic “may be extended”).

understating the number of discrete industries.⁶⁹ Even describing someone as participating in the same industry as another person does not describe the role that they play in that industry. Jeff Bezos works in the same industry as someone loading boxes at the Amazon warehouse, yet their roles in that industry are—to say the least—quite different. There are more than 270 variations of people that we would want to be present and therefore heard in a capital location.

Any single capital city will also struggle to represent the country because of the unique human capital that is now necessary to serve in important positions in the federal government. As federal power became more complicated, the people qualified to exercise it therefore became more unique. A capital city is inevitably going to feature a large number of highly connected, highly skilled, and usually therefore highly wealthy people. Political appointees in the executive branch, for instance, need a combination of skill and network to obtain their positions and succeed in them.⁷⁰ That usually means these appointees will have attended selective universities⁷¹ and made enough money so that they can tolerate the lower pay of public service.⁷² Civil servants—at least since the Pendleton Act—will often face competitive examinations or other filtration mechanisms that will inevitably sort for similar criteria (even if lesser in magnitude).⁷³

With this large number of highly affluent and highly skilled residents, inevitably Washington will face the same struggles to be inclusive that other metropolitan areas are also facing. As metropolitan areas struggle to recruit and to support less-educated workers, these types of workers increasingly are lacking from any significant metropolitan area, and particularly from the most prominent metropolitan areas.⁷⁴ Any place that hopes to speak to and for the country will deserve and face these criticisms. Think, for instance, of the constant refrain about “Hollywood

⁶⁹ See *Industry Categories*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/employment/industry-occupation/about/industry.html#:~:text=The%20Census%20Industry%20Code%20list%20consists%20of%20270%20categories%20for,military%2C%20classified%20into%2020%20sectors>.

⁷⁰ See David E. Lewis, Gary E. Hollibaugh Jr. & Gabe Horton, *Presidents and Patronage*, 58 AM. J. POL. SCI. 1024 (2014) (discussing the balance of competence and connections that political appointees have).

⁷¹ See Patrick J. Egan, *Ashton Carter and the Astoundingly Elite Educational Credentials of Obama’s Cabinet Appointees*, Dec. 5, 2014, WASH. POST, <https://www.washingtonpost.com/news/monkey-cage/wp/2014/12/05/ashton-carter-and-the-astoundingly-elite-educational-credentials-of-obamas-cabinet-appointees/> (discussing the educational background of cabinet appointees).

⁷² See Fontana & Huq, *supra* note 45, at 41-44 (talking about the financial implications of federal governmental service).

⁷³ See Pendleton Act § 2, 22 Stat. 403-04 (1883).

⁷⁴ Economist David Autor has addressed these issues in his research. For an accessible summary of this research, see David Autor, *The Faltering Escalator of Urban Opportunity*, MIT WORK FOR THE FUTURE (2019), <https://workofthefuture.mit.edu/wp-content/uploads/2020/09/2020-Research-Brief-Autor.pdf> (“Since 1980, college-educated workers have been steadily moving into affluent cities while non-college workers have been moving out.”).

elites” whose entertainment programming is out of touch with most Americans.⁷⁵ Of course, as rural areas struggle to recruit higher-skilled workers, they have a harder time recruiting these types of workers.⁷⁶ As an example, state capitals not located in major metropolitan areas often permit their most important workers—including their governors—to work from a major metropolitan area instead.⁷⁷

While these difficulties of making capitals democratic are almost features of modern government rather than bugs, a company town has it much worse. The Washington metropolitan area houses only about 2 percent of the nation’s population. For the other 98 percent of the population, they have to want to work in the federal government so much that they can and are willing to move a meaningful distance, live in an expensive metropolitan area, and forego prior close personal and professional relationships that exist and cannot be easily transported from a prior place of residence. The returns from other industries are not as numerous or as significant in Washington, because the opportunities from these other industries are not as present, particularly at the highest levels of the Washington labor market. That means someone must be highly motivated to work with or for the federal government to relocate to Washington. What type of person would that be, and would that be the kind of person we want doing democracy’s work in-between elections?

The optimistic version of the selection effect⁷⁸ of the company town is that it selects for a “Mr. Smith” wanting to go to Washington.⁷⁹ People having to endure so much to go to Washington to work in the federal government means that Washington will uniquely feature many public-oriented, virtuous federal officials. New York City or San Francisco might select for those who value the best jobs there because they pay the most money or offer enormous power. By contrast, Washington would feature the person who moves to Capitol Hill to be a young communications

⁷⁵ See, e.g., Neil Gross, *Why Is Hollywood So Liberal?*, N.Y. TIMES (Jan. 27, 2018), <https://www.nytimes.com/2018/01/27/opinion/sunday/hollywood-liberal.html> (noting the empirical evidence about the disconnect between the entertainment industry and the rest of the country).

⁷⁶ See Autor, *supra* note 74, at 4 (noting that jobs requiring “specific skills and shared expertise” and paying “higher wages” are now “comparatively scarce in suburbs and rural areas, far away from the office towers . . . bustling urban production centers.”).

⁷⁷ See Bill Mahoney, *A Rare Sight: Cuomo, in Public, in Albany*, POLITICO (Dec. 15, 2016), <https://www.politico.com/states/new-york/albany/story/2016/12/cuomos-public-appearances-in-albany-still-rare-108097> (“[T]his year there have been 201 days in which [then-New York Governor Andrew Cuomo] has spent at least some time in New York City and 88 ‘in the New York City area’ . . . [and only] 62 days in Albany.”).

⁷⁸ See Adrian Vermeule, *Selection Effects in Constitutional Law*, 91 VA. L. REV. 953, 953 (2005) (describing “selection effects” as means that ensure the right kinds of “officials are selected” using “optimal incentives”).

⁷⁹ See Frank S. Nugent, *Frank Capra’s ‘Mr. Smith Goes to Washington’ at the Music Hall Sets a Seasonal High in Comedy*, N.Y. TIMES (Oct., 20, 1939) at A11 (describing the character played by Frank Capra in the movie as being motivated to do right when coming to Washington).

staffer in Congress, or the infectious disease doctor who moves to Washington to work at the National Institutes of Health to prevent the next pandemic. This was part of the idea of creating a single, new capital city uniquely dedicated to the federal government. It would select for more of the “continental characters” dedicated to the public good and fewer of the factional leaders dedicated to other considerations.⁸⁰

Even if this is true, of course, part of the idea of the Madisonian principle of the capital town is that it features *everyone*, regardless of how undesirable they may be deemed by everyone else. A company town that is dominated by federal officials at the highest levels who are the most affluent and educated and connected Americans will have a difficult time understanding the rest of the country,⁸¹ even if federal officials are uniquely public-oriented (because not everyone is). If there were other companies with other positions—at higher or even middle or lower levels—there might be more of these people in or influencing the federal government.

There are also *specific ways* in which those motivated to move to Washington might be unlike others that are undesirable for a democratic capital. These ways might cast at least some doubt on any claim that the company town is uniquely selecting for the virtuous, altruistic federal official. Moving to Washington to make a career does not necessarily select for those committed to using the company in the company town for public service. People will move to the company town because of the unique opportunities the company offers to exercise great amounts of coercive power. Power corrupts, but the ambition for great power can corrupt as well.⁸² There are many stories of the (overly) ambitious young person moving to Washington not just to improve the world, but to rule the world—think of Bill Clinton as an undergraduate at Georgetown,⁸³ or Paul Ryan navigating the conservative networks of Washington as a young Capitol Hill staffer.⁸⁴

Those heading to Washington to make a career in the federal government will be uniquely highly educated and highly politically engaged. However, individuals with those attributes tend to

⁸⁰ See Bruce Ackerman & David Fontana, *Thomas Jefferson Counts Himself Into the Presidency*, 90 VA. L. REV. 551, 560-62 (2004) (discussing the idea of “continental characters”).

⁸¹ For a great discussion of the absence of these type of people from federal power, see Nicholas Carnes, *Does the Numerical Underrepresentation of the Working Class in Congress Matter?*, 37 LEG. STUD. Q. 5 (2012).

⁸² See Daryl J. Levinson, *Empire-Building Government*, 118 HARV. L. REV. 915, 917 (2005) (discussing “empire-building” as meaning officials who desire power “at the expense of the citizenry”).

⁸³ See DAVID MARANISS, *FIRST IN HIS CLASS: A BIOGRAPHY OF BILL CLINTON*, FIRST IN HIS CLASS ch. 3 (2008).

⁸⁴ See Marin Cogan, *Margarita Man: Paul Ryan, Creature of the Beltway* (Aug. 11, 2012), GQ, <https://www.gq.com/story/the-margarita-man-paul-ryan-creature-of-the-beltway>.

be also uniquely close-minded to new ideas and to the input of others.⁸⁵ These are precisely the worst people that you want in a democratically accountable federal government.

In a highly polarized country, it may also be the case that one moves to Washington because they are uniquely motivated to pursue an ideological or partisan agenda that can be pursued in the federal government. Social identities are highly motivating and are shaped by ideological or partisan commitments, so it should be no surprise that those commitments can lead one to move to a new place to make their personal and professional lives. Highly partisan people are not necessarily great people to serve in federal positions in a democracy, since listening to others is very important in such a system and strong partisans are not great at that.⁸⁶

B. Working in the Company Town

A company town undermines democratic principles by exposing those serving in federal office to a narrower range of people than exists in a large republic.⁸⁷ The other individuals that federal officials are interacting with on a regular basis constitute the “epistemic community” shaping how these federal officials think.⁸⁸ These regular interlocutors expose federal officials to different “argument pools,” the range of different perspectives these officials are hearing.⁸⁹ Because they live and work near other federal officials, the primary members of the epistemic community for federal officials will be other individuals in Washington.⁹⁰ This is why those trying think tanks, lobbyists, and other members of the influence industry locate in Washington. This is why powerful

⁸⁵ For a helpful summary of the relevant empirical literature, see Mark R. Joslyn & Donald P. Haider-Markel, *Who Knows Best? Education, Partisanship, and Contested Facts*, 42 POL. & POL’Y 919, 919-25 (2014). See also *id.* at 921 (describing how “highly educated partisans would be better equipped to challenge information inconsistent with predispositions”); *id.* (“[H]ighly educated partisans . . . are schooled in political alternatives, possess greater ammunition with which to counter incongruent facts, and exercise biases that reinforce firmly held convictions.”).

⁸⁶ For a classic treatment, see Bernard Berelson, Paul Lazarsfeld & William McPhee, *VOTING: A STUDY OF OPINION FORMATION IN A PRESIDENTIAL CAMPAIGN* 223 (1954) (“The stronger the partisanship, the greater the (mis)perception of agreement with one’s own side and the less (mis)perception of agreement with the opposition.”).

⁸⁷ See Vermeule, *supra* note 78, at 953 (describing the importance of treatment effects on official behavior, or “the creation of optimal incentives for those who happen to occupy official posts at any given time”).

⁸⁸ See Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2648 (1997) (discussing the role these communities play in legal debates).

⁸⁹ See Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683, 715-35 (1999) (discussing the literature surrounding and importance of argument pools).

⁹⁰ See JOHN BREHM & SCOTT GATES, *WORKING, SHIRKING, AND SABOTAGE: BUREAUCRATIC RESPONSE TO A DEMOCRATIC PUBLIC* 73-74 (1997).

organizations not previously anchored in Washington—like Amazon—have opened offices here to increase their Washington influence.⁹¹

When federal officials do hear from those whose voices are not in Washington, they are hearing them in a different sound. They do not build the kind of personal, emotional connection that can help one deeply understand the plight of another.⁹² The relationship with the governed is more abstract, less intimate. It is something different altogether when someone is words on a paper rather than a neighbor down the street.

It is worth noting that the influence of the company town on federal officials is true even for those supposedly working even in more technical roles, not just democratic roles. The administrative state requires matching technocratically accomplished people to the right positions in the federal government and creating the work environment for them to be able to use their technocratic judgment.⁹³ Washington remains relatively isolated from networks that train and employ others with high-level human capital headed for other professional opportunities.⁹⁴ The trained computer scientist might have studied at Stanford or the Massachusetts Institute of Technology, but they have to leave the vibrant technology sectors in Silicon Valley and Boston to work in the federal government. The company town is selecting for those with enough expertise to qualify as experts, but also those who are willing to abandon their expertise enough to move to Washington.

Once in Washington, the expert is supposed to be removed from influences that undermine their expertise. Making it harder to remove these officials, for instance, is meant to limit the degree to which they consider their audience to be those outside of their expert communities. Their employment in the company town, though, places the expert actor in the federal government as a member of the epistemic community of the federal government, and therefore less a member of the epistemic community of the relevant expert profession. They are much less exposed to the

⁹¹ See David Fontana, *Amazon's D.C. Move Threatens the Founders' Vision for America*, POLITICO MAGAZINE (Apr. 13, 2019), <https://www.politico.com/magazine/story/2019/04/13/would-the-founders-have-freaked-out-about-amazons-dc-headquarters-226653/>.

⁹² See Deborah A. Small, George Lowenstein & Paul Slovic, *Sympathy and Callousness: The Impact of Deliberative Thought on Donations to Identifiable and Statistical Victims*, 102 ORG. BEHAVIOR & HUMAN DEC. PROC. 143, 144-45 (2007) (discussing the importance of accessible narratives shaped by personal experience).

⁹³ See, e.g., *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976) (“The Civil Service Commission, like other administrative agencies, has an obligation to perform its responsibilities with some degree of expertise.”); *Humphrey's Executor v. United States*, 295 U.S. 602, 634 (1935) (discussing how to create “a body of experts”); *Crowell v. Benson*, 285 U.S. 22, 88 (1932) (discussing the importance and means of creating “a special and expert tribunal”).

⁹⁴ For examples of these realities, see Zachary R. Neal, *The Causal Relationship Between Employment and Business Networks in U.S. Cities*, 33 J. URB. AFF. 167 (2011); Zachary R. Neal, *Differentiating Centrality and Power in the World City Network*, 48 URB. STUD. 2733 (2011).

“argument pools” of their expert professional community.⁹⁵ The trained computer scientist is no longer regularly exposed at work or at home to the ideas of the expert communities in Silicon Valley or Boston. Instead, they are reading *Politico* or hearing a lot about the Defense Department and cyber-security policy. Their reputations and career trajectory are determined much more by the “political and social networks” within the federal government than by the leaders in their expert community.⁹⁶

C. Company Town Appearance

The company town also makes the government *appear* undemocratic because it makes the government appear disconnected. There are plenty of political figures who have attacked not just the federal government, but *Washington* in particular. President Ronald Reagan famously said in his first inaugural address that “[g]overnment is not the solution to our problem; government is the problem.”⁹⁷ But Reagan had come to national prominence by using a line that criticized Washington as a “far-distant capital.”⁹⁸ He asked whether we wanted to govern “ourselves,” meaning that the government was an alien creature.⁹⁹ Ben Rhodes, the chief foreign policy advisor to President Barack Obama, derisively referred to “The Blob” as the foreign policy community whose conventional wisdom had generated many foreign policy disasters.¹⁰⁰ Rhodes made sure to note that this Blob was generated partly because it was concentrated in and isolated together in Washington.¹⁰¹

Attacks on the federal government are surely partly motivated by a deep anti-governmental sentiment that pervades American history. Yet there is also a sense in which these attacks are not

⁹⁵ See Kuran & Sunstein, *supra* note 89, at 715-35 (discussing argument pools).

⁹⁶ See Daniel P. Carpenter, *THE FORGING OF BUREAUCRATIC AUTONOMY: REPUTATIONS, NETWORKS, AND POLICY INNOVATION IN EXECUTIVE AGENCIES, 1862–1928*, at 367 (Princeton 2001) (“[B]ureaucratic power grew not at the expense of democratic participation but in a symbiotic relationship with it. Precisely because federal agencies shrewdly orchestrated the participatory energies of American politics, they cleared a unique policymaking place for themselves in the American institutional order, at least for a time.”).

⁹⁷ JOHN B. JUDIS & RUY TEIXEIRA, *THE EMERGING DEMOCRATIC MAJORITY* 151-52 (2002) (quoting the speech).

⁹⁸ See Ronald Reagan, *Address on Behalf of Senator Barry Goldwater (A Time for Choosing)* (Oct. 27, 1964) http://home.reaganfoundation.org/site/DocServer/A_Time_for_Choosing__OFFICIAL_TRANSCRIPT.pdf?docID=2864 [<https://perma.cc/V593-P4V2>].

⁹⁹ See *id.* (“[I]t’s time we ask ourselves if we still know the freedoms that were intended for us by the Founding Fathers. . . . Whether we believe in our capacity for self-government or whether we abandon the American Revolution and confess that a little intellectual elite in a far-distant capital [sic] can plan our lives for us better than we can plan them ourselves.”).

¹⁰⁰ See David Samuels, *The Aspiring Novelist Who Became Obama’s Foreign Policy Guru*, N.Y. TIMES (May 8, 2022), <https://www.nytimes.com/2016/05/08/magazine/the-aspiring-novelist-who-became-obamas-foreign-policy-guru.html>.

¹⁰¹ See *id.*

just anti-government, but anti-government because they are anti-Washington, and the two can be unbundled. People like governmental officials who seem similar to them, even for more technical institutions like bureaucracies and courts.¹⁰² Place is a relevant form of social identity, used to divide between those who seem to be a member of your group, and those who seem to be a member of another group.¹⁰³

A company town seems like a different kind of place.¹⁰⁴ There are few people like most other people in the country living and working in the company town. The absence of many important federal officials outside of Washington means there are no friends and neighbors to explain the company to people.¹⁰⁵

III. CAPITAL ALTERNATIVES

The question therefore is what type of metropolitan area would better fit a democratic system than a company town. This Part briefly considers some of the benefits and negatives of the two main alternatives: a dominant city as capital, and a secondary city as capital. A secondary city seems more desirable but is also not without its problems.

A. Dominant Cities

The most common location for national capitals is in the dominant city of a country, particularly when that dominant city is so much more substantial that it is a primate city.¹⁰⁶ The economic geography literature has demonstrated how much more productive workers are in the biggest of metropolitan areas even compared to the slightly less substantial metropolitan areas.¹⁰⁷ These

¹⁰² See generally SAMUEL KRISLOV, REPRESENTATIVE BUREAUCRACY (1974); Jane Mansbridge, *Should Blacks Represent Women? A Contingent "Yes,"* 61 J. POL. 628 (1999).

¹⁰³ See KATHERINE CRAMER, THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER (2016); Nicholas F. Jacobs & B. Kal Munis, *Place-Based Imagery and Voter Evaluations: Experimental Evidence on the Politics of Place*, 72 POL. RES. Q. 263 (2018).

¹⁰⁴ See STEPHEN F. FULLER, MARKET CONDITIONS AND DYNAMICS IN THE WASHINGTON METROPOLITAN AREA: 1990-2003 (2004), <https://cra.gmu.edu/research-reports/> (choose "Market Conditions and Dynamics in the Washington Metropolitan Area: 1990-2003" from the reports list) ("The Washington area economy is different than any other metropolitan area economy in the nation. Federal spending is what differentiates it from the others.").

¹⁰⁵ See Fontana, *Federal Decentralization*, *supra* note 1.

¹⁰⁶ See Sebastian Galiani & Sukkoo Kim, *Political Centralization and Urban Primacy: Evidence from National and Provincial Capitals in the Americas*, in UNDERSTANDING LONG-RUN ECONOMIC GROWTH: GEOGRAPHY, INSTITUTIONS AND THE KNOWLEDGE ECONOMY 121 (Dora L. Costa & Naomi R. Lamoreaux eds., 2011) ("In almost every country, the primate city [is] usually a capital city.").

¹⁰⁷ See Luis M.A. Bettencourt, Jose Lobo, Dirk Helbing, Christian Kuhnert & Geoffrey B. West, *Growth, Innovation, Scaling, and the Pace of Life in Cities*, 104 PROC. NATL. ACAD. SCI. USA 7301 (2007) (finding a linear relationship between city size and innovation).

“superstar cities”¹⁰⁸ are attracting uniquely talented people and then ensuring that these uniquely talented people benefit from the greater informational spillovers that come from increased density. It is worth noting, for instance, that New York City usually has several times more headquarters of Fortune 1000 companies than the second largest metropolitan area.¹⁰⁹ More than fifty percent of graduates of Harvard University want to live in one of these cities after they graduate.¹¹⁰

There is an appeal to leveraging these features of a dominant city and making that dominant city the capital city. It would be easier to staff the Federal Reserve Bank if it were in New York City because of the greater supply of financial experts there. A dominant city capital would also feature more different types of people moving there and interacting there because of the greater range of industries. London, for instance, is the capital of the United Kingdom. It had a finance industry that employed twenty percent more people than did the government there (at least before Brexit).¹¹¹ Individuals move to London to work in multiple different fields and may then occasionally go into government. Individuals are meeting personally and professionally with those that represent many different perspectives.

Dominant cities have their own democratic issues. If the company town is criticized for featuring a narrow group of disconnected political elites, the dominant city is criticized for featuring a narrow group of *all or more* disconnected elites. These metropolitan areas—or really just a few neighborhoods in these metropolitan areas—feature not only many industries but also the leaders of these industries.¹¹² Having these hegemonic private actors uniquely working in the same buildings and living on the same streets as governmental officials gives them easy and unique access to those in power.¹¹³ This type of privileged access is part of the reason why Amazon wanted to employ so many officials in Washington, as did many other private companies that do a lot of

¹⁰⁸ See Joseph Gyourko, Christopher Mayer & Todd Sinai, *Superstar Cities*, 5 AM. ECON. J. 167, 169 (2013) (“Locations that experience persistently high house prices relative to housing unit growth are called ‘superstars’”). Others have extended the term and applied to all metropolitan areas doing uniquely well. See, e.g., Richard Florida, *Why America's Richest Cities Keep Getting Richer*, ATLANTIC (Apr. 12, 2017), <https://www.theatlantic.com/business/archive/2017/04/richard-florida-winner-take-all-new-urban-crisis/522630> [<https://perma.cc/P9LZ-WLB5>].

¹⁰⁹ See Caitlin Dempsey, *Geography of Fortune 1000 Companies in 2018*, GEOGRAPHY REALM (Nov. 13, 2018), <https://www.geographyrealm.com/geography-of-fortune-1000-companies-in-2018/>.

¹¹⁰ See Myelle Lansat & Samantha Lee, *Almost Every Ivy League Grad Wants to Move to the Same Place After School*, BUSINESS INSIDER (Sep. 2, 2018), <https://www.businessinsider.com/most-popular-cities-for-harvard-yale-ivy-league-grads-2018-8>.

¹¹¹ See SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* 147, 207, 235 (1992).

¹¹² See Giles Duranton & Diego Puga, *Nursery Cities: Urban Diversity, Process Innovation, and the Life Cycle of Products*, 91 AM. ECON. REV. 1454 (2001) (describing “nursery cities” as more elite cities where major innovations are generated).

¹¹³ See David Fontana, *The Geography of Campaign Finance Law*, 90 S. CAL. L. REV. 102, 127-37 (2017) (describing these powerful yet isolated networks).

business with the federal government.¹¹⁴ This is not just regulatory capture made easier, but regulatory capture of the most powerful by the most powerful.¹¹⁵

There is also the *appearance* of democratic problems with dominant cities as capitals. In the United States right now, there are several “superstar cities” whose image is distinctive from other metropolitan areas.¹¹⁶ These superstar cities seem to be just as disconnected from the daily lives of people in other places as does the company town, even if for different reasons. Indeed, several years ago there was a successful movie in the United Kingdom in which “predator cities” like London ingested smaller cities.¹¹⁷ Much of the rhetoric and energy of the Brexit campaign was directed at London as a rich—and disconnected—metropolitan area.

B. Secondary Cities

A rural capital is not as necessary in a country in which roughly 81 percent of the population lives in metropolitan areas. It is also not as possible for a nation of 330 million and a federal government that employs 9 million (only 15 percent of whom are in Washington).¹¹⁸ There are state capitals that remain small, but that is because state governments remain so much smaller.¹¹⁹ Other countries that have tried to create smaller capitals have seen their capitals eventually grow into major cities—Canberra in Australia, for instance.¹²⁰

The only other choice, then, is a secondary metropolitan area. Metropolitan areas outside of the superstar cities usually lack large numbers of those at the top of the power pyramid. They do not have Fortune 1000 headquarters. They are attracting large numbers of college graduates, but not the college graduates of the highest-ranked universities—nor equally large numbers of those with graduate degrees. In that sense, though, the secondary city is more like what most Americans

¹¹⁴ See Fontana, *supra* note 91.

¹¹⁵ See David Zaring, *Against Being Against the Revolving Door*, 2013 U. ILL. L. REV. 507, 507 (“The revolving door between jobs in the public and private sector supposedly incentivizes government regulators to regulate on behalf of the industry for whom they will eventually work.”).

¹¹⁶ See *Supra* note 108.

¹¹⁷ See Ben Kenigsberg, ‘Mortal Engines’ Review: London Becomes a Death Star on Wheels, N.Y. TIMES, (Dec. 13, 2018), <https://nyti.ms/2zYsrar> [<https://perma.cc/T47U-F5EB>]. It is instructive—if hard to take too seriously—to consider what Senator Ted Cruz from Texas meant when he said Donald Trump did not understand Texas because Trump had “New York Values.” See Daniel White, *Ted Cruz Dissed “New York Values” and New Yorkers Are Not Happy About It*, TIME (Jan. 15, 2016), <https://time.com/4182887/ted-cruz-new-york-values-donald-trump-republican-debate/>.

¹¹⁸ See Abbott, *supra* note 31, at 1371.

¹¹⁹ See W.D. Wetherhell, *A Picture Perfect Capital*, N.Y. TIMES (Sept. 17, 1995), <https://www.nytimes.com/1995/09/17/travel/a-picture-perfect-capital.html> (describing Montpelier as the capital of Vermont and having only 8,000 residents).

¹²⁰ See K. F. Fischer, *Canberra: Myths and Models*, 60 TOWN PLAN. REV. 155 (1989).

experience. Most Americans live in metropolitan areas other than superstar cities.¹²¹ Roughly 1 in 5 Americans live in rural areas. Roughly 1 in 6 Americans live in superstar cities. That means almost 2 in 3 Americans live in a secondary city. These are also the places in the United States that are seeing some of the most explosive population growth, which means people are moving there.¹²² These are also the places that most state governments have made their capital cities. Only 17 of the 50 state capitals are in the largest city in that state in the first place.¹²³

One question is whether those with the highest levels of human capital—and with the most other choices—would really want to move to a place like a Houston or a Portland. State capitals have struggled to lure talent to less than desirable capital cities.¹²⁴ The hope would be—over time at least—that enough alluring positions at the highest levels of the federal government would generate population movement towards those places. This would generate consumption markets too, bringing the best goods and services. The path dependence of this would be meaningful, but gradual, so that with time a secondary city could be a desirable place for desirable people to live and work—and all without becoming a dominant city. This is, after all, the story of Washington, which started out without much and eventually grew to have a lot.

CONCLUSION

The federal government is not leaving Washington anytime soon. There have been discussions about moving the capital previously. After the Civil War, there was discussion about moving it to St. Louis, before President Ulysses Grant indicated his disapproval to *The New York Times*.¹²⁵ During the New Deal, there was discussion about creating a new capital,¹²⁶ perhaps one farther west.¹²⁷

¹²¹ See Aaron Renn, *Scaling Up: How Superstar Cities Can Grow to New Heights*, CITY JOURNAL (Jan. 23, 2020), <https://www.aaronrenn.com/2020/01/23/scaling-superstar-cities/> (defining superstar cities broadly to include Boston, Los Angeles, New York City, San Francisco, Seattle, and Washington).

¹²² See Jade Sciponi, *The Cities Americans Moved to the Most in 2021*, CNBC (May 8, 2022), <https://www.cnbc.com/2022/05/08/the-cities-americans-moved-to-the-most-in-2021-according-to-penske.html> Less the urban-rural.

¹²³ See Rossitti, *supra* note 15.

¹²⁴ See *id.*

¹²⁵ See *The "Welcome" Demonstration*, EVENING STAR (D.C.), Dec. 22, 1870, at 4; *The Boys in Blue*, N.Y. TRIB., Dec. 21, 1870, at 1.

¹²⁶ See John Crowe Ransom, *A Capital for the New Deal*, 2 AM. REV. 129, 142 (1933) (“The fight which Mr. Roosevelt makes every day is chiefly against an opposition which has its centre in the money markets of the East, where private capitalism makes its most desperate and dangerous gamble. . . . How could he better claim to represent [Southern and Western] sections against the East . . . than by setting in to move the seat of government to a place where it will be fairly representative of the national geography?”).

¹²⁷ See Richard L. Neuberger, *Should We Move the Capital to the Rockies?*, N.Y. TIMES MAGAZINE, Oct. 6, 1946, at 49 (“Washington, which was to have been the compact, friendly capital of a rural nation, has long since burst the breeches cut for it. Why not a return to the Arcadian ideal of the Founding Fathers? Why not

There are fairly substantial reasons why these capital changes never made it anywhere. Having the federal government in Washington is a sticky decision which has generated a path dependence that is difficult to reverse.¹²⁸ Then there are rules-generating dynamics that are so sticky that they might as well be asphalt. Countries do move capitals, but it is worth noting that the many vetogates that democracies feature make it harder to overcome all of the opposition to capital relocation. These political costs to capital change need to be added to whatever constitutional concerns might arise from changing the capital.¹²⁹

The problems with Washington as the capital, though, can inform one other debate that is more active than any questions about where the capital should be. Since federal officials will struggle to understand the rest of the country so long as they are living and working in Washington, more of these federal officials should be working from outside of Washington. If the capital cannot understand the country, at least we can put the capital in more parts of the country.

a fresh start somewhere along the eastern ramparts of the Rockies, not many miles from the geographic center of the United States?”).

¹²⁸ See Paul Pierson, *Increasing Returns, Path Dependence, and the Study of Politics*, 94 AM. POLL. SCI. REV. 251, 254 (2000) (“Knowledge gained in the operation of complex systems also leads to higher returns from continuing use.”).

¹²⁹ President Ulysses Grant told newspapers that changing the location of federal officials “should go through the same process . . . as amendments to the Constitution.” See EVENING STAR, *supra* note 10; see also N.Y. TRIB., *supra* note 10.