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**Wealth and the Commonwealth:  
Virtue, Law, and Commerce in Eighteenth Century Political Thought**

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**1. Epilogue on the broader project**

Mainstream international relations scholarship treats international institutions as reflections of state interests, contingent bargains, and asymmetries of power. These are eminently reasonable assumptions. But as Henry Maine noted in the *Ancient Law*, “Nothing in law springs entirely from a sense of convenience. There are always certain ideas existing antecedently on which the sense of convenience works, and of which it can do no more than form some new combination; and to find these ideas is exactly the problem.” The fact that many constitutional norms are artifacts of vested interests, political struggles, and patterns of domination does not stop citizens, politicians, and scholars from imbuing them with normative significance that takes them far beyond their shady origins. Similarly, the fact that international institutions more often than not reflect the configuration of dominant state interests does not preclude a search for the principles and values embedded within them. This paper is part of a broader exercise in reconstructing the commitments, ideals, and values that guide influential institutions of global economic governance, and uncovering the philosophical sources of those commitments, ideals, and values. In other words, it is part of an inquiry into the moral foundations of a certain class of international institutions.

Much of modern political thought since Machiavelli has reflected on the moral foundations of public authority, more specifically, on the problem of formulating a post-theological theory of political obligation. The locus of such obligation has generally been thought of as the sovereign territorial state.<sup>1</sup> Contemporary states, however, no longer monopolize the exercise of public power, if they ever did. Instead of asking why and to what extent do citizens owe loyalty to the states that purport to govern them, the question in the background of this project is why and to what extent citizens owe loyalty to international institutions. This question, often generalized as the legitimacy of international institutions or as the legitimacy of international law, has received copious attention in recent years. The straightforward answer that hinges on state consent (i.e. that states represent us as their citizens and have entrusted these institutions with some measure of their authority) has serious limitations in view of the extensive and often asymmetrical forms of power that contemporary international institutions wield and the degree of attenuation of state (not to mention citizen) control over their operations.

Rather than offer a normative theory of legitimacy for international institutions, however, this project will provide a historical and interpretive account of one particular normative principle that is at the core of many (though by no means all) contemporary international economic institutions. This is the principle of commercial mobility, expressed as a demand for maximizing the freedom of movement of goods, services, and capital. This paper is drawn from the first part of the project, which will trace of the emergence of a demand for commercial mobility in eighteenth century European political thought as a principle that complements, qualifies, and occasionally rivals the stark paradigm of the law of nations as sovereign rights of war and peace offered by seventeenth century thinkers including Grotius, Hobbes, and Pufendorf.

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<sup>1</sup> Martin Wight, "Why is there no international theory?" in Herbert Butterfield and Martin Wight (eds), *Diplomatic Investigations* (Harvard University Press 1966)

Although eighteenth century thinkers were engrossed by the logic of economic interdependence and how it shaped the calculus of state interests, contemporary political theorists have so far neglected to study contemporary international institutions designed to facilitate, foster, and establish the rules of international trade and investment. To be sure, the themes of human rights, global distributive justice, and cosmopolitan democracy have recently been among the priorities of political theorists investigating what Jürgen Habermas has termed “the postnational constellation.” However, these debates tend to operate at a high level of generality and often lack detailed attention to existing regimes. Such important institutional innovations as the WTO dispute settlement system, investor-state arbitration, and conditionality in financial and development assistance have barely showed up on political theory’s radar, particularly compared to the priority given to these topics in the neighboring disciplines of law, international relations, and international political economy.

Some of this lack of institutional engagement is owing to the chronic neglect of political economy in post-Marxist political theory, but I contend that more is at work. When contemporary political theorists debate the feasibility and desirability of ‘global governance,’ their referents tend to involve schemes of world federation or republic exercising global coercive power, global parliamentary democracy, or centralized mechanisms of wealth redistribution. Each of these themes evinces a lingering Hobbesian habit, a habit of presupposing the centralized coercive, legal, and representative apparatus of the state. Once we drop the idea of projecting these structures to the global level, however, we find that global governance is already in existence: myriad institutions govern everything from tariffs and quotas to environmental emissions to consumer safety standards to the enforcement of contracts to the keeping of time. Perhaps the reason political theorists have overlooked these institutions is because they operate differently from the paradigm of political power that modern political theory has come to expect since Hobbes.

This project explores the idea that the mode of political power instantiated by contemporary institutions of global governance prioritizes a structural coupling of law and the economy. Briefly put, its thesis is that this structural coupling has its roots in the eighteenth century, particularly in the work of political philosophers who replaced the classic question of the best regime with jurisprudential conceptions of legitimate public power.<sup>2</sup> Put differently, their concern shifted away from the question of “who governs?” to that of “governed how?”. According to the civic humanist orthodoxy that preceded this shift, Istvan Hont has written, “the societies of Europe were compared in terms of their forms of government, and of the degrees of political liberty which they afforded to their political nation.” By contrast, “[i]n Humean and Smithian analysis, societies were to be compared on the basis of how securely they grounded rights of property and how adequately they met the needs of their laborers.”<sup>3</sup> In their turns, Montesquieu, Hume, Smith, and Kant extolled the virtues of moderate government, the rule of law, due process, and a stable and secure property regime. If these institutional mechanisms were in place, the distribution of offices in a state and the distribution of power, privilege, and liberty between the various classes took secondary importance. In other words, if we must trace the beginnings of a shift in emphasis from government to governance in political thought, eighteenth century political thought with its emphasis on public law, impartial administration, and public police (in the sense of regulation and encouragement of private industry) deserves attention.

In the context of international institutions such as the WTO, NAFTA, the EU, Mercosur, and investment agreements, the structural coupling between law and the economy is instantiated by

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<sup>2</sup> The thesis that eighteenth century commercial thought, not least in the work of Adam Smith and David Hume, is characterized by a concern for justice over virtue builds on the seminal volume by Istvan Hont and Michael Ignatieff, *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge University Press 1983). In what follows, I challenge the opposition Hont and Ignatieff have drawn between virtue and justice, while maintaining their emphasis on the theme of justice in the political thought of this period.

<sup>3</sup> Istvan Hont, *The Jealousy of Trade* (Harvard University Press 2010), 395-6.

the ordering principle of commercial mobility. Promoting and safeguarding the circulation of goods, services, and/or capital (though rarely labor) is the principle that guides some of the most powerful international institutions in existence today. To sum it up, the principle of commercial mobility is central to a series of eighteenth century accounts of freedom and political legitimacy, and has been elevated to the status of a guiding legal norm by many contemporary international economic institutions. This project traces the extent and limits of this correspondence.

Freedom of commerce (and the unhindered geographic mobility that it entails) took shape, of course, an ideological rallying cry. For starters, although commercial mobility was articulated as a claim of freedom that was universal in scope and ethos, it was by no means a universally emancipatory project. Many patent violations of freedom occurred under its banner, not least the Atlantic slave trade, colonial exploitation, and conquest, and its proponents and beneficiaries tended to be European societies. This study treats commercial mobility as a political project like any other, one that benefited some at the expense of others and harbored many internal tensions and outright contradictions.

In describing commercial mobility as a political project, I wish partly to highlight its dependence on sovereign power. It has too often been understood as a project to curb, disable, and tame sovereign power, which obscures one of its most fascinating tensions. To be sure, commerce as an individual activity was and is often framed as a private liberty, a demand for immunity from meddling by the state, and has been regarded in the aggregate as an alternative, more rational way of ordering society compared to administration by the state. However, the nineteenth century label of *laissez-faire* obscured the ways in which commercial mobility not only depended on but demanded sovereign brawn. Clearly, commercial activity requires the enforcement of contracts; hence the predominance of the theme of justice among eighteenth-century Anglophone political theory. More radically, thinkers of this period called upon the sovereign to dismantle obstacles to commerce in the

realm of civil society, a task that entailed major re-engineering of societies that retained extensive remnants of the feudal yoke. As Adam Smith acknowledged, vigorous exertion of public power was necessary to challenge entrenched forms of control such as guilds, mercantile and hereditary privileges that blocked and distorted the operations of the market.<sup>4</sup> Similarly, overseas trade by mercantile corporations depended on sovereign authorization and encouragement. If associations of private citizens were to undertake diplomacy in distant lands, they needed the sovereign's imprimatur against mistreatment by their hosts, not to mention the resources that their sovereign alone could unlock. As their operations expanded, mercantile corporations found it necessary to exercise coercive power sanctioned by the sovereign, ostensibly to protect their assets, but also to expand their operations against the opposition of their trading partners. In turn, trading corporations increased the wealth and prestige of the metropolis through geopolitical dominion, but also embroiled it in fresh disputes with foreign powers and occasionally plunged it into economic crises.

As these cursory examples suggest, commercial mobility is a project that simultaneously entails the use *and* limitation, the commission *and* omission of public power. In this respect, it can be framed as the political economy chapter of the history of constitutional rule: at one and the same time, it is a project that authorizes the use of public power *and* patrol the bounds of its exercise.<sup>5</sup> If constitutional regimes employ the dynamic of empowerment and limitation to pursue a variety of different principles and ends (including popular sovereignty, individual autonomy, or social justice),<sup>6</sup> commercial mobility furnishes one of these principles. By its very nature, however, commercial

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<sup>4</sup> For instance, Sankar Muthu, "Adam Smith's Critique of International Trading Companies." *Political Theory* 36:2 (2008), pp. 185-212.

<sup>5</sup> I draw here on Neil MacCormick's conception of "[c]onstitutionalism as a *minimal* virtue involves duly respecting the conditional quality of powers conferred . . . and involves observing faithfully the (interpreted) conditions of the respective agencies' empowerment." Neil MacCormick, *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth* (Oxford University Press 1999) 103, emphasis original.

<sup>6</sup> For an account of constitutionalism as a system of empowerment and limitation, see Stephen Holmes, *Passions and Constraint* (University of Chicago Press 1995).

mobility is a normative principle that extends the scope of constitutional rule beyond the realm of the sovereign state. Unsurprisingly, therefore, an extensive scholarly literature examines international institutions that promote commercial mobility using the normative and conceptual vocabulary of constitutionalism. This paper leaves this debate aside, and focuses instead on the role of commerce in the crystallization of a distinctively liberal idea of domestic and global order in the eighteenth century, and on the concomitant formulation of an idea of freedom that differed markedly from earlier republican conceptions.

## 2. The Mandevillean moment<sup>7</sup>

The classical republican tradition had treated wealth-getting as at best a subordinate pursuit, neither praiseworthy nor debased: necessary for the propagation of society but decidedly inferior to the quest for human excellence in the theater of politics. The pursuit of “riches of the spurious kind,” boundless wealth beyond the limited amount of property necessary for leading the good life, was said to be contrary to nature and symptomatic of a grasping soul.<sup>8</sup> Material comfort and luxury were regarded as corrosive of civic virtue and responsible for creating lazy, covetous, quarrelsome, and effeminate citizens and soldiers.

Eighteenth-century thinkers subtly and forcefully pushed back against this, what they considered to be an antediluvian condemnation of wealth accumulation. Although Montesquieu retained reservations about the effects of luxury and tried to set out a model of commerce that

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<sup>7</sup> This phrase is also used by M.M. Goldsmith, *Private Vices, Public Virtues* (Cambridge University Press 1985) 58. However, whereas Goldsmith he uses this phrase to refer to the resonance between Machiavelli's figure of the legislator and the “skillful politicians” in *The Fable of the Bees* who Mandeville posits manipulated the base passions of human beings to civilize them, I use it in J.G.A. Pocock's sense to flag this thinker's profound influence on a discernible moment in the history of political thought that has had deep reverberations for the subsequent evolution of social and political institutions.

<sup>8</sup> Aristotle, *The Politics*, trans. and ed. Carnes Lord (Chicago: The University of Chicago Press, 1984), 1257b-1258a

would be based on needs rather than superfluities,<sup>9</sup> an influential essay on political economy by a French contemporary, Jean-François Melon, contested the very distinction as illogical. “The term Luxury is an idle Name, which should never be employed, in Considerations on Polity, and Commerce: Because it conveyeth uncertain, confused, and false Ideas, the misapplication whereof, might stop Industry in its very Source.”<sup>10</sup> Similarly, according to the scandalous Bernard Mandeville, “If everything is to be luxury (as in strictness it ought) that is not immediately necessary to make man subsist as he is a living creature, there is nothing else to be found in the world, no, not even among the naked savages, of which it is not probably that there are any but what by this time have made some improvements upon their former manner of living... or added something to what once sufficed them.”<sup>11</sup> Both thinkers forcefully contested the maxim that luxury enervated martial spirit. Melon wrote that “ambitious emulation” was a goad to bravery, while “Glory alone, without those Advantages, which are inseparable from a happy Existence, Is not a sufficient Spur for the Multitude.”<sup>12</sup> “Incitement” by the opulence and “the Spoils of the Enemy” had “produced the great Services, the Privateers performed to the State, and the astonishing Actions of the *Buccaniers*.”<sup>13</sup> What Machiavelli had considered to be the only secure motivation for a reliable army, namely the soldiers’ undivided allegiance to their homeland and its institutions was, for Melon, incomprehensible: “How could [Licurgus] expect that the Members of his Community, who had no Knowledge of future Rewards, could support the ambitious Spirit of Acquisition, through a thousand Hardships, and a

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<sup>9</sup> See especially Charles de Secondat, Baron de Montesquieu, *The Spirit of the Laws*, trans. and ed. Anne M. Cohler, Basia C. Miller & Harold S. Stone (Cambridge University Press [1748, 1758] 1989), I.7.1, pp.96-9; IV.20.4, p.340. For an explication of Montesquieu’s distinction between commerce founded on luxury (which he associated with monarchies and despotic regimes) and commerce founded on “economy” or the satisfaction of needs (which he associated with republics), see Robert Howse, “Montesquieu on Commerce, Conquest, War, and Peace,” *Brooklyn Journal of International Law* 31:3 (2006), pp. 1-16.

<sup>10</sup> Jean-François Melon, *A Political Essay upon Commerce* [1734] in *Commerce, Culture & Liberty. Readings on Capitalism before Adam Smith* (H.C. Clark ed., Liberty Fund 2003), 258

<sup>11</sup> Bernard Mandeville, *The Fable of the Bees and Other Writings* (E.J. Hundert ed., Hackett 1997), Remark L, p.65

<sup>12</sup> Melon, *A Political Essay upon Commerce*, 258

<sup>13</sup> Melon, *A Political Essay upon Commerce*, 258



thousand Dangers, without the Hopes of augmenting their Portion, or diminishing their Labour?”<sup>14</sup>

Melton’s assessment of the springs of human motivation were so radically different from that presumed by the civic humanist orthodoxy that the idea of patriotic sacrifice as its own reward had literally become inconceivable.

In his philosophical doggerel, *The Grumbling Hive*, Mandeville generalized this line of argument (which he epigrammatically dubbed “private vices, public benefits”) into all realms of society. It’s criminal to abridge his uproarious verse, which weaves a series of knotty paradoxes into a consequentialist absolution of commercial society of all moral reproach. But here is a snippet anyway:

The Root of evil Avarice,  
That damn'd ill-natur'd baneful Vice,  
Was Slave to Prodigality,  
That Noble Sin; whilst Luxury  
Employ'd a Million of the Poor,  
And odious Pride a Million more  
Envy it self, and Vanity  
Were Ministers of Industry;  
Their darling Folly, Fickleness  
In Diet, Furniture, and Dress,  
That strange, ridic'lous Vice, was made  
The very Wheel, that turn'd the Trade.

Thus Vice nursed Ingenuity,  
Which join'd with Time; and Industry  
Had carry'd Life's Conveniencies,  
It's real Pleasures, Comforts, Ease,  
To such a Height, the very Poor  
Lived better than the Rich before;  
And nothing could be added more  
[...]

**THE MORAL**

Fools only strive  
To make a Great an honest Hive.  
T' enjoy the World's Conveniencies,  
Be famed in War, yet live in Ease  
Without great Vices, is a vain  
Eutopia seated in the Brain.

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<sup>14</sup> Melton, *A Political Essay upon Commerce*, 258

Fraud, Luxury, and Pride must live;  
Whilst we the Benefits receive.  
[...]  
Vice is beneficial found,  
When it's by Justice lopt and bound [...]<sup>15</sup>

It is tempting to reconstruct Mandeville's private vices, public virtues argument and its many subsequent cognates (including Smith's invisible hand and Kant's concept of unsocial sociability) as meaning that commercial society requires no individual virtues for social integration; that is, as implying that greed and selfishness seamlessly tend to the common good. In part, these neat paradoxes were crafted to assuage widespread anxieties that the growing prominence of the market as a sphere of social interaction would blunt or wholly eliminate the altruistic, patriotic, or benevolent motivations that the civic humanist and Christian traditions had regarded as the key to social integration. However, even if the language of virtue was eclipsed by a language of justice during this period, as Hont and Ignatieff have argued,<sup>16</sup> the *logic* of virtue, as an insistence that certain individual character traits are necessary for social integration and for a well-ordered polity, persists in many eighteenth century defenses of commercial society. Even Mandeville insisted that though genuine virtue ran counter to human nature, society functioned only because people strove in word and deed to *appear* virtuous. More importantly, the attempts of moral philosophers such as Hume and Smith to "reach the foundation of ethics, and find those universal principles, from which all censure or approbation is ultimately derived,"<sup>17</sup> and the emphasis they placed on merit, propriety, approbation, and disapprobation attest to a desire to systematize and refurbish the language of virtue.

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<sup>15</sup> Mandeville, "The Grumbling Hive, Or, Knaves Turn'd Honest" [1705] in *The Fable of the Bees and Other Writings*

<sup>16</sup> van Hont & Michael Ignatieff, "Needs and Justice in the *Wealth of Nations*: An Introductory Essay," in Istvan Hont & Michael Ignatieff, *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge, 1983), 7.

<sup>17</sup> Hume, *An Enquiry Concerning the Principles of Morals* [1751] (ed. J.B. Schneewind, Hackett 1995), Section I, p.16

What does change dramatically during this period, however, is the conventional list of which virtues are necessary for attaining the common good.<sup>18</sup> As Albert Hirschman has shown, traditional conceptions of virtue, not least the Christian ones grounded in duties to God and his creation and the civic humanist ones grounded in service to the public good were eclipsed in favor of a new catalog of virtues for the commercial age. The accumulation of wealth was no longer evidence of a corrupt, exploitative, and shameful character, but the symptom of assiduity, foresight, honesty, and self-discipline. In Nietzsche's terms, then, the eighteenth is a period of profound reevaluation of values; it is what we might term—with a nod to JGA Pocock—the Mandevillian moment.

To this end, many of the works of the period provide a programmatic list of virtues appropriate to and fostered by commercial society. According to Montesquieu, “the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, wisdom, tranquility, order, and rule. As long as this spirit continues to exist, the wealth it produces has no bad effect.”<sup>19</sup> For his part, Smith anoints “probity and punctuality” as “the principal virtues of a commercial nation.”<sup>20</sup> “[S]elf-interest, that general principle which regulates the actions of every man” leads people who trade frequently to be more true to their word in order to preserve their reputation.<sup>21</sup> Decisively parting ways with his teacher Francis Hutcheson's benevolence-based theory of virtue, Smith argues that “[r]egard to our own private happiness and interest, too, appear upon many occasions very laudable principles of action.”<sup>22</sup> In particular, “[s]elf-interested motives” help us cultivate “habits of economy, industry, discretion, attention and application of thought,” all of which are thought “praise-worthy qualities, which deserve the esteem and approbation of every body.”<sup>23</sup>

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<sup>18</sup> Albert O. Hirschman, *The Passions and the Interests: Political arguments for capitalism before its triumph* (Princeton, NJ: Princeton University Press, [1977] 1997)

<sup>19</sup> Montesquieu, *Spirit of the Laws*, I.5.6, p.48

<sup>20</sup> Adam Smith, *Lectures on Jurisprudence* (R.L. Meek, D.D. Raphael, and P.G. Stein eds. Liberty Classics 1982), Report of 1766, para. 328, p.539; para. 327, p.538

<sup>21</sup> Smith, *Lectures on Jurisprudence*, Report of 1766, para. 327, p.538

<sup>22</sup> Adam Smith, *The Theory of Moral Sentiments* [1759] (K. Haakonsen ed., Cambridge University Press 2002), VII.2.3, 359

<sup>23</sup> Smith, *Theory of Moral Sentiments*, VII.2.3, 359

Doctrines of virtue that demand complete self-abnegation, including Mandeville's, are wrong about the nature of virtue. In a turn of phrase that such notions of virtue on their head, Smith declares that "self-love may be a virtuous motive to action."<sup>24</sup>

In Smith's telling, market society rests on the measured Epicurean virtues, which he attempts to rescue from the ill-repute accrued through the ages. Smith arrays these qualities of character around the "respectable" and "inoffensive"—if not "endearing" or "ennobling"—virtue of *prudence*.<sup>25</sup> "In the bottom of his heart," the prudent man "would prefer the undisturbed enjoyment of secure tranquillity, not only to all the vain splendour of successful ambition, but to the real and solid glory of performing the greatest and most magnanimous actions."<sup>26</sup> For Smith, the prudent man is distinguished by his sincerity, modesty, reticence, and loyalty to a select few friends. But it is in the domain of wealth-getting where prudence makes its mark as the cardinal virtue of a risk-averse, calculating, steady managerial hand:

It is rather cautious than enterprising, and more anxious to preserve the advantages which we already possess, than forward to prompt us to the acquisition of still greater advantages. The methods of improving our fortune, which it principally recommends to us, are those which expose to no loss or hazard; real knowledge and skill in our trade or profession, assiduity and industry in the exercise of it, frugality, and even some degree of parsimony, in all our expences.<sup>27</sup>

Prudence, expressed in the sphere of commerce as parsimony and frugality, is the defining 'oeconomic' virtue: "the principle which prompts to save, is the desire of bettering our condition, a desire which, though generally calm and dispassionate, comes with us from the womb, and never leaves us till we go into the grave."<sup>28</sup> Lest we are left with any doubt as to whether prudence is a virtue that Smith merely catalogs or one he admires, he writes that "the prudent man is always both

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<sup>24</sup> Smith, *Theory of Moral Sentiments*, VII.II.4, p.364. The definition of virtue as acting from motives *other than* self-interest was by no means an antiquated notion during this period. Even Montesquieu defines "Political virtue [as] a renunciation of oneself, which is always a very painful thing." Montesquieu, *Spirit of the Laws*, I.iv.5, pp. 35-6

<sup>25</sup> Smith, *Theory of Moral Sentiments*, Part VI.1

<sup>26</sup> Smith, *Theory of Moral Sentiments*, Part VI.1

<sup>27</sup> Smith, *Theory of Moral Sentiments*, Part VI.1

<sup>28</sup> Adam Smith, *The Wealth of Nations*, ed Edwin Cannan (New York: The Modern Library, 2000), II.iii, p. 372

supported and rewarded by the entire approbation of the impartial spectator,” the coveted seal of approval in his moral system.<sup>29</sup>

As his depiction of the prudent man makes clear, Smith does not share Hume’s view that material extravagance is benign, let alone join in Mandeville or Melon’s iconoclastic celebrations of it. The Presbyterian moralist in him dismisses, with occasional scathing disdain, the love of “trinkets of frivolous utility”<sup>30</sup> as “the meanest and the most sordid of all vanities.”<sup>31</sup> The *Wealth of Nations* condemns foreign trade that “promotes prodigality, increases expence and consumption” while praising that which provides “an additional stock of materials tools, and, provisions” for the consumption of “industrious people.”<sup>32</sup> In one of the righteous flourishes that punctuate the clinical rhetoric of the *Wealth of Nations*, Smith writes, “every prodigal appears to be a public enemy, and every frugal man a public benefactor.”<sup>33</sup>

Nonetheless, it is in the *Theory of Moral Sentiments (TMS)* where Smith tries to account for the moral psychology behind our admiration and emulation of the wealthy and their ornaments, and why the ambitious person “voluntarily puts himself to more trouble than all he could have suffered for the want of” an object of convenience such as a watch or a tweezer-case.<sup>34</sup> As the rich man finds “in the last dregs of life, his body wasted with toil and diseases, his mind galled and ruffled by the memory of a thousand injuries and disappointments which he imagines he has met with from the injustice of his enemies” that “wealth and greatness are mere trinkets of frivolous utility.”<sup>35</sup> The passage builds up to an Ecclesiastean crescendo as Smith declares “power and riches” to be “immense fabrics, which it requires the labour of a life to raise” and which ultimately “keep off the

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<sup>29</sup> Smith, *Theory of Moral Sentiments*, Part VI.1

<sup>30</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para.6, p.211

<sup>31</sup> Smith, *Wealth of Nations*, III.iv, pp. 444-5

<sup>32</sup> Smith, *Wealth of Nations*, II.ii, p. 320

<sup>33</sup> Smith, *Wealth of Nations*, II.iii, p. 371

<sup>34</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para.4, p.210

<sup>35</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 8, p. 212

summer shower, not the winter storm, but leave him always as much, and sometimes more exposed than before, to anxiety, to fear, and to sorrow; to diseases, to danger, and to death.”<sup>36</sup> Immediately, however, Smith snaps out of this “splenetic philosophy” that “entirely depreciates great objects of human desire.”<sup>37</sup> In general, he says, everyone is “charmed with the beauty of that accommodation which reigns in the palaces and oeconomy of the great.”<sup>38</sup> This response attests to our instinctive “love of system,”<sup>39</sup> namely the system in which the rich “are by an invisible hand to make nearly the same distribution of the necessities of life, which would have been made, had the earth been divided into equal portions among all its inhabitants, and thus without intending it, without knowing it, advance the interest of society, and afford means to the multiplication of the species.”<sup>40</sup> Thus, the “proud and unfeeling landlord” “is obliged to distribute among those... who provide and keep in order all the different baubles and trinkets, which are employed in the oeconomy of greatness; all of whom thus derive from his luxury and caprice, that share of the necessaries of life, which they would in vain have expected from his humanity or his justice.”<sup>41</sup> If we did not put an exaggerated premium on wealth and greatness, overestimate the comforts they bring, and fancy those who have them happier than ourselves, there would be no agriculture, no cities, no arts and sciences, “which ennoble and embellish human life; which have entirely changed the whole face of the globe.”<sup>42</sup> Therefore “[i]t is well that nature imposes upon us in this manner. It is this deception which rouses and keeps in continual motion the industry of mankind.”<sup>43</sup>

As the invisible hand passage of *TMS* indicates, Smith views commerce as tending toward the levelling of a stratified society. As Hont and Ignatieff have argued, Smith was anxious to defend

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<sup>36</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 8, pp. 213-4

<sup>37</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 9, pp. 214

<sup>38</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 9, pp. 214

<sup>39</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 11, pp. 216

<sup>40</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 10, pp. 215-6

<sup>41</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 10, pp. 215

<sup>42</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 10, pp. 215

<sup>43</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 9, pp. 214

the greater productivity of commercial society as a solution to the vexing moral problem of inequality that did not require forcible redistribution and coercive social engineering.<sup>44</sup> While he concedes that different employments of labor and capital may generate some inequalities in wages and profit, and that these are incident to the market, he insists that these pale in comparison to inequalities that result from economic mismanagement. In particular, policies “obstructing the free circulation of labour and stock, both from employment to employment and from place to place,” restraining competition in some employments, and granting exclusive privileges to trading corporations bear greater responsibility for inequalities in wages and returns.<sup>45</sup> However, Smith argues that commercial society has broken up the hereditary power of the feudal lords, who were charmed by consumerism into bartering away their “whole power and authority” for “the gratification of the most childish, the meanest and the most sordid of all vanities.”<sup>46</sup> As a result,

what all the violence of the feudal institutions could never have effected, the silent and insensible operation of foreign commerce and manufactures gradually brought about. They gradually furnished the great proprietors with something for which they could exchange the whole surplus produce of their lands, and which they could consume themselves without sharing it either with tenants or retainers. All for ourselves, and nothing for other people, seems, in ever age of the world, to have been the vile maxim of the masters of mankind.<sup>47</sup>

Of course, the supreme irony here is that the selfishness of the landed aristocracy becomes the agent of the downward distribution of their own wealth and power. In coveting something all to themselves (such as a pair of diamond buckles), they enrich numerous merchants and artificers at their own expense.

In fact, the morose “diamond buckles” passage of Book III of the *Wealth of Nations* reads like a direct response to Jean-Jacques Rousseau’s argument in the *Second Discourse* that market society was to blame for the inequality of wealth, to which Rousseau believed other inequalities (such as social

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<sup>44</sup> Istvan Hont & Michael Ignatieff, “Needs and Justice in the *Wealth of Nations*: An Introductory Essay,” in Istvan Hont & Michael Ignatieff, *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge, 1983)

<sup>45</sup> Smith, *Wealth of Nations*, I.x.1, pp.136-7

<sup>46</sup> Smith, *Wealth of Nations*, III.iv, pp. 444-5

<sup>47</sup> Smith, *Wealth of Nations*, III.iv, pp. 444-5

status, political power, and even personal merit) were reduced.<sup>48</sup> In the *Second Discourse*, Rousseau contends that “although man had previously been free and independent,” market society makes him “subject, by virtue of a multitude of fresh needs, to all of nature and particularly to his fellowmen, whose slave in a sense he becomes even in becoming their master: rich, he needs their services; poor, he needs their help... It is therefore necessary for him to seek incessantly to interest them in his fate and to make them find their own profit... in working for his.”<sup>49</sup> Smith countered that the interdependence produced by market society had replaced the far more pernicious form of *personal* dependence on which feudalism had been founded. Though the wealthy aristocrat “contributes, therefore, to the maintenance of [all the workmen and their employers], they are all more or less *independent* of him, because generally they can all be maintained without him.”<sup>50</sup> Similarly, while “Each tradesman or artificer derives his subsistence from the employment, not of one, but of a hundred or thousand different customers. Though in some measure obliged to them all, therefore, he is not *absolutely dependent* upon any of them.”<sup>51</sup> In other words, for Smith, the tendency of commerce superimposed on aristocratic society is toward a downward distribution of political power and wealth. Smith goes so far as to call this a “revolution of the greatest importance to the public happiness,” brought about by the “childish vanity” of “ridiculous” proprietors of land on the one hand, and merchants and manufacturers who acted “in pursuit of their own peddler principle of turning a penny wherever a penny was to be got.”<sup>52</sup> “Neither of them had either knowledge of foresight of that great revolution which the folly of the one, and the industry of the other, was

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<sup>48</sup> Smith had ruminated on the *Discourse on the Origin of Inequality* in a short contribution to the *Edinburgh Review* in 1756. “Letter to the Authors of the Edinburgh Review” [1756] reproduced in W. P. D. Wightman, J. C. Bryce, and I. S. Ross (eds), *The Glasgow Edition of the Works and Correspondence of Adam Smith*, Vol. III.

<sup>49</sup> Jean-Jacques Rousseau, “Discourse on the Origin and Foundations of Inequality Among Men,” in *The Basic Political Writings*. 2<sup>nd</sup> edn. (D.A. Cress ed., Hackett 2011), II, p.77.

<sup>50</sup> Smith, *Wealth of Nations*, III.iv, p. 445, emphasis added.

<sup>51</sup> Smith, *Wealth of Nations*, III.iv, pp. 445-6, emphasis added.

<sup>52</sup> Smith, *Wealth of Nations*, III.iv, pp. 447-8



gradually bringing about,”<sup>53</sup> the very process in respect of which *TMS* had used the phrase “invisible hand.”<sup>54</sup>

Like Smith, Hume uses a historical point of comparison to draw a link between commerce and social and political emancipation. Revisiting the ever-contentious topic of ancient Rome’s enervation and demise, Hume argues provocatively that what brought disorders upon the Roman state was not material decadence, but “an ill-modelled government and the unlimited extent of conquests.”<sup>55</sup> Far from losing its martial virtue, the Roman state had fallen victim to its very vigor! Hume did not deny that honor and glory were the springs of martial virtue, but nevertheless defended commercial society against those “Latin classics, whom we peruse in our infancy” that “universally ascribe the ruin of their state to the arts and riches imported from the East.”<sup>56</sup> Increased productivity, progress in the arts and manufactures, and a concomitant refinement in mores softened tempers and made men more intelligent, more urbane, more rational, and less angry. In refined societies, “Factions are then less inveterate, revolutions less tragical, authority less severe, and seditions less frequent.”<sup>57</sup> In such societies, moreover, men were not “less undaunted and vigorous in defence of their country or their liberty”; rather, “a sense of honour, which is a stronger, more constant, and more governable principle, acquires fresh vigour by that elevation of genius which arises from knowledge and a good education.”<sup>58</sup>

More broadly, Hume argues, “a progress in the arts is rather favourable to liberty, and has a natural tendency to preserve, if not produce a free government.”<sup>59</sup> In particular, “where luxury nourishes commerce and industry”, peasants become rich and independent, tradesmen and

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<sup>53</sup> Smith, *Wealth of Nations*, III.iv, pp. 448

<sup>54</sup> Smith, *Theory of Moral Sentiments*, Part VI.1, para. 10, pp. 215-6

<sup>55</sup> Hume, “Of Refinement in the Arts”

<sup>56</sup> David Hume, “Of Refinement in the Arts,” 282

<sup>57</sup> David Hume, “Of Refinement in the Arts,” 281

<sup>58</sup> David Hume, “Of Refinement in the Arts,” 281

<sup>59</sup> Hume, “Of Refinement in the Arts,” 283

merchants acquire property, all of which results in the accumulation of “authority and consideration” among “that middling rank of men, who are the best and firmest basis of public liberty.”<sup>60</sup> As such,

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. They covet equal laws, which may secure their property, and preserve them from monarchical, as well as aristocratical tyranny.<sup>61</sup>

In other words, Hume ascribes the love of liberty Machiavelli had identified with the *popolo* to a growing new bourgeois class, whose desire for ease and tranquility check monarchical excess, patrician pride, and plebian vulgarity.

Whereas Hume and Smith depict commerce as a dynamic that revolutionizes stratified societies, Montesquieu argues that social stratification can be an obstacle to the flourishing of commerce. Aristocratic republics cannot successfully engage in it, Montesquieu writes, because commerce “is the profession of equal people.”<sup>62</sup> When patricians pursue it, they attempt to use their political clout to gain economic advantage, “set up all sorts of monopolies,” and frustrate industry. By contrast, a democracy can be founded on commerce provided that the laws favor “the spirit of commerce.” Montesquieu argues that the laws of a commercial republic must “divide fortunes in proportion as commerce increases them,” and “must make each poor citizen comfortable enough to be able to work as the others do and must bring each rich citizen to a middle level such that he needs to work in order to preserve or to acquire.”<sup>63</sup> In this connection, Montesquieu endorses measures such as dividing inheritance equally among children, restricting women’s dowries, and instituting sumptuary laws. In sum, the inequality naturally generated by the accumulation of wealth

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<sup>60</sup> Hume, “Of Refinement in the Arts,” 284

<sup>61</sup> Hume, “Of Refinement in the Arts,” 284

<sup>62</sup> Montesquieu, *Spirit of the Laws*, I.5.8, p.53

<sup>63</sup> Montesquieu, *Spirit of the Laws*, I.5.6, p.48

must be counteracted by stern regulation, not only because such laws are necessary to preserve virtue among citizens but because “an excess of wealth destroys the spirit of commerce.”<sup>64</sup>

Where Montesquieu sees commerce as having an independent causal effect on entrenched power structures is with respect to despotism. This, Montesquieu argues, is the only regime type that is wholly incompatible with commerce. The “uncertainty of fortunes” under a despot lead to high borrowing costs, which clip investment, industry, and trade. “Confiscations... render the ownership of goods uncertain” and “embezzlement is natural.”<sup>65</sup> As a result, “the laws of commerce scarcely apply” in despotic regimes, and “destitution is omnipresent in these unhappy countries.”<sup>66</sup> But despotic regimes are inherently unstable in Montesquieu’s telling, and commerce can throw them off balance. His studies reveal the watershed invention in the quest to tame the rapacious sovereign to be neither the separation of powers nor the entrenchment of *lois fondamentales* nor even the English Constitution with its petulant parliament, juries of peers, and ornery judges in powdered wigs. In fact, liberty was not an English, French, or Roman institution, according to Montesquieu; it was the Jews who delivered Europe from the clutches of absolutism. As a remedy against being expelled and expropriated, prosperous Jewish merchants and financiers of early modern Europe invented “letters of exchange,” which were used to retain the value of their estates upon being forced to leave their despotic regimes, “seat[s] of harassment and despair.”<sup>67</sup> Letters of exchange enabled them to spirit away the riches the prince coveted. “[A] prince who wanted very much to be rid of [the Jews] would not, for all that, be in a humour to rid himself of their silver.” As a result, “commerce was able to

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<sup>64</sup> Montesquieu, *Spirit of the Laws*, I.5.6, p.48

<sup>65</sup> Montesquieu, *Spirit of the Laws*, I.5.15, p.64-5

<sup>66</sup> Montesquieu, *Spirit of the Laws*, I.5.15, p.64-5

<sup>67</sup> If Montesquieu’s paean to the ostensible commercial virtues of the Jewish people has an unmistakably anti-Semitic ring to modern ears, it was effusively philo-Semitic and fairly contrarian for its time. Consider Voltaire, the loudest among a large chorus of purportedly universalist eighteenth century thinkers to extol the virtues of commerce, just as long as it was monopolized by gentiles. For a brilliant analysis of Voltaire’s virulent anti-Semitism, see Robert Goodman, “*Doux Commerce*, Jew Commerce: Intolerance and Tolerance in Voltaire and Montesquieu,” forthcoming in *History of Political Thought*.

avoid violence and maintain itself everywhere, for the richest trader had only invisible goods, which could be sent everywhere and leave no trace anywhere.”<sup>68</sup> The mobility of capital functioned as a surprisingly effective constitutional check against the sovereign temptation to prey on subjects, and as a powerful penalty against despotism.<sup>69</sup> “Since that time princes have had to govern themselves more wisely than they themselves would have thought, for it turned out that... only goodness of government brings prosperity.”<sup>70</sup> Contemporary monarchs had “begun to be cured of Machiavellianism” thanks to the influence of capital, and henceforward “[w]hat were formerly called *coups d'état* would at present, apart from their horror, be only imprudences.”<sup>71</sup> In sum, by plotting a causal relationship between political liberty and capital mobility, Montesquieu beat Carles Boix to the punch by several hundred years.<sup>72</sup>

More broadly, Montesquieu argues that capital mobility and the threat of capital flight accelerated the moral and cultural redemption of commercial activity, “which had been violently linked to bad faith, returned, so to speak, to the bosom of integrity.”<sup>73</sup> Since it no longer paid to denounce commerce and despoil those who prospered by it, Christian monarchs were obliged to drop the hypocrisy and embrace the commercial pursuits on which the prosperity of their lands (and the availability of credit to bankroll their expenses) depended. Meanwhile, the free circulation of currency within Europe discouraged princes from manipulating the weight of specie: “The exchange has taught the banker to compare all the monies of the world and set them at their just value; the grade of monies can no longer be kept secret.”<sup>74</sup> As a result, “violent operations” such as surreptitious weakening of the currency “could not occur in our time; a prince would deceive

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<sup>68</sup> Montesquieu, *The Spirit of the Laws*, IV.21.20, pp. 388-9.

<sup>69</sup> Albert O. Hirschman, *The Passions and the Interests: Political arguments for capitalism before its triumph* (Princeton, NJ: Princeton University Press, [1977] 1997), 77-8.

<sup>70</sup> Montesquieu, *Spirit of the Laws*, IV.21.20, p. 389

<sup>71</sup> Montesquieu, *Spirit of the Laws*, IV.21.20, p.389

<sup>72</sup> Carles Boix, *Democracy and Redistribution* (Cambridge 2003), 38*n*, 227*n*.

<sup>73</sup> Montesquieu, *Spirit of the Laws*, IV.21.20, p.389

<sup>74</sup> Montesquieu, *Spirit of the Laws*, IV.21.13, p. 416

himself and would deceive no one else.”<sup>75</sup> Elsewhere, Montesquieu observed that capital mobility inevitably undermined measures designed to restrict it. Thus, laws that restricted the sale of privately owned land to prevent the wealth of proprietors from being transferred abroad had been frustrated “by the use of the exchange.”<sup>76</sup> Such restrictions could be easily evaded thanks to the ease of circulation of specie. In this new world, “wealth somehow does not belong to any state in particular and since it is so easily transferred from one country to another.”<sup>77</sup> Thus attempted restrictions harmed only the commonwealth by depreciating the price of land *and* discouraging foreign investment. Thanks to capital mobility, the liberties of subjects became difficult for the sovereign to curtail. In each of Montesquieu’s examples, therefore, commercial mobility disciplines sovereign prerogative and leads to a general enlargement of the liberty of subjects beyond the commercial sphere.

### **3. Anemic theories of political legitimacy...**

The eighteenth century fascination with the various miracles of political economy comes at the expense of state theory, whose core concerns include the attributes and prerogatives of sovereignty, the rights of war and peace, the taxonomy of regimes, and the characteristics of a well-ordered realm. During this period, thinkers who were optimistic about commercial society did not pay as much attention to these classic themes, not necessarily because they were agnostic between different regime types, but because they defined the role of public power in terms of a set of specific tasks that could be slotted into a multitude of different kinds of regimes. These tasks included the maintenance of basic norms of justice, the protection of property rights, the enforcement of

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<sup>75</sup> Montesquieu, *Spirit of the Laws*, IV.21.13, p. 416

<sup>76</sup> Montesquieu, *Spirit of the Laws*, IV.21.15, p. 417

<sup>77</sup> Montesquieu, *Spirit of the Laws*, IV.21.15, p. 417

contracts, and basic market regulation. Nonetheless, their preference for political stability inclined thinkers including Mandeville, Montesquieu, Hume, and Kant towards constitutional monarchy with limited suffrage, the separation of powers, competent police, and an impartial administration of justice. The uncertainty of parliamentary rule, the ferment of popular government, and the whims of elected representatives could be disruptive to each of these priorities. Characteristically, Hume warned against “the force of popular currents and tides” that sought periodically to alter the British commonwealth, exhorting his compatriots to “cherish and improve our ancient government as much as possible, without encouraging a passion for such dangerous novelties” as increasing the power of the Commons.<sup>78</sup>

To the extent that the task of social integration in commercial society could be entrusted to the system of needs, the state was left with a relatively limited set of functions to fulfill. In this regard, Adam Smith set out three essential “duties of the sovereign.”<sup>79</sup> The first was to provide for external defense against foreign aggression or domination. The second was “an exact administration of justice,” which Smith defined as “protecting, as far as possible, every member of the society from the injustice and oppression of every other member of it.”<sup>80</sup> Finally, the state needed to provide “certain public works and certain public institutions” that the market could not be expected to provide due to the prohibitive cost to individuals or private associations of providing and operating them. As his social democratic readers have argued, the public goods Smith tasked the state with providing could potentially be quite extensive.<sup>81</sup> Nonetheless, each of the functions with which Smith tasked the state are managerial in nature, and exclude the possibility that the state might

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<sup>78</sup> David Hume, “Of the First Principles of Government” [1741], in *Essays. Moral, Political, and Literary*

<sup>79</sup> Smith, *Wealth of Nations*, IV.9, p.2; Knud Haakonssen, *The Science of a Legislator. The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge University Press 1981), p.93

<sup>80</sup> Smith, *Wealth of Nations*, V.1.ii, p.2

<sup>81</sup> Deborah Boucoyannis, “The Equalizing Hand: Why Adam Smith thought the market should produce wealth without steep inequality,” *Perspectives on Politics*, vol. 11 (2013), pp.1051-1070

become mired in factional, ideological, or confessional conflicts of the kind that so preoccupied political thinkers such as Aristotle, Machiavelli, and Hobbes.

In his lectures, Smith appears to have simplified the functions of public power even further by designating the maintenance of justice as “[t]he first and chief design of every system of government.”<sup>82</sup> In *TMS*, he unpacks this aim. “The most sacred laws of justice, therefore, are the laws which guard the life and person of our neighbor; the next are those which guard his property and possessions; and last of all come those which guard what are called his personal rights, or what are due to him from the promise of others.”<sup>83</sup> It is important to note that these essential laws coincide with the norms required for the market to function, namely the protection of the lives, liberties, and estates of individuals, and the enforcement of promises (most notably, contracts) made between them. The result is a political theory that assigns a primarily juridical role to the sovereign for the purpose of regulating the sphere of the market.

Montesquieu, unlike Hume and Smith, dedicates his political *chef d’oeuvre* to updating the classic taxonomy of regimes with commercial society in mind. Despite his careful comparative study of constitutions, however, he shares in their noncommittal attitude toward the question of the best regime. In lieu of a particular configuration of power, he favors “moderate government,”<sup>84</sup> which can take on a variety of constitutional forms. Tacitly rejecting the classical wariness of anacyclosis, Montesquieu writes, “It is not a drawback when the state passes from moderate government to moderate government, as from republic to monarchy or from monarchy to republic,” except when either one “falls and collapses from moderate government into despotism.”<sup>85</sup> This indifference rankled revolutionaries just a few decades later. Jean Joseph Mounier was surely being unfair when

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<sup>82</sup> Smith, *Lectures on Jurisprudence*, Report of 1762-3 I, 7, p.2; also Report of 1766, 5, p.2

<sup>83</sup> Smith, *Theory of Moral Sentiments*, II.2.ii.2, p.2

<sup>84</sup> E.g. “Political liberty is found only in moderate governments.” Montesquieu, *Spirit of the Laws*, II.11.4, p.155

<sup>85</sup> Montesquieu, *Spirit of the Laws*, I.8.8, p.118

he dismissed Montesquieu as a writer who, “in seeking the spirit of institutions, always attempted to justify whatever he found established. He gave despots lessons on how to increase their power, just as he gave free peoples lessons on how to preserve themselves from servitude.”<sup>86</sup> After all, a manifest aversion to despotism is one of the few categorical normative lessons of the *Spirit of the Laws*. Nonetheless, his defense of moderate government gives Montesquieu a wide lens through which to survey laws, policies, and institutions in terms of their suitability to their particular constitutional, cultural, and climatic context, delighting social scientists and deeply frustrating political radicals.

If Montesquieu’s theory of moderate government yields a relatively permissive standard of political legitimacy, David Hume’s theory of political obligation is almost entirely sociological and descriptive. His essay on the “First Principles of Government” contains virtually no first principles that might be used to assess the legitimacy of a particular set of political institutions. Instead, Hume uses this essay to advance the empirical hypothesis that “[i]t is... on opinion only that government is founded.”<sup>87</sup> A government is legitimate if its subjects are persuaded that its operations tend to the general interest, follow principles of justice and equity, and safeguard subjects’ rightful property. What seems to matter is less whether the government actually *conforms* to standards of justice and equity (whatever they may be) and more whether citizens are persuaded that it does.

Reflecting on the rights of subjects against their sovereign and the limits of sovereign power, Smith follows Hume’s account of political obligation almost to the letter. With Hume’s rejection of contractarian and consent-based theories of political legitimacy in mind, Smith writes that “the duty of allegiance seems to be founded on two principles,” namely, “the principle of authority” (the fact that people tend to respect the antiquity of institutions, the superiority of the laws, magistrates, and

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<sup>86</sup> Quoted in Bernard Manin, “Montesquieu,” in François Furet and Mona Ozouf (eds), *A Critical Dictionary of the French Revolution* (Arthur Goldhammer trans., Belknap 1989), 728.

<sup>87</sup> Hume, “Of the First Principles of Government”



those who occupy a higher social station) and the idea of a “common or general interest”<sup>88</sup> (which Smith elsewhere calls “utility.”)<sup>89</sup> The principle of rightful authority, which Smith shares with Hume, is particularly troubling for its normative vacuity: it implies that magistrates are entitled to their authority because and to the extent that subjects respect their authority. Like Hume, then, Smith treats the question of political legitimacy as an empirical rather than a normative problem, focusing on why people tend to obey the law rather than theorizing whether and when they ought to obey. Although Smith, unlike Hume, implicitly invokes the impartial spectator as the test of whether the sovereign has forfeited his authority, his bar is almost comically low. A government, forfeits its authority by reaching “certain degrees of absurdity and outrage,” including “lunacy, nonnage, or idiotism.”<sup>90</sup> In other words, we are made to understand that governments are legitimate except when “every unprejudiced person” can “enter into the designs of the people [who resist], and go along with them in all their plots and conspiracys.”<sup>91</sup>

In Smith’s defense, Knud Haakonssen has written that his “theory of politics might be thought an impoverishment of the subject, in favour of legal theory and positive economics, and certainly if one’s standard is the wilder flight of utopian fantasies, he would be more than willing to plead guilty to the charge.”<sup>92</sup> Still, one hardly needs to be a wild utopian fantasist to regret the flattening of political theory’s traditional concern with collective autonomy, conflict, and power into a regimented jurisprudence of property and contracts. One may be forgiven for construing such a theory as apolitical. The mistake, however, would be to read each of these thinkers, particularly Hume and Smith, as entrusting the sphere of politics to the failsafe logic of economics. In the next section, I offer some correctives to this mistake.

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<sup>88</sup> Smith, *Lectures on Jurisprudence*, Report of 1762-3, V.119, p.318.

<sup>89</sup> Smith, *Lectures on Jurisprudence*, V.129, p.321

<sup>90</sup> *ibid*, V.125-6, p.320

<sup>91</sup> *ibid*, V.126, p.320

<sup>92</sup> Haakonssen, *The Science of a Legislator*, 97-8

#### 4. ...but not theories of spontaneous order

Many observers have interpreted a lack of interest in state theory on the part of eighteenth century market thinkers as evidence of a faith in the inexorable power of commerce to engender a salutary political order or of a belief that freedom and efficient social organization thrive within the lacunae left by public power. Occult metaphors of spirits and invisible hands used by some of these thinkers to describe the aggregate effects of commercial activity encourage this misconception. However, in their respective ways, Montesquieu, Smith, Hume, and Kant emphasize that the success of commerce presupposes a particular configuration of public power, but they do not believe that this configuration arises spontaneously from dynamics immanent to commercial activity. In fact, each is highly concerned with the legal and institutional infrastructure that market societies require, which they argue is not automatically generated by market activity *and sometimes actively opposed by it*. In many cases, the legal and institutional changes required to build a commercial society are radical, including the disabling of systems of monopolies and licenses, guilds, and the dismantlement of feudal landholding arrangements.

The apolitical flavor of these theories therefore derives not from a faith in spontaneous order, but from the fact that the stable institutional framework they recommend as essential to a flourishing market society encroaches on traditional political prerogative by reducing the discretion of the prince or assembly in favor of a stable framework of laws. What Peter Laslett has written of Locke holds equally true with regard to Smith, Hume, and Montesquieu: the respective ways in which they construe “[t]he right of governing, and power to govern... is judicial in its nature, for it is the pronouncing and enforcing of a law.”<sup>93</sup> This juridical conception of political legitimacy is relatively agnostic with regard to the classical question of the best regime. In particular, it does not

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<sup>93</sup> Peter Laslett, “Introduction,” in John Locke, *Two Treatises of Government* (Cambridge University Press 1988), 97

clamor for republican liberty or popular government so long as those who hold political power are constrained by the rule of law and subjects are secure in their persons and possessions. In fact, as Hume observes, “the public interests may be pursued with some method and constancy” in a participatory system only to the extent that “the force of popular currents and tides is in a great measure broken.”<sup>94</sup> A juridical conception of political legitimacy entails a demand for being governed by a settled, publicly promulgated, predictable system of laws, impartially applied.

As we have seen, Smith and Hume insist that commerce presupposes, above all, a functioning system of justice. Paring down the virtues necessary for the subsistence of society, Smith dispenses with “agreeable bands of love and affection,” friendship, and benevolence.<sup>95</sup> In fact, society can function on the model of the marketplace, “from a sense of its utility, without any mutual love or affection”; “may still be upheld by a mercenary exchange of good offices according to an agreed valuation.”<sup>96</sup> Neither a marketplace nor society itself, however, can subsist without justice, which Smith describes as “the main pillar that upholds the whole edifice.”<sup>97</sup> He does not mean that social integration hinges on the inner rectitude of citizens since he takes a jaundiced view of the moral fiber of the bulk of mankind. Thankfully, justice is distinguished as “[a] virtue of which the observance is not left to the freedom of our own wills,” and which, unlike charity, gratitude, or benevolence, “may be extorted by force.”<sup>98</sup>

That unregulated commerce neither implies nor generates justice is evidenced by Smith’s remarks on European trade with the peoples of the Americas. The mutually beneficial effects of commerce, Smith argues, are contingent on the reciprocal observance of norms of justice. Whereas the fortuitous complementarity of commodities between the Americas and Europe “should naturally

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<sup>94</sup> Hume, “Of the First Principles of Government”

<sup>95</sup> Smith, *Theory of Moral Sentiments*, II.2.iii.1, p. 100

<sup>96</sup> Smith, *Theory of Moral Sentiments*, II.2.iii.2, p. 100

<sup>97</sup> Smith, *Theory of Moral Sentiments*, II.2.iii.4, p. 101

<sup>98</sup> Smith, *Theory of Moral Sentiments*, II.2.i.5, p. 93

have proved as advantageous to the new, as it certainly did to the old continent,”<sup>99</sup> the “savage injustice of the Europeans rendered an event, which ought to have been beneficial to all, ruinous and destructive to several of those unfortunate countries.”<sup>100</sup> Although mutual benefit is the “natural” effect of complementary economies, such reciprocity is neither automatic nor spontaneous, but strongly conditional on observation of the norms of justice.

Similarly, Smith, like Mandeville, contends that “order and good government, and along with them the liberty and security of individuals” are necessary to encourage industry. In a “defenceless state,” people “content themselves with their necessary subsistence; because to acquire more might only tempt the injustice of their oppressors.” By contrast, “when they are secure of enjoying the fruits of their industry, they naturally exert it to better their condition and to acquire not only the necessaries, but the conveniencies and elegancies of life.”<sup>101</sup> Furthermore, capital will tend to migrate to “sanctuaries in which it could be secure to the person that acquire it.”<sup>102</sup>

Though Smith and Montesquieu share the view that commerce only thrives in moderate regimes, the latter emphasizes the difficulties of establishing and maintaining such a regime. Far from being an automatic consequence of expanding markets, moderate governments are not even commonplace in contemporary Europe. “[D]espite men’s love of liberty, despite their hatred of violence, most peoples are subjected to [despotic] government,” because “In order to form a moderate government, one must combine powers, regulate them, temper them, make them act; one must give one power a ballast, so to speak, to put it in a position to resist another; this is a masterpiece of legislation that chance rarely produces and prudence is rarely allowed to produce.”<sup>103</sup> In fact, if Montesquieu had espoused the providential view of commerce sometimes ascribed to him,

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<sup>99</sup> Smith, *Wealth of Nations*, IV.i, pp. 476-7

<sup>100</sup> Smith, *Wealth of Nations*, IV.i, pp. 476-7

<sup>101</sup> Smith, *Wealth of Nations*, pp. 432-3

<sup>102</sup> Smith, *Wealth of Nations*, p. 433

<sup>103</sup> Montesquieu, *Spirit of the Laws*, I.5.14, p.63

it would be difficult to explain why bothered to pay such indefatigable (and fatiguing!) attention to statecraft and institutional design.

Montesquieu's extensive reflections on the policies and laws that are conducive to different types of commerce illustrate this point. He declares that "[c]ommerce is related to the constitution,"<sup>104</sup> meaning that patterns of commercial activity are contingent on a regime's institutional structure and the principles that animate it. Commerce is not a self-sustaining system: "In order for the spirit of commerce to be maintained... all the laws must favor it." Not least, the laws must "divide fortunes in proportion as commerce increases them, must make each poor citizen comfortable enough to be able to work as the others do and must bring each rich citizen to a middle level such that he needs to work in order to preserve or to acquire."<sup>105</sup> Without such redistributive measures, the rich as well as the poor will become idle, and the spirit of commerce will be a victim of its own success. "An excess of wealth," which one might think is an anticipated result of success in commerce, "destroys the *spirit* of commerce," not least by widening inequality.<sup>106</sup> For all of these reasons, harnessing the beneficial effects of market society requires conscientious legal regulation. "Liberty of commerce," Montesquieu argues, "is not a faculty granted to traders to do what they want; this would instead be the servitude of commerce. That which hampers those who engage in commerce does not, for all that, hamper commerce. It is in countries of liberty that the trader finds innumerable obstacles; the laws never thwart him less than in countries of servitude."<sup>107</sup> The fearsome commercial power of the period, England, Montesquieu points out, imposes myriad restrictions on its own traders in order to encourage commerce.

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<sup>104</sup>Montesquieu, *Spirit of the Laws*, IV.20.4, p. 340

<sup>105</sup> Montesquieu, *Spirit of the Laws*, I.5.6, p.48

<sup>106</sup> Montesquieu, *Spirit of the Laws*, I.5.6, p.48

<sup>107</sup> Montesquieu, *Spirit of the Laws*, I.???, p.35

Long before Marx, then, we find intimations of the immanent self-destructive dynamics of commerce and arguments that these dynamics must be counteracted by wise legislation. Adam Smith famously condemns “the mean rapacity, the monopolizing spirit of merchants and manufacturers,” whose interests are often “directly opposed to that of the great body of the people.”<sup>108</sup> Whereas merchants desire to “secure to themselves the monopoly of the home market,” the resultant protectionism diminishes their country’s overall level of welfare by pushing up domestic prices and limiting product variety, triggering retaliatory measures, depressing the volume of trade, and impoverishing partner nations. Merchants and manufacturers “neither are, nor ought to be, the rulers of mankind” or of their respective nations.<sup>109</sup> By the same token, Smith gives wide berth to political regulation of international trade, even endorsing those aspects of the Navigation Act that he deems “necessary for the defence of the country” or would result in “the diminution of the naval power” of England’s principal seventeenth century adversary, Holland.<sup>110</sup> Smith acknowledges that these measures were “not favourable to foreign commerce,” but endorses them even though they force the English “not only to buy foreign goods dearer, but to sell our own cheaper, than if there was a more perfect freedom of trade.”<sup>111</sup> The polity, in short, cannot be entrusted to its economy, not only because economic actors were just as short-sighted and likely to abuse power as anyone else, but also because wealth is not the only metric of the common weal.

## **5. The international dimension**

**[Section under construction]**

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<sup>108</sup> Smith, *Wealth of Nations*, IV.3.ii, p. 527

<sup>109</sup> Smith, *Wealth of Nations*, IV.3.ii, p. 527

<sup>110</sup> Smith, *Wealth of Nations*, IV.2, pp. 492-3. See also, Hont, *Jealousy of Trade*, p. 53.

<sup>111</sup> Smith, *Wealth of Nations*, IV.3.ii, p. 494

Montesquieu's statement, "The natural effect of commerce is to lead to peace," has often been read as a hypothesis regarding economic interdependence between nations as possessed of a pacifying dynamic.<sup>112</sup> What is perhaps less evident to us than to his contemporaries is that Montesquieu was swimming against the current. For much of the early eighteenth century, commerce was widely regarded as a vital instrument of power politics, the treasury as an arsenal to be enlarged in preparation for warfare, and the balance of trade as a strategy for undercutting one's adversaries and sapping their military might. Louis XIV's legendary finance minister Jean-Baptiste Colbert voiced a conventional view when he described commerce as "perpetual combat," that is, as a zero-sum interaction directly consequential for a country's capacity to make war.<sup>113</sup>

Against this background, Montesquieu's many statements regarding the pacific and homogenizing tendencies of international economic interdependence encourages a providential reading of his theory. According to the most well-known such interpretation, Montesquieu's "doux commerce thesis" entails the "expectation... that the expansion of the market would restrain the arbitrary actions and excessive power plays of the sovereign, both in domestic and in international politics."<sup>114</sup> On this view, the desire for economic gain trumps or tames the belligerent impulses of nations; the logic of politics is subsumed or vanquished by an economic calculus. The *doux commerce* thesis, in short, contains a philosophy of history, a providential ascendancy of economic rationality whose anticipated effect is the displacement of politics.<sup>115</sup>

Yet, it is difficult to square this providential reading of Montesquieu with his voluminous discussion of the proper political and administrative regulation of commercial activity, and with his

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<sup>112</sup> Montesquieu, *Spirit of the Laws*, IV.XX.2, p. 338

<sup>113</sup> Quoted in Hirschman, *Passions and the Interests*, 79

<sup>114</sup> Albert O. Hirschman, "Rival Views of Market Society: Civilizing, Destructive, or Feeble?", *Journal of Economic Literature* 20:4 (1982), pp. 1483-1484, at 1484

<sup>115</sup> This felicitous phrase is borrowed from Bonnie Honig, *Political Theory and the Displacement of Politics* (Cornell University Press 1993).

categorical claims such as “[c]ommerce is related to the constitution”<sup>116</sup> and “only goodness of government brings prosperity.”<sup>117</sup> More broadly, each of the eighteenth century theorists of commercial society I have treated in this essay construes the domain of politics and legislation as autonomous rather than epiphenomenal. To be sure, they each maintain that economic activity can mediate despotic tendencies, alter mores, and change the composition of society, often if not always for the better. This means that commerce is allocated considerable causal force over society, politics, and culture. But these are far from deterministic claims. Writing during a relatively early stage of capitalist development, Montesquieu, Hume, and Smith each treat commerce as a finicky, delicate plant that does not thrive in all climes, as one whose success provokes the avarice and envy of powerful neighbors and whose self-destructive tendencies are in need of careful mediation. There is, in short, a pronounced tension between these thinkers’ insistence on the indispensability of certain legal and political arrangements for sustaining commerce (an insistence which necessarily attributes causal force to public power) and their faith in the providential forces unleashed by market society.

For his part, Montesquieu explains the pacifying effect of commerce with reference to an observed correlation between commerce and “gentle mores,”<sup>118</sup> and more importantly with reference to the “reciprocal dependence” it fosters between trading nations. “[I]f one has an interest in buying, the other has an interest in selling, and all unions are founded on mutual needs.”<sup>119</sup> Still, the emphasis in Montesquieu’s statement about peace being the “natural effect of commerce” should fall on the qualifier *natural*: like many of his generalizations, Montesquieu hedges this one with ways in which the pacific dynamic can be thwarted by irrationality, bad policies, and poor institutional design. Commerce is determinative of international order only to the extent that it is

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<sup>116</sup>Montesquieu, *Spirit of the Laws*, IV.20.4, p. 340

<sup>117</sup> Montesquieu, *Spirit of the Laws*, IV.21.20, p. 389

<sup>118</sup> Montesquieu, *Spirit of the Laws*, IV.XX.1, p. 338

<sup>119</sup> Montesquieu, *Spirit of the Laws*, IV.XX.2, p. 338



determinative of domestic institutions: it has some effects, but these are neither inexorable nor entirely predictable.

If trade among nations is as acutely in need of wise political administration as it is within them, the decisive question is the level at which such administration ought to be located.

Montesquieu's solution to this problem seems to be located at the domestic level: his commercial peace hypothesis is largely limited to the relations among *moderate* governments that possess the internal constitutional make-up required to foster commerce. Professor Howse has recently proposed another solution. In his view, by positing a tendency to external aggression on the part of states, Montesquieu's theory necessitates the construction of "a (potentially) universal legal system"<sup>120</sup> or "a social order beyond the state or closed political community."<sup>121</sup> Though Montesquieu himself does not explicitly spell out any such scheme, Professor Howse points out that Montesquieu's theory of a federation of republics (which reassured the American founders that their idea of fashioning a republican mode of government for a large polity would not be a catastrophic failure) offers a model for an international legal system that would be compatible with domestic autonomy. It is perhaps a vindication of Professor Howse's thesis that one of the most ardent followers of Montesquieu, Scots historian William Robertson, treated the Hanseatic League as exemplifying Montesquieu's theory of economic interdependence among nations. According to Robertson, "the members of this powerful association formed the first systematick plan of commerce known in the middle ages, and conducted it with common laws enacted in their general assemblies."<sup>122</sup> Although the Hanseatic league aimed at commerce only, "the vigorous efforts of a society attentive *only* to commercial objects could not fail of diffusing over Europe new and more

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<sup>120</sup> Howse, "Montesquieu on Commerce, Conquest, War, and Peace," p.5

<sup>121</sup> Howse, "Montesquieu on Commerce, Conquest, War, and Peace," p.15

<sup>122</sup> William Robertson, "A View of the Progress of Society in Europe" [1766] excerpted in *Commerce, Culture & Liberty. Readings on Capitalism before Adam Smith* (H.C. Clark ed., Liberty Fund 2003), 505.

liberal ideas concerning justice and order wherever they settled.”<sup>123</sup> Robertson’s emphasis on the necessity of a disciplined league to keep the peace among the German commercial states also speaks against the providential reading of Montesquieu, even though Robertson is arguably far more confident than Montesquieu about the salutary political consequences of commercial interdependence.

The most famous confederal solution to the problem of harnessing the peaceful as well as constraining the destructive tendencies of economic interdependence was provided early in the eighteenth century by Abbé St. Pierre in his 1712 *Plan for a Perpetual Peace*. St. Pierre thought a durable confederation of the states of Europe essential for defusing the tensions generated by economic competition between them. The states of Europe had entered into a society by virtue of their commercial interdependence and, like any other human society, required a system of public right backed up by compulsive force to govern their interactions. Thus, the confederation was to have “a judicial Tribunal, which can establish laws and rule that must oblige all the members,” “a compulsory and coercive force to constrain each State to submit to the common deliberations,” a collective security clause, a rotating presidency, as well as a legislative Diet that would function according to what EU scholars will recognize as qualified majority voting.<sup>124</sup> Although St. Pierre’s plan launched a whole genre of writing on perpetual peace, and although the author was a seasoned statesman in his own right, it was thought impracticable because it would be incompatible with the selfish motivations of Europe’s existing states.

Asides from the American founders, whom I leave outside the scope of a discussion that is already straining the bounds of intellectual humility, the thinker who most exhaustively grappled

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<sup>123</sup> William Robertson, “A View of the Progress of Society in Europe,” 516

<sup>124</sup> Jean-Jacques Rousseau, “Abstract of Monsieur the Abbé Saint-Pierre’s Plan for Perpetual Peace,” in Jean-Jacques Rousseau, *The Plan for Perpetual Peace and Other Writings on History and Politics* (C. Kelly & J. Bush trans., C. Kelly ed., Dartmouth College Press, 2005), 36.

with the institutional problem of regulating international commerce in this period is Immanuel Kant. Kant's tripartite scheme combined Montesquieu's emphasis on domestic institutions (in particular moderate, or what he called 'representative' governments) with something like Abbé St Pierre's scheme of a pacific federation, and superimposed on them his own proposal for a thin layer of cosmopolitan norms consisting of the right of hospitality. Kant's *fin de siècle* reflections on the relationship between commerce and public right are therefore a retrospective of sorts on the *doux commerce* thesis. Above all, they contain a more checkered appraisal of the purported pacifying and civilizing potential of commerce than earlier enthusiasts like Hume and Voltaire. In his writings, Kant does not represent commerce as either an intrinsically peaceful or a morally rehabilitative activity.<sup>125</sup> Rather than extolling its capacity to cure the parochial, selfish, and violent passions of traditional societies in favor of a refined, rational, gentle, cosmopolitan humanism, Kant expresses deep disquiet about European imperialism and a frankly acknowledges of the ruthlessness that the competitive drive for profit engenders.<sup>126</sup>

Nonetheless, Kant believes that protection is owed to those who embark on voyages of discovery and trade and thereby thrust themselves into a lawless condition, counting on little more than the benevolence of the foreign peoples they encounter.<sup>127</sup> Provided that they refrain from violence and exploitation (which they often did not), Kant regards the plucky explorers, adventurers, and merchants who skirted the unknown corners of the world as agents of human advancement, not least the quest for knowledge and enlightenment. It is not a stretch to say that those enlarged the scope of peaceful human interaction furthered the Enlightenment maxim of *sapere aude* by reaching

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<sup>125</sup> To be sure, Kant is not alone among thinkers of the period in acknowledging that commerce is not an inherently peaceable drive. Even Montesquieu recognized that as with all else, prosperity ought to be attributed to good government, and not vice versa (esp. *Spirit of the Laws*, Part 4, Book XXI, Ch 20, at 389), and noted the injustices that went along with commerce, "revolutions" that in his account were not by any means salutary across the board.

<sup>126</sup> Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003), ch.5; Thomas Mertens, "Cosmopolitanism and citizenship: Kant against Habermas," *European Journal of Philosophy*, vol.4 (1996), no.3, pp.328-347

<sup>127</sup> Muthu, "Adam Smith's Critique of International Trading Companies," 191-2

beyond the cultural horizons of their own societies and leading others to do the same. Encounters between foreigners enable “continents distant from each other [to] enter into peaceful mutual relations which may eventually be regulated by public laws, thus bringing the human race nearer and nearer to a cosmopolitan constitution.”<sup>128</sup> We cannot enter into a lawful relationship with people we have never met but only ever eyed from afar; nor can we do so if they fire their cannons at us without asking us who we are and why we visit their shores. At the same time, Kant recognized that such fears were dwarfed by European practices of conquest, plunder, and subordination. For Kant, then, transnational commerce poses a moral dilemma: it deserves protection *and* regulation, requires encouragement *and* constraint.<sup>129</sup>

Kant’s treatment of the *doux commerce* theme is further distinguished by the juridical blueprint he offered to govern the excesses of transnational commerce in the form of a “cosmopolitan constitution” (*weltbürgerliche Verfassung*). Crucially, Kant viewed the classic law of nations (*jus gentium*) was insufficient to meet this dual challenge, because it was confined to regulating the relationships between states.<sup>130</sup> The intensification of global commerce carried private actors (individuals and trading companies) onto the international scene as moral agents in their own right. For this reason, Kant writes:

in the right of nations we have to take into consideration not only the relation of one state toward another as a whole, but also the relation of individual persons of one state toward the individuals of another, as well as toward another state as a whole.<sup>131</sup>

Kant’s point is that the law of nations can cognize the first set of morally salient relationships (state-to-state), but not the second (between citizens of different states) or third (between a state and the

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<sup>128</sup> Immanuel Kant, *Perpetual Peace* [1795] in *Kant: Political Writings* (H. B. Nisbet trans., Hans Reiss, ed. Cambridge University Press 1991), 106

<sup>129</sup> Muthu, *Enlightenment against Empire*, 192

<sup>130</sup> Pauline Kleingeld, *Kant and Cosmopolitanism. The Philosophical Ideal of World Citizenship*. (Cambridge University Press 2012), 72-5

<sup>131</sup> Immanuel Kant, *The Metaphysics of Morals*, trans. and ed. Mary Gregor (Cambridge University Press, 1996), §53, at 114

citizen of another state).<sup>132</sup> We might term the latter two sets *cosmopolitan relationships* to distinguish them from the relationships regulated by municipal and interstate law. In a world crisscrossed by voyages of discovery and trade, individuals who transact outside of their political community find themselves in a lawless relation with foreign states and their citizens. According to Kant's well-known dictum, the moral law abhors a legal vacuum, and commands that "all men who can at all influence one another must adhere to some kind of civil constitution."<sup>133</sup> "[I]n so far as individuals and states coexisting in an external relationship of mutual influences may be regarded as citizens of a universal state of mankind," their interactions must also be subject to laws.<sup>134</sup> Since these interactions fall outside the scope of either civil (i.e. domestic) right (*ius civitatis*) or international right (*ius gentium*), they must be brought under "a constitution based on *cosmopolitan right*."<sup>135</sup> Accordingly, "[t]he idea of a cosmopolitan right is... a necessary complement to the unwritten code of political and international right [*Staats— als Völkerrecht*], transforming it into a universal right of humanity."<sup>136</sup> Specifically, cosmopolitan right obliges states to extend a measure of legal consideration to foreigners with whom they interact, while at the same time giving private individuals duties towards the communities with which they interact.<sup>137</sup>

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<sup>132</sup> Muthu, *Enlightenment against Empire*, 190. Cf. Kleingeld, who writes that "Cosmopolitan law is concerned not with the interaction between states, but with the status of individuals in their dealings with states of which they are not citizens." (Pauline Kleingeld, "Kant's Cosmopolitan Law: World Citizenship for a Global Order," *Kantian Review* 2 (1998), pp. 72-90, 72) This definition omits what Kant defines as "the relation of individual persons of one state toward the individuals of another." Indeed, other than the cited passage, Kant himself does not appear to be as concerned with governing the relationship between individuals from different states who encounter one another in their private capacity the transnational realm, perhaps because he regards cosmopolitan right as a species of public right, while the relationships in question fall within the domain of international private right. Nonetheless, the claims individuals make against one another must still be enforced by some public authority. For instance, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards requires domestic courts of signatory states to recognize and enforce foreign private arbitration. Presumably this type of relationship would also fall in the domain of Kantian cosmopolitan right.

<sup>133</sup> Kant, *Perpetual Peace*, 98. Anna Stilz, *Liberal Loyalty. Freedom, Obligation, and the State*. (Princeton University Press 2009), 27-56

<sup>134</sup> Kant, *Perpetual Peace*, 98-9

<sup>135</sup> Kant, *Perpetual Peace*, 98

<sup>136</sup> Kant, *Perpetual Peace*, 108

<sup>137</sup> Mertens, "Cosmopolitanism and citizenship: Kant against Habermas," 331-2

This latter aspect of Kantian cosmopolitan right carries particular importance in the contemporary global corporate economy, where 13 of the world's top 100 largest economies are private business corporations whose power often dwarfs the political communities in which they operate.<sup>138</sup> Kant noted that the agents of the most violent, “appalling” episodes of imperialism, those who perpetrated the “cruellest and most calculated slavery” in the Caribbean and inflicted “the whole litany of evils which can afflict the human race” on India were trading companies that operated quasi-autonomously from the commercial states that chartered them.<sup>139</sup> His theory of cosmopolitan right is therefore meant to address a blind spot of traditional interstate law as much by imposing duties on *private agents*, most notably corporations, as by regulating the behavior of states.<sup>140</sup> In sum, for Kant, there is no default, natural, or categorical right to commercial mobility. That right can only be established, and must be tightly regulated, by means of agreements among states and must not encroach on their domestic constitutional autonomy. Along with many of his eighteenth century contemporaries, Kant does not view commercial activity as spontaneously generating peaceful relations, but he sees its regulation as necessarily a global project, one that requires a system of multilevel constitutionalism that would encompass the municipal, international, and supranational domains.

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<sup>138</sup> The World Bank. 2010. *Cities and Climate Change: An Urgent Agenda*. Washington, DC: World Bank. Available at <http://siteresources.worldbank.org/INTUWM/Resources/340232-1205330656272/CitiesandClimateChange.pdf>, 17

<sup>139</sup> Kant, *Perpetual Peace*, 106-7

<sup>140</sup> Although contemporary international law has come to recognize individuals as the bearers of rights, it hardly fares any better on this front. Although the principle of sovereign equality enshrined in the UN Charter safeguards states against imperialism by other states, international law remains ill-equipped to govern the actions of private enterprises, codify and enforce their duties, and hold them accountable for abuses. As the recent UN report on corporate human rights observance conceded, the state-centered paradigm of international law (including international human rights law) assigns responsibility for human rights exclusively to states, for the most part omitting the duties of private agents towards one another. See UN Human Rights Council. 2008. *Protect, Respect and Remedy: A Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, A/HRC/8/5, available at: <http://www.refworld.org/docid/484d2d5f2.html>