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The Philosophical Case for the Commercial Republic

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Ironically, Charles Beard both reviled and revived The Federalists. Douglass Adair has shown that Federalist 10 was rarely cited in the 19th century, and argues that thus Beard made it more important than it really was. My question would be different: why did Federalist 10 disappear for so long when it was, in fact, crucial to the entire creation of the commercial republic? But that is a question for another day. Beard was correct to make Federalist 10 important; he understood that economics were common and durable issues of faction to Madison. But Beard interpreted that essay through a sort of Marxist reductionist lens: know the economic holdings of the Framers and you know their ideas. Martin Diamond argued persuasively against Beard's reductionist argument, but ended up saying that the Framers were insufficiently ancient and thus were solid but "low." In the end, both Beard and Diamond agreed that America was ill-founded for the very same reason: our founders created a commercial republic.

I want to make the case for the Commercial Republic against a framework of distrust on bot sides of the spectrum.

Federalist 51 provides the institutional or constitutional framework for the operation of Federalist 10. There is nothing in The Federalist to encourage the direct will of the people ruling; they instead appeal to the deliberate sense of the community. That is what Madison means by the rule of law rather than the rule of men. The latter was seen as the very essence of tyranny. But for the Progressives the institutional framework was a mere façade for the rule of the upper over the lower class. The objective was to win the battle for democracy. Interestingly, on might have expected that Jefferson would have loomed large in the heroic figures of the Progressives. Wasn't he the democrat par excellence of the Founding? He authored the Declaration of Independence and was absent for the creation of the Constitution. Yet, while Jefferson might have been a democrat, for Progressives, he had an under developed understanding of democracy. Namely, he put his emphasis on individual freedom and not social justice. Didn't he oppose the upper class system being proposed by Hamilton? Yes, but the Progressives think they can cure Hamiltonianism of upper classism and keep his nationalism. The solution is a national democracy.

I am going to suggest that historians have misplaced the difference between Hamilton and Jefferson as the great divide in American politics. One consequence is that we see the battle for America as agrarianism over against capitalism. This is another of the mistakes that historians make: import a European model to interpret America.

Federalist 10 does say that the most common and durable source of faction is the property question. And that is what makes a conversation between the Founding

and the Progressives possible. For Locke and Smith, private property is a legitimate reward for personal effort. It also leads to the improvement of the human condition. For Rousseau and Marx, private property is theft and the symbol of human alienation. Linked to the property question is what is the proper role of government? For Marx, all politics and government is about power. And power ultimately is economic power, which, in turn, is about the few who own and the many who don't own property.

There is thus a link to Lincoln and the Civil War and to the amended Constitution. The progressives play up the notion that the origin of real progress in America is constitutionalized by the 13th Amendment, which prohibits one human being to own another human being. At issue is whether or not that amendment is seen as a reversal of the ill-founded nation or as the fulfillment of a well-founded nation. Lincoln replaces both Jefferson and Hamilton as the Founders of modern America where human rights are more important than property rights. Thus, the Declaration becomes more important than the Constitution; if anything the Constitution is a reaction to the Declaration.

But once you have passed the 13th and then the 14th and the 15th amendment what is there for you to do and what is the lesson for the next generation?

Hamilton is a half-hero of the Progressives because they see him as a nationalist willing to use the power of the federal government. The economic theory of Beard is a mild form of class war and that social question is at the heart of the Progressive approach to politics. It is class war stupid. And certainly with the Progressives equality replaces liberty as the central concern of politics. The role of the federal government is to regulate interstate commerce, thus the ICC and the emergence of the three new cabinet departments.

So the Progressives are against the improved science of politics AND the extended commercial republic. Thus they think that America is ill founded. They would rather have a parliamentary system governed by a centralized administration and a society that holds to the values of social justice or communal freedom than individual liberty, which seems to reinforce the selfish side of human nature. Competition implies market failure, whereas government intervention suggests government solution. And there is no sense saying that local government is better because, according to the Progressives, the great social problems do not recognize state boundaries. Thus, in addition to the separation of powers and checks and balances, the Progressives have no affinity for federalism.

For Progressives, coordination rather than competition leads to good outcomes and leadership is linked to the notion of knowledge. There is a Progressive inkling that there is a body of knowledge that can be certified by an advanced degree somehow independent from special or personal interests. These public servants will seek the common good, and since commerce and the common good do not go together, it is the job of government to reign in the self interested few who would shaft us unsuspecting and innocent many.

John Locke and the Commercial Republic

What joins commerce or trade on the one side with republic and law on the other side is the centrality of consent and contracts as normal parts of human living. People have been exchanging goods and services for centuries, but it is only when money replaces barter that money making becomes defensible and commerce emerges as a way of life. Similarly, while the word republic has been around in the heads of philosophers and the statesmen of Rome for centuries, it is only when contrasted with monarchy that the word becomes clearer. The attachment to public things inherent in the word republic is best understood in terms of its opposite, namely an attachment to private things. By the 17th century, republicanism was seen as the alternative to monarchy or absolute rule by one person for his or her own private interest. The rallying cry for republics was that the rule of law should replace the rule of man.

But it is not obvious that commerce and republic should be joined together. After all, the Peoples Republic, Socialist Republic, Islamic Republic, and Protestant Republic have all existed and they are all suspicious of the commercial way of life. And one can at least imagine widespread commercial activity taking place in 19th century Victorian England and 21st Century Communist China.

We could begin our study of the commercial republic with Plato's Republic and his remarks about a commercial regime being a city fit for pigs in contrast to the best regime run by philosophers rather than wage-earners. We could then turn to Aristotle's Politics, where we learn that the management of the household (oikos-nomos) is an inferior activity to the governing of the polis and that there are certain economic activities more in accordance with nature than others. In particular, making money off of money is an unnatural act, whereas farming with an eye to self-sufficiency is praiseworthy. We could then work our way through Aquinas and beyond and discuss such concepts as the just price, the just wage, and further criticisms over the deadly sins that emerge from devoting too much attention to the life of the body and the secular world. Such a study would reveal two important points: 1) the case had to be made in favor of a commercial republic, and 2) there is something unsatisfying about the modern commercial republic regardless of whether that springs from attachment to ancient virtues or post-modern values.

We begin our coverage of the commercial republic with the late 17th century work of John Locke. The dominant theme in Locke's work is that improvement in the material condition of mankind is both possible and desirable. With the help of the discoveries of modern science generally and of Rene Descartes, Isaac Newton, and Francis Bacon particularly, Locke presented a view of human progress and the transformation of nature that was unknown to the ancients.

And Locke argued that this could best be achieved by challenging the existing mixed economic system of mercantilism and feudalism and the notion that

monarchs had that divine right to rule and be obeyed absolutely, and by insisting that there should be a separation of church and state.

Unlike the classicists and the post-moderns, Locke envisioned the essential unit of analysis to be the autonomous individual in a state of nature free from social restraints and governmental regulations. Locke portrayed this fundamental natural position of humans to be one of abject poverty. Nevertheless, since God gave the world to man to enjoy and improve rather than to simply suffer and starve, those who are rational and industrious in taking care of themselves by ploughing the land and investing in the useful arts and sciences are to be held in the highest esteem. Private property is the source of human improvement. True, God gave the world in to man common, but it is through the privatization of this property that the general wellbeing is advanced. Accordingly, the acquisition of private property is natural rather than suspect (as the ancients would claim) or down right theft (as the post-moderns would challenge).

But Locke didn't stop with a defense of private property as 1) a legitimate reward for honest and productive labor and 2) an opportunity to invest the surplus product for personal profit. He went beyond offering an alternative to the mercantilist theory of production of and the aristocratic distribution of property according to the law of primogeniture. He went beyond a defense of commerce broadly understood. He actually challenged the traditional answer to the political question of who should rule. Locke seriously undermined not only primogeniture in the economic world but also the divine right of kings in the political world. Legitimate government came into existence by the consent of autonomous individuals who willingly surrendered the right to adjudicate disputes and reluctantly gave up the power to make laws that were necessary and proper for the well-being of the community. Locke brooks no idea that the rights of the people came from the government; rather the powers of the government were a limited grant by the people out of necessity. All the better to separate the powers of government and limit the reach of government to specified objects with the people retaining control over the vast areas of their life.

The critique of the Commercial Society suggests that the very term is an oxymoron. How can a monetary economy based on exchange and investment for profit produce an outcome where the public good is served? Moreover, it rests on the assumption that competition actually exists in both spheres and produces a fair outcome. But experience proves that the economy does not work in this imaginary way, and thus a government can't be limited to enforcing the rule of law against the theft of property and the abuse of power. The government, particularly a democratically inclined government, must control commerce so that it works on behalf of the people rather than advancing the interests of the few. The new case for government is not the classical claim of molding (re)public(an) virtue, but the claim that government is to secure the equal claim to happiness.

Adam Smith and the American Founding

Smith built on the Lockean foundation that the human condition was capable of improvement by individual initiative. Smith focused on improving the human condition by increasing the wealth of the nation. Poverty was to be solved by increasing production, which, in turn depended on the productivity of labor, which was strongly influenced by the division or specialization of labor, and *that* depended on the extent of the market.

But Smith made a correction to Locke that gave commerce an even greater moral support. Human beings not only have a natural inclination to self preservation and thus have the right to the means to self preservation; the butcher, the baker, and the brewer also have a natural inclination to "truck, barter, and exchange" beef, bread, and beer with other human beings. No "human wisdom" was needed to create this situation; the "propensity " to cooperate with others is a vital part of a commercial or civilized society. In seeking the cooperation of others, however, we do not appeal to their generosity, "but to their self-love, and never talk to them of our own necessities but of their advantages. Nobody but a beggar chooses to depend chiefly upon the benevolence of his fellow-citizens."

In the Wealth of Nations, Smith presents his System of Natural Liberty where a commercial society if left to its own devices produces both improvement and equilibrium. Smith wrote, contra Rousseau, that the practical arts and sciences actually lead to the improvement of society and that there is a natural progress from a primitive agricultural community to an advanced, or "civilized and thriving country."

In the final two books of the Wealth of Nations, Smith addresses the question of what government should do that is consistent with the Natural System of Liberty. He distinguishes between a Mercantile system of political economy, where the government is extensively involved in the day to day operations of production and the granting of special privileges to a few companies, and a commercial society where the government is limited to a few essential operations and the market operates in the area of production, distribution, and exchange. This defense of an active market against an active government is what John Stuart Mill called the system of laissez faire in 1848 and what von Hayek called the system of free enterprise in the 20th century. The presumption through the centuries is that individuals know what is best for themselves and that the market system works favorably. The government should resist the urge to interfere against the contrary defense of government action which points to market failure as justification for involvement.

There is a common thread that runs through the defense and critique of the commercial society. In many ways it turns on the role of human wisdom. From Smith to Hayek and Friedman there is the suspicion that human wisdom is incapable of planning and anticipating what should be produced. On the other hand, there is a strong presumption from the Mercantislists through the

Progressives that selfless administrators can be educated to determine the level and kind of production necessary for an efficiently run economy.

The other problem that needs to be considered is whether a commercial society promotes personal greed at the expense of a concern for the public welfare. How is it possible that a concern with self-interest in fact leads to desirable outcomes? How scientific is it to say that an invisible hand somehow works to unintended actions into favorable outcomes? This sounds like an economics of flashing mirrors. The defense from Locke through Smith to Hayek and Friedman is that a concern with self-interest is not the same as personal greed or self-indulgence. A commercial society requires its habitants to learn the values of hard work, thrift, and moderation. On the contrary says Smith "I have never known much good done by those who affected to trade for the public good." To borrow from Tocqueville, the heavy hand of government involvement in the day-to-day lives of the people is likely to turn self-reliant citizens into obedient sheep or permanently dependent children.

The Federalists followed the Smith model in its effort to control rather than eliminate faction. The wellbeing of the nation depended on the presence of religious, political, and economic liberty. These liberties in turn required the encouragement of a variety of opinions, passions, and interests, and *these* in turn depended greatly on the encouragement of a commercial society across an extended territory. Commerce is not just tolerated; it is embraced.

This leads us to emphasize what is critical in the origin and development of the commercial republic. Commerce is deemed to be vital for the preservation of economic, political, and religious liberty. At the heart of commerce is not only the idea of trade and exchange, but also competition. It is through the competition of firms and industries for the support of the consumer that economic liberty is secured. Similarly, the competition of the separate branches of government and different levels of government, augmented by frequent and fair elections helps secure political freedom. And linked to this is the notion that religious liberty is strongly influence by the competition between a vast number and variety of religious sects for the support of the "religious consumer."

The American Founding and the Commercial Republic

Perhaps the greatest contribution of The Federalist was that republicanism could be—in fact must be—operated on a scale not previously imagined. The "oracle" Montesquieu, for example, argued that republics could only thrive in small and homogeneous communities where people knew each other and had a sufficient range of experiences in common to care for the public things. To be sure, Montesquieu had supported federalism and the separation of powers, but he saw these republican institutions as auxiliaries to the social infrastructure of a small and homogeneous society where the inhabitants were involved as citizens and thus their public virtue was vital. But such small communities were not conducive to the encouragement of a variety of interest. The Federalist "corrected" Montesquieu by arguing that the republican institutions will work

even better in a large republic than in a small one. That is the whole point to Federalist 10 and 51.

Madison put it this way in Federalist 51: "If all men were angels, no government would be necessary." We add, if all men were beasts, free government would be impossible. Thus free government presupposes a sufficient degree of virtue in the people that, when supported by institutional and economic competition, the republican principle of "the deliberate sense of the community" will prevail. There is no temptation in Madison to transform men into angels or to eliminate the causes of faction.

We have said that the very idea of republicanism in the modern world is to replace the arbitrary distribution of economic and political power with a reasonable criteria, the evidence for truthfulness of which appears obvious to the reasonable person. The conventional law of primogeniture and monarchical rule were deemed to be self evidently false by the standard of nature. The rule of law is better than the rule of man. That is the key to the modern case for republicanism. One might add that the rule of markets –the law of demand and supply—is better than the rue of men in the economic realm. So it is not as unnatural as might first appear that commerce and republicanism belong together. A modern republic is designed to protect the rights of individuals and not just the rights of the few or the many. Modern republicanism does not stress the pre-existence and importance of a common good. Nor is it willing to rely simply on the voice of the people as the expression of a common good. Modern republicanism has a Constitution which species the powers of government, the rights of individuals, as well as the powers and limitations of the majority of the people. To be sure, this institutional arrangement receives its continued legitimacy from frequent and fair popular elections as well as the super majoritarian amendment process.

Let's take a look at the Constitutional support for a commercial republic. And let's look at the document more innocently than did Charles Beard did. Let's take the language seriously. And let's ponder two central questions: 1) what does the Constitution have to say about republicanism? and 2) what is commercial about the Constitution and the republic it establishes?

It is far easier to answer the first question than the second and we need not delay too long to pursue the second question. According to the Framers, a republican form of government is where a) a scheme of representation takes place in contrast to both a monarch and a (pure) democracy; b) there is a separation of powers between the legislature and executive branches; c) the judicial branch is independent from the political branches; and d) the legislative branch is bicameral rather than unicameral. There is also e) a provision for frequent elections by the people, but there is room for debate about the mode of election, the length of term of office, whether terms of office should be staggered, and who can vote and who can run for office. There is also f) provision for the removal of a party from office.

1). Article One, Section six indicates that "Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States." I think this underscores the commercial nature of the republic. As Ben Franklin reminded the delegates at the Philadelphia Convention, and political thinkers from Aristotle to Montesquieu argued, a republic required a deep attachment to public service by both the citizens and statesmen. The thought of paying someone to serve the public was certainly untraditional. But that is what the Framers proposed. Now, that did not mean that the electorate and the elected were to be motivated simply by money; rather it meant that it is appropriate to pay someone for services rendered and we can always refuse to hire them again by means of frequent elections. Besides, paying a House member or senator for their service certainly broadens the pool of who can be elected.

The Framers realized that paying the representatives could also lead to abuse. Thus in Article 2, Section 1, the President shall not receive a pay increase until after the next Presidential election. This move was an attempt to check the potentiality for corruption in the executive branch. Similarly in Article 3, Section 1, the judges shall be compensated for their services, but their pay shall not be reduced while in office. This is an attempt to secure the independence of the judiciary.

2) Article 1, Section 7 that "all bills for raising revenue shall originate in the House of Representatives." This clause is grounded in an American axiom of republican liberty: no taxation without representation.

3) Among the 18 clauses Article One, Section 8 outlining the powers of Congress, there are at least six that deal directly with a commercial society.

A) There was close to unanimous at the Constitutional Convention that Congressional action under the Articles of Confederation was impeded by the unavailability of a regular source of funding and borrowing. Thus the delegates agreed to grant the power to tax and borrow to Congress under the new Constitution (see Article 1, section 8, clauses 1 and 2).

But what if Congress abused this power? One answer is that power is limited to public policy that supports the general welfare and common defense. But what if these two clause are used as invitations to expand the role of government rather than to limit the role of government? What policy can't be justified in the name of the general welfare or common defense? The Framers' answer is that ultimately the people themselves initially through regular elections and ultimately through the amendment process must express their "deliberate sense" on the issue. Whether one interprets these clauses loosely or strictly has had a huge impact on the kind of commercial society and republican government that has unfolded in the United States. For example, the New Deal and Great Society programs in the 20th century and Obamacare in the 21st century owe much to a broad constitutional interpretation of these clauses.

B) The most famous is Article 1, Section 8, clause three known popularly as the interstate commerce clause. The clause granting Congress the power to "regulate commerce…among the several states" is vital to the creation and preservation of an interstate commercial republic over an extended territory. But what exactly does this clause mean and has its meaning changed over time? Is it possible to draw a clear line between intrastate and interstate commerce as the Supreme Court in the new Deal era attempted to do? What exactly constitutes commerce? Does Chief Justice John Marshall's decision in McCulloch v Maryland settle the issue for good? Again, the New Deal, the Great Society, and Obamacare programs relied on a very expansive rather than a restrictive interpretation of the meaning of this clause.

The Progressives in the late 19th and early 20th century relied on this clause to regulate the relationship between capital and labor and support the development of labor union activity. The Progressives also provided a significant challenge to the traditional understanding of the role of government in a commercial republic. They introduced three new cabinet departments that were directly responsible for regulating the three sectors of the economy: the Agriculture Department, the Labor Department, and the Commerce Department. The roles of these departments have expanded over the last hundred years in an effort to control rather than encourage the operation of a commercially based republic.