THE INVENTION OF

MARKET FREEDOM

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Introduction

Republicanism and the Market

A study of the history of opinion is a necessary preliminary to the emancipation of the mind.

John Maynard Keynes, “The End of Laissez-Faire”

One of the most striking and far-reaching transformations that has taken place in modern political thought concerns the use of the word “freedom.” Once used to distinguish the members of a social and political elite from those – women, slaves, serfs, menial laborers, and foreigners – who did not enjoy their privileges or share their ethos, the term is now typically used to refer to the unregulated and unsupervised behavior of individuals, especially, though not exclusively, in the market. So complete is this shift in usage that the phrase “free market” sounds almost redundant to our ears, and the “libertarian,” the partisan of liberty, is generally understood to be a person who favors the extension of market norms and practices into nearly all areas of life. Thus the language of freedom, which was once highly moralized and fundamentally egalitarian, is now fundamentally (if only formally) egalitarian and has been largely drained of moral content: Freedom, in colloquial terms, means doing as one likes and allowing others to do likewise. Moreover, where the enjoyment of freedom was once thought to depend on the existence of a carefully designed and highly fragile set of formal and informal institutions, the uncoordinated actions of free individuals are now said to be capable of generating “spontaneous order” – again, especially, though not exclusively, through the mechanism of the market.¹ These dramatic

¹ The claim that complex and efficient social systems can arise spontaneously from the free choices of individuals is most closely associated today with the thought of Friedrich
changes in usage are of more than merely historical interest, because freedom has over the same period of time become one of the most potent words in our political vocabulary, and the effort to expand the use of the market as a means of realizing social outcomes has greatly intensified, especially in recent decades. Indeed, it seems likely that these developments are related; that the widespread and growing influence of market ideology depends in part on its ability to speak in the language and with the authority of freedom.

In this book I seek to explain how the market came to hold such a privileged place in modern thinking about freedom. I do this by contrasting this market-centered way of thinking with the older view, rooted in the tradition of republican political thought, that it largely displaced. Republican freedom makes a natural foil in this inquiry for at least two reasons. First, it is the republican tradition to which the partisan of freedom (or liberty – I will use the terms interchangeably) would necessarily have appealed throughout most of the political history of the West. It follows that any gains that have been made by market freedom in the modern period have come at the expense of the republican view, and that a natural place to begin in trying to account for the state of current debates about freedom is by examining how the republican conception of freedom was confronted with, altered in response to, and finally was overcome by the spread of market norms and practices. Second, there has been an explosion of scholarly interest in republican thought over the last several decades, and as a result its ethical and institutional entailments have now been thoroughly explored in a contemporary idiom. We are therefore in a better position than ever to explore the relationship between republican and market freedom without falling into anachronism.¹


The defenders of republican and market freedom ask us to imagine two ideal worlds: one in which independent and autonomous citizens devote themselves to the good of the community, and one in which the common good is realized through the voluntary exchange of goods and services among individuals, and each person’s ability to pursue his or her own ends therefore depends in a very literal sense on the ends of others. A republican politics aims at genuinely collective control over social outcomes; an ideal market society is one in which social outcomes are determined as far as possible by the market itself and are therefore the product of an indefinite number of self-interested decisions by people who are unknown and therefore unaccountable to one another. Each of these ideals has its own attractions and poses its own problems, and the contrast between them raises a number of questions about the meaning of the word freedom, the value that we assign (or should assign) to being free, and the role that the appeal to freedom plays in organizing political thinking and guiding political action. What reasons do we have for valuing freedom, and what are the necessary conditions for its enjoyment? Why did the idea of market freedom hold so little appeal before the modern period, and how can we explain its rise to dominance? What is the relationship between republican and market freedom today: Are they contradictory to, merely compatible with, or in some way dependent on or complementary of one another? Can these kinds of freedom be pursued at the same time, and to the extent that they cannot, why is this? Which of them, or which combination of them, provides the most attractive and feasible model of social and political life?

My aim in raising these questions is not to demonstrate the superiority of one of these kinds of freedom to the other, or to argue that we must somehow choose between them. Rather, I am motivated by a more specific practical concern. To the extent that the defenders of “market solutions” to pressing social and political problems have succeeded in monopolizing the language of freedom – a development that is peculiar to Western, and perhaps more specifically to Anglo-American, political thought – they enjoy a rhetorical advantage in public discourse that of the now vast historical literature include Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge, MA: Harvard University Press, 1967); Gordon S. Wood, The Creation of the American Republic, 1776–1787 (New York: W. W. Norton, 1969); J. G. A. Pocock, The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition (Princeton, NJ: Princeton University Press, 1975); Quentin Skinner, The Foundations of Modern Political Thought (New York: Cambridge University Press, 1978), vol. 1, and idem, Liberty before Liberalism (New York: Cambridge University Press, 1998).
exaggerates the actual merits of their proposals, as great as these may be. By learning to see market freedom as something that was (like republican freedom itself) *invented* – by treating it as the contingent product of a particular set of material and ideological circumstances – I hope that we can become more alert to the various ways in which the appeal to freedom shapes and distorts our thinking about politics today. By paying attention to the various ways in which republican and market freedom can reinforce and undermine each other, I hope that we can become better able to judge the relative merits of allowing a given range of social outcomes to be determined by political or economic means without the heavy thumb of freedom weighing on only one side of the scale. In the broadest sense, then, the aim of this book is a very traditional one: to look to the past in order to see the present more clearly.

I.I. THE PROBLEM OF CONSTRAINT

Any discussion of the meaning and value of freedom has to begin by coming to terms with the bewildering range of meanings that the concept has assumed both in popular and in scholarly discourse. The existence of this kaleidoscope of meanings is due in part to the fact that freedom is one of the most potent words in our political vocabulary: Political actors often begin with the assumption that freedom is, after security, the first public good to be pursued and then go on to define the word in such a way that it can be associated with whatever policies they happen to favor – often ruling out competing definitions as confused or illegitimate in the process. We are therefore faced with the familiar spectacle of different people appealing to the same ideal, or at least the same vocabulary, to defend widely divergent courses of action: Franklin Roosevelt invoking the “four freedoms” to defend the New Deal; Ronald Reagan opposing the Great Society with the warning that “freedom is never more than one generation away from extinction”; Donald Rumsfeld responding to the widespread looting in postwar Iraq with the memorable observation that “stuff happens” in a free society.

Here already there is a fundamental contrast between modern and pre-modern usage. To describe someone as “unfree” in the pre-modern world was simply to state a fact about their position in the social order, most commonly that they were a slave. This usage was similar in many respects to describing someone as “poor” today. Most of us will agree that it is better, all things being equal, to be rich than to be poor, and that many, perhaps most, of the people who are currently poor are not
Their aim was the aim of kings: that needing nothing, and obeying no one, they might enjoy liberty, the mark of which is to live just as one pleases.


4.1. THE LOCKEAN LEGACY

We have seen that the debates about the political implications of the rise of commerce in the early modern period brought to the surface the long-standing tensions in republican thought between procedural and substantive conceptions of arbitrary power, and between instrumental and intrinsic conceptions of the value of virtue. As a result, early modern thinkers had to make a series of difficult choices about the meaning and implications of republican freedom that their forebears had been able to avoid, between options that their forebears may not have clearly recognized as such. The “republican” defense of commercial society that emerged in these debates represented a substantial departure in many ways from the classical republican view. The classical republican expects the free man to be independent; to depend on the market for the satisfaction of one’s own wants and needs is to depend in a radical sense on the wants and needs of other people. The classical republican sees the pursuit and enjoyment of luxury as a threat to individual virtue, and thus to freedom itself; the flourishing of a commercial economy depends on the assumption that people will always want more material goods than they actually have. The classical republican expects the free man to be neither calculating nor self-interested; these are the defining features of *homo œconomicus*. Freedom in the classical republican tradition consists in
being socially and legally set apart from one’s fellows; markets are often praised for their blindness to status distinctions – or at least to those that cannot be expressed in economic terms.

Thus even those who were favorably disposed toward the rise of commerce had to admit that the norms and practices that prevail in commercial societies are very different from those that had been associated with free societies in the past. It is nevertheless the case, or so I have argued, that to the extent that a political defense of the rise of commerce was mounted, it was mounted in recognizably republican terms. This line of argument hinged on two related claims: first, that commerce has replaced war as the primary mode of interaction between societies in the modern world, and second, that governments, because they benefit from the prosperity of their citizens, have to exercise their power non-arbitrarily if they want to attract the desired level of commercial activity. The defenders of commercial society concluded that the self-regarding commercial virtues are superior to the traditional civic ones because they provide the most efficient route to collective prosperity, and because prosperity is a necessary condition for preserving the security and independence – and thus the freedom – of the modern state. Virtue stands in this way of thinking for the diligent and prudent pursuit of self-interest, especially in the economic realm, and power is said to be non-arbitrary if and to the extent that it refrains from interfering with virtuous behavior so defined. The promise of peace and prosperity that was associated with the rise of commerce was therefore said to provide grounds for extending commercial norms and practices even into the traditionally political areas of social life.

The critics of commercial society were generally willing to admit that under modern conditions the states that cultivate the arts of production and trade most assiduously are likely to be the most prosperous. However, they pointed out that in a commercial society both rulers and ordinary citizens depend on the good opinion of others – especially the wealthy – to achieve their ends, and that this kind of dependence is incompatible with the cultivation of civic virtue in the classical sense. As Rousseau put it, the citizen of a commercial society is “scheming, intense, greedy, servile and knavish … forever at one of the two extremes of misery or opulence, of license or slavery, without any middle ground.”

of commercial society responded that although it is true that in the modern world the fate of individuals and even of entire states increasingly lies in the hands of the wealthy – and, in the limit, of unpredictable and ungovernable “market forces” – the overall effect of the rise of commerce has been to dissolve particular relationships of dependence and to provide historically unprecedented levels of prosperity. Moreover, the kind of dependence that we experience in the commercial realm is qualitatively different from the kind that we experience as political subjects. Thus to the extent that the aversion that we feel to being subject to arbitrary power arises from the fact, real or imagined, that an identifiable person or group is taking pleasure in our subjection, the relative anonymity of market relationships represents a distinct improvement.

I have suggested that the emergence of this commercial brand of republican thought in the early modern period was a necessary but not sufficient condition for the invention of market freedom, and that this further development was made possible by a synthesis of commercial republican and natural juristic ideas over the course of the 18th century. The present chapter will be devoted to fleshing out and defending this claim. I have so far ignored the important role that the juristic emphasis on the rule of law and the protection of individual rights played in the thought of 18th-century defenders of commercial society such as Montesquieu, Hume, and Smith – and the equally important role that these ideas played in the thought of critics of commercial society such as Rousseau and Adam Ferguson. We saw in Chapter 2, however, that the relationship between juristic and republican ideas prior to the 18th century was rather strained. On the one hand, the juristic idea of subjective natural rights provides a conceptually precise and ideologically powerful tool for defining the sphere of personal independence on which the enjoyment of republican freedom depends. On the other hand, the juristic preoccupation with ensuring that political power is exercised in accordance with the demands of natural law is not only compatible with, but was even said to require, the rule of a benevolent monarch. As a result, many natural jurists viewed the republican ideal of popular self-rule with a great deal of suspicion. This juristic brand of anti-republicanism is nicely, if somewhat quixotically, captured in the speech that Charles I

peaceful and wise nation which neither fears nor needs anyone, is self-sufficient and is happy; then you must adopt an altogether different method... make money contemptible and, if possible, useless, seek, find more powerful and more reliable springs to achieve great things”: ibid., pp. 224–5.
made from the scaffold in 1649: “For the people… their Liberty and their freedom, consists in having of Government; those Laws, by which their life and their goods, may be most their own. It is not for having share in Government (sir) that is nothing pertaining to them. A Subject and a Sovereign are clean different things.”

The fact that juristic and republican ideas can be found side by side in the work of a number of leading 18th-century thinkers suggests that the tensions between these two schools of thought were not irresolvable, and it is part of our task here to see how these thinkers were able to negotiate and finally to overcome them, at least to their own satisfaction. We left off our account of the development of juristic ideas about freedom with John Locke, who, as we have seen, was one of the first thinkers to associate natural liberty in the juristic sense with the republican concern to prevent the arbitrary exercise of power. As we now know, Locke’s Two Treatises had only a limited impact on the thoughts and actions of his contemporaries. It is nevertheless clear that by the middle of the 18th century the view that legitimate political rule rests on popular consent had become influential enough that Hume could treat it (without directly naming Locke as its author) as one of the two “systems of speculative principles” on which “the factions, into which this nation [viz., Britain] is divided” rested – the other being the one against which Locke had directed his polemical energies, that “the DEITY is the ultimate author of all government.”

The question of the nature and scope of the influence of Locke’s political writings in the 18th century remains one of the most contentious topics of debate among historians of early modern political thought. Indeed, the contemporary revival of interest in the republican tradition was undertaken in large part with an eye toward overturning the once-conventional view that the political thought of that period was predominantly “Lockean-liberal” in character. I will argue that the most

\[1\] On this, see, for example, Martyn P. Thompson, “The Reception of Locke’s Two Treatises of Government 1690–1705,” Political Studies 24 (1976), pp. 184–91 and, more recently, the introduction to Mark Goldie, ed., The Reception of Locke’s Politics (London: Pickering & Chatto, 1999), vol. 1, esp. pp. xxi–xxiii, xxx–xxxiv. Goldie allows that the Two Treatises “had an esoteric éclat among advanced Whigs” in the 1690s: ibid., p. xxxi.

\[2\] David Hume, “Of the Original Contract” (1748), in idem, Political Essays, ed. Knud Haakonssen (New York: Cambridge University Press, 1994), pp. 186–7 (emphasis removed). Hume paraphrases the argument of the Second Treatise near the end of the essay, referring to its author only as “the most noted of [the] partizans” of the view that government was founded on an “original contract”: ibid., p. 200.

\[3\] The canonical statement of the “Lockean-liberal” reading of American political thought is found in Louis Hartz, The Liberal Tradition in America: An Interpretation of American Political Thought Since the Revolution (New York: Harcourt, Brace, 1955). The most
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striking fact about the political thought of this period is not that these two schools of thought were in competition with each other, but rather that key elements of both traditions were brought together for the first time into a single political vision. The result, as we will see, was not a triumph of “liberal” over “republican” ideas, but rather a synthesis of the two into a qualitatively different conception of freedom that took economic rather than political life as its model.

4.2. LIBERTY AND THE LAW

We have seen that the juristic and republican traditions associate freedom with the rule of law in two different and, to some extent, conflicting ways. According to the natural jurists, the purpose of civil law is to ensure that human behavior conforms to the demands of natural law. Freedom is associated in this way of thinking with free (or autonomous) choice, which can be conceived either in positive terms, as choice in accordance with natural law, or in negative terms, as the ability to choose as one wishes within a legally defined sphere. In either case, freedom is not treated as a political value taken in itself, but rather, in the positive view, it is treated as an underlying property of human nature that makes moral behavior possible, or, in the negative view, as a morally neutral category of action that has to be regulated for the sake of justice and social order. Republicans hold, by contrast, that the purpose of law is to prevent the arbitrary exercise of power. They are therefore concerned not only with the content of law, but also with the way in which it is made and the means by which rulers are constrained to obey it in practice. The influential republican criticisms of Hartz’s view are found in Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967) and Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (New York: W. W. Norton, 1969). Part 3 of J. G. A. Pocock’s *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975) provides a seminal statement of the republican or (as Pocock prefers to say) “civic humanist” reading of early modern Anglo-American political thought more generally. For two notable and generally sympathetic critiques of Pocock’s position, see Isaac Kramnick, *Republicanism and Bourgeois Radicalism: Political Ideology in Late Eighteenth-Century England and America* (Ithaca, NY: Cornell University Press, 1990) and the essays collected in Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge, MA: Harvard University Press, 1992), especially chapters 4, 6, 11, and 13.

For another recent effort to demonstrate the historical interdependence of liberal and republican ideas, see Andreas Kalyvas and Ira Katznelson, *Liberal Beginnings: Making a Republic for the Moderns* (New York: Cambridge University Press, 2008). Kalyvas and Katznelson define the term republican more loosely than I have here.
distinction is subtle but significant: Republicans seek to ensure that the authors and executors of the law are accountable to those on whom it is binding, and they associate freedom with the ability of citizens to ensure that this is the case. Here freedom, rather than justice or peace, is the first end to be pursued in public life, and the rule of law is treated as a means for achieving that end.

However, because the republican defense of the rule of law contains the same ambiguity about the meaning of arbitrary power that we have identified in republican thought more generally, it is not always clear what criteria republicans should use to determine whether the laws have been made and applied non-arbitrarily in a given case. According to what I have called the “substantive” understanding of arbitrary power, the test will be whether a given system of laws serves the interests of those who are bound by it. This raises the obvious question of what those interests are and how we should determine whether they have been served in a given case. In its pure form, this line of argument is consistent with, though it does not strictly entail, the juristic (and Lockean) view that political rule is legitimate only if it conforms to the demands of natural law. However, the more traditional republican position, which we can find in Locke as well, is that the only reliable way to ensure that political power is exercised non-arbitrarily is by giving those who are subject to it a say in determining how it is exercised. This line of argument rests on what I have called the “procedural” understanding of arbitrary power and points toward the equally traditional republican project of designing accountable political institutions.

As we have seen, the classical republicans sought to take each of these positions into account: Power cannot be considered non-arbitrary simply because it is subject to procedural checks, nor can it be considered non-arbitrary simply because it is exercised benevolently. Rather, the classical republicans saw the control of arbitrary power and the display of virtue as complementary aims: The test of whether political power is substantially non-arbitrary is whether its exercise (or non-exercise) promotes the cultivation and practice of virtue among the citizenry, and the absence of procedurally arbitrary power is seen as a necessary condition for realizing this end. It follows that for republicans the relationship between liberty and the law has both negative and positive dimensions, just as it does for the natural jurists: The function of law is not only to shield us from the arbitrary exercise of power – thereby making the cultivation of virtue possible – but also to mold us into virtuous citizens and to create the social conditions under which we can display whatever virtue we may
have. Just as the rise of commerce exposed the tension between the substantive and procedural understandings of arbitrary power, so too did it expose the tension between the positive and negative understandings of the relationship between liberty and the law. The ensuing efforts to disentangle these positions gave rise to a synthesis of juristic and republican ideas about freedom in which the classical republican commitment to virtuous citizenship came to play a distinctly subordinate role.

An early example of this kind of syncretism is found in the writings of John Trenchard and Thomas Gordon, whose pseudonymous Cato’s Letters (1720–3) stand as one of the most eloquent and influential expressions of Lockean political thought in the first half of the 18th century. Taken together, Cato’s Letters provide a discourse on the meaning of English liberty and the necessary conditions for its preservation. However, two different conceptions of liberty can be found in the text: one rooted in the republican concern with checking arbitrary power, the other in the juristic concern with defining the limits of rightful action and of legitimate political authority. Thus Gordon begins the sixty-second letter, titled “An Enquiry Into the Nature and Extent of Liberty,” by defining liberty in juristic and even proto-Millian terms as “the power which every man has over his own actions, and his right to enjoy the fruit of his labour, art, and industry, as far as by it he hurts not the society, or any members of it.” However, he goes on to characterize this sphere

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6 Pocock, in keeping with his tendency to minimize the influence of Locke’s political writings in the 18th century, has argued that Cato’s thought is predominantly “neo-Harringtonian” in character: See especially Machiavellian Moment, pp. 467–77. However, although the Harringtonian language of virtue, corruption, and the balance of property can indeed be found in Cato’s Letters (see especially ##35, 84, 85, and 91), so too do many crucial passages (most notably in #59, but cf. ##11, 33, 38, 45, 55, 60, and 62) echo and even closely paraphrase Locke’s Second Treatise. For two readings of Cato that emphasize his debt to Locke, see Ronald Hamowy, “Cato’s Letters, John Locke, and the Republican Paradigm,” History of Political Thought 11 (1990), pp. 273–94 and Michael P. Zuckert, Natural Rights and the New Republicanism (Princeton, NJ: Princeton University Press, 1994), pp. 297–319; for a recent defense of the “neo-Harringtonian” reading, see Eric Nelson, The Greek Tradition in Republican Thought (New York: Cambridge University Press, 2004), pp. 139–44. It is worth pointing out in this connection that Cato, although he often espouses Lockean views, never credits these views to Locke and indeed mentions Locke by name only twice (#105 and 116), both times in passing and in his capacity as a philosopher rather than a political thinker. By contrast, two of the letters (#26 and 37) consist almost entirely of extended (and attributed) quotations from the writings of Locke’s contemporary and fellow radical Whig Algernon Sidney. Harrington’s name does not appear in the text at all.

7 John Trenchard and Thomas Gordon, Cato’s Letters, or, Essays on Liberty, Civil and Religious, and Other Important Subjects, ed. Ronald Hamowy (Indianapolis: Liberty Fund, 1995), vol. 1, p. 427. In #59, also by Gordon, the Lockean roots of this line of
of individual liberty as something that is not only due to us as a matter of right, but that is necessary for the cultivation and practice of virtue. “Liberty is,” he argues, “to live upon one’s own terms; slavery is, to live at the mere mercy of another; and a life of slavery is, to those who can bear it, a continual state of uncertainty and wretchedness.” Indeed, where the natural jurists hold that self-preservation is the first duty imposed by natural law, Gordon notes approvingly that “to many men, and to many other creatures, as well as men, the love of liberty is beyond the love of life.” He concludes with the unmistakably republican observation that “[the] passion for liberty in men, and their possession of it, is of that efficacy and importance, that it seems the parent of all the virtues,” so that “in free countries there seems to be another species of mankind, than is to be found under tyrants.”

“Cato” sounds even more like a republican when he discusses questions of governance. “Power,” Gordon writes in the twenty-fifth letter, “is like fire; it warms, scorches, or destroys, according as it is watched, provoked, or increased.” It follows, as Trenchard puts it in the sixtieth letter, that a “free country” is one in which “the power and sovereignty of magistrates...[is] so qualified, and so divided into different channels, and committed to the direction of so many different men, with different interests and views, that the majority of them could seldom or never find their account in betraying [the people’s] trust,” that is, one in which “the concerns of all [are] directed by all, as far as possibly can be.” (Gordon is careful to emphasize in the thirty-seventh letter that the British system, having been purged of its Stuart excesses, meets this standard: “[O]ur government is a thousand degrees nearer a-kin to a commonwealth,” he argues, “than it is to absolute monarchy.” Trenchard adds in the eighty-fifth letter that “liberty may be better preserved by a well poised monarchy, than by any popular government.” However, institutional checks alone do not suffice. Gordon points out in the seventieth letter that “[t]he emperors of Rome were as absolute with the shew of a Senate, argument are even clearer: “All men are born free; liberty is a gift which they receive from God himself; nor can they alienate the same by consent, though possibly they may forfeit it by crimes. No man has power over his own life, or to dispose of his own religion; and cannot consequently transfer the power of either to any body else: Much less can he give away the lives and liberties, religion or acquired property of his posterity, who will be born as free as he himself was born, and can never be bound by his wicked and ridiculous bargain”: ibid., vol. 1, pp. 406–7; cf. Locke, Second Treatise §§22–3, 172, 182.

8 Cato’s Letters, vol. 1, p. 430 (emphasis added).
10 Ibid., vol. 1, p. 262; vol. 2, p. 613.
and the appearance of the people’s choosing their praetors, tribunes, and other officers of the commonwealth, as the eastern monarchs are now without these seeming checks, and this shew of liberty.” He therefore urges his fellow Britons to remember that their freedom can only be preserved through vigilance: “As you love your liberties exercise your virtue: they depend upon it.” The other half of the republican view – that virtue depends on free government – is stated in the ninety-fourth letter, in which Trenchard and Gordon, writing jointly, argue in characteristically vivid terms that “[t]here is scarce such a thing under the sun as a corrupt people, where the government is uncorrupt: it is that, and that alone, which makes them so, and to calumniate them for what they do not seek, but suffer by, is as great impudence as it would be to knock a man down and then rail at him for hurting himself.”

Thus we find in Cato’s Letters – and, as we will see, in the writings of a number of other 18th-century thinkers – the synthesis of republican and juristic ideas that is so conspicuously absent in the medieval period and that is only tentatively explored even in Locke. The Letters appeal to liberty, understood in terms of the absence of arbitrary power, as the first good to be pursued in public life; to mixed and limited government as its institutional corollary; to virtue as the precondition for and product of liberty so understood; and to natural and inalienable rights as a way of defining the sphere of action within which neither the state nor our fellow citizens can interfere, except arbitrarily. However, this synthesis required – or perhaps it would be more accurate to say that it reflected – a fundamental rethinking of the premises of classical republican thought. Most notably, Cato treats virtue as a means to the preservation of juristic liberty rather than as an end in itself; to refer again to the terminology that I introduced in Chapter 1, he favors an instrumental over an intrinsic understanding of the value of virtue. Indeed, Gordon argues in the sixty-second letter that “entering into political society, is so far from a departure from… natural right, that to preserve it was the sole reason why men did so.” There is no trace in Cato’s Letters, any more than there is in Locke, of the classical view that the life of virtuous citizenship should be valued for its own sake, and still less that it should be taken as the proper aim of political society. As Trenchard dryly remarks in the opening words of the sixty-first letter, “[t]he most reasonable meaning that can be put upon this apothegm, that virtue is its own reward, is, that it seldom meets with any other.”

11 Ibid., vol. 2, pp. 505, 510, 673.
12 Ibid., vol. 1, pp. 427 (emphasis added), 420 (original emphasis).
Cato’s treatment of the content of virtue departs no less sharply from the classical view. As Gordon puts it in the fortieth letter, “[w]hen the passions of men do good to others, it is called virtue and public spirit; and when they do hurt to others, it is called selfishness, dishonesty, lust, and other names of infamy.” In other words, Cato measures virtue – or, more precisely, suggests that most people measure virtue – not by the character or motivations of those who display it, but rather by the social benefits to which it leads. Indeed, as the appeal to the “passions” may suggest, Cato’s conception of virtue, and of human behavior more generally, is rooted in a Hobbesian psychology that holds that human beings are fundamentally egoistic. Gordon writes in the same letter that “[f]or men to act independently of their passions, is a contradiction! since their passions enter into all that they do, and are the source of it.” He adds in the thirty-first letter that “[o]f all the passions which belong to human nature, self-love is the strongest, and the root of all the rest; or, rather, all the different passions are only several names for the several operations of self-love.”

Thus despite his eloquent words about the priority of liberty over life, Gordon views the blessings of liberty in strictly instrumental terms, arguing in the sixty-second letter – this time in a Lockean tone of voice – that “[t]rue and impartial liberty is . . . the right of every man to pursue the natural, reasonable, and religious dictates of his own mind; to think what he will, and act as he thinks, provided he acts not to the prejudice of another; to spend his own money himself, and lay out the produce of his labour his own way; and to labour for his own pleasure and profit.” The same point is stated in more frankly egoistic terms in the sixty-eighth letter, also by Gordon, which begins with the observation that “it is the ambition of all men to live agreeably to their own humours and discretion.”

Thus although Cato’s Letters contain both republican and juristic ideas about the relationship between liberty and the law, the former are nevertheless strictly subordinated to the latter. As Gordon puts it in the sixty-eighth letter:

To live securely, happily, and independently, is the end and effect of liberty…and only to be found in free countries, where power is fixed on one side, and property secured on the other; where the one cannot break bounds without check, penalties or forfeiture, nor the other suffer diminution without redress; where the

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13 Ibid., vol. 1, pp. 279–80, 222.
14 Ibid., vol. 1, pp. 429, 483.
people have no masters but the laws, and such as the laws appoint; [and] where both laws and magistracy are formed by the people or their deputies.¹⁵

This synthesis of republican and juristic ideas was undeniably a major ideological achievement – and I do not mean to suggest that it was Cato’s achievement alone – but it was vulnerable to two significant objections. First of all, if it is true, as Cato maintains and as later 18th-century thinkers tend to agree, that human beings are fundamentally motivated by self-interest,¹⁶ then it is not clear that we can depend on them to display the virtue that is, by Cato’s own account, a necessary condition for the preservation of free government. Second of all, by conceiving of rights as the legal corollaries of “the ambition of all men to live agreeably to their own humours and discretion,” rather than as the moral corollaries of duties that we owe to God as our creator, these thinkers raise the question of whether we can depend on citizens to respect the rights of their fellows, and further, whether it is prudent or even coherent to rest the legitimacy of political rule on the claim that they have consented to do so. The political thought of the later 18th century was largely devoted to addressing one or the other of these concerns.

### 4.3. **“THE DEFECT OF BETTER MOTIVES”**

As I have suggested, the juxtaposition of republican and juristic ideas about freedom is not unique to Cato in the 18th century. Indeed, it can be found not only in thinkers who were favorably disposed toward the rise of commerce, such as Montesquieu, Hume, Smith, and Cato himself, but even in as vigorous a critic of commercial society as Rousseau. In each case, the problem of reconciling the aim of maintaining a free government with the aim of allowing citizens to pursue their own ends – or, put otherwise, of ensuring that citizens display the qualities of character that are necessary to preserve their freedom – looms large. For Rousseau, the challenge is to reconcile a juristic, and thus essentially voluntaristic, conception of political obligation with a classical conception of virtue as the fulfillment of human personality: To use his terminology,

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¹⁵ Ibid., vol. 1, pp. 483–4 (emphasis added).

the enjoyment of civil and moral freedom requires that each citizen be persuaded to place the general will ahead of his own particular will.\textsuperscript{17} Citizenship – and, indeed, the act of founding a polity in the first place – is thus in his view a pedagogical project: it requires that the will of each citizen be molded in such a way that he comes to prefer, and thus to choose, the freedom that republican citizenship offers over the material and psychic enticements of modern civilization. Rousseau insists that this project can be sustained only if and insofar as the polity in question is sheltered from the corrupting effects of commerce.\textsuperscript{18}

If republican critics of commercial society such as Rousseau follow their classical forebears in emphasizing the positive association of the rule of law with the cultivation of virtue, the commercial republicans associate the rule of law instead with the negative aim of defining a sphere of action that is immune from arbitrary interference. They therefore detach the socially beneficial effects of virtuous behavior from the larger ideal of self-realization: Virtue, insofar as it is seen as a matter of public concern, is in this way of thinking something of instrumental rather than intrinsic value. This raises the question, as Rousseau never tired of pointing out, of whether a political system that treats self-regarding behavior as both the foundation and the end of social life can be relied on to generate the other-regarding norms of behavior on which the preservation of free government – and thus of juristic liberty itself – depends. As we have seen, Cato responds to this concern simply by exhorting his fellow citizens to be more virtuous, and this was – and indeed remains – a prominent strand of republican discourse.\textsuperscript{19} However, a more innovative group of thinkers

\textsuperscript{17} See especially Rousseau, \textit{Social Contract}, book 1, chapters 6–8, as well as book 1, chapter 2 of the so-called \textit{Geneva Manuscript}. My use of gendered language is considered, because Rousseau’s is an exclusively male conception of citizenship.


\textsuperscript{19} Among 18th-century thinkers, the bare appeal to classical virtue as a necessary supplement to commercial self-interest is perhaps most notably made by Adam Ferguson in his \textit{Essay on the History of Civil Society} (1767). For two contemporary examples of such an appeal, made from different perspectives and for different purposes, see Michael J. Sandel, \textit{Democracy’s Discontent: America in Search of a Public Philosophy} (Cambridge, MA: Harvard University Press, 1996) and Richard Dagger, \textit{Civic Virtues: Rights, Citizenship, and Republican Liberalism} (New York: Oxford University Press, 1997).
followed Rousseau in seeing a fundamental conflict between the self-regarding nature of life in a commercial society and the other-regarding demands of republican citizenship. They sought to show that juristic and republican freedom – the legitimate pursuit of self-interest and the effective checking of arbitrary power – can nevertheless be enjoyed within the same political order. We have already seen that these thinkers were able to forge a republican response to the rise of commerce by emphasizing the connection between the pursuit of commerce, the control of arbitrary power, and the preservation of national security and independence, and that in doing so they exposed the conceptual ambiguities in the republican conception of freedom. As we will now see, their efforts to resolve the tension between juristic and republican freedom led to a loosening of the connection not only between republican freedom and civic virtue, but also between juristic freedom and republican government itself.

Two of the more sophisticated efforts along these lines are found in the writings of Montesquieu and Hume, who, although they hold conflicting views on the question of how freedom is best preserved under modern conditions, nevertheless agree on the more fundamental question of what freedom itself consists in. Montesquieu argues that “[p]olitical liberty in a citizen is that tranquility of spirit which comes from the opinion each one has of his security,” adding that “in order for him to have this liberty the government must be such that one citizen cannot fear another citizen.” Liberty so understood, he concludes, “in no way consists in doing what one wants,” but rather in “the right to do everything the laws permit.” Hume argues along similar lines that a free government is one that “in the usual course of administration, must act by general and equal laws, that are previously known to all the members and to all their subjects,” because “a legal authority, though great, has always some bounds, which terminate both the hopes and pretensions of the person possessed of it.”

Thus Montesquieu and Hume agree with the classical republicans

in associating freedom with the absence of arbitrary (extralegal) power held either by rulers or by private citizens. Like Locke, however, they raise doubts as to whether freedom so understood requires the existence of republican institutions. Part 1 of Montesquieu’s *Spirit of the Laws* centers around the claim that, whereas monarchical and republican governments rest on different “principles” of behavior – the former on honor, the latter on virtue – both are nevertheless free in the sense that they are each subject to the rule of law and can be contrasted with despotism on those grounds. Hume puts the point more succinctly, arguing that “[i]t may now be affirmed of civilized monarchies, what was formerly said in praise of republics alone, *that they are a government of Laws, not of Men.*”

As I have suggested, however, Montesquieu and Hume do not agree on the question of how freedom is best preserved under modern conditions; indeed, they took opposite sides in the dispute between the “Country” and “Court” parties that divided British politics for much of the 18th century. Montesquieu, who from 1729 to 1731 stayed in England as a guest of Lord Bolingbroke, the leading figure in the Country opposition, includes a lengthy paean to English liberty in the eleventh book of his *Spirit of the Laws* that toes the Country line by attributing the genius of the English Constitution to its success in keeping the legislative, executive, and judicial powers distinct and independent of one another. Political liberty is found, he argues, “only in moderate governments,” that is, in governments where “power...check[s] power by the arrangement of things.” This claim provides the basis for his famous defense of the separation of powers: When legislative and executive power are united in the same hands, he argues, then “one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically.”

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21 Montesquieu, *Spirit of the Laws*, books 2–3 passim; Hume, “Of Civil Liberty” (1741; originally “Of Liberty and Despotism”), *Political Essays*, p. 56 (original emphasis). Elsewhere Hume argues that the English government is “neither wholly monarchical, nor wholly republican” and adds that “the republican part of the government...is obliged, for its own preservation, to maintain a watchful jealousy over the magistrates, to remove all discretionary powers, and to secure every one’s life and fortune by general and inflexible laws”: “Of the Liberty of the Press” (1742), *Political Essays*, pp. 1–2 (original emphasis).

22 Montesquieu, *Spirit of the Laws*, pp. 155, 157 (book 11, chapters 4 and 6). A more precise translation of the latter passage – and one that better captures the practical dynamics of arbitrary rule – would be to say that “one can fear that the same monarch or senate would make tyrannical laws in order to execute them tyrannically” (*ne fasse...pour les exécuter*...). For bibliographic evidence of Montesquieu’s debt to Bolingbroke on this point, see Robert Shackleton, “Montesquieu, Bolingbroke, and the Separation of Powers,” *French Studies* 3 (1949), pp. 25–38.
By contrast, a government in which these powers check one another will be resilient against what James Madison, a student of Montesquieu on this point, aptly termed “the defect of better motives.” As we have seen, Montesquieu, unlike Madison, holds that a monarchy can be free in this sense, but only if the power of the king is limited in such a way that he is constrained to obey and faithfully execute the laws of his kingdom. Whatever regime is in place, freedom depends on the counter-vailing presence of “intermediate powers”: an independent legislature (such as the British Parliament), an independent judiciary (such as the French parlements, whose influence Montesquieu hoped to restore), and a hereditary nobility.

Hume agrees with Montesquieu in thinking that republican government is not the only alternative to despotism under modern conditions: “Private property,” he argues, “[is] almost as secure in a civilized EUROPEAN monarchy, as in a republic; nor is danger much apprehended in such a government, from the violence of the sovereign; more than we commonly dread harm from thunder, or earthquakes, or any accident the most unusual and extraordinary.” However, whereas Montesquieu follows the Country party in insisting on the need for a strict separation of legislative, executive, and judicial powers, Hume was perhaps the most influential defender of the Court view that the enhancement of executive power, and in particular the exercise of royal prerogative through the influence of the king’s ministers in Parliament, was an appropriate and indeed necessary feature of public life in a commercial republic such as

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23 The quoted passage is from Federalist 51; for Madison’s debt to Montesquieu on the question of the separation of powers, see especially Federalist 47. This is not to say that Madison, any more than Montesquieu, discounts the importance of virtue altogether: In Federalist 57 he argues that “[t]he aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust,” and he warned the delegates to the Virginia ratifying convention on June 20, 1788, that “[t]o suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea.”


25 Hume, “Of Civil Liberty,” p. 55. Hume goes on to argue that “[a]varice, the spur of industry, is so obstinate a passion, and works its way through so many real dangers and difficulties, that it is not likely to be scared by an imaginary danger, which is so small, that it scarcely admits of calculation”: ibid. Montesquieu argues, by contrast, that “public business is for the most part as suspect to the merchants in monarchies as it appears safe to them in republican states,” so that “great commercial enterprises are not for monarchies, but for the government by many”: Spirit of the Laws, p. 340 (book 20, chapter 4).
England had become. Thus although he endorses the traditional republican claim that mixed government is favorable to liberty, he nevertheless downplays the differences between the liberties that are enjoyed in England and in France, the latter of which he describes as “the most perfect model of pure monarchy.” He even goes so far as to suggest that the French should look not to constitutional checks, but rather to the interests of the monarch himself to curb the arbitrary power of the state: “If a prince or minister should arise, endowed with sufficient discernment to know his own and the public interest, and with sufficient force of mind to break through ancient customs, we might expect to see these abuses remedied; in which case, the difference between that absolute government and our free one, would not appear so considerable as at present.” Indeed, the close connection between the interests of the monarch and those of his subjects – and the tendency of republics to take on unsustainable levels of public debt – led Hume to conclude that “though all kinds of government be improved in modern times, yet monarchical government seems to have made the greatest advances towards perfection.”

Whatever their differences – and they are on the whole differences of judgment rather than principle – Montesquieu and Hume agree in

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26 See especially Hume, “Of the Independence of Parliament” (1741), Political Essays, pp. 24–7, and “Whether the British Government Inclines More to Absolute Monarchy, or to a Republic.” Elsewhere Hume argues that the pervasive corruption in British political life “is chiefly to be ascribed to our established liberty, when our princes have found the impossibility of governing without parliaments, or of terrifying parliaments by the phantom of prerogative”: “Of Refinement in the Arts” (1752; originally “Of Luxury”), Political Essays, p. i i i.

27 “When there offers, therefore, to our censure and examination, any plan of government, real or imaginary, where the power is distributed among several courts, and several orders of men, we should always consider the separate interest of each court, and each order; and, if we find, that, by the skilful division of power, this interest must necessarily, in its operation, concur with public, we may pronounce that government to be wise and happy. If, on the contrary, separate interest be not checked, and be not directed to the public, we ought to look for nothing but faction, disorder, and tyranny from such a government. In this opinion I am justified by experience, as well as by the authority of all philosophers and politicians, both ancient and modern”: “Of the Independence of Parliament,” p. 25.

28 Hume, “Of Civil Liberty,” pp. 56–7. Montesquieu expresses agreement on this point in an early pensée, writing that “[t]he sole advantage that a free people has over any other, is the security in which each person lives that the caprice of a single man cannot deprive him of his goods or his life,” and adding that “[t]hat security is no greater in England than in France, and...was hardly greater in several ancient Greek republics which were divided into two factions”: Pensée 1802 (1728), translated and cited in Nannerl O. Keohane, “Virtuous Republics and Glorious Monarchies: Two Models in Montesquieu’s Political Thought,” Political Studies 20 (1972), p. 392. Cf. also Spirit of the Laws, book 12, chapter 1.
thinking that civic virtue in the classical sense is not necessary for the preservation of political liberty, and they attribute the absence of this kind of virtue in the modern world to the rise of commerce. Montesquieu observes, for example, that where “[t]he political men of Greece who lived under popular government recognized no other force to sustain it than virtue...[t]hose of today speak to us only of manufacturing, commerce, finance, wealth, and even luxury.”

Hume agrees that the classical ideal of civic virtue is “too disinterested and too difficult to support” under modern conditions, so that “it is requisite to govern men by other passions, and animate them with a spirit of avarice and industry, art and luxury.”

To the extent that virtue has a role to play in modern political life, they argue, its content is defined not by the degree and quality of one’s involvement in public life, but rather by the extent to which one respects the juristic liberties and, in particular, the property of one’s fellow citizens. “The spirit of commerce,” as Montesquieu puts it, “produces in men a certain feeling for exact justice, opposed on the one hand to banditry and on the other to those moral virtues that make it so that one does not always discuss one’s own interests alone and that one can neglect them for those of others.”

Hume goes so far as to argue that a “civilized” commercial society is likely to produce better citizens than the “barbarous” polities of antiquity, prosperous enough to resent and resist the intrusions of arbitrary power, but also prosperous enough to realize that they have something to lose from political instability and agitation: “[T]hey submit not to slavery, like the peasants, from poverty and meanness of spirit; and having no hopes of tyrannizing over others, like

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59 Montesquieu, *Spirit of the Laws*, p. 22 (book 3, chapter 3). This remark is closely paraphrased by Rousseau, who notes disapprovingly that “[t]he ancient politicians forever spoke of morals and of virtue; ours speak only of commerce and of money”: *Discourse on the Arts and Sciences* (1750), part 2, in idem, *The Discourses and Other Early Political Writings*, trans. and ed. Victor Gourevitch (New York: Cambridge University Press, 1997), p. 18. Montesquieu later makes the striking observation that where “[o]ther nations have made commercial interests give way to political interests: England has always made its political interests give way to the interests of its commerce”: *Spirit of the Laws*, p. 343 (book 20, chapter 7).


the barons, they are not tempted, for the sake of that gratification, to submit to the tyranny of their sovereign”); as a result, “[f]actions are…less inveterate, revolutions less tragical, authority less severe, and seditions less frequent.” Hume concludes that commerce, far from being incompatible with the enjoyment of freedom, “is rather favourable to liberty, and has a natural tendency to preserve, if not produce a free government.”

Not all of the defenders of commercial society were so confident that it would “naturally” generate the habits of thought and action that are necessary for its preservation. Hume’s friend Adam Smith points out, for example, that although “the interest of the labourer is strictly connected with that of the society, he is incapable either of comprehending that interest, or of understanding its connection with his own,” because “[h]is condition leaves him no time to receive the necessary information, and his education and habits are commonly such as to render him unfit to judge even though he was fully informed.” The mercantile and manufacturing classes, by contrast, “have generally an interest to deceive and even to oppress the public, and…accordingly have, upon many occasions, both deceived and oppressed it.” Smith adds that the opinions of the laborer may be heard “upon some particular occasions,” but only “when his clamour is animated, set on, and supported by his employers, not for his, but their own particular purposes.”

Indeed, he warns that if left to run its course, “the progress of the division of labour” – which is, of course, inextricably bound up with economic progress – will render “the great body of the people…as stupid and ignorant as it is possible for a human creature to become…altogether incapable of judging…the great and extensive interests of [their] country.”

Smith concludes that it is the duty of the state to see that its citizens are educated in such a way that they are able to perform their duties as citizens. However, like Hume and unlike Rousseau, he holds that the aim of civic education is not to make it possible for the people to play an active

32 Hume, “Of Refinement in the Arts,” pp. 112, 109, 111. Hume is echoing and perhaps alluding here to Aristotle’s claim that the “best constitution…for the majority of cities and the majority of mankind” is one in which “there is a large middle class”: Politics, book 4, chapter 11, quoting R. F. Stalley’s revision of the Barker translation (New York: Oxford University Press, 1995 [1946]), pp. 157, 159. Aristotle, unlike Hume, does not provide any suggestions as to how a large middle class might be created, counting it simply as “the greatest of blessings” if one is present: ibid., p. 159.


34 Ibid., V.i.f.49–50; I have changed the order in which these passages appear in the text. Cf. Smith, Lectures on Jurisprudence (B) 329–30.
role in government, but rather to prevent them from interfering unduly with its just administration:

An instructed and intelligent people are always more decent and orderly than an ignorant and stupid one. They feel themselves, each individually, more respectable, and more likely to obtain the respect of their lawful superiors, and they are therefore more disposed to respect those superiors. They are more disposed to examine, and more capable of seeing through, the interested complaints of faction and sedition, and they are, upon that account, less apt to be misled into any wanton or unnecessary opposition to the measures of government.\(^{35}\)

This line of argument is stated even more strongly by Adam Ferguson, who, writing anonymously against American independence, argues that “the essence of political Liberty is such an establishment as gives power to the wise, and safety to all,” adding that “popular Assemblies” represent “a power, which is of all others the most unstable, capricious, and arbitrary: bound by no law, and subject to no appeal.” Ferguson concludes, with Montesquieu, Hume, and Smith, that “Democracy and Aristocracy are…inferior in this respect to certain species of monarchy, where law is more fixed and the abuses of power are better restrained.”\(^{16}\)

The disagreement between Smith and Hume about the effects of commerce on individual virtue, like the corresponding disagreement between Montesquieu and Hume about the relative merits of monarchical and mixed government, should not obscure the fact that each of these thinkers agrees with Cato in treating virtue, insofar as it is a matter of public concern, as a means to the preservation of juristic liberty rather than as an end in itself (Ferguson’s is a more complicated case\(^ {37}\)). By distancing themselves from the classical association of virtue with the fulfillment of human personality, these thinkers raise the question of what kind of virtue promotes the enjoyment of freedom as they understand it and of whether commercial society tends to cultivate, or at least not to corrupt, virtue so understood. They respond, as we have seen, by arguing that the

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\(^{35}\) Smith, \textit{Wealth of Nations} V.i.f.61.


\(^{37}\) For a useful discussion of Ferguson’s treatment of virtue, see David Kettler, \textit{The Social and Political Thought of Adam Ferguson} (Columbus: Ohio State University Press, 1965), chapters 6–7.
virtuous citizen is one who is, as Smith puts it, “decent and orderly,” that is, who refrains from interfering not only in the private affairs of others, but in the affairs of the government itself as long as it is duly protecting the rights of its citizens. This line of argument represents a substantial departure from the premises of classical republican thought; indeed, we are not far here from Locke’s definition of liberty itself as a kind of property. However, as we will now see, these thinkers do not rest the defense of juristic liberty, as Locke does, on an appeal to divine purposes; rather they rest it on an appeal to the good of society as a whole. They thereby raise a series of questions about the relationship between individual and collective interests that are no less pregnant with implications for the relationship between republican and juristic freedom.

4.4. “NONSENSE UPON STILTS”

We have seen that the 18th-century defenders of commercial society developed a way of talking about freedom that was a genuine synthesis of republican and juristic ideas, combining the negative republican view that freedom depends on the enjoyment of personal security within a legally defined sphere and the negative juristic view that freedom consists in the exercise of discretionary choice within that sphere. What distinguishes these thinkers most clearly from their more traditional predecessors and contemporaries is their belief that the classical republican ideal of virtuous citizenship is no longer viable in the modern world. From this premise they drew the natural conclusion that the question of whether the practice of virtue is a necessary condition for the enjoyment of freedom – and the question of what virtue itself consists in – should be fundamentally rethought. In particular, they turned away from the classical association of virtue with active citizenship and devotion to the common good, focusing instead on the qualities of diligence and prudence that are necessary for success in a commercial society, and on the norms of deference to the laws and to the legally established authorities that

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38 The logic of this position is brought out nicely by Hirschman, who points out that “there is another side to the insight that the modern economy, its complex interdependence and growth constitute so delicate a mechanism that the grands coups d’autorité of despotic government become impossible. If it is true that the economy must be deferred to, then there is a case not only for constraining the imprudent actions of the prince but for repressing those of the people, for limiting participation, in short, for crushing anything that could be interpreted by some economist-king as a threat to the proper functioning of the ‘delicate watch’”: The Passions and the Interests, p. 124 (original emphasis).
are necessary for the orderly management of such a society. Although these thinkers agree on the importance of cultivating virtue in this rather limited sense, their views on the desirability of maintaining a republican form of government are rather mixed. Indeed, republican ideas play a distinctly subordinate role in this way of thinking, providing at most a statement of the necessary means for achieving the more fundamental end of protecting juristic liberty, and serving at times as little more than a set of rhetorical tropes for warning about the dangers of greed, envy, and factionalism.

This position has obvious ideological advantages: If commerce leads citizens away from the public sphere, it also complicates and deepens their private ties to one another, and to many 18th-century thinkers—and, no doubt, to many ordinary people—this seemed a trade-off well worth making. However, this depoliticized conception of public life also has certain ideological vulnerabilities. In particular, the 18th-century defenders of commercial society had to confront more squarely than their predecessors the question of how the existence of individual rights, and especially of rights to property, can be defended. Here, the juristic and republican traditions begin to pull once again in opposite directions. From a juristic standpoint the obligation to respect individual rights is ultimately derived from the obligation that we each have under natural law to preserve the human species and to be good stewards of the creation that we have been given in common. The challenge in this way of thinking is to ensure that human beings, corrupt and fallible as they are, are nevertheless compelled to respect the rights of their fellows. The solution is to empower a central authority—a sovereign or state—to enforce them. From a republican standpoint, by contrast, the secure enjoyment of individual rights is a necessary condition for the existence of a vibrant public sphere: Rights protect citizens from the arbitrary exercise of power, thereby making it possible for them to cultivate their virtue and to pursue the common good as they see it. It follows that rights must be politically actionable; that is, their enjoyment must depend not on the good will of a benevolent ruler, but rather on the vigilance of the citizens themselves.

39 As Pocock puts it, “if [the individual] could no longer engage directly in the activity and equality of ruling and being ruled...he was more than compensated for his loss of antique virtue by an indefinite and perhaps infinite enrichment of his personality, the product of the multiplying relationships, with both things and persons, in which he became progressively involved”: “Virtues, Rights, and Manners: A Model for Historians of Political Thought,” in idem, *Virtue, Commerce, and History: Essays on Political Thought and History* (New York: Cambridge University Press, 1985), p. 49.
As we have seen, elements of each of these positions are brought together in Locke, who argues that the legitimacy of political rule depends on the consent of those who are subject to it, and that freedom consists in obedience to no other political authority than the one to which we have consented. We have also seen that, despite the republican overtones of his argument, Locke conceives of consent in de jure rather than de facto terms: It can be improperly given, as when an individual or group consents to their own enslavement, and improperly withheld, as when an individual or group disobeys, resists, or seeks to overthrow a government that is in fact ruling justly.40 This raises the question of how the appeal to a natural standard of justice can be reconciled with the claim that the authority to decide whether that standard has been met should be placed in the hands of the people themselves, and indeed of each person taken singly.41 After all, as Locke himself was well aware, we often disagree about what our natural rights to life, liberty, and property entail, and thus about when they have been violated in a given case. This line of argument led Hume to conclude that the appeal to an “original contract” has anarchic implications: “[N]othing is a clearer proof,” he argues, “that a theory of this kind is erroneous, than to find, that it leads to paradoxes, repugnant to the common sentiments of mankind, and to the practice and opinion of all nations and all ages.” Jeremy Bentham, writing in the wake of the French Revolution, put the point even more sharply, accusing the defenders of natural rights of promoting a view that was not only “dangerous nonsense,” but “rhetorical nonsense – nonsense upon stilts.”42

Needless to say, these thinkers did not reject the idea of individual rights altogether; rather, they sought to justify their existence and define their scope by appealing to the good of society rather than to the purposes of God or the consent, counterfactual or otherwise, of the individuals concerned. Hume argues, for example, that we are obliged to observe “the natural duties of justice and fidelity” not because “we have given a tacit promise to that purpose,” but rather because “the commerce and intercourse of mankind, which are of such mighty advantage, can have no security where men pay no regard to their engagements.” Bentham

40 On the illegitimacy of “voluntary” slavery, see especially Locke, Second Treatise §§23–4; on the illegitimacy of resisting a just government, see ibid., §§226, 230.
41 As Locke puts it, “where the Body of the People, or any single Man, is deprived of their Right, or is under the Exercise of a power without right, and have no Appeal on Earth, there they have a liberty to appeal to Heaven, whenever they judge the Cause of sufficient moment”: ibid., §168 (emphasis added).
argues along similar lines that just as “there is no right, which ought not to be maintained so long as it is upon the whole advantageous to the society that it should be maintained, so there is no right which, when the abolition of it is advantageous to society, should not be abolished.” “[T]he exercise of the rights allowed to and conferred upon each individual,” he concludes, “ought to have no other bounds set to it by the law, than those which are necessary to enable it to maintain every other individual in the possession and exercise of such rights as…is consistent with the greatest good of the community.” Even Edmund Burke, who was hardly a Benthamite in his political views, holds that “[i]f civil society be made for the advantage of man, all advantages for which it is made become his right,” and, conversely, that “[t]he rights of men in governments are their advantages.”

By resting the defense of individual rights on considerations of social utility rather than on the consent of the governed, Hume, Bentham, Burke, and like-minded thinkers sought to avoid the seemingly anarchic implications of a position that combines, as Locke’s does, a juristic appeal to natural liberty with a quasi-republican appeal to popular sovereignty. However, if these thinkers sought to limit the grounds on which something can be regarded as a right, the rise of commerce dramatically expanded the grounds on which something can be regarded as property – the most conspicuous, and most conspicuously Lockean, example being the “property” that individuals were now said to have in their own labor. Indeed, as real property was increasingly displaced by or convertible into mobile property, it became possible and even customary to take the very fact that something can be exchanged for something else of value as grounds for treating it as property. Moreover, as J. G. A. Pocock observes, “defining something as property was becoming hard to distinguish from defining it as commodity,” and thus as something that its owner had the right to alienate – to sell – at will. Rights to possession therefore became

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44 See, for example, William Paley’s Principles of Moral and Political Philosophy (1785), book 6, chapter 3, which repeats Hume’s critique of contractarianism (adding a distinctly non-Humean theological twist), and which served as a leading textbook on the subject through the middle of the 19th century.

hard to distinguish from rights to exchange: If to sell one’s property (or one’s labor) is to lose one’s freedom in the classical republican sense, to be prevented from doing so is to be prevented from exercising one’s freedom in this new, commercial sense.

Instead of being seen as the stable foundation of human personality, property was now seen in dynamic terms as something to be used or traded according to the interests of the individuals concerned. This commercialized conception of the relationship between property and consent turns Locke’s position on its head: Rather than serving as a counterfactual condition for the legitimacy of political rule, consent is now treated as a constitutive feature of social life, an activity in which individuals are continuously engaged as they pursue their interests by making voluntary exchanges in the marketplace. In other words, if the juristic appeal to natural rights was (and is) intended to limit the discretionary power of individuals in the public sphere, with the rise of commerce it also came to stand for the idea that an entire social order could – and should – be built out of the consensual actions of individuals in the private sphere.

Thus Keith Michael Baker points out, for example, that in the writings of Abbé Sieyès (1748–1836), “the notion of the social contract is generalised into the principle of constant exchange underlying the logic of the division of labour and the progress of society towards greater complexity. In this idiom, freedom is not secured against domination by a single contractual act; instead it is indefinitely extended by a constantly proliferating system of contracts/exchanges generating an ever-increasing satisfaction of human needs.” Joyce Appleby finds a similar development in 18th-century Anglo-American thought more generally: “A hundred years earlier [viz., in the 17th century]…people spoke of the state of nature, a predicament, and civil society, a solution. A century and a quarter of economic development had dramatically enhanced public opinion about voluntary human actions, and society was the word that emerged to represent the uncoerced relations of people living under the same authority.”

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The canonical statement of this line of argument is found not in Locke, but rather in Smith’s “obvious and simple system of natural liberty,” in which “[e]very man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men,” and in which the duties of the state are limited to protecting its citizens against external enemies, securing the necessary conditions for just and orderly exchange, and providing those public goods “which it can never be for the interest of any individual, or small number of individuals, to erect and maintain.” The aim of this “obvious and simple system” is to approximate as closely as possible what Smith refers to elsewhere as a condition of “perfect” liberty, one in which each person is free to offer their goods – including their labor – for sale at a price of their own choosing, to buy or not buy goods at a given price, and to choose and change occupations as they please. When perfect liberty obtains, Smith argues, the market price of commodities will tend to converge to their “natural price” – that is, the cost of bringing them to market plus what he refers to as the “ordinary rate of profit” – and an efficient allocation of resources will be achieved as productive resources are brought into and out of play in response to changes in effective demand. This is, he concludes, the only way to ensure “the progress of the society towards real wealth and greatness” by “increasing the real value of the annual produce of its land and labour.”

Smith, like the other defenders of commercial society, rests his defense of perfect liberty squarely on the empirical claim that the best way to advance the well-being of society is to allow individuals to dispose of their property as they please. However, his defense of individual rights, unlike Hume’s and Bentham’s, does not rest solely on considerations of social utility. “[W]hen a single man is injured,” he argues, “we demand the punishment of the wrong that has been done to him, not so much from a concern for the general interest of society, as from a concern for that very individual.” Smith defines “injury” as harm, first, to “that which we are possessed of,” and second, to that of which “we have only the

Smith, *Wealth of Nations* IV.ix. 50–1; on “perfect” liberty, see in particular I.vii.6, 30; I.x.a.1. Smith is careful to emphasize that this is an ideal: “If a nation could not prosper without the enjoyment of perfect liberty and perfect justice, there is not in the world a nation which could ever have prospered. In the political body, however, the wisdom of nature has fortunately made ample provision for remedying many of the bad effects of the folly and injustice of man; in the same manner as it has done in the natural body, for remedying those of his sloth and intemperance”: ibid., IV.ix. 28.
“expectation” because of agreements that we have entered into. “The most sacred laws of justice,” he concludes, “are the laws which guard the life and person of our neighbour; the next are those which guard his property and possessions; and last of all come those which guard what are called his personal rights, or what is due to him from the promises of others.”

For Smith, as for later market theorists, the distribution of property in a given society is not just because it is socially optimal, but rather because it is the product of voluntary exchanges on the part of the individuals concerned. He therefore takes the Lockean claim that “[t]he property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable” to mean that government interference in the labor market is “a manifest encroachment upon the just liberty both of the workman, and of those who might be disposed to employ him.” Indeed, this principle of non-interference applies in Smith’s view to the operation of any market whatsoever: “[t]o prohibit a great people...from making all that they can of every part of their own produce, or from employing their stock and industry in the way that they judge most advantageous to themselves,” he argues, “is a manifest violation of the most sacred rights of mankind.”

Here again we have a synthesis of the commercial republican claim that rights to property and exchange should be respected as a matter of social utility and the juristic claim that they should be respected as a

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matter of justice. The tension between these positions is finessed in Smith, as it is in market ideology more generally, by the empirical claim that it is precisely the policy of justice that leads to the greatest welfare of society as a whole. The definition of liberty that he appeals to in making this line of argument resembles Hobbes’s conceptually pioneering but politically stillborn effort to define the “liberty of subjects” in purely negative terms. However, where Hobbes sought to neutralize the appeal to the language of liberty on the part of political subjects, Smith makes the absence of restrictions on voluntary exchange a leading measure of the legitimacy of political rule. In his hands the synthesis of commercial republican and juristic ideas takes an explicitly market-centered form: The proper aim of a system of law is not simply to ensure that human behavior is kept within the bounds of justice, but to facilitate the efficient exchange of goods and services by maximizing the amount of natural liberty that is enjoyed by each individual. Freedom so understood consists in, rather than simply being realized through, the pursuit of individual interests in the marketplace. It is associated on the one hand with the impersonal operation of a decentralized and largely anonymous mechanism for determining social outcomes – the “invisible hand” of the market – and on the other hand with the right of individuals to exercise their natural liberty within the legal and material constraints that are defined by that mechanism. This is, of course, the market conception of freedom with which we are now familiar.

4.5. MARKET FREEDOM

I hope to have shown that the empirical and conceptual objections to which the Lockean doctrine of government by consent was subject brought it into contact with commercial republicanism, another newly emerging ideological position with seemingly anarchic implications. Each of these schools of thought sought to resolve a long-standing tension in the republican conception of freedom: the commercial republicans by favoring an instrumental over an intrinsic conception of the value of virtue, and the Lockean liberals by favoring a substantive over a procedural conception of the nature of arbitrary power. And each has certain ideological advantages taken on its own: The Lockean appeal to natural rights offers a clearer set of criteria for identifying the presence of arbitrary power than the classical republicans had been able to provide, and the commercial republican appeal to the incentives that states have to promote the commercial activities of their citizens offers a means of
checking arbitrary power that was more robust and less demanding than the classical republican appeal to civic virtue. However, each of these positions also suffers from a corresponding ideological vulnerability. The Lockean view that the legitimacy of political rule rests on the consent of the governed, and that consent can only legitimately be given to governments that respect the natural rights of their subjects, raises the question of how individuals and governments can be constrained to respect those rights in practice. After all, government is necessary in Locke’s view precisely because we often disagree about what our natural rights entail, and the threat that consent might be withdrawn and revolution undertaken can only be invoked, as he admits, in exceptional cases. Similarly, the commercial republican view that self-interested behavior can have collectively beneficial consequences raises the question of whether the habits of thought and action that are generated by a commercial society are compatible with the traditional republican aim of creating the conditions under which individuals can cultivate and display their virtue.

The Lockean claim that the “Industrious and Rational” have a natural right, and indeed a God-given duty, to “improve” the earth through their labor\textsuperscript{50} made it possible for the 18th-century defenders of commercial society to tie their position to something loftier than the pursuit of wealth and luxury, and to portray the abuse of political power as something more than a matter of inefficient administration. They were therefore better able than their 16th- and 17th-century predecessors had been to respond to the accusation that the rise of commerce has made citizenship into a purely mercenary proposition and the citizen into little more than an anonymous cog in a larger economic machine. Indeed, the claim that we each have a sacred right to life, liberty, and property and a corresponding duty to provide for our own well-being proved to be more than a match rhetorically speaking for the traditional republican appeal to civic virtue and the common good. For their part, the commercial republicans provided the Lockeans with a conception of resistance to arbitrary power that extended beyond mere consent, tacit or otherwise, to political rule into the day-to-day world of commercial transactions. The project of securing justice was therefore not restricted to those exceptional, revolutionary moments of crisis in which the very legitimacy of political rule is called into question. As the idea of a social order built out of individual acts of consent came to occupy a central place in the theoretical imagination of the 18th century, the idea of a political order based on the

\textsuperscript{50} Locke, \textit{Second Treatise} §34.
same principles began to seem less mysterious and radical than it had in the original Lockean formulation. After all, not only do we consent to commercial transactions all the time, but we each have an interest in seeing that the commercial realm continues to function in an orderly way. Indeed, the supposed efficacy of the market in generating wealth for all people made it possible for the defenders of market freedom to sweep aside the moral restrictions that natural jurists, including Locke, had placed on market activity since at least the time of Thomas Aquinas.

Thus, as I suggested at the beginning of this chapter, the most striking feature of the 18th-century debates about the meaning and value of freedom is not the existence of a conflict between liberals and republicans, but rather the weaving together of two distinct theories of freedom – each of which emerged, as we have seen, out of a much older tradition of thought – into a new and predominantly market-centered view. According to this way of thinking, the proper aim of government is not, as in classical republicanism, simply to enact the will of a virtuous citizenry as filtered through a properly designed set of political institutions, or, as in Lockean liberalism, simply to protect the natural rights of its citizens. Rather, the aim is to ensure the smooth functioning of commerce by allowing individuals to dispose of their property – including the property that they have in their labor – as they see fit, thereby advancing the security and prosperity of the polity as a whole. Whereas the classical republicans saw the subordination of economic to political concerns as a necessary condition for the enjoyment of freedom, the cause of freedom and that of commerce were now said to be closely linked. Whereas the classical republicans sought to subordinate individual interests to the common good, the defenders of market freedom, despite (or because of?) their professed belief in the ultimate harmony between individual and collective interests, placed the ever-present possibility of conflict between the individual and the state at the center of attention and described it as a conflict in which freedom itself was at stake.

The defenders of market freedom did not abandon the commercial republican claim that markets, as the most efficient means of generating and distributing wealth, are socially beneficial; they simply added the claim that markets are to be valued because they provide the greatest

scope for the exercise of individual liberty. The defense of market freedom, and of market society more generally, has always consisted in a somewhat unstable amalgam of these two lines of argument:\textsuperscript{52} Markets are favored on the one hand because they promote what Smith calls the “real wealth and greatness” of society, and when counter-arguments are advanced against this claim they are rejected, usually through an appeal to anti-paternalism, on the grounds that even socially beneficial interference with markets infringes on what Smith calls the “just liberty” of the individual.\textsuperscript{53} The resilience of the market conception of freedom, like the resilience of the republican conception that it displaced, is due in large part to its ability to hold these two ways of thinking – one individual and personal, the other collective and impersonal – in fruitful tension with each other. Indeed, there is a sense in which these two lines of argument reinforce each other: Whether we believe that the exercise of individual liberty in the marketplace provides the best means of advancing the interests of society as a whole, or that the expansion of individual liberty is itself the end that we should pursue in public life, we are assured in either case that by attending to our own interests without conscious regard for the common good, we are meeting our social obligations in the most efficient possible way. This is an enormously liberating point of view: a vision of a world that, once the right rules are in place, runs by itself. The effort to bring such a world into being has always been one of the central aims of market ideology, from the \textit{ordre naturel} of the Physiocrats (to whose founder, François Quesnay, Smith intended to dedicate his \textit{Wealth of Nations}) to the “self-regulating market” of

\textsuperscript{52} A similar observation is made by John Dunn, who points out that “the conception of the bourgeois liberal republic is a precarious fusion of the two very different modern idioms of ethical thought – deontological theories ascribing rights to all human beings in virtue of their humanity (or perhaps more narrowly to all human agents in virtue of their agency), and consequentialist theories assessing the distribution of utilities or preferences, or more broadly, welfare outcomes, and deeply preoccupied, accordingly, with questions of social, political and economic causation”: “The Identity of the Bourgeois Liberal Republic,” in Biancamaria Fontana, ed., \textit{The Invention of the Modern Republic} (New York: Cambridge University Press, 1994), quoted at p. 219.

\textsuperscript{53} The delicate balance between the claims of justice and utility in Smith’s economic thought is brought out especially clearly in his defense of free trade in grain, where he argues that “[t]o hinder… the farmer from sending his goods at all times to the best market, is evidently to sacrifice the ordinary laws of justice to an idea of publick utility, to a sort of reasons [sic] of state; an act of legislative authority which ought to be exercised only, which can be pardoned only in cases of the most urgent necessity”: ibid., IV.v.b.39. On Smith’s involvement in the 18th-century Corn Law debates, see Emma Rothschild, \textit{Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment} (Cambridge, MA: Harvard University Press, 2001), chapter 3.
19th-century laissez-faire to the “spontaneous order” of Friedrich Hayek and the Austrian school.\textsuperscript{54}

I began this book by suggesting that much of the appeal of market freedom can be traced to the fact that it aims at the removal of constraint as such, thus allowing the partisan of freedom to bracket disagreements about the proper ends of public life from discussions about freedom itself. We can now see how this way of thinking, seemingly incoherent though it is, fits hand-in-glove with the norms and practices of market societies: In such societies individuals are not only absolved of responsibility for consciously pursuing the common good (which is said to be realized, if at all, through the unhindered operation of the market), they are encouraged to think of their own sphere of free action in purely individualistic terms, as one that the state is obliged to respect as a matter of right. Constraints on individual choice therefore appear as a loss of freedom \textit{tout court}, to be defended by appealing not to a broader conception of freedom as participation in a free man’s ethos or obedience to natural law, but rather to the competing presence of a qualitatively different – and, often enough, presumptively inferior – value. Instead of serving as a shorthand for an entire way of life, which combines under one heading a pattern of social relationships and a standard of individual behavior, freedom becomes a particular value that has to be traded off against other values in public life.\textsuperscript{55} It is this way of thinking that makes it possible for Isaiah Berlin to


\textsuperscript{55} As James T. Kloppenberg observes, “[w]hen independence lost its identification with benevolence, when self-interest was no longer conceived in relation to [an] egalitarian standard...then freedom itself, especially the freedom to compete in the race for riches without the restraint of natural law, became an obstacle in the way of justice.” Kloppenberg traces this development to “the early alliance between the virtues of republicanism and the virtues of liberalism,” although he defines these terms rather differently than I have here: “The Virtues of Liberalism: Christianity, Republicanism, and
argue, as if it were a matter of plain common sense, that “[e]verything is what it is: liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience.” In other words, the market conception of freedom makes it possible to detach the problem of removing constraints from the larger political context in which it necessarily appears – ironically, the very detachment against which Berlin protests in the quoted passage. Any effort to revive the republican conception of freedom must therefore begin, pace Berlin, by showing that there is a sense in which a commitment to freedom entails a commitment to values such as equality, fairness, justice, culture, and happiness. Yet the contemporary theorist of freedom is in the paradoxical position of being unable to do this without seeming to pose a threat to the value of freedom itself.

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