

The Invention of Market Freedom*

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1. Republicanism and liberalism

One of the most striking and far-reaching transformations that has taken place in the language of 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 inegalitarian, 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 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

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the market.¹ These dramatic 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 lexicon, 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 essay I explore the question of how the market came to hold such a privileged place in modern thinking about freedom — a state of affairs that is both historically anomalous and, in some respects, morally troubling. Any discussion of this question has to begin by taking account of the fact that 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 the market conception of freedom in the modern period must have come at the expense of the republican view. A natural place to begin, then, in trying to account for the state of current debates about freedom is by examining how the republican tradition was confronted with, altered in response to, and finally overcome by the spread of market norms and practices. Given that liberals, unlike republicans, treat individual liberty, understood as the ability to pursue one's own good in one's own way, as the first and highest political end to be pursued, and given that as a result they have typically been receptive to the idea of turning a wide range of social

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 Hayek; see especially the first volume of his *Law, Legislation and Liberty* (Chicago: University of Chicago Press, 1973). Hayek himself credits the idea that social order can be “the result of human action but not of human design” to Adam Ferguson: *ibid.*, p. 20.

decisions over to the market, it is tempting to conclude that the triumph of the market-centered conception of freedom was a byproduct of the broader triumph of liberal ideals in the modern period.² From this point of view we should not ask how and why republican freedom was supplanted by market freedom, but rather how and why republicanism was supplanted by liberalism more generally speaking. The question of why the language of freedom is now so closely associated with the institution of the market would then be subordinated to the larger question of why liberalism is the reigning political ideology in the modern world. In other words, we would find ourselves, on familiar (if nevertheless puzzling and contentious) conceptual and ideological terrain.

The problem with this line of argument is that it asks the wrong historical question: the question for our purposes is not whether and how republican political ideals were superseded by liberal ones, but rather how the political implications of the language of *freedom* — the one political value to which republicans have, historically speaking, had privileged rhetorical access — could have changed so thoroughly that it now requires some effort to grasp its original meaning. I will argue that this shift in usage was made possible by two related developments in the political thought of the 18th century. This first was the emergence of a debate over the question of whether and to what extent the so-called “rise of commerce” was compatible with traditional republican ideas about freedom — a debate that led, as we will see, to a schism within the republican tradition

² I do not mean to minimize the disagreements among liberals with regard to the implications of a commitment to individual liberty, or with regard to the role that markets have to play in realizing this commitment. Nevertheless, I believe that Ronald Dworkin is correct to say that for the liberal “there are no better mechanisms available, as general political institutions, than the two main institutions of our own political economy: the economic market, for decisions about what goods shall be produced and how they shall be distributed, and representative democracy, for collective decisions about what conduct shall be prohibited or regulated so that other conduct might be made possible or convenient”: “Liberalism,” in idem, *A Matter of Principle* (Cambridge: Harvard University Press, 1985), pp. 193-4.

itself. The second, roughly contemporaneous, development was the emergence of an ideological alliance between the “commercial” republicans, as I will call them, and the defenders of the idea that human beings are the bearers of certain natural and inalienable rights — the liberals, as they came to be known. The question of the relative influence of “liberal” and “republican” ideas in the 18th century remains one of the most contentious matters 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 monolithically “liberal” in character.³ I will argue that the most striking fact about the political thought of this period is not that these two schools of thought were in competition with one another, 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 about freedom, but rather a synthesis of the two into a qualitatively different view: one that took economic rather than political life as its model.

2. “Commercial” republicanism

As I have suggested, the word “free” was primarily used in the classical world, by republicans and non-republicans alike, to describe a specific class of people — those men who were not slaves or serfs — as well as the kind of behavior — the virtue — that was

³ For a seminal statement of the republican or “civic humanist” reading of 18th century Anglo-American political thought see part 3 of J. G. A. Pocock’s *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975). 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: Cornell University Press, 1990) and the essays collected in Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge: Harvard University Press, 1992), especially chapters 4, 6, 11 and 13.

associated with or expected from members of that class.⁴ We can mark the boundaries of specifically *republican* thinking about freedom at the point where the practice of virtue, and thus the ability to live as a free man (or person) should, is associated with the control of arbitrary power,⁵ and we can attribute the complexity of republican thought to the wide variety of ways in which this relationship can be understood. With respect to arbitrary power there is the question of whether power becomes non-arbitrary if it is exercised in a regular and predictable way — if it is forced to obey a rule — or whether non-arbitrariness requires instead or in addition that the exercise of power serve the interests of those over whom it is exercised. There are, in other words, *procedural* and *substantive* understandings of what the non-arbitrary exercise of power consists in.⁶ Similarly, with respect to virtue there is the question of whether we practice virtue in order to prevent power from becoming arbitrary, or whether on the contrary we wish to be free from arbitrary power so that we may practice virtue. There are, in other words, *instrumental* and *intrinsic* ways of understanding the value of virtue.⁷ These positions are not of

⁴ For a useful discussion of the etymological roots and early development of the language of freedom in the Indo-European languages see Hanna Fenichel Pitkin, “Are Freedom and Liberty Twins?”, *Political Theory* 16 (1988), esp. pp. 528-44, and see also C. S. Lewis, *Studies in Words* (2nd ed., New York: Cambridge University Press, 1960), chapter 5, on which Pitkin draws substantially. My use of gendered language here and elsewhere in my description of classical thinking about freedom is considered, since “freedom” in this period was an exclusively male privilege.

⁵ I draw here on Philip Pettit’s work on republican freedom, though I place more weight than he does on the role that the cultivation and practice of virtue plays in republican thought. See especially the first two chapters of his *Republicanism: A Theory of Freedom and Government* (2nd ed., New York: Oxford University Press, 1999 [1997]), as well as Quentin Skinner’s *Liberty Before Liberalism*, which is, by his own account “deeply indebted” to Pettit’s ideas (p. 37n; cf. p. xi).

⁶ Pettit holds that the exercise of power must satisfy both conditions in order to count as non-arbitrary: *Republicanism*, pp. 55-6. The contrary view is held by Hayek, who argues that “it is more important that there should be a rule applied always without exceptions than what this rule is”: *The Road to Serfdom* (Chicago: University of Chicago Press, 1944), p. 88.

⁷ The view that civic virtue is of intrinsic value can be traced back to Aristotle’s claim that man is *zōōn politikon*, and that it is only by playing an active role in public life that we develop our highest faculties or realize our true nature. Skinner traces the instrumental conception of virtue back to

course mutually exclusive — we might believe that power should be governed by a rule *and* that it should be forced to serve our interests, and we might practice virtue in order to check arbitrary power *and* for its own sake. They are, however, analytically distinct from one another, and so we can speak in general terms of *thinner* and *thicker* understandings of republican freedom, where thinner understandings lean toward the procedural and instrumental views that I have described, and thicker understandings toward the substantive and intrinsic views, either in combination with or to the exclusion of the procedural and instrumental ones.

The durability and resilience of the republican tradition can be credited in large part to its ability to hold these various ways of understanding the meaning and value of freedom in fruitful tension with one another, and thus to maintain a certain degree of ambiguity on the question of which among the logically possible positions it was ultimately committed to. Indeed, what is most striking about classical republican thought when seen from this perspective is not the presence of disagreement over these issues, but rather the fact that the substance of these disagreements was so rarely articulated. This lack of clarity (as it seems to us) was made possible, I believe, by certain empirical features of the social world in which republican thought developed — or, more precisely, by certain beliefs that republican thinkers held about that world. Thus for example the question of whether arbitrary power is objectionable because it is not rule-governed or because it directly harms those over whom it is exercised did not need to be answered as long as these were seen as two sides of the same coin; as long, that is, as republicans could not conceive of a power (save God's) that was inscrutable in its intentions,

Machiavelli; see for example his “Machiavelli on the Maintenance of Liberty,” *Australian Journal of Political Science* 18 (1983), pp. 3-15.

ungovernable in its actions, and yet reliably beneficial in its effects. Instead, the lack of external checks on the exercise of power was thought to lead inevitably and inexorably to its abuse. Similarly, the question of whether virtue is intrinsically or only instrumentally valuable did not need to be definitively answered, or even explicitly raised, as long as republicans could not conceive of any way to prevent or check the arbitrary exercise of power except through the conscious efforts of virtuous individuals. Instead, the capacity and willingness to be active in public affairs — to rule and be ruled, in Aristotle’s terms — was seen both as a necessary condition for the enjoyment of freedom and as an essential part of human flourishing more generally speaking.

The classical republicans associated freedom with autarchy: the free man, like the free state, is secure not only from the malign influence of tyrants and masters, but more generally from dependence on the arbitrary will of other people (or other polities) for the material necessities that make the good life possible.⁸ Unfreedom is therefore associated in this tradition not only with poverty — a condition that places the practice of virtue beyond the reach even of the naturally virtuous man⁹ — but more broadly with the need to work for a living, and thus with dependence on an employer and on the availability of remunerative work, and still more broadly with subjection to the vagaries of trade, an activity which was fraught with uncertainty under pre-modern conditions, and which highlights by its very existence the fact of dependence. Thus while trade, labor and poverty were seen as irreducible features of social life in antiquity — just as they are

⁸ The latter concern is especially pronounced in Cicero, who argues that “those who think that they are wealthy, honoured and blessed do not want even to be under obligation from a kind service. For...they suspect that something will be demanded or expected of them in return, and they consider that accepting patronage or being labeled as a client is tantamount to death”: *On Duties*, trans. Margaret Atkins (New York: Cambridge University Press, 1991), p. 91 (book 2 §69).

⁹ As Hannah Arendt puts it, paraphrasing Demosthenes, “[p]overty forces the free man to act like a slave”: *The Human Condition* (Chicago: University of Chicago Press, 1958), p. 64.

today — entanglement in any one of them was thought to render a person presumptively unfit for the privileges and responsibilities of citizenship in a free state. To be sure, the right to own property and to use and dispose of it as one sees fit was seen both as a privilege of and as a precondition for the enjoyment of free status, and interference with this right was therefore counted among the paradigmatic examples of the arbitrary exercise of power. Nevertheless, the classical republicans saw the commercial realm, like the economic realm more generally speaking, as a realm not of freedom but of necessity, in the Aristotelian sense that it was concerned with providing the goods — such as food, shelter, and clothing — that make life possible, not the goods — above all the virtues — that make it worth living. In other words, while the secure ownership of property was seen in classical republican thought as one of the essential marks of a free man's status, active participation in the realm of production and trade was thought to be not only distinct from but incompatible with the cultivation of virtue, and thus beneath a free man's station.¹⁰

However, precisely because there is a certain amount of ambiguity about the precise meaning and implications of the republican conception of freedom, there were also substantial ideological resources available for defending the opposite position, and over the course of the 18th century a more forward-looking group of thinkers was able to find in the rise of modern commercial societies a new set of resources for responding to a traditionally republican set of concerns. One of the earliest arguments to be offered along these lines held that commerce provides a new mechanism for checking the arbitrary power of the state. Montesquieu observes, for example, that since the rise of commerce

¹⁰ See for example Aristotle, *Nicomachean Ethics*, book 1, chapter 4 and *Politics*, book 7, chapters 8-10, as well as Cicero, *On Duties*, book 1 §151.

“princes have had to govern themselves more wisely than they themselves would have thought, for it turned out that great acts [*grands coups*] of authority were so clumsy that experience itself has made known that only goodness of government brings prosperity.” The same point is made more sharply by James Steuart, who argues that “a modern œconomy...is the most effectual bridle ever was invented against the folly of despotism” because “the sovereign...finds himself so bound up by the laws of his political œconomy, that every transgression of them runs him into new difficulties.”¹¹ There are, as Benjamin Constant was later to observe, two features of a commercial economy that give it this politically beneficial effect. First, the substitution of mobile for immobile forms of property “makes the action of arbitrary power easier to elude,” since property “becomes, in virtue of this change, almost impossible to seize.” Second, the reliance on credit, and thus on the good opinion of others, in commercial relationships “places authority itself in a position of dependence,” since “to obtain the favours of wealth one must serve it.”¹² In other words, under modern conditions what we now call the flight of capital provides the mechanism through which states are punished for failing to respect and promote the commercial activities of their citizens, as well as the publicly visible signal that allows such failures to be perceived — just as a decline in military prowess was thought both to

¹¹ Montesquieu, *The Spirit of the Laws* (1748), trans. Anne Cohler, Basia Miller, and Harold Stone (New York: Cambridge University Press, 1989 [1748]), p. 389 (book 21, chapter 20); James Steuart, *An Inquiry in the Principles of Political Economy* (1767), book 2, chapters 22, 13. I am indebted here to Albert O. Hirschman’s *The Passions and the Interests: Political Arguments for Capitalism Before Its Triumph* (Princeton: Princeton University Press, 1977), where these passages are cited at pp. 72 and 83-5, respectively.

¹² Benjamin Constant, “The Liberty of the Ancients Compared With That of the Moderns” (1819), in *idem, Political Writings*, ed. Biancamaria Fontana (New York: Cambridge University Press, 1988), pp. 324-5; cf. *idem, The Spirit of Conquest and Usurpation and Their Relation to European Civilization* (1814), *ibid.*, pp. 140-2 (part 2, chapter 18). Constant goes on to argue that “[c]redit did not have the same influence among the ancients; their governments were stronger than individuals, while in our time individuals are stronger than political power”: “Ancient and Modern Liberty,” p. 325.

herald and to bring about the more general decline of free societies in the pre-modern world. To paraphrase Machiavelli, there cannot be good laws where there is not good credit, and where there is good credit there must be good laws.

According to a second line of argument — memorably summarized in Bernard Mandeville’s notorious observation that public benefits arise from private vice — the well-being of the polity does not depend on the fact that its citizens subordinate the claims of self-interest to those of virtue, but rather on the fact that they each pursue their private interests as diligently as they can. The classical republican fear that the enjoyment of material goods would tilt over into avarice, luxury and effeminacy, thereby posing a threat to civic virtue and thus to the freedom of the polity, began to seem archaic in a world in which the desire for wealth and luxury was thought to provide a necessary and powerful stimulus to collectively beneficial behavior.¹³ Indeed, if the pursuit of individual self-interest provides the most reliable path to collective prosperity, then it would seem to follow that any effort to promote virtue would be likely to do more harm than good: as Mandeville put it, “Fools only strive/To make a Great an Honest Hive.” Some defenders of the rise of commerce (though not Mandeville himself) tried to soften this conclusion by pointing out that the pursuit of commerce depends upon and even instills virtues of its own. Montesquieu argues, for example, that “the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, wisdom, tranquility, order, and rule [*règle*],” and compares this commercial ethos favorably to the classical

¹³ An influential argument for the social utility of the desire for luxuries is found in David Hume’s essay “Of Refinement in the Arts” (1752; originally “Of Luxury”), in idem, *Political Essays*, ed. Knud Haakonssen (New York: Cambridge University Press, 1994), pp. 105-14. For a useful discussion see John Robertson, “The Scottish Enlightenment at the Limits of the Civic Tradition,” in Istvan Hont and Michael Ignatieff, eds., *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (New York: Cambridge University Press, 1983), esp. pp. 154-77 and, more generally, Christopher J. Berry, *The Idea of Luxury* (New York: Cambridge University Press, 1994), esp. chapter 6.

republican's selfless love of country, which he sardonically compares to the love that monks feel "for the very rule that afflicts them."¹⁴ This association of virtue with prudent self-interest, which is perhaps best exemplified in the writings of Benjamin Franklin, departs from the classical view not only with respect to its content (frugality and a devotion to work were, after all, anathema to the free man of antiquity), but also and more importantly with respect to its ends: the commercial virtues do not aim at the subordination of individual desires to the common good, but rather at the efficient satisfaction of those desires through the acquisition of material goods. Moreover, instead of being attainable only by a cultured elite — one that has to be shielded from the materialism and instrumentalism that are endemic to commerce — virtue so understood is something that anyone can be said to possess insofar as they succeed in advancing their material interests through prudent behavior over time: it is, like reason, the servant and not the ruler of the passions.

A third line of argument, perhaps the most far-reaching and influential one, was offered by Adam Smith, who argues that it is precisely the self-regarding and impersonal nature of commercial relationships that gives them their freedom-promoting quality. A feudal tenant, he points out, "is as dependent upon the proprietor as any servant or retainer whatever and must obey him with as little reserve," because "[t]he subsistence of both is derived from his bounty, and its continuance depends upon his good pleasure." In a commercial economy, by contrast, "[e]ach tradesman or artificer derives his subsistence from the employment, not of one, but of a hundred or a thousand different customers," so that while he is "in some measure obliged to them all...he is not absolutely dependent

¹⁴ Montesquieu, *Spirit of the Laws*, pp. 48, 42-3. (book 5, chapters 6 and 2).

upon any one of them.” The same is true of the “customers” themselves: while “the produce of [a wealthy man’s] estate may be sufficient to maintain, and may perhaps actually maintain, more than a thousand people, yet as those people pay for everything they get...there is scarce any body who considers himself as entirely dependent upon him.”¹⁵ Smith applies the same line of argument to the exercise of political authority more generally, famously arguing that under conditions of “perfect liberty” — that is, when individuals are allowed to buy and sell commodities at whatever prices they are willing to accept — “every individual...by directing [his] industry in such a manner as its produce may be of the greatest value,” will be “led by an invisible hand to promote an end which was no part of his intention,” and will thus promote the common good — understood, again, in terms of material prosperity — “more effectually than when he really intends to promote it.” The alternative — allowing economic outcomes to be regulated or determined by the state — not only produces economically inferior outcomes, but grants “the statesman...an authority which could safely be trusted, not only to no single person, but to no council or senate whatever, and which would no-where be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.”¹⁶

By shifting their focus from the realm of collective self-rule to that of voluntary exchange the “commercial” republicans changed the terms of the debate about the

¹⁵ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Chicago: University of Chicago Press, 1976 [1776]), vol. 1, pp. 435, 438 (book 3, chapter 4); vol. 2, pp. 233-4 (book 5, chapter 1, part 2). Smith is presumably alluding to Hume’s essays “Of Commerce” and “Of Refinement in the Arts.” The republican roots of this line of argument are brought out even more clearly in the *Lectures on Jurisprudence*, where Smith argues that “[n]othing tends so much to corrupt mankind as dependency,” and thus that “[t]he establishment of commerce and manufactures, which brings about...independency, is the best police for preventing crimes”: Smith, *Lectures on Jurisprudence* (B) 204-5 (1766).

¹⁶ Smith, *Wealth of Nations*, vol. 1, pp. 477-8 (book 4, chapter 2).

meaning and implications of republican freedom in two different and overlapping ways. First, by making the security of the polity depend, at least indirectly, on its wealth, and by tying the acquisition of wealth to the pursuit of self-interest in the commercial realm, they severed the socially and politically instrumental dimensions of the practice of virtue from its ethical and humanistic roots, thereby calling into question the traditional association of the display of classical virtue with the realization of the common good. The classical republicans did not draw a sharp distinction between the demands of self-interest and virtue, or between individual and collective purposes, because they saw the control of arbitrary power as one of the most fundamental human interests, and because they could not conceive of a reliable way of achieving this end except through the vigilance of a virtuous citizenry. The insight that self-interested behavior can be socially useful — that private vice leads to public benefits — called the coherence of this harmonization of the demands of individual virtue, enlightened self-interest and the common good into question. Defenders of the rise of commerce concluded that the longstanding tension in republican thought between instrumental and intrinsic conceptions of the value of virtue should be resolved in favor of the instrumental view, and that the question of what actually constitutes virtuous behavior should be rethought along commercial lines.

Second, the defenders of commercial society — Smith foremost among them — sought to replace the traditional republican demand for transparency and accountability in the exercise of social power with a demand that power be exercised anonymously, impersonally and, above all, non-politically, at least insofar as this was possible. In doing so they took advantage of a second longstanding ambiguity in republican thought; this time with respect to the question of whether power becomes non-arbitrary because and to

the extent that it is supervised and controlled by those over whom it is exercised, or whether on the contrary non-arbitrariness requires only that power be exercised in a way that serves the interests of those who are subject to it. Here again the classical republicans did not distinguish clearly between the two possibilities because they could not conceive of a way to ensure that power was exercised beneficially except through the proper design and control of political institutions, and here again the insight that collectively beneficial outcomes can be the unintended byproduct of the self-interested actions of individuals called the traditional view into question. Defenders of the rise of commerce argued that the traditional republican association of freedom with collective control over social outcomes was simply too cumbersome to be realized or even coherently pursued under modern conditions — especially in light of the fact that each of us, whenever we make an economic decision of any kind, has a marginal and largely unintended effect on the overall pattern of social outcomes. By shifting decision-making power from the political to the economic realm, they concluded, we are trading a decision mechanism that is highly fallible and subject to abuse for one that is reliably beneficial — just as by substituting interest for virtue as the basis of social order we are trading a lofty but volatile ideal of behavior for one that is less elevated but more dependable.

The significance of these developments for our purposes does not lie in the fact that some thinkers were successful in working out a theory of what we might call “commercial” republicanism — that part of the story is relatively familiar — and still less in the fact that their efforts were met with resistance from more traditionally-minded republicans. Rather, it lies in the fact that the rise of commerce forced thinkers of all stripes to confront squarely for the first time the various tensions that are contained in the

republican conception of freedom. As a result, the traditional picture of the free man as someone who displays his virtue by placing the public good ahead of his private interests was brought into competition with a very different view, one that portrayed the free man as someone who advances the public good by attending to his private interests as diligently as possible. Now for the first time there was a debate on republican grounds between those who argued that power should be considered non-arbitrary if and to the extent that it promotes (often through abstinence) the material well-being of those over whom it is exercised, and those who held instead that the citizens of a republic should be insulated from the arbitrary exercise of power — including economic power — even if a certain, perhaps quite substantial, amount of prosperity was sacrificed as a result. There was also a debate between those who defined virtuous behavior as socially beneficial behavior, regardless of its motivations, and those who held that the demands of virtue and of self-interest are fundamentally opposed to one another, and that to pursue the one is necessarily to abandon the other. Thus by the end of the 18th century the republican tradition was divided against itself in a way and to an extent that it had never been before, as republicans were forced 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 even have clearly recognized as such.

3. “The defect of better motives”

I have suggested that the emergence of a “commercial” brand of republican thought in the early modern period was a necessary but not a sufficient condition for the emergence of a market-centered conception of freedom, and that this further development was made possible by a synthesis of “commercial” republican and natural jurisprudential ideas. The

relationship between jurisprudential and republican ideas prior to the 18th century was a rather ambivalent one. On the one hand, the juristic appeal to natural rights and the rule of law provides a conceptually precise and ideologically powerful tool for defining the boundaries of the sphere of individual independence on which the enjoyment of republican freedom depends. However, despite this obvious point of contact, the jurisprudential 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 law is to ensure that human behavior conforms to the principles 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 pleases within a legally-defined sphere. In either case, freedom is *not* treated as a value that might be pursued for its own sake, but rather, in the “positive” view, as an underlying property of human nature which makes moral behavior possible, or, in the “negative” view, as a morally neutral category of action which must be limited and regulated for the sake of justice and social order.¹⁷ Moreover, the aim of ensuring that political power is exercised in accordance with the demands of natural law was not only said to be compatible with, but was even said to require, the rule of a benevolent monarch, and so many natural jurists viewed the republican ideal of popular self-rule with a great deal of suspicion.¹⁸

¹⁷ The former view is the one held by Thomas Aquinas; see for example *Summa Theologiae* 2a2ae q 104 art 1 ad 3, and cf. Locke’s *Second Treatise of Government* §§54-63 as well as the *Essay Concerning Human Understanding*, book 2, chapter 21, esp. §§48-51 The latter view is most closely associated in the modern period with the thought of Thomas Hobbes, see especially *Leviathan*, chapter 21.

¹⁸ Aquinas writes, for example, that “provinces or cities which are not ruled by one man toil under dissensions and are tossed about without peace,” whereas “provinces and cities governed by a single king rejoice in peace, flourish in justice and are gladdened by an abundance of things”: *De Regimine Principum*, book 1, chapter 3, in idem, *Political Writings*, trans. R. W. Dyson (New York: Cambridge University

Republicans hold, by contrast, that the purpose of the rule of law is to prevent or check the arbitrary exercise of power. They are therefore concerned not only with the content of law, but also and more fundamentally with the way in which it is made and the means by which rulers can be constrained to obey it in practice. The distinction is subtle but significant: republicans seek to ensure above all 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 it is freedom — in the republican sense of the absence of arbitrary power — rather than justice or peace that is treated as the primary end to be pursued in public life, and the rule of law is treated as a necessary means to achieving that end. This 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. In particular, it is not entirely clear on republican grounds what criteria should be used to judge whether the laws have been made and applied non-arbitrarily in a given case. Insofar as we endorse what I have called the “substantive” understanding of arbitrary power, then the test will be whether a given system of laws serves the interests of those who are bound by it — a test which raises the obvious question of how we should go about determining what those interests are and whether and to what extent they have been served in a given case. Indeed, in its pure form this line of argument is consistent with, though it does not of course strictly entail, the juristic view that political rule is legitimate only if and insofar as it conforms to the dictates of natural law. However, the more traditional republican position is that the only reliable

Press, 2002), quoted at p. 11. Even Locke, the canonical enemy of absolute monarchy, observes that “[p]rerogative was always *largest* in the hands of our wisest and best Princes” — princes who, he concedes, “had some Title to Arbitrary Power, by that Argument, that would prove Absolute Monarchy the best Government”: *Second Treatise of Government* §§165-6 (original emphasis).

way to ensure that political power is exercised non-arbitrarily is to see that the citizens themselves have a say in determining how the laws are made and applied. This line of argument rests on what I have called the “procedural” understanding of arbitrary power, and points again toward the traditional republican project of designing effective and accountable institutions of governance.

As we have seen, republicans are officially committed to taking each of these lines of argument into account, since they view the control of arbitrary power and the display of virtue as complementary aspects of the enjoyment of freedom more generally. The test of whether political power is *substantively* non-arbitrary is whether its exercise (or non-exercise) tends to promote the cultivation and practice of virtue among the citizenry, and the absence of *procedurally* arbitrary power is seen as a necessary condition for the realization of this end. It follows that for republicans the relationship between liberty and the rule of 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. And, just as the rise of commercial societies in the early modern period exposed the tensions between the substantive and procedural understandings of arbitrary power, so too did it expose the related tensions between these two ways of conceiving of the relationship between liberty and the law. If republican critics of the rise of commerce such as Rousseau followed their classical forebears in emphasizing the “positive” association of the rule of law with the cultivation of virtue, the “commercial” republicans associated the rule of law instead with the

“negative” aim of defining and protecting a sphere of action that is immune from arbitrary interference. They therefore detached the socially beneficial effects of virtuous behavior from the classical association of virtue with self-realization: virtue, insofar as it is seen as a matter of public concern, becomes 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 upon to generate the other-regarding norms of behavior on which the preservation of “free” government — and thus of juristic liberty itself — depends. Two of the more sophisticated efforts to respond to this question are found in the writings of Montesquieu and Hume, who, although they hold conflicting views on the question of how freedom might best be 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,” and adds that liberty so understood “in no way consists in doing what one wants,” but rather in “the right to do everything the laws permit”: “if one citizen could do what they forbid,” he points out, then “he would no longer have liberty because the others would likewise have this same power.” Hume argues along similar lines that a free government is one which “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.”¹⁹ Thus

¹⁹ Montesquieu, *Spirit of the Laws*, pp. 157, 155 (book 11, chapters 6 and 3); Hume, “Of the Origin of Government” (1777), *Political Essays*, p. 23; “Whether the British Monarchy Inclines More to Absolute

Montesquieu and Hume agree with the classical republican tradition in associating freedom with the absence of arbitrary — that is to say, extralegal— power on the part either of rulers or of private citizens. They innovate, however, in arguing that freedom so understood does not depend on the existence of republican institutions: part one of Montesquieu’s *Spirit of the Laws* centers around the claim that, while monarchical and republican governments depend on different “principles” of behavior — the former on honor, the latter on virtue — both are nevertheless “free” forms of government in the sense that they are each subject to the rule of law, and can each be contrasted with despotism on those grounds. Hume argues along similar lines, albeit more succinctly, 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.*”²⁰

As I have suggested, however, Montesquieu and Hume do not entirely agree on the question of how freedom might best be preserved under modern conditions; indeed, they found themselves on opposite sides of the dispute between “Country” and “Court” parties that divided British politics for much of the 18th century. Montesquieu, who stayed in England as a guest of Lord Bolingbroke, the leading figure in the “Country” opposition, from 1729 to 1731, includes a lengthy paean to English liberty in the eleventh book of his *Spirit of the Laws* which toes the “Country” line, attributing the genius of the English Constitution above all to its success in keeping the legislative and executive powers distinct and independent of one another. Political liberty is to be found, he argues, “only in moderate governments”; that is, in governments where

Monarchy, or to a Republic” (1741), *ibid.*, p. 30. Smith, too, defines “the liberty of every individual” as “the sense which he has of his own security”: *Wealth of Nations*, vol. 2, p. 244 (book 5, chapter 1, part 2).

²⁰ 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).

“power...check[s] power by the arrangement of things.” This claim provides the basis for Montesquieu’s famous defense of the principle of the separation of powers: when the executive and legislative powers 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.”²¹ By contrast, a government in which these powers are separated and check one another will be resilient against what James Madison, a student of Montesquieu on this point, aptly termed “the defect of better motives.”²² As we have seen Montesquieu, unlike Madison, argues that a monarchy can be “free” in this sense, but only on the condition that 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, and he insists, like Madison, that this can only be achieved through the countervailing presence of “intermediate powers”: an independent legislature (such as the British Parliament), an independent judiciary (such as the French *parlements*, whose influence he hoped to restore), and a hereditary nobility.²³

Hume agrees with Montesquieu in thinking that the prevention of despotism does not depend on republican government in the traditional sense: “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

²¹ 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 power — 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...*).

²² The quoted passage is from *The Federalist* number 51; for Madison’s debt to Montesquieu on this point see especially *Federalist* number 47.

²³ Montesquieu, *Spirit of the Laws*, e.g. book 2, chapter 4; book 5, chapter 11; book 8, chapter 6.

most unusual and extraordinary.”²⁴ However, where Montesquieu follows the “Country” party in insisting on the need for a strict separation of executive, legislative 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 England had become.²⁵ Thus while he endorses the traditional republican claim that mixed government is favorable to liberty,²⁶ he nevertheless downplays the supposed 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” — and even suggests that the French should look not to constitutional checks but rather to the interests of the monarch himself to curb the arbitrary exercise of political power: “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

²⁴ 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).

²⁵ See especially Hume, “Of the Independency 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,” p. 111.

²⁶ “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 Independency of Parliament,” p. 25.

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 closer connection between the interests of the monarch and that of the public — and the greater tendency of republics to take on unsustainable levels of public debt — leads 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.”²⁷

Whatever their differences — and they are on the whole differences of judgment rather than principle — Montesquieu and Hume agree not only in thinking that civic virtue in the classical sense is not necessary for the preservation of political liberty, but in attributing 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,”²⁸ and 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.”²⁹ Virtuous citizenship is measured in this way of thinking 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

²⁷ Hume, “Of Civil Liberty,” pp. 56-7.

²⁸ 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. & ed. Victor Gourevitch (New York: Cambridge University Press, 1997), p. 18.

²⁹ Hume, “Of Commerce” (1752), *Political Writings*, p. 100.

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.”³⁰ Indeed, 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: “[they] submit not to slavery, like the peasants, from poverty and meanness of spirit; and having no hopes of tyrannizing over others, like 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.”³¹

To be sure, not all thinkers were as optimistic as Hume was in thinking that commercial society would “naturally” generate the habits of thought and action that are necessary for the preservation of a free society. Smith, for example, points out that while “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

³⁰ Montesquieu, *Spirit of the Laws*, p. 339 (book 20, chapter 2).

³¹ Hume, “Of Refinement in the Arts,” pp. 112, 109, 111.

generally an interest to deceive and even to oppress the public, and...accordingly have, upon many occasions, both deceived and oppressed it.”³² Indeed, Smith 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.”³³ He concludes that the state must see to it that its citizens are properly educated, not least to ensure that they are capable of performing their duties as citizens. However, like Hume and unlike Rousseau, Smith holds that the aim of doing this is not to make it possible for the people to play an active role in politics, but rather to ensure that they do not interfere unduly with the just administration of government: “An instructed and intelligent people,” he argues, “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.”³⁴

³² Smith, *Wealth of Nations*, vol. 1, pp. 277-8 (book 1, chapter 11). Smith qualifies this statement with the astute observation that the opinions of the laborer may be heard “upon some particular occasions, when his clamour is animated, set on, and supported by his employers, not for his, but their own particular purposes”: *ibid.*, p. 277.

³³ *Ibid.*, vol. 2, p. 303 (book 5, chapter 1, part 3, article 2). I have slightly altered the order in which these passages appear in the text.

³⁴ *Ibid.*, vol. 2, p. 309 (book 5, chapter 1, part 3, article 2).

The differences between Smith's evaluation of commercial society and Hume's, like the corresponding differences between Montesquieu and Hume on the relative merits of monarchical and mixed government, should not be allowed to obscure the fact that each of these thinkers agrees in treating virtue, insofar as it is seen as a matter of political concern, as a means to the enjoyment of juristic liberty rather than as an end to be pursued for its own sake. 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 is conducive to the enjoyment of freedom as they understand it — and, of course, the further question of whether commercial society can be relied upon to cultivate, or at least not to corrupt, virtue so understood. They respond, as we have seen, by arguing that the 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. Needless to say, this line of argument represents a substantial departure from the premises of classical republican thought; indeed, we are not far here from the Lockean 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 a theological appeal to natural law and divine purposes, but rather on a secular 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. “Nonsense upon stilts”

By relieving ordinary citizens of the onerous task of closely supervising and actively participating in public affairs, thereby providing them with a great deal of leeway to order their private affairs as they pleased, the 18th-century defenders of commercial society had arrived at a position with obvious ideological advantages: if commerce tends to lead citizens away from the public sphere, it also tends to complicate and deepen their private ties to one another, and to many 18th-century thinkers — and, no doubt, to many ordinary people — this seemed a tradeoff well worth making.³⁵ However, this instrumental and largely depoliticized conception of public life also carried its own set of ideological vulnerabilities. In particular, these thinkers had to confront more squarely than their predecessors the question of how the existence of the juristic liberties — of individual rights, and paradigmatically of rights to property — can be justified, both in principle and in practice. Here the juristic and republican traditions begin to pull once again in opposite directions. For the medieval natural jurists the obligation to respect individual rights is ultimately derived from the obligation that we each have under natural law to preserve ourselves, and the human species more generally, in existence, and to be good stewards of the creation that we have been given in common. The fundamental political 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, and the solution is to empower a central authority — a sovereign or state — to enforce those rights in

³⁵ 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.

practice. For the classical republicans, by contrast, the secure enjoyment of individual rights is seen as a necessary condition for the existence of a vibrant public sphere: by protecting citizens from the arbitrary exercise of power, they make it possible for us to cultivate our virtue and thus to judge and act in the name of the interests of the whole. Here the fundamental political challenge is not simply to maintain social order, but rather to empower citizens to pursue the common good as they see it. It follows that rights must be politically actionable; that is, that they must be guaranteed through the vigilance of the citizens themselves, and not just by the power of a benevolent ruler.

Elements of each of these positions are brought together in Locke, who argues that the legitimacy of political authority depends on the consent of those who are subject to it, and that freedom therefore consists in obedience to no other political authority than the one to which we have consented. However, 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.³⁶ By appealing to counterfactual or tacit consent in this way Locke is able to avoid the obvious objection that many governments do not in fact rest their authority on the consent of those over whom they rule: the question, in his view, is not whether the authority of a given government was *derived* from the consent of the people, but rather whether the exercise of that authority

³⁶ On the illegitimacy of “voluntary” slavery see especially Locke, *Second Treatise* §§23-4; on the illegitimacy of resisting just political rule see *ibid.* §§226, 230.

merits their consent.³⁷ However, this line of argument raises the further question of how the appeal to a “natural” standard of justice can be reconciled with the claim that the power of judging whether that standard has been met in practice should be placed in the hands of the people themselves, taken not only collectively but also individually.³⁸ 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 practice. This observation led Hume to conclude that the claim that legitimate government rests on consent is not only implausible in principle but anarchic in its implications: “nothing 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 is not only “dangerous nonsense” but “rhetorical nonsense — nonsense upon stilts.”³⁹

This skepticism about the premises of contractarian thought reflects a broader skepticism in the later 18th century about the idea of “natural” rights; a skepticism that found its most extended and eloquent statement in Edmund Burke’s *Reflections on the Revolution in France* (1790). However, and needless to say, these thinkers did not reject

³⁷ For a recent argument to this effect see Lena Halldenius, “Locke and the Non-Arbitrary,” *European Journal of Political Theory* 2 (2003), pp. 261-79; for a classic statement see John Dunn, “Consent in the Political Theory of John Locke,” *Historical Journal* 10 (1967), pp. 153-82, and cf. also Hanna Pitkin, “Obligation and Consent – I,” *American Political Science Review* 59 (1965), pp. 994-7.

³⁸ 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”: *Second Treatise* §168 (my emphasis).

³⁹ Hume, “Of the Original Contract,” p. 200; Jeremy Bentham, “Anarchical Fallacies” (1796), article 2, sentence 1.

the idea of individual rights altogether; rather, they sought to justify their existence and define their scope by appealing to the good of society as a whole rather than to 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.”⁴⁰ Bentham 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”: “the 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.”⁴¹ Even Burke — 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.”⁴²

By resting the defense of individual rights on considerations of social utility rather than on the consent of the individuals concerned, Hume, Bentham, Burke and like-minded thinkers sought to avoid the seemingly anarchic implications of a position that

⁴⁰ Hume, “Of the Original Contract,” p. 196.

⁴¹ Bentham, “Anarchical Fallacies,” article 2, sentence 1; article 4, proposition 3 (emphasis removed).

⁴² Edmund Burke, *Reflections on the Revolution in France*, ed. J. G. A. Pocock (Indianapolis: Hackett Publishing, 1987 [1790]), pp. 51, 54.

combines, as Locke's does, a juristic appeal to natural liberty with a quasi-republican appeal to popular sovereignty. This line of argument dovetails nicely, of course, with the broader aims of "commercial" republicanism: in each case the justification of rights in general, and of property rights in particular, is made to rest on the claim that all polities — and thus, by extension, all governments — have an interest in promoting what Hume calls the "commerce and intercourse of mankind." However, if these thinkers sought to limit the grounds on which something can be claimed as a right, the rise of commerce itself helped to bring about an expansion of the grounds on which something can be regarded as property. In particular, as real property was increasingly displaced by — and converted into — mobile property, it became possible and indeed customary to regard as property anything that can be exchanged for something else of value: as J. G. A. Pocock has observed, "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.⁴³ Instead of being seen as the stable foundation of human personality and social order, property was now seen in dynamic terms as something to be acquired and exchanged according to the interests of the individuals concerned — interests which are themselves dynamic and fluid over time. Rights to possession therefore became hard to distinguish from rights to exchange: if to alienate one's property 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.

The most conspicuous — and most conspicuously Lockean — addition to this newly-expanded conception of property was of course the "property" that individuals

⁴³ J. G. A. Pocock, "The Political Limits to Premodern Economics," in John Dunn, ed., *The Economic Limits to Modern Politics* (New York: Cambridge University Press, 1990), pp. 124-5.

were said to have in their own labor.⁴⁴ However, the “commercial” conception of the relationship between property and consent turns the Lockean position more generally 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 the people 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. The canonical statement of this line of argument is found, not in Locke, but rather in Smith’s defense of what he calls the “obvious and simple system of natural liberty”; a system 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.”⁴⁵ 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; that is, a condition in which each person is free to offer their goods — including, of course, their labor — for sale at a price of their own choosing, to buy or not buy goods at

⁴⁴ See especially Locke, *Second Treatise* §27. On the fallacy of attributing to Locke a full-blown defense of a free market in labor see for example E. J. Hundert, “Market Society and Meaning in Locke’s Political Philosophy,” *Journal of the History of Philosophy* 15 (1977), pp. 33-44.

⁴⁵ Smith, *Wealth of Nations*, vol. 2, pp. 208-9 (book 4, chapter 9).

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 thereby be achieved as productive resources are brought in and out of play in response to changes in effective demand.⁴⁶

Smith, like Hume, Bentham and Burke, rests his defense of individual rights squarely on the empirical claim that the best way to secure “the progress of the society towards real wealth and greatness” is to give individuals the “natural” liberty to dispose of their property as they please. However, the resulting distribution of property is said to be just not because it is socially optimal, but rather because and to the extent that it is the product of voluntary exchanges on the part of the individuals concerned. Thus Smith argues, echoing Locke, 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,” and concludes that governmental interference in the labor market, as in any market, is “a manifest encroachment upon the just liberty both of the workman, and of those who might be disposed to employ him.” Likewise, “[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, is a manifest violation of the most sacred rights of mankind.”⁴⁷ The tension between this rights-centered line of argument and the more straightforwardly consequentialist defense

⁴⁶ See especially *ibid.*, book 1, chapter 7; on “perfect” liberty see in particular pp. 62-3, 70, 111-2.

⁴⁷ *Ibid.*, vol. 1, pp. 136; vol. 2, p. 95 (book 1, chapter 10; book 4, chapter 7, part 2). Smith is referring in the former passage to the laws regulating apprenticeships, and in the latter to the British treatment of the American colonists.

of markets is finessed in Smith, as it is market ideology more generally, by the empirical claim that it is precisely the expansion of “natural” liberty that will lead to the greatest welfare of society in general, and thus (so he argues) to the greatest welfare of the needy in particular⁴⁸ — or, more precisely, by the fact that Smith does not give sustained attention to the exceptions and qualifications to this claim, at least within the confines of the *Wealth of Nations*.

Here again we have a synthesis of the “commercial” republican view that rights to property and exchange should be respected as a matter of public interest and the natural jurisprudential view that these rights should be respected as a matter of justice. In Smith’s hands, however, this line of argument takes a more explicitly market-centered form: the proper aim of a system of law is not simply to ensure that human behavior is kept within the boundaries of justice, but also to facilitate the efficient exchange of goods and services by maximizing the amount of “natural” liberty that is enjoyed by each individual. This way of thinking bears a certain resemblance to Hobbes’s conceptually pioneering but politically stillborn effort to define political liberty in purely “negative” terms. However, where Hobbes had sought to neutralize the appeal to the language of liberty on the part of political subjects by showing that freedom, understood as the absence of constraint, has no independent moral or political value, Smith and the other defenders of commercial society place this conception of freedom at the center of social life and make it the ultimate measure of the justice of political rule. Freedom so understood is said to consist in, and not merely to be realized through, the pursuit of individual interests in the marketplace, and so is associated on the one hand with the

⁴⁸ On Smith’s views about distributive justice see Istvan Hont and Michael Ignatieff, “Needs and Justice in the *Wealth of Nations*: An Introductory Essay,” in idem, eds., *op. cit.*, pp. 1-44.

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 existence of certain legal protections that guarantee individuals the right to exercise their “natural” liberty within the material and legal constraints that are defined by that mechanism. This is of course the market conception of freedom with which we are now familiar.

5. The market synthesis

I hope to have shown that the empirical and conceptual objections to which the “liberal” doctrine of natural rights and government by consent was subject brought this position into contact with “commercial” republicanism, another newly-emerging ideological position with apparently subversive and anarchic implications. As we have seen, each of these ways of thinking carried certain ideological advantages taken on its own: the Lockean “liberals,” with their emphasis on the inalienability and inviolability of certain individual rights, offered a clearer set of criteria for identifying the presence of arbitrary power than the classical republicans had been able to provide, and the “commercial” republicans, with their emphasis on the incentives that states have to respect and promote the commercial activities of their citizens, offered a means of checking arbitrary power that was both more robust and less demanding than the classical republican appeal to civic virtue. However, each of these positions suffers from a corresponding ideological vulnerability. On the one hand, the Lockean view that the legitimacy of political rule rests on the consent of those who are subject to it, and that this consent can only legitimately be given to governments that respect the natural rights of their subjects, raises the question of how governments and ordinary citizens can be persuaded to respect

those rights in practice: after all, government is necessary in Locke's view precisely because we disagree about what our natural rights entail, and the threat that consent might be withdrawn and revolution undertaken can be invoked, as Locke himself admits, only in exceptional circumstances. On the other hand, the "commercial" republican view that the pursuit of commerce provides a more reliable route to national prosperity and greatness than the cultivation of classical virtue raises the question of whether the habits of thought and behavior that are generated by a commercial society, and the way in which power is distributed and exercised within such a society, are consistent with the broader republican aim of placing power under the supervision and control of those over whom it is to be exercised.

I have suggested that their respective ideological vulnerabilities brought these two lines of argument, and the broader traditions of thought from which they were drawn, into closer contact with one another. In particular, the Lockean appeal to natural rights made it possible for "commercial" republicans to portray the abuse of political power as something more than a matter of inefficient administration, and to tie commercial activity to something more lofty than the pursuit of wealth, thereby making it possible for them to respond to the accusation that they had 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 responsibility to provide for our own well-being, proved to be more than a match, rhetorically speaking, for the traditional republican appeal to civic virtue. 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 a

particular form of government into the day-to-day world of commercial transactions, and that was therefore not restricted in its application to those exceptional, revolutionary moments of crisis in which the legitimacy of political rule itself is called into question. Indeed, 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 same principles began to seem less mysterious and less 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.

From this standpoint 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 lines of argument, 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 proper aim of government is to ensure the smooth functioning of commerce by allowing individuals to dispose of their property — including, of course, the property that they have in their own labor — as they see fit, thereby guaranteeing the security and prosperity of the polity as a whole. Where the classical republicans had seen the tension between individual and collective interests as being consistent with and even implied by a commitment to the broader value of human freedom, this tension was now said to point

toward a more fundamental conflict between the value of freedom and other, qualitatively different (and, often enough, presumptively inferior) values — a conflict in which the cause of freedom and that of commerce are intrinsically aligned. And where Lockean political thought centers around the conflict between individual interests and unlawful political authority, the defenders of commercial society placed the conflict between individual interests and anti-commercial (though lawful) political authority at the center of attention — and made it possible, moreover, to describe this as a conflict in which freedom itself was at stake.

Thus the proponents of market freedom did not abandon the “commercial” republican claim that markets, as the most efficient mechanism for generating and distributing wealth, are socially beneficial; they simply added to it 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 markets more generally, has always consisted in a somewhat unstable amalgam of these two lines of argument: 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 these are rejected, usually through an appeal to anti-paternalism, on the grounds that even economically and socially beneficial interference with markets infringes on what Smith calls the “just liberty” of the individual. The resilience of the market conception of freedom, like the resilience of the classical 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 one another. Indeed, there is a sense in which these two lines of argument reinforce one another:

whether we believe that the exercise of individual liberty in the marketplace provides the most efficient means of realizing a larger and socially desirable end, or that the expansion of individual liberty is itself the end that we ought to 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 of course an enormously liberating point of view; a vision of a world that, once the right rules are in place, runs by itself.

We can now see how the association of freedom with the mere removal of constraint, apparently 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. This means, among other things, that any restrictions that are placed on this sphere of action appear from the individual's point of view as restrictions of freedom *tout court* — to be defended not, as in “commercial” republicanism, by appealing to a more comprehensive conception of freedom as immunity from arbitrary power or participation in a free man's ethos, but only in more or less *ad hoc* terms to the countervailing presence of some other value. Instead of serving as a shorthand for an entire way of life — combining under one heading a pattern of social relationships and an ethos of individual behavior — freedom becomes in this way of thinking a particular value that has to be traded off against other values in public life. It is this way of thinking that makes it possible for Isaiah Berlin to 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.”⁴⁹ In other words, the market conception of freedom encourages us to detach the problem of removing constraints on individual behavior from the larger political context in which such problems necessarily appear — which is, ironically, the very detachment against which Berlin’s pluralism protests so strenuously. It follows that any effort to revive the older and more demanding republican ideal must begin, *pace* Berlin, by reconnecting the language of freedom to a more comprehensive social and political vision.

⁴⁹ Isaiah Berlin, “Two Concepts of Liberty” (1958/1969), in *idem*, *Liberty*, ed. Henry Hardy (New York: Oxford University Press, 2002), p. 172.