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Unbundling Populism

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ABSTRACT

Populism is having its moment on our constitutional center stage, but the way we are treating this moment is adding to the risks that populism poses to our liberal democratic constitutional order. Populism has primarily been defined in our public discussions by the loudest self-identifying populists active in democratic politics at the moment. Populism has therefore often been treated as a bundled-together concept, merging not just antiestablishment sentiments, but also authoritarian and xenophobic ones as well. Populism is an eight-letter word that is then treated like a pejorative four-letter one. Populism, though, is a they, and not an it. The antiestablishment part of populism can be empirically and logically unbundled from its authoritarian and xenophobic dimensions. Defining populism by treating it as featuring authoritarian and racist elements delegitimizes antiestablishment populism by associating it with these abhorrent features, while at the same time legitimizing these abhorrent features by labeling them populist.

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INTRODUCTION

On January 22, 2017—two days after the inauguration of Donald J. Trump as the President of the United States—the Cambridge Dictionary reported a dramatic spike in searches for the word “populism.”¹ In April and May of 2017, Marine Le Pen of the French National Front performed the best in presidential elections of any populist candidate in the history of postwar French politics.² In September of 2017, a far-right populist party entered the German Parliament for the first time in over sixty years.³ Hungary’s Fidesz⁴ and Poland’s Law and Justice (PiS) parties have been in power for several years now and have undermined core features of their liberal democratic constitutional traditions.⁵ These are just a few examples of what the *Cambridge Dictionary* recognized at the end of 2017: Populism was the word of the year.⁶

Populism is not just a word in the news, but a word with particular normative baggage. There are eight letters in the word, but it is framed as a four-letter word. Populism is being treated not just as a defining and different term, but as an idea that threatens the liberal democratic constitutional order. Scholars have been debating populism for decades, but a new burst of important scholarship has revived the concept in light of events in the past few years.⁷

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1. See *Cambridge Dictionary’s Word of the Year in 2017*, CAMBRIDGE DICTIONARY (Nov. 29, 2017), <https://dictionaryblog.cambridge.org/2017/11/29/cambridge-dictionary-word-of-the-year-2017> [<https://perma.cc/72Z3-7MLR>].
 2. See Alissa J. Rubin, *Macron Decisively Defeats Le Pen in French Presidential Race*, N.Y. TIMES (May 7, 2017), <https://www.nytimes.com/2017/05/07/world/europe/emmanuel-macron-france-election-marine-le-pen.html> (noting that “[t]he vote was a record for the National Front,” and thereby for all populist parties in postwar France).
 3. See Steven Erlanger & Melissa Eddy, *Angela Merkel Makes History in German Vote, But So Does Far Right*, N.Y. TIMES (Sept. 24, 2017), <https://www.nytimes.com/2017/09/24/world/europe/germany-election-merkel.html>.
 4. See Patrick Kingsley, *As West Fears the Rise of Autocrats, Hungary Shows What’s Possible*, N.Y. TIMES (Feb. 10, 2018), <https://www.nytimes.com/2018/02/10/world/europe/hungary-orban-democracy-far-right.html>.
 5. See Editorial Board, *E.U. Reminds Poland How A Democracy Acts*, N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/opinion/eu-poland-democracy-vote.html>.
 6. See *Cambridge Dictionary’s Word of the Year in 2017*, *supra* note 1.
 7. For some examples, see JOHN B. JUDIS, *THE POPULIST EXPLOSION: HOW THE GREAT RECESSION TRANSFORMED AMERICAN AND EUROPEAN POLITICS* (2016), STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* (2018), CAS MUDDÉ & CRISTÓBAL ROVIRA KALTWASSER, *POPULISM: A VERY SHORT INTRODUCTION* (2017), JAN-WERNER MÜLLER, *WHAT IS POPULISM?* (2016), Aziz Huq & Tom Ginsburg, *How to Lose a Constitutional*

This Article argues that the problem with populism right now is the populists.⁸ Populism is primarily defined in our public discussions by the loudest populists active in democratic politics at the moment. Populism has therefore often been treated as a bundled-together concept merging not just anti-establishment sentiments, but also authoritarian and xenophobic sentiments.⁹ Populism, though, is a they, and not an it. The more that scholars permit populism to be defined mostly—and even exclusively—by figures like Donald J. Trump or Marine Le Pen, the more conceptual problems scholars will face.

But the problem is deeper than that. As one scholar has written, “[p]opulism seems to become stronger the more intellectuals criticize it.”¹⁰ Labeling antiestablishment arguments with the same word that we use to describe authoritarians and bigots generates political harms for democratic citizens. It allows an ideology to be tainted by a subset of ideologists trying to appropriate it. The intellectual and popular energy that is dedicated to criticizing a narrow and isolated Establishment is undermined because the only word we have to describe it is the same word we use to describe figures like Trump and Le Pen. Respectable populists are therefore tainted because they share the p-word with abhorrent populists. At the same time, using a concept that does describe ideas with some intellectual merit to describe figures like Trump and Le Pen legitimates threatening figures and their threatening ideas.

Part I identifies and defines two versions of populism. The first, *unbundled populism*, relies on a basic definition of political claims-making that a large number of ordinary citizens are being excessively and unjustly disempowered by

Democracy, 65 UCLA L. REV. 78 (2018), and Aziz Z. Huq, *The People Against the Constitution*, 116 MICH. L. REV. 1123 (2018) (reviewing MÜLLER, *supra*).

8. For a helpful attempt to discover this argument in the landmark work of Richard Hofstadter, see Joshua Zeitz, *Historians Have Long Thought Populism Was a Good Thing. Are They Wrong?*, POLITICO MAG. (Jan. 14, 2018), <https://www.politico.com/magazine/story/2018/01/14/trump-populism-history-216320> [<https://perma.cc/VBP5-U9R6>] (“Hofstadter’s problem wasn’t with Populism (capital P) as much as it was with populist movements (small p), more generally.”).
9. For examples of this definition of populism, see CAS MUDDÉ, *POPULIST RADICAL RIGHT PARTIES IN EUROPE passim* (2007); Ronald F. Inglehart & Pippa Norris, *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash* 6 (Harvard Kennedy Sch., Working Paper No. 16-026, 2016), <https://research.hks.harvard.edu/publications/getFile.aspx?Id=1401> [<https://perma.cc/SV3V-Z9VK>] (noting the predominant sense in the academic literature that a “populist philosophy is a loose set of ideas that share three core features: anti-establishment, authoritarianism, and nativism”). See generally J. Eric Oliver & Wendy M. Rahn, *Rise of the Trumpenvolk: Populism in the 2016 Election*, 667 ANNALS AM. ACAD. POL. & SOC. SCI. 189 *passim* (2016) (using this definition of populism to test it empirically).
10. Pierre-André Taguieff, *Political Science Confronts Populism: From a Conceptual Mirage to a Real Problem*, 103 TELOS 9, 43 (1995).

a narrow and largely disconnected and unsympathetic elite. The second, *bundled populism*, adds to the basic framework of a disempowered people battling an unjust elite with several other conditions. In addition to political claims that pit average citizens against elites, it includes authoritarian and xenophobic claims. Scholars have not only rushed to label bundled populism as a form of populism, but increasingly as the only form of populism. Part II argues that the hostility to established power sources featured in unbundled populism can be separated out from the intolerance towards others that bundled populism says inevitably follows and deserves the label populism. Not only can unbundled populism be disaggregated from bundled populism, it must. Otherwise, scholars will corrupt legitimate forms of populism, and legitimate corrupt forms of populism.

I. UNBUNDLED AND BUNDLED POPULISM

Populism generally refers to arguments pitting a large number of average people unjustly disempowered relative to and against some power elite.¹¹ The *Cambridge Dictionary* that made populism the word of the year in 2017 defined it as, in substantial part, “political ideas and activities that are intended to get the support of ordinary people by giving them what they want.”¹² The power elite can be an elite that exists across many different sectors of society. The people can be struggling to claim power from a political elite of political leaders and parties, a legal elite of judges and lawyers, an economic elite of bankers, a media elite of journalists—each acting separately or together.¹³ The basic claim is in many ways a classic Madisonian one: “The accumulation of all powers . . . in the same hands . . . may justly be pronounced the very definition of tyranny.”¹⁴

But this claim comes in two materially and significantly different forms. This Part sets out these two forms and their conceptual differences. The next

11. The linguistic reference here is a purposeful nod to C. Wright Mills’s classic *THE POWER ELITE* (1956). See also Margaret Canovan, *Trust the People! Populism and the Two Faces of Democracy*, 47 *POL. STUD.* 2, 5 (1999) (“Populists in established democracies claim they speak for the ‘silent majority’ of ‘ordinary, decent people’, whose interests and opinions are (they claim) regularly overridden by arrogant elites, corrupt politicians, and strident minorities.”).

12. See *Populism*, *CAMBRIDGE DICTIONARY*, <https://dictionary.cambridge.org/dictionary/english/populism> [<https://perma.cc/MY47-7HK9>].

13. Jan Jagers & Stefaan Walgrave, *Populism as Political Communication Style: An Empirical Study of Political Parties’ Discourse in Belgium*, 46 *EUR. J. POL. RES.* 319, 324 (2007) (identifying the many forms of populism across many dimensions of public life).

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

Part discusses how the more provocative—and more undesirable—form of populism is distorting our consideration of these ideologies.

A. Unbundled Populism

One version of populism features a claim of a mass of people competing against and unfairly losing to a narrow and secluded elite. In a classic definition from 1956, Edward Shils defined populism as an “ideology of popular resentment against the order imposed on society by a long-established, differentiated, ruling class which is believed to have a monopoly of power, property, breeding and culture.”¹⁵ In a related and helpful definition in 2009, Robert R. Barr defined populism as “a mass movement led by an outsider or maverick seeking to gain or maintain power by using anti-establishment appeals and plebiscitarian linkages.”¹⁶ In the modern theoretical literature, other conditions have been added to the concept of populism, but several features of this basic framework remain. Cas Mudde’s important work has used features of this definition.¹⁷ Two recent and significant books on populism likewise feature similar definitions of populism as part of their definitions.¹⁸

Empirical measures of support for populism as the dependent variable likewise feature this concept of a disempowered people competing against unjustly empowered elites. One battery of questions measuring this concept asks how respondents feel that elites are actually and unjustly exercising outsized power. Some questions commonly used to measure this include asking about agreement with the following statements:

It doesn’t really matter who you vote for because the rich control both political parties.

Politics usually boils down to a struggle between the people and the powerful.

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15. EDWARD A. SHILS, *THE TORMENT OF SECRECY* 100–01 (1956).
 16. Robert R. Barr, *Populists, Outsiders and Anti-Establishment Politics*, 15 *PARTY POL.* 29, 44 (2009).
 17. See Cas Mudde, *The Populist Zeitgeist*, 39 *GOV’T & OPPOSITION* 541, 543 (2004) (stating, among other things, that populism puts “the . . . people” versus “the corrupt elite”).
 18. See JUDIS, *supra* note 7, at 15 (describing populism as being about “a conflictual relationship” between “the people” and “the elite”); JAN-WERNER MÜLLER, *WHAT IS POPULISM?* 19–20 (2016) (defining populism as featuring the “people against elites”).

The system is stacked against people like me.

People at the top usually get there . . . from some unfair advantage.¹⁹

Another dimension measures distrust of elites placed into their position because of a technical expertise. Some questions commonly used to measure sentiments towards this include: “I’d rather put my trust in the wisdom of ordinary people than the opinions of experts and intellectuals”; “When it comes to really important questions, scientific facts don’t help very much”; and “Ordinary people are perfectly capable of deciding for themselves what’s true and what’s not.”²⁰

The simpler unbundled populism is defined as both a style and a substance. As a style, populism prioritizes speaking for the people by speaking to the people. Democratic institutions are increasingly making politics into something like a technical profession, defined by the capacity of a few to claim jurisdiction by virtue of their specialized expertise.²¹ Political claims are thought to involve sophisticated arguments made in a stoic fashion. For the populist, institutions have become too complicated and too distant, and therefore too difficult to understand, and the populist style promises to render these institutions legible.²² Populism values political arguments that are clear, comprehensible, and often emotional.²³

19. See Oliver & Rahn, *supra* note 9, at 197; Adam M. Enders & Steven Smallpage, *Racial Prejudice, Not Populism or Authoritarianism, Predicts Support for Trump Over Clinton*, WASH. POST: MONKEY CAGE (May 26, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/26/these-9-simple-charts-show-how-donald-trumps-supporters-differ-from-hillary-clintons/?utm_term=.64215f91d49e [https://perma.cc/8HT9-8K56]. For similar questions, see Brian Rathbun et al., *This New Poll Shows that Populism Doesn’t Stem from People’s Economic Distress*, WASH. POST: MONKEY CAGE (Oct. 19, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/10/19/this-new-poll-shows-that-populism-doesnt-stem-from-economic-distress/?utm_term=.7a17d8ffb2bb [https://perma.cc/BLZ8-ELDE].

20. Oliver & Rahn, *supra* note 9, at 197–98.

21. See JAN-WERNER MÜLLER, *WHAT IS POPULISM?* 11 (2016) (repeating the claim made by others that “populism is simple; democracy is complex”). For a helpful overview of this as a central definition of what a profession is, see generally ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS* (1988).

22. This is often referred to as the Bagehot problem, identified by political theorist Margaret Canovan as a feature of populism and located in her work by her references to the British theorist Walter Bagehot. Democratic institutions can become sufficiently complex that they become incoherent to most citizens of those democracies. See Margaret Canovan, *Populism for Political Theorists?*, 9 J. POL. IDEOLOGIES 241, 244–45 (2004); see also Huq, *supra* note 7, at 1133–44 (discussing this problem).

23. For good theoretical treatments of the style of populism, see generally Canovan, *supra* note 22; Benjamin Moffitt & Simon Tormey, *Rethinking Populism: Politics, Mediatization and*

The improvised style of populism is a costly signal to ordinary citizens to help them identify authentic political figures that will explain these institutions to the people they are meant to serve.²⁴ Speaking in and with those institutions but in a style that can be comprehended more broadly runs the risk of alienating those institutions by not speaking in their linguistic code. Enduring this stylistic cost for the sake of making political institutions more broadly comprehensible is a signal to ordinary citizens that the populist claims-maker cares about them. Any figure that can only discuss the issues of the day in a way that is incomprehensible to the people of the day does not truly understand the concerns of the people.

Unbundled populism's style of speaking to the people has a rich lineage and contemporary support. It was Andrew Jackson's mass circulation biography, *The Life of Jackson*, that marked him as a stylistic populist.²⁵ It is Justice Sonia Sotomayor's appearances in locations open to the general public and her stylistic capacity to communicate to that public that led me to call her in an earlier article, "The People's Justice."²⁶

Unbundled populism is also a policy agenda, albeit one often paired with a more traditional "host ideology" (on a more traditional left-right spectrum)²⁷ that aspires to rectify injustices that empowered elites created for the rest of the people. In this sense, populism does not fit the standard ideological definitions of the contemporary political left or political right. On the political left in the United States, Occupy Wall Street rallied with a slogan, "We are the 99 percent."²⁸ On the political right, Tea Party Republicans provide as one of the

Political Style, 62 POL. STUD. 381 (2014). For efforts to measure the use of a populist style through content analysis, see generally Bart Bonikowski & Noam Gidron, *The Populist Style in American Politics: Presidential Campaign Discourse, 1952–1996*, 94 SOC. FORCES 1593 (2016).

24. See Michael Spence, *Job Market Signaling*, 87 Q. J. ECON 355, 361–68 (1973) (presenting a basic model that explains how those on the demand side evaluate good types and bad types on the supply side).
25. See RICHARD HOFSTADTER, *THE AGE OF REFORM* 131–34 (1955).
26. See David Fontana, *The People's Justice?*, 123 YALE L.J. FORUM 447, 448 (2014) ("Sotomayor has made a large number of appearances at events geared toward [public] audiences. . . [and] has used these appearances (and her best-selling book) to discuss her life—and the law—in a less academic fashion.").
27. See Bert N. Bakker et. al., *The Psychological Roots of Populist Voting: Evidence from the United States, the Netherlands and Germany*, 55 EUR. J. POL. RES. 302, 303 (2016) ("Populism can be combined with many different 'host ideologies.'").
28. See Andrew Ross Sorkin, *Occupy Wall Street: A Frenzy That Fizzled*, N.Y. TIMES: DEALBOOK (Sept. 17, 2012, 8:51 PM), <https://dealbook.nytimes.com/2012/09/17/occupy-wall-street-a-frenzy-that-fizzled> [<https://perma.cc/9W2S-RZ6Q>].

justifications for libertarianism the corruption of governments by elites.²⁹ One study found that populism—even when defined more broadly than just the unbundled version—did not predict support for President Donald J. Trump.³⁰

The concern about ordinary citizens being ignored and misunderstood by a disconnected elite has a constitutional lineage in the United States, even if a complicated and conflicted one. James Madison decried political parties as tools of political elites to suppress common sense—and common sentiment. Madison wrote of political parties in *Federalist No. 10* as a “disease.”³¹ Members of the House of Representatives were to be selected every two years³² to ensure they were connected to regular people. This was because, as Madison wrote in *Federalist No. 52*, these officials “should have a common interest with the people . . . [and] an immediate dependence on, and an intimate sympathy with[] the people.”³³ U.S. Supreme Court Justices rode circuit to keep them in touch “with the ordinary transactions of business.”³⁴ There were not many executive officials at the Founding, but many of them were located outside of Washington to remove them from undue influence by a narrow political elite.³⁵ If practices like this were not sufficient, then the fact that each of the three branches of the federal government were granted discrete but also overlapping powers was meant to ensure that “[a]mbition must be made to counteract ambition” of those with political power.³⁶

Unbundled populism is also consistent with—and perhaps compelled by—many of the leading scholarly trends of the past generation, particularly in constitutional law. In the social sciences, the best-selling book of the past several years is the economist Thomas Piketty’s *Capital in the Twenty-First Century*. Piketty—described as a “rock star” by the *New York Times* because of the reception his ideas received³⁷—analyzed the origins of massive economic

29. See generally CHRISTOPHER S. PARKER & MATT A. BARRETO, CHANGE THEY CAN’T BELIEVE IN: THE TEA PARTY AND REACTIONARY POLITICS IN AMERICA (2013) (identifying how Tea Party ideology has focused on a supposedly narrow and corrupt group of people controlling the federal government).

30. See Enders & Smallpage, *supra* note 19.

31. THE FEDERALIST NO. 10, *supra* note 14, at 51 (James Madison).

32. See U.S. CONST. art. I, § 2, cl. 1 (“The House of Representatives shall be composed of Members chosen every second Year by the People of the several States.”).

33. THE FEDERALIST NO. 52, *supra* note 14, at 296 (James Madison).

34. CONG. GLOBE, 30th Cong., 1st Sess. 596 (1848) (featuring Senator George Badger’s statement as part of deliberations considering ending circuit riding).

35. See generally David Fontana, *Federal Decentralization*, 104 V.A.L. REV. 727 (2018).

36. THE FEDERALIST NO. 51, *supra* note 14, at 291 (James Madison).

37. See Jennifer Schuessler, *Economist Receives Rock Star Treatment*, N.Y. TIMES (Apr. 18, 2014), <https://www.nytimes.com/2014/04/19/books/thomas-piketty-tours-us-for-his-new-book.html>.

inequality.³⁸ Nearly two-thirds of Americans think that these inequalities pose significant problems.³⁹ The political science counterpart to *Capital* is Martin Gilens's book on how policy outcomes reflect the preferences of the rich. Gilens tells an empirical story of how the domination by economic elites turned them into dominant political elites as well.⁴⁰ Elected officials at the state and federal level are increasingly from the same backgrounds, the same places, and the same schools.⁴¹

Scholarly movements not only present elites as too powerful relative to rest of the country, but also have started to question the supposed technical expertise that justifies elite authority in many contexts. Scholarship has started to argue what is now being tested as an element of populism: whether there is reason to question the "opinions of experts and intellectuals."⁴² Law professors have started to engage with the motivated cognition literature's findings that individuals are shaped in their worldviews by their underlying priors, including their priors related to legal issues.⁴³ Scholars have found that experts—in law and otherwise—can be even more biased in the application of their skills than lay people.⁴⁴ It was a bestselling book fourteen years ago—

38. See David Singh Grewal, *The Laws of Capitalism*, 128 HARV. L. REV. 626, 629 (2014) (reviewing THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (2014)).

39. See Richard Wike, *The Global Consensus: Inequality is a Major Problem*, PEW RES. CTR. (Nov. 15, 2013), <http://www.pewresearch.org/fact-tank/2013/11/15/the-global-consensus-inequality-is-a-major-problem/> [<https://perma.cc/MT67-U8D8>].

40. See generally MARTIN GILENS, *AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA* (2012); *id.* at 1 ("The American government does respond to the public's preferences, but that responsiveness is strongly tilted toward the most affluent citizens.").

41. See NICHOLAS CARNES, *WHITE-COLLAR GOVERNMENT: THE HIDDEN ROLE OF CLASS IN ECONOMIC POLICY-MAKING* (2013) (pulling together overall empirical evidence). For the primary article leading to this important book, see generally Nicholas Carnes, *Does the Numerical Underrepresentation of the Working Class in Congress Matter?*, 37 LEG. STUD. Q. 5 (2012).

42. Oliver & Rahn, *supra* note 9, at 197.

43. See, e.g., David Fontana & Donald Braman, *Judicial Backlash or Just Backlash? Evidence From a National Experiment*, 112 COLUM. L. REV. 731, 748 (2012). Fontana & Braman write:

Arguments that courts or legislatures are (or are not) distinctively competent to decide an issue are not just factual claims; they are also salvos in motivated battles over facts in the world. Preferences regarding institutional choice are thus contingent on the values a citizen prioritizes and the social meaning a law or policy holds in relation to those worldviews.

Id.

44. See generally John Gastil et al., *The "Wildavsky Heuristic": The Cultural Orientation of Mass Political Opinion* (Yale Law Sch. Pub. Law & Legal Theory Research Paper Series, No. 107, 2005); Dan M. Kahan et al., *The Tragedy of the Risk-Perception Commons: Culture Conflict, Rationality Conflict, and Climate Change* 8 fig.3 (Cultural Cognition Project,

relying on many academic findings—that extolled “[t]he wisdom of crowds.”⁴⁵

Supreme Court Justices themselves come from an increasingly few number of places in the country, law schools, and professional backgrounds.⁴⁶ For the first time in over a hundred years, every single member of the Supreme Court can be placed on the ideological spectrum based on the political party of the president nominating them.⁴⁷ The Supreme Court’s pro-big business orientation has been the subject of empirical⁴⁸ and normative evaluation.⁴⁹ The Supreme Court’s decision in *Citizens United v. FEC*⁵⁰ cleared the way for economic elites to control the political process by removing many limitations on corporate spending in elections.⁵¹ These justices not only appear more biased towards the powerful in outcome, but also perform their responsibilities

Working Paper No. 89, 2011), <https://www.law.upenn.edu/live/files/296-kahan-tragedy-of-the-riskperception1pdf> [<https://perma.cc/A2JG-NBXD>].

45. See generally JAMES SUROWIECKI, *THE WISDOM OF CROWDS: WHY THE MANY ARE SMARTER THAN THE FEW AND HOW COLLECTIVE WISDOM SHAPES BUSINESS, ECONOMIES, SOCIETIES AND NATIONS* (2004).
46. See, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584, 2629 (2015) (Scalia, J., dissenting). Justice Scalia writes:

[T]his Court . . . [features] successful lawyers who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east- and west-coast States. Only one hails from the vast expanse in-between. Not a single Southwesterner or even, to tell the truth, a genuine Westerner (California does not count). Not a single evangelical Christian (a group that comprises about one quarter of Americans), or even a Protestant of any denomination.

Id. See also, e.g., Kiran Dhillon, *The Most Popular Law Schools of Supreme Court Justices*, TIME (May 8, 2014), <http://time.com/91646/the-most-popular-law-schools-of-supreme-court-justices> [<https://perma.cc/G7FM-7B3E>]; *Past U.S. Supreme Court Members*, INFOPLEASE, <https://www.infoplease.com/history-and-government/supreme-court/past-us-supreme-court-members> [<https://perma.cc/6Z27-ZH8B>].
47. See Lawrence Baum & Neal Devins, *Split Definitive*, SLATE (Nov. 11, 2011, 5:27 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2011/11/supreme_court_s_partisan_divide_and_obama_s_health_care_law.html [<https://perma.cc/HM9H-KU4J>].
48. See, e.g., Lee Epstein, William M. Landes & Richard A. Posner, *How Business Fares in the Supreme Court*, 97 MINN. L. REV. 1431, 1472 (2013) (“Whether measured by decisions or Justices’ votes, a plunge in warmth toward business during the 1960s (the heyday of the Warren Court) was quickly reversed; and the Roberts Court is much friendlier to business than either the Burger or Rehnquist Courts, which preceded it, were.”).
49. See, e.g., Erwin Chemerinsky, *The Roberts Court at Age Three*, 54 WAYNE L. REV. 947, 962 (2008) (“[T]he Roberts Court is the most pro-business Court of any since the mid-1930s.”); Jeffrey Rosen, *Supreme Court Inc.*, N.Y. TIMES: MAG. (Mar. 16, 2008), <http://www.nytimes.com/2008/03/16/magazine/16supreme-t.html> (“The Supreme Court term that ended last June was, by all measures, exceptionally good for American business.”).
50. 558 U.S. 310 (2010).
51. *Id.* at 311 (deciding that some limitations on corporate participation in campaigns were unconstitutional).

by writing increasingly long and increasingly complicated opinions that are comprehensible only to a narrow few. Two important books—one published and one forthcoming⁵²—have connected the increasingly greater power exercised by increasingly fewer elites to constitutional law. Indeed, it was just fourteen years ago that legal scholars were focused on “populist” claims by Larry Kramer⁵³ (and others like Mark Tushnet⁵⁴) that the Court was essentially too elite to have an exclusive power over judicial review.

If there is any doubt about how much this unbundled populism had captured the minds of constitutional law professors, consider that several of them have ridden their scholarly message in law reviews and legal books to political careers. Elizabeth Warren, primarily a bankruptcy scholar, focused on how elites distorted bankruptcy law to benefit the few over the many, and noted the constitutional implications of those arguments.⁵⁵ Warren used those findings to move from Harvard law professor to U.S. senator and now a potential future presidential candidate. Several years later, Zephyr Teachout, a Fordham law professor whose research focused on *Citizens United* and political inequalities, used her scholarship about the problems with elite power to run for governor of New York, a seat in the U.S. House of Representatives, and then Attorney General of the State of New York.⁵⁶

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52. See GANESH SITARAMAN, *THE CRISIS OF THE MIDDLE-CLASS CONSTITUTION: WHY ECONOMIC INEQUALITY THREATENS OUR REPUBLIC* 12 (2017) (arguing that in moments of great control by narrow elites that the people “might turn to a demagogue who would overthrow the government—only to become a tyrant. Oligarchy or tyranny, economic inequality meant the end of the republic”); Joseph Fishkin & William E. Forbath, *Wealth, Commonwealth, and the Constitution of Opportunity*, in *WEALTH: NOMOS LVIII* 45, 45 (Jack Knight & Melissa Schwartzberg eds., 2017) (previewing the arguments in their forthcoming book by arguing that “[a]s structures of opportunity grow more narrow and brittle and class inequalities mount, our nation is becoming what reformers throughout the nineteenth and early twentieth centuries meant when they talked about a society with a ‘moneyed aristocracy’ or a ‘ruling class’—an oligarchy, not a republic”).
 53. See Richard H. Fallon, Jr., *Judicial Supremacy, Departmentalism, and the Rule of Law in a Populist Age*, 96 *TEX. L. REV.* 487, 539 & n.231 (2018) (discussing Kramer’s book as invoking “an anti-elitist, populist sensibility”). See generally LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* (2004).
 54. See generally MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* (1999) (arguing that judicial review systematically insufficiently considers certain interests).
 55. See Suzanna Andrews, *The Woman Who Knew Too Much*, *VANITY FAIR: HIVE* (Nov. 2011), <http://www.vanityfair.com/politics/features/2011/11/elizabeth-warren-201111> (discussing Warren’s work).
 56. See Thomas Frank, *Zephyr Teachout’s “Corruption in America,”* *N.Y. TIMES* (Oct. 16, 2014), <https://www.nytimes.com/2014/10/19/books/review/zephyr-teachouts-corruption-in-america.html> (discussing Teachout); William Neuman, *In Upstate Congressional Race, a “Classic Boxers’ Match” That is Virtually Tied,* *N.Y. TIMES* (Oct. 3, 2016), <https://www.nytimes.com/2016/10/04/nyregion/zephyr-teachout-john-faso-new-york-congressional-district-race.html> (discussing Teachout’s congressional campaign) Editorial

B. Bundled Populism

This unbundled version of populism is simply insufficient to explain our current political moment. Something else—something more—is happening now that was not happening previously. Scholars have therefore bundled into the definition of populism a number of other criteria. In bundled populism, antiestablishment views are now also bundled together with conceptually distinct authoritarian and xenophobic worldviews.⁵⁷

First, bundled populism has a different conception of the antiestablishment claims of populism. Rather than conceptualizing the people as a disempowered people against a narrow, unjustly overpowered elite, the people and the elite are treated—by definition by bundled populism—as internally coherent. The people are defined not only as the statistically dominant but neglected demographic in a country, but also as both “homogeneous” and “virtuous.”⁵⁸ The “people” could include the nation, the voters, the peasants, or the proletariat, but the essential point is that there are many of them and that they are identical.⁵⁹ The elites are not just exercising excessive power but are “arrogant, greedy, lazy, corrupt, unresponsive to ordinary people, and absorbed by self-interest.”⁶⁰

Bundled populism is therefore identified as espousing popular sovereignty at the expense of democratic values.⁶¹ It features what Jan-Werner Müller has described as a moralized antipluralism, premised on the idea that

Board, Opinion, *The New York Times Endorses Zephyr Teachout for Attorney General in Thursday's Primary*, N.Y. TIMES (Aug. 19, 2018), <https://www.nytimes.com/2018/08/19/opinion/zephyr-teachout-new-york-attorney-general.html>.

57. See, e.g., Inglehart & Norris, *supra* note 9, at 6 (noting Mudde’s influential definition that a “populist philosophy is a loose set of ideas that share three core features: *anti-establishment*, *authoritarianism*, and *nativism*”); see generally Oliver & Rahn, *supra* note 9 (using this definition of populism to test it empirically).
58. The influential definition by Mudde, for instance, reflects this conception of populism. See Mudde, *supra* note 17, at 543 (defining populism as “an ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, ‘the pure people’ versus ‘the corrupt elite’, and which argues that politics should be an expression of the *volonté générale* (general will) of the people”); see also Huq, *supra* note 7, at 1135–36 (noting the problems with adding the “general will” concept to the definition of populism).
59. See MARGARET CANOVAN, *POPULISM* (1981); PAUL A. TAGGART, *POPULISM* (2000).
60. Bakker et al., *supra* note 27, at 306. Bakker summarizes the sense of bundled populism in his article. See *id.*; MÜLLER, *supra* note 7, at 19–20 (stating that populism features “a particular moralistic imagination of politics, a way of perceiving the political world that sets a morally pure and fully unified . . . people against elites who are deemed corrupt or in some other way morally inferior.” (emphasis omitted)).
61. See Canovan, *supra* note 11; Mudde, *supra* note 17.

the particular political faction “alone[] represent[s] the people.”⁶² If there are two groups and only one is morally legitimate (that is, “the people”), then only one should rule, and the other group need not be protected. Many empiricists testing individual preferences for populism therefore utilize authoritarianism modules.⁶³

Bundled populism features not just antiliberalism, but xenophobia as well. Defining populism to feature homogeneous people means that the people must aggressively ward off anyone threatening to intrude on their homogeneity. Right-wing bundled populism has targeted immigrants as threatening the homogeneity of the people. Left-wing bundled populism has not targeted immigrants to the same degree.⁶⁴ Some scholars have therefore argued that this xenophobia is a feature of right-wing populism alone.⁶⁵ Left-wing populism in Europe, however, is often bundled. Pim Fortuyn, a Dutch populist a generation ago, argued that the absence of support for gay rights was what made Muslims unfit for Dutch society.⁶⁶ In many places in Western Europe, left-wing bundled populists argue that the elite have coopted the social democratic state for improper uses, taking it away from ordinary citizens.⁶⁷ Bundled populism in Latin America has targeted American imperialism as a threat to the homogeneous “people” in different Latin American countries (most notably

62. MÜLLER, *supra* note 7, at 3; *see also id.* at 69 (stating that the populist believes that rule by any faction other than the people “amount[s] to mere administration or cooptation into existing political and social arrangements”).

63. *See* Wendy Rahm & Eric Oliver, *Trump’s Voters Aren’t Authoritarians, New Research Says. So What Are They?*, WASH. POST: MONKEY CAGE (Mar. 9, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/03/09/trumps-voters-arent-authoritarians-new-research-says-so-what-are-they/?utm_term=.2d0df8789116 [<https://perma.cc/7L24-LRZA>] (testing preferences for authoritarianism as related to preferences for populism).

64. *See* Cas Mudde & Cristóbal Rovira Kaltwasser, *Exclusionary vs. Inclusionary Populism: Comparing Contemporary Europe and Latin America*, 48 GOV’T & OPPOSITION 147 (2013) (discussing how not all forms of populism equally target immigrants).

65. *See e.g.*, CAS MUDDÉ, *POPULIST RADICAL RIGHT PARTIES IN EUROPE* (2007); TAGGART, *supra* note 59.

66. *See* Andrew Osborn, *Dutch Fall for Gay Mr. Right*, GUARDIAN (Apr. 13, 2002), <https://www.theguardian.com/world/2002/apr/14/andrewosborn.theobserver> [<https://perma.cc/G7CW-HT2D>].

67. *See* Gijs Schumacher & Kees van Kersbergen, *Do Mainstream Parties Adapt to the Welfare Chauvinism of Populist Parties*, 22 PARTY POL. 300 (2014) (discussing the populist appeals of certain Western European democratic parties and examining how some populists support the social democratic state but argue that its animating purposes are being undermined through the alleged misdirection of resources).

Venezuela under Hugo Chávez).⁶⁸ Andrew Jackson attacked the Second Bank of the United States for having too many foreign investors.⁶⁹

II. THE PROBLEMS OF POPULISM PROLIFERATION

These two ideologies are clearly different in theory and in practice. With so much separating them, why unify them with a single, powerful label? This Part argues that labeling both ideologies as populist generates unnecessary research confusion and political harms.

A. Conceptual

Bundled populism either does not need to be primarily called populism as opposed to other labels, or it need not be called populism at all. First, the fact that bundled populism is primarily called populism is unnecessary and unhelpful from the perspective of research design.⁷⁰ Let's assume—as substantial evidence does suggest—that bundled populism is correct to treat its three dimensions of political perspectives as logically and empirically related. Scholars wishing to describe the current reality of bundled populism across the globe would be (rightfully) criticized if they excluded the authoritarian or xenophobic dimensions from their analysis. If a scholar discussed Prime Minister Viktor Orbán of Hungary's political brand without mentioning his destruction of democratic institutions, it would seem as if something substantial was missing.⁷¹ If a scholar tried to discuss President Donald J. Trump's political brand without discussing his bigotry,⁷² it would be hard to take their arguments seriously.

68. Kirk Hawkins, *Populism in Venezuela: The Rise of Chavismo*, 24 *THIRD WORLD Q.* 1137 (2003) (discussing how Hugo Chavez targeted foreign intervention as deserving of scorn).

69. See *Andrew Jackson and the National Bank*, *WORLD HIST.* (May 22, 2017), <https://worldhistory.us/american-history/andrew-jackson-and-the-national-bank.php> [<https://perma.cc/XBC3-T226>].

70. For helpful guidance on how to define a concept, see generally the classic article written by Giovanni Sartori, *Concept Misformation in Comparative Politics*, 64 *AM. POL. SCI. REV.* 1033 (1970).

71. For more on Orbán's actions, see generally Joanna Fomina & Jacek Kucharczyk, *Populism and Protest in Poland*, 27 *J. DEMOCRACY* 58 (2016).

72. See, e.g., Michelle Yee He Lee, *Donald Trump's False Comments Connecting Mexican Immigrants and Crime*, *WASH. POST* (July 8, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime/?utm_term=.af256f0b0ed6 [<https://perma.cc/T8EM-AQAN>] (“When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re

Why, then, do scholars so often label this phenomenon by just one dimension (populism) to the exclusion of the others? None of the three dimensions seems to be logically or empirically driving the other dimensions and therefore deserving of being the title for all of the other dimensions. Xenophobic sentiments can mobilize antiestablishment or antidemocratic sentiments and have in the past few years.⁷³ Why not call bundled populism authoritarianism? Or racism? Or some combination that mutes the exclusivity of populism—such as authoritarian populism?

Second, linking together the antiestablishment dimension of bundled populism to the authoritarian and xenophobic dimensions is questionable—or at least in need of more empirical evidence. The mechanism linking together populism and the other dimensions is presumably that the nature of ideological preferences by populists makes populists view opponents in moralized terms, and views opponents as morally inferior and therefore undeserving of equal political status.⁷⁴

If we substituted *polarization* for *populism*, would we not see a similar linkage with authoritarian and xenophobic sentiments? Is it just the intensity of the populist preference that matters rather than that it is a populist preference? Polarization generates powerful ingroup and outgroup mechanisms that make opponents distant and different, and therefore undeserving of an equal political status and even undeserving of equal human or moral status.⁷⁵ Polarization—regardless of which ideologies are being polarized—results in one’s political opponents being deemed not just as political opponents but as moral enemies. The affective polarization literature in the social sciences demonstrates—even

bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.”).

73. The political scientist Michael Tesler has conducted excellent empirical work demonstrating that xenophobia (particularly racist sentiments) drove political preferences in 2008 and 2012—and even more in 2016. See generally MICHAEL TESLER, POST-RACIAL OR MOST RACIAL? RACE AND POLITICS IN THE OBAMA ERA (2016). For a discussion of the 2016 U.S. presidential election, see Michael Tesler, *Views About Race Mattered More in Electing Trump Than in Electing Obama*, WASH. POST: MONKEY CAGE (Nov. 22, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/11/22/peoples-views-about-race-mattered-more-in-electing-trump-than-in-electing-obama/?utm_term=.ccd07ba26d8d [https://perma.cc/NGB8-QPFU].
74. See MÜLLER, *supra* note 7, at 3, 31–32 (describing populism as dismissing opponents as “immoral and not properly a part of the people at all” and as featuring a “moralized antippluralism”).
75. Classic findings in this genre include Carl I. Hovland & Walter Weiss, *The Influence of Source Credibility on Communication Effectiveness*, 15 PUB. OPINION Q. 635 (1951–52), and Irving Lorge & Carl C. Curtiss, *Prestige, Suggestion, and Attitudes*, 7 J. SOC. PSYCHOL. 386 (1936).

before Trump won in 2016—how much Democrats and Republicans now see supporters of the other party as not deserving of equal status in the political system.⁷⁶ Large numbers of Americans of both parties would be “displeased” if their child married someone from the opposing political party.⁷⁷ Supermajorities of Americans of both parties would be disinclined to hire someone from the opposing political party.⁷⁸

If the argument is that populism is somehow different from other examples of polarized ideological disputes, then the argument is that there is something distinctive about the internal ideological structure of populism that makes it more authoritarian and xenophobic. Jan-Werner Müller makes an argument like this in his important book, describing arguments using “the people” and “the elite” as “volatile, risky, maybe outright dangerous expression[s].”⁷⁹ What is it about using the phrase “the people” that dangerously excludes certain groups from the political process? Political causes frequently make arguments targeting specific subgroups.⁸⁰ These appeals are crucial to prime supporters to mobilize and to act in the political system. Are appeals based on criticizing “forces of greed” taking from “a forgotten middle class” (Bill Clinton)⁸¹ or talking about “a billionaire class” (Bernie Sanders)⁸² somehow less motivating than talking about “the people”? What about when President Franklin Delano Roosevelt justified massive changes to the country by talking about the “average man” versus the “economic royalists”?⁸³ These were all appeals identifying some subgroups as wrongly dispossessed compared to other subgroups.

76. For a good frame and discussion of this literature about polarization, see Cass R. Sunstein, *Partyism*, 2015 U. CHI. LEGAL FORUM 1, 1 (2015) (stating that partyism “is a form of hostility and prejudice that operates across political lines”).

77. Shanto Iyengar, Gaurav Sood & Yphtach Lelkes, *Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 PUB. OPINION Q. 405, 417 (2012).

78. See Shanto Iyengar & Sean J. Westwood, *Fear and Loathing Across Party Lines: New Evidence on Group Polarization*, 59 AM. J. POL. SCI. 690, 697–701 (2015) (providing results of a study demonstrating how people do not like to pick ideological opponents for anything, including nonpolitical tasks).

79. MÜLLER, *supra* note 7, at 71.

80. See Eitan D. Hersh & Brian F. Schaffner, *Targeted Campaign Appeals and the Value of Ambiguity*, 75 J. POL. 520 (2013).

81. William J. Clinton, President, Address Accepting the Presidential Nomination at the Democratic National Convention in New York (July 16, 1992), <http://www.presidency.ucsb.edu/ws/?pid=25958> [<https://perma.cc/SG9U-AX8C>].

82. Bernie Sanders, Opinion, *How Democrats Can Stop Losing Elections*, N.Y. TIMES (June 13, 2017), <https://www.nytimes.com/2017/06/13/opinion/bernie-sanders-how-democrats-can-stop-losing-elections.html>.

83. See JUDIS, *supra* note 7, at 32.

B. Political

1. Unbundled Populism

Unbundled populism is left without the capacity to escape bundled populism, or the capacity to fight it to construct a more perfect populism. Unbundled populism is—to quote Albert Hirschman’s famous writing—without exit or voice.⁸⁴ Unbundled populism cannot exit populism because it needs the label populism as an organizing frame. At the same time, unbundled populism is left without voice to shape what the term populism means because of the louder microphone that bundled populism holds. The result is that unbundled populism is dismissed and demeaned by association, making it into a caged intellectual force that feels wrongfully ignored.

Unbundled populism cannot exit from the populism debate because it needs a frame to motivate and organize its actual and potential supporters. If a massive number of individuals are going to organize to displace an excessively powerful elite, they face significant free-rider problems.⁸⁵ One means of overcoming these problems is to generate frames—or messages—for their cause that unifies proponents. Frames produce and maintain “meaning for constituents, antagonists, and bystanders or observers.”⁸⁶ Frames succeed to the degree that they resonate with potential supporters.⁸⁷ The populist frame is an unavoidable one because it goes to the very ideological core of what unbundled populism advocates.

Unbundled populism must therefore answer for bundled populism because they share the same populism label. In the United States, that means associating oneself with the Know-Nothings of the 1840s—often labeled as populist—and their bigoted targeting of immigrants.⁸⁸ In Latin America, it means associating oneself with Juan Domingo Perón in Argentina and his

84. See ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES* (1970) (describing how participants can exit a collective or use their voice within the collective as a means of exercising power).

85. For the classic statement of this problem, see MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* 46–48, 156–57 (1965).

86. Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 *ANN. REV. SOC.* 611, 613 (2000) (citation omitted).

87. See Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 *YALE L.J.* 804, 814 (2008) (“The key insight of framing theory, then, is that the existence and success of collective action is affected . . . by the ability of social actors to frame problems and solutions . . . to ‘align’ their frames with those used by potential adherents and bystanders.”).

88. For the classic account of this period, see RICHARD HOFSTADTER, *THE AGE OF REFORM* 131–34 (1955).

persecution of political opponents and support of fascism.⁸⁹ In Europe, it means associating oneself with the French National Front and its Holocaust denialism and anti-Muslim platforms.⁹⁰

But unbundled populism cannot speak back to the pathologies of bundled populism because bundled populism saturates the media environment with its message. Media in all of its forms has a greater commercial orientation than previously.⁹¹ Media outlets face greater and greater pressure to reach more and more customers. Trump's comments about a Mexican judge⁹² and the position of the Law and Justice Party in Poland regarding the Holocaust⁹³ generate more outrage, and therefore more eyeballs, than other forms of populist comments such as the fact that members of Congress are no longer from working class backgrounds.⁹⁴ When unbundled populism can obtain a microphone to lay a claim on populism, it must fight against the notion that authoritarianism and xenophobia are not just characteristic of one form of populism, but of all forms of populism.⁹⁵ It must fight the notion that unbundled populism does not count as populism.⁹⁶

The absence of exit or voice means that unbundled populism is without sufficient influence in the political process in the democracies trying to squelch it. But the problem is not just that unbundled populism loses out, but also how it loses out. The association of unbundled populism with bundled populism causes people to reject the former by demeaning it. The result is a constant—and constantly problematic—dynamic that crowds out unbundled populism

89. See generally DAVID ROCK, ARGENTINA, 1516–1982 (1987).

90. See JUDIS, *supra* note 7, at 98–102 (discussing how these versions of populism dominate the European debate).

91. See Fritz Plasser & Peter A. Ulram, *Striking a Responsive Chord: Mass Media and Right-Wing Populism in Austria*, in THE MEDIA AND NEO-POPULISM: A CONTEMPORARY COMPARATIVE ANALYSIS 21 (Gianpietro Mazzoleni et al. eds., 2003) (discussing how media concentration produced populism in Austria).

92. See Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict'*, WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442> [<https://perma.cc/2XJB-CV7K>].

93. See Marc Santora, *Poland's President Supports Making Some Holocaust Statements A Crime*, N.Y. TIMES (Feb. 6, 2018), <https://www.nytimes.com/2018/02/06/world/europe/poland-holocaust-law.html> (discussing a law that would make it a crime to accuse “the Polish nation” of any role in the Holocaust and other Nazi atrocities).

94. See Carnes, *supra* note 41.

95. See MÜLLER, *supra* note 7, at 2–3 (“[I]t is a necessary but not sufficient condition to be critical of elites in order to count as a populist. . . . [P]opulists are always *antipluralist*.”).

96. See *id.* at 20 (“The core claim of populism is thus a moralized form of antipluralism. Political actors not committed to this claim are simply not populists.”).

from the necessary role it should enjoy as part of the public discourse of the world's democracies.

Unbundled populism is demeaned because people treat it as featuring the silly, simplified antiestablishment claims made by the more provocative bundled populism. Scholars define bundled populism not just as highlighting that a narrow and corrupt elite is suppressing a broad and morally undervalued majority, but as necessarily involving a “homogenous” people and elite.⁹⁷ How can any theory be taken seriously if it is defining hundreds of millions of people as identical—as “homogenous?” Populism is also defined simplistically by allegedly claiming that the people are “pure.”⁹⁸ Again, how can any theory be taken seriously by academics if hundreds of millions of people are defined as morally flawless?

Scholars likewise dismiss the claims of unbundled populism that communications should be more simplified and more emotionally resonant. The fact that populist leaders are appealing to voters in a more accessible fashion is viewed as bound together with their authoritarian and xenophobic behaviors. Hugo Chávez, for instance, hosted a weekly television program in Venezuela entitled *Aló Presidente*.⁹⁹ Viktor Orbán appears on radio most Fridays to reach voters.¹⁰⁰ Beppe Grillo of the Five Star Movement in Italy has a blog which he uses to communicate directly to voters.¹⁰¹ Many scholars focus so much on the messages that Chávez, Orbán or Grillo are advocating that they demean the medium that they are using to communicate it. They dismiss talking to the people as a “curious kind of political folklore.”¹⁰² Or consider, closer to home, the disdainful reaction to the fact that President Donald J. Trump uses Twitter, rather than to what he says on Twitter.¹⁰³ Twitter is

97. See, e.g., Mudde, *supra* note 17, at 543.

98. See *id.*

99. See MÜLLER, *supra* note 7, at 43; Rachel Nolan, *The Realest Reality Show in the World*, N.Y. TIMES (May 4, 2012), <https://www.nytimes.com/2012/05/06/magazine/hugo-chavez-totally-bizarre-talk-show.html>.

100. See MÜLLER, *supra* note 7, at 43; see, e.g., Tom Szigetti, *Victor Orbán on Trump, Brexit, and EU Migration*, HUNGARY TODAY (Nov. 11, 2016), <https://hungarytoday.hu/firebrand-chat-viktor-orbans-friday-radio-interview-touches-trump-brexit-eu-migration-policy-79496> [<https://perma.cc/3SPP-6DCH>].

101. MÜLLER, *supra* note 7, at 35 (quoting Grillo's blog as stating, “[f]olks, it works like this: You let me know, and I play the amplifier”).

102. *Id.* at 43.

103. For examples in the media, see, for instance, Kathy Gilsinan & Uri Friedman, *Donald Trump's Asymmetric War on the Establishment*, ATLANTIC (Jan. 5, 2017), <https://www.theatlantic.com/international/archive/2017/01/trump-asymmetric-war-establishment/512231> [<https://perma.cc/U2EC-XCND>], and *Foreign Policy Expert Considers Repercussions of Trump's Twitter Diplomacy*, NPR (Jan. 3, 2018),

portrayed as superficial and silly, not a medium of communication for anyone who cares about the message.

2. Bundled Populism

Simply labeling bundled populism as any form of populism legitimates it as a kind of populism.¹⁰⁴ It legitimates it in the first place simply by considering bundled populism as a principled perspective deserving of an ideological label. Scholars and others consider whether it is a desirable way to look at the world, rather than questioning in the first place whether it is a way to look at the world at all. It is certainly possible—if not probable—that the commitment to restoring the power of the people relative to the elite advocated by bundled populism is “cheap talk” undeserving of an ideological label.¹⁰⁵

The scholarly debate about populism, until recently, has been dominated by first-rate political theorists and intellectual historians.¹⁰⁶ Because of the domination of those fields, political figures espousing populist ideologies were taken to mean what they say. The scholarly debates were about the internal merits of the ideas rather than the sincerity of those espousing them. The limited but helpful empirical research into the causes and effects of populism has taken the conceptual definitions provided by these scholars on their own terms by analyzing rhetorical uses of populist claims instead of insincere and costly policy manifestations of these claims.¹⁰⁷

Stating support for the people against the elite can cover not just for inconsistent ideological perspectives, but for ideological perspectives that are completely opposed to populism. Viktor Orbán in Hungary and Geert Wilders, two leading European populists, have served for decades in national elected politics, not exactly fitting the profiles of supporters of the people against elites. Likewise, Trump won every major income group that is above the national income average in the 2016 presidential election, and lost every major income group below the national average in that election.¹⁰⁸ Rather than being

<https://www.npr.org/2018/01/03/575450211/foreign-policy-expert-considers-repercussions-of-trumps-twitter-diplomacy>.

104. See MÜLLER, *supra* note 7, at 50–51 (noting how many of those politicians dominating the discussion about populism relish the label of “illiberal democracy”).

105. See Vincent Crawford, *A Survey of Experiments on Communication via Cheap Talk*, 78 J. ECON. THEORY 286, 286 (1998) (“[T]alk is cheap in the sense that players’ messages have no direct payoff implications . . .”).

106. See MÜLLER, *supra* note 7; Canovan, *supra* note 11; Mudde, *supra* note 17.

107. See, e.g., Bonikowski & Gidron, *supra* note 23.

108. See Nicholas Carnes & Noam Lupu, *It’s Time to Bust the Myth: Most Trump Voters Were Not Working Class*, WASH. POST (June 5, 2017), <https://www.washingtonpost.com/news/>

committed to the people against the elites, lawsuits have raised legitimate questions about whether his motivations are less ideological and more about personal enrichment.¹⁰⁹ The late Alabama governor George Wallace, another political figure often labeled as populist, lost massive amounts of political support once unions informed Alabama voters how much his policies really favored the elite over the people rather than the other way around.¹¹⁰

Labeling these political figures and their political claims as populist legitimates the figures and their claims also by not labeling them as something else. It is equally possible that bundled populism could be called authoritarianism. Or it could be labeled xenophobia. In those situations, not only is the focus on something less morally sympathetic than populism, but even the populism dimension of unbundled populism becomes something to question rather than something to embrace. Can an authoritarian be a populist? Can a racist be a populist?

Labeling bundled populism as populism also legitimates it by providing it with a usable past. It saddles unbundled populists with the problematic legacy of populist figures like Father Coughlin, Joseph McCarthy, or George Wallace. But it also helps them by affiliating them with the more appealing elements of the platform of the Populist Party and the social democratic reforms that their efforts eventually yielded.¹¹¹ As Jan-Werner Müller has written, the pathological ideologies that constitute bundled populism have “proudly claimed the label [populism] for themselves with the argument that, if populism means working for the people, then they are indeed populists.”¹¹²

Labeling bundled populism as populism also legitimates problematic political figures and claims that came before the current populists on center stage. For bundled populism to be so bad, everything that came before it needs to be so good. In order to devise a concept of what populism is that makes current figures and claims coherent and connected, other figures and claims need to be distinguished. The focus needs to be on what bundled populism does as the disease, rather than as the symptom of an underlying disease that predated it.

monkey-cage/wp/2017/06/05/its-time-to-bust-the-myth-most-trump-voters-were-not-working-class/?noredirect=on&utm_term=.c32a51e95e95 [https://perma.cc/VT3A-5F45].

109. See, e.g., *Citizens for Responsibility & Ethics in Washington v. Trump*, 276 F. Supp. 3d 174 (S.D.N.Y. 2017) (considering whether President Donald J. Trump violated the Emoluments Clause by using his office for personal enrichment).

110. See KAZIN, *supra* note 69, at 241.

111. See *id.* at 240–47 (discussing many of the morally appealing features of some past populists).

112. MÜLLER, *supra* note 7, at 10.

If bundled populism is uniquely defined by its antidemocratic tendencies, then such tendencies need to be eliminated from any understanding of what came before figures like Trump. Other political leaders outside of bundled populists are therefore defined as “mak[ing] representative claims in the form of something like hypotheses that can be empirically disproven on the basis of . . . actual results.”¹¹³ Whatever one thinks of political leaders outside of any form of populism, it is hard to think of them as applying the scientific method in their campaigns and terms in office.

CONCLUSION

One of the key measures of success of any political figure is not just their ability to persuade, but their ability to distract. Democracies are defined not just by what their leaders and their citizens prefer, but by what they prefer to discuss. Successful political leaders do not just tell us how to think, but they tell us what to think about—and what to forget.

It is difficult to remember what occupied public attention before the year of the populist, but it is worthwhile to do so. In late 2013, Democratic President Barack Obama mentioned inequality—the gap between the many and the few—as the “defining challenge of our time.”¹¹⁴ During the midterm elections of 2014, Republicans agreed with Obama’s sentiment.¹¹⁵ That year, overwhelming majorities of both parties began to agree that our political and economic system was favoring the few over the many.¹¹⁶

Then Donald J. Trump entered the presidential race in June of 2015, with his attention-grabbing flouting of norms that safeguard democracy and tolerance. His rise during the presidential primaries and general election

113. *Id.* at 39.

114. Barack Obama, President, Remarks by the President on Economic Mobility (Dec. 4, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/12/04/remarks-president-economic-mobility> [<https://perma.cc/H9C6-LFNF>].

115. See Philip Rucker & Robert Costa, *Income Gap Takes Shape as Central Issue for Both Parties Ahead of 2014 Midterms*, WASH. POST (Jan. 6, 2014), https://www.washingtonpost.com/politics/income-gap-takes-shape-as-central-issue-for-both-parties-ahead-of-2014midterms/2014/01/06/ec8399d8-76f8-11e3-b1c5-739e63e9c9a7_story.html?utm_term=.e7f1ce62173d [<https://perma.cc/8PEX-YGMN>].

116. See *Most See Inequality Growing, But Partisans Differ Over Solutions*, PEW RES. CTR. (Jan. 23, 2014), <http://www.people-press.org/2014/01/23/most-see-inequality-growing-but-partisans-differ-over-solutions> [<https://perma.cc/AVH8-KGSS>]; Hannah Fingerhut, *Most Americans Say U.S. Economic System Is Unfair, But High-Income Republicans Disagree*, PEW RES. CTR. (Feb. 10, 2016), <http://www.pewresearch.org/fact-tank/2016/02/10/most-americans-say-u-s-economic-system-is-unfair-but-high-income-republicans-disagree> [<https://perma.cc/DD6X-KKNL>].

during 2016 fit into a global narrative—alongside the continued success of figures like Le Pen in France and Orbán in Hungary—of a new politics pushing old countries in new directions. We continued our old conversations about the few controlling the many, but also layered on top of that conversation—and distracting us from it—was a conversation about Mexicans being rapists (United States)¹¹⁷ and Muslim invaders destroying Western democracies (Hungary).¹¹⁸

It is a feature of the success of these political figures that they not only distracted us from antiestablishment populism and turned our attention to authoritarian and xenophobic ideas, but that they did so through an act of appropriation. New movements have been able to use old terms, and to use old terms with at worst morally ambiguous meanings, and at best, meanings that legitimate these new movements. The year of the populist was the year of grand populist theft. Trump and Le Pen and Orbán stole populism. These figures were able to convince us that they are the populists, and that they are the rightful heirs to our conversation of the years prior about the few controlling the many. While we might disagree whether populism is the frame through which we want to discuss the issues of our time, if it is going to be a frame, we need to make sure to police who gets to use that term—and who does not.

117. See Kendall, *supra* note 92.

118. Harriet Agerholm, *Refugees Are 'Muslim Invaders' Not Running for Their Lives, Says Hungarian PM Viktor Orbán*, INDEP. (Jan. 9, 2018), <http://www.independent.co.uk/news/world/europe/refugees-muslim-invaders-hungary-viktor-orban-racism-islamophobia-eu-a8149251.html> [https://perma.cc/9BRU-VPRA].