Men of Little Faith: The American Revolution as a Rebellion against the Modern State (1765-1850)

by

Ivan Jankovic

MA Political Science, University of Windsor, 2011
Honours BA Philosophy, University of Belgrade Serbia, 2002

Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy

in the Department of Political Science Faculty of Arts and Social Sciences

© Ivan Jankovic 2016
SIMON FRASER UNIVERSITY
Spring 2016

All rights reserved.
However, in accordance with the Copyright Act of Canada, this work may be reproduced, without authorization, under the conditions for “Fair Dealing.” Therefore, limited reproduction of this work for the purposes of private study, research, criticism, review and news reporting is likely to be in accordance with the law, particularly if cited appropriately.
Approval

Name: Ivan Jankovic
Degree: Doctor of Philosophy (Political Science)
Title: Men of Little Faith: the American Revolution as a Rebellion against the Modern State (1765-1850)

Examining Committee: Chair: Rémi Léger
Assistant Professor

Laurent Dobuzinskis
Senior Supervisor
Associate Professor

Genevieve Fuji Johnson (in absentia, Pentington)
Supervisor
Associate Professor

David Laycock
Supervisor
Professor

Michael Everton
Internal Examiner
Associate Professor, English

Filippo Sabetti (via videoconference, Montreal)
External Examiner
Professor, Department of Political Science
McGill University

Date Defended/Approved: December 18, 2015
Abstract

This dissertation explores American political thought and development in the period 1765-1850. It is a study aimed at reinterpreting the American Revolution, both in terms of its temporal extent as well as its political and ideological sources and meaning. When it comes to temporal dimension the study claims that the Revolution did not end in 1783 or 1787 but continued for decades afterwards, and in terms of meaning it argues that the Revolution was not a process of gaining independence and creating a nation-state, but a process or *resisting* the multiple attempts at creating a centralized state in America.

Revolutionary thought encompassed the patriots and antifederalists, included Jeffersonian writers and theorists in the early national period and Jacksonians in the 1830a and 1840s, to culminate with John C. Calhoun. What drove this Revolution was skepticism about both political consolidation of a nation state and economic policies of mercantilism that went hand in hand with it. It was both reactionary and liberal: reactionary in its resistance to modern state-building, and liberal in terms of its philosophy of rights and economic theory.

The study deals with the two central motifs of revolutionary thought: political localism and economic liberalism. This duality is studied against the background of conventional theories which presuppose political modernization in the form of a consolidated, centralized, enlightened state as necessary for the development of modern commerce. It is argued that a better model for understanding America is a “decoupled modernization” hypothesis. Within it economic and social modernity, most obviously expressed in a widespread acceptance of laissez-faire economic ideas, is seen as coinciding with a pre-modern localist political mindset, derived and strongly influenced by medieval principles and practices as well as by British common law. This study finds a counterintuitive combination of modern economic and social ideas and largely “antiquated,” anachronistic political theories in American early tradition. Free market economic theories were dominating the thought of American localists, whereas their political thought transformed slowly so as do adapt to the realities of the nation state and to make peace with it, through the so called states’ rights philosophy.
Keywords: men of little faith; American Revolution; modern state; economic liberalism; localism
Dedication:

To the remnants…
Acknowledgements

The author wants to thank professors Laurent Dobuzinskis, David Laycock and Genevieve Fuji-Johnson for their constant support and their spirit of productive challenge during the entire process of writing this dissertation. Prof Alexander Moens read some of the first brief formulations of the general argument of the study and helped me through our general discussions of American history and politics. The thank is also extended to prof Michael Zuckert of the University of Notre Dame and editor of "American Political Thought; prof Zuckert and some 6 or 7 anonymous referees at APT helped immensely in improving a paper which represents an enlarged version of chapter 2 of this dissertation. A special gratitude is owed by the author to historians and political theorists who influenced the most my way of thinking about the early American political tradition, most notably Luigi Marco Bassani, Thomas E. Woods Jr, Donald Livingston and Clyde Wilson. It goes without saying that none of the mentioned persons bears any responsibility for the views and arguments offered in this study.
# Table of Contents

Approval.............................................................................................................................. ii  
Abstract............................................................................................................................... iii  
Dedication: ............................................................................................................................ v  
Acknowledgements.............................................................................................................. vi  
Table of Contents................................................................................................................. vii  

Chapter 1.  **Introduction** ................................................................................................. 1  


Chapter 3.  **Hobbes, Locke and the Long Parliament against America** ..................... 63  

Chapter 4.  **Consent, Representation and Liberty: America as the Last Medieval Society** ......................................................................................................................... 92  

Chapter 5.  **Medieval heritage: Consent, Rebellion and Liberty** .............................. 121  

Chapter 6.  **The Great Derailment: the Coming of the American State** ................. 156  

Chapter 7.  **1776 Strikes Back – Critics of the Constitution** ...................................... 200  


Chapter 9.  **The last Stand - John C. Calhoun** ............................................................ 271  

Chapter 10. **Conclusion** ................................................................................................. 307  

**Bibliography** .................................................................................................................. 321
Chapter 1.

Introduction

This study is an attempt at reinterpretation of the American Revolution. The reader could be excused for being sceptical about yet another attempt to say “something new” on a topic so many thousands of books were written about, by both historians and political theorists (and economists as well). However, this dissertation does not purport to discover anything “new” in terms of historical data or analysis; it rather seeks to offer a novel interpretation of the ideational and ideological underpinnings of the Revolution and to challenge the usual interpretations of what the Revolution was and meant.

The primary focus of this study is the relationship between the American Revolution and the modern state in North America. It is often recognized by many historians and political theorists that American society in colonial times was a stateless one (Wood, 2011b). The state of extreme political decentralization, coupled with “anarchy” in economic regulations by the British Empire created a condition closely resembling the European Middle Ages. British colonies were authorized by British royal charters, but in actual terms colonial societies were built from the bottom-up, as highly decentralized experiments, drawing on English traditional legal and political institutions,
and semi-medieval localism. It is often argued (with good justification) that the American union of the revolutionary and early national periods was just a confederation of independent states: yet, to say even this much is to exaggerate slightly, because the North American colonies and newly emerging “states” of 1770s and 1780s were nothing like modern states, exercising sovereign decision-making power over their territory. They were themselves confederated, composite political forms built from the bottom up within a loose network of similar independent agglomerations (Wood, idem), resembling overall the anarchic kaleidoscope of European medieval or early modern principalities and dukedoms. Consolidation in America was lagging behind Europe even at this, local-state level, let alone the federal level.

The main thesis of this study is that the American Revolution actually represented a resistance movement of this traditional American society and attending political mindset against the consolidating and centralizing revolution begotten by British authorities in the 1760s and continued after the Independence by the domestic American political elites. It was a revolution to conserve the existing social and political traditions against the novelty of state building. What I am trying to do is to follow the intellectual articulations of this resistance movement, in order to outline the contours of continuities and discontinuities of this process, from 1765 when the controversy began, until 1850 when the last great thinker of this decentralist tradition, John. C. Calhoun, dies. In terms of what is being studied, mine is predominantly an approach close to the “ideological” schools of the American founding, liberal and civic republican; however it is not

---

1 It is important to bear in mind that this applies mostly to the 13 colonies that seceded in 1776 and formed the United States of America, but not to Canadian colonies. The later were formed mostly in the 18th century, under much stronger supervision of the central government in London, and possessed much lesser degree of political and economic self-government, contributing to the formation of different institutional structure as well as political culture. For a comparison between American and Canadian colonies with regard to their distinctive political cultures, see, Kaufman, 2009.

2 See below, pp. 5-10.
ideological in the sense of ascribing the dominant role to ideological factors of any kind to historical events. I remain agnostic as to how important economic interests were in the constitutional evolution of the American union, as compared to ideational factors. I just chose to study ideational factors, assuming they are important (and interesting), although it is difficult to quantify this influence or significance.

The dissertation revises the traditional accounts of the Revolution in two cardinal ways: first, the Revolution did not end in 1783 or 1787 as most authors would claim; it continued for decades in new conditions. While the battle lines were drawn differently, and soldiers were fighting under different banners and in different uniforms, the battle itself was the same, because the arguments were the same, or at least very similar. What was argued by anti-federalists in 1780s was re-argued and reasserted by Jacksonians during the 1830s. The second important revision is to challenge the concept of the “founding period” as a monolithic whole, as a progression and perfection of the institutional framework of the American union inherited from the chaotic wartime years of 1770s. In this study the period of 1783-1788 is seen as a great rupture, as a counterrevolution of ideas that were defeated in the Revolutionary war (political consolidation and centralization of power) – a counter-revolution led this time around by American statesmen themselves. I follow the lead of some earlier historians who saw the “spirit of 1776” as radically opposed to the “spirit of 1787” (Beard, 1986; Jensen, 1968) but I give to this opposition a new interpretation, one relying not on economic or class analysis, but rather on the political and economic theory of modern state development. This practically means the following: men of 1776 were men of liberty, localism and free-market economy, the proverbial “men of little faith” in a strong government. Men of 1787, however, were men of political power, mercantilist philosophy in economic matters and consolidation and centralization, in political theory as well as in practice. This

---

3 The term originates from Cecilya Kenyon’s 1955 article of the same title.
opposition, this perennial conflict between libertarian-localist and mercantilist-centralizing philosophies, was the driving engine of American early history. Although the philosophy of centralizers and nation-builders has to be analyzed in this study to a certain degree, its main contribution is to develop a comprehensive account of the libertarian-localist ideas, the ideas of people who were against the nation-building project, going from revolutionary pamphleteers, via antifederalist enemies of the new Constitution, then Jeffersonian and Jacksonian mature “states’ rights” formulations of the same ideas, to culminate (and in ironic Hegelian twist, get dialectically aborted in the same time), in the work of John. C. Calhoun, the towering figure of the early American political philosophy. Chapter VI is the only one in which the philosophy of the nationalists is treated in detail, primarily in order to show that American colonists were not unified in their opposition to the logic of modern state. Thus, according to my hypothesis, the Revolution lasted for more than 70 years, and its supposed crowning achievement, the Constitution of 1787, was actually an attempt, half-successful, to undo the American Revolution. The Constitution of 1787 represented a centralist and statist counterattack on the revolutionary ideals and principles of 1776.

The status of this hypothesis in the literature about the Revolution is a curious one. In many conventional treatments of the subject, numerous insights are developed about the statelessness of American early society and about the struggle of that society in the revolutionary period against attempts to create a centralized state. The problem, however, is that those insights are rarely conveyed in a rigorous and systematic manner; moreover, they are usually offered just as an afterthought, as an accidental observation, or developed as a part of an argument addressing other, presumably more important, issues. If for some reason such insights are given a more prominent profile, they are abandoned or downplayed if they threaten to challenge the notion of the Revolution as a linear progression in the rise of national consciousness and institutional sophistication of the union, from 1776 in 1787. In most cases, the precious bits and pieces of historical
information or theoretical analysis would easily slip through the cracks of conventional approaches, because they did not serve any enduring purpose within these approaches. In this study I attempt to recover and preserve these fragments and incorporate them into what I consider to be a more viable general view of the American Revolution. I believe that some of the characteristic jumps, inconsistencies, contradictions, and awkward, unnatural concoctions that are so often found in the best treatments of the Revolution (Bailyn, 1967; Wood, 1969; Greene; 1986, 2010; Jensen, 1968) become much more explicable if one applies the kind of dualistic interpretation I propose. American political thought about the Revolution struggles mightily to preserve the structural integrity of the “American founding” at any cost, whereas the material itself simply cries for decomposition and “deconstruction.”

The only monographic treatments of the issue of the Revolution and state-building I was able to find are two important works by Max Edling (2003; 2014) and Nelson (2014). Edling, who does not belong to any of the main schools of thought that dominate the literature on the American Founding, achieved two extremely important results. First, he challenged the notion that 1787 represented the culmination of the Revolution; he had shown that the essence of the revolution of 1787 was not to reform the unsatisfactory regime of the Articles of Confederation but to create a modern European “fiscal-military state” modeled after European monarchies and thereby annihilate the results of the Revolution. In Edling (2014), he follows up by showing how those institutions of consolidated military-fiscal state in America developed and “matured” over the period 1787-1865. Nelson (2014) complements Edling by showing the royalist features in the discourse of many revolutionaries, and their overarching

---

4 The fact the author is a European probably accounts at least partially for the ease with which he departed from the American mainstream analysis: first, it was easier for him to see the parallels between American nationalism and European monarchism, and he was outside the American debates which often cloud the issues of the relationship between the state and society in a fog of high-powered theory and ideological discussions.
ambition to recreate the imperial framework after the dissolution of the ties with the Great Britain. This dissertation should be read as a direct complement to Edling and Nelson: I accept Edling’s interpretation of the reasons and mechanisms and ideological sources of centralization, and Nelson’s depiction of royalist thinking behind the new Constitution, but I ask – what about the opponents of this process, what about the trenchant critics of the process of consolidation? Edling covers almost exclusively the nationalist thinking and political practice, and Nelson exclusively. This is of course of understandable if one seeks to explain the origins of the American state and statism. However, if one wants to reflect on the American Revolution as a process, one has to concentrate also on the ideas and political actions of the enemies of nationalism and statism. My study is exactly this: a parallel (although partial) history of ideas, actions and ideologies of the people who resisted the trend Edling so ably described as a “revolution in favour of the state.” I treat these ideas in chapters 7, 8 and 9, covering anti-federalists, Jeffersonians-Jacksonians and Calhoun, respectively. Chapter 6 however, provides an Edling-esque reconstruction of the origins of the American statism in the 1770s and 1780s, fully confirming his conclusions, but challenging his portrayal of Madison as being somehow iconoclastic within this statist tradition.

In a broader philosophical sense, this study uses as its starting point the interpretations of the American Revolution as a conservative or “reactionary” one. Probably the first significant work to entertain such possibility was a book “The Origin and principles of the American Revolution, as Compared with French Revolution“ by a German 19th century author Friedrich von Gentz ([1800]2010). He is a kind of anti-Tocqueville – an eloquent, well-informed European aristocrat trying to explain America and American Revolution in terms of European philosophical framework and to advance
his domestic political causes in the process. Gentz argues that the American Revolution was fundamentally different from the French Revolution in so far it did not pretend to remould the entire social and political universe of the old regime, but just to make modest institutional adjustments in order to protect the traditional concepts of liberty and the rule of law. American “revolutionaries” were actually trying to prevent the British parliament from introducing some dangerous novelties (taxation without representation and virtual representation) in the name of Ancient British liberties and the common law guarantees of individual rights of British citizens. Only when the central government had shown itself to be completely immune to any pleas and petitions by the colonists did they decide to separate from the Mother country. But, in doing so, they did not break with wider British political culture, institutions and political philosophy, they just created a new institutional framework, through the state and later federal constitutions, intended to better protect and uphold those same traditional British liberties. Americans were “conservative revolutionaries.”

This interpretation became significantly influential in the 20th century among a variety of theorists interested in emphasizing conservative bona fides of the founding generation, especially in the Cold War context, when the position of speaking in the name of the progress and the Enlightenment was monopolized by ideas of the radical Left. In his book Constitution of Liberty, classical liberal thinker F.A. Hayek (1960) argues that the American Revolution was just a continuation of the British experiment in the development of the rule of law: what the Americans had achieved by adopting the Constitution in Philadelphia, was simply to remedy some of the flaws that the British system displayed, primarily by codifying the concept of the checks and balances and constitutionally entrenching federalism. On the other hand, many Southern conservatives,

Gentz was a Prussian aristocrat and a bitter enemy of the French Revolution. He strove to strengthen the intellectual case against the French Revolution, by radically divorcing it from the American Revolution, and by portraying the latter as quite consistent with the principles of moderate, conservative monarchical regimes of Europe.
such as Mel Bradford (1983), Clyde Wilson (1969) or Wilmore Kendall (1959) appropriated Gentz’s framework to defend the claims of Southern confederate heritage: if upholding the tradition against constructivist innovations and attempts to remodel the society in accordance with political will of the “enlightened” elites is the hallmark of the American Revolution, then the Southern conservatism, from Calhoun’s defence of slavery and states’ rights to the early 20th century “agrarianism” was the true heir of George Washington, Thomas Jefferson and James Madison.

However, the problem remained that both in Gentz’s original formulation as well as in all these subsequent spinoffs of his argument, the basic unity of the revolutionary experience remained untouched by the analysis: American revolutionaries began their enterprise by resistance to British Empire and Declaration of Independence and crowned it by the Constitution in Philadelphia. Thus, a big chance to theorize the huge gap that divides the spirit of 1776 from the spirit of 1787 was lost.

The first major school of thought that came very close to explicitly addressing this gap I would label “constitutional” or “constitutionalist,” represented by such historians and political theorists as Charles McIlwain, Jack P. Greene or John Philip Reid. Their starting assumption was that the Revolution was guided neither by philosophy (Lockean nor not) nor by economic and social interests and cleavages but by a profound dispute between the centre and North American colonists about the essence of British constitutionalism. A pioneering work of this school was Charles McIlwain’s book *The American Revolution: a Constitutional Interpretation* (McIlwain, 1924), which argued that the American Revolution was a rebellion against the innovations put forward by the British parliament in the form of consolidation that strove to include the dominions and colonies into the “realm” and thereby subject them to the direct rule of the Mother Parliament and the King. According to McIlwain this was done for the first time in late 17th century with Ireland, and the American Revolution represented an attempt to prevent the same process of consolidating subjugation from being applied to North American
dominions as well. John Philip Reid (1989; 1991) followed up on McIlwain with a detailed analysis of the colonial situation and of all the aspects of this legal-constitutional dispute, and the full range of innovations put forward by the British government, including taxation, legislation and commercial regulation. In Reid’s interpretation, the dominant discourse of the revolutionary period was neither Lockean philosophy, nor republican radicalism but the language and principles of British “common law” litigation; the “founders” were not wise Lockean Philosopher Kings, nor the virtuous republican reformers, but lawyers using legal language and procedures to protect fundamental principles of British Constitutionalism against British political institutions. Jack P. Greene (1986; 2010) added a significant emphasis on the territorial and confederated nature of British constitution – a much neglected aspect. According to Greene, the colonial constitution is best understood as a kind of concurrent majority system in which the stability and harmony depended upon the center upholding the con-federal rights of self-government by the dominions, and dominions accepting the limited military suzerainty as well commercial regulation by the center. The Stamp Act of 1765 and British attempts to wrest the rights of taxation and legislation from the colonies sparked a justified rebellion of British subjects wanting to preserve a decentralist constitutional regime they were used to. When this attempt at accommodation and reconciliation failed, they were forced reluctantly to separate from the Empire.

Clearly, introducing the motifs of centralization, consolidation and the negotiated and confederated character of the British Empire was of first-rate importance, since it addressed the problem of the territorial dimension of political order, central to the American colonists. However, it did not help – at least in the form the “constitutionalists” offered their theories – in clarifying the internal dynamic of the Revolution itself, of the processes from 1765 to 1787 and beyond. Most of what they have to say is relevant for the period before July 4th 1776. And insofar as they say anything beyond that point, it rather tends to undermine rather than to amplify their general arguments. Reid and
McIlwain barely mention the Constitution of 1787 and the ways it reshaped the American constitutional experiment. Jack Greene does something even more problematic: realizing how destructive for the myth of the unitary “American founding” stretching from 1776 to 1787 his and his fellow constitutionalist’s theory is, he tries to prove that Philadelphia of 1787 was not – as one would have surmised from their concept of the Revolution as repudiation of centralization and consolidation, a counter-revolution and renewal of British imperial thinking under the new names – but a consummation and fulfilment of the very principles of 1776. In the first characteristic act of what we can call the “politics of the scholarship on the American Revolution” Greene argues that the constitutional settlement of 1787-89 represented a solution to the problem that created the American Revolution.

Although relevant in many ways, constitutionalists left ideological elements completely out of the picture; people are motivated in political action by a whole host of different ideas and considerations, some of which are often “irrational” or “ideological”; they don’t spend 100% of their time thinking about the intricacies of constitutional issues. This omission was remedied by a somewhat complementary “civic republican” school led by Bailyn, Wood, Pocock, Baning and others. Civic republicans are relevant for our project in two ways: first, they articulated most satisfactorily and comprehensively the ideological content of the revolutionary discourse, and second, they emphasized and to some extent even incorporated into their analysis, the medieval and pre-modern aspects of the American political culture and organization, highlighting its opposition to the modern state, not only in strictly legal and constitutional, but also sociological and even psychological terms. As for the first element, Bailyn’s path-breaking Origins of the American Revolution (1967) revised the traditional identification of American revolutionary ideology with Lockean classical liberalism, by emphasizing the influence

6 See below, pp. 9-11.
of the British radical Whig or “country party” ideology. This ideology emerged in the early 18\textsuperscript{th} century in England and spread quickly to America, primarily through the writings of Trenchard and Gordon and their famous “Cato’s Letters.” It established the crucial opposition between “power” and “liberty” and the court and country parties as the central explanatory categories of the revolutionary struggles of the late 18\textsuperscript{th} century. This dichotomy roughly reflected the dispute over the modern state formation: Walpole’s reforms in England (centralization, central banking, taxes and subsidies, regulations, tying the commercial and banking interest to the interest of state, standing armies financed by public revenue and so on) were opposed in the name of traditional British institutions of local self-government. When the British parliament attempted to apply similar principles of legislative, regulatory and fiscal consolidation to American colonies, colonists had ready-made theoretical framework to resist the new design. Gordon Wood’s main work (Wood, 1969) further developed Bailyn’s ideas in various directions, including the emphasis on the republican ethic of “civic virtue” as opposed to Lockean liberal individualism. This element of Wood’s rendering of Bailyn’s thought was hugely influential, since it provided a communitarian language to counter the Lockean hegemony in American historical writing (Banning, 1978; Pocock, 1975).

An especially valuable contribution of the Bailyn/Wood school was to recognize the extent to which the colonial American experience represented a relapse into versions of medieval/pre-modern political, practices and habits of thought, and to which colonial America in the institutional sense was a stateless society. For example, Bernard Bailyn argues that Americans “starting from the 17\textsuperscript{th} century assumptions, out of necessity drifted backwards…towards the medieval forms of attorneyship in representation. The colonial towns and counties like their medieval counterparts, were largely autonomous, and they stood to lose more than they were likely to gain from the loose acquiescence in the action of central government” (Bailyn, 1965: 164). Gordon Wood argues along the similar lines that ‘They [Americans] sincerely believed they were not creating new rights
or new principles prescribed only by what ought to be, but saw themselves claiming “only to keep their old privileges,” the traditional rights and principles of all Englishmen, sanctioned by what they thought had always been (Wood, 1969: 13). He moreover concedes that “…republicanism as Americans expressed it in 1776 possessed a decidedly reactionary tone. It embodied the ideal of good society as it had been set forth from antiquity to the 18th century” (Wood, 1969: 59).

And yet, those general isolated utterances are strangely disconnected from the mainline of their argumentation: the same authors seldom discuss to what extent the same medieval and ‘pre-modern’ or “ancient” institutions and customs caused the Revolution, let alone survived it. Ironically, most of them are – by virtue of their own acceptance of the consensual assumption of the Revolution as an Enlightenment’s big leap forward – simply forced to make a radical break, somewhere in the period 1765-1787, and proclaim the coming of the Revolution in America and the demise of the old world. Another example of “scholarly politics of the American Revolution”: between the rock of historical evidence and the hard place of the imperative to uphold the revolutionary and modern character of the Revolution itself (and the structural integrity of the “American founding”), civic republicans had to develop different makeshifts and ad hoc bodges about the “maturation” or “transformation” of the American spirit in the period 1765-1775. In order to avoid the unwanted but entirely plausible conclusion that the Revolution was a conservative and reactionary uprising against the modern state and its “progressive” instruments of economic and social control, they essentially had to invent some big philosophical upheaval or spiritual revolution happening amidst the political turmoil of the revolutionary years, which made this down-to earth political reality of American reaction against the modern state irrelevant. Thus Bailyn (1967: 161) argues: “Words and concepts have been reshaped…turned in unfamiliar directions towards the conclusions they themselves could not clearly perceive.” In the second edition of the “Ideological Origins…” (Bailyn, 1992) he adds a brand new 60 pages postscript titled “Fulfilment: the Commentary on the Constitution” in which he basically refutes
everything he said in the book. Instead of his previous emphasis on the cardinal opposition between power and liberty, on “paranoid-style politics” (Wood, 2010b) dominating America, on revolutionary impulse as a libertarian rebellion against political consolidation and so on, he now argues that consolidation was actually the essence of the Revolution, that the federalist centralizers from Philadelphia were fulfilling the promise of 1776. Without any apparent irony, he directly compares the Framers from Philadelphia with Plato’s Philosopher Kings and the people themselves with the unenlightened peasants seeing only the shadows on the wall, and consequently, needing to be managed by these wise Guardians (Bailyn, 1992: 380-81).

Similarly J.G.A. Pocock spent hundreds of pages in which he found the true source of American revolutionary ideology in the Renaissance humanism reviving the old Roman and Aristotelian traditions, combined with the medieval political institutions. He then nevertheless agrees with Bailyn that “the experience of the war of Independence and the constitution-making that followed it necessitated a further revision of the classical tradition, and in some respects a departure from it” (Pocock, 1975: 506).

Wood is no different in this regard. After conceding that the revolutionaries were driven by the medieval forms of representation and localism, he did not entertain the suggestion that the subsequent political centralization with the Philadelphia constitution and the Madisonian “compound republic” was inconsistent with the revolutionary ideals and actually represented a counter-revolutionary putsch. Rather, for Wood, the apparent counter-revolution was just a ‘refinement’ and “further development” of American republicanism, driven by good will and the philosophical genius of the “American people” fed up with petty and “excessive” localism and desperate to achieve “deliberative democracy” (rather than by the ambition of power-hungry elites and their business allies to centralize government). “Throughout the years of war and after, Americans in almost all the states mounted increasing attacks on the tendencies of the American representational system, voicing a broadening awareness of what excessive localism, binding instructions and acutely actual representation signified for their
assumptions about the nature of republican politics. The ideal of an independent and
deliberative legislature, attending to the common interest of the whole state, would not
die” (Wood, 1969: 195-96). Yet after all of these convoluted claims, one wonders why
Americans fought against the supremacy of British parliament if an “independent” (from
voters?) and “deliberative” legislature was their highest political ideal to begin with?

The best and shortest shortcut into the world beyond this scholarly politics of the
American founding is the progressive literature of the early 20th century, which is
nowadays deeply out of fashion within the academy. The reasons for this marginalization
vary, but one of the most obvious ones is the fact that progressives threatened to destroy
the unity and structural integrity of the concept of the “founding” by polarizing American
political experience. Starting with Charles Beard’s seminal analysis in his “Economic
Interpretation of the Constitution,” and continuing with the whole scores of Progressive
contributions (Beard, 1986; Parrington, 1958; Hammond, 1957; Jensen, 1974; Main,
1961) the American political tradition was being reinterpreted as a deep conflict between
the radical democratic and ‘agrarian’ mainstream that tried to drive the revolutionary
impetus to its ultimate logical and institutional consequences, as well as to hold back the
ascendancy of capitalism, and a conservative, classical liberal reaction to the revolution,
trying to muzzle democracy in the name of property rights and aristocratic rule.
Stemming from the thought of Jefferson and Paine, the American revolution, it was
argued, sought radical social transformation, equality and political emancipation, whereas
the liberal-conservatives, exemplified by the Framers of the Constitution and the
‘federalists’ led by Hamilton and Madison, wanted to suppress this democratic will by
creating an institutional concoction of ‘checks and balances’ against the will of majorities
and to protect their bourgeois class interests as merchants, public creditors and land
speculators (Jensen, 1963; Ferguson, 1961). Progressives extolled the democratic and
radical faction of the Revolution with its social-democratic undertones, led allegedly by
the anti-Federalists and Jeffersonians, wanting more democracy, less protection for
capitalist interests, less centralized government and paper money in order to favor the interests of debtors, small farmers and artisans (Hammond, 1957; Parrington, 1967).

Arthur Schlesinger in his celebrated book “The Age of Jackson” found the same, debtor-agraarian-anticapitalist force in the Jacksonian philosophy of laissez-faire and their anti-banking ideology (Schlesinger, 1953). What might have appeared to an untrained eye as a typical 19th century laissez-faire radicalism of the Jacksonians, fighting the corrupt state-business mercantilist nexus, was interpreted just as a proto-New Dealish sentiment for the ‘oppressed’ and ‘poor’ and a sign of their ‘social awareness’ and reforming spirit. The advocacy of free trade, hard money, harangues against fractional reserve banking, anti-subsidy and anti-public debt ideologies were all interpreted as merely anti-bourgeois ‘agrarian’ sentiments, not as the hallmarks of the adherence to a classical liberal credo. “Market fundamentalist” views that would have been considered insulting, if expressed by modern writers in polite society, are routinely and benevolently tolerated when voiced by Jefferson, Jackson or anti-federalists. The Beardian straightjacket was so stubbornly and heroically carried on that some historians would even talk about alleged Jacksonian ‘urban agrarians’, to describe the urban followers of laissez-faire, the so called ‘Locofocos’ (Degler, 1956). Since it was unimaginable that the ‘good guys’ could have ever been simply the laissez-faire radicals, their staunch economic and political liberalism was relegated to the ideological background and treated just as a historically conditioned and slightly misguided expression of their deeper ‘democratic’, ‘agrarian’ and ‘progressive’ commitment. Thus, the list of noble ancestors of the Progressives and the New Dealers was enlarged so as to include Jacksonians, in addition to anti-Federalists and Jeffersonians (Schlesinger, 1953; Elis, 1987; Meyers, 1957; van Deusen, 1959).

I consider this whole interpretation misguided. The initial argument as to why was provided by Cecilya Kenyon – herself a progressive – in a path-breaking article “Men of Little Faith” (Kanyon, 1955) in which she argued that anti-federalists were not radical
democrats and representatives of poor and indebted farmers, but rather nasty libertarian ideologues who hated the state, not capitalism or private property rights. My study amplifies this argument by adding a distinctive mode of economic analysis\(^7\) and widening the scope of the argument, so as to include in this reinterpretation of decentralists as localist classical liberals not only anti-federalists, but also Jeffersonians and Jacksonians.

Having this in mind, one may think that a long dominant liberal Lockean interpretation of the American Revolution would be of great importance for this project (Diggins, 1984; Kloppenberg, 1987; Zuckert, 1996; Appleby, 2000; Hamowy, 1979; Bassani, 2010). Yet, paradoxically, this is not quite the case. In the 20\(^{th}\) century the most influential formulation of this way of thinking was given by Louis Hartz, and all subsequent revisions and refinements notwithstanding, the main Hartzian dictum remained: the American Revolution was a philosophical revolution in the name of Lockean individualism and natural rights. American founding fathers (both federalists and anti-federalists) were classical liberals believing in minimal government, a clear division of power, free markets, and unbounded individual liberty of “pursuit of happiness”\(^8\) as the Declaration aptly expressed their ethos. According to Hartz, America was the “Lockean fragment of European history,” a society founded on modern liberal ideas but devoid of any medieval and pre-modern political traditions and devoted to individualism and progress. The utter dominance of Lockean philosophy explains many things in Hartz’s view, among them – why socialism and collectivism never got off the ground in America. They were made impossible by a national culture “tyrannically ruled” by Locke.

\(^7\) See above, p.2-3.
\(^8\) For an explanation why “the pursuit of happiness” in the language of 18\(^{th}\) century North American colonists had decidedly classical liberal meaning of pursuing commercial and economic success, see Bassani, 2010.
A major twist to the Hartzian general argument was given by the liberal nationalists of the last 40 years, who mostly reacted to Bailyn-Wood revolution that threatened to dislodge Locke as “the American philosopher” and the main authority influencing the founding generation. This approach, sometimes dubbed the “West coast Straussianism” accepted the Lockean ancestry of American founding, but went much further than Hartz in conceptualizing the nation-building aspect of this Lockeanism, which stretched from the Philadelphia Constitution to Gettysburg, as a necessary condition of protecting and actually redeeming the abstract Lockean promise of the Declaration of Independence (Jaffa, 1988; Zuckert; 1996; Dworetz, 1990). This ‘liberal-nationalist’ school, as I call it, saw classical Locke’s liberalism as the consensual philosophy of the American founding, but not yet in the final form, which was to be “perfected” by the Civil War as the ‘second American founding’. The founders of the American regime were liberals in good standing but not yet quite liberated from the remnants of pre-modern experience: petty localism, slavery, irrational doubts about commerce and central government as dual embodiments of ‘modernity’ were still present in their thought and practice. And hence a “second American founding” was needed to purge those primitive pre-modern wrenches from the wheels of progress and to redeem the second paragraph of the Declaration, with its emphasis on universal liberty and equality. And Abraham Lincoln is the agent of this transubstantiation who with one stroke of his sword (and pen) redeemed the liberalism of the Declaration and created a strong consolidated state in America.

In this area the so called West Coast Straussians have an unexpected ally in some of the most influential libertarians (Barnett, 2004; Bernstein, 2012; Epstein, 1985).

9 Michael Zuckert, one of the important representatives of this school, many times said that “America was the Lockean country, and Locke was the American philosopher”.

10 The reason being that many of them were philosophically influenced by Leo Strauss and many of the members of the school operate in California, most notably at Clermont Institute and Clermont Graduate University.
Libertarians think that the natural rights, individual liberties, minimal constitutional government, checks and balances, universal equality before the law and similar Lockean and quasi-Lockean tenets were built into the project of the American founding from the beginning and remained the truest legacy of American political thought to this day that should be protected or recovered. One of the avenues in which the arguments of libertarians and neoconservatives seem to converge is the depiction of the ‘originalist’ jurisprudence in which they argue that the Supreme Court should use its power of judicial review to protect the individual rights understood in the Lockean sense. The Constitution was allegedly a document sanctifying the natural individual rights and Lockean philosophy, which should be used as an extralegal benchmark for deciding the difficult cases involving any issue of the Bill of Rights or Commerce Clause jurisprudence (Bernstein, 2012). They are not so much interested in the issues of federalism and division of powers as such but primarily in using the central power to restore the conditions of a ‘natural rights republic’, as one of the prominent writers of the Straussian group had nicely put it (Zuckert, 1996). The bedrock assumption of this rather multifaceted school of thought is that American liberal founding (however many phases it may contain) represents a project of creating a central government capable of protecting natural rights against both society and subnational governments.

Although implicitly assuming it, the liberal school never explicates that the nature of the process of institutional evolution 1787-1865 was the state building. The changes taking place for them included ideological and moral maturation of American society and its political representatives, not the structural changes in political institutions. And even the ideological factor is treated rather selectively, leaving aside many important elements which are difficult to square with the “second founding” hypothesis. One example is the very “Declaration of Independence,” purportedly a Lockean document par excellence. This document is written to justify secession of British subjects from their Mother country, in their capacity as the members of colonial political societies. Locke, however,
not only prohibits secession, he does not think that even emigration should be allowed as an exit option to an individual (Locke, 2003). Locke only allows revolution, or an overthrow of the government in case of usurpation. However, American colonists in 1776 do not have the ambition to depose the King of England; they just want to be left alone to create their own independent states. This problem is not addressed at all by liberal nationalists.

Or take another example: how to explain the presence of the 2nd amendment in the Constitution, explicitly designed to give the state controlled militias power to resist the federal government if it oversteps its legitimate powers? Even an arch-nationalist Joseph Story wrote that the right to bear arms was “the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them” (Story, 2002: 265). This seems to be a complete medieval anachronism questioning the monopoly of force that a standard classical liberal government has to exercise. Or, how to explain the widespread belief in the right of secession in America much after the independence had been secured, again the most strongly espoused by the radical liberals all the way to the Civil War in 1861? Or state nullification? The idea that the subnational levels of government should have a final say in determining the constitutionality of the acts of the central government, espoused characteristically by such heavy-weight figures as Jefferson, Madison or Calhoun? Where in his Second Treatise Locke explained any of these to Americans? This puzzle could not be solved within the confines of the existing theories that postulate the Lockean origins of the American founding. Chapter 3 explicitly addresses these and similar issues.
II. Theoretical framework and Intended Contribution

The approach taken in this study could be described as a combination of theory and history. More precisely, it uses history (social and cultural) as a complement of theory. This practically means that it largely belongs to the “ideological” school of thinking about the Revolution, dealing primarily with the texts of prominent revolutionaries and attempting to disentangle the intricacies of different ideological languages used in the revolutionary period. It could be said that the book is an exercise in history of ideas. Yet, this ideological analysis is anchored in history, economics and sociology, as the corrective and complementary/clarifying modes of inquiry.

The study transcends the opposition between ideational and material factors of history by abandoning the narrow, deterministic, economic view of what material factors of history consist of; it treats political institutions, legal traditions and political cultures as given “material” correctives, and in the same time “anchors,” for ideological discourses. For example, an abstract philosophical adherence to natural rights and individual liberty so often attested among many of the American revolutionaries cannot be properly understood without accounting for its rootedness in the “down-to-earth” legal and cultural traditions and practices, such as British common law or traditional localist self-government. In order to do the full justices to the complexity of the American revolutionary situation one has to couple political theory and social history by emphasizing legal and cultural “institutions” as the springboards of ideology. The approach of the dissertation is agnostic as to the relative importance of ideational vs material (in terms of economic) factors. It treats only the ideational factors, further explicated and provided a context for by a cultural and legal analysis, assuming their independent importance for the course of history, but abandoning any attempt to determine primacy or the lack thereof of these factors as opposed to conventional material/economic interests. This is the main reason why very important aspect of the revolutionary period and state building regarding the interest groups’ influence on
constitutionalism and political evolution – captured so often by public choice analysis – is not a part of this dissertation. The reason is not that the author considers those considerations unimportant, but rather that they are too important and require a separate treatment.

In terms of the content, the analysis is predicated upon a concept that could be dubbed “decoupled modernization”: by that I mean that the processes ushering in cultural, scientific and economic progress were not in any direct causal way connected to the process of political modernization – building a modern, centralized state with powerful legislatures and bureaucracies. If we want to take seriously the evidence that early American political and economic thought offers us, we have to “decouple” social and political modernizations, to accept that a partial temporal coincidence between these two important phenomena does not in and of itself imply a causal relationship, and moreover, that there are solid reasons to consider them antithetical.

The arguments for this position are extensively developed in the first five chapters of the dissertation, through the lenses of political debates and conflicts in the late eighteenth and early nineteenth centuries. The literature emphasizing the general historicity and modernity of the state (Brunner, 1992, Althoff, 2004; Foucault 2001; Poggi, 1990; Tilly 1978) provides the basis for the concept of decoupling, and is discussed in detail in chapters 4 and 5. What this literature has shown is that the concept of all political authority as a coercive monopoly of power (“state”), inaugurated by early modern thinkers such as Machiavelli, Bodin and Hobbes, and central to the dominant tradition of Western thought, from John Locke to Max Webber, is an ahistorical anachronism. Brunner (1992) demonstrated the ubiquitousness of medieval feuds in Germany and Austria, calling into question both the notion of the perennial existence of the state and the standard 19th century liberal derivation of modern state from medieval kingship; according to Brunner, medieval political thought and practice lacked the concept of monopoly of power, but was immersed in a complex nexus of co-existing
claims to power and law and contract enforcement. Law and Order were considered to be standing above the kings, nobles and common people equally, and armed resistance to the rulers was considered lawful. Gerd Althoff (2004) showed that the concept of political community in the German High Middle Ages was based on the idea of informal relationship between various social groups, not on the functional unity of the state. In Althoff’s model, just like in Brunner’s, the liberal 19th century notion of the watertight distinction between the state and civil society is shown to be inapplicable to the Middle Ages.

However, this stateless political universe is not limited to the medieval times: it stretches further back into the past. Modern social and cultural history, very much against the consensual theoretical conceptualizations of politics, had shown rather convincingly a similar lack of the state in the ancient republics of Greece and Rome. These were political communities lacking any institution of police; contract enforcement was performed by private persons, and most of the public expenditures were met by voluntary contributions of notable citizens, not by taxation. In these communities the military was not a “government service,” but just private citizens united together for the specific purpose of defence: when a war began the citizens would come together, with their personal arms and elect military commanders. When the war ends they would disband and go back to the civilian life. Government did not prosecute murder, theft and violent assault, and in dealing with these crimes citizens were left to their own private devices of legal arbitration or vendetta (Ehrenberg, 1960; Syme, 1939; Nippel, 1995; Riggsby, 1999; Gaughan, 2010).

These results of cultural history of the ancient and medieval times were complemented by more theoretical conceptualizations of the state and government. Michel Foucault had shown that the modern state emerges since the 16th century as an expression of a new form of power-relations called “governmentality” (Foucault, 2004). The state is for Foucault an expression of the same type of instrumental rationality
embodied in political economy, which strives to control, rationalize, calculate and manage the costs and benefits of social action. A “therapeutic” political order embedded in the state is a radical novelty of the early modern period. Similarly, Gianfranco Poggi (1990) turns his attention to several key ingredients of the Weberian state (organization, centralization, sovereignty, coercive control of the population) and argues for its modern origin: “strictly speaking, the adjective modern [in the context of the state] is pleonastic. For the set of features listed above is not found in any large-scale political entities rather than those which began to develop in the early modern phase of European history” (Poggi, 1990:25). In a thorough study of the formation of the European state since 1500, Charles Tilly (1978: 24-25) argues that this process included a far-reaching destruction and then reconstruction of the whole political universe of traditional legal and political rules and institutions, creating a novel form of organization: “The European state-makers engaged in in the work of combining, consolidating, neutralizing, manipulating a tough, complicated, and well set web of political relations…They had to tear or dissolve large parts of the web and to face resistance as they did so.”

This is the framework in which I place early America – the context of the creation of a modern European-style state, or to put it more stringently and in accordance with Poggi’s theoretical nomenclature, in the context of the state as such. And it is in this framework that the concepts of America as a “stateless” or even “medieval” society, widely used in this study, should be understood. My multidisciplinary approach in this regard is expressed in an attempt to match this general theoretical framework with the historical experience of early America.

This is done through the second theoretical pillar of my “decoupling modernization” thesis - “sociological” and “cultural” in character – that could be found the work of authors such as Tocqueville (1969), Cattaneo (2010), McFarlane (1978), Wrigston (1982) and Martin (1991), analyzed in detail in chapter 4, These authors showed that the key strains of the communal localism of medieval Europe and colonial
America were perfectly consistent with “libertarian” entrepreneurial individualism, and that the practices and values Benjamin Constant [1816] (2010) sharply counterposed as “ancient” and “modern” liberties, actually coexisted in the Anglo-Saxon world at least from the medieval times, and perhaps longer, and were transplanted from there to America in the 17th century. After having established that the American conditions before the Revolution did not satisfy the Weberian definition of the state, the second step is to see to what extent the general sociological assumption stemming from this, namely that a strong state is a precondition of social and economic modernization holds. Tocqueville’s analysis in both “Democracy in America” and “Old Regime and the Revolution,” demonstrates that the medieval political institutions based on localism and customary law were compatible with individual liberty. Even more importantly, Tocqueville argues that many of the features usually ascribed to the medieval traditions (guilds, cartels, monopolies) were actually the products of early modern economic interventions designed by absolutist monarchs. One of the interesting findings of “Old Regime…” is that England was different from continental Europe precisely because it developed individualistic and entrepreneurial spirit from the Middle ages, due to the absence of strict hierarchical stratification predominating in much of the continental Europe. When we take into account that Tocqueville considers stratification and regimentation to be the products of modern state-building, the basis for the concept of pre modern or medieval individualism or “libertarianism” is established.

Alan Macfarlane and Keith Wrigston document in great detail the individualistic and liberal spirit of pre-modern England; entrepreneurial economy, buying and selling land, a widespread wage system, substantial level of gender equality as well as significant overall vertical mobility that are all attested from the high Middle ages on. This highly modern social and economic world emerged much before the political modernization took place from the 16th century on under the Tudor monarchs. The same decoupling is analyzed in great detail by Tocqueville (1969) and Martin (1991) for early America.
The third significant type of literature I draw on is economic theory, predominantly classical and neoclassical economics, federalism theory and Austrian “neo-currency” school of economics. An analysis of the economic doctrines of the revolutionary thinkers is a part of the demonstration that the overall social modernization concerned also the economic thinking among the leading proponents of localist political tradition. In chapter II the congruence of British Old Whig theory with classical economics of Smith and Hume is shown whereas in the chapters dealing with anti-federalists, Jeffersonians and Jacksonians a striking resemblance of American early theorizing to the public choice and Austrian theories of markets, monetary and banking policies, protectionism as well as interest groups politics, is demonstrated and followed in detail. The inclusion of “high” economic theory in the dissertation was necessary in order to demonstrate the modernity of American early thinking about the economy and the convergence of that thinking with the leading free market schools of the past and the present. Economic theorizing along the lines of Smith, Hume, Say, de Tracey, Mises, Hayek or Buchanan is one of the best proxies of “social modernity” one may wish to establish.

To summarize, the analysis in this dissertation starts from the fragments of the constitutionalist and civic republican depictions of the Revolution as a pre-modern revolt against the state building. However, it broadens their perspective in two ways: first, by introducing the dualistic concept of the American founding; “spirit of 1776” and “spirit of 1787,” first inaugurated by the progressive school. In my reinterpretation, the “revolution in the name of government” as it had been aptly described by a contemporary, was a counter-revolution, or an attempt to create a consolidated state in North America, the ambition against which the Revolution itself was aimed. The second revision is my attempt to deepen the concept of the Revolution as a reactionary rebellion

---

against the state by introducing the economic analysis, or more precisely, an analysis of the economic ideas of the people who advocated decentralization. In sharp opposition to the progressive school, which is the only one which paid much attention to economic ideas, I see the dominance of Adam Smith’s And Jean Baptiste Say’s classical liberal or laissez-faire ideas among decentralists (revolutionaries of 1770s, anti-federalists. Jeffersonians, Jacksonians), as opposed to the dominance of mercantilist-interventionist ideas among the advocates of a strong national government.

Second chapter analyses the British country party ideology, placing it within a context of the British classical liberal thought, but outside the mainstream British consensus about the modern state of the time. This is achieved by comparing the writings of Cato, Bolingbroke, Swift, among others, with the theories of Adam Smith and David Hume, and finding a high level of agreement between the two groups (money, banking, subsidies, monopolies, corruption, and so on). On the other hand, the outsider position of the country party is demonstrated by their adherence to the traditional British political concepts which included localism and rejection of the ministerial government and consolidated Parliament.

Chapter III follows up on this analysis by outlining the constitutional evolution of the Great Britain in the 17th century that prepared the ground for the American Revolution, primarily through the doctrines of the Sovereignty of Parliament and territorial unity of the Empire as a single state. Locke and Hobbes are shown to be in basic agreement with this evolution and hence on the opposing side of the American Revolution. Not only that the North American revolutionaries followed country party in their general philosophy, they followed their rejection of modern state building in a very similar language.

Chapter IV deals with the situation in America and with the character of the colonial society vis a vis the modern state. It argues that American political institutions
owe much to the medieval heritage, which includes localism and statelessness (the state being understood in the Webberian sense). The chapter offers some evidence that this medieval, “regressive” political constitution was coupled with a modern, entrepreneurial and individualistic spirit. Drawing on Tocqueville, Martin and McFarlane, among others, the analysis identifies the simultaneous existence of political localism and anachronistic political institutions with the entrepreneurial spirit and a very modern thinking in economics. Thereby, the chapter offers the basic outline of the “decoupled modernization” hypothesis.

Chapter V further documents and expands upon the previous one by concentrating on the concept of rebellion and violence in America, and the widespread understanding that constitutional and legal order could be protected by extra-institutional violence in the case of need. In this regard, revolutionary violence and its justification, as well as the regulator movements are analyzed and shown to be the remnants of the medieval concepts of conflict management and resolution, completely foreign to the logic of modern state. This anachronistic idea of conflict resolution was entrenched with the Second amendment to the Constitution, and remains very strong to this day.

Chapter VI describes the counterrevolution brought about by the Constitution of 1787, analyzes the arguments of its proponents, showing their consistency and constancy during the revolutionary and early national periods. One of the purposes of this chapter is to contrast more sharply the doctrines and principles of nationalists and decentralists, and to contribute towards the clarification of the relationship between economic and political aspects of state building. A special attention is paid to Hamilton’s economic philosophy because it demonstrates in the purest form the protectionist basis of the state building project. However, I do not follow the progressive and public choice schools in their emphasis on economic interest as driver of political change in this period: I limit the analysis to ideological and doctrinal factors.
In chapter VII the analysis turns to the opponents of the new Constitution, anti-federalists, both their political and economic arguments. They combine in the purest form the country party economic and political principles of all localist currents in America; the notions of localism and ancient constitution are more present than in the later formulations of the decentralist philosophy in the works of Jeffersonians and Jacksonians. Contrary to the prevailing interpretations I find a strong liberal economic reasoning, very similar to the country party in England and later traditions in America.

Chapter VIII covers Jeffersonians and Jacksonians. Here we are in the domain of the mature states’ rights tradition which combines an elaborate political theory based on the compact view of the union with a sophisticated economic analysis. Jefferson’s and Madison’s “principles of ‘98” are reviewed as well as Abel Upshur’s argument against the nationalist interpretations of the origins of the American union. It is shown that the states’ rights tradition emerges from the attempts to interpret the new Constitution in accordance with the promises given by the federalists during the ratification process, contributing thereby to a slow “revolution within a form – a change in the meaning of the Constitution brought about by different interpretation rather than a change of the document itself. In the same time this tradition reconciles gradually itself with the logic of modern state by accepting the concepts of sovereignty and federalism enshrined in the new Constitution. Economic doctrines of the states’ rights school are primarily analyzed through the works of John Taylor of Caroline, the leading economic thinker of Jeffersonian tradition and leading Jacksonian economists William Legett and Philip Barbour.

In the last, IX chapter I turn to John C. Calhoun, the most original and systematic thinker of the antebellum period. He represents both a culmination and a problematic fullfilment of the states’ rights doctrine. The chapter covers Calhoun’s combination of Lockean and Aristotelian, organic views of society and government, his class struggle theory of the state, anticipating public choice, his theory of concurrent majority as well as
its applications in America. The conclusion is reached that Calhoun transformed the Jefferson-Madison doctrine of nullification/interposition into a national decision making procedure and thereby finalized the process of reconciliation of localism and statism in America. The chapter closes with the analysis of Calhoun’s relationship to slavery and the impact that slavery and segregation had in problematizing the states’ rights tradition in general.

In Conclusion I summarize the results and implications of the study, and outline the open questions and directions for further research.
Chapter 2.

Original Men of Little Faith: The Country Party Ideology in Great Britain

Introduction:

The influence of the British old Whig or ‘Country party’ ideology on the American revolutionary thought and practice is old news in the literature on the American Revolution. This influence has been elaborated most forcefully and convincingly with the publication of Bernard Bailyn’s magisterial study “Ideological Origins of the American Revolution,” and then reinforced by a whole host of further additions and modifications in the works of Wood (1969), Pocock (1975), Parker (1975) or Banning (1978). The main argument of this literature has been the claim that the old orthodoxy, defined by Becker (1942), and philosophically most influentially shaped by Hartz (1955) about Locke as the most important ideological influence on the American Revolution, should be radically revised by emphasizing the classical republican and civic republican ideology of the founders. The initial argument offered by Bailyn (1967) was less radical than the subsequent revisions: he did not eliminate or even significantly downplay Locke’s influence on the founding; he just claimed that Lockean general philosophical ideas were adopted and consumed in America in the radical form of the ‘country party’ ideology, based on ‘paranoid-style’ politics and radical hatred of power, rather than in the form of abstract philosophical reasoning based on natural rights. Later formulations, especially by Pocock (1975), went much further than this, claiming that the founders actually rejected Lockean liberalism outright and advocated instead a ‘civic
republican’ ideology based on self-government, “civic virtue” and agrarian critique of modern commerce and market economy (as opposed to Lockean liberal individualism). Especially in the circles of the progressive historians, this was very much welcomed since it furnished a respectable, American-based language for the collectivist ideas they espoused, which have been traditionally dismissed by conservatives and classical liberals as a European importation and innovation. Now, progressives seemingly had a home-grown anti-Lockean tradition to rely on.

A far-reaching critique of this republican revisionism was offered during the 1980s and 1990s by a wide range of proponents of the old Lockean orthodoxy (Zuckert 1994; Appleby, 1985; Pangle, 1988; Dworetz, 1990; Huyler, 1995; Bassani 2010), who problematized the majority of claims put forward by civic republicans. It is sufficient to say that after the dust of this debate settled, few people were ready to accept at face value the ‘republican synthesis’ anymore; even when reluctant to accept the wholesale revival of the Hartzian paradigm, they would nevertheless concede the eclectic nature of the American political tradition, containing both Lockean and republican elements.

In the last 10 or 15 years there has not been much debate that would go substantially beyond what had already been said by the late 1990s, suggesting that the exchange of ideas in this area had entered the stage of diminishing returns. The purpose of this paper is to revive and refresh the debate by concentrating on one element of the original “republican” theory which was in my opinion dubious, but which, strangely enough, had largely escaped the attention of the Lockean “counter-revolutionaries”; namely, the economic ideology of the British country party and its progeny in the United

---

12 For a good summary of those claims, see Michael Zuckert (1994, 150-185) and Rodgers (1992).

13 See for example Banning (1986) who abandoned his previous extreme Pocockian views and developed a more ecumenical conception, allowing both Lockean and republican motifs to significantly shape the American founding.
States. The problem that civic republicans have had in developing a comprehensive account of this ideology was that the pre-modern kind of political science that they detected in the country party tradition did not square well with what appeared to have been their free market economics. Their solution was simply to ignore the free market part and argue that the country party was about an “economy of masters and servants” as John G. Pocock had memorably said – a reactionary attempt at protecting the pre-modern, primitive pastoralist utopia. An entire intellectual tradition, spanning from Cato and Bolingbroke to Jefferson and John Taylor, was defined as “agrarian,” “reactionary,” sometimes even “feudal,” only to maintain the intuitive appeal of the anti-Lockean, anti-liberal interpretation of their political science (Banning 1978; McDonald 1976).

The reaction of the liberal critics, such as Zuckert, Dworetz, Pangle or Huyler was to attack frontally the revisionists’ interpretation of the country party’s general political philosophy, which, they argued, was squarely Lockean. However, they did not insist much on the economic side of the country party doctrines.\(^{14}\) The reasons for this are varied but a very important consideration was that for the liberal interpreters the founding generation was a collection of Lockean classical liberals, and “commercial liberalism” was just a natural corollary of their general Lockeanism in no need of separate elaboration. In some cases (Dworetz 1990), we even see a significant scepticism towards laissez-faire and even attempts to show that American founders took just the concept of checks and balances and political science from Locke, not the property rights theory from chapter 5 of the “Second Treatise.”

I intend to move the analysis further by reconceptualizing the country party tradition (in both English and American iterations) as a long-lasting trans-Atlantic libertarian *resistance movement* against the modern, mercantilist state. These people were Cecilia Kenyon’s real ‘men of little faith’, but they did not lack faith in progress,

\(^{14}\) The most significant exception is Huyler (1995, 274-309).
modernity or capitalism, but rather in the new instruments of mercantilist governance erected by the Walpolean regime in Britain, and emulated by Hamiltonian nationalists in America. They were the soul-mates of Adam Smith, David Hume and Jean Baptiste Say, not the slaves of romantic visions and republican “virtues.” Their denunciations of “corruption,” executive tyranny, detrimental effects of paper money, and trade protectionism and government-controlled banking, were expressions of their liberal resistance to modern state, not to modernity as such. There is no real reason to feel uneasy about the ‘reactionary’ elements of this tradition, while upholding its classical liberal character. Modern economics and ‘reactionary’ politics are two complementary sides of the same libertarian “ethos” dominating the thinking and values of this group.

The chapter starts with a section devoted to the general political ideology of the country party, describing it essentially as a reaction to modern mercantilism and state building, using both the languages of modern liberal philosophy and medieval, “ancient” constitutionalism. In the second section, the main argument related to the country party economic ideology is developed showing that the new financial architecture of the Walpole regime was not an imitation of the free market system of the Netherlands, as it is sometimes argued, but an experiment in building a protectionist state. Understanding this makes it easier to see that the country party critiques were mounted in the name of free market individualism, not a romantic abhorrence of change. This critique focused on paper money, public debt, central banking, “corporate welfare” and tariff protectionism. In the third section, the liberal-libertarian character of the country party critique is buttressed by showing its essential identity with the British classical liberal economics of Adam Smith and David Hume.

Reactionary- libertarian ideology of the country party

One of the most significant changes in the description of American’s liberal origins, brought about by the Bailyn-Wood historiographical revolution, was a shift of
focus from abstract theories to populist politics. For a radical “country party” which came to dominate the discussions about the Revolution for quite some time, the essence of liberty was not anymore in the theoretical adherence to any given creed or philosophy but rather in a constant vigilance in preventing political power from consolidating into “tyranny”; it was a universal hatred of power as such, rather than a nuanced philosophical vision based on the *Second Treatise* or any other theoretical work. Liberty meant not so much a guarantee of individual claims against ‘social oppression’, but a guarantee of social claims against political oppression. The old Whigs developed the first rudimentary version of what John C. Calhoun would much later perfect in a kind of libertarian theory of class struggle. In a society characterized by a consolidated and centralized government there are only two classes: the people and the rulers, the tax payers and tax spenders. All other social, economic and cultural distinctions are insignificant compared with the status of tax spender: “Economic and social inequalities among the people seemed slight and insignificant when compared to the differences of power that flowed from the institution of government” (Wood 1969, 22).

Josiah Quincy, an American follower of radical Whigs expressed their semi-anarchic inclination to minimize the government’s role in this way: “it is much easier to restrain liberty from running into licentiousness than power from swelling into tyranny and oppression” (Quincy 1774, 304). And Trenchard and Gordon said in one of the

---

15 Michael Zuckert, one of the foremost theorists emphasizing the Lockean origins of the American Revolution is critical of this interpretative shift from Locke’s abstract philosophical analysis to a hard-hitting, populist, and publicist libertarianism of the Old Whigs and their American followers, a shift largely attributed to Bernard Bailyn’s seminal work (Bailyn 1967): “Where Locke and the liberal philosophers put natural rights, the opposition tradition put power, but the emphasis on power gave the whole theory a rather negative cast...Like Cecilia Kenyon’s Anti-federalists, Bailyn’s opposition tradition was composed of “men of little faith” (Zuckert 1996, 203). On the other hand, for the views that Locke himself was an oppositional, country party writer, see Ashcraft (1980).

16 For Calhoun’s theory of class struggle see, Calhoun (2000, 16-20).
‘Cato’s Letters’ even more bluntly, emphasizing the ‘goodness’ of the ‘people’ and wickedness of the rulers:

I have always thought, that the people would constantly be in the interests of truth and liberty, were it not for external delusion and external force. Take away terror, and men never would have been slaves…But it is not so with great men, and the leaders of parties; who are, for the most part, in the wrong through ambition, and continue in the wrong through malice. Their intention is wicked, and their end criminal; and they commonly aggravate great crimes by greater” (Trenchard and Gordon, 1724/1995c: 111).

The natural rights and liberties did not represent just the analytical constructs or abstract normative ideals to be used as benchmarks for denouncing the existing, imperfect world, but rather historical realities of the old British constitution which had been lost to “cabinet corruption” (aka modern state) and which should be recovered. For the Old Whigs, liberty was ancient and tyranny was modern. What appears as their “medieval,” “ancient” pre-modern political science is not a sign of a backward-looking fear of modernity, nor a minor side-issue to be minimized and explained away, but a crucial political expression of a libertarian vision, skeptical of government and nation-building, and in search of a language best suited to express this scepticism.

J.G.A. Pocock and Isaac Kramnick recognize the medieval and “Gothic” imprint in Cato’s political thought. Pocock describes the radical Whig thinkers of the Walpole age as “neo-Harringtonians,” yet nevertheless concedes that those thinkers, most notably Toland, Trenchard and Gordon, abandoned some of the modernizing elements of Harrington’s thought and went back to the medieval and pre-mediaval intuitions and concepts: “

the essential difference between Harrington and neo-Harringtonians was that Harrington dismissed medieval politics as incoherent and saw his commonwealth of freeholders as coming into existence only after 1485, while the
neo-Harringtonians identified it with the ancient constitution…[this] compelled them to present those things to which they were hostile – finance, bureaucracy and standing armies – as corruption of an original balance, and so as historical innovations occurring at the end of the Middle Ages” (Pocock, 1965: 574-75).

And – needless to say – Pocock draws the conclusion from there that neo-Harringtonians, led by Trenchard and Gordon were “for an economy of masters and servants, defined mainly in agrarian and traditional terms” (ibid.). Pocock discerns no trace of economic libertarianism in Cato because he cannot conceive its presence, never envisioning that economic individualism could coexist with a non-statist and anti-modern political outlook. For him, if someone is opposed to the modern state, then he must be against economic libertarianism. Kramnick is no different in this regard: he portrays the entire opposition thought of this age as a misplaced nostalgia for the Middle Ages, by the coterie of narrow-minded agrarian reactionaries (Kramnick, 1992).

Michael Zuckert, on the other hand, feels obliged to minimize the radical or the “country-party” side of Cato’s thought in order to place him within the orbit of abstract philosophical Lockeanism. Approaching radical libertarian Cato from the opposite ideological viewpoint than Pocock, he treats him nevertheless in accordance with the same problematic identification of modern state with modern economy: an economic liberal cannot be political reactionary. He rejects Bailyn’s and Wood’s contention that Cato subscribed to the radical Whig idea of power as an absolute evil that has to be minimized to the utmost. As a classical liberal, Cato simply could not have been a radical opponent of power as such, any more than a Locke or a Madison was. Zuckert’s Cato allegedly did not want “…so much to denounce any and all possible government, but to delineate a political science that will help construct governments that warm but not scorch” (Zuckert, 1994: 312). Hence, per Zuckert, Bailyn’s portrayal of Cato as an indefatigable enemy of power was “too single-minded” (Zuckert ibid, 311).
Yet, it seems that Bailyn was right at least insofar as the emphasis of Cato’s writing was concerned, which was indeed quite different than that of Locke. Cato offered a hard-hitting libertarian polemic against “corruption” and ‘tyranny’, with Lockeanism and natural rights lingering in the background, instead of a general philosophical argument, with natural rights in the foreground. Cato was a typical “paranoid” (Wood)\textsuperscript{17} radical Whig who extolled the old, rather feeble, medieval British institutions as a model (something we do not typically find in Locke). Here is perhaps the most representative statement of Cato’s ideal of government:

This was the ancient Constitution of England: our Kings had neither Revenues large enough, nor Offices gainful and numerous enough in their Disposal, to corrupt any considerable Number of Members; nor any force to Frighten them. Besides, the same Parliament seldom or never met twice; For, the serving in it being found an Office of Burthen, and not of profit, it was thought reasonable that all Men qualified should, in their turns, leave their Families and domestick concerns to serve the Publick; and their Boroughs bore their Charges. The only Grievance then was that they were not called together often enough, to redress the Grievances which the People suffered from the Court during their Intermission: and therefore a Law was made in Edwards IIId’s time, that Parliament should be holden once a Year” (Trenchard and Gordon, 1724/1995b: 127)

It is difficult to find here much room for the notion of a good government that “warms, but not scorches.” What we see is a typical radical Whig custom of invoking the ‘ancient English constitution’ to defend petty political localism and express radical ‘libertarian’ hatred of power. The idea that Cato presents in the quoted passage, although

not technically anarchy, is nevertheless bordering on anarchy in some important aspects: the reason why, according to him, the traditional English constitution was so great is that neither King nor parliament had any real power to tax, control and coerce the people. The king had “almost no revenue or offices” and the Parliament would meet so irregularly that a special law had to be passed in order to force it to meet at least once per year. The power of this “government” was so feeble that the public service represented a “burthen” rather than a chance for prestige since there was not much to be gained from it. And we see this very strange and peculiar combination: invoking the medieval or even pre-medieval British constitution in order to defend modern libertarian economic and social values is also one of leitmotifs of the American reception and perfection of the radical Whig theory of Cato.

In this regard, the country party opposition was far outside the Whig political mainstream of that age, and especially of the later 18th century. One may consider, for example, an internal strife within the Whig party over the French Revolution to be a big, principled conflict dividing the Whig party along the ideological lines. And, yet, judged from the perspective of the country opposition, the differences between Burke and the Whig majority were relatively minor: both sides shared the same conception of political community based on the supremacy of Parliament and the existing 18th century system of “ministerial government” (which they invented). The Whigs of the later part of the 18th century, including Burke, were the progeny of the Walpole revolution. They were already the “new Whigs” from the point of view of Trenchard and Gordon. Trenchard and

---

18 Charles McIlwain this way describes this new Whig orthodoxy in the 18th century against which the country party was reacting: “[the old Whigs] would have repudiated all arbitrary government whatsoever, whether by King or Parliament. Filmer had declared that any government in England must be arbitrary and royal; for Hobbes it must be arbitrary but not necessarily royal; for many Whigs a century later it must be arbitrary but cannot be royal. Thus after 1689, and the revolution settlement which marked the final triumph of the Whigs, the arbitrary power of Hobbes and Filmer was for the first time “engrafted into the English constitution”…and vested in the national assembly. For the Whigs, the only real sovereign must be the parliament, and that is all. (McIlwain, 1939: 63-64).
Gordon’s localism and emphasis on tight electoral control, short parliamentary terms and instructions are directly contrary to the prevailing, novel, Whig conception of representation perhaps most notably expressed by Burke. In the “Appeal of the New to the Old Whigs” he says, proudly invoking his new Whig, modernizing credentials:

He [Burke] was the first man who, on the hustings, at a popular election, rejected the authority of instructions from constituents,—or who, in any place, has argued so fully against it. Perhaps the discredit into which that doctrine of compulsive instructions under our Constitution is since fallen may be due in a great degree to his opposing himself to it in that manner and on that occasion. The reforms in representation, and the bills for shortening the duration of Parliaments, he uniformly and steadily opposed for many years together, in contradiction to many of his best friends. (Burke, 1792: 33)

Instructions and mandates to the representatives in the Parliament are the cornerstone of traditional British parliamentarianism, dating from the Middle Ages, and cherished highly by North American colonists (Wood 1969; Jensen 1968). Yet Burke describes them as a sinister innovation foreign to the British constitution:

To deliver an opinion, is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience,—these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution. (Burke, 1774/1854: 447)

19 Compare this with how ‘Cato’ describes the key desideratum of a free government: “I can see no means in human policy to preserve the publick liberty and a monarchical form of government together, but by the frequent fresh elections of the people’s deputies: This is what the writers in politicks call rotation of magistracy” (Cato Letters, no. 61).
In this sense, Burke is a modern new Whig, accepting wholesale the entire package of political novelties brought about by revolutionary changes of the 18th century. He uses the rhetoric of conservatism, but his conservatism resembles the position of those American thinkers and politicians who believe that preserving the existing system based on the New Deal and Great Society against even more radical changes expresses the deepest devotion to the American “founding principles.” In a similar vein, Burke's conservatism stood for freezing British constitutionalism in the form it had reached in the late 18th century and decrying the changes that go against that momentary equilibrium as being against “British tradition” as such. The differences between him and the so called New Whigs are much narrower than their common differences with the true old Whigs of the early 18th century – the country party opposition.

The new financial empire and the country party economics

The crucially important corollary of the just described Old Whig conception, which was constantly utilized by both radical pamphleteers and politicians in America is a libertarian argument against the interventionist, or ‘arbitrary’ state in the economic area. A succession of writers and pamphleteers after 1688, and especially after 1710, attacked ferociously the tendencies, particularly pronounced after Walpole’s ascent to power, to build a machinery of commercial regulations and restrictions, required by the reigning mercantilist ideology. The invention of public credit and a central bank that were to real Whigs the supreme instruments of corruption, and discretionary powers of cabinet ministers to grant exemptions, tariffs, duties, special tax treatments and other arbitrary interventions attracted the most hostile sentiments. In the eyes of many old Whigs this economic machinery of control and regulation was almost synonymous with arbitrary government.

For an extensive catalogue of the old Whig writings on Walpole’s program see, Parker (1975).
This is not surprising. As Eli Heckscher demonstrates in his monumental study "Mercantilism," laissez-faire sentiment and ideology in England were much older than mercantilism and have deep roots in the medieval experience that was crystalized in the common law. The medieval idea of protection against arbitrary restrictions and violence, originally given to various medieval estates and gradually congealing into a broader ideological presumption against restrictionism as such, was much stronger in England than on the Continent. Just as the old Whig political science derived the concepts of local autonomy, attorneyship, right of resistance and annual parliaments from the ancient ‘Gothick’ constitution, although in practice most of those institutions were medieval, the old Whig economic libertarianism derived the concepts of free trade and anti-restrictionism from the same ancient sources, which were actually the forms of the 12th and 13th century legal tradition. As Heckscher points out, “from these medieval conceptions, one line of development led directly to laissez-faire and it is particularly important that this connection was much stronger in England than in most other countries. Magna Charta and 14th century legislation gave rise to the opinion held by later generations that economic liberty had therein an age-old legal basis. They thought that every compulsion in economic activity was illegal from of old” (Heckscher, 1955: 274). Rejection of monopolies, as well as of all other restrictions of trade, in common law are just some of the elements of the medieval British heritage that made their way into the modern laissez-faire doctrine.

From this point of view it is quite natural and non-controversial that the country-party ideology of the 17th century, glorifying the ‘Gothick’ constitution and the common law tradition, would tend to accept laissez-faire, while vehemently denouncing mercantilist scheming as an attack on “traditional British liberties.” However, this fact has not been recognized in the historical literature, and more often has been misunderstood. The conventional interpretation shared across the spectrum of historians of ideas of the 18th century tries to place the country writers and pamphleteers in the
camp of the opponents of capitalism, financial markets and modern economy. The evidence usually adduced for this kind of conjecture reveals the pattern that we shall encounter so many times later in analyzing the late 18th and early 19th century American economic thought and practice: whoever was an opponent of paper money, central banking, and government regulation and regimentation of trade by tariffs, imposts and subsidies was considered an enemy of “capitalism” as such. Whoever supported or devised such schemes was considered a supporter of capitalism and “bourgeois classes” or even “economic modernization.” One historian of ideas writes that Cato’s rejection of the central bank and public debt meant a sentiment “against the new economic age” (Kramnick, 1992: 249). Another argues that the narrow-minded commonwealthmen lashing out against the “new economy” of Walpole did not understand what a great benefit for the country the new system was which “contributed greatly to the internal economic development” (Parker, 1975: 9). Still another argues that the ideology of American followers of Cato and Bolingbroke, Jeffersonian republican simpletons, was not to build a free society and prevent the ascendancy of mercantilism, but rather to “restore America to the pristine simplicity of the Arcadian past” (McDonald, 1976: 22).

In all these utterances, we see a typical display of a very common misconception from which almost all historians of the Augustan age in England start and with which their economic analysis usually ends: a false identification of the mercantilist system of central banking, paper money and government debt with capitalism or “commercial liberalism” as such, and the consequent treatment of any opposition to these as anti-liberal, feudal and “agrarian.” However, the named instruments of mercantilist economic policy were not the indigenous products of the capitalist system as such, but the contrived, artificial instruments in the hands of politicians eager to centralize power and provide international aggrandizement of the British state. As a well-known economic

---

21 Se for example, Kramnick (2005); Pocock (1965); Wood (1969); McDonald (1985); Parker (1975); Devanny (2001); Huyler (1995).
historian of the late 19th century writes: “The politicians of the sixteenth, seventeenth and greater part of the eighteenth century were agreed in trying to regulate all commerce and industry, so the power of England relatively to other nations may be promoted” (Heckscher, 1955: 28).

One of the most vivid expressions of this misconception, equating capitalism with mercantilism, is reflected in a usual view of the British mercantilist experiments as having been decidedly influenced by the Dutch example. Looking across the North Sea, the argument goes, Englishmen saw the most commercially successful nation in the world, and tried to replicate its institutional arrangements. Hence, they introduced a central bank, tied to paper credit and public debt, following the example of the Bank of Amsterdam, and all other Dutch economic policies conducive to business expansion. However, this is based on a dubious analysis of the Dutch situation. If one wants to analyze the mercantilist developments of the 17th century in Europe, the Netherlands is probably the last place one would want to look at, since this country pursued throughout the 17th century a pure laissez-faire economic policy with almost no restrictions. As one prominent historian of European mercantilism says “the Netherlands, although the ideal of all mercantilists, were yet at the same time less affected by mercantilist tendencies than most other countries,” adding “Dutch developments is of importance in our study, as an antithesis of mercantilism” (Heckscher, 1955: 351, 353). Mercantilists saw great economic and commercial advance in Netherlands, and since they did not perceive the possibility that freedom could lead to prosperity they simply made a circular argument: the Netherlands were wealthy because they enforced the mercantilist regulations.

However, it does not take long to see the falsity of the argument. First, in the 17th century, the Netherlands did not have a central government at all; the country represented a very loose association of independent local communities, a kind of system usually considered medieval or pre-modern. This widely known medieval, “regressive” political system without a consolidated, sovereign power center, combined with a phenomenal
economic success and capitalist development was and is a big head-scratcher for modern political scientists and economists. They don’t know what to do with the 17th century Netherlands. Such a strange combination of political “backwardness” and economic “modernity” should not be possible, because we know that an “efficient” and “modern” bureaucratically organized administration is a necessary agent of economic development to provide the essential “public goods” and coordinate the chaotic economy. One prominent historian of the Dutch Republic contends: “In a number of ways the Dutch state was an anomaly in the Europe of the 17th century; it was a republic in an age of increasing absolutism; it was held together by a minimal state and radical decentralized at a time when growing state power has been seen as a norm…” (Price, 1998: 18). One of the best contemporary Dutch historians of the 17th century concurs: “Measured against the standards of the modern state, with its centralised decision-making and bureaucratic apparatus, the Republic was indeed a political freak.” (Prak, 2005: 4) How can they have mercantilist economic policy when they did not have a proper state to begin with?

This is best seen in the example of the alleged parallel between the Bank of Amsterdam and the Bank of England which is so routinely invoked. However, the crucial difference between the two was that the former represented a simple local deposit bank, operating on the principle of full-reserve banking. In other words, this bank accepted money deposits in specie, requiring a fee in return, and stored the cash as any other warehouse would do with any other commodity. No bullion or coin deposited with the Bank of Amsterdam was ever allowed to be lent out to the entrepreneurs, and it kept the 100% reserve ratio against the deposits at all times. On the other hand, the Bank of England was an invention intended to facilitate and entrench the system of “fractional reserve banking”: it paid the interest on deposits in gold and then invested large portions of these deposits into commercial enterprise and for purchasing government debt,

22 See the discussion in Parker (1975).
emitting that way a huge amount of paper currency and making the financial system inherently unstable. So it created a powerful nexus of corruption, unifying the interests of large-scale traders, seeking the low-interest loans, politicians seeking cheap financing of government expenditure without the pain of taxation and money changers and speculators seeking the cheap credit money. Hence, any comparison between the two banks is fundamentally misplaced. The Bank of Amsterdam has not been an instrument of mercantilist policy, whereas the Bank of England was.

The fact the Bank of Amsterdam was a 100% reserve bank which did not lend to either governments or entrepreneurs was widely known and accepted among the English economists and commentators of the 18th century (unfortunately, not so much among the contemporary historians of ideas). For example, Adam Smith in the *Wealth of Nations*, published in 1776 commented:

The Bank of Amsterdam professes to lend out no part of what is deposited with it, but, for every guilder for which it gives credit in the books, to keep in its repositories the value of a guilder either in money or in bullion. That it keeps in its repositories all the money and bullion for which there are receipts in force, for which it is at all times liable to be called upon, cannot well be doubted…At Amsterdam no point of faith is better established than that for every guilder, circulated as bank money, there is a corresponding guilder in gold or silver to be found in the treasure of the bank (Smith, 1776/1907: 72-73).

Another heavy-weight figure among the classical economists, David Hume, also was full of praise for the Bank of Amsterdam and its financial system; but – and this might seem strange to modern historians – the same Hume was a staunch opponent of paper money, fractional reserve banking and government debt. He provided a clear
argument as to why the Dutch system was economically more productive than the paper currency inflationism of the Bank of England:

           no bank could be more advantageous, than such a one as locked up all the money it received, and never augmented the circulating coin, as is usual, by returning part of its treasure into commerce. A public bank, by this expedient, might cut off much of the dealings of private bankers and money-jobbers; and though the state bore the charge of salaries to the directors and tellers of this bank (for, according to the preceding supposition, it would have no profit from its dealings), the national advantage, resulting from the low price of labour and the destruction of paper credit, would be a sufficient compensation” (Hume, 1994: 117).

           Thus, David Hume himself, who is usually considered by the historians a ‘commercial liberal’ in good standing, who is even thought to have influenced Alexander Hamilton, was no less inclined to see the dark side of the new system and to hope for the end of the “stock jobbers” and bankers, than any country oppositionist from the Walpole age. Was he also an enemy of progress and capitalism, and a nostalgic admirer of the “economy of masters and servants”?

           Fractional reserve banking entrenched into the system by the Bank of England is a critical apple of discord between the new Whigs and country party ideologues, representing in the minds of latter the true fuel and engine of the entire machinery of mercantilist corruption. Not the financial markets, capitalism or private business as such, but the artificial interventionist system of pyramiding the large amounts of paper money on top of the narrow basis of specie, as well as the resulting redistribution of income from the debtor to the creditor classes, was a true “casus belli” of the opposition. As Isaac Kramnick notes, one of the major organs of the opposition, Bolingbroke’s Craftsman “pictured Walpole as a giant from whom hung the huge bank bills, exchequer notes,

           24 For the alleged influence of Hume on Hamilton see McDonald (1985).
lottery tickets and tallies, but only a small bag of money. How better to explain the new economy based on vast paper credit and little real money?” (Kramnick, 1992: 21). The primary target of the opposition was a system based on corrupt form of banking, not business speculation *per se*. However, this did not prompt Kramnick to reconsider his picture of Bolingbroke, Trenchard or any of the opposition figures as narrow-minded foes of “bourgeois progress.” In a pattern so pervasive in the histories of the early America, paper money, fractional reserve and central banking, trade protectionism and corporate welfare, were considered synonymous with capitalism or “commercial liberalism.”

This concentration on the pernicious economic and social effects of the fractional reserve banking and government debt is pronounced in the writings of many country party politicians and pamphleteers of both Tory and Whig provenance. When read through the lenses of the opposition between the real Whigs or dissident Tories such as Swift and Bolingbroke on the one hand and Walpole and his cohort, on the other, this looks more like a conflict between the proto-Keynesian inflationists such as Hamilton and Morris and hard money men of the sort Jefferson, Jackson and their followers will be in the first part of the 19th century in America, or between the banking school inflationists and the followers of the “currency school” of monetary policy in England in the mid-19th century. Lord Bolingbroke, one of the main Tory spokesmen of the country party, had seen the economic and political essence of Walpole’s regime of central banking, taxation and debt in the exactly same manner Jeffersonians and Jacksonians would see similar attempts by Hamilton or Whigs to create an economic basis for a centralized state some 80 or 90 years later in America:

---

The notion of attaching men to the new government by tempting them to embark their fortunes on the same bottom, was a reason of state to some…and I make no doubts that the opportunity of amassing immense estates by the management of funds, by trafficking in paper and by all sorts of jobbing was a reason of private interest to those who supported and improved this scheme of inequity, if not those who devised it (Bolingbroke, 1752: 38-39).

A “crony capitalist” nexus of influence between the financiers of government debt and politicians offering benefits and monopoly privileges was at the centre of public debate in England more than 60 years before it was to become a defining issue of American politics, responsible for the creation of the first party system.26 In the same time, Bolingbroke never loses sight of the main causal factor in creating this entire corrupt machinery: the Bank of England and it emission of paper money. Bolingbroke calls the paper credit “a Scheme which oppresses the Farmer, ruins the Manufacturer, breaks the Merchant, discourages Industry, and reduces Fraud into System, which beggars so often a Fair Adventurer and innocent Proprietor…and drains the rest of that immense Property which was diffused among Thousands into the pockets of a Few.” (Bolingbroke, 1754: 299)

Viscount Bolingbroke has been portrayed by the generations of historians as a romantic defender of the rights of landed aristocracy, full of irrational hatred of “progress,” “modern economy” and so on.27 Yet it is peculiar that he lists not only “manufacturer, farmer and merchant” among the victims of this pernicious government-orchestrated scheme of paper credit, but also a “fair adventurer,” an entrepreneur and speculator who seeks profit as an arbitrageur and inventor of new ways of producing, marketing and obtaining goods. Bolingbroke seems to be comfortable with business

26 The literature on this topic is immense: but it’s best to seek the original sources, for example Taylor (1814) or Van Buren (1960).
27 The best examples are Kramnick (1992; 2005); Parker (1975), and Pocock (1965).
speculation and entrepreneurship as long as they are divorced from government meddling, i.e. not aided by a corrupt monetary system of redistribution from the producers and people on fixed incomes to the politically well-connected stock-jobbers. Bolingbroke emphasizes that the main source of political corruption, destruction of the old “Gothick” system and all other calamites that have befallen the Nation, is “in the Establishment of the publick Funds, as it furnishes the new means of Corruption, on the part of the Crown, and new Facilities to these Means, on the part of the People…the whole art of Stock-jobbing, the whole Mystery of Iniquity, mention’d above, arises from this Establishment, and is employ’d about the Funds; and secondly, the main springs that turn or may turn the artificial Wheal of Credit, and make the Paper Estates, that are fasten’d to it, rise or fall, lurk behind the Veil of the Treasury” (ibid.). If we concentrate on the economic substance of what he is saying (as opposed to futile attempts to classify him sociologically as a “defender of landed classes” or in any number of similar ways), it is difficult to see here anything radically different from a hard-core free market ideology, based on sound money, low taxes and minimal government, espoused by such Jeffersonian and Jacksonian economists and pamphleteers as John Taylor, John Randolph, William Leggett, Condy Raguet or William Gouge, a full century later. In England of 1720 and 1730s, we find the same sharp line of division between statism and libertarianism as in America 100 or more years later. We find a dividing line between the nation-building political elites trying to unite together financial interests and political power in order to aggrandize the central government, and the resisting forces of the libertarian opposition that rejects this system in the name of the older political localism and free market economy. Bolingbroke was one of the principal proponents of the original reactionary-libertarian, anti-statist program in England of the age of Walpole.

However, he was far from being alone. A brilliant writer and satirist of the Walpole age Jonathan Swift, uses his poem “Run Upon the Bankers” to ridicule the prevailing inflationist views about the need to print paper currency in order to mobilize
the “idle” gold and silver reserves to create a perpetual prosperity. This doctrine gained currency in 18th century England and is practically the leading economic orthodoxy now. Swift writes that

Money, the life-blood of the nation,
Corrupts and stagnates in the veins,
Unless a proper circulation
Its motion and its heat maintains.

Here Swift tongue-in-cheek “praises” monetary inflation (“proper circulation”) as a magical way or preventing the money supply from idling and “stagnating” in the monetary “bloodstream” of the nation. An increase in circulation is needed to make the monetary base usefully employed by the economy. Inflation is a recipe for prosperity! However, the same poem offers also a brilliant literary description of the ultimate calamity of the fractional reserve banking: a bank run, which makes the fraudulent nature of that system apparent and destroys the banker’s veneer of “magician” and “conjurer”: creditors demanding their “due” (deposits) reveal the inherently bankrupt nature of the entire enterprise, and the fact that the banker, operating with the paper bills and notes

28 This is an assumption shared by both Keynesian and Chicago Schools, all their other doctrinal differences notwithstanding. A canonical status in this regard belongs to a study of the Great Depression conducted by the dean of the Chicago school Milton Friedman, in co-authorship with Anna Schwartz, “The Monetary History of the United States” (1963). In this study they argue that the reason for a severity and duration of the Great Depression was that the Federal Reserve system did not intervene vigorously enough, allowing the money supply to dwindle quickly, as the demand for money soared and banks went bankrupt: the proper course of action was to increase the money supply by lowering the interest rates and augmenting the credit.
simply does not have enough cash in his vaults to satisfy all the legitimate claims of his creditors:

So powerful are a banker's bills,
Where creditors demand their due;
They break up counters, doors, and tills,
And leave the empty chests in view.

Thus when an earthquake lets in light
Upon the god of gold and hell,
Unable to endure the sight,
He hides within his darkest cell.

As when a conjurer takes a lease
From Satan for a term of years,
The tenant's in a dismal case,
Whene'er the bloody bond appears.

In another poem Swift develops a hilarious satirical critique of paper money scheme which he compares with alchemy, referring to the South Sea Bubble:
Ye wise Philosophers explain
What Magic makes our Money rise
When dropt into the Southern Main
Or do these Juglers cheat our Eyes

Thus in a Basin drop a Shilling,
Then fill the vessel to the Brim
You shall observe as you are filling,
The pond’rous metal seems to swim:

It rises both in Bulk and Height
Behold it mounting to the Top
The Liquid Medium cheats your sights
Behold it swelling like a Sop.²⁹

When it comes to the critiques of corrupting influence of paper money and government debt on traditional British liberties, many other talented writers joined the forces in their opposition efforts. John Trenchard in his famous *Cato’s Letters* also

²⁹ Cited according to Wennerlind (2011, 235-38).
mounts a frontal attack on the very same economic institutions that Bolingbroke and Swift single out for intellectual destruction. After making the argument that public credit could properly mean only frugality, sound finance, commodity money and thrift, and the nation that practices those values is said to have a ‘high credit’, whereas the one engaging in printing paper money, creating debt and high taxes is considered unstable and with a low credit. He invokes the same parallel that Adam Smith was to make famous, the one between the principles of managing an individual household’s finances, and public finance of a country. In his words,

The Credit of a State or what we call Publick Credit, must be preserved by the same Means as private Men preserve theirs; namely, doing strict Justice to Particulars, by being exact in their Payments, not chicaning in their Bargains, nor frightening or tricking people into them, or out of them…and they are always to take especial Care to sell nothing but what is valuable; to coin Silver and Gold, and not put the stamp of public Authority upon base and counterfeit metals” (Trenchard and Gordon, 1724/1995: 12)

This is a complete counter-ideal to what is considered a modern economy and modern economics, in which the money supply should be “flexible” and “elastic” in order to keep up with the progress of the economy and respond to the ‘needs of commerce’. These views became prevalent in public policy circles of Walpole’s England and were transferred to America and matured into the Hamiltonian federalist program of nation-building. Cato on the other hand argues for a “rigid” and “austere” system of sound money based on gold and silver, frugal government, low taxes and no public debt, a kind of ideology which would mature in the Jeffersonian and Jacksonian reactions to the Hamiltonian program. A “flexible” monetary system of credit and paper currency is not a miraculous invention that ushers in perpetual prosperity with little sacrifice, but a fraud and deception which heralds economic decline.
In outlining their broader economic vision, Trenchard and Gordon emphasize the standard libertarian argument that trade abandons countries in which it is harassed by arbitrary interventions: “Nothing is more certain than that Trade cannot be Forced…but if you give her gentle and kind Entertainment she will turn Deserts into fruitful Fields, Villages into great Cities, Cottages into Palaces, Beggars into Princes, convert Cowards into Heroes, Blockheads into Philosophers” (Jackobsen, 1965: 46). The powers of commerce are extraordinary indeed, but they need a proper inducement or ‘gentle entertainment’ by the government in order to effectuate all its potential miraculous effects. However, we search in vain through the Cato Letters for any hint of a “constructive public policy solution,” as modern social engineers like to say. All Trenchard and Gordon have to say in the context of government encouragement of Trade is negative: they unleash a relentless tirades against the monarchs, ministers, cabinets and bureaucrats who give monopolies, privileges, who tax, loot, regulate, protect and favour. The only ‘policy solution’ they are able to come up with is – abolish all ‘policy solutions’, because they are the source of the problem to begin with.30

For example, the way the two writers define the very concept of ‘arbitrary government’ attests to the fact that they have in mind a government with powers to intervene in the economy. They develop a three-fold argument against government intervention which is highly original and which is used very often in all three varieties among modern libertarians. First, none can know how to improve the economy via

30 It is somewhat astonishing how the prevailing interpretations classified ‘Cato Letters’: the civic republican school had seen in them the foremost document of civic virtue declaring a war to corruption, luxury and capitalist greed (Pocock 1965; Wood 1969): the proponents of Lockean origins of America, on the other hand, averred that Trenchard and Gordon were balanced and moderate writers who defended commerce but were not uncritical apologists of laissez-faire, or as Steven Dworetz has put it: ”Cato himself neither repudiated nor surrendered to capitalism. In fact, he recommended “honest commerce,” which implies neither hostility to capitalism nor devotion to laissez-faire…” (Dworetz 1990, 106). But, if Trenchard and Gordon were indeed not devoted to laissez-faire, one would expect from Dworetz to offer at least some example of prudent government interventions that they advocated. But none was offered.
political means; second, even if there was somebody with such a knowledge, we cannot believe that he would sacrifice private interest that is always better served by corrupt scheming than by honest service, and third, even if a public servant is incorruptible, he would not succeed within the government machinery, because the very nature of such a machinery is that it promotes and sustains the sinister and corrupt characters (Jackobsen, 1965:146).

From this pessimistic depiction of how things unfold at an arbitrary Court (an analysis resembling Hayek’s theory of “why the worst always get to the top” from his Road to Serfdom)31, ‘Cato’ concludes that the only economic policy that such an arbitrary government can and would apply is a policy of harassment of commerce, arbitrary privileges, extortionate taxation and duties, subsidies, favours and the entire machinery of mercantilist interventionism that the Walpole administration was already establishing in England of his time, and that Alexander Hamilton revived 70 years later with great vigour:

Now, what Encouragement or Security can Trade and Industry receive from such a crew of Banditti? No Privileges and Immunities, or even Protection, can be obtained but for Money, and are always granted to such who give the most; and these again will be curtailed, altered, abrogated, and cancelled, upon the Change of Minister, or of his Inclinations, Interests or Caprices; Monopolies, Exclusive Companies, Liberties of pre-Emption etc will be obtained for Bribes or Favour, or in Trust for Great Men, or vile and worthless Women. Some merchants will be openly encouraged and protected, and get Exemptions from Searches and Duties or shall be connived in escaping them; others shall be burthened, oppressed, manacled, stopped, and delayed, to extort Presents, to wreak Revenge or to Give preference of Markets to Favourites. (Trenchard and Gordon, 1724/1995b: 145)

31 Compare Hayek, Road to Serfdom, ch. 10.
Gordon and Trenchard not only rejected government interventionism; they seemed to have espoused openly the views that placed them squarely within the ‘possessive individualist’ camp, rather than among the champions of ‘civic virtue’ who accept the existence of private property only insofar as it fosters Aristotelian civic participation. They develop, probably for the first time in history, an argument for ‘tax havens’ as the instruments of protecting individual liberty and justly earned individual wealth: “True Merchants are citizens of the world, and that is their Country where they can live best and most secure; and whatever they can pick up and gather together in tyrannical Governments, they remove to Free ones. Tavernier invested all the Riches he had amassed by his long Ramble over the World in the barren rocks of Switzerland. And being asked by the last King of France, how it came to pass that he, who had seen the Finest Countries on the Globe, came to lay out his Fortune in the worst? He gave his haughty Majesty this short Answer, That he was willing to have something which he could call his own” (Jackobsen, idem: 149). We should add to this a more general libertarian argument which could be best described as a critique of ‘nanny state’ in any shape and form, very much relevant in today’s world:

Must the Magistrate tie up every Man’s Legs, because some men fall into Ditches? Or would it become a Wisdom and Care of Governors to establish a travelling Society, to prevent People, by a proper confinement, from throwing themselves into Wells, or over precipices? Or to endow a Fraternity of Physicians and Surgeons all over the nation, to take Care of their Subjects health, without being consulted; and to vomit, bleed, purge, and scarify them at Pleasure, whether they would or not, just as these established Judges of Health should think”? (Jackobsen 1965, 129).
II. The Country party and the British liberal mainstream

In the previous sections we criticized the prevailing scholarly fashion of describing the country party ideology exclusively as a concoction of the disgruntled foes of the new regime established by Sir Robert Walpole: reactionary and narrow-minded opponents of progress lacking a sophisticated understanding of “modern economy” and “modern finance. We argued that their economic ideology was classical liberal/libertarian. This section demonstrates this additionally by showing that Adam Smith and David Hume had essentially identical economic views. Both of them argued very tenaciously against public debt, paper money, banks, monopoly corporations and all other scarecrows of the “country-party” demonology.

One can start with how David Hume, who in historical imagination fluctuates freely between being called a “Tory” and a “commercial liberal,” explained the essence of government debt, its function and social consequences. He first notes an age-old common sense notion of public spending as a fiscal burden that can only be borne by accumulating enough real savings to finance government expenditure. Modern sophistry regarding public debt as a vehicle of prosperity deludes people into believing in a pernicious and self-destructive economic philosophy: “On the contrary, our modern expedient, which has become very general, is to mortgage the public revenues, and to trust that posterity will pay off the incumbrances contracted by their ancestors: And they, having before their eyes, so good an example of their wise fathers, have the same prudent reliance on their posterity; who, at last, from necessity more than choice, are obliged to place the same confidence in a new posterity.” (Hume 1994, 167).

Hume touches the crux of the matter when he further argues that this novel doctrine of public debt is not only used as an expedient form of financing government
expenditure in the case of severe need, but advertised also as a magical public policy of “encouraging commerce,” a doctrine very popular in England of the 18\textsuperscript{th} century (and also by many today’s economists, political scientists and historians):

What then shall we say to the new paradox, that public incumbrances, are, of themselves, advantageous, independent of the necessity of contracting them; and that any state, even though it were not pressed by a foreign enemy, could not possibly have embraced a wiser expedient for promoting commerce and riches, than to create funds, and debts, and taxes, without limitation? Reasonings, such as these, might naturally have passed for trials of wit among rhetoricians, like the panegyrics on folly and a fever, on BUSIRIS and NERO, had we not seen such absurd maxims patronized by great ministers, and by a whole party among us (Hume 1994, 168).

The “great minster” whom David Hume is referring to here is Sir Robert Walpole, and the “party among us” are the new Whigs, pushing the financial system based on paper money and public debt as the best strategy of economic development. Hume’s response includes not only economic, but also moral arguments. This new system not only hinders economic productivity by transferring wealth from the entrepreneurs and laborers to money changers and bankers, it also undermines the moral substance of the nation, work ethic and decency, by encouraging “idle” life styles and social parasitism:

\textit{First}, It is certain, that national debts cause a mighty confluence of people and riches to the capital, by the great sums, levied in the provinces to pay the interest;

\textit{Secondly}, Public stocks, being a kind of paper-credit, have all the disadvantages attending that species of money. They banish gold and silver from the most considerable commerce of the state, reduce them to common circulation, and by that means render all provisions and labour dearer than otherwise they would be.
Thirdly, The taxes, which are levied to pay the interests of these debts, are apt either to heighten the price of labour, or be an oppression on the poorer sort.

Fourthly, As foreigners possess a great share of our national funds, they render the public, in a manner, tributary to them, and may in time occasion the transport of our people and our industry.

Fifthly, The greater part of the public stock being always in the hands of idle people, who live on their revenue, our funds, in that view, give great encouragement to an useless and unactive life. (Hume 1994, 170)

Adam Smith, the “founder of modern economics” and the inventor of the “invisible hand” justification of free markets is no less a narrow-minded anti-capitalist opponent of “modern economy and finance” and an apologist of the gentry and landed classes, if we are to follow the logic of many historians. First, he completely agreed with all the “disgruntled” Whigs and Tories that the monopoly corporations were awful. Further still, he was no less eloquent in his denunciations of public debt than Bolingbroke or Cato. He argues that all governments like debt because it is a very cheap and convenient form of financing wars:

The ordinary expense of the greater part of modern governments, in time of peace, being equal, or nearly equal, to their ordinary revenue, when war comes, they are both unwilling and unable to increase their revenue in proportion to the increase of their expense. They are unwilling, for fear of offending the people, who, by so great and so sudden an increase of taxes, would soon be disgusted with the war; and they are unable, from not well knowing what taxes would be sufficient to produce the revenue wanted. The facility of borrowing delivers them from the embarrassment which this fear and inability would otherwise occasion. By means of borrowing, they are enabled, with a very moderate increase of taxes, to raise, from year to year, money sufficient for carrying on the war; and by the practice of perpetual funding, they are enabled, with the smallest possible increase

32 For a good analysis of Smith’s critique of corporations as parts of the mercantilist economic policy, see Anderson and Tollison (1982).
of taxes, to raise annually the largest possible sum of money. (Smith 1776/1907, 760)

However, the great economist offered something more: an economic analysis showing the falsity of the entire modern doctrine of public debt as a way of improving commerce and bringing about perpetual prosperity. The doctrine of public debt as an engine of progress which gained popularity in mercantilist England and was greatly advertised by Alexander Hamilton in the USA, for Adam Smith was just a mercantilist sophistry whose main effect was destruction of capital and impoverishment of society:

The public funds of the different indebted nations of Europe, particularly those of England, have, by one author, been represented as the accumulation of a great capital, superadded to the other capital of the country, by means of which its trade is extended, its manufactures are multiplied, and its lands cultivated and improved, much beyond what they could have been by means of that other capital only. He does not consider that the capital which the first creditors of the public advanced to government, was, from the moment in which he advanced it, a certain portion of the annual produce, turned away from serving in the function of a capital, to serve in that of a revenue; from maintaining productive labourers, to maintain unproductive ones, and to be spent and wasted, generally in the course of the year, without even the hope of any future reproduction. (Smith 1776/1907, 764-65).

Adam Smith was no less an ardent critic of paper money. Although he did not reject outright fractional reserve banking as did his friend Hume, he was nevertheless aware of the dangers that the expansion of paper currency has for a market economy: “The commerce and industry of the country…cannot be so secure when they are thus, as it were, suspended upon the Daedalian wings of paper money, as when they travel upon the solid ground of gold and silver. Over and above the accidents they are exposed from
the unskillfulness of the conductors of this paper money, they are liable to several others, from which no prudence or skill of these conductors can guard them” (Smith 1776/1907, 86). Just as in Swift’s poem, believers in paper money are portrayed as the likes of naïve Icarus using their wax wings for a flight which ends up badly in a crash.

Conclusion

The “country party” thought of Great Britan, analyzed thoroughly by Caroline Robbins, that perhaps decisively influenced the American Revolution, as demonstrated by Bernard Bailyn (1967) and Gordon Wood (1969) had not been theorized satisfactorily. Most of the treatments portrayed the country party ideologues as disgruntled foes of progress, modern society and “commerce,” failing to apply the finer distinction of economic and political theory to its principles and practices. I strive in this chapter to analyze more rigorously these principles and thereby prepare the ground for a similar reanalysis and re-evaluation of the American revolutionary tradition itself. The main finding of this chapter is that the country party was not (only) backward-looking and conservative, but that it rather exemplified a strong transatlantic liberal current of thought which is nowadays difficult to conceptualize because it rejects political modernization in the form of government consolidation and centralization, while accepting the laissez-faire economics, modern Lockean individual liberty as well as cultural modernization. By concentrating mostly on their economic writings I demonstrate that Cato, Bolingbroke, Swift and other country party thinkers essentially were indistinguishable from Adam Smith and David Hume in their renunciations of mercantilism, public debt, subsidies for

33 Smith here apparently exploits the metaphor of paper money as Icarus’ ‘wax wings’, abundantly used by the old Whigs to mock the entire scheme of paper credit, and most memorably expressed in Swift’s poem, where he says: “on paper wings he takes his flight/with wax the Father bound them fast/the wax is melted by the height/and down the tow’ring Boy is cast”.
(Swift 1869, 593)

34 Supra note 32.
corporations and credit-paper induced false “prosperity.” What had been portrayed as their resistance to modern commerce, appears to be their resistance to mercantilism in the name of laissez-faire, which they shared with Smith and Hume.

By using the British country party as a case study I begin to flesh out in this chapter the contours of an alternative paradigm called “decoupled modernization,” which posits that political modernity in the form of a “fiscal-military state” (Edling (2003) devoted to mercantilism, has to be divorced from economic, social and cultural modernity. British country party combined political anachronisms, such as the old medieval concepts of “British liberties,” localism and short parliaments, with a highly modern view of general philosophical principles (Lokcean in character) and modern economic theory indistinguishable from Adam Smith’s and David Hume’s. In the chapters 3 and 4 I will offer further analysis and further historical illustrations of this decoupled concept of modernization in America itself.
Chapter 3.

Hobbes, Locke and the Long Parliament against America

Introduction

The first two chapters offered some evidence that the early American political experience combined the ancient, medieval constitutionalism of localist self-government with the modern economic concepts of free market economics. This nexus was threatened by the British concept of parliamentary supremacy pursued in the name of military power and mercantilist economic policy. In spite of this, much of the literature about this period either refuses to describe the mainstream of the American revolutionary tradition as classical liberal/libertarian or if it does so, tends to reject or minimize its pre-modern features. Few people seem to be willing to concede that what may appear as an impossible or illogical combination to us (economic liberalism plus anachronistic, ‘old-Whig’ semi-medieval political science) did not have to be impossible or illogical to the people of the 18th century. This chapter will attempt to explain why this is so, what are the sources and amplifying factors of this misinterpretation and how it could be remedied.

Broadly speaking, two sets of reasons control this process of erasing the old Whig political science from the collective memory of American liberalism: one stemming from the institutional developments in England of the 17th century; the other from the intellectual hegemony of Hobbes and Locke who are treated as authoritative expositors of the meaning of classical liberalism as well as of this very process of state-formation in Great Britain. The institutional process in question is a gradual consolidation of a
modern, centralized state, characterized by parliamentary supremacy. The intellectual handling of this process by Hobbes and Locke transferred the liberal and libertarian ideas into the context of such a consolidated state as the only possible framework for their realization. Due to the confluence of these two factors, treating the anti-statist and ‘medievalist’ libertarians as “agrarians” or “reactionaries” in much of the contemporary historical literature seems plausible, logical and indeed unavoidable. The project of nationalist consolidation was going hand in hand with “liberal modernization,” and Locke and Hobbes authoritatively articulated this process. And modern interpretations follow those two philosophical giants in rejecting and censuring any form of liberal/libertarian ideas which do not fit their particular concept of political community, meaning: the state as a unitary, artificial corporation.\textsuperscript{35}

All this is further amplified and in the same time obscured by the fact that Locke was in many ways the principal conduit through which many American colonists encountered the liberal ideas in their general philosophical form, especially the ideas of individual liberty, natural rights and revolution (Rossiter, 1953: Huyler, 2000). This in turn made assigning to Locke a monopoly in explaining all the facets of American liberal experience so much more inviting for an analyst aiming at interpretative economy and simplicity. Not only the general philosophical ideas entertained by the polemicists and pamphleteers but also their constitutional context, as well as the nature of the dispute with the Mother Country had to be somehow squeezed into the straightjacket of Lockean political theory.

However, the hard problem here is that Locke’s conception of political community was largely inapplicable to the American colonial situation. Locke’s concerns

\textsuperscript{35} This concept that liberalism or libertarianism is a modern doctrine, and as such, closely tied to the context of a modern state is practically universally accepted, both among philosophers and historians of ideas. See for example Nozick, 1974, Rawls 1971, Zuckert, 1996.'
were deeply English, and that his solutions reflected the consensus in England of his time about the need for a centralized, homogenous government, which was bitterly contested by the American colonists. As a dominant theoretical conceptualization of the English liberal order in the 17th century, Locke’s political science reflects and reinforces the project of abandoning the world which Americans fought a bloody and protracted war to preserve. In the fundamental sense of how political order is understood, Locke’s philosophy was on the opposing side to the American Revolution, rather than supporting it or being the cornerstone of it. This is the deepest source of much of the confusion in modern literature which from the fact that Locke influenced American revolutionaries philosophically, derives an unjustified assumption that Locke’s political theory was also widely shared in all politically relevant particulars by Americans.

The first set of reasons for this curious anomaly has to do with the constitutional developments in England in the 17th century. The period of the mid-late 17th century in England was a time of major political and intellectual fermentation; not only that the modern state was being truly created in this period, but also the theoretical models conceptualizing this novel form of political organization were firmly established. The old ‘Gothick’ constitutionalism was facing a new political reality of cabinet government, standing armies and public debt administered by the national bank, as well as their political foundations laid in the new philosophies of Hobbes, Filmer, Locke. The tradition which is usually described as liberal or classical liberal was at the cross-section of those two different worlds: it stood with one leg in the old universe of localist rule and polycentrism but was already flirting and communicating with the new paradigms and models of thinking, based on coercive monopoly of governing functions. All theoretical conceptualizations of the 17th century politics reflected this changing and unstable flux; the rhetoric of ancient British liberties, traditional common law guarantees, privileges and immunities of the British citizens continued to be paid a lip service to, all the while a new political practice blatantly and directly repudiating those traditional liberties was slowly
advancing. Step by step, over the middle decades of the 17th century, many English liberals came to accept this revolution in government and to fuse together the remnants of the old Gothic constitutionalist rhetoric with the political science and practice of a consolidated, centralized government, either in its monarchical or republican forms.

Radical old Whigs and some of their tory allies were the only political forces resisting this trend and defending the old system of decentralized, multipolar governance. The American Revolution was going to grow from the same ‘reactionary’ source: from a spring of the old Whig, semi-medieval Gothick constitutionalism which never went along with the process of the formation of a modern British state. All major figures of the mainstream English liberalism, including Hobbes and Locke were on the opposite, winning side of the debate, the side of the absolute government, keeping the monopoly of coercive control over the entire society, both in England and in the colonies.

Constitutional history of the mid-17th century shows how and when the conditions for this momentous shift in British political history took shape, and underlines the problems that will persist into the next century, finally causing the American Revolution. Charles McIlwain points out that the true date of the American Revolution is May 19th 1649. On that faithful day, the British Parliament took a kind of power that was unprecedented in British history, and which was to be the root cause of the American Revolution 130 years later:

Be it Declared and Enacted by this present Parliament and by the authority of the same, That the People of England, and all the Dominions and Territories thereunto belonging are and shall be, and hereby Constituted, Made, Established and Confirmed to be a Commonwealth and free State: and shall from henceforth be Governed as a Commonwealth and a Free State, by the Supreme Authority of this Nation, the Representatives of the People in Parliament, and by such as they shall appoint and constitute as Officers and Ministers under them for the good of
the People, and that without any King or House of Lords. (McIlwain, 1924: 21-22)

This is the first constitutional document in which the phrases such as “dominions and territories belonging thereunto” or “shall be governed by the Supreme authority of this nation, the People in the Parliament” show up. This document for the first time spelled out what has come to be known as the doctrine of “Parliamentary sovereignty” or “Parliamentary supremacy.” This novel doctrine represented a complete overhaul of the traditional British system of mixed monarchical government. Before it, nobody was considered “sovereign”: the system evolving in the later Middle Ages, “the king in the parliament,” vested political authority in a symbolic fiction of the united monarchical, aristocratic and democratic elements of the community, expressed in the person of the King, in the Commons and the Lords. And moreover, even in this overarching composite, symbolic authority was ‘supreme’ only for the British realm, not for the colonies. The division of powers within the traditional British political system was reflecting on the position of the colonies and dominions in so far as they owed their allegiance to the King, and the administration had a supreme power in foreign relations, which meant a right to impose tariffs, or regulations of commerce, as well as to function as a military protector. However, in the same time, the internal affairs of the dominions were regulated by their domestic institutions and legislatures, so the Parliament in London did not have a supreme legislative authority over the colonial political societies. This included the issue of taxation, because Americans were never taxed by the Parliament before 1763. Two years before the King was to be executed in 1649, the “Long Parliament” profoundly changed the British constitution by disregarding or completely overruling an entire array of constitutional conventions governing the political practice before. Among those changes was the fateful enlargement of the coercive powers of the central state over the colonies. Since the King did not exist anymore, the Parliament could either forfeit any
powers to rule the colonies or to abolish by a stroke of pen any legislative autonomy of the colonies whatsoever subjecting them to its own unlimited and sovereign rule. The Parliament had chosen the latter.

And the consequences of this fatal move became apparent very quickly: the Parliament vigorously asserted its supremacy in some of the dominions, especially in Ireland. In the American colonies the first attempts to abolish or severely diminish local self-government started in 1660s and 1670s, first with the Navigation act of the Parliament and then with the introduction of the Lords of Trade, all geared towards restricting colonial trade with foreign countries (Greene, 1986: 13-15). The Lords of Trade not only increased the control and supervision over the colonial trade but also attempted to curtail the power of elected assemblies in the colonies, in order to strengthen the central control by the British Parliament, now deeming itself ‘supreme’. Another assault on the colonial self-government stemming from the new doctrine of Parliament’s supremacy was the revoking of charters of the existing private and corporate colonies, their transformation into the royal colonies, as well as prevention of any new private colonies from ever arising in America. Those policies encountered strong resistance in America from the beginning and were deemed for the most part unsuccessful (Greene, idem). And even when they were successful, as in the case of the Navigation act, this was mostly because the American interests were not threatened greatly by them.36

However, the most critical development was not the immediate application of this doctrine, but rather its constitutional entrenchment after the Glorious Revolution.

36 Arthur Schlesinger Sr (1964: 15-49) explains that the restrictions put in place by the Navigation Act were very light, because British merchandise was generally of higher quality and less expensive than the rival European goods, so the tariffs on foreign goods just reinforced the consumer and investment preference for domestic products that most American had anyway; and the provision that all European ware had to be shipped via English ports to America was also by and large redundant since London had been the main entry point for intercontinental trade anyway.
Namely, the restoration of the monarchy and subsequent re-imposition of a lawful, constitutional system of checks and balances in the Great Britain after 1688 has not been followed up by the abolishment of the illegal prerogatives of the British Parliament to legislate in all cases for the colonies and dominions. On the contrary, the solemn oath that William and Marry took, repeated and reaffirmed the same unlawful proclamation made by the Long Parliament in 1649, in a slightly different wording but with the essentially identical meaning: they vowed “to govern the people of this Kingdom of Great Britain and the dominions thereunto belonging according to the statutes in Parliament agreed on and the respective laws and customs of the same” (McIlwain, 1924: 43).

This shows a line of continuity from the early Puritan Revolution marked by populist and republican philosophy, through the monarchist and authoritarian reaction exemplified in the writings of Filmer and Hobbes, to the new Whig, Lockean thinking of the restoration and Revolution. All their differences notwithstanding, the idea of a sovereign coercive power standing above all other rival sources of social and political authority was preserved intact. From this vintage point, the tumultuous period 1642-1688 brought about a revolution in the government system which had not been reversed but just changed in form with the Glorious Revolution; initial vesting of the locus of sovereign political authority in the Parliament was reallocated to the King, and finally brought back to the Parliament again. However, the novel, revolutionary and subversive idea that there has to be a single, centralized locus of sovereign power had never been repudiated. The Glorious Revolution just cemented and consolidated this constitutional subversion initiated by the Long Parliament in the 1640s. The idea of a consolidated coercive power, subject to no outside limitation but its own will or the toleration by the ‘people’, became a consensual political philosophy in the mainstream of British tradition. As Charles Mcilwain perceptively notes:
[the old Whigs] would have repudiated all arbitrary government whatsoever, whether by King or Parliament. Filmer had declared that any government in England must be arbitrary and royal; for Hobbes it must be arbitrary but not necessarily royal; for many Whigs a century later it must be arbitrary but cannot be royal. Thus after 1689, and the revolution settlement which marked the final triumph of the Whigs, the arbitrary power of Hobbes and Filmer was for the first time “engrafted into the English constitution”…and vested in the national assembly. For the Whigs, the only real sovereign must be the parliament, that is all. (McIlwain, 1939: 63-64)

This surprising uniformity of the statist consensus trumping all accidental differences between monarchism, republicanism, Whigism, Toryism and so on, is seen in the fact that the republican radicals of 1642 asserting the absolute coercive powers for the Parliament, waging a war against the King and finally beheading him, nevertheless used the same theory of the ‘two bodies of King’, developed initially by the court lawyers to justify the privileges of the Crown. According to this doctrine, derived from the ecclesiastical and theological sources, the King has two bodies; natural, physical body and a ‘body politic’, the latter being an artificial corporate form, symbolizing the unity of the ruler and the ruled within a consolidated state authority (Kantorowicz, 1957: 18-23). In this depiction the King is the head of the corporate body politic, whereas the subjects are the ‘members’, or the body parts, of this artificial corporation. And there is no direct relationship between the King’s temporal and eternal existence; so much so that even the republican revolutionaries from the Long Parliament could have invoked the symbolism of the King’s eternal body in order to justify the war they were waging against the existing temporal King. In the Declaration of the Commons and Lords of May 27th 1642 we read:

37 For the doctrine of the two body of the king see Kantorowicz, 1957, especially, pp. 7-61.
It is acknowledged the King is the fountain of Justice and Protection, but the acts of Justice and Protection are not exercised in his own Person, nor depend upon his Pleasure, but by his Courts and his Ministers who must do their duty therein, though the King in his own person may forbid them: and therefore if the Judgement should be given by them against the King’s Will and Personal command, yet are they the King’s Judgements. The High Court of Parliament is not only a Court of Judicature…but it is likewise a Council…to preserve the publick Peace and Safety of the Kingdom, and to declare the King’s pleasure in those things that are requisite thereunto, and what they do herein hath the stamp of Royal authority, although His Majesty…do in his own Person oppose or interrupt the same (Kantorowicz, 1957: 21).

What this amounted to was simply a takeover of sovereign political power from the King by the Parliament; its doctrinal expression was an affirmation of an irreconcilable conflict between the King’s two bodies. As Ernst Kantorowicz caustically points out: ”…the King body politic in Parliament, survived without change. In other words, the king body natural in Oxford had become a nuisance to Parliament; but the King body politic still was useful; he still was present in Parliament, though only in his seal image – an appropriate illustration of the concept justifying the Puritan cry of “fighting the king to defend the King”” (Kantorowicz, 1957: 23).

This is extremely important to bear in mind, since it undercuts a popular misunderstanding of the Glorious Revolution as embodying a radical change from the absolutist to the constitutional monarchy. On the contrary, as McIlwain rightly notes, the Glorious Revolution with its doctrine of parliamentary sovereignty “engrafted” the Hobbesian absolute state into the British constitution. By 1689 there has scarcely remained anyone of note in England who would have defended the Old Whig idea of a limited government, subject to local control and the common law restrictions. The only remaining quarrel was where the locus of sovereignty was to be placed, which group or faction was going to claim a monopoly of embodying the King’s ‘eternal body’. The Whig final victory settled the question by placing it into the hands of Parliament, therby
finally secularizing and democratizing the King’s ‘corporate body’. The lofty democratic rhetoric and the invocations of the will of the people served only to disguise the unlawful character of this radical change. For a long time, the debate between the liberals and conservatives, the proponents of a ‘free government’ and monarchy was reshaped into a debate between the advocates of two different forms of arbitrary rule. John Locke was the main source and inspiration for the “liberal” and “democratic” side of this debate. But, if this analysis is correct, Locke actually served a sinister purpose of embellishing and cementing a form of government marked by political centralization and consolidation, instead of defending limitations of power by a group and territorial pluralism and polycentrism. And the derivations of the American Revolution from Locke are emphatically misleading, because they tend to ignore this function of Locke’s political science, as the chief agent of consolidation of the British centralized state.

It is not difficult to see that the main source of the conflict between the British colonial policy after 1763 and American colonials was exactly over the territorial locus of ‘sovereign’ decision-making: the British Parliament insisted upon the Hobbesian and Lockean (and Filmer’s) conception of a government as a consolidated power with an ultimate and absolute decision-making authority over all the subjects of the empire; whereas the American colonists, whose notions of political authority were formed under the influence of older theories of limited and mixed constitution, as well as their ‘anarchic’ colonial experience, did not accept the Hobbesian sovereignty in any shape and form (Lockean or non-Lockean). From the British ‘new’ Whig point of view (following from Locke), the resistance to the Parliament’s authority to tax the colonies was a rebellion and a sedition against the government: from the colonial, old-Whig political viewpoint, parliamentary taxation was a supreme act of tyranny and subversion of the traditional British liberties, which included taxation by consent, territorial representation in government and natural rights. The Revolution of 1776 was a temporary triumph of the ancient American and British, pre-1642 conception; the Philadelphia
Putsch of 1787 signified the establishment of the *modern* post-1642 British conception in America.\(^{38}\)

**II. The Leviathan-state and liberalism**

The line of direct continuity that I – following McIlwain and Kantorowicz – draw between the monarchist and democratic, Hobbesian and Lockean versions of British liberalism, may seem exaggerated and certainly is at odds with the conventional representations of modern political philosophy as well as of the American Revolution. In order to show that these conventional representations, digging a deep ditch between Locke and Hobbes, and 1642-49 and 1689, are exaggerated, and that the analysis of Kantorowicz, McIlwain and Caroline Robbins is basically correct, I will offer my own textual analysis of Hobbes and Locke. Specifically, I will attempt to show that in one crucial aspect – the concept of the state as a unitary, centralized, artificial body or corporation, having sovereign powers over the *entire* territory of the realm or empire (Locke and Hobbes do not differentiate between the two) – there is no difference at all between Hobbes and Locke, and that in this, for the American Revolution *critical* aspect, both of them were equally the enemies rather than the friends of the Revolution.

Let us start with Hobbes. There is scarcely a philosopher who contributed more decisively to the solidification of the idea of unitary, sovereign political power than Thomas Hobbes. Moreover, the very idea of an absolute and unlimited government (“Leviathan state”) is nowadays often considered “Hobbesian,” and sometimes even

\(^{38}\) John Philip Read (1995) and Jack P. Greene (2010) come very close to this interpretation but they, in a manner typical of the historians’ urge to protect the integrity of the “founding generation” at every cost, shy away from openly characterizing the new Constitution as an anti-American counter-revolution, the characterization which is in my view fully justified, and moreover, required, by their own analysis.
associated with the concept of a totalitarian state. On the other hand, it is widely acknowledged that Hobbes was writing in the conditions of the British Civil War and that this fact should be taken into account when we ponder some of his statements from *Leviathan*. Hobbes’ diagnosis of the problem that had led to the Civil War was essentially that the evolution from a feudal society with its complicated structures of sociological checks and balances and “factions” towards an absolute monarchy with one supreme power centre had not been yet completed (Hobbes, 2010). The internal strife and conflict came from the absence of an authoritative central power that could crush all competing claims to political authority. Moreover, Hobbes goes even further, by generalizing this idea to argue that the source of all social upheavals, instabilities and revolutions throughout history was the division of powers and a lack of a strong unitary and absolute government. Here is just one prominent example of this fateful “want of absolute power” (Hobbes, 2010: 222) in history:

…whereas the style of the ancient Roman commonwealth was, The Senate and People of Rome; neither Senate nor the People pretended to the Whole Power; which first caused the seditions of Tiberius Gracchus, Caius Gracchus, Lucius Saturnius and others…and afterwards the warres between the Senate and the People, under Marius and Sylla, and again under Pompey and Ceasar, to the Extinction of their Democracy, and the setting up of Monarch. (ibid.)

Therefore, the famous formula from the chapter XIII of the *Leviathan* talking about the “solitary, poore, nasty, brutish and short” life in the state-of-nature, should not be interpreted narrowly as an analytical depiction of the stateless society, but even more so as a radical critique of *any* form of society which is in “want of absolute power,” namely which is politically decentered and decentralized. In strictly analytical terms, British society before the Civil War was for Hobbes in the state-of-nature, as well as the

---

39 For the view attributing to Hobbes the decisive role in articulating the totalitarian ideal see Arendt (1994) and (Weiler, 1994).
Roman republic, Greek polis or medieval principalities, dukedoms, or free republics. There is no principal difference between them.

This idea of an all-powerful Leviathan state as the only possible guarantee of peace and liberty has many radical and transformative repercussions in Hobbes’ thought. It radiates well beyond the conventional dichotomy liberty-despotism. One such crucial repercussion was Hobbes’ complete refashioning of the relationship between the government and civil society. Instead of the old view which depicted the local authorities and non-governmental power centres as the autonomous agents with inherent powers and God-given rights and privileges, Hobbes reduces all those powers to an explicit grant by the sovereign ruler, the grant that can be revoked any time, at the discretion of the Sovereign:

In Bodies Politique, the power of the Representative is always Limited: and that which prescribeth the Limits thereof, is the Power Sovereign. For Power Unlimited, is absolute Soveraignty. And the Soveraign, in every Commonwealth, is the absolute Representative of all the subjects; and therefore no other can be Representative of any part of them, but so far forth, as he shall give leave: and to give leave to a Body Politique of Subjects, to have an absolute Representative of all intents and purposes to abandon the government of so much of the Commonwealth, and to divide the Dominion, contrary to their Peace and Defence, which the Soveraign cannot be understood to doe, by any grant, that does not plainly discharge them of their subjection. (Hobbes, 1991: 116)

Therefore, political representation must be absolute or not to exist at all; any sub-national political and social authority derives its legitimacy and its prerogatives only from an act of the Sovereign, and as such is not permanently and independently established; it has just a temporary and revocable licence to do certain things. And, as Hobbes points out, any kind of division of power among the various territorial units would amount to an overt subversion and actually abolition of a Commonwealth itself (Hobbes, 2001: 224).

For the old Roman and medieval view, see Brunner (1992), Kern (1956) Riggsby (2010) or Bourchart (2007)
Power in the Hobbesian model descends from above, from a king or other sovereign body, to the various “subordinate” organizations, which retain their authority or immunity only as long as the Sovereign allows it. Therefore, if a person conceives that her rights are abridged by the city council or by the provincial or colonial government, the central government is in charge of enforcing her “individual rights” against the local political authority (be it territorial or otherwise). As we saw, the local political units are created by the Sovereign at will, they don’t have any independent political capacity. Thereby, any organic, exclusive bond between the local political authorities and individual subjects is broken; central government is in charge of policing society at large in regard of its treatment of the individual.

What is really paradoxical about this is that Hobbesian absolutist state coexists with a radically novel, highly individualistic theory of social contract. The absolute state does not emerge by a conquest or violence, or a gradual agglomeration of social groups and collegia, but allegedly by a procedure of voluntary cession of the individual’s right to self-defence to the state. In a way this is a two-way traffic; individuals hand over all their rights to the Sovereign, who then, if so inclined, can return back some of it to the subjects, but does not have to, and he and he alone is the final judge of the extent of power thereby allocated to any organization in society. Hence, society as such ceases to exist as a pre-political reality; there are only isolated, solitary and helpless individuals in the “war of all against all,” and there exists the state, an artificial corporation led by an individual or collection of individuals that can put an end to this unhappy anarchical state of affairs. The social contract eliminates the autonomous powers of all intermediate

---

41 This is a major difference between the highly stylized philosophical accounts of the state as a “contract”, covenant and so on, from Hobbes to Rawls, and more empirical and down-to-earth explorations of the real source of state authority developed in economic public choice literature. One of the most well-known accounts of this, more cynical nature is Mancur Olson’s explanation of the state as a “stationary bandit”; a kind of bandit who figures out that it is much more profitable for him to tax people’s assets and income on a regular basis (extort money for “protection”), instead of randomly plundering their property and wealth (Olson, 1965).
institutions of civil society and largely reduces all societal dynamics to the relationship between the absolute state and helpless individual. And here lays a Faustian bargain that Hobbesian, and later on Lockean, individuals make with the state; you provide us with the guarantees of individual liberty and safety, and especially with the guaranties against any autonomous intrusions by voluntary societal associations, and we will coronate you as an absolute and unlimited power with the monopoly of using force.

In the *Leviathan*, this Faustian bargain is quite far-reaching and all-encompassing. Hobbes includes under the term “Body Politique” all competing sources of authority, both territorial organizations like provinces or colonial governments and the institutions of civil society such as Churches, Universities, trade associations, and so on. All of them are summarily classified under the rubric of “subordinate” powers (Hobbes, ibid.). They do not represent anyone; they exist only by virtue of being instituted by the Sovereign, who is the only representative of the people as individuals. And here Hobbes includes an additional clarification which is clearly at the core of the liberal “Faustian bargain” with the state to this day: an explicit guaranty of immunity for the individual against the societal power:

> In all Bodies Politique, if any particular member conceive himself Injured by the Body it self, the Cognisance of his cause belongeth to the Sovereign, and those the Sovereign hath ordained for Judges in such causes, or shall ordaine for that particular cause; and not to the Body it self. For the whole Body is in this case his fellow subject, which in Sovereign Assembly, is otherwise: for there if the Sovereign be not Judge, though in his own case, there can be no Judge at all (Hobbes, 2010: 119).

This particular feature of Hobbesian rendition of the social contract was accepted across the board: not only by his fellow-liberal Locke, but equally by other, non-liberal theorists of social contract, such as Rousseau. All of them “bought” the main tenet of the Hobbesian doctrine; the notion of erasing the intermediary structures of society as the pre-political obstacles to social contract, and reducing thereby the very concept of
political society to a mere manifestation of government’s will. In Rousseau’s case this paradoxical and dialectical marriage of individualism and a complete collectivization of individuals, is especially obvious in his concept of general will. As Thomas Hueglin perceptively notes: “because he located bourgeois virtue, liberty, and reason exclusively in the individual self and not in social structure, the idea of volonte general necessarily had to remain fiction, which then, interpreted and abused in a totalitarian way, could very easily lead to the destruction of exactly that free individual it was supposed to protect” (Hueglin, 1979: 22). Locke was very far from any “totalitarian” mindset, he is not to be blamed (or credited) for Rousseau’s interpretation, but his thought definitely originates from the same Hobbesian source, which is foreign to the American prevailing revolutionary conceptualizations of politics.

III. Locke, Hobbes and the American case

John Locke starts from a seemingly different theoretical perspective than Hobbes – from what appears to be a trenchant critique of Hobbes’ statist and absolutist philosophical program. Indeed, an entire alternative political model devised by Locke, the elaborate scheme of checks and balances and division of powers is meant to remedy the main, cardinal deficiency that he sees in Hobbesianism – the absolutization of power and a lack of limitation for the sovereign political will. And yet, in a more roundabout way, Locke ends up supporting and reinforcing the same tenets of Hobbesianism he superficially rejects, through his uncritical acceptance of the idea of the state as being divided only from within, into the three separate branches (executive, legislative and “federative”) not by outside territorial plurality and federalism. The very metaphor of the

---

42 This is not to imply that Locke and Rousseau should be equated with regard to their treatment of individual liberty, but just to emphasize how influential the Hobbesian philosophy had been in shaping such disparate philosophical programs, as Locke’s and Rousseau’s.
“branches”\textsuperscript{43} suggests the main problem with the Lockean solution – the “tree” in question that has ‘branches’ is the same old Hobbesian tree of consolidated central power. It is just differentiated from within, but not challenged at its roots. Locke does not do much to dismantle this underlying idea, to uproot the tree of absolutism – but for the most part just reinforces it by questioning some of its less important features while taking for granted the \textit{most important one} – territorial homogeneity and monopoly of force of the state.

In the same time, Locke does even more to reinforce the Hobbesian statism by accepting at face value the contractual theory of the state; once again, just like in \textit{Leviathan}, the core political dynamic is understood in terms of the relationship between an agglomeration of isolated and helpless individuals and a powerful state (divided from within or not) which is the only agent capable of guaranteeing their rights and liberties, including the most basic liberal ones, “life, liberty and property.”\textsuperscript{44} The very important doctrinal differences that exist between the Lockean and Hobbesian renditions of the state-of-nature and social contract are not of interest for our discussion here, although they might have been of great value for understanding liberal thought more generally. We are following the threads of Hobbesian influences and Hobbesian logic in Locke’s formulation of liberalism that can help us understand how was it possible that the best heads of liberal philosophy until today seemed to have accepted the idea that “state”

\textsuperscript{43} Actually, Locke did not use the term “branches” himself but “powers”. However, the subsequent interpretations very often use this term which is quite fitting, having in mind the consolidationist and majoritarian assumptions from which Locke starts.

\textsuperscript{44} In fairness to Locke, one can say that for any liberal, some level of state is required to guarantee liberties. This is not to say that ONLY the state plays a role in guaranteeing liberties, since for Locke, natural rights to property precede and legitimize the state, so their exercise is arguably more important than the state’s role in backstopping them. However, the “Hobbesian” element in Locke is that he does not allow for the multiple and/or concurrent levels of jurisdiction and territorial organization, the aspect of the American situation which was of the utmost importance for the Revolution.
which should protect individual rights should be one, indivisible and homogenous. We are trying to understand the history of the expulsion of the “territorial dimension” from liberalism.

The Second Treatise is a paramount work for identifying and following further those Hobbesian threads. And here, in the single most cited, most read and most cherished manifesto of classical liberalism of all time, we find the same Hobbesian statism vividly expressed. In the chapter VII dealing with political and civil society Locke writes:

Wherever…any number of men are so united into one society as to quit every one his executive power of the law of nature, and to resign it to the public, there, and there only, is a political or civil society. And this is done wherever any number of men, in the state of nature, enter into society to make one people, one body politic, under one supreme government, or else when any one joins himself to, and incorporates with any government already made. (Locke, 2003: 142)

It is clear that Locke accepts wholeheartedly Hobbes’ definition of government as an absolute representative emerging from an individualistic social contract, the entity which is unitary and indivisible in nature: it is “supreme” and also making the people comprise “one body politic.” This last formulation is interesting because it suggests that Locke follows Hobbes even in solidifying the identification between the state and society. We shall remember that Hobbes recognizes the existence of the various smaller societal organizations and autonomous units which he calls the “bodies politic”; however, he denies that those bodies have any real autonomy – they exist only as long as the royal

---

45 This insistence on consolidation in Locke’s philosophy should not be treated as a part of a general discussion of liberal philosophical principles, even less as arguing against Locke’s dominant influence on liberal thought (including the American decentralist revolutionaries!), but just to underscore the main objective of this section – to show that Locke was on the opposing side of the American Revolution in one of the critical aspects of this Revolution: the problem of territorial localization of power and the problem whether the British Empire was a “state” or a composite, decentralized confederation.
charters and decrees survive, by virtue of which they were established. The sovereign has a right to abolish them at will anytime. And moreover, all of them, the Churches, Universities, trade associations and so on, are just the parts and embodiments of the state. Locke seems to concur completely; when people unite in a government to remedy the inconveniences of the state of nature they create thereby not only “one supreme government” (which is a standard Hobbesian argument), but moreover, “one body politic,” or one single “civil society.”

This solidification and petrification of central political power is ever present in Locke: it is consistently applied and reiterated throughout the entire Second Treatise. For example, in the chapter VIII where Locke develops his democratic majoritarian theory we also read:

…when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, which is only by the will and determination of the majority. For that which acts any community being only the consent of the individuals of it, and it being necessary to that which is one body to move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound to that consent to be concluded by the majority (Locke, 2003: 140).

We can see that legislative supremacy and democratic majoritarianism are thought of as a glue that keeps together the isolated fragments of society pre-existing in the state of nature; moreover, they remold those fragments into a qualitatively new and higher political organism, a “collective body,” with its will, its direction, its movements and so on. According to Locke, majority rule is the only mechanism through which the critical normative ideal expressed in the cited paragraph, keeping all the individuals as a unitary
“single community,” could be achieved.\textsuperscript{46} We see here both the Newtonian political physics popular in the late 17\textsuperscript{th} century, but also the germs of the future Rousseauean organicist metaphysics of society as a collective body, as a conscious subject, or a person with ‘its’ will, knowledge and so on, heralded by the self-serving musings of the Tudor court jurists about the ‘body politic’ of the king, half a century before (Kantorowitz, 1957). This shows how problematic any search for Lockean ancestry of the American Revolution might be: if political community – any political community – is a consolidated unitary corporation consisting of \textit{individuals}, not groups or separately existing territorial units, such as colonies or provinces – how then to justify on Lockean grounds what appears to be an American claim for a separation of isolated territorial units from the central state?

Even the famous theory of the right of the subjects to overthrow the government – Locke’s celebrated justification of revolution constantly invoked by the historians to prove the Lockeanism of the American rebellion – instead of helping us in this regard only increases and highlights our troubles. To be sure, Locke provides a powerful defence of the right of the people to overthrow the government whenever it infringes upon their life, liberty and property, and thereby breaches the terms of social compact by which the state of nature was transformed into the civil government. But this is again a right of the majority of \textit{individuals}\textsuperscript{47} within the body politic, not of isolated territorial \textit{communities} within the body politic:

\textsuperscript{46} In his book \textit{John Locke and the Doctrine of the Majority Rule} (University of Illinois Press, Urbana, 1959: p.118) Wilmore Kendall perceptively notes: "In a word Locke apprehended...a tremendously important logical relation between the doctrine that the whole people have a right to have their way and the doctrine that the majority have a right to have their way".

\textsuperscript{47} Locke never explicitly says that the “People” whom he authorizes to change the oppressive government acting against social contract means “majority of the people,” but that is the most logical inference. However, even if we allow that it is not quite clear whether he thinks that only majority can act, whoever has a right to act in a Revolution, this right is limited to changing the central government, not to territorially reorganizing the state! And the latter was exactly what the American colonists strove to do in the 1770s.
…when either the legislative is changed, or the legislators act contrary to the end to which they are constituted those who are guilty are guilty of rebellion: for if any one by force takes away the established legislative of any society, and the laws by them made pursuant to their trust, he thereby takes away the umpirage, which every one has consented to, for a peaceable decisions of all their controversies and the bar of the state of war amongst them. They, who remove, or change the legislative, take away this decisive power, which nobody can have but by the appointment and consent of the people; and so destroying the authority which the people did, and nobody else can set up, and introducing the power that the people hath not authorized, they actually introduce a state of war, which is that of force without authority (Locke, 2003: 200)

This is a brilliant critique of the Hobbesian notion of a change of government as a return to the state of war; on the contrary, argues Locke, those who usurp power return the society in the state of civil war, and hence overthrowing an usurping and illegitimate government by the people means bringing back the conditions of peace and justice. However, notice that even this justification of the revolution means that only the people as a whole, as a single, unified “body politic”\(^{48}\), have a right to revolutionary change their government; it is impossible for a smaller political society, or a province of a large country to *secede* from it. Locke is completely silent about such a possibility. The right of revolution simply means a right of the people as a unified whole to replace one central and “supreme” government which usurped its powers, by another “supreme” government that would respect the prescribed constitutional limitations. Here is Locke’s very characteristic statement: “it is in their legislative, that the members of a commonwealth are united, and combined together into one coherent living body. This is the soul that gives form, life, and unity, to the common-wealth: from hence the several members have their mutual influence, sympathy, and connexion: and therefore, when the legislative is broken, or dissolved, dissolution and death follows: for the essence and union of the

\(^{48}\) This follows from the general definition of the body politic Locke gives in Locke, 2003: 140, see p. 15 above.
society consisting in having one will, the legislative, when once established by the majority, has the declaring, and as it were keeping of that will." (Locke, 2003: 197). Therefore, we have “one living body,” one “legislative will,” a legislature that is a ‘soul’ which ‘unites’ all members of the body politic, and the entire civil society. How in this model is the concept of a confederated, divided polity which owes the allegiance to the King in foreign affairs, but governs itself freely otherwise, supposed to be conceptualized? This was exactly the concept Americans believed in and undertook the Revolution to defend.

It is true, in the Declaration of Independence Jefferson is flirting with the Lockean idea of revolution and is trying to portray the American independence as a revolution satisfying the Lockean conditions. However, what is going on is actually that 13 provinces/colonies of a large “body politic” were seceding from that body, a logical and political impossibility, according to Locke. The very first paragraph of the Declaration affirms that:

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

It is clear that Jefferson here does not elaborate a Lockean revolution within a state, but simply a secession or “separation” or “dissolving the bonds” that connected the American colonists with the mother country (their “supreme government”). It does not represent a “declaration of revolution,” but a declaration of independence of the 13 colonies from Great Britain. If all the subjects of the British Empire comprise a single

---

49 For an elaborate explanation of the secessionist nature of the Declaration, see Pocock, 1975.
body politic, as Locke’s logic inevitably requires, and if the supreme principle of civil
government is democratic majoritarianism, then it is not clear how the mere fact that one
small f(r)action of the Empire, the North American colonists, considers some legitimate
decisions of the Parliament “unjust,” should serve as a justification for them to secede
from the body politic. They could arguably try to overthrow the central government by
allying themselves with other political forces within the body politic, but not to secede
and establish their own independent governments. For Locke, that would have been the
same as if York had seceded from the Great Britain.

Something has to be said about the influence that Locke had on colonists; this
widely documented influence (Hartz, 1955; Zuckert, 1996; 2000; Bassani 2010) seems to
contradict our insistence that Locke was in the most important thing of the Revolution on
the opposing side. First thing that has to be noted is that Locke’s direct influence was
exaggerated; as Bernard Bailyn (1967) had shown Locke’s influence was more generic
than exclusive, because the colonists accepted the general tenor of Locke’s political
liberalism of the “country party,” exemplified most notably by “Cato’s Letters” written
by Trenchard and Gordon. In terms of general political philosophy they were also good
liberals, just as Locke was: “life, liberty and property” and limited government confined
to the protection of these were the basic desiderata of the philosophical framework within
which they (English “country party” men), together with all colonists, localists and
nationalists alike, operated. However, the way how these general Lockean principles
were given a practical meaning by localists differed sharply from the nationalists: they
accepted only a general framework from Locke but in elaborating political and
constitutional theory to justify the political course of action they took, they fell back to the traditional British common law and the “republican,” radical Whig or “country” opposition between power and liberty (Wood, 1969). In a sense, the principles (liberty, limited government) that we today tend to associate with Locke (because of his philosophical genius and influence in the general history of ideas), in America were digested via an complicated mix of different traditions, having little to do with Locke per se.

This is not always appreciated in modern literature. A very widespread narrative that cuts across the ideological and disciplinary lines of division still holds that the liberal-Lockean *philosophical* ancestry of the American Revolution in general of necessity means that all other concrete aspects of the American situation have to be viewed from the Lockean perspective, and judged in accordance with Lockean tenets. The fact that Locke did not say much about the main issues at stake in the dispute between the Parliament and the colonists, is taken more as a convenient green light to proceed with further unfounded pan-Lockean generalizations rather than to step back from them and have another look. For example, Forrest McDonald criticizes Lincoln’s nationalist theory of the union and argues that the compact theory promoted by Jeffersonians and Jacksonians was right. But, for this purpose he uses an argument ‘from Locke’ which is quite unconvincing: “…according to Lockean principles, the people of the colonies could not have returned to the state of nature unless their legislatures had gone out of existence, which they had not.” (McDonald, 2000: 9). The problem is that the phrase “their legislatures” from the Lockean point of view cannot here refer to the colonial legislatures, but only to the British Parliament! There is only one supreme

---

50 A good complement to this analysis is the fact emphasized by Bernard Bailyn (1967) that both revolutionaries and loyalists equally used Locke in their dispute over the American secession from the British Empire. We today tend to identify Lockeanism with the revolutionary spirit only because of the accident of history; that revolutionary “Lockeans” won and loyalist “Lockeans” lost. And a leading expositor of the winning side’s arguments used some of the memorable Lockean phrases in crafting the *Declaration of Independence*. 

---

86
legislative authority in any given commonwealth, according to Locke.51 Hence, by withholding their consent to the British Parliament, the colonists did return to the state of nature. In this regard, Hamilton, Webster, Joseph Story and Lincoln had more right to claim the Lockean mantle for their nationalist theory of the union, which presumes that with the ‘Declaration of Independence’ the American people returned to the state of nature, from which they only emerged as a new nation with the Constitution of 1787.52 If indeed the colonial legislatures were “their” legislature, then the only way to perform a Lockean revolution would be to disband those colonial legislatures, which they did not do; if, however, ‘their’ legislature was British Parliament then “disbanding the ties” with it would not be a Lockean revolution, but an unlawful rebellion. Which is it?

Similarly, Michael Zuckert begins his discussion of the Lockean character of the Declaration by refuting a very widespread misconception that America in 1776 represented a single, unified nation, which was often entertained – most notably by Lincoln – as a justification for the war to prevent the Southern secession. This argument stems from the opening sentence of the Declaration: “when in the course of human events becomes necessary for one people to dissolve the political bands which had connected them to another…. ” This ‘one people’ from the first sentence is then used as a proof that the author of the Declaration considered Americans ‘one people’ from the very beginning. But, as Zuckert shows, this is clearly wrong: ”the first sentence does not profess to make a statement about the status of the American people(s); that comes later when the general principles of political right announced early in the document are applied

51 See above, pp. 15-17.
52 But, even for them, the problem is that the American colonists in 1776 made just a small subset of British subjects, and the fact that the Westminster Parliament had not been disbanded as a result of American rebellion, testifies to the fact that no Lockean Revolution in America had taken place, just as the Revolution in the South had not taken place after the South Carolina “ordinance of secession” was adopted. The most precise way to describe the American Revolution from the Lockean point of view would be “an unlawful rebellion”. Lincoln and other American nationalists cannot have it both ways; if secession in 1860 was illegal and criminal, so was the “revolution” of 1776.
to their own case: “These United Colonies...are free and independent states.” By acting together to declare and then secure their independence the American colonies/states no more constitute one nation than does the large alliance that fought the Gulf War (Zuckert, 2002: 207).

Zuckert continues from this point on by discussing the Lockean character of the Declaration, never confronting the question: how to reconcile this with Locke? Namely, however many peoples in America “disbanded their ties” to the British people, one or thirteen, how the very concept of ‘disbanding the ties’ among the various peoples, and the consequent implication that two or more peoples could constitute at some point a composite body politic, is to be translated into the Lockean idiom of majority that bounds everyone who participates in a mystical unity? Zuckert never confronts this problem; just as McDonald does, he simply ignores this ‘territorial’ dimension of the problem, and reduces everything to the discussion of philosophical generalities, as if the territorial framework for the discussion is given and consistent with Locke. But it is neither.

Dworetz (1990) reveals a similar confusion in his analysis of taxation and consent in America. After conceding that Locke did not have a “theory of representation” he nevertheless claims that Locke’s enumeration of the limits of legislative authority gave the best weapon to the colonists by saying that taxes cannot be levied “without the consent of the people, given by themselves of their deputies” (Dwortez, 1990:81). Dworetz takes this as a sufficient proof that colonial policy of resistance followed from Locke’s theory. But, this just begs the question: who is the “people” whose consent is necessary for taxation? If it is the British people, the consent was obviously given, since the majority in the parliament voted for the taxes: if it is the American people, then the proper constitutional relationship between the American and the British peoples is not clear. In which sense the term “people” is employed here?
As many other theorists do, Dworetz muddies the waters to the utmost: when discussing the absence or presence of the colonial consent to the parliamentary policy of taxation, the implicit assumption is that the ‘people’ are the British people, since the legislature is the British parliament in which the Americans are not represented. And since they are not represented the decisions made cannot bound them (but, then the problem is to explain why is exactly an unrepresented colonist from Virginia or Massachusetts any different from an unrepresented metropolitan from Manchester or Birmingham). However, when refuting the theory of virtual representation it seems that Dworetz thinks that the “people” are actually the American people expressing their sovereignty through their colonial legislatures: he argues that Locke’s argument was “friendly to the revolutionists” because “he did not say that majority could give their consent through representative chosen by others for them” (Dworetz, 1990: 86). If this were indeed the case, if American people were really a separate entity from the British people, then Dworetz has to explain where Locke authorized, or even mentioned as a possibility, the case of the two different and separate majorities coexisting within a single ‘body politic’?

It goes without saying that none of this should be understood as a claim that Locke is unimportant or irrelevant for a study of either the American Revolution in general or the Declaration in particular; it, however means that Locke is of little help to us in shedding light on the central issue at hand: ‘separation’ or independence of America from the Great Britain. And moreover, that the inescapable logic of the Lockean position itself simply prohibits or renders impossible any talk of separating or dividing a body politic. Just to remind the reader what Locke says, because this is the critical point:

when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, which is only by the will and determination of the majority. For that which acts any community being only the consent of the individuals of it, and it being necessary to that which is one body to move one way, it is necessary the body should move that way
whiter the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue **one body, one community**, which the consent of every individual that united into it agreed that it should; and so every one is bound to that consent to be concluded by **the majority** (Locke, 2003: 140) (bold added).

So: one body, one community, one majority, unity – those are the key words of the Locke’s liberal vision and his political science. He does not say anything about an artificial amalgamation of the two separate bodies politic, or about two separate majorities grafted onto one another. What Dworetz, McDonald, Zuckert and countless others, defending the alleged Lockean character of the arguments for the American independence do is to smuggle a kind of Calhounian concurrent majority theory under the guise of a philosophical reconstruction of Locke’s influence in America. What they clearly imply, but never quite explicitly state, is that the British Empire in 1765 was a composite political form, a kind of confederation consisting of at least two separate bodies politic and at least two separate majorities (potentially much more, see Zuckert and McDonald), and that in order for the decisions made by the British Parliament to be valid in America, those decisions needed the *concurrence* of the American ‘people(s)’ expressed through their local, colonial legislatures. This entire logic is as foreign to Locke as possible. He was a philosopher of a centralized monarchy, of a unified body politic consisting of **individuals**, not of a loose, confederate empire consisting of **communities**; of British citizens under a common sovereign power, not of many self-governing local polities regulating their mutual relationships through the principle of concurrent majority. This is the deepest reason why the theories about the Lockean origins of the American Revolution represent a very problematic assumption, essentially based on a conceptual confusion.
Conclusion

In this chapter, the standard arguments often made for the Lockean character of the American Revolution were explored and found wanting in one crucial aspect: although appealing as a description of general philosophical values many Americans of the revolutionary period shared, they fail to explain the critical belief all of them shared: that they, as members of colonial political societies had a right to unilaterally secede from the Mother country, the belief expressly claimed not only in many political pamphlets but also in the very Declaration of Independence. The main problem with the theories of Lockean ancestry of the Revolution is that they fail to capture a territorial dimension of the dispute, and more radically its constitutional dimension. In other words, relying on Locke and language of natural rights fails to explain how was it possible that the North American colonials in the 1770s could have believed that the British Empire was a composite, complex, confederated polity, rather than a unitary kingdom, explicitly equated with “body politic” in Locke’s Second Treatise.

The analysis performed here confirms and hopefully further refines the claim put forward by Bernard Bailyn and Gordon Wood; not only that the American revolutionaries of 1776 were the followers of the British radical Whig and country party tradition, they were opposed to the Lockean vision of politics in yet another aspect, and that is their belief, largely taken from the tradition British constitutional concepts, that the Empire was not a unitary state, but a confederated polity with divided sovereignty.
Chapter 4.

Consent, Representation and Liberty: America as the Last Medieval Society

Introduction:

In the chapters 2 and 3 we have surveyed the ideological underpinnings of the country party philosophy that dominated colonial and revolutionary America, as well as the institutional and conceptual changes in England itself, which made these ideas marginalized and inapplicable in the Mother country. Essentially, the project of state building and centralization of power was both politically ascendant and philosophically entrenched. This and the next chapter will analyze more in detail the intellectual climate and political institutions of late colonial America in order to illustrate to what extent the processes of political consolidation lagged in America, and to what extent political reality and colonists’ experience matched the theoretical musing of country party radicals much more closely than the reality of Great Britain itself. These two chapters will argue that the American Revolution was essentially a rebellion of this anachronistic society against the innovations that British Parliament had tried to impose upon them since 1765 – a counterrevolutionary movement against the revolution of the modern state.

As some of the best observers of America had already noticed, the new continent was a paradoxical mixture of archaic, almost medieval political habits and institutions and an unbounded spirit of individual liberty, entrepreneurship and opportunity. Those two distinct elements of American political heritage, ‘liberalism’ and ‘medievalism-pre
modernism’ are usually not only kept separated but treated as being antithetical in the literature. This chapter argues, on the contrary, that “libertarian” and pre-modern streaks of the early American psyche and philosophy were closely connected through their relationship towards the modern state, and that the rejection of state building was a crystallization point of this American early tradition. Its political expression was a localist, parochial system of self-government, dominated by short electoral terms, a model of attorneyship and delegation and local control of political representatives, all inherited from the Middle Ages, whereas the economic expression of the same vision was a free market individualism and entrepreneurial spirit. Those two seemingly conflicting elements are reconciled by their synchronous contribution to the ideology of anti-statism that represents the cornerstone of American revolutionary thought and practice. For an American of the 18th century, liberty was ancient, and tyranny was modern. In its radical revolutionary rejection of the consolidated centralized state, both in economic and political realms, America was indeed the last medieval society of the Western world.

II. American localism

Localism and a territorial framework of liberal order represented an antecedent condition of the revolutionary upheaval, an inherited feature of political consciousness and of the customary baggage of the colonial life that made the intellectual acceptance of radical Whig concepts easier and quicker. Most of the North American colonists came in the 17th century from a country that preserved its medieval forms of local self-government much more than the continental European lands. During the 17th and early 18th centuries they were mostly on the sidelines of the gradual development of a modern state in Great Britain. Hence, the old Whig sharp critiques of administrative

53 This is shared by both the “economic” school (Beard, 1986; Turner, 1961; McDonald, 1958) as well as “ideological” school (Bailyn, 1967; Wood, 1969; Pocock, 1975).
centralization, taxation without consent, regulation of commerce and other things were congenial to the notions of governance they derived from their own practical experience. It is safe to say that the revolutionary experience had grown from a happy conjunction of ideological influences of the literature widely read, and political and economic conditions of colonial life. As Gordon Wood insightfully points out: “What the Whig radicals were saying about the English government and society had so long been a part of the American mind, had so often been reinforced by their first-hand observation of London life, and had possessed such an affinity to their own provincial interests and experience that it always seemed to the colonists to be what they had been trying to say all along” (Wood, 1969: 17).

However, it was not only the ideology of radical country party that was English in origin; such was also the anachronistic institutional set up that had been imported and fossilized in its previous forms which were gradually dissolved in England itself, under the assault of advancing administrative centralization in the 17th century. The ancient, medieval freedom of English parishes and boroughs is one of the strongest sources of this idiosyncratic American localism. The time-honored American traditions of short electoral terms and local control of the politicians by the constituencies are the remnants and reflections of the medieval practice of attorneyship. This feature the literature has very often interpreted as genealogically stemming from the old Gothic constitutionalism (which may be right). Historically, however, it has been derived from the application of the 13th century institution of plena potestas, a revived Roman institution of representation in court, according to which local communities could send their representatives in the central political bodies to discuss taxes and other issues with a king or other nobles. This arrangement meant a delegation of power under a very precisely specified set of circumstances; it gave to a representative (attorney) a right to negotiate

---

54 This is emphasized by Bailyn, 1967: 73-74 and Wood, 1969: 23-28; 181-196, among others.
and conclude agreements with other parties, but in the same time retained his fiduciary duty towards the principal, or *dominus* (local community), similar to the way proxy representation functions in modern corporate firms (Post, 1943; Edwards, 1942). What is particularly important is that in medieval times this institution did not distinguish between ‘private’ and ‘public’ relationships among the contracting parties. An attorney representing a defendant in court, a political representative in the Parliament or an ambassador in foreign kingdoms, all had exactly the same power of *plena potestas*: a power to act in the principal’s interest as if he was physically present (Post, 1943).

This paradox is similar to that identified by Otto Brunner in his analysis of the late-Medieval feuds: the fact that the medieval sources do not make any difference between the ‘private’ and ‘public’, between the ‘state’ and ‘civil society’. Just as a quarrel of the two petty local nobles in Bavaria was regulated by the same laws of just war as a ‘real war’ between the two powerful Kings, a local parish representative in Southern England had essentially the same legal status as English ambassador to France. J. Edwards (1942) demonstrates that *plena potestas* was introduced in England in the late 13th century as a means of providing a stable tax revenue for the King: in order to have the local boroughs and communities assent to the tax levies, a medieval King had to ask and get a binding agreement and consent of every single local community. He had no direct and autonomous power to tax: “As to the opinion that the king was under no legal necessity of obtaining the consent of shires and boroughs to taxation...no convincing evidence has yet been adduced in support of it, and a great deal of evidence tells directly against it...it seems clear that men in the thirteenth century inclined to the belief that consent to taxation should be personal, individual consent.” (Edwards, 1958: 147-48).

55 See Brunner, 1992.
56 Clarke, 1964: 11, writes: “all [members of Parliament] must consent to leave of absence for members, to amended judgements in cases of difficulty and to grants of taxation [emphasis added]”.
Hence the need for mandatory *Plena potestas* as a means of circumventing the problem of consent to taxation: it allowed the local ambassadors (‘knights of shire’) to negotiate and to grant to the king a tax levy for a specific period of time on behalf of a given community. But, even that did not mean that the king could enforce the obligation by force; it only meant that he had law on his side, and that justice required local communities to pay. As one historian notes, summarizing the 14th century document about the British Parliament: “The king reigns, without him there can be no Parliament, but he is no more than the servant of the Commonwealth. His subjects could withdraw themselves from Parliament if they maintain, with particular instances that he has not ruled as he ought and he has no redress against their recalcitrance” (Clarke, 1964: 9).

The concept of the monopoly of coercion and the power to tax as a prerogative of the ‘government’ are inapplicable to the High Middle Ages in general, and specifically to the medieval England. In its historical origins, the formula made famous by the revolutionary Americans of the 18th century, “no taxation without representation,” was just a reflection of a more fundamental medieval formula of a voluntary consent to taxation by the *local* territorial communities (boroughs and parishes). The formula was *quod omnes tangit, ab omnibus approbetur* (‘what touches all, must be approved by all’). This meant that any concrete grant of financial aid to the king must be approved by all estates and all individual local communities. The historical record of the period from 11th to 14th century is full of examples of individual noblemen, clergymen or commoners.

This is a very bitter pill to swallow by many modern scholars who attempt incessantly to project the modern notions of the “state” and “civil society” back into the medieval institutions and avoid the inescapable conclusion that a medieval king did not represent a Weberian ‘government’. They assume that the king has always been an absolute ruler, and that all seemingly democratic and representative institutions of the Middle Ages were created just as ‘consultative bodies’, used by the ‘government’ (the king) to facilitate his ‘policy making’. However, if this was the case, it would be difficult to explain why the king would insist that local representatives should have *plena potestas* from their communities, if they were just called in for consultations? For such attempts to project anachronistic modern notions of ‘state’ and ‘government’ into the English Middle Ages see Monahan, 1987; Maddicott, 2010; Harris, 1981. For the best refutation, see Brunner, 1992.
refusing to pay the subsidy to the king, by invoking the *quod omnes tangit* rationale, in other words, the fact that they did not freely consent to the subsidy. Originating in Catholic ecclesiastical thought, influenced by Roman law, the *quod omnes tangit* quickly found widespread acclaim among the secular magnates and commoner knights in the parliament. We find for example that the Bishop of Winchester in 1217 refused to pay the tax to the king by arguing that he did not personally consent, and the Exchequer was forced to accept his explanation (no forcible collection of taxes in this ‘dark age’!). In 1270, the bishops granted to the king just one twentieth of the requested sum, with the explanation that only those prelates and magnates present in Parliament were bound to pay. And the king had to accept this (Clarke, 1964: 257).

This surprisingly individualistic method of parliamentary “representation” had one crucial aspect: localism. In the English Middle Ages, people sitting in Parliament did not represent the estates or social groups, even less the “nation,” but only their local masters who very tightly controlled them:

In its original medieval form elective representation to parliament had been a device by which “local men, locally minded, whose business began and ended with the interest of their constituency,” were enabled, as attorneys for their electors to seek the redress from the royal court of Parliament, in return for which they were expected to commit their constituencies to grants and financial aid. Attendance at Parliament of representatives of the commons was for the most part an obligation unwillingly performed, and local communities bound their representatives to local interests in every way possible: by requiring local residency or the ownership of local property as a qualification for election, by closely controlling the payment of wages for official services performed, by instructing representatives minutely as to their powers and limits of permissible concessions, and by making them strictly accountable for all the actions taken in the name of the constituents. As a result, representatives of the commons in the medieval Parliament did not speak for that estate in general or for any other body.

58 It is highly significant that the medieval sources do not talk about ‘taxation’, but rather about “help and aid,” “subsidies,” “grants” and so on, underlying the voluntary and contractual nature of the financial revenue the king was obtaining from his subjects.
or group larger than the specific one that had elected them” (Bailyn, 1967: 162-163)

English immigrants to North America of the 17th century brought with them this ancient tradition of localist liberty and decentralized politics, this strange “territorial democracy” which so strongly limited powers of any central agency purporting to exert the functions of a Weberian sovereign territorial state. And although these communal liberties of the Middle Ages began to fade away by the early 17th century in England,59 conditions in North America forced the settlers to preserve them and even radicalize their use in the new circumstances. As Bernard Bailyn suggests, Americans: “starting from the 17th century assumptions, out of necessity drifted backwards...towards the medieval forms of attorneyship in representation. The colonial towns and counties like their medieval counterparts, were largely autonomous, and they stood to lose more than they were likely to gain from the loose acquiescence in the action of central government” (Bailyn, 1967: 164). Instead of moving from the medieval decentralized conditions towards political consolidation, as had been the case with England in the centuries before the American Revolution, the North American colonists went back to the original conception of the House of Commons as a confederation of localities. Seemingly hypermodern Americans reached deeply back into the Middle Ages to shape their political and social institutions in the new world.

The feebleness of colonial governments in America encouraged and in some sense even forced the colonials to rely on those older traditions and instruments. Since

---

59 A series of tax rebellions in England against the centralizing policies and high taxation needed for military buildup under Tudors testify to this: late 16th century was a golden age of tax rebellions in England, for example Kett’s Rebellion 1549, Wayat Rebellion 1553, Pilgrimage of Grace 1536 and so on, see Tilly, 1975: 22-23. Those rebellions were the last stand of localist authorities against the advancing and consolidating modern state. Similar phenomena could be observed in France, Spain and other continental countries (ibid.).
the power of colonial government was largely formal and ineffective, and colonial legislatures were formed and maintained on the basis of local representation, residential requirements, annual elections and binding instructions to the legislators, the resulting system was one of extreme decentralization of decision-making, closely tracking that of medieval England or Germanic states. The main governing units in the colonial period were the townships in New England and counties in the South and mid-Atlantic colonies (Jensen, 1968; Wood, 2011b). They were the true sources from which the almost perennial American localism and skeptical attitude toward centralized government initially sprang up. In colonial times, the governments of every individual colony were ruled by an appointed bureaucratic oligarchy and a rubber-stamp upper house of the legislature, whereas the most local influence was felt in townships in counties. There, the inhabitants could freely choose their representatives (or rule by direct democracy), and from the earliest period of colonization they had a significant and wide autonomy. As one historian notes: “The two most basic units of local government were townships in the New England and counties in the colonies to the South. Town government was in large measure self-government, for the towns divided their lands, controlled schools and churches, levied town taxes and elected town officials and representatives to the legislature” (Jensen, 1968: 21). Moreover, the lower houses of the colonial legislatures were not elected on colony-wide elections but rather selected and appointed by the said local governments as their ambassadors. Colonial legislatures were a sort of


61 As for example Andrews (1924), Kaufman (2009) and Bailyn (1968) show the power of colonial government was very weak, especially when compared to the power of central government in the Canadian colonies. The main reason was that the colonial authorities, led by the governors, did not have much of a power of patronage, which made a Walpole-style “influence” on popular legislatures very difficult to exert. Thereby, although in theory (law) the governor and his hand-picked upper chambers have great deal of power, in practice their power was very limited. For this see especially a detailed analysis in Bailyn, (1968:70-105). Another reason was a “salutary neglect” of the colonies, especially in the early to mid-18th century where British government did not pay too much attention to colonial governance and was preoccupied with the politics of Europe.
confederations of local political communities: “the elective or lower houses of the colonial legislatures went by various names. In New England they were made up of representatives from the townships; in the other colonies, from the counties, the parishes, and from certain cities and boroughs” (Jensen, ibid). In the time when almost the entire Europe went in the direction of growing centralization and administrative, bureaucratic gleihschaltung, Americans went back to the essentially medieval system of local representation and self-rule.

The two most remarkable institutions, both medieval in their origin, were blooming in late colonial and revolutionary America, and were front and center of many constitutional debates during the revolutionary period: annual elections and binding instructions to legislators. The practice of electing annual and sometimes shorter parliaments was prevalent in England from the Middle ages. In the 13th century, the parliaments were often called after much shorter periods than a year; for example, between 1272 and 1280 the parliament meet fifteen times, and only once granted tax revenue to the king (Maddicott, 1981: 62). The strictly annual elections for the parliament were legally introduced after 1330 and this practice remained for centuries. For the most part, the annual election meant that no single parliament could do business for much longer than several weeks: “…each parliament had only a single session, although its length could vary considerably. Some parliaments lasted for less than a week, although ten days to two weeks was more typical” (Harriss, 1981: 35).

All this started to change radically in the seventeenth and especially early eighteenth centuries: first, the parliaments were prolonged to four years and then, according to the Septennial Act of 1716, to even seven years. Save for a handful of radical Whigs and their allies among the gentry reactionaries, annual elections were considered an antiquated remnant of primitive medieval politics: modern Parliament needed to participate in governance on a daily basis (Wood, 1969: 26).
In contrast to this, in America, this same antiquated fossil of British tradition was very much alive and thriving. Annual elections were considered a cornerstone of democracy, especially after the experience with earlier colonial legislatures, sitting for five or seven years, often manipulated and bribed by the governors and English bureaucrats. Americans relapsed happily into the medieval-Gothick orthodoxy of annual elections as the surest bulwark against “corruption” of colonial rule: “when annual elections end Tyranny begins,” proclaimed one South Carolinian in 1776. During the Revolutionary war, Massachusetts Arundel County militia members proposed annual elections because “they are most friendly to liberty, and the oftener power reverts to the people, the greater will be the security for a faithful discharge of it” (Jensen, 1967: 336). After 1776, all new state constitutions except South Carolina provided for annual elections and greatly increased the number of legislators (Wood, 1969). A New York pamphlet published in 1778 echoed the widespread adherence to annual elections by deriving the transgressions of the British parliament against the colonists from the abandonment of short electoral terms by the British themselves: “long duration of the parliament is allowed by all to be principal Cause of its present corrupt State” because “the Ministry knowing that they [members of the parliament I.J.] are to continue for seven years, think it worth their while to attempt and seduce them with a high Bribe” (Publicola, [pseud]. 1778).

Perhaps the most striking illustration of the ubiquitousness of the old concept of annual elections is the fact that even Thomas Paine, arguably the most radical and Enlightenment–inspired among the American revolutionary thinkers and pamphleteers, also subscribed to short elections, rotation and binding instructions. In ‘Common Sense’, he argues that the legislative business should be carried out “by a select number chosen from the whole body, who are supposed to have the same concerns at stake with those who appointed them, and who will act in the same manner as the whole body would act were they present…let the assemblies be annual, with a president only…let each colony
be divided into six, eight or ten, convenient districts, each district to send a proper number of delegates to Congress, so that each colony sends at least thirty... each Congress to sit and choose a president by a following method. When the delegates are met, let a colony be taken from the all thirteen colonies by lot, after which let Congress choose by ballot a president out of delegates of that Province. In the next Congress, let a colony be taken by lot out of twelve only, omitting that colony from which the president was taken in the former Congress.” (Paine, 1986 [1776]: 14, emphasis added)

In addition, in order to better effectuate the old notion of local, communal representation, annual elections were reinforced by a renaissance of binding instructions, also a very old English medieval institution. It came from the times when the local parishes were represented by plenipotentiaries – attorneys of local communities – when the parliament had very little real power, and when the very concepts of ‘body politic’ and ‘political sovereignty’ were unknown. In those times, the plenipotentiary attorneys were the agents of local communities who did not have a right of independent judgement that could go contrary to the will of the communities that sent them to Parliament.

From the beginning of American colonial settlement, the practice of binding instructions was strongly entrenched: “In the colonies, the practice of voting instructions commenced with the very beginning of New England. In 1641, the Massachusetts General Court asked the town to instruct their representatives on two issues, one of which was the method of elections. Plymouth had a statute providing that town meetings should hear from their representatives what had been done in the legislature and vote “instructions for any other business they should have done.” Dover, New Hampshire, instructed its representatives every year since 1658, and Boston did this almost annually

62 For a wide-ranging discussion how the concepts of political sovereignty came into being in England see Kantorowitz 1957, and Skinner, 1989.
63 See above, pp.3-5.
since 1721” (Reid, 1989: 98). Americans of the late 18th century reinforced those old institutions and gave them the constitutional status: in Pennsylvania, Vermont and North Carolina binding instructions to the legislatures were obligatory (Wood, idem). In many other states, although not constitutionalized, they were nevertheless rampant and widely accepted as a cornerstone of political liberty. Especially New England had a long and uninterrupted history of local democracy coupled with the system of strict medieval attorneyship, including the instructions. The representatives of the New England townships even after the Revolution very often understood themselves just as the new incarnation of the medieval ‘knights of shire’, attorneys with the power to negotiate with other private parties. As late as the 1830s Alexis de Tocqueville wrote: “the majority [in America, IJ]…regards public functionaries as its passive agents and is glad to leave them the trouble of carrying out its plans….It treats them as a master might treat his servants if, always seeing them act under his eyes, he could direct and correct them at any moment” (Tocqueville, 1969: 253-54).

The popularity of binding instructions was immense: it was defended as a hallmark of the American freedom. And the metaphors of servants and masters were widely used to describe the relationship between the people and representatives. One of the leading critics of the planted aristocracy in South Carolina wrote that if binding instructions were to be relaxed “it will at one stroke transform us into legal SLAVES to our lordly SERVANTS.” Another writer argued explicitly for the republic of parishes which would create a state as a derived, composite community of local units, finding their least common denominator: “whatever difficulty there may be in convening and taking the sense of all members of a society at once; there is none in assembling parishes separately…if after the election the members are free to act on their own accord, instead of abiding by the direction of their constituents…it would be a matter of indifference

64 In most cases, this tradition was not identified as medieval by the colonists, but simply as “American”. Or alternatively, as “ancient” or “Gothick”.

103
from what part of the Republic the Legislative body was taken…What nation in their senses ever sent ambassadors to another without limiting them by instructions” (Wood, 1969:190). In his letter of instructions to Boston representatives in the colonial legislature of Massachusetts, Samuel Adams wrote that voters “delegated to you the power of acting in their publick Concerns in general as your own prudence shall direct you…always reserving to themselves the[?] Constitutional Right of expressing their mind and giving you such Instruction upon particular matters as they at any Time shall Judge proper” (Reid, 1989: 99). As one contemporary observer put it “a representative who should act against the explicit recommendation of his constituency would most deservedly forfeit their regard and all pretension to their future confidence.”65 One Pennsylvanian writer in 1728 wrote in a tongue-in-cheek philosophical manner that there was “no transessentiating or transubstantiating of being from people to representative, no more than there is an absolute transferring of a title in a letter to an attorney” (Bailyn, 1968: 85).

It is not a big surprise that American colonists were not greatly enamoured of the concept of ‘virtual representation’, well established in England and used by the Parliament in the 1760s and 1770s to justify the British colonial policy of taxing Americans. This doctrine was considered by colonials to be appalling and “the most monstrous, the most slavish doctrine that was ever heard.” Echoing the English radical Whigs and their criticisms of ministerial and cabinet corruption, they offered a trenchant defense of binding instructions to legislators as a palladium of American liberties which was, according to Arthur Lee, denied by the British government “since the system of corruption which is now arrived to so dangerous a height began first to predominate in our constitution. Then it was that arbitrary ministers and their prostitute dependents began to maintain this doctrine dangerous to our liberty, that the representatives are

independent of the people. This was necessary to serve their tyrannical and selfish purposes…[they are] trustees for their constituents to transact for them the business of government…and for this service they, like all other agents, are paid by their constituents till they found it more advantageous to sell their voices in Parliament, and then…wished to become independent of the people” (Bailyn, 1967: 171). Here we have again a full-throated defense of the same medieval form of representation via plena potestas, the same depiction of legislators as attorneys or proxy negotiators who do the “business of government” in the same way attorneys or real estate agents do other kinds of business for their principals and clients. And the concept of virtual representation that separates the rulers from the ruled, for a typical American pamphleteer of 1760s and 1770s, was just a fraud concocted by the “arbitrary ministers and their prostitute dependents” to advance their own selfish interests.

The inhabitants of western New Hampshire articulated the idea in a more stringent and more philosophical sense. In their view, the relationship between the towns and state legislatures was analogous to the relationship between the state legislatures and British Parliament, and there were as many bodies politic in New Hampshire as there had been local communities: “to unite half a dozen or more towns together, equally privileged, in order to make them equal to some one other town, is a new practice in politics. We may as well take the souls of a number of different persons and say they make but one, while yet they remain separate and different” (Bouton, 1877: 231). If a local representation was questioned, there was no difference in the mind of American colonials between the provincial and imperial governments: “We are contending against the same enemy within which is also without,” said a typical resolution written by the rebels of the Connecticut River valley, who were soon to secede from New York and create the republic of Vermont, “pursuing the same general cause…that there cannot be taxation without representation.” In 1769 the reverend John Joachim Zubly attacked the British theory of virtual representation, invoking the medieval localist idea of
representation: “every representative in Parliament is not a representative for the whole nation, but only for the particular place for which he hath been elected; if not elected, he cannot represent them, and of course not consent to any thing in their behalf” (Zubly, ([1769]1972): 17). Just as the Continental Congress was an assembly of state ambassadors, in many ways the colonial and early revolutionary provincial/state legislatures were just collections of independent ambassadors of local communities. The basic unit of political representation, the living ‘soul’ of the body politic, remained the local community, a town or a parish, whereas states represented just the derived composite forms, without any constitutional significance.

However, all this was not a new invention prompted by the revolutionary upheaval. On the contrary, this constitutional localism was well established from the very beginning of colonization. The colony of Connecticut was created in 1639 when three independent cities, Hartford, Windsor and Whethersfield, came together and drew up an instrument of incorporation, creating thereby a central government for specific purposes. New Haven was created in 1643 when six cities joined together in a confederation to establish the separate colony of New Haven, and then in the 1660s joined Connecticut. Gordon Wood points out that colonial Rhode Island was also a loose confederation of cities: “Although ostensibly a colony, seventeenth century Rhode Island was in reality four more or less independent towns: Providence, founded by Roger Williams; Portsmouth, founded by Anne Hutchinson, in flight from the Puritans in Boston; Newport, founded by William Coddington; and Warwick (or Shawomut, as it was called then) founded by a real radical, Samuel Gorton…” (Wood, 2011b: 713). Cities and localities were pre-existing political societies coalescing voluntarily to create a kind of federative structure in the colonial framework. A kind of federative duality between the state and national governments that we see in the period after 1787, in the 17th and early 18th centuries existed between the local and colonial or provincial governments. Many colonial political structures were created by a similar bottom-up process of federalization.
in which the local communities would confederate and establish overarching political structures. But those provincial or colonial legislative structures remained entities of limited and delegated powers; localities such as the cities and towns in New England and parishes and counties in the Chesapeake area remained the basic constitutional units. This is best seen in the fact that throughout the colonial period there were independent cities that did not belong to any colony, and also in the fact that the same process of spontaneous bottom-up federalism with secessions and consolidations of independent cities and counties into new political units was repeated in the revolutionary period. The republic of Vermont was created by some counties of New York seceding to establish an independent state. Northern regions of Massachusetts secede from it to form the state of Maine; Kentucky seceded from Virginia and Tennessee from North Carolina. Not only in terms of institutional heritage and mental attitudes but also in terms of its kaleidoscopic, fragmented political geography, colonial and early revolutionary America was a true heir of the European High Middle Ages.

Many political sophisticates of the 18th century were already very much annoyed by the unenlightened and reactionary localist tradition of politics in America. William Smith of New York complained as early as 1750 that the provincial assembly consisted of “plain, illiterate husbandmen, whose views seldom extended farther than to the regulation of highways, the destruction of wolves, wild cats and foxes, and the advancement of their little interests of the particular counties, which they were chosen to represent” (Smith, 1782: 243). Tory politician Samuel Peters of Connecticut similarly complained that those same assemblies were composed of “contending factions whose different interests and pursuits it is generally found necessary mutually to consult, in order to produce a sufficient coalition to proceed on the business of the state.” So we have here developed the same argument against the ‘inefficiency’ of American government that was to be used pretty much until now: the government is too slow, too timid, too incapable of doing great things quickly. Moreover, the unenlightened, narrow-
minded peasants see “the common interest only through the eyes of their deputies,” who in return care only to provide “private or particular advantages to their own towns or persons, to the prejudice of other towns and the rest of their fellow subjects” (Wood, 1969: 29). One of the modern, nationalist politicians in Massachusetts dismissed this widespread trend of “erecting small democracies” with local ‘ambassadors’ within the new states of the union: “they [have to withdraw all their representatives from the legislature] for it is highly unreasonable that they should sit there as spies. The towns should send them as ambassadors, or commissioners plenipotentiary, and in that character they ought to be received, if received at all, not as representatives.” (Wood, 1969: ibid.)

A similar sentiment against the medieval habits and ways of peasants was shared by later, post-revolutionary American nationalists. One of the principal advocates of political centralization and consolidation in the 1780s, James Madison, was equally dissatisfied with American petty localism. Commenting on Jefferson’s proposal that the Virginia state senators should be appointed by the districts, he argued furiously: “The appointment of Senators by districts seems to be objectionable. A spirit of locality is inseparable from that mode. The evil is fully displayed in the County representations; the members of which are every where observed to lose sight of the aggregate interests of the Community, and even to sacrifice them to the interests or prejudices of their respective constituents…so far from being the representatives of the people, they are only an assembly of private men, securing their own interests to the ruin of the Commonwealth” (Madison, 1865: 186). It is difficult to overlook here a typical aristocratic arrogance of a wealthy planter against the plain folks who do not understand their own real interests, and who considers himself, or perhaps a clique of like-minded aristocratic illuminati, as being uniquely capable of defining the “public interest” as opposed to “private interests.” The same proud spirit of localism that Tocqueville and Jefferson extolled as a cornerstone of American liberty, Madison disparages as an obstacle to efficient government.
III. Libertarian Medievalism – Tocqueville and beyond

The picture of America emerging from the previous pages seems to militate sharply against the received wisdom, reinforced by the canonical readings on American founding, the wisdom emphasizing the radically novel and democratic character of American society. The absence of feudal hierarchies, radical egalitarianism, plenty of economic and social opportunities in the new world, great social mobility - all those factors suggest to a student of Western history that America is perhaps the last place in the world in which one would want to look for the medieval remnants. And yet, as we have seen, there is much of the medieval world that survived in the late colonial America that did not survive nearly as much in Europe of that time. Moreover, and to make things even more complicated and counterintuitive, it appears that this medieval, anachronistic world of American politics was indeed coupled with tremendous economic and social advancement, entrepreneurship and private business opportunity. How was this possible?

The shortest answer is that this peculiar combination of traditional medieval political localism and modern free market economy is counterintuitive only if we accept the typical sociological views of history of Marx (or perhaps Weber) as paramount accounts of modernization. In other words, if we consider history as a succession of various all-encompassing socio-economic ‘formations’, in which the more primitive ones give way to the more advanced ones, i.e. feudal peasantry comes before capitalism, capitalism before socialism and so forth. In this view, which is, at least in its most general features, almost universally shared among modern social scientists, liberal individualism, a free market economy and the prevalence of private property and entrepreneurship could not be the ancient heritage of British society, but the products of “modernity” from the 16th century onwards. On the other hand, the Middle Ages as earlier have to be backward, static, communal and hierarchical. In this view, modernization in the Anglo-Saxon world came in the 16th and especially 17th centuries, with the spread of intercontinental trade, financial innovations and displacement of peasantry, eventually culminating in the
Industrial Revolution. This is the process driven by technological change and administrative innovations, rather than by the ancient laws and customs that were considered a hindrance to change.

This picture of modern history has been shown to be of dubious validity. Modern social history of England has shown rather convincingly that both medieval England and the early modern Anglo-Saxon world were essentially liberal communities full of economic and social opportunities for ordinary people, rather than hierarchical systems of serfdom. Liberty, in both ancient and modern senses – both as the right of collective political self-government and individual liberty to act and trade and seek profit opportunities – were deeply entrenched as far back as 11th century, and perhaps earlier. The great divergence between England and the rest of Europe did not come in the 18th century with the Industrial revolution, but rather in the 13th century with the beginning of the process of state building in Continental Europe, culminating with the acceptance of Roman law and political absolutism a couple of centuries later that stifled and suffocated the ancient liberties of the high Middle Ages (Bassani and Lottieri, 2003). Those liberties only survived in England, and moved from there to America, just as they came under heavy assault in England by the absolute monarchs of the 16th and 17th century.

Alan Macfarlane shows that at least from the 13th century onwards England has had an individualistic, capitalist economy based on individual, instead of family property, a wide freedom of buying and selling land, extensive wage labor and all other elements of a free market capitalist economy, completely absent in the traditional peasant societies, one of which England had to be in the 13th century, according to traditional conception of history: “Recent work on thirteenth century manorial documents has uncovered a very extensive land market from at least the middle of the 13th century. There is rapidly accumulating evidence of the buying and selling of pieces of land by non-kin; the idea that land passed down in the family is now increasingly regarded as fiction.” (Macfarlane, 1978: 259). Moreover, it seems that “recent studies in the land market of the
later fourteenth and fifteenth centuries suggest that more land was bought and sold than passed on to children…Court rolls suggest that the family’s claim on land was less strongly influential in 1400 than in 1700” (ibid. : 258). Keith Wrightson (1982: 223) argues that by the late 16th century “English society was already deeply permeated by the ethos of agrarian and commercial capitalism. Inequality of wealth and opportunity was nothing new. Beneath the rhetoric of contemporary ideals of commonwealth was concealed the cold reality of a harsh, competitive contract society.”

In a sweeping revision of the received Marxist and Weberian historical schemata, the new social historiography established that laissez-faire in England (and in America) has not been a product of modernization but an antecedent condition for it. In the Anglo-Saxon world, individualism, entrepreneurship and modern economic liberty were medieval phenomena: “…if we use the criteria suggested by Marx, Weber and most economic historians, England was as “capitalist” in 1250 as it was in 1550 or 1750. That is to say, there was already a developed market, mobility of labor, land was treated as a commodity and full private ownership was established, there was very considerable geographical and social mobility, a complete distinction between farm and family existed, and rational accounting and profit motive were widespread” (Macfarlane, 1978: 268).

The consequences of this are tremendous. Not only that conventional concept of “social modernization” cannot be sustained anymore, but also its American expression, the “declension” model of early North American settlements, must be revised accordingly. An allegedly “communitarian” Puritan from whom the entrepreneurial Yankee would “declense” in the 18th century appears to be a myth.66 The Puritan was already a Yankee. The old, mythical notions of the early New England settlements as a paradise of social homogeneity, communitarian sense and religious piety, devoid of

commercial, entrepreneurial and acquisitive spirit could not hold. As Jack Greene emphasizes, most of the Puritan settlers were economic immigrants who came to America in pursuit of economic gain and better life, having failed to achieve it in London or in other English cities (Greene, 1986:32). Far from exemplifying the pious communitarian spirit, most of them were highly individualistic personalities, raising nuclear families with little tribal connections and integrated into a wider economic and mercantile order of the New World. New England, as one historian noticed, represented a “relatively fluid society in which individuals and independent nuclear families were little cushioned by kinship ties and obligations” (Wrightston, 1982:63).

Alan Macfarlane has convincingly shown that the collectivist, tribal, self-sufficient peasantry of the kind the older historians identified with the 17th century Puritan settlers was only marginally present in England of the 13th century and for all practical purposes had disappeared entirely by 1500 (Macfarlane, 1978). The old towns and parishes of East Anglia from which the first Puritan settlers came to America, by the early 17th century were all parts of a thriving, commercial and “proto-industrial” society, with significant gender and child equality, individualized property rights and extensive involvement in trade and commerce. Moreover, the early surveys show that as far back as 1318, in East Anglia between 50 and 70% of the male population were working for wages for capitalists and land owners (ibid.). It is not a big surprise that the descendants of those same people, 300 years later, especially those who decided to risk everything and immigrate to America, would be skilful laborers and entrepreneurs themselves.

This is perhaps most glaringly seen in the fact that most of the New England townships were established and run for a long period of time as private corporations, not as standard political entities. In this seemingly strange system the owners and shareholders governed the local communities as if they were private firms: the shares in the township corporations were bought and sold (women had a right to own shares as well), political and voting rights were apportioned in accordance with how many shares
an individual had, and taxes were also apportioned in the same way (Martin, 1991: 162-164). In many cases, the shareholders were not physically living in the town, but were absentee landlords, speculating on the increase in land value due to the local improvements. Nevertheless, the stake in the local community that they had by virtue of owning property entitled them to have a say in local politics. This world was very far removed from the communitarian paradise of civic republican virtue portrayed by Pocock or Wood, and resembles more the features of the Macpherson’s ‘possessive individualist’\(^67\) version of liberalism:

From the beginning of colonization, New Englanders used shares to apportion rights and responsibilities in towns. They divided land by shares, and based political participation upon the holding of shares. In some places, they even voted by shares [thus granting major shareholders disproportionate “say’ in town affairs]. Shares shaped essential relationships between individuals and their towns. They gave to the towns a strong business character by reflecting the principle that rights were anchored by investment. (Martin, 1991:185)

What made the New England townships such a powerful combination of medieval localism and hyper-modern capitalist entrepreneurship was the specific frontier environment in which they emerged. All those cities were built from the ground up on a green field. In most cases, labour was abundant but capital very scarce. To attract a large number of new settlers wealthy investors needed to provide start-up capital in the form of credit for the building material, equipment and tools needed, other raw materials and transport. And all of this required a tremendous entrepreneurial skill and offered, consequently, a very high rate of return on investment. The emergence of an entirely new class of frontier entrepreneurs, people who would organize and coordinate the process of settlement and building of the new towns, is one of the most fascinating aspects of early

\(^{67}\) See, Macpherson (1962).
American history. It puts into question the accepted narrative of the official historiography about the early communal Puritans who only became entrepreneurially successful much later. Instead, entrepreneurs and investors in many ways dominated the social life of the New England communities from the beginnings. And almost none of them were ‘aristocrats of money’, but rather local people, of poor background in many cases, who capitalized in a typical American manner on the business opportunities offered by the expansion of the new settlements. Many of them were specialists who would go from town to town and repeat the same routine all over again: petitioning the court for the land grant, organizing the trans-Atlantic transport of the raw materials, tools, and other necessities, pool the capital of wealthy merchants willing to hold the land in the new city in return, enlist the poor laborers willing to settle and assign them their shares and so on (Martin, 1991).

Most New England cities remained private corporations until the end of the 17th century, and some even longer. Their local assemblies were literally stockholder meetings, their ‘mayors’ – chief executive officers. Before the early 18th century we cannot speak at all about the distinction between the private life and political life in most of those cities; they were united in this peculiar ‘business’ model. New England was built from the very beginning as New England Inc. The majority of cities were founded as stock companies in which land was apportioned in accordance with the number of shares, and the number of shares in accordance with the amount of money paid into the fund for buying the land from the Indians, which was the largest initial cost of setting up a new settlement (Martin, 1991: 152-53). However, even the cities that were not explicitly created as the stock companies of land speculators, for example those established by religious missionaries, were nevertheless operated and managed as stock companies. The town of Hadley was founded by radical Puritans but as Martin suggests they “did not advance any religious or social program.” What they were doing instead was allotting the amount of land in accordance with the number of shares derived from the percentage of
start-up capital invested by the individuals. The city of Lancaster, another pious religious town founded by dissenters, prohibited non-shareholders from voting for the local assembly. Another radical sect, led by the English immigrant Ezekiel Rogers, founded another city called Rowley in 1653, in the “glory of God.” And yet the political and economic regime was very counterintuitive for a community of God’s humble servants: only the shareholders (called “inhabitants”) could live there and vote, and voting rights and land were again apportioned exclusively according to the amount of shares owned: “Neither the wealthiest settler, nor the town minister, had the largest land share in Rowley: instead the largest investor did” (Martin, 1991: 153). The capitalist spirit in early New England was so pervasive that it equally shaped the explicitly private and commercial as well as ostensibly “religious” and “communal” local societies. Hence as Martin concludes:

When historians attribute communal characteristics to the land system of the New England towns, they are mistaking the fraternity of the shareholders for the fraternity of town-dwellers. And when they attribute egalitarian characteristics to town meetings, they are calling “town democracy” what in many cases was really shareholder democracy” (ibid. 4).

IV. Tocqueville gets it right – sort of...

Some of the best earlier observers of American life were aware of this fact that American domestic institutions represented a modified form of medieval local order while contributing to the upholding of modern individual freedom. Alexis de Tocqueville, paradoxically, is one among them. This is surprising insofar as Tocqueville in his “Democracy in America” saw America as a hypermodern society of enlightened republican egalitarianism, showing to Europe its inevitable democratic future. New England township democracy was seen by the French historian as a radical novelty, a
product of Enlightenment thinking and republican rejection of European conservative mores and hierarchical political ethos. According to younger Tocqueville of ‘Democracy in America’, “The foundation of New England was something new in the world, all the attendant circumstances being both peculiar and original” (Tocqueville, 1969: 35).

However, in his Old Regime and the Revolution Tocqueville concedes that he was wrong in this regard, that the New England township democracy was everything but “something new in the world”; it was, in fact, a form of the very old medieval localist democracy. In analyzing the gradual disappearance of the communal institutions of self-government in modern French and German cities and villages, and pointing to a curious phenomenon that those cities appeared to have been much more vigorous and autonomous in the 13th and 14th centuries than in his own time, he writes: “…in the organization of this small community, despite its poverty and servile state, I discovered some of the features which had struck me so much in the rural townships of North America; the features that I had then –wrongly – thought peculiar to the New World.” (Tocqueville, 1998: 48). It suddenly dawned on him that local American freedoms he wrongly described in Democracy as a hypermodern, Enlightenment invention of American egalitarianism and democracy, were actually a direct descendant of European medieval freedoms. The New England township was a medieval parish, surviving its transatlantic journey on the ships carrying the English settlers, just removed from the feudal context: “They resembled each other [English parish and the New England township]…as much as the living could resemble the dead. These two beings with such different fates had had, in reality, the same birth. Suddenly transported far from feudalism and made absolute mistress of itself, the medieval rural parish became the New England township [emphasis added].” (Tocqueville, 1998: 48). In his now canonical book about the culture of America, ‘Albion’s Seed’, David Hackett Fisher concurs with later Tocqueville in arguing that the New England township democracy was nothing new, but just the old East Anglian town assembly: “When the Puritans came to America, this
ancient system of government by town meetings, selectmen and fundamental laws became the basis of local government in New England. In the year 1636, a statute of the Massachusetts General Court defined town governments in their classical form. Throughout the smaller communities of New England, those institutions have remained remarkably stable for many generations” (Fisher, 1989: 198).

One of the primary corollaries of this transportation of medieval localism into a world devoid of feudalism and rigid social hierarchies was that local self-government in the New World very early became some kind of libertarian utopia, with an extremely weak government, bordering on anarchy:

In the United States…the English system of decentralization is exaggerated: the towns become almost independent municipalities, kinds of democratic republics. The republican element which is the base of English mores and English constitution displays itself without opposition and develops. Government, properly speaking, does little in England, and individuals do much; in America the government is no longer involved in anything, so to speak, and individuals united together do everything. The absence of upper classes, which made the inhabitant of Canada still more submissive to the government than the inhabitant of France was at that time, made the inhabitant of English colonies more and more independent of authority (Tocqueville, 1998: 281).

And in order to provide a vivid context for this theory, Tocqueville contrasts the situation in England and English colonies with what was happening simultaneously in French Canada, which had followed the opposite course: exporting French statism and administrative centralization to the New World instead of petty localism and the spirit of independence and self-government. His description articulates the conceptual duality that has eluded so many contemporary historians and political scientists – the duality between liberty and medieval localism on the one hand, and the modern state and oppressive social control on the other. Tocqueville argues that “…in Canada government never adopted the great principles which can render a colony populous and prosperous, but on
the contrary, employed all kinds of petty artificial procedures and little regulatory tyrannies to increase and spread the population…” (Tocqueville, 1998: ibid.). He bestows little praise upon the famous Canadian ‘orderly’ bureaucratic patterns of life and settlement so often favourably contrasted by historians and philosophers with American violent, wild and anarchical individualism and disorder. He compares French Canada with Algeria, another flagship colonial territory of the French government, ruled by the same logic and spirit of ‘orderly’, bureaucratic and paternalistic benevolent absolutism: “Canada is in fact a faithful picture of what we have always seen in Algeria. On both sides one is in the presence of this government that is almost as numerous as the population dominant, active, regulatory, constraining, wanting to foresee everything, taking everything over, always more familiar with the interests of the governed that they are themselves…” (Tocqueville, 1998: ibid.)

Tocqueville established this conceptual link between local communal liberties and modern individual liberty, between ancient republicanism and libertarianism much earlier, in his *Democracy in America*. There, he was equally appreciative of American local liberties as the strongest check against political despotism and guarantees of modern, individualistic liberty: “What good is it to me…if there is an authority always busy to see to the tranquil enjoyment of my pleasures and going ahead to brush all dangers away from my path without giving me even the trouble to think about it, if that authority, which protects me from the smallest thorns on my journey, is also the absolute master of my liberty and of my life? If it monopolizes all activity and life to such an extent that I must languish when it languishes, sleep when it sleeps, and perish if it dies?” (Tocqueville, 1969: 93). Although *Democracy in America* became famous and popular primarily for its analysis of democracy and the “tyranny of the majority,” as well as for its emphasis on radical novelty and modernity of American experience, we can see that even in this comparatively earlier work Tocqueville anticipates some of the key elements
of his mature political theory of *The Old Regime and Revolution*, which emphasized the ancient roots of political and economic liberty, and their transfer to America.\(^{68}\)

**Conclusion**

We can now see that our initial and seemingly strange contention about American “medieval libertarianism” looks very plausible when interpreted in the context of these different strands of literature that have usually been kept in isolation. Tocqueville indeed saw libertarianism in America being reinforced by the medieval political sources. This concept has been reinvigorated in modern political and historical literature by Bailyn, Wood, Fisher and others. On the other hand, a new social history, exemplified by Macfarlane and Wrightson, has discovered a widespread laissez-faire liberal practices and institutions in medieval England, which were directly transplanted into the new world. The main difference between social history and the Tocqueville-Baylin-Wood-Fisher line of argument is that the former treated capitalism as an already existing thing in England, whereas the latter saw it largely as a by-product of the removal of medieval localism from the feudal context into the anarchic conditions of the American colonies. Although my first guess would be that Macfarlane and Wrightson are probably more in the right, this does not have to be presented as an either-or alternative; it could be that prominent expressions of an already existing individualistic and liberal culture, descending from the Middle ages, were additionally reinforced and strengthened by American domestic conditions. It made the amalgamation easier and quicker. Eventually, the issue boils down to the perennial methodological question: culture or institutions? If we want to more strictly qualify or quantify the contributions of English cultural individualism and anarchic institutional conditions of America to what appears as distinct

\(^{68}\) For an analysis of the contradiction between “Democracy in America” and “The Old Regime and the Revolution,” see Jankovic 2016 [forthcoming].
American ideological libertarianism, we would have to decide about this prior methodological problem. That task is beyond the scope of this chapter.

This revision is not meant to discredit everything that had been said by the conventional approaches about America before, especially that America was much more democratic and self-governing polity than Europe in the 18th century: on the contrary, this analysis supports that contention. Where it revises the traditional account is by questioning the claim that America was more liberal and more democratic because it was less rooted in political institutions of the old world, and the Middle Ages (as Tocqueville in “Democracy” and most other analysts claim). It rather was such because it was more rooted in the pre-modern political tradition and less affected by political modernization in the form of a nation-state imposing its administrative and legislative supremacy over localist authorities (As Tocqueville in “Ancient Regime” claims).
Chapter 5.

Medieval heritage: Consent, Rebellion and Liberty

Introduction

The pre-modern medieval character of American political tradition is perhaps nowhere seen more clearly than in the doctrine of rebellion against the unlawful government. It is widely acknowledged to be the central tenet of the revolutionary ideology, and a deeply modern and revolutionary concept to that, separating the new world from the monarchist and traditionalist Europe. However, as we shall see, the American philosophy of a lawful rebellion against government has always been couched in terms of the community’s right to redress the injustices and corruption of the actual regime, not to enforce the social contract among individuals. When Thomas Jefferson in his “Summary View…” wrote: “his majesty will have reason to expect when he reflects that he is no more than the chief officer of the people, appointed by the laws and circumscribed with definite powers in assisting the working of the great machine of government, erected for their use, and consequently subject to their superintendence,” many modern analysts would see a Lockean, enlightened challenge to the old doctrines of divine rights of Kings.69

69 The literature about the Lockean roots of the American concept of the right to resist is enormous. See eg. Zuckert, 1994; McDonald, 1985; Becker, 1942 Rossiter, 1953; Pangle, 1985.
In this dissertation I argue that we must look elsewhere to understand the key sources of this challenge. Like much of early American liberal thought, Jefferson’s position on this matter represented a slightly repackaged form of reactionary, medieval challenge to the modern doctrine of state sovereignty and monopoly of coercion. Kings in medieval times were not ‘sovereign’; they were at best a combination of natural aristocracy and democratically elected officials, subject to removal by the people in cases of bad behaviour. Otto Brunner, one of the top experts in German medieval history writes: “...in medieval period, lex, the sphere of positive law, was held to be identical with ius, the “law of nature” or justice. In cases of doubt the faculty of deciding what was right did not lie with the ruler alone; there was always a possibility of resistance against a ruler who did not act rightfully. In this respect, an internally sovereign absolutist state came into existence only after this faculty of decision, in fact, rested with the ruler alone” (Brunner, 1992: 321). As late as 1771, Obediah Hulme, in a widely read pamphlet which gained the status of a constitutional handbook in American colonies, argued that the original “Gotick” constitution meant not only the annual Parliaments but also elective Kings (Colbourn, 1965: 31). The notion that American colonists needed Locke in order to develop a concept of their right to resistance against the unlawful rulers is plausible only if we exclude any self-awareness among them about their ‘Gothic constitutionalism’ and Old Whig principles, both of which they accepted, and none of which had had much to do with Locke. In the Old Saxon or Germanic political tradition to which Jefferson subscribed, along with many other leading American publicists and propagandists, the right of resistance is the cornerstone constitutional principle. As Fritz Kern points out in his study of medieval monarchy *Kingship and Law*, the violent removal of Kings in early and High-medieval times was a normal and common practice in the German lands, considered to be completely lawful:

---

70 For the extensive evidence of this self-awareness see a compilation of revolutionary pamphlets in Jensen 1969, as well as Bailyn, 1967.
…the history of the Visigothic, Lombard and Anglo-Saxon lands, and also the Frankish monarchy, is full of revolts and forcible depositions, but this violence was not entirely devoid of justification in legal theory. The “lawlessness” of a monarch above all, but also bodily or mental incapacity, cowardice or political ineptitude, defective kin-right or the lack of other legitimation, and even the anger of the gods as manifested in bad harvests or military failures, all these demerits could suffice, in the common conviction, to justify or even to require the abandonment of the king. A formal condemnation of the monarch by legal procedure was unknown. The people simply abandoned their king; they absolved themselves from obedience, and chose a new ruler” (Kern, 1956: 86)

Consider, for example, how an old Nordic saga describes a 10th century revolution against the Swedish King Olaf Scotkonning who was unwilling to make peace with the Norwegian King, against the will of his own people:

this king allows none to speak with him and wishes to hear nothing but what pleases him to hear...He wants to rule over the Norwegians, which no Swedish King before him wanted, and as a result many men must live in unrest. Therefore we countrymen will that thou, King Olaf, makest peace with the Norwegian king, and givest him thy daughter to wife...and shouldst thou not fulfil our demand, we shall fall upon thee and kill thee, and no longer suffer unrest and unlawfulness. For so have our forefathers done; they threw five kings into a well near Mulathing, kings who were as filled with arrogance against us as thou.

According to Kern, who summarizes the saga in his book, this proclamation was followed by a threatening demonstration of force by the people assembled at a public square: “The clash of people’s weapons gave these words ominous applause, and the king
recognized the will of the people, in accordance, as he said, with the custom of all the Swedish kings” (Kern, 1956: 85).

In his study of the late medieval institutions in Bavaria and Austria *Land and Lordship* Otto Brunner (1992) shows how the same concept of mutual consent between the rulers and the ruled thrived in the German lands all the way to the 16th century and perhaps longer. He meticulously documents the strange institution of the medieval feud, a ‘private’ war between the two parties, that is nowadays usually considered a form of lawless violence, but which the historical sources of the Middle Ages portray as legitimate forms of conflict arbitration.\(^71\) The difficulty that modern historiography has in accepting this concept is that it denies the need for a central, administratively organized government apparatus, as a monopolistic contract enforcer and protector of rights.\(^72\) It denies, actually, that the state as such existed in the Middle Ages at all!\(^73\)

---


\(^72\) This is almost universal position but a particularly good illustrations could be Bisson, 2009 in modern times, or Maitland (1895) a century ago.

\(^73\) In his important book *The State: Its Nature, Development and Prospects*, Gianfranco Poggi argues that the very concept of ‘modern state’ represents a tautology, since there was no state before the modern state: “…although one often speaks of modern state…strictly speaking the adjective ‘modern’ is pleonastic. For, the set of features [pertaining to the state] is not found in any larger-scale political entities other than those which began to develop in the early modern phase of European history. In previous large-scale political entities, political power was institutionalized in a different manner, and mostly to a lesser extent. Those entities mainly expressed and extended the particular powers and interests of individual rulers and dynasties; in them…political prerogatives were undifferentiated components of privileged social standing. In general, those entities were structured as loose confederations of powerful individuals and their groups of followers and associates, with uncertain and varying spacial boundaries [emphasis added]. On that account, the conduct of political activities lacked those characteristics of intensity, continuity and purposefulness which follow from entrusting such activities to an expressly designated, territorially bounded organization.” (Poggi, 1990: 25).
world, law\textsuperscript{74} stood above masters and servants, kings and nobles, aristocrats and commoners, and everyone had an equal duty and right to protect it and uphold it. And if a territorial lord was to break the law, the vassals or even peasants had a right to rebel against him by using the outside help (this included kings as well).

The crucial medieval and Germanic concept that survived in the American experience is the idea about individual and collective rights of the people to disband the political allegiances in the case of bad government and breaching the contract on the part of the rulers: the institution of feud was distinguished from the ordinary violence (brigandage) by the act of ‘challenge’ or ‘defiance’, in Latin ‘diffidatio’ (Brunner, 1992: 65). Those who wanted to resist by violent means the acts of lawlessness had to declare their intention openly, to state the reasons for the feud and to accept the legitimate rules of warfare: plundering, kidnapping and terrorizing civilians were strongly forbidden. The medieval sources make a very strong distinction between the feud as lawful procedure and “brigandage” as lawless violence. Far from being a sign of ‘anarchy’ and lawless chaos as both popular and historical imagination often portray them, feuds were considered a highly honorable and legitimate, age-old way of resolving conflicts. Nobody had a right of monopoly in interpreting and enforcing law. And although the idea of contractual relationship between the rulers and the ruled was derived from the ancient Germanic institutions, Fritz Kern emphasized that this contractual relationships received in the High Middle Ages an official and formal sanction by merging with the feudal law: “the idea of fealty, in which the reciprocal duties of monarch and subjects, and the right of resistance were rooted, received, it is true, its most complete expression in feudal law. But, this idea already existed before and outside the feudal law. Nevertheless, certain

\textsuperscript{74} There is a certain debate about what exactly constituted this “law” in the Middle Ages that everyone was sworn to protect: Brunner’s argument is that it was the old Germanic customary law( a kind of argument the American colonists used to justify their resistance to the British Crown); Kern (1957) however, notes that this Germanic law was already reshaped by the Middle ages and given a sanction by the Feudal law. Most historians today would side with Kern in this matter (for this see, Kaminski, 2002).
developments of the idea of contract were due to the influence of feudalism. In the security pacts such as the capitulary of Kiersy…which Charles the Bald concluded with his powerful subjects, the right of resistance was certainly put upon a contractual basis” (Kern, 1956: 122).

And although it is most common to think of right to resistance in the context of the relationship between the Kings and the nobles, a very wide range of people and institutions had feuded in the Middle Ages: nobility, free towns and cities, various feudal estates, but also peasants, collectively or individually. Sometimes the groups within a single territory would feud against their own territorial lords with the help of ‘foreign powers’ (other kings, territorial lords or cities) and this was also considered legitimate (Brunner, 1992). A person of humblest birth could enlist a stronger protector to feud against his or her lord or master. Since the very concept of the state as an agency having monopoly of coercion and law enforcement did not exist, feud was the only lawful way of resolving the conflicts by using force. The difference between ‘war’ and ‘private violence’ did not exist at all: “

…any formal use of force had to be a battle for Right and peace, hence a feud. Any distinction between war as a conflict between sovereign states and feud as a conflict within states is inapplicable to the Middle Ages, where neither the sovereign state nor international law existed in the modern sense. There was no difference between a declaration of war by “challenging” the king of France or of Hungary, the formula was the same as that used in a feud between the two petty nobles. War and feud were thus legally indistinguishable. Right down to the end of the Middle Ages, “war” (Krieg) had no specific meaning of its own, but signified a conflict of the sort that might be resolved just as well in court as in the field of Battle” (Brunner, 1992: 34).
Not only the petty nobles could engage in feuds; the same holds true for ordinary people. Brunner offers a remarkable example from the early 15th century in which a servant girl named Catherine was arrested wrongly and then released from custody by the cities Krems and Stein. And she accepted to swear an oath of allegiance in which she promised that neither she nor her “heirs, friends and supporters” will cherish enmity against the two towns and against those who arrested her “neither on account of body nor of property, neither secretly nor openly, neither sending other people from within the territory or outside it” (ibid. p. 22). The fact that a servant girl would swear such a solemnly-sounding oath against the powerful cities with their militias and armies looks really strange to our modern sensibility. But, in a world in which a legitimate monopoly of force did not exist, this was quite conventional and expected.

Or take for example a feud from the 15th century in which the Austrian estates declared a war against the Emperor Rudolph III. The emperor claimed that the Prince von Eizenting rebelled against his territorial lord, committed high treason by levying taxes illegally and preparing for war (Brunner, 1992: 37). The Roman pope supported the Emperor, threatening to excommunicate the rebels. And yet, the city of Vienna and other rebelling territories averred that they were doing the lawful thing “just and worthy of great praise” and went to war which they were eventually to win and earn the recognition from the Emperor as a Land community. So even the intervention of a Pope was not sufficient to dissuade the rebels and establish the supremacy of the Emperor. In another equally illustrative case, the Moravian nobleman Wenzel Sharowetz von Sharowa as late as 1541 declared a feud against his territorial ruler, King Ferdinand I, promising to resort to “killing, capture, plunder, destruction, every manner of evil that enemies could inflict on each other” (Brunner, idem. 9). But the response from the king was equally revealing; he answered that the knight “has no legal claim or justification to engage in such an action against Us and Our subjects, but does so owning to his insolent and obdurate character.” The crucial element of the Kings’ proclamation is that he does not deny a
legal right to feud, but denies that this particular nobleman had any just reason to do engage in it.

The same right to feuding was universal throughout Western Europe. French historians, who most thoroughly accepted the statist paradigm concentrating on the enlargement of the royal administration’s power and prerogatives as signs of progress, ignored the feuds in medieval France. Since the entire history had to be told from the point of view of victorious and virtuous royal administration, *aka* modern state, all phenomena of medieval life and experience that militated against this narrative had to be relegated to insignificance and suppressed. However, in recent decades, French historiography has also been touched by the Brunner-Kern revolution. It was pointed out, for example, that the noble feuds existed in France virtually from time immemorial, that in the period 1000-1300 there has not been any, let alone, absolute state, on the territories today commonly called France (Kaminski, 2002). After 1300 the royal power was growing, but nevertheless the old, high-medieval system of noble autonomy and self-help persisted well into the 15th century. Just as in Germany, feuds were considered legitimate legal ways of conflict resolution, oftentimes coupled with peaceful means of arbitration by other nobles or kings. The French king was not an absolute ruler but rather what was called an “overlord” like the Holy Roman Emperor. He was *primus inter pares*, but not state’s central administrator or monopolist of conflict resolution. When the French king Philip VI wanted to become the overlord of the Gascon nobles in the 14th century one of the conditions he had to accept was that those nobles retain their rights to wage war:

We grant the ... barons and nobles of the duchy that they may declare, prosecute, and wage wars among themselves when they deem it expedient to do so. But the due form of challenge must precede, to be given by the one wishing war and accepted by the one challenged, before any damage be done to bodies or goods by such war ... For it is known that such has been their custom of old. (Kaminski, 2002: 69)
We see the same two essential points Brunner identified in German and Austrian medieval feuds: a right of nobles and barons to regulate the conflicts by violent means disregarding royal or imperial authority, but also the claim that this right represented not a rebellion and illegal violence (as modern historians want) but a legitimate and lawful “custom of old.” Just how pervasive noble feuds were in late medieval and even early modern France is best indicated by the fact that from 1302-1568, irrespective of feuds being forbidden by the king for most of this period, at least 54,000 royal pardons survive of the people feuding among themselves. “Private wars” were waged in the late-medieval France, virtually with impunity (Kaminski, ibid.).

In England, which is for our study of America the most important example of all, the situation was even more radical than in France. The critical episode in English history, the emergence of Magna Carta, was an example of noble lords feuding against the king. As a major historian of Magna Carta emphasizes, “The barons already had the capacity to levy war against the king and had already done so through the formal process or renunciation of fealty. The charter now allowed them to distrain the king by acts which were in practice warlike, and yet still remain the king’s men and retain their title to land and liberties” (Holt, 1965: 239-40). The war that British barons waged against King John was not a successful rebellion of “private citizens” (powerful, privileged, wealthy, greedy, but private anyway) against the “state,” resulting in the limitations of the state’s power, which is the only interpretation that modern statist historiography can offer.75 On the contrary this was a lawful action by political subjects having a right to wage war against the king, and who lawfully declared the war (feud) against him in order to effectuate a restitution of their traditional, customary rights on property and liberty. If

75 This is a necessary consequence of projecting the modern state back into the medieval world, and identifying modest medieval kings with the “state”. Whoever then challenges this “state” has to be seen as a “private usurper”; an apolitical actor imposing “disorder” from below. If king=state (this is almost universally accepted) than barons of 1215 were indeed just private citizens in rebellion. See Bruner, 1992: 95-139.
anything, King John was in rebellion against Law and constitution, not barons, at least from the medieval point of view.

Throughout the 13th and 14th centuries open feuding was considered unlawful by the kings, but it was nonetheless very common. As in France, the kings from the late 13th century tried to “outlaw” the feuds but with no effect. Historians accustomed to the statist paradigm in interpreting even the distant past are often shocked to discover that in the Middle Ages the king did not have a power of “enforcing justice and order” in the same sense the modern state has. One historian, by looking at the evidence in England, complains that “not one investigator has been able to indicate even a few years of effective policing in the period 1290-1485” (Bellamy, 1973: 3-4). Noble families kept their right of feuding throughout the Middle Ages, and in the 14th and 15th centuries even the non-noble actors, such as clients and allies of noble lords, took part in feuds (Kaminski, 2002; Rosenthal, 1970). Earlier historians were unable to make sense of widespread feuds, continuing even after royal “ban” except to talk in a typical manner about the “structural and administrative weakness” of the “state” to “police crime.” Noble feuds represented just private crime that goes unpunished. But, a more recent English historiography, taking into account the “Brunner revolution” in understanding feuds, is slowly coming to terms with the roots of feuding in medieval law and custom and is much more inclined to treat feud as a lawful procedure. For example, it is emphasized that feuds were seldom acts of unrestricted violence; just as Brunner had shown for Austria and Bavaria, Rosenthal (1970) shows an example of the 15th century feud between the families Pierpont and Hastings which starts with fighting and ends with legal arbitration. Powell (1983) argues that the picture of feuds as lawlessness is wrong; they represented just one smaller element in an edifice of a non-statist and non-royal system of law and order in the Middle Ages which included direct negotiations,

76 For the general discussion of the historian’s treatment of feud see Kaminski 2002.
mediations of third parties or voluntary arbitration by third parties. Feuding was one element of this alternative system of protecting and upholding Law, not a lawless aggression.

II. American “private” law-enforcement – theoretical foundations

When one looks at the history of colonial and early revolutionary America, one is struck by the remarkable similarity between their understanding and protection of law, and that of European medieval nobles and commoners. One encounters in America a widespread presence of seemingly medieval forms of “law enforcement,” medieval “feuds” and “challenges,” under new names and applied in different circumstances. One sees lawful riots, ‘regulator’ campaigns, lynchings and so on – phenomena rarely connected in the literature with the medieval world or heritage. But they nevertheless represented the remnants of that world. The political context of the 18th century in the North American colonies (outside Canada) shows that the practice of “private” law enforcement was a natural and orderly way of organizing such societies. Yet this is most commonly ignored, or alternatively, condemned and dismissed by historians and political scientists as an aberration or a sign of lawlessness and disorder.77 This is society without any administrative structure and without police. Even in Great Britain police were formed only in the 19th century, in the age of “social reformers.” Most of the crime as late as the 18th century was dealt with by private courts and enforced by private persons. The very institution of government-run crime-enforcement apparatus was very much feared all the way to the 19th century as a hallmark of ‘tyranny’. It was deemed contrary to the traditional British constitution of limited government and common law. Consequently, a

77 The major exceptions here are the constitutional theorists of the American Revolution, emphasizing the links between the revolutionary ideology and the older legal and constitutional traditions of Great Britain. For example, Reid (1974; 1986, 1991), Greene (1986; 2010), and Maier (1970).
right to resist political authorities in their unlawful actions was perfectly wholesome in the eyes of colonial people of 18th century America. All subsequent repugnance to this private and “anarchical” character of the American law enforcement model by modern historians and social scientists represents an expression of anachronistic projection of the concepts of modern state, with its administrative, regulatory and law-enforcement monopolies into a world in which such monopoly was lacking, and even considered undesirable and dangerous.78

As John Reid (1974), Jack P. Green (2010) and others have shown (eg. Maier, 1970) this right of “private resistance” was not even considered a matter of some extraordinary revolutionary, extralegal addressing of the unbearable transgressions of authorities, but rather an intra-legal, ordinary, constitutional form of political behaviour on a daily basis, rooted in traditional legal norms. Resistance was a traditional ‘British right’, not an abstract philosophical concept, based on natural rights, a Lockean theory of the revolution or anything like that. Moreover, the idea of violent popular resistance to the unlawful actions of imperial authorities is deemed ‘illegal’ nowadays only because what Reid calls the “tory legal view,” and which is better described as the “modern statist legal view” came to dominate legal and political theory in the 20th century: “The pre-revolutionary American political crowd may have been as lawful as it was lawless, for the legal perspective of the tory was not the legal perspective of the whig. What was unlawful to the tory was not unlawful to the whig.” (Reid, 1974: 1044)

What was this ‘whig’ legal concept that allowed or even invited individualized or group “extra-institutional” violence as a political remedy? This could be approached from

two interrelated perspectives. First, American colonists identified law with “ancient laws,” and by that they always meant traditional British liberties guaranteed by Common law and the acts of the Parliament. The fact that the Tea Partiers of 1773 were chanting “Magna Carta, Magna Carta” is just one illustration (Hayek, 1960). All “classical” American liberties we today see in the Bill of Rights were initially just British ancient liberties; liberty from unreasonable searches and seizures, no taxation without representation, right to bear arms and resist political authority, liberty from soldiers being stationed in private homes – all those liberties were traditional for American colonists, not revolutionary novelties. Even when the colonists adorned them with Lockean vignettes of natural rights rhetoric, the precise content was always controlled by these British legal benchmarks and precedents, having their source in the Middle Ages and being codified later on (Reid, 1989).

Now, we will notice that all this is closely related to medieval concepts we have encountered in Brunner’s and Kern’s reconstructions of Germanic medieval institutions, only couched in the language of British common law and ‘ancient constitution’. But, structurally and genealogically that was the same ancient law Kern and Brunner described for continental Europe, and the same law in the name of which British nobles had feuded for centuries, all the way to the 16th century and in the name of which the English barons resisted King John in 1215. That is the belief that the government has no monopoly in protecting the law, that Law stands above all mortals, and that both rulers and the ruled have a right and duty to obey and enforce it, and moreover that the greatest danger to the constitution of the land does not come from the ‘riotous mob’ and ‘rabble rousers’, but from the tyrannical and out-of-touch government officials.

In this sense, the sources of the concept of the ancient law are much deeper and older than old whig constitutionalism, just discussed. The theoretical framework of American legitimation of resistance could be found in revolutionaries’ fascination with a distant past as the source of individual liberty, sometimes conceptualized in a very
modern, “libertarian” manner. Ancient liberties were discovered and codified in common law and Acts of Parliament (including the Bill of Right) but their true source is “ancient Gothick constitution,” pre 11th century Germanic social order. Early revolutionary pamphlets of the leading American politicians and thinkers are simply replete with references to the old Gothic constitution, to the modern parliament as a body transgressing against this “ancient constitution” and their own efforts as just an attempt at protecting and conserving this ancient system. In his ‘Summary views of the Rights of North Americans’, written in 1775, Thomas Jefferson will not invoke the lofty ideals of Lockean political science and philosophical principles of Enlightenment, but rather the ancient privileges of the British North Americans derived from the their status of Englishmen who brought with them in North America the old Saxon political institutions and laws. By immigrating in the new world, the English forefathers of modern Americans retained their right of self-government, local political representation and independence, in the same way the English who came from the continent retained their ancient institutions on their new island. An uninterrupted continuity of preservation of old Gothic constitution is implied, which leads from the old Saxons to the early English before the Norman Conquest to the modern Americans who preserved the old customs and liberties in the purest form: “…their Saxon ancestors had, under this universal law [emigration] in like manner left their native wilds and woods in the North of Europe, had possessed themselves of the island of Britain, then less charged with inhabitants, and had established there that system of laws which has so long been the glory and protection of that country” (Jefferson, 1967: 258-59). So, the Americans actually continued the old tradition by relocating to the new continent; not invented the new one taken from the abstract Enlightenment constructions of Locke or from covenant theology, or anything of the sort.

We have to notice a radically libertarian bent of this Jeffersonian reactionary traditionalist concoction. The conflict between the colonists and the Mother country is
conceptualized in “Summary View” as a persistent conflict between the state and society, between the absolute sovereign power encroaching the traditional rights of the people and the people themselves. The old Real Whig dichotomy ‘power vs liberty’ is reinforced with an applied libertarian economic theorizing. First, he wants to remind the British government that America was not settled at the expense of public treasury, but by the individual adventurers spending their own money, energy and time: “America was conquered and her settlements made, and firmly established, at the expense of the individuals and not of the British public. Their own blood was spilt in acquiring lands for their settlement, their own fortunes expended in making that settlement effectual, for themselves they fought, for themselves they conquered and for themselves alone they have a right to hold. Not a shilling was ever issued from the public treasuries of his majesty, or his ancestors, for their assistance, till of very late times, after the colonies have been established on a firm and permanent footing” (Jefferson, 1967: 259).

This is the background against which the entire history of the relationship between the colonies and Great Britain is measured and told. And Jefferson portrays this relationship as a continual conflict of the free colonial societies against the modern state with its apparatus of coercion, taxation and regulation. He parades the case after case of this unlawful encroachment by the British governments in the ancient, natural rights of North American colonists. One of the primary examples of this encroachment are the multiple and repeated limitations of free trade (p.261-262). Again echoing the Old Whigs and ‘Cato’ Jefferson connects the arbitrary power with the spirit of limiting trade, and with taxation, tariffs and privileges and monopolies: “History has informed us that bodies of men as well as individuals, are susceptible of the spirit of tyranny. A view of these acts of parliament for regulation, as it has been affectedly called, American trade, if all other evidence was removed out of the case, would undeniably evince the truth of this observation” (Jefferson, 1967: 261). And an entire litany follows of arbitrary taxes, monopoly privileges used against America, restraint of trade and production on American
soil as well of erecting the new colonial offices that had not existed before, only to show the colonists the power of the Parliament and to accommodate “his majesty’s ministers and favourites with the sale of easy and lucrative offices (this motif will make it into the Declaration in which the king is faulted, among other things with “erect[ing] a multitude of New Offices, and send[ing] hither swarms of Officers to harass our people, and eat out their substance”).

However, it would be wrong to lose sight for a moment of the context which Jefferson gives to his libertarian ideas all the time: the context of the ancient Saxon liberties as defined and defended by the Whig historiography; Jefferson’s seemingly hyper-modern libertarianism is not, as it is sometimes interpreted, an effect of his Lockeanism, but rather of his program of reviving a reactionary ideal of lost Saxon liberty, a narrative most representatively formulated by Catherin Macaulay, whose eight-volume History of England Jefferson had read and procured for the library of the University of Virginia. The entire British history is interpreted as series of the attacks by the consolidating forces of the Crown and Parliament on the ancient Germanic liberties, based on the elective kingship and annual Parliament, the Glorious Revolution being just a half-successful attempt at re-establishing the old constitution. Jefferson’s interpretation of the history of British colonies is just a refashioning of this same general narrative to show a similar perpetual struggle between the local Saxon liberties and central government striving to control and regulate life by disregarding the old institutions. The American resistance is just one in a long train of revolts against the perennial political disease begotten by the Norman invasion. As one historian has nicely put it: “Jefferson’s Whig history gave him an outlook which made for a strangely reactionary revolutionary: a man who wanted change but not innovation, a man who wished to advance to the political perfection of an earlier age” (Colbourn, 1958: 69). Jefferson was an Old Whig British doctrinaire par excellence.
We can detect the same duality of ancient Germanic constitutionalism and modern libertarian ideas in the works of a widely read colonial pamphleteer Richard Bland. His pamphlet titled “An Inquiry into the rights of the British Colonies” that became extremely influential and whose arguments made their way into the Declaration of Independence, combined the Lockean theory of a right to resettlement with an ardent devotion to the ancient Saxon institutions, and reviled the same ministerial corruption against which the English real Whigs were thundering some 50 years before: “...they [subjects] retain so much of their natural Freedom as to have a right to retire from the Society, to renounce the benefits of it, to enter into another society, and to settle in another Country; for their Engagement to the Society and their submission to the publick Authority of the State, do not oblige them to continue in it longer than they find it will conduce to their Happiness, which they have natural right to promote” (Bland, 1967: 113). And, yet, this hyper-modern concept of an individual right to emigrate, derived directly form Locke, is accompanied by the repeated homages to the old constitutions and ancient liberties of Englishmen, including the characteristic Old Whig condemnations of ‘corruption’ of the old system inflicted by the centralized cabinet government. Responding to the objection that the absence of representation of the American colonies in the Parliament is not an argument against parliamentary supremacy itself, since many people in England are not represented in the Parliament either, Bland averts that this represents an argument against the system in England, rather than against the colonial faithful reproduction of the old pre-Norman constitution: “…it would be a work worthy of the best patriotick Spirits in the Nation to effectuate an Alteration of this putrid part of the Constitution; and by restoring it to its pristine Perfection, prevent any “order or Rank of the Subjects from Imposing upon or binding the rest without their consent.” But, I fear, the Gangrene has taken to deep Hold to be eradicated in these Days of Venality” (Bland, 114). So, we encounter the same argument all over again: once upon a time there was a golden age, a utopia of individual liberty and independence, equal representation and civic harmony, and then the ‘pristine Perfection” of this ancient
republican system was spoiled by the modern cabinet government, ministerial corruption, machinery of mercantilism and restriction, so it is now too late to do anything about it, since the problem decayed in the meantime into a “gangrene.”

James Ottis Jr, another extremely well read and popular American pamphleteer of the Revolutionary period, was no less devoted to the Old Saxon myth than Jefferson and Bland: “liberty was better understood and more fully enjoyed by our ancestors before of the coming of the first Norman Tyrants than ever after, ‘till it was found necessary, for the salvation of the kingdom, to combat the arbitrary and wicked proceedings of the Stuarts” (Ottis, 1967: 21). And Ottis then uses, in a way resembling closely the procedure employed by Jefferson, this framework as a springboard for an analysis purporting to show how the natural rights of British colonists were injured once the Parliament taxes or regulates them directly, or in any other way infringes on their commercial liberty. The Glorious Revolution of 1688 just re-established the lost Saxon liberties and had given to the Americans their rightful local rights, only to be threatened once again by the King George III, a new embodiment of the Norman tyranny. Ottis’ writing is one of the beautiful displays of this ancient-libertarian synthesis: his opposition to the infamous ‘Writs of Assistance’, a British colonial legislation which empowered the colonial custom officials to perform the extralegal searches and seizures in order to suppress smuggling, prompted Ottis to reassert the traditional privileges of American colonists, relying on Sir Edward Coke’s theory about the law as a convention existing “time out of mind,” revived by Magna Carta, that stands beyond and above both legislature and executive (a typical medieval understanding of law), and which is now threatened by the aggressive Parliamentary assertion of the power to control and regulate colonial commerce. Ottis adds in a threatening manner that previous attempts to abrogate the Saxon common law “cost one King of England his head, and another his Crown.” He is basing, 10 years
before the actual Revolution, American right to resistance to the British government on the ancient common law, and in the name of free trade and free market economy.\(^7^9\)

This kind of sentiment was identified in chapter 1 with the radical Whig ‘country party’ ideology, but it is little more than a modernized repackaging of the British common law tradition of scepticism towards any absolutist and sovereigntist political ambition. Another striking similarity between American private law enforcement and medieval feuds and depositions of kings is the fact that Americans drew a critical and very precise distinction between an unlawful, licentious riot and legal political mob violence, or between the “challenge” or ‘difidatio’ and “brigandage.” Colonial legal and political thinkers fiercely denounced ordinary lawless violence while condoning and even openly supporting the violence targeted at political authorities enforcing imperial edicts deemed to be contrary to the British constitution and traditional rights of Americans: “So long as popular uprisings served a public function and confined their actions to harassing those charged with enforcing the unconstitutional statutes of the Parliament they were thus perfectly in accord with British legal traditions as expressed in contemporary doctrines that it was legal to resist unlawful government power” (Greene, 2010: 144).

We can see this in numerous and diverse examples from the 18\(^{th}\) century. The entire century is full of political uprisings, rebellions and mini-revolutions in the name of various traditional British rights, alleged to have been infringed by imperial authorities. The most common form of colonial “feuds” against the imperial government were anti-tax rebellions. Majority of all local rebellions were anti-tax rebellions. Also, a very frequent reason for feuding with imperial officials was the practice of “impressment,” or forcible recruitment of colonial men to the British navy. The expression of mob violence

\(^7^9\) All quotations from Jefferson, Bland and Ottis in previous paragraphs taken from Jensen ed (1967).
in the period after 1765 was in most cases directed against the Stamp Act and other imperial statutes that colonials deemed flagrant infringements on their ‘ancient rights’.

III. American private law enforcement – some notable examples

We can start a concrete analysis of some cases of the American “private” law enforcement ideology with the revolutionary upheaval in New England. Two riots very well documented in the literature nicely illustrate the peculiar distinction between lawful and unlawful violent resistance to the government espoused by American colonists. The first is an attack on the office and the house of Andrew Oliver, the main imperial official in Boston entrusted with enforcing the Stamp Act. On July 14th 1765 the mob gathered in Boston and hung an effigy of Oliver on the “liberty tree” on which it was written:

How Glorious is to see,
A Stamp officer hung on a tree.\(^{80}\)

They proceeded from there to the place called “Oliver’s Dock” outside of the city, where a small brick building had recently been erected, called the “stamp office” by the locals, and believed to be where the stamps were to be delivered. The mob, according to one account, “halted here and without Axes and Hammers they soon leveled this Brick Building.” From there they went to the house of Andrew Oliver, but found there some other imperial officers instead who arrested a couple of rioters. Later in the day the rest of the group broke into the prison and liberated their “comrades” and then proceeded again to Oliver’s house, where they “went from Top to Bottom satisfied themselves with good

Cheer broke and all his Glass Windows and three very valuable Looking Glasses and then returned to forth Hill Where they were entertained with a good Bon Fire and Wine in flowing Bowles and at Eleven Clock dispersed.” A few days later, Oliver resigned his office: no stamps were ever distributed in Boston.

This riot was supported and condoned by all famous people in Boston including Sam and John Adams, Elbert Gerry and countless others. In stark contrast, a new riot 12 days later was summarily condemned as “poisonous rabble” and “mindless violence.” It was an attack on the house of Governor Thomas Hutchinson who was wrongly rumoured to have been sympathetic to the Stamp Act. The mob attacked his home and plundered his possessions, without any direct political reason, except for those dubious rumours. The same Boston luminaries who supported and praised the Oliver riots as patriotic summarily condemned the Hutchinson riot. They made sure that the perpetrators were punished and that Hutchinson was compensated for his material losses. The critical difference that made the first riot legal and the second illegal in the eyes of those New England radical whigs was the political purpose of enforcing the traditional British law and preventing the exercise of arbitrary power; apart from this narrowly defined legal purpose, rioting and mob violence were severely punishable in early America. Even Tory legal theorists and politicians understood this difference between the two types of popular violence emphasized by the whigs. For example, Governor Francis Bernard described the prevailing legal thinking of the New England Whigs this way:

great pains are taken to separate the two riots, what was done against Mr. Oliver is still approved of as a necessary declaration of their resolution not to submit to the Stamp Act; and even the cruel treatment of him and his family is justified by its consequences—the frightening him into a resignation; and it has been publically hinted that if a line is not drawn between the first riot and the last, the civil power will not be supported by the principal people of the town, as it is assured it shall

81 Cited according to, Reid (1974: 1045).
be now. And indeed, if the last riot had been the only one, the civil government would appear to be in full power. (Reid, 1974: 1047)

As numerous as such instances of mob law enforcement in New England may have been, they were by no means confined to New England. In many other parts of America attacks on and harassment of custom officials and other imperial bureaucrats were as numerous as in New England. In Philadelphia some of the most aggressive attacks took place, but they were quite widespread in the South as well: “After seizing two wagons of goods being carried overland from Maryland towards Duck Creek, Pennsylvania, the officer was overpowered by a “licentious mob” that kept shouting “Liberty and Duck Creek forever” as it went through the hours-long rituals of tarring and feathering and threatening his life. And at Norfolk, Virginia, in the spring of 1766 an accused customs informer was tarred and feathered, pelted with stones and rotten eggs, and finally thrown in the sea were he nearly drowned. Even Georgia saw customs violence before independence, and one of rare deaths resulting from a colonial riot occurred there in 1775” (Maier, 1970: 11).

We can find many analogous phenomena of American political and social life showing that the ‘state’ as a privileged agent of law enforcement and legal violence was not accepted by them unconditionally. One among the most characteristic ones in the 18th century was the so called Regulator movement, especially in Carolinas and Virginia, and later in Massachusetts and Vermont. It unified medieval localism, medieval concepts of rebellion against the unlawful authority and often libertarian economic and political ideas. All of those spontaneous uprisings of local people against the central state governments attested to the fact that the idea of private persons having a right to enforce law and resist legal officials in the name of higher Law was widely accepted not only in

---

82 For the analysis of the regulator movement see Brown (1963), Richards, (2001).
the major cities on the eastern seaboard, but also, and perhaps even more, in the rural ‘backcountry’. Foreshadowing the arguments for American Independence, the backcountry Regulators would take power in situations when the state governments were dysfunctional, or monopolized by corrupt regimes unable to restore the communal order.

The very concept of Regulation was borrowed from the radical Whig tradition of the late 17th century and referred to British activists who rose against the corrupt parliamentary system and strove to regain the control over their representatives (another prominent element of the Old Whig philosophy to be discussed later)\textsuperscript{83} Most often, they would cloak their arguments in the garb of Lockean and ‘Gothic’ rhetoric of self-preservation in the face of a tyrannical government going wild, or the self-preservation of the community against the social ills that legitimate government was not willing or not capable of protecting them against. What is remarkable about virtually all major Regulator uprisings is that they were based not on a mob mentality but on the consensus of leading local notables who believed in law and order. Disobedience to the government was based on solemn and elaborated philosophical principles, not uncontrolled passions or banditry. The same belief inherited from the Middle Ages that everyone has a right to protect Law, and that resisting unlawful masters is a solemn duty, survived in the New World deeply into the 18th century.

In North Carolina, the farmers self-organized to fight back against the subversion of a county government by land speculators who took over the courts and imposed draconian taxes against the original homesteaders in order to drive them off their land. In addition to that, as one historian notes, “grievances included extortionate and illegal fees of lawyers and clerks of courts, the inability to secure honest representation in the assembly and the sale of lands and goods for a small portion of their value by officials who bought them with public money” (Jensen, 1963:25). We have the same ‘libertarian’

\textsuperscript{83} For the original concept of Regulation in England, see Weston, (1965).
triad of localism and local representation, a crusade against public officials embezzling the treasury for land speculation and a failing court system. The same motifs were repeated in many other Regulator movements. The North Carolina Regulators thus proclaimed that they were “determined to have the officers of this county under the better and honester regulation” (Richards, 2001: 64). Since the sheriffs and other officials were not inclined to do anything about this, the Regulators “took the law into their hands, drove the judges from the bench, whipped obnoxious lawyers, and terrorized corrupt sheriffs. In 1770 they seized the Orange County Court in Hillsborough and tried cases on the docket themselves” (Richards, ibid.). And although the North Carolina Regulation was not as successful as the South Carolina and Vermont campaigns, it served as a rallying point for many other similar campaigns.

Across the state border, in South Carolina, Regulators took the law in their hands in 1768 to protect their community from a wave of organized crime in the chaos after the war against the Cherokee nation in South Carolina back country. The lack of interest and leniency towards the problem of crime by the government in Charleston prompted local people, led by the wealthiest and most reputable citizens, to proclaim a ‘regulation campaign’ in which they hunted down criminals, burned the houses of people who were aiding them, expelled vagabonds, beggars and prostitutes out of the province, and suspended completely the official legal system, putting in its place ad hoc tribunals composed of local people.84

However, the only exemption that the South Carolina Regulators made with regard to law enforcement was private debt. This may surprise those who believe that

84 The most radical and infamous, and the least understood, episode of this kind was “Lynching” in Virginia which was especially vilified and acquired a cult status in the demonology of “American violence” propagated by the academia. Lynching was however, just another orderly regulator movement, see Richards, 2001.
every rebellion in America was conducted by poor people who just wanted redistribution of land and debt relief.\textsuperscript{85} A historian of South Carolina Regulation writes:

There was one significant exemption to the prohibition of legal processes. The Regulators permitted the Provost Marshall to "serve the writs of Debts." Bad debts and absconding debtors were major problems in the Southern Back Country. In 1766 the Moravians of Bethabara, North Carolina, posted notices on their store and tavern calling for their six hundred debtors to pay up at once. A month later the Moravians discovered that some of the worst delinquents simply left the country. Religious principles prevented the gentle Moravians from coercing debtors, but the tough South Carolina Regulators knew no such compunctions. Indeed, they undertook to execute the writs themselves. In October 1768 the Regulators of the Peede let it be known through a Charleston newspaper that "if any creditor is doubtful of a debt dues" and would "come amongst them" they would protect and assist him in procuring good security for what may be owing, and if that cannot be obtained…would deliver the debtor into the common goal." (Brown, 1963: 51-52)

So, rather than rebelling against capitalist oppression and social inequality, the frontier revolutionaries of the late colonial period were actually creating \textit{anarchy} in order to restore and protect the bourgeois order and hierarchy, control a lower class lumpen-proletariat, and reinforce thereby ‘social injustice’. Here is how the Reverend Charles Woodmason, one of the leading Regulators, described the effects of the regulation campaign: “the People were governed by their Militia officers who decided all Disputes over the Drum Head in the Muster Field. The Country was purged of all Villains. The Whores were whipped and drove off…they have brought many under the lash and are scourging and banishing the baser sort of people as above, with unwearied diligence…The Magistrates & Constabls associated with the Rogues Silenc’d & inhibited. Tranquility reigned. Industry was restor’d” (Brown, 1963: 49,52) And for the

purposes of this reactionary program they rejected any jurisdiction of the legal
government, but nevertheless allowed the creditors from Charleston and other places to
freely execute their debt and moreover assisted them in hunting down and forcing the
debtors to pay.

The ‘people’s uprising’ in South Carolina was actually a kind of *coup* by property
owners and other notables who provided the public goods of law and order for
themselves, when the government was unable to do so. And they felt this was a perfectly
legitimate enterprise; they did not consider themselves to be rebels at all, but rather the
“regulators of public liberty.” Maybe most astonishing is that this Regulation in South
Caroline succeeded. Here is how a prominent historian explains the end result of the
entire affair: “They [Regulators] finally disbanded in 1769 when the provincial assembly
passed the Circuit Court Act, giving them the courts, jails, and sheriffs they wanted, plus
additional representation in the legislature. Many of them did well. Of the known
Regulators, one quarter later became justices of peace, and about one-fifth became militia
officers and prosperous slaveholders” (Richards, 2001: 65). So, instead of a class struggle
between the rich and poor, between the ‘agrarian proletariat’ and ‘capitalist ruling class’,
the Regulator story of South Carolina shows a conflict for local-self-government by a
well-to-do local elite (from the backcountry) against another well-to-do elite in the capital
city of Charleston.

This is the pattern that we will see time and again in our encounters with early
American tradition of localist self-government: almost in every case that historiography
presents as either “democratic People’s uprising against Capitalism and Authority” or as
“mob violence and Jacobin rabble-rousing” (depending on the point of view of the
author), we will almost always find the rebellious but orderly, libertarian-leaning
American individualists with ‘medieval’ concept of local autonomy rising up for their
traditional local rights, the same type which brought about the Boston Tea Party and
fought courageously the American Revolution.
Another classical example of the Regulator movement is much better known: Shays Rebellion in Massachusetts of 1787. Actually, it is rarely mentioned as an example of Regulation but just a few details can show that it indeed was. The conventional historical narrative about this episode, extremely important in American history because it served as a critical catalyst for the Philadelphia Convention, goes as follows. In rural Massachusetts, over the winter of 1786-87, poor and indebted farmers rose up against the powers that be (wealthy merchants and creditors from Boston), demanding debt relief, paper money, land redistribution and a more “democratic” state constitution. In order to protect law and order, private property, sanctity of contract and other liberal values, this democratic uprising had to be squashed. George Washington, who had retired on his Virginia farm as a modern Cincinnatus, came back to lead the suppression of the rebellion. And the Philadelphia Constitution that same summer responded to this challenge of anarchy and disorder,, convincing the wise Founding Fathers that America needed a stronger national government in order to prevent similar trouble in the future.

This story is false in many critical details. The rebels of Massachusetts were not poor, they were not indebted, and they did not demand the redistribution of land and abolishing the private property. They were on average wealthy, respected men from prominent backcountry families, most of them creditors rather than debtors, who were actually rebelling against high taxes and political centralization in the hands of a Boston state government, rather than for ‘social equality’ and redistribution of wealth. And we know all of this because after the suppression of the Shays Rebellion all the participants were forced to sign an Oath of allegiance to the government, and hence we know all the names of the people who participated in the uprising (a rather rare historical occurrence). Historian Leonard L. Richards found that most of the rebels came from the Western

---

86 Such views were formulated by general Henry Knox and other pro-centralizing figures and propagated by the Boston and New York press, as a “fact,” eventually convincing not only Washington to step in but contributing to a gradual shift in public opinion, see Richards, 2001: idem.
back-country, politically disenfranchised by the Boston elite, most above average in income and few actual debtors. For example in the city of Colrain, one of the Shayite principal strongholds, only five men were sued for debt default in 1785 and 1786. But Colrain gave 156 soldiers to the rebellion, none of them debtor. Their military commander was James White, revolutionary hero and who had been in court earlier that year as a creditor who sued one of the five debt delinquents. In the city of Granville, however, with 42 cases of debt lawsuits, the highest percentage in the entire state, none joined Shays Rebellion (Richards, 2001: 61-62).

The immediate reason for the rebellion was a draconian tax increase that the state government, dominated by wartime bond speculators, imposed in order to pay off the bonds at face value. Most of the bonds were bought earlier at rock bottom prices from farmers, soldiers and small merchants, and when the change of government took place in 1786, a new, Boston controlled administration planned to increase the poll and property taxes approximately sixfold to reward the bond speculators. “[T]hat meant that Massachusetts had to come up with several hundred thousand in taxes, and come up with the money quickly. This meant that Massachusetts had to increase the tax burden by five or six times. The legislature also decided to pay interest on the notes at 6 percent annually in specie. This meant that the state somehow had to come up with over $265 000 in hard money” (Richards, idem. 81-82). And over 90% of this tax burden had to be borne by property owners, primarily landowners and farmers. It does not take a very sophisticated economic analysis to realize that this would have killed the backcountry farmers. So, at one level, this was a typical anti-tax rebellion, just one of many that took place in colonial and revolutionary America.

However, it had a political dimension to it as well. And this did not mean the egalitarian uprising against the bourgeois ruling class but a backcountry localist uprising against political centralization in Boston. Here is how the Regulators themselves described the reasons for their actions: “We do Each one of Us acknowledge our Selves
to be Inlisted…in Colo Hazeltons Regiment of Regulators…for the Supressing of tyrannical government of Massachusetts State” (idem.). A kind of “tyranny” that the Regulators wanted to “supress” was not the contract law or private property but the maneuvers of the state legislature in Boston, controlled by local mercantile interests to centralize power and exclude the backcountry towns and villages from the decision-making process. They concocted a typical “aristocratic” constitution with two chambers of legislature, a powerful governor with the veto power, ‘independent’ centrally controlled rather than locally elected judges, and the ability of large eastern centers to control the government without paying any attention to backcountry: “Some of the provisions had little support in towns which later became the nucleus of Shays Rebellion. In one way or another, many of these towns complained that the power was being taken out of their hands and given to the Boston elite, they much preferred...to be ruled by men who were answerable to them rather than to the governor or the governor’s council. Rather than endorsing judicial independence, twenty-nine towns wanted superior court judges to be either elected or appointed annually, and thirty one wanted justices to be elected.” (Richards, 2001: 73). There you have it: no taxation without representation, local self-government as opposed to rigged centrally controlled bureaucratic regime, a revolution (‘regulation’) to reclaim local control over political life: the same combination of ideas producing the American Revolution just 11 years before.

The Massachusetts rebels took their lead from what appears to be the biggest success story of the entire Regulator movement: the free republic of Vermont. This astonishing revolution was not only a successful ‘private’ law enforcement campaign, but it also established for the first time a time-honoured and today much maligned right of secession. Vermont emerged when a part of New York state seceded to form a separate and independent republic which was soon recognized by other states. A right to disobey

---

The most detailed account of this rebellion is given in Billias, 1996. The connection between the Vermont and Massachusetts Regulations is discussed in Richards, 2001.
the government was joined together with a positive right to form one’s own government. The Vermont story started with a conflict between the state of New York which claimed the political right to a piece of territory in the Connecticut river valley and the settlers and homesteaders, most of whom came from New Hampshire. New York State granted the land titles to its own favorites, largely land speculators, and a real war broke out between local settlers and New Yorkers. Led by Set Warner and later Ethan Allen, the settler stopped courts from proceedings, terrorized New York sympathizers, and after a protracted conflict declared their own independent state of Vermont with a radically democratic constitution. It largely copied the unicameral structure of the Pennsylvania constitution, with the addition of much larger powers for local towns and villages and an outright prohibition of slavery.

In most cases today, academics, politicians and pundits would consider secession (and the states’ rights tradition more generally) as a sinister plot by Southern slaveholders to protect their ‘peculiar institution’ from the well-meaning central government, the question which had been luckily “settled by the Civil War.” However, we see that the later concept of secession as a right of the states was but a pale shadow of an older American tradition, which started as a right of individual group of people to withdraw from a political community and form another one on the same territory (prohibiting slavery on it!). There is no theoretical conceptualization of this right in the literature which is traditionally offered as a basis for American revolutionary experience. The closest approximation that we can find is Johannes Althusius’ theory of federative government, based on experiences of the Dutch republic that owed much to the medieval vision of politics and governance. This is virtually never mentioned in the context of America.

88 The influence of Althusius as a thinker of federalism in general is discussed in detail by Hueglin, 1979, Benoist, 1999, although the possible influence that Althusius could have had in American is uncertain.
The best minds of late colonial and early revolutionary America considered right of rebellion natural and wholesome and actively supported the mob actions against the British and later American domestic officials transgressing the rights of the citizens. The examples are countless. Thomas Jefferson wrote to Edward Carrington from Paris in 1787: “I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution.” (Jefferson, 1787b: 153) In another letter Jefferson goes even further and develops an explicit theory of lawful resistance: “what country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon & pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants.” (Jefferson, 1787b: ibid.).

Josiah Quincy Jr. argued in 1779 offered a justification of colonial riots: “Under a form of government like ours, it would be in vain to expect that pacific, timid, obsequious, and servile temper, so predominant in more despotic governments. From our happy constitution there results its very natural effect – an impatience of injuries and a strong resentment of insults.” (Moore, 1858: 845). Samuel Adams argued that “when the People are oppress'd, when their Rights are infring'd, when their property is invaded, when taskmasters are set over them, when unconstitutional acts are executed by a naval force before their eyes, and they are daily threatened with military troops, when their legislative [sic] is dissolv'd! and what government is left, is as secret as a Divan, when placemen and their underlings swarm about them, and Pensioners begin to make an insolent appearance – in such circumstances the people will be discontented, and they are not to be blamed” (Adams, 1904: 240).
What we see here is constitutional whig rhetoric merged with ideological libertarian abhorrence of “placemen,” “pensioners” and other bureaucratic parasites, immortalized by Thomas Jefferson a few years later in the Declaration of Independence as harpies sent by the King to “harass our people and eat out their substance.” John Adams, Sam’s more cautious and conservative cousin, nevertheless justified mob law-enforcing and law-upholding activities from the beginning as necessitated by the requirements of British free constitution. Here is how he justified the Boston Tea Party, the signature event of the American Revolution, which represented, better than anything else, the true spirit of American republicanism:

The question is, Whether the destruction of this tea was necessary? I apprehended it absolutely and indispensably so. They could not send it back. The Governor, Admiral, and Collector and Comptroller would not suffer it. It was in their power to have saved it, but in no other. It could not get by the castle [the harbor fort], the men of war, &c. Then there was no other alternative but to destroy it or let it be landed. To let it be landed, would be giving up the principle of taxation by parliamentary authority, against which the continent has struggled for ten years. It was losing all our labor for ten years, and subjecting ourselves and our posterity forever to Egyptian task-masters; to burthens, indignities; to ignominy, reproach and contempt; to desolation and oppression; to poverty and servitude.89

The most enduring or at least the most visible element of this original American political culture is the Second amendment to the Constitution: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” When the previous doctrinal context of American understanding of liberty is taken into account, it should not surprise us greatly that a right

89 Cited according Adams (1773), Diary of John Adams, Volume II, 17 Dec 1773, accessed online 24 Oct. 2015
https://www.masshist.org/publications/apde2/view?id=ADMS-01-02-02-0003-0008-0001#DJA02d100n1
to bear arms emerged also from the context of British traditional constitution, existing “time of out of mind,” rather than being a novel construct of the ‘revolutionary’ thought of America. As Joyce Lee Malcolm, among others, ⁹⁰ has demonstrated, this right was derived from the traditional common-law sources. As we have seen, the medieval, feudal kings were not sovereign in any sense of the word; the monopoly of coercion was an unknown concept for Englishmen of the Middle Ages and early modernity. Before the 17ᵗʰ century the standing army was unknown, and police were not created before the 19ᵗʰ century. Hence, the right to bear arms was not questioned before the 17ᵗʰ century and hence it was not formulated explicitly as a “right” before the constitutional crises of that time. The attempts of James II to disarm his subjects were the real source of the political and legal efforts to codify and more precisely entrench the right to bear arms into the British constitution. It was against the attempts by the king to deny this ancient right that the British Bill of Rights of 1688 affirmed it as a positive constitutional category.

Historical investigation shows that the English right to bear arms was both an individual and a collective right. It meant first an individual right to self-defence but also has the political significance of a collective body of citizens’ shared right to challenge an unlawful government and protect their constitutional rights against possible royal usurpation. However, far more important than precise historical location of the formal right to bear arms is the fact that the right itself represented a remnant of the old, pre-state society in which the concept of a monopoly of coercion was despised as amounting to tyranny and slavery. America is the last Western society in which this old world was preserved to the 19ᵗʰ century and in some aspects even today. The fact that the right to keep and bear arms has a critical meaning of providing for self-defence against the government is confirmed by the fact that even the supporters of centralized government in America were supporting it openly, or at least were forced to pay lip service to it.

⁹⁰ see Malcolm, 1994, Reid, 1970.
which is in and of itself highly significant. For example, Alexander Hamilton in Federalist 29 contends that even if the federal government establishes a standing army, the armed state militias would be a powerful check to it: “if circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens. This appears to me the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist.” (Hamilton, [1788] (2001): 143). Joseph Story, a Supreme Court judge and one of the principal authors of the nationalist theory of the union, nevertheless argued: “The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.” (Story, 1833: 743).

Conclusion

This chapter demonstrated that the concepts of resistance in America drew from much older traditions than the Lockean rights to revolution. Although colonists were familiar with Locke and used his philosophy as justification of their actions, the most conspicuous concept of resistance came from the ancient and medieval concepts of Law as being above all political authorities and “private persons” having right to uphold it if necessary by violent means. But this did not mean that the violent resistance to unlawful authorities represented anarchy; on the contrary, just as medieval feuds, the American colonial and revolutionary resistance was codified and restricted by the notions of upholding law restoring a proper order in society. Both Regulator movements and revolutionary violence have a strong family resemblance to the medieval concepts of “law enforcement” in their common assumption that social actors and civil society have a
right and a duty to protect the lawful order, if necessary against the proper legal authorities. This is vaguely consistent with Locke, but goes much further than Locke himself, both in terms of allowed forms of resistance as well as the justifications for resistance. Also, a right to bear arms, which has survived to this day as a part of the Constitution, is a really anachronistic medieval remnant, the most direct, symbolic challenge to the notion of the state as a coercive monopoly of force. The American concept of a right to bear arms has not been a protection to possess arms for private use or hunting, but a political principle that citizens can legitimately arm themselves in order to protect themselves against an ‘unlawful’ government. It is impossible to conceptualize such a right without abandoning the modern notion of government as the lawful monopolist of violence.
Chapter 6.

The Great Derailment: the Coming of the American State

“The revolution of 1776 is celebrated for a revolution in favor of Liberty.

“The year 1787 will be, it is expected, celebrated with equal joy for a revolution in favor of Government.” Pennsylvania Gazette, 5 September 1787.

Introduction:

The early American political experience could best be understood in terms of a conflict for hegemony between the libertarian-localist and nationalist-statist ideological worldviews, a conflict the outcome of which for a long time remained inconclusive. The first five chapters explored ideological and socio-economic sources of libertarianism in America: its roots in British old Whiggism as well as its amplification by local conditions in the colonial America. This chapter will explain the sources of the centralizing statism in America, its temporal evolution in the period 1776-1787, and how it conflicted with the dominant libertarian worldview. Some external social and economic factors were also interacting with the ideology in the same period to create a powerful, full-scale

91 I am using these two terms mindful that they represent anachronisms of the sort, but in the same time reflect the ideological assumptions accepted by two groups, as interpreted in this work.
alternative to the doctrines of the Declaration of Independence and the Articles of Confederation. However, these will not be analyzed in great detail.92

One major stumbling block must be cleared in order to successfully perform such an analysis, and that is to address the dominance of the two “ideological” schools in modern American political theory and history of the early period, liberal Lockean and “civic republican.” All their theoretical differences notwithstanding, the main point of convergence between them is a concept that there has always been one, single “American” tradition, which only evolved and changed over time, accommodating the circumstances and responding to challenges, but always miraculously surviving as a single, homogenous system of beliefs and practices. The civic republican school, as developed by Bailyn and Wood, established a tradition that they in many places call ‘libertarian’, dominated by the ancient and medieval elements before the Revolution. But, then when faced with what appeared to be a negation of that tradition in the 1780s and 1790s, they cut corners and contrive the ‘dialectical’ bodges that either suggest that the old tradition suddenly died out and the new one was born, or that the old one was miraculously “transformed” into its own opposite. No conflict between the competing simultaneously existing visions or political programs, as a driving force of American history, is allowed to exist. For example Bailyn (1967) finds that in the revolutionary pamphlets there is no big difference between the loyalists and patriots in the literature that they read and quoted; from whence he concludes that there was just one single American political tradition. However, this could also mean that one’s reading list does not decisively influence one’s political behaviour. People can use the same or similar

92 By these socio-economic conditions I mean the economic interests influencing the political processes, described in progressive literature and debated widely. See Beard (1986) and MacDonald (1955)
literature to justify opposing programs, based on different interests or ideologies. Bailyn never takes seriously such a possibility.93

The thing is in some ways even more problematic with the Lockean school: they argue that the wise Lockean Founding Fathers rebelled in 1776 and crowned their achievement by a timeless Constitution in 1787. No significant change in the American tradition took place here either. Of course, there have been some debates in the meantime, e.g. between ‘federalists’ and ‘anti-federalists’ but those were just small quarrels within the family, always resolved in the best possible way, by wiser and more respectable among them (Madison, Hamilton, Wilson and their ilk) carrying the day over the less respectable and less wise ones (Henry, Mason, Clinton and their ilk). In this model, a rather momentous political and ideological shift from a revolution against a centralized empire in the name of natural rights and local liberties in 1776, to a centralized government in the name of “order” and reigning in “licentiousness” and “anarchy,” was considered irrelevant. This entire problem with localism and licentiousness is minimized and relegated to the rank of secondary nuisance that was overcome; the overwhelming emphasis is on the maturation of American republicanism and gradual improvement of political arguments used in public debates. Hence, the period 1776-1787 was much less a time of bitter political and ideological battles but more like a protracted, ongoing seminar in political philosophy and constitutional theory among the “wise statesmen” whom professors almost depict as distant replicas of themselves today; people who debate in the faculty lounges about the true meaning of Lockean natural rights and how best to provide for a mixed or balanced constitution. It would almost appear that the only real difference between the liberal and civic republican orthodoxies in this regard is about what were the syllabus and the reading list for this seminar:

93 This is best seen in the fact that Bailyn all the time interchangeably cites for example John Dickinson and Samuel Adams, as expressing “American views,” disregarding the fact that Dickinson was a loyalist and an opponent of independence and Adams a radical revolutionary, see Bailyn, 1967.
Locke’s *Second Treatise* and the sermons of New England covenant theologians, or maybe the Old Whig pamphlets and Machiavelli’s *Discourses*.94

We start from a rather different assumption in this study, namely, from the idea that the period 1776-1787 was a period of political battles between the two ideologies which were mortal political enemies, no lasting compromise between which was possible. The fact that those two competing ideological tides were both running high in the late 18th and early 19th centuries produced oftentimes the unstable compromises and middle-of-the-road solutions, which prompted many historians to wrongly seek for the comprehensive explanations that would make sense of those unstable and unprincipled compromises as the self-conscious and deliberate products of a single tradition, instead as the cultural and political makeshifts and ‘bastards’. But, this turns out to be untenable strategy. A good example (to be discussed later) was the American Constitution drafted in Philadelphia in 1787; huge libraries are published about American “federalism,” about American original and never before seen system which proves a true political genius of that nation, and so on.95

And yet, no new and original tradition was created in 1787; what existed was a localist, libertarian, ideology of the “men of little faith,” fresh of their victory in the Revolution, and there was on the other side of the line a nation-building, statist and mercantilist elite which felt defeated after the Declaration and the Articles, and fought bitterly during the 1780s to create a centralized government even more powerful than the British monarchy. When those two formidable forces clashed head-on in the

94 This notion of founding fathers deliberating to improve public institutions is stock in trade of the nationalist historiography, both in Lockean and civic republican versions. The two most obvious proxies for this benign view of the founders is a tendency to overlook or minimize the differences between federalists and antifederalists, and to ignore different economic interests. The excellent illustrations of this trend are Zuckert (1996), Flahy (1994), Bailyn (1992), Wood, (1969);
“interregnum” 1776-1788 nobody could claim a decisive victory, and both were forced to compromise and settle for an inconclusive, confused (dis)equilibrium combining the elements of localism and centralization, libertarianism and statism. In the meantime, the nationalist forces came up with a novel and convoluted theory of “federalism” in order to protect and legitimize at least some of the significant gains that they made in this clash.\footnote{For the history of the ratification debates analyzed in this key, see Gutzman (2007) and Kilpatrick (1957).} Debates waged before and after the drafting of the Constitution were the same debates and controversies that predated it for decades, and that continued for decades after its adoption. No transformation of American political culture and institutions about which some parts of the literature speak took place.

II. Creeping statist revolution

A convenient entry point into the debate about the revolutionary decade 1776-1787 could be a popular mythology about this period which is shared by all currently relevant schools of thought, and is seldom questioned: the mythology that the new Constitution came about by a harmless, gradual process of “policy learning” and adjustment to the circumstances under the Articles of Confederation.\footnote{This is a uniform and extremely rarely challenged proposition, the main exceptions being Sobel (1999), and Holcombe (1991) who argue that the Articles of Confederation were a better and more liberal institutional arrangement than the Constitution, and that economic results were generally good in the 1780s. Jensen 1968, 1943, on the other hand, argues against the assumption of change in the mainstream of American political tradition.} According to this narrative the wise Founding Fathers declared their independence and went to war to protect it; in the same time they created a loose association of independent states because the colonial conditions were such that the different colonies of North America were mutually independent for the most part. However, the problems of waging the war without a proper central authority, including inadequate tax revenue, provided by a
system of state requisitions, inability of the government to control army and navy as well as the failing financial and monetary system, convinced many of them that a closer and more centralized union was needed. In addition to that, the economic depression and stagnation stemming from the want of central power to regulate commerce, as well as some rebellions and disorders caused by the same absence of strong government completely swayed them towards idea of creating a new Constitution. And that was how and why the wise statesmen met in Philadelphia in 1787, proposed a draft of the new Constitution that addressed all those problems, creating in passing an original and never before seen political philosophy of “federalism,” and thus the American nation could breathe a sigh of relief because disorder, anarchy and licentious, petty localism had been reigned in and a true republicanism of Madison’s compound republic established.

However, the new Constitution was much less a product of adapting to the circumstances and much more a product of a successful conscious attempt to overhaul the old system. This attempt started from the first day of independence, much before any defects of the system under the Articles could have been revealed. It is much more correct to describe the process that produced the Constitution as a creeping revolution spanning the entire revolutionary decade driven by ideology, ambition and interest, rather than as a passive, well-intentioned and reactive adjustment to the given circumstances. As historian Merrill Jensen correctly points out: “it is difficult to maintain that the Articles of Confederation were the result of ignorance and inexperience or that the Constitution was the result of wisdom and experience. Actually both governments were the results of choice by men, very few of whom changed their minds between 1776 and 1787. Differing conceptions of the purpose of government, not ignorance, lay at the bottom of the political conflicts and changes of the American Revolution” (Jensen, 1943: 357). Forrest McDonald, famous for his criticism of the progressive school for its overemphasis on the economic factors in explaining the constitutional developments, (and very sympathetic to the nationalist cause as well) nevertheless agrees with Jensen
that the two irreconcilable ideological camps existed and survived in the revolutionary America: “During the prewar decade of resistance to British authority the proto-nationalists led the way, but they had lost leadership when the shooting started, and in 1776 the republicans swept to power. Under republican direction, Congress declared that British authority was non-existent, and for practical purposes it created nothing that could properly be called either a union or a government. But, the matter did not end there; in the ensuing eleven years, the pendulum swung thrice again. As it swung, only these two groups – one believing fiercely in republicanism and but secondarily in the nation, the other believing fiercely in the nation but secondarily in republicanism – remained essentially constant in their views” (McDonald, 1976: 29-30).

Actually, both sets of ideas *predated* by far the revolutionary period. As Bernard Bailyn (1967; 1968) shows, the ‘country party’ libertarianism of the radicals came from England and was strengthened by the colonial experience. On the other hand, the first ideas to create a national government in British North America were also much older than the independence. Throughout the 18th century various proposals were circulated for some kind of political union: some of them were *ad hoc* desperate measures calculated to strengthen the defensive capabilities of the colonies against the French or the Indians; others already showing the characteristics of the later, mature statism, arguing that the economic development and collective well-being depended upon the existence of a strong central government that would limit the anarchy and democratic licentiousness that was supposedly running high. The very first proposal for a union dating from 1698 advocated a “national assembly,” which would control the military affairs as well as significant parts of the civil government, and which would elect an executive committee or administration. Many similar proposals would float around during the 18th century,

---

98 For a review of the early proposals for the creation of a national government see Jensen, 1943.
always advanced by the British colonial aristocracy and the elites of merchants and landowners connected to and dependent on them.\(^99\)

It is perhaps ironic, but not unexpected, that one of the first comprehensive formulations of the need to create some overarching political authority in North America did not come from American patriots or revolutionaries, but rather from a British High Tory Samuel Johnson. His argument laid out in 1760 reflected all essential reasons that Madison, Hamilton and other proponents of centralized government repeated 25 years later: “[the republican form of government] is indeed pernicious to them, as the people are nearly rampant in their high notions of liberty, and thence perpetually running into intrigue and faction and the rulers so dependent on them that they in many cases are afraid to do what is best and right for fear of disobliging them” (O’ Callaghan, 1856: 442). There is too much liberty, and too much limitation to the power of the politicians to do “what is right.”

The only significant difference between this high Tory indictment of American republicanism and later “federalist” indictments of anarchy and licence under the regime of the Articles of Confederation was that the people like Hamilton, Madison or Wilson could not openly admit their monarchist assumptions anymore.\(^100\) They were operating in the circumstances of a newly ended revolutionary war during which the vast rivers of blood were spilt in the name of republicanism and against the British Monarchy. Conceding openly in such circumstances that your real purpose was to restore the same monarchical system under a different name was not politically viable. Hence, they had to cloak their monarchist arguments in the language of (some sort of) republicanism, and to

\(^99\) For the detailed description see Jensen, 1968 and Bailyn, 1968.
\(^100\) Even this was not always correct, since Hamilton in many occasions praised the British system as the most perfect one. American republicans by ‘monarchism’ meant ‘statism’. Madison openly argued that the federal government should play a similar reconciling role of neutral arbitration among the conflicting faction the British King is performing, see, bellow, pp.24-27.
argue, by and large, that what the revolutionaries fought for was actually a misguided and impractical form of republican idea (localism) and that the centralized coercive government which only may appear as a new type of monarchy, was actually the “true” and best form of republicanism itself. That’s the upshot of Publius’ celebrated arguments for an “extended republic” from 1787.

If we start from the conventional assumption that the Independence and the Articles of Confederation marked the first, unsophisticated stage of republicanism in America which was later superseded by more mature principles of the Federalist, we must notice that this supposedly new “republicanism” started to “mature” very early indeed. Actually, three years before the Declaration of Independence! During the first continental Congress, in 1774, the first serious constitutional proposal to create a supreme national government in America was presented and bitterly debated, only to be narrowly defeated by the radicals. George Galloway, an opponent of independence tried to push through Congress a plan to create a national government in America, with coercive powers over the individual colonies and citizens and with an “American Parliament” at the top. The colonies represented according to Galloway’s reasoning “so many inferior societies, disunited and unconnected in polity.” If the congressmen really wanted independence, argued Galloway, they needed first to build an American nation, with a national government and national Parliament, in order to control and regulate the colonies, and only then to declare independence, if necessary (Jensen, 1968; Ferguson, 1970). In the Congress dominated by the radicals led by Jefferson, Mason, Richard Henry Lee and Sam Adams this proposal was eventually defeated. However, it testifies to the fact that nationalists started plotting for political centralization even before the Declaration of Independence.

The next attempt was with the Articles of Confederation. Namely, on July 12th 1776, just eight days after the Declaration of Independence, the Continental Congress appointed a committee to draft the Articles of Confederation, a written Constitution for
the newly independent union of states. What was particularly bizarre about this process is the fact that the committee was dominated by the three outstanding opponents of independence, John Dickinson, Edward Routledge and Robert R. Livingston. Other members of the committee included Joseph Hewes, a close associate of Robert Morris’, himself a strong and influential supporter of centralized government, as well as Thomas Nelson, a Virginian with close connections with the colonial British government and also an opponent of independence. The only radical or libertarian at the committee was Samuel Adams of Massachusetts. Most of these people were against independence, and went along with it only reluctantly, when its inevitability became apparent, doing before that their best to postpone it as much as they could in order to create a strong national government first.101

John Dickinson, the staunchest and most influential loyalist in Pennsylvania, was in charge of producing the first draft of the document, which would then be amended by other members and sent to the Congress. And what was produced, just eight days after the Declaration of Independence (!) may come as a great surprise to anyone who would only know about the final, adopted version of the Articles: unlike the final product, the draft proposal was a relatively thinly disguised system of centralized government, not much different from Madison’s Virginia plan of 1787 in everything but in technical details. It resembled the British North America Act of 1867 in so far as it created a centralized national government with residual powers and granted to the states just some defined and limited legislative powers. In the article III it was stipulated that the states could retain their present laws (nothing was said about the future laws) but only as long as those laws did not contradict the Congressional laws. This is the crux of Dickinson Draft; any state could retain “as much of its present Laws, Rights and Customs, as it may think, and reserves to itself the sole and exclusive regulation and government of its

101 For an overview of the debates during the period 1773-1776 see Bailyn, 1967, Jensen, 1967.
internal police, *in all matters that shall not interfere with the Articles of Confederation* [emphasis added].” As we see, the legislation pertaining to internal issues of the states was the only exclusive power given to the states, and yet, even this power was effectively abrogated by the provision that nothing that states legislatively enact can conflict with the Articles of Confederation, and the Congress was made the final judge of what was and what was not “interfering with the Articles of Confederation.”

Dickinson’s draft contained, among other things, a concept that the militia was going to be controlled mostly by the federal government: the states were to collect money and appoint the lower ranking officers, whereas the Congress was to command the forces and appoint the senior (“general”) officers. This was a more centralized solution than was adopted in the Constitution of 1787. The states could impose duties and customs, but only insofar as those would not conflict with the treaties concluded by the Congress, which implicitly had given to the Congress on the back door the right to regulate trade and commerce. In addition to this, the Congress was to have “authority for the Defence and the Welfare of the United Colonies and every one of them,” which united both the right to raise armies and navy and the general welfare clause of the Constitution of 1787. The federal government was to fix the amount of money, to emit the bills of credit, to raise the navy, to determine the number of land troops, as well as to require the state legislatures to appropriate funding. Also, the Congress was to be given a judicial right of arbitrating in the disputes among the several states, which represented just a repackaging of the imperial prerogative to arbitrate between the colonies. And most glaringly, the Dickinson draft provided for the creation of a national executive branch: “a Council of State and such Committees and Civil Offices, as may be necessary for managing the general affairs of the United States, under the direction while Assembled, and in their Recess, of the Council of State” (Jensen, 1943). This seven-member body was meant to function as an executive branch of the federal government with an original power to “superintend the military and civil affairs of the United States,” to prepare the policy
proposals for the Congress, to act as an arm of Government when the Congress is in recess as well as to summon the Congress when it deems necessary. Some of the powers vested in the Congress, such as war and peace, post office, Indian affairs and foreign affairs were a part of the traditional imperial prerogative, but internal regulations, a supreme national legislature, executive and bureaucracy to superintend and supervise the colonies went far beyond anything that the imperial government had ever attempted to erect in the colonies.

III. Nationalist defeat and a renewed struggle

Even from this cursory review, it’s clear that we are facing a great irony: less than two weeks after independence was declared from the British government because of its encroachments on the rights of British colonists to govern themselves, a new and even more extensive and powerful central government was being proposed in its place by Americans themselves! It was then no surprise that the Congress dominated by the opponents of centralization would defeat such a proposal. Led by the radicals of the likes of Thomas Jefferson, Samuel Adams or George Mason, they thoroughly overhauled the Dickinson draft and convinced the majority to accept a quite different proposal. In the final version of the document the entire centralizing language was scrapped: the Council of State was renamed into Council of States and made completely subservient to the Congress, and the national residual clause from the Articles was eliminated and in its place inserted a memorable phrase that “every state retains its freedom and independence.” No taxing or regulatory powers, implicit or explicit were given to the Congress. The final text was an almost polar opposite of the first Dickinson Draft and a complete victory for the radicals and de-centralizers.
The debate surrounding the adoption of the proposal of the Articles of Confederation was very instructive: it revealed the same lines of division seen 10 years later between the ‘federalists” (nationalists) and ‘anti-federalists’ (real federalists) with regard to the Constitution proposed in Philadelphia: is the union a government of limited, delegated powers, or rather the one of plenary police powers, whether a grant of powers given will be used to illegally enlarge the federal authority or not? What is the guarantee against the illegal federal encroachments, what is the bigger threat to liberty, local faction or centralized tyranny and so on. One of the leading radical-libertarian spokesmen in the Congress, responsible for the final formulation of the article III, Thomas Burke offered the arguments that anticipated all the main facets of ‘anti-federalist’ argumentation from the great debate of 1787-88. First, Burke elaborated the main classical liberal-libertarian argument against the concentration of power, the problem which did not worry much people like Hamilton, Wilson, Morris, Duane, and others, neither in 1777 nor in 1787: “Power of all kinds has an irresistible to increase a desire for itself. It gives the Passion of ambition a Velocity which increases in its progress, and this is the passion which grows in proportion as it is gratified” (Jensen, 1974: 140). In other words, a small grant of power today, will mean only a larger one tomorrow, because concentrated power has the ‘propensity’ to increase its demands in proportion to how much the previous demands have been satisfied. Crucially, Burke derived from this general philosophical proposition the only possible practical conclusion with regard to the Dickinson draft of the Articles, and especially with regard to its national residual clause contained in the article 3: [it] “expressed only a reservation of the power of regulating the internal police, and consequently resigned every other power. It appeared to me that this was not what the States expected, and, I thought, it left it in the power of the future Congress or General Council to explain away every right belonging to the States and to make their own power as unlimited as they please.” (Wood, 1969:252) The reader will certainly recall the similar warnings by Patrick Henry or George Mason in 1788 about the Necessary and Proper and General Welfare clauses which were to be used, in their opinion, to diminish,
“explain away’ and finally annihilate all independent police powers of the states and aggrandize the central government’s ambitions. The critical difference was that in 1777, unlike 1787, nationalists did not have majority in the Congress, and their proposals and ideas, essentially unchanged from 1777 to 1787, were soundly defeated by the same people who will not succeed in thwarting the final nationalist project – the Constitution written in Philadelphia.

However, the nationalists did not take this setback as the end of the story. What they were striving to do in the period 1777-1787 was an early form of what people like Hamilton, Marshall, Story and other high ‘federalists’ would successfully do in the 1790s and early 1800s – to subvert the constitution by interpreting “elastically” its provisions and accumulating power step by step, by administrative encroachments and setting up individual precedents in the hope that these will thereby become the law. Much before the Constitution in Philadelphia has even been proposed, the proponents of a strong national government employed the whole bag of tricks that will be so memorably used by the ‘federalists’ later on; from the concept of “implied powers of the Congress” to authorize the national bank necessary to service the public debt, or the ‘implicit’ authorization of the federal tariffs and imposts, to the derivations of the right of taxation and raising the standing army from the rights of the Congress to wage war. This entire panoply of coercive government derived from the generous reading of the constitutional text was pursued by nationalists in the period 1776-1787 with the same arguments and the same vigilance as they were going to do with the new Constitution after 1787.

This is best illustrated by the fact that nationalists from the very beginning tried hard to enlarge illegally the powers of central government by establishing precedents that could be then exploited for further encroachments. One of the first attempts of this kind actually preceded the Articles of Confederation, and pertained to an attempt of some delegates in the Continental Congress to claim judicial rights for the Congress. As far back as 1775, Gouverneur Morris, a staunch nationalist who was going to play an
important role in the politics of the 1780s tried to convince the Congress to try James Rivington, a Tory printer from New York, in order to establish by a precedent the judicial capacity for the Congress. In a letter to Richard Henry Lee Morris explains this strategy quite frankly: “The power of Government as of man is to be collected from small instances; great affairs are more the object of reflection and policy. Here both join” (Jensen, 1943: 364).

This strategy was applied time and again. Take for example the famous doctrine of a federal veto power over the state legislatures. We are taught that this idea developed only gradually during the 1780s as the anarchy and licentiousness of the regime under the Articles started to show their true face, and good patriots led by Hamilton and Madison wanted by using this ‘federal negative’ to reign in the local “faction” and “tyranny of majority.” And yet, as far back as 1777, a staunch nationalist from Pennsylvania, James Wilson who played later a significant role in the Philadelphia Convention, proposed this idea for the first time, much before the Articles were even ratified; the news about the convention on price-fixing going on in New England prompted him to propose that such a measure needed to be approved by the Continental Congress. The measure was solidly defeated by the libertarian radicals in the Congress, who correctly perceived that this was contemplated just as a precedent that could be later used to clamp down on state legislatures in other issues (Jensen, 1943: 365).

Yet another pet cause of the nationalists that they believed would ‘cement the union’ has been indefatigably pursued all along: the power of the central government to act directly on the individual citizens, bypassing the state laws and regulations. This was a prominent issue during the Philadelphia convention, although this right was not completely secured until the 14th amendment was supposedly ratified in 1867 (actually, until the very generous, ahistorical interpretations by the judges have been established
many decades later).\textsuperscript{102} However, one might be surprised to discover the first eloquent elaborations of the necessity to allow the central government the power of direct regulation of individual behaviour and individual rights in the archives of the first continental Congress! Just a few days after the failed attempt to secure a federal veto on the backdoor of regulating price-fixing, nationalists saw another opportunity: the laws punishing military desertion. Such laws were contemplated in the state legislatures and the report was considered by the Congress to advise all the states to pass them and authorize the constables and other officers to enforce them. However, James Wilson added an amendment, initially adopted but later revoked, according to which this power was to be given to the Congress directly, not the states; the Congress would appoint the officers, enact the law and enforce the rules against the desertion (Jensen, 1943; McDonald, 1985).

A further step in developing the case for a national government on back door was to provide a general ‘constitutional theory’ that would justify these illegal encroachments on the state powers. And this theory was concocted first during the Hartford Convention of 1780 when the nationalists contemplated a coup d’etat against the Articles of Confederation. The idea was to appoint George Washington as Dictator and 13 vice-Dictators in the several states to forcibly extract the tax contributions for the military (Jensen, 1968: Ferguson, 1968). And they justified this proposal in the exactly same manner John Marshall would justify the second National Bank in his \textit{McCullough vs Maryland}; although the Constitution has not explicitly delegated this particular power to the Congress, the same power was ‘implied’ in the nature of the compact, and was ‘necessary and proper’ for the execution of other delegated powers.\textsuperscript{103} Thus the Hartford

\textsuperscript{102} For the way how the 14\textsuperscript{th} amendment was (not) ratified and the process of twisting its original meaning by the judges into an instrument of direct federal regulation of individual rights and behaviour through the doctrine of incorporation of the Bill of Rights, see McDonald, 1991 and Berger, 1977.

\textsuperscript{103} \textit{McCulloch v. Maryland}, 17 U.S. 316 (1819).
conspirators entertained several resolutions in which, for example, a right of Congress to enact any measure it deemed necessary for waging war, including taxation, was said to have been based on a “necessary implied compact” - between the states. Accordingly, the convention said “it may certainly be inferred that that Congress was vested with every power essential to the common defense.” Alexander Hamilton, true to himself, proposed in a letter to Robert Morris a truly remarkable principle of “constitutional interpretation” according to which Congress’ power to determine the amount of requisitions allows us to infer that it had an “implied” power of general taxation!104

Even the theory later propounded by Joseph Story, John Marshal, Daniel Webster and others about the union allegedly “preceeding the states,” and the continental Congress being “sovereign” (irrespective of the direct claim to the contrary in the Articles of Confederation) was developed in the first years of the independence, as a means of supplying a constitutional justification for various nationalist policies, ranging from federal control over the Western lands, tariffs to the national bank. As early as August 1776, James Wilson argued that the Continental Congress did not represent the states but rather individuals across the union and that it represented in itself “the state” superior to the several states, i.e. former colonies: “It has been said that Congress is a representation of states; not of Individuals. I say that the objects of its care are all individuals of the states...as to those matters which are referred to Congress, we are not so many states, but one large state. We lay our individuality, whenever we come here” (Eliot, 1836: 106).

John Adams added an even more far-reaching theory according to which the very fact of confederation meant that the states were to lose any political subjectivity and simply to be remolded into an agglomeration of individuals: “it is to form us, like separate parcels of metal, into one common mass. We shall no longer retain our separate individuality.” Later on in 1785 James Wilson formulated a full-scale “argument” about

104 See, Jensen, 1943.
the Confederation constitutionally preceding the states. The issue at hand was the renewal of the Charter of the Bank of North America, of which Wilson was an attorney and stockholder. The charter was given by both the continental Congress and the assembly of Pennsylvania. However, the Pennsylvanian legislature, dominated by libertarians, revoked the charter in 1785. Wilson argued that this was an illegal decision because the authority of the Congress was older than that of the states, since it was created before the Declaration of Independence. Hence, the acts of the Congress trump the state laws, notwithstanding the article III of the Articles of Confederation, asserting exactly the opposite. Even more fantastical, Wilson argued that the formulation “these United Colonies as free and independent states” did not refer to the states severally, but rather to the Continental Congress as a supreme legislative and executive body of the colonies! The time-honoured nationalist tradition of claiming that there was a union first, expressing its will in the Continental Congress, which then created the states, began as a self-serving attempt by Wilson, Gouverneur Morris and John Marshall to protect their bank profits from the legislature of Pennsylvania.

IV. Nationalism or liberalism?

All those piecemeal efforts in obliterating the subnational political authorities and creating a sovereign and centralized government conspired with the economic doctrines of mercantilism and government intervention that the same circles espoused. This surprisingly consistent thinking of nationalists in the revolutionary period helps explain another phenomenon often described in conventional historical accounts: the alleged “commercial liberalism” of the nationalists, their ‘modern’ economic ideas, their devotion to classical liberalism and free markets, as opposed to the narrow-minded

105 This tradition includes Daniel Webster, Joseph Story, Abraham Lincoln and the entire Whig-nationalist political movement.
“agrarianism” of the anti-federalist and Jeffersonian forces. But, the real focal point of nationalist ideology was not ‘commercial’ or any other liberalism per se but rather mercantilist ideology which only had commerce and manufacturing for its objects. Nationalists did not so much want to free the commerce as to manage it by the state. Or rather – to invoke the necessity of regulating commerce as a justification for a strong central state that they wanted anyway.

When we study Alexander Hamilton’s economic doctrines and policies it is quite clear that he did not support free markets and unbridled capitalism but rather the conventional European mercantilist model. Hamilton’s economic program as a cornerstone of the entire nationalist constitutional project was a dramatic revival of the economic theory of the 17\textsuperscript{th} century considered by Adam Smith, David Hume and French liberals to be in the domain of cranks and crackpots: it revolved around the zero-sum concept of foreign trade, in which the “trade balance” should be the key preoccupation of government policy, the fractional reserve central banking and paper currency as the ways to mobilize the ‘dead stock’ of commodity money of gold and silver, an obsession with export and/or economic self-sufficiency, and the idea that public debt increases the capital stock of a nation.\textsuperscript{106} All those doctrines were revived, polished and repackaged by Hamilton and his allies and supporters as the state-of-the-art economic model for America of their time. However, Hamilton added some original new concepts of his own, such as the famous “infant industries” argument from the ‘Report on Manufactures’ which was to become an extremely influential doctrine among all protectionists and mercantilists of the 19\textsuperscript{th} and 20\textsuperscript{th} centuries.\textsuperscript{107}

\textsuperscript{106} See chapter 3.
\textsuperscript{107} Hamilton significantly influenced the German historical school, a major statist and mercantilist school in Europe of the mid and late 19\textsuperscript{th} century, see Eicholz, 2014.
One of the cornerstone principles of mercantilism is the doctrine of balance of trade: a surplus in foreign trade is “good” whereas the negative balance is “bad,” and the purpose of government policy should be to encourage export and discourage imports (Hecksher, 1955). Dixit Hamilton: “To preserve the balance of trade in favour of a nation ought to be a leading aim of its policy. The avarice of individuals may frequently find its account in pursuing channels of traffic prejudicial to that balance, to which the government may be able to oppose effectual impediments.” Thus, greedy businessmen may venture into the lines of trade that could adversely affect the nation’s balance of trade, but the goal of the “enlightened” and “energetic” government has to be to “impede effectively” this fatal aberration. According to Hamilton it is not the extent of foreign trade, the level of integration of a country into the international division of labor that increases prosperity: it is rather a success in dumping on foreign countries more of your products than they succeed in dumping on you, irrespective of the overall magnitude of the mutual exchange. And if you don’t succeed, if the balance still gets ‘wrong’, it is better to prevent cheap imports and subsidize domestic inefficient production than to allow domestic consumers to profit from cheaper foreign goods: “if Europe will not take from us the products of our soil, upon terms consistent with our interest, the natural remedy is to contract, as fast as possible, our wants of her (Hamilton, 1957: 202).

The most cogent (and revealing) liberal refutation of this entire obsession with the balance of trade and tariffs was offered by Adam Smith himself in his ‘Wealth of Nations’, whose following passage sounds almost as a direct refutation avant la lettre of Hamilton’s mercantilism:

Nothing, however, can be more absurd than this whole doctrine of the balance of trade, upon which, not only these restraints, but almost all the other regulations of commerce are founded. When two places trade with one another, this doctrine supposes that, if the balance be even, neither of them either loses or gains; but if it leans in any degree to one side, that one of them loses and the other gains in proportion to its declension from the exact equilibrium. Both suppositions are false. A trade which is forced by means of bounties and monopolies may be and commonly is disadvantageous to the country in whose favour it is meant to be established, as I shall endeavour to show hereafter. But that trade which, without force or constraint, is naturally and regularly carried on between any two places is always advantageous, though not always equally so, to both. (Smith, [1776] 1907: 199).

Hamilton, however, would have none of it. He did not hide his disdain for Smithian liberalism, including the celebrated doctrine of the ‘invisible hand’, as the best metaphor for market self-regulation; “There are some who maintain that trade will regulate itself, and is not to be benefited by the encouragements and restraints of the government…this is one of those wild speculative paradoxes, which have grown into credit among us, contrary to the uniform practice and sense of the most enlightened nations.”

What Hamilton meant here by practice of the most “enlightened nations” is the protectionist systems dominating the large European monarchies of his time including his contemporary model – the government of the Great Britain. According to him, the reason for economic progress of England was a wise government interventionism and regimentation, that started from the age of Elisabeth I and continued ever since: “Trade may be said to have taken its rise in England under the auspices of Elizabeth; and its rapid progress there is in a great measure to be ascribed to the fostering care of

government in that and succeeding reigns.\textsuperscript{110} Therefore, no progress was considered possible without the “fostering care” of the state.

However, the real hero of Hamilton’s was French minister Colbert (“the great Colbert”), who decisively contributed to the creation of the French mercantilism in the 17\textsuperscript{th} century by his numerous edicts, laws and regulations “fostering,” subsidizing or even creating entire branches of industry, and in general, steering the French economy towards “modernization” and “improvement”:

\ldots France was much later in commercial improvements, nor would her trade have been at this time in so prosperous a condition had it not been for the abilities and indefatigable endeavours of the great Colbert. He laid the foundation of the French commerce, and taught the way to his successors to enlarge and improve it. The establishment of the woolen manufacture, in a kingdom, where nature seemed to have denied the means, is one among many proofs, how much may be effected in favour of commerce by the attention and patronage of a wise administration. The number of useful edicts passed by Louis the 14\textsuperscript{th}, and since his time, in spite of frequent interruptions from the jealous enmity of Great Britain, has advanced that of France to a degree which has excited the envy and astonishment of its neighbours.\textsuperscript{111}

We see here the main recipe for economic progress that Hamilton would equally indefatigably pursue in America as his great predecessor Colbert did in France: the “patronage of a wise administration” as a means of fostering trade and commerce, and plenty of “useful edicts” geared towards the creation and establishment of the new and superior industries, making up thereby for the short-sightedness of the business people

\textsuperscript{110} Alexander Hamilton, ‘Continentalist’, no. 5 18 Apr. 1782, Papers 3:75--82
\textsuperscript{111} Ibid.
and the markets. However, Hamilton’s version of history in which the French monarchs and bureaucrats are the champions of economic modernization (the version of history in unison repeated by almost all contemporary historians) is rather dubious. Tocqueville in his ‘Ancient Regime’ explains that economic policy of Louis XIV was not a modernization of any kind but rather a thorough process of economic regimentation that made French economy much less free than it had been in the Middle Ages:

The Middle Ages have been unjustly blamed for much of the mischief produced by the trade-corporations. There is every reason to believe that, in the origin, trade-companies and trade-unions were formed merely for the purpose of uniting the members of each craft together, and establishing a sort of free government for each branch of industry, in order to assist and control the operatives. It does not appear that Saint Louis contemplated any thing beyond this…It was not till the beginning of the sixteenth century, when the revival of civil and religious liberty was in full progress, that the idea of placing labor on the footing of a privilege to be purchased of government was first broached. It was not till then that each craft became a small, close aristocracy, and a start was given to those monopolies which were so injurious to the progress of the arts and so odious to our ancestors. From the time of Henry III., who generalized, if he did not actually create the evil, to that of Louis XVI., who extirpated it, it may be said that the system of trade-companies acquired fresh strength and extension every year; and this, while the progress of society as steadily aggravated their inconvenience, and common sense revealed their absurdity. Year after year the close corporation system was adopted by new trades, while the privileges of the old companies were constantly on the increase. The evil reached its climax at the period which is usually termed the glorious portion of the reign of Louis XIV.; for that was the time when the government stood in most urgent need of money, and was most firmly resolved not to appeal to the country. Letronne remarked very justly in 1775, “Government established trade-corporations solely for the purpose of obtaining money from them, either by the sale of patents, or by the creation of

---

112 It is particularly ironic to ascribe commercial liberalism to Hamilton when we take into account that the very notion of laissez-faire was coined as a polemical category against his idol Colbert: at one point Minister Colbert assembled the leading businessmen and asked them what he could do for them. And one of them, named Legendre, responded: “Laissez-nous faire” (“live us alone to work”)
offices which the corporations were bound to buy up. The edict of 1673 carried out thoroughly the principles of Henry III. by obliging all corporations to purchase charters from government; the next step was compelling all trades not incorporated to form companies. This wretched business yielded three hundred thousand livres.” (Tocqueville, 1998: 131)

Far from being the remnants of the ‘dark’ Middle Ages, dismantled by ‘enlightened modernity’, the guilds, trade unions and corporate monopolies were actually the inventions of the modern and “enlightened” Kings and their bureaucrats eager to extract as much money as they could from the subjects for the purposes of war and state building. Hamiltonian economic program was just a New World replica of this European policy. One does not have to look further than his famous ‘Report on Manufactures’ to see what a plethora of “useful Colberian edicts” Hamilton himself had in store for the unenlightened America which fell for Adam Smith’s superficial doctrines of free trade. In this report every single form of protectionism and “industrial policy” which had ever been proposed and tried, from the 17th century onwards, was listed and elaborated in great detail, adding some original ideas of his own. In this report, Hamilton lists the following policies employed by the “advanced nations of Europe” in order to foster domestic manufacturing, and that should be adopted or strengthened in America as well: protective tariffs (duties), outright prohibitions of foreign products, prohibitions of export of the manufacturing materials, direct government subsidies (‘pecuniary bounties’), premiums, exemptions of manufacturing materials from tariffs, regulation and inspection of the production of manufacturing commodities, subsides for the new inventions at home, and so on (op cit. 240-247). Hamilton then, almost with a pedantry of a 20th century central planner, meticulously documents all the various branches of manufacturing that in his opinion needed the government ‘protection’. And in almost 113

113 The authoritative studies of this are Edling (2003) and Edling (2014).
every single case he proposes an increase in the level of that protection; lead, fossil coal, iron and steel, copper, wood, skins, grain, wool, flax and hemp, cotton, silk, glass, gunpowder, paper, printed books, refined sugars and chocolate (Hamilton, 1957: 247-276) In virtually all of these cases Hamilton favors increasing the tariffs, or subsidies, or premiums, or (most often) all of the above (ibid.).

The basic reason for Hamilton’s frantic insistence on tariffs and protectionism was not only doctrinal adherence to mercantilist ideology but also the political ethos of nation-building and necessity of economic controls to advance the power of central government, an attitude Heckscher founds at the very bottom of mercantilism (Heckscher, 1955). In Federalist No. 12 Hamilton explains that the main reason for constitutional “reform” is that tariff policies if carried out by individual states tend to be too low because of the competitive pressures among them, and that the central government would be able to increase them manifold in order to fund federal spending: “It is evident…that one national government would be able, at much less expense, to extend the duties on import, beyond comparison further than would be practicable to the states separately, or to any partial confederacies; hitherto I believe it may safely be asserted, that these duties have not upon average exceeded in any state three per cent. In France they are estimated at 15%, and in Britain the proportion is still greater. There seems to be nothing to hinder their being increased in this country, to at least treble their present amount” (Hamilton et al, 2001: 58-59). A decentralized system of government is bad because it does not provide enough money for central government.

Another aspect of Hamilton’s mercantilism is his belief in monetary inflationism and public debt. In the ‘Report on ‘National Bank’, in defiance to modern historians’ narrative that the Constitution was imposed to counter the tendencies towards paper
money and protect a hard specie monetary system,\textsuperscript{114} Hamilton argues at great length about the benefits of paper money, if issued and controlled by the banks. According to him, the primary beneficial role of paper money is to increase the capital stock of a nation: “[paper money causes] augmentation of the active or productive capital of a country, gold and silver, when they are employed merely as the instruments of exchange and alienation, have not been improperly denominated as dead stock; but when deposited in banks to become a basis of a paper circulation, which takes their character and place...they then acquire life, or, in other words, an active and productive quality” (Hamilton: 1957: 54-55). We will remember from the chapter 2 that this is exactly the same argument the Walpole regime was advancing and that the Old Whigs were rejecting and Johnathan Swift so stingingly mocked in his poetry. For Hamilton, as for the British Whigs, the system based on paper currency, by allowing to banks to pyramid their notes on top of the specie reserves increases the aggregate amount of capital available for investment, and thus benefits the entire society. Far from being an alternative to the practices of paper circulation in revolutionary America, the Hamiltonian program actually represented an even more radical form of inflationism, which simply posits that printing money if carried out by the states is bad, but if carried out by the banks controlled by federal government is very beneficial and actually creates wealth (even the most ardent of the state-level paper inflationists would shy away from such a radical conclusion). Hamilton disparagingly talks about the classical liberal ideas that wealth can be created only by hard-work, investment and production of new things, not through monetary expansion (Hamilton, ibid.). \textsuperscript{115}

\textsuperscript{114} This interpretation is again widely held across the ideological lines; both progressive and nationalist historians accept it, with the only difference being the evaluation.

\textsuperscript{115} Forrest McDonald actually criticizes Adam Smith for neglecting this deep wisdom that Hamilton took from an English mercantilist writer Steuart: “Smith thought capital could be accumulated only by frugality, and failed to understanding that by far most potent source of capital formation is public debt” (McDonald, 1985: 127)
Why is a national bank important for economic development? The first wholesome effect of paper credit is that it tends to lower the interest rate, which stimulates business enterprises to borrow and invest more, and hence to create wealth. However, there are additional and even more tangible benefits; a ‘national’ bank with a monopoly of issuing the paper currency could stimulate business by giving subsidies, ‘affordable loans’ at low interest rates and so on to the selected businesses. Hamilton talks about the extensive programs of ‘internal improvements’ that should be undertaken with the help of the bank (Hamilton, 1957: 51-97). And since the bank is a private institution dependent on federal government for its monopoly status and profits, a welcome symbiosis between the two is foreseen: “as the institution it [bank, IJ] if rightly constituted, must depend for its renovation, from time to time, on the pleasure of the government, it will not be likely to feel a disposition to render itself, by its conduct unworthy of public patronage. The government too, in the administration of its finances, has in its power to reciprocate benefits to the bank of not less importance than those which the bank affords to the government, and which besides, are never unattended with an immediate and adequate compensation” (Hamilton, 1957: 84). In other words, the bank could enjoy the fruits of its monopoly profits created by paper circulation, but only as long as it is generous to the politicians and their cronies, via the appropriate payments or favorable loans, or funding of the government’s pet projects. Hamilton was not afraid of the corruption which this model apparently entailed; on the contrary, he welcomed it as ‘cement’ to the national unity, created by the confluence of interests between the financiers and politicians.¹¹⁶

¹¹⁶ A famous dinner that Adams, Jefferson and Hamilton had together in 1791 illustrates this. During the dinner Adams claimed that if the British government could be purged of its corruption it would have been the best political regime on Earth. To that Hamilton responded, according to Jefferson, that if the British system was purged of corruption it would have been purged of its most vital element and became “impracticable”. Jefferson commented: “Hamilton was not only a monarchist, but for a monarchy bottomed on corruption”. see Jefferson, ANA, foreword,
This is one of the old ideas applied in the Augustan age in England and decried strenuously by the old Whig pamphleteers and propagandists; an attempt to tie the interests of the creditor and investor classes to the state through the system of public debt and paper money. Alexander Hamilton could be credited as the main proponent of this idea in revolutionary America. As he emphasized, a national bank of issue was necessary in order to forge the strong ‘national bonds’ between the businessmen and politicians; as early as 1780 he wrote that “a national debt, if it is not excessive, would be to us a national blessing. It will be a powerful cement of our union.” What Hamilton meant by the “cement of the union” did not have anything to do with the sentiments and loyalties of the ordinary American people, but rather with a political design to make a strong government supported by the powerful clientele groups depending on the government financial and regulatory largesse. He spoke about the public debt as a “blessing,” because it would have tied together the interests of the financial and manufacturing elites, holding the debt, to the central government spending the money based on debt. The bank will be used as a tool of corrupting the Congress which would in return maintain the system of ‘economic growth’ based on public debt, paper money and government subsidies to the well-connected businesses (DiLorenzo, 2008).

Although certainly the most influential, Hamilton is far from being the only one to advocate such a system. The idea of strengthening the central government to achieve the goals of economic nationalism and mercantilism was widespread among the Framers. And it was widely popular much before the Articles of Confederation were ratified and their supposed failures became manifest. As early as May 1775 the proposals started floating for the creation of an overarching confederal political body in order to protect the value of paper currency, or rather the existing investments in government bonds. Some nationalists of New York argued that “whenever a Paper currency has been emitted and obtained general credit, it will be a new bond to the Associated Colonies.” In 1776 Joseph Hawley of Massachusetts argued that a national government had to be formed.
because “without a general Superintending Legislative what will become of us with regard to our paper medium” (Jensen, 1943: 367). Hamilton himself openly espoused the same idea as far back as 1779 or 1780.

Nothing was exactly new when James Wilson in 1787 explained the tragic shortcomings of the economic decentralization and ‘anarchy’ under the Articles of Confederation:

Devoid of national power, we could not prohibit the extravagance of our importations, nor could derive a revenue from their excesses. Devoid of national importance, we could not procure, for our exports, a tolerable sale at foreign markets. Devoid of national credit, we saw our public securities melt in the hands of the holders, like snow before the sun. Devoid of national dignity, we could not, in some instances, perform our treaties, on our part; and in other instances, we could neither obtain nor compel the performance of them, on the part of others. Devoid of national energy, we could not carry into execution our own resolutions, decisions and laws. (Wilson et al 1792: 37)

This is the universe of nationalist thinking in a nutshell; without a strong and centralized national government the ‘federal’ political elite would be unable to apply the mercantilist economic engineering; it could not control imports, provide tax revenue for the ‘energetic’ and activist administration, or ‘properly’ support the export and secure a favorable ‘balance of trade’.

In the very speech introducing the ‘Virginia plan’ during the Philadelphia Convention, Edmund Randolph thusly elaborated the economic advantages of the new Constitution: “there were many advantages which the United States might acquire, which were not attainable under the Confederation; such as a productive impost, counteraction of the commercial regulations of other nations; pushing of commerce ad libitum, &c.,
Gouverneur Morris expressed directly and forthrightly the Hamiltonian program of using agriculture as a basis for mercantilist policy of “encouraging” i.e. subsidizing domestic manufacturing: “The state of the country will change…and renders duties on exports, as skins, beaver and other peculiar raw materials, politic in the view of encouraging American manufactures” (Eliot, 1836: 454). In the Federalist 4, John Jay argued that the new powers of regulating commerce in the Constitution would be crucial because the international trade is a zero-sum game in which only way to prosper is by displacing and damaging the commercial interests of others: for this, a loose confederacy is inadequate instrument, and strong centralized state is indispensable: “we are rivals in navigation and carrying trade; and we shall deceive ourselves if we suppose that any of them will rejoice to see these flourish in our hands; so as our trade cannot increase, without in some degree diminishing their’s, it is more their interest and will be more their policy, to restrain, than to promote it” (Hamilton et al, 2001: 14).

The extent to which nationalists saw the fatal laissez-faire anarchy as the biggest evil that had to be dealt with decisively, could be also seen in James Madison, by no means a supporter of ‘commercial interests’, and actually an ‘agrarian’ himself, if we are to believe most historians. He claimed that the biggest economic problem was that America was unable to ‘draw steady revenue from its imposts’ (Madison, 1865: 226). He then adds that “most of our political evils may be traced back to our commercial ones, as our moral may to our political” (Madison, 1865: 227) Thus, ‘excessive’ economic liberalism, according to the “father of the Constitution” leads even to a moral decay. The natural consequence of this sad state of affairs is that America is ‘not respected’ by other nations and unable to secure for itself a favorable balance of trade.
V. The evils of disunity

If the main heroes of the “federalist” vision were “great minister” Colbert and Tudor monarchs of England no less well known were the main villains: all decentralized, republican regimes, from Greek Confederacies, the Holly Roman Empire or Republics of Switzerland or Netherlands. All those regimes receive their fair share of bashing and abuse by the “federalists.” A special scorn is understandably reserved for the most inconvenient example: the Republic of Netherlands, the wealthiest and most powerful commercial empire in the world of the 17th century invoked repeatedly by the opponents of the Constitution as an example of a successful decentralized republic. This republican regime was an alliance of independent states and their central government was not much stronger than the American Congress under the Articles of Confederation. This is the regime praised highly by Adam Smith and David Hume for its economic achievements based on laissez-faire policy and by the antifederalist writers for its political liberty and republicanism. But ‘Publius’ would have none of it. The conditions in the Netherlands were almost as dreadful as under the Articles of Confederation: “What are the characters that practice has stamped upon it? Imbecility in government; discord among the provinces; foreign influence and indignities; a precarious existence in peace and peculiar calamities from war.” And just when you think it could not get any worse, it could: “This unhappy people seem to be now suffering from popular convulsions, from dissentions among the states, and from actual invasions from foreign armies, the crisis of their destiny. All nations have their eyes fixed on the awful spectacle.” (Hamilton et al, 2001: 91)

All other European nations that did not have centralized, absolutist monarchies were about as awful and plagued by “imbecility” as Netherlands. Take for instance this hair-raising story, describing the conditions of Germany: “The history of Germany is a history of wars between the emperor and the princes and states; of wars among the princes and states themselves; of the licentiousness of the strong, and the oppression of
the weak; of foreign intrusions, and foreign intrigues; of requisitions of men and money disregarded, or partially complied with; of attempts to enforce them, altogether abortive, or attended with slaughter and desolation, involving the innocent with the guilty; of general imbecility, confusion, and misery.” (Hamilton et al, 2001: 92) Once again we see the obsession of American nationalists with economic mercantilism: the reason for the awfulness of German confederation is that it does not provide enough money for government and makes raising the armies more difficult. All economic and cultural achievements of decentralized countries pale in comparison with the “partial compliance” with requisitions for the military. For an inexperienced observer it would be difficult to gauge that this ‘Publius’ report from hell referred to the same country which was in this way described, some 40 years later, by a great German liberal Johann Wolfgang Goethe:

I do not fear that Germany will not be united; our excellent streets and future railroads will do their own. Germany is united in her patriotism and opposition to external enemies. She is united, because the German Taler and Groschen have the same value throughout the entire Empire, and because my suitcase can pass through all thirty-six states without being opened. It is united, because the municipal travel documents of a resident of Weimar are accepted everywhere on a par with the passports of the citizens of her mighty foreign neighbors. With regard to the German states, there is no longer any talk of domestic and foreign lands. Further, Germany is united in the areas of weights and measures, trade and migration, and a hundred similar things which I neither can nor wish to mention….One is mistaken, however, if one thinks that Germany's unity should be expressed in the form of one large capital city, and that this great city might benefit the masses in the same way that it might benefit the development of a few outstanding individuals...Think about cities such as Dresden, Munich, Stuttgart, Kassel, Braunschweig, Hanover, and similar ones; think about the energy that these cities represent; think about the effect they have on neighboring provinces, and ask yourself, if all of this would exist if such cities had not been the residences of princes for a long time...Frankfurt, Bremen, Hamburg, Luebeck are large and brilliant, and their impact on the prosperity of Germany is incalculable. Yet, would they remain what they are if they were to lose their independence and be incorporated as provincial cities into one great German Empire? I have reason to doubt this (cited ac. to Hoppe, 2001: 118-119n).
The contrast of the two visions could not have been more severe: where Publius sees only “discord,” “confusion,” “imbecility,” “convulsions” and “misery,” Goethe sees dynamism, productivity and economic and cultural flourishing. A statist feels a political horror vacui, believing that unity and “order” necessitate political dictation and wise centralized supervision; a liberal, on the contrary, sees in political disunity the precondition of commercial and cultural thriving, through competition and emulation of successful models. “Progress” and “enlightened policy” for a statist of the time means high taxes, standing armies, paper money, protective tariffs, economic subsidies and control by a wise political elite; for a liberal progress means the absence of all those things. A statist does not see the possibility of a national unity without a coercive government masterminding it by erasing or crippling all rival sources of authority and acting directly upon the atomized individuals; a liberal believes that sound money, free trade and migration as well cultural and linguistic unity are the best common bonds of a nation, and dreads the very possibility of political unification.

This again confirms our initial thesis that the conventional literature got it exactly backwards in describing Hamilton, Madison and “federalists” as proponents of capitalism and free markets; they were, on the contrary, proponents of the European absolute monarchy under a different name. That this is not a hyperbole but something very close to literal truth, one of the proofs could be following Madison’s claim:

The great desideratum in Government is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society to control one part from invading the rights of another, and at the same time sufficiently controlled itself, from setting up an interest adverse to that of the entire Society. In absolute monarchies, the Prince may be tolerably neutral towards different classes of his subjects, but may sacrifice the happiness of all to his personal
ambition or avarice. In small republics, the sovereign will is controlled from such a sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. In the extended Republic of the United States, the General Government would hold a pretty even balance between the parties of particular States, and be at the same time sufficiently restrained by its dependence on the community, from betraying its general interests. (Madison 1962–91, 10:214)

Thus the American “general government” represents just a “republican” repackaging of the old monarchical supremacy; it is a guardian angel of liberty and justice hovering above the fray of politics as a seemingly ‘neutral’ and benevolent harmonizer of diverse interests and factions in the society, immune to corruption and temptations of power abuse.\(^{117}\) Idolatry of the “republican” state is thereby substituted for the idolatry of the Kings and Princes. Madison just re-enacts the primal scene of the Anglo-Saxon state-building, Declaration of the Long Parliament of 1642\(^{118}\): the King’s artificial body had just been secularized and democratized.

The conflation of this kind of power-obsessed nationalism with liberal tradition is exactly the kind of mistake we detected in the first chapter that many historians committed in describing the Walpole regime as ‘modernizing’ and liberalizing the British economy and his “Old Whig” critics as backward-looking agrarians. We will see in the next chapter that the real advocates of free market capitalism in America were the people whom the literature often describes as its foes, for the same reasons the civic republicans described the British old Whigs that way: a pre-modern political science and rejection of the ‘advanced’, modern state are not supposed to be combined with modern, free market

\(^{117}\) This is the vision formulated by Hobbes (1653), and essentially accepted in variety of forms in modern political philosophy and practice. Hobbes himself was theoretically indifferent towards the form of government – republican or monarchical – as long as it played its role of conflict arbiter and interest harmonizer.

\(^{118}\) See the chapter 2.
economics. But, in America they were combined, just like they were in the mind of Johann Wolfgang Goethe.

VI. Property rights and tyranny of the majority

Another basis for the contention that ‘federalists” were “commercial liberals” is that they allegedly believed in property rights and fought tyranny of the majority in the name of the liberal Lockean system of “checks and balances,” whereas Jeffersonians were “radical” or doctrinal” democrats or majoritarians. And yet, the same arguments also fall apart under closer scrutiny. Namely, the same alleged “federalists” “anti-majoritarians” used very often the arguments that directly identified the good political regime with an unrestrained rule of the majority, and even castigated the existing model under the Articles of Confederation for being too restrictive of the majority will. When pressed by Patrick Henry during the Virginia ratification convention about the absence of any real checks to the majority will at the national level Madison invoked the virtue of the citizens, i.e. the will and wisdom of the same wretched majority against which he was supposed to fight to death, according to historians:

I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks--no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men. So that we do not depend on their virtue, or put

---

119 Here the agreement is compete: the only difference is how a particular historian evaluates different sides: whereas Jensen, 1943, Beard, 1986 or Main 1961 support ‘democrats’, McDonald 1985; 1976, Matson and Onuf 1990 support “commercial liberals”.
confidence in our rulers, but in the people who are to choose them. (Madison, 2006: 157)

The same people, the same “riotous mob,” whose virtue was not to be trusted as a guarantee against the tyranny of majority at the state level, all of a sudden, when aggregated across a large territory, become the main protection against tyranny. This miracle of transubstantiation of vice into virtue that political centralization performs is also invoked many times in the ‘Federalist’.

Alexander Hamilton’s systematically mixed feelings about majoritarianism are even more remarkable. In the Federalist 22 he wages a real rhetorical war against the restrictions to the will of majority – at the national level, of course. According to Hamilton the biggest pitfall of republican government is a condition of unanimity or qualified majority in public bodies required by traditional republican constitutions: what is needed instead is an easy and quick, smooth decision-making process with no unnecessary checks and roadblocks. The real effect of ‘excessive’ republican checks is “to embarrass the administration, to destroy the energy of the government and to substitute the pleasure, caprice or the artifices of an insignificant, turbulent or corrupt junto to the regular deliberations and decisions of a respectable majority” (Hamilton et al, 2001: 108). Thus, the same helpless, oppressed minority that at the local level needed protection from above, at the national level becomes suddenly “an insignificant, turbulent or corrupt junto”; on the other hand, the state-level dangerous and subversive “rabble,” and “tyrannous mob” once again magically transmutes at the national level into “a respectable majority.” We wonder: where did the textbook Publius, a fearless defender of oppressed minorities and an impeccable foe of ‘radical democracy’, ‘mob’ and ‘majoritarianism’ disappear?
However, it is not only that the tyranny of majority is nowhere on the Hamilton’s radar screen; it seems that a power of federal majority to do as they please is, moreover, the supreme desideratum of a good republican government. The reason is simple: “When a concurrence of a large number is required by the constitution to the doing of any national act, we are apt to rest satisfied that all is safe, because nothing improper will likely to be done; but we forget how much good may be prevented, and how much it may be produced by the power of hindering what is necessary to do…” (Hamilton et al, 2001: 109). The reader is thus left to lament over all the wonderful things that the government could have done but for the pesky, narrow-minded, obstructionist ‘juntos’, whose concurrence the wise and respectable rulers need.

It is clear from this that the insistence on the checks on majority is not a matter of some doctrinal, classical liberal adherence to the idea of individual rights or property rights, but rather a rhetorical epiphenomenon of the background argument for centralization of power. Tyranny of the majority is actually excellent if exercised at the national level by “respectable gentlemen.” A prominent American historian, very sympathetic to the nationalist cause, concedes nevertheless this basic point: “Federalist argument was not a proto-liberal call for minority rights and limited government, but an argument about state formation, or state building...federalists tried to create a strong national state in America, a state possessing all the significant powers held by contemporary European states” (Edling, 2003: 4).

This is characteristic even of the Federalist, which has a reputation for being more balanced and less consolidating than other utterances of its authors. It is often argued that the arguments offered in the Federalist represent a modification of the orthodox nationalist ideology by arguing for a “divided sovereignty” and the combined “national-federal” constitution. Yet, we have to keep in mind Quentin Skinner’s
distinction between what the text says and what it does. Namely, the Federalist is a collection of the propagandistic writings, a selection of newspaper articles written to convince the reluctant anti-federalists in New York to accept the Constitution, not a disinterested philosophical treatise. It is quite logical that in such literature the writers would adjust their message to the audience they are trying to reach: this audience is certainly not the hard-core supporters of the Constitution, but rather its opponents who doubt or question the idea of political consolidation and fear that it would bring about a diminution of public liberty. If this is the case, then it is quite expected that Publius would downplay their centralist convictions and try to win the support of reluctant lukewarmers by convincing them that the new document was NOT an act of consolidation. They had every possible motive to conceal or modify their true views so as not to alienate or scare of the reluctant “elements.”

This dual mandate, to support centralization and to explain it away in the same time, produced confusing and contradictory statements which are difficult to square if the text is to be taken as a treatise rather than as propaganda. On the one hand, the whole argument in the Federalist is to convince the people that a more “energetic” (powerful) government is needed. But, at the same time, the people who had to be convinced did not like powerful governments at all. For them, “Publius” had developed the “compound republic” scheme; an argument that justifies centralized government as being less susceptible to tyranny because a great multiplicity of factions and large territorial extent of the country would make forming a majority coalition more difficult:

121 This does not mean that nationalists did not believe doctrinally in private property rights, and that any Lockean statement one can find in their writings is just a “window dressing”. It rather means that the charitable traditional interpretations that Lockeanism was the driving force behind the constitutional reform cannot be sustained, and that this driving force has to be found in state-building and centralizing ideology.
Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with others. (Hamilton et al, 2001: 48)

The first tricky problem with this is that Madison is defending here a centralized, unitary state spanning a large territory, rather than a compound, federal polity. The main claim is that the evils of faction and tyranny of majority will be greatly attenuated in a larger state, as compared to a smaller one. If true, this would be a perfect argument against any sort of federal government, and for a consolidated, unitary state. If larger states indeed make combinations of factions more difficult, then the solution should be to maximize this wholesome effect, for example by something like the original Virginia plan, or even Hamilton’s proposal for abolishing the states and state governments altogether. Madison’s main argument in 10th is not that an extended, federative republic of divided sovereignty would be better than a small, local republic, but rather that a territorially large unitary state would be better than a territorially small unitary state.

In such circumstances, the existence of the subnational orders of government only serves to undermine the logic of an extended ‘republican’ polity, by creating an arena in which the

---

122 In so far as one accepts the findings of modern public choice theory, such as those pertaining to rent-seeking, log-rolling, bureaucratic inefficiency and so on, all of them showing the ways how the majority will could be and have been routinely subverted by “cooperating” factions at the federal level, one is very unlikely to believe Madison’s benign view of centralization. For public choice analysis, see Buchanan and Tullock, 1999; Krueger, 1974, McChesney 1997; Niskanen 1971.

123 Best direct support for this interpretation is Madison famous insistence on “federal negative” during the Constitutional Convention in Philadelphia – a power of central government to suspend or abolish any state laws that conflict with national interest (“in all cases whatsoever”). This practically amounted to the abolition of state sovereignty and created a unitary government in content, if not in form. What Madison says in Federalist 10 is: “don’t worry about centralization, it is actually a good thing”. Of course, since the final product, the Constitution to be ratified, did not contain his favorite negative, he had to pay a lip service to “federalism” and “coordination,” but that’s a side show for him at this point in time.
devious logic of local faction could reign supreme. Would not be much better if we could have gotten rid of the local governments altogether? What purpose do they serve at all?

However, an additional problem is that this looks like an argument that the national government will be less energetic than before, which is contrary to the purpose of Publius’ writing. If a ‘federal’ government spanning a large territory is more difficult to misuse because the majority faction is harder to form and sustain, it would be then equally difficult to muster a requisite majority for a proper use. And this means that the Constitution would be ineffective. In order to shore up this contradiction Madison simply introduces an ad hoc bodge: “virtue.” Namely, centralization does not mean, as it may appear, a paralysis and inactivity; once the power is centralized, the elected rulers will cease to be self-serving schemers and will become heroic public servants. The ‘compound republic’ brings about “the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices” and is “more likely to centre in men who possess the most attractive merit and the most diffusive and established characters” (Hamilton et al, 2001: 10, 27). Politics will be transformed from the struggle of the interest groups and factious demagogues into an elevated deliberation of enlightened Philosopher Kings. And whenever “public good” requires it, those demi-gods would agree to “act” which explains why this government, technically clumsy and difficult to organize would be supremely energetic and efficient. Centralization not only makes nefarious designs by factions less likely for technical reasons of higher ‘transaction costs’ of organizing majority, but also makes rulers more virtuous and less factious to begin with. Hence, for those who do not quite buy the ingenious “compound republic” scheme, Publius had an even better miracle to sell: a mystical transubstantiation of politicians from devils into angels: the only precondition was to give them a larger territory and more power! Madison adds: “under such a regulation, it well may happen that the public voice pronounced by the people’s representatives will be more consonant to the public good, than if pronounced by people themselves convened for this purpose”
Thus, the new, wise and “energetic” rulers will be able to know the ‘true’ interest of their subjects much better than the subjects themselves.

Madison does not explain very convincingly the causal mechanism behind this miracle. The closest he comes to an actual argument is the claim in the Federalist 10: “as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.” (Hamilton et al., 2001: 47). But now this looks like an argument that centralization is not a cure for the “tyranny of majority” as advertised, but rather for the tyranny of minority, and that the dangers of “excessive democracy” could be arrested only by an even more excessive democracy. And, moreover, it seems now that centralization of power morally uplifts and purifies both the rulers and the subjects. While majorities at the state level create all sorts of carnage that the nationalists denounce in almost biblical language, at the national level, majority should increase the likelihood of the election of virtuous politicians. The transformation of a collection of bigoted and narrow-minded local majorities into one large and wise majority still remains a puzzle in need of explanation. As Gordon Wood points out, this amounted to a sort of alchemy: “the federalist image of the Constitution as a “philosopher’s stone” was indeed appropriate: it was a device intended to transmute the base materials into gold and thereby prolonging the life of the republic” (Wood, 1969: 507).

This entire constitutional-theoretical alchemy testifies to the fact that the Federalist did not have a new and original philosophy to offer: what had been described by many historians as such was actually an attempt to placate the skeptics and explain away what looked to many of them as a consolidationist and monarchist logic in the new Constitution. Moreover, this tactical redefining of their program from a hard-core and
open nationalism to the “compound republic” federalism was widespread among the nationalists. Like Madison, many of them switched their tactic from openly attacking the states and requiring centralization to the arguments about ‘divided sovereignty’ and stronger central government being needed to help and “preserve” the states. Edmund Randolph who presented the consolidationist Virginia Plan in Philadelphia, sang quite a different tune during the ratification convention in Richmond: that only limited powers expressly delegated to the Congress will be used and that “we should be at liberty to consider as a violation of the Constitution every exercise of power not expressly delegated therein..” (Eliot, 1836: 576). Another influential federalist who was to become the first attorney general of Kentucky, George Nicholas said that “[Constitution] is not to be construed so as to impose any supplementary condition upon [us] and that [we] are to be exonerated from it whencesoever such an imposition shall be attempted..” (Eliot, 1836 626). Pelatiah Webster similarly insisted that the new Constitution did not represent a consolidation of power but just a better system of coordination between the central and local governments, and even strengthened the local powers of the states: “The New Constitution leaves of Thirteen States, complete republics, as it found them…it gives the establishment, support and protection to the internal and separate police of each State, under the superintendancy of the federal powers, which it could not possibly enjoy in an independent state” (ibid.). Emphasizing the same “interdependence” between the states and federal government, Robert Livingston argued: “The strongest-nerved state, even the right arm, if separated from the body must whither” (Eliot, 1836: 133-34).

James Wilson, who probably played an even more important role in pushing for centralization in Philadelphia than Madison, and who a few years earlier invented the argument about the federal union “preceding the states,” now also changed his argument dramatically. At the Pennsylvania ratifying convention, he channelled Madison and Nicholas in extolling the “decentralist” virtues of the new Constitution, which was now just a limited federal pact giving circumscribed powers to the new government. In
elaborating why the new Constitution did not need any amendments in the form of a Bill of Rights, he said:

When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question respecting the jurisdiction of the House of Assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating federal powers, another criterion was necessarily introduced, and the congressional power is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of the union. Hence, it is evident, that in the former case everything which is not reserved is given; but in the latter the reverse of the proposition prevails, and everything which is not given is reserved. (Cogan, 1997: 699)

It seems clear that James Wilson tried to “sell” the Constitution in Pennsylvania by arguing that noting like a subsequent 10th amendment was necessary, since the iron-clad constitutional guarantee against any seizure of power “by implication” or usurping legislative or regulatory responsibilities not explicitly delegated by the Constitution was out of the question, as a matter of constitutional principle. Even today, many proponents of nationalist orthodoxy who regard the 10th amendment as a “truism” often ridicule the notions sometimes invoked by the states’ rights advocates that 10th amendment means what is says: that whatever was not delegated by the constitutional text to the federal government is reserved for the states. But, the real originator of that argument was an arch nationalist James Wilson at the Pennsylvania ratifying convention.

Conclusion

The conclusion of this chapter could be that the nationalist thinking about the American founding represented a constant and coherent political presence throughout the revolutionary period, that it had its ideological, political and economic sources, and that it
had not been “transformed” in any significant way in the period 1773-1787. Those sources are best understood as an American attempt at creating a centralized, European style nation-state with the economic apparatus of mercantilist control as its most obvious element. What is usually understood as a “transformation” of the American revolutionary experience was in essence a tactical and rhetorical modification of the nationalist message, not affecting the core values and beliefs of the nationalists.

The tween sources of the drive for the new Constitution (that can be only analytically separated) were mercantilist philosophy and political centralization. Alexander Hamilton’s program which was widely advertised in 1780s, used as the strongest argument against the Articles of Confederation and then implemented in 1790s, was widely shared among the proponents of the new Constitution. On the other hand, the centralizing philosophy was inherited from the British tradition, and reinforced by doctrinal adherence to some continental precedents (such as in the case of Hamilton). The significance of this process is that federalist-nationalists both created the basis for modern American state, and provided unintentionally, during the ratification process, the intellectual ammunition to their opponents to continue the resistance to the state, in the new circumstances and under the new, modified theoretical assumptions.
Chapter 7.

1776 Strikes Back – Critics of the Constitution

Introduction

With the struggle over the adoption of the proposed new Constitution in 1787-88, the conflict between the forces of modern statism and liberalism has started to be internalized. As seen in the previous chapter, the nationalist movement for a strong central government was a logical continuation of the processes unleashed by the British Parliament in the period 1763-1775 that caused the American Revolution. A shocked and angry reaction of many American leaders and rank and file revolutionaries against the new constitutional proposal bear a remarkable similarity to the reactions of patriots in 1773-1776. The principles and the logic with which the so called “anti-federalists” would assail the Constitution was a carbon copy of the revolutionary invective against the designs of British Parliament from the previous decade: arguments for free and unrestricted trade, low taxes, local liberties, ‘ancient constitution’\(^{124}\) threatened by modern ‘innovations’ of ambitious ministers and officials, and a thoroughgoing conspiracy of the elite against the people.\(^{125}\) All the essential elements of the ‘country party’ ideology which inflamed and sustained the bitter revolutionary spirit throughout the 1760s and 70s now transmigrated into a movement against a new, ‘aristocratic’ and

\(^{124}\) For the discussion of the “ancient constitution” and anti-federalists see section 3 of this chapter.

\(^{125}\) About the influence that Bolingbroke, Cato and other country party ideologues had on American Revolution in general the best study is Bailyn (1965). See also Kramnick (1992),
‘oligarchic’ design by the ambitious, domestic well-to-do gentlemen to ‘enslave the people’ by central economic and political control. Just as federalists-nationalists took the loy whole of centralizing nation-building, the patriot-revolutionary torch has been taken over by a diverse group of writers, politicians and pamphleteers who almost succeeded in thwarting the Philadelphia Constitution, and who were called by their enemies “anti-federalists.”

As already indicated, this dualistic interpretation of the early revolutionary and national periods is not new: it had been developed already by the progressive school, but my theoretical novelty lies in my interpretation of the antagonists in this struggle. The standard progressive interpretation advanced by Beard (1986), Jensen (1968), Turner Main (1961) and others posited that anti-federalists were anti-capitalist farmers-agarians, advocating debt relief and the widespread use of paper money for this purpose, and in politics, amounted to “radical democrats” and virtually proto-new Dealers (as opposed to “bourgeois-conservative” federalists). This was the conventional wisdom until about the 1950s. Since then a wide variety of revisions have been proposed, some of which have become a new conventional wisdom themselves. Targeting a peculiar conceptual anomaly that anti-federalists were radical, anti-business democrats who were nevertheless against strong government, Cecilia Kenyon argued in her very influential essay that anti-federalists were not democrats at all, but rather conservative and actually libertarian “men of little faith” (Kenyon, 1956). They were narrow-minded, provincial opponents of big and enlightened government pursued by Hamiltonians, who did not believe in democracy at all, but rather in local, as opposed to centralized, aristocracy. This revision came from the growing realization that by enthroning the antifederalist skeptics of strong government.

126 I will use this term throughout the chapter for the reasons of convenience, although its meaning is exactly the opposite of reality: “anti-federalists” were actually federalists according to the linguistic usages of the time, the people opposing strong central government and emphasizing the rights and liberties of federal units, just as much the “federalists” were actually “anti-federalists,” advocating a strong central government and a radical diminution, and in some cases even abolishing, of political subjectivity of the federal states.
government as spokesmen of the progressive political forces, earlier progressive literature was playing into the hands of conservatives, by pursuing superficial ideological continuities instead of systematic analysis of political philosophies. This is why Kenyon argued that the real hero of progressive forces should be Alexander Hamilton, the “American Rousseau,” as she dubbed him,127 because he was the first to develop the concept of a strong, centralized government as an instrument and agent of democratic transformation of society, creating thereby an institutional and discursive framework in which all subsequent progressive political revolutions were to take place.

But one of the primary corollaries of Kenyon’s intervention was to cast doubt on the notion that federalists and anti-federalists were radical ideological opponents, by questioning the democratic character of anti-federalism. Other revisions, such as McDonald’s critique of Beard’s or Bailyn’s and Woods’ reformulations of progressive theory128, deemphasized the class and economic elements and emphasized, quite ecumenically, the ideological elements in which all American actors were in agreement. These revisions seem to have undercut the basis for progressive dualistic interpretation.129 Their subversion was to artificially graft one of the elements of the old, dualistic model – the radical character of the American Revolution – on to the mainstream interpretation, but then, quite inconsistently, to dilute it by accepting the opposite nationalist tradition as the “real” and “true,” “evolving” republicanism. Hence, they would be able to eat the cake and to have it in the same time; to spend most of their time explaining the revolutionary, anti-statist character of the Revolution of 1776, and still not transgress

128 Even Gordon Wood in his magisterial “The Creation of the American Republic” adheres to the standard Beardian platitudes of federalists as promoters of “commercial republicanism” and anti-federalists as “radical democrats,” egalitarians and majoritarians, see Wood, 1969: 9-16.
129 Modern treatments of anti-federalists to a large degree follow this approach, with some modifications; see for example Storing (1981), Cornell (1999), Siemmers (2003).
against the sacred dogma that 1787 was the only possible continuation and consummation of 1776.

In this chapter I will attempt to recover the progressive dualistic model which sees 1787 as repudiation of 1776, by using the arguments developed by its critics and some which are novel, or at least thus far obscure and mostly ignored. My simple contention is that Kenyon was indeed right in describing the enemies of the new Constitution as “men of little faith,” that the core of the antifederalist critique was a libertarian reaction against modern state building. It was the first line of American resistance against the domestic statism, expressing itself in three ways: as a libertarian economic critique of the mercantilist aspects of the new Constitution; II) as a more general theoretical rejection of the modern, consolidated state in the name of localism and ‘ancient constitution’, and III) A Bolingbroke-Cato style criticism of political ‘corruption’ that the new centralized system was to bring about. We will see that anti-federalist critique of the Constitution replicated to a minute detail the same ideological suppositions of the British “country-party” ideology explained in the chapter 1, blending this with traditional American attitudes towards political power described in chapters 2 and 3. The only difference between the revolutionary spirit of 1763-1776 and that of 1787-88 was that in the latter case the enemy was domestic. But the enemies’ program against which the resistance was mounted was essentially the same, and the same (or very similar) arguments were used.

II. Economic critique

Perhaps the best place to start the discussion of the anti-federalist economic persuasion is the issue of paper money and monetary policy. For a very long time, the common wisdom among the students of the subject has been that the new constitution was designed to protect sanctity of contract and sound money, by prohibiting state
legislatures from using the paper currency to de facto default on their debt promises. Federalists were for hard money, private property, sanctity of contract, whereas agrarians or “radical democrats” were for paper money, debt default and contract infringements. However, we have already seen in the previous chapter that “federalists” were not at the advocates of sound money and private property rights, but of mercantilism, and that they proposed the constitution to thwart only the state legislatures in pursuing the inflationist policies of paper money, while reserving this right for the central government, i.e. for themselves. The Constitution forbids state governments from issuing paper currency, but does not say anything about the central government’s role or powers in this regard. Hamilton’s theory about the wholesome effects of bank paper money and subsequent imposition of the national bank should suffice to settle this matter.

However, the second part of the equation is no less wrong: the claim that anti-federalists were for paper money. Actually, some of the most prominent anti-federalist writers were extreme hard-money men. We find very drastic and unequivocal denunciations of paper money in the writings of the most eloquent and profound republican writers. ‘Agripa’ thus argues that the tender laws introducing paper money represented a fatal economic mistake of believing that the imbalance in trade with foreign countries could be remedied and incomes increased by monetary inflation. Incidentally, he offered a brilliant counter-argument not only against the state policies of issuing paper currency but equally against Hamiltonian mercantilist schemes of increasing the amount of capital by printing bank fiduciary medium: “when business is unshackled, it will find out that channel which is most friendly to its course. We ought, therefore, to be

130 See the Article 1, section 10 of the Constitution. "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility".

131 For a sympathetic account of Hamilton see McDonald (1982). For a critique see DiLorenzo (2009). Hamilton’s own writings on the matter are collected in Hamilton (1957).
exceedingly cautious about diverting or restraining it. Every day produces fresh proofs that people, under the immediate pressure of difficulties, do not, at first glance, discover the proper relief. The last year, a desire to get rid of embarrassments induced many honest people to agree to a tender act, and many others, of a different description, to obstruct the courts of justice. Both these methods only increased the evil they were intended to cure.” (Ford, 1892: 75) Solidly in the footsteps of Adam Smith, Agripa rejects the notion, common to many nationalists and state level mercantilists, that there is something else beyond unshackling the free enterprise that a government could do to increase the economic welfare of the people.

Federal Farmer was no less ardent and explicit in denouncing the economically detrimental effects of paper money: “it was the war that disturbed the course of commerce, introduced the floods of paper money, the stagnation of credit and threw many valuable men out of steady business. From these sources our greatest evils arise: “ (Fronthen, 294). Federal Farmer is specifically critical of the state legislatures and their custom of introducing legal tender laws and paper money, thereby strengthening the position of the nationalist forces who could use those lax practices as a justification for their program of financial and political centralization: “the conduct of several legislatures, touching paper money and tender laws, has prepared many honest men for changes in government, which otherwise they would not have thought of – when by the evils on the one hand, and by the secret instigation of artful men on the other… the minds of men will become sufficiently uneasy” (ibid, 146). Centinela argued that paper money issued during the revolutionary period, both by Congress and by state legislatures, crippled domestic and foreign commerce and created “great distress” for most of the people: “the country in this period was very much impoverished and exhausted, commerce has been suspended for near six years,.. the evils of depreciation of paper money, which fell chiefly upon the patriotic and virtuous part of the community, had all concurred to produce great distress throughout America.“ (Ibid.: 70)
Moreover, the most important anti-federalist spokesmen defended sanctity of contract and in the context of the debate about debt relief. Deliberator’s’ take on this issue was characteristic:

Though I believe it not generally so understood, yet certain it is, that Congress may emit paper money, and even make it legal tender throughout the United States, and, what is still worse, may, after it shall have depreciated in the hands of the people, call it in by taxes, at any rate of depreciation (compared with gold and silver) which they may think proper. For though no state can emit bills of credit, or pass any law impairing the obligation of contracts, yet the Congress themselves are under no constitutional restraints on these points (Storing, 1981, vol 3: 179).

Agripa also argued that infringement of the rights of contract was a big misfortune that had to be remedied, not by government intervention but by free trade: “…a desire to get rid of embarrassments induced many honest people to agree to a tender act, and many others, of a different description, to obstruct the courts of justice. Both these methods only increased the evil they were intended to cure. Experience has since shown that, instead of trying to lessen an evil by altering the present course of things, that every endeavor should have been applied to facilitate the course of law, and thus to encourage a mutual confidence among the citizens, which increases the resources of them all, and renders easy the payment of debts.” (Borden, 1965: 30)

As Bray Hammond has pointed out, almost none of the leading figures among the anti-federalists advocated paper currency, and even those that did, such Martin Luther, did so not out of doctrinal adherence to the paper money creed, but out of the opposition to the federal takeover of monetary policy (Hammond, 1957: 92-94). Most of the anti-federalists were for specie money and were critical of the Constitutional dealing with money not because it prohibited paper to the states but because it did not prohibit it to the
federal government as well, allowing the Congress to create inflation with impunity (Frohnen, 1999). Contrary to the popular notions advanced by historians, the primary goal of federalist commercial regulations in the Constitution was not to preserve the rigid property rights and hard money,\textsuperscript{132} nor were the major objections to those regulations by the anti-federalists motivated by a preference for paper money and democratic tyranny. On the contrary, their objections were based on the conviction that the liberty of contract and hard specie money were not sufficiently protected by the Constitution, because the federal government could practice both inflation and contractual impairment with impunity.

Anti-federalists’ general critique of government interventionism in economic areas is surprisingly modern. Many different writers understood perfectly that the new Constitution would not be a protector of a “commercial republic,” but rather serve as an instrument of meddling into commerce by central government in order to protect special interests, or to forge national unity.\textsuperscript{133} Their arguments are often typical of the laissez-faire ideology that could have easily been taken directly from Adam Smith. For example, the popular writer ‘Cato’ argues that the power given to the central government to regulate commerce would be used to increase tariff protectionism and would not, as the partisans of new Constitution believed, promote economic development, but rather lead to impoverishment, higher prices and inferior supply of goods and services:

\textsuperscript{132} This is virtually universal assumption, most notably and consistently formulated by Forrest McDonald (2000).

\textsuperscript{133} It used to be widely accepted by the progressive historians that the Constitution was primarily premeditated to give the central government the power to pay off the war time bods, reward land speculation and give the tariff protection to wealthy merchants who were disproportionately federalists (Jensen, 1963, Beard, 1986). However, later revisions (MCDonald 1958) this strong thesis was put into question, but the basic argument that economic power of the central government should serve as a vehicle of political power and consolidation, that federalists themselves boasted, is undeniable.
…if heavy duties are laid on merchandize…the price of commodities, useful as well as luxurious, must be increased; the consumers will be fewer, the merchants must import less; trade will languish, and this source of revenue in a great measure be dried up; but if you examine this a little further, you will find that this revenue, managed in this way, will come out of you and be a very heavy and ruinous one, at least – the merchant no more than advances money for you to the public and will not, nor cannot pay any part of it himself, and if he pays more duties, he will sell his commodities at a price portionably raised – thus the laborer, mechanic and farmer must fill it in the purpose of their utensils and clothing – wages etc. must rise with the price of things, or they must be ruined, and that must be the case with the farmer, whose produce will not increase, in the ration with labor, utensils and clothing; for that he must sell at usual price or lower caused by the decrease of trade; the consequence will be that he must mortgage his farm, and then it comes the inevitable bankruptcy (Fronhen, 1999: 25-26)

Cato is assisted and complemented in his efforts by an analysis provided by “Agripa.” Agripa concurs that a centralized government is bad for commercial and economic development, and emphasizes that bonds of the union are best preserved by trade, not by political unification: “one consolidated government is inapplicable to a great extent of country; is unfriendly to the rights both of persons and property, which rights always adhere together; and that being contrary to the interest of the extreme of an empire, such a government can be supported only by power, and that commerce is the true bond of union for a free state” (Ford, 1892: 85-86). However, Agripa also has a response to a very commonly touted argument of Madison and other nationalists, namely that historically speaking small decentralized republics were unstable and in a constant state of war, having primarily in mind Roman republic and various Greek confederacies. According to Agripa, however, using the instability and wars prevalent in Roman and
Greek experience as a proof of the instability of localist and republican regimes as such is wrong, because the real causal agent of instability was not that Rome or Greek poleis were republican, but the absence of the spirit of free enterprise. They did not combine their republicanism with the spirit of free trade and commercialism, which are the surest bulwarks against militarism and wars. Instead they developed an economy based on slavery and treated martial virtues as supreme.\textsuperscript{134} Agripa uses the opposite example of Carthage to refute Madison’s claims:

no instances can be produced of any kind of government so stable and energetick as republican. The objection drawn from Greek and Roman states does not apply to the question. Republicanism appears here in its most disadvantageous form. Arts and domestic employments were generally committed to slaves, while war was almost the only business worthy of a citizen…On the other hand we find Carthage cultivating commerce and extending her dominions for the long space of seven centuries, during which term internal tranquility was never disturbed by her citizens. Her national power was so respectable that for a long time it was doubtful whether Carthage or Rome should rule. (Kenyon, 1966: 138)

It is difficult to lay out more clearly the ideal of a decentralized political regime based on free trade and commerce than these writers do. If anyone was a supporter of “commercial republicanism,” writers such as ‘Cato’ or ‘Agripa’ were. Agripa offers a direct and thorough refutation of the nationalist argument that strong central government is needed to “promote commerce”:

There cannot, from the history of mankind, be produced an instance of rapid growth in extent, in numbers, in arts, and in trade, that will bear any comparison with our country. This is owing to what the friends of the new system,

\textsuperscript{134} See Frohnen, 1999.
and the enemies of the revolution, for I take them to be nearly the same, would term our *extreme liberty*. Already, have our ships visited every part of the world, and brought us their commodities in greater perfection, and at a more moderate price, than we ever before experienced. The ships of other nations crowd to our ports, seeking an intercourse with us.” (Ford, 1892: 97-98).

Agripa’s optics are exactly opposite of Hamilton’s or Madison’s; while they have promoted European absolute monarchies with their mercantilist policies of centralized control as an idea to which America should aspire, Agripa saw America, as it is, as an ideal vastly superior to the sclerotic, centralized monarchies of the old world. Thus, the opposition nationalists- federalists should not be seen in the conventional key as an opposition between “commercial republicanism” and “localist agrarianism,” but rather as the one between a commercial regime based on government intervention and a commercial regime based on decentralization and free trade.

Another aspect of the anti-federalist, pro free-trade argument is their opposition to the powers of Congress to regulate trade, which, according to many of them, included the right to form commercial monopolies which are extremely harmful for economic development. The contrast to the Hamiltonian belief that chartered corporations are good for the economy could not have been greater. For example, Agripa argues: “By sect. 8 of article I, Congress is to have the unlimited right to regulate commerce, external and internal, and may therefore create monopolies which have been universally injurious to all the subjects of the countries that have adopted them, excepting the monopolists themselves.” (Ford, 1892: 100)

135 For an explanation (a sympathetic one) of the reasons for considering federalists to be the monarchists of the European mold, see Rose (1990).
These economic discussions between federalists and anti-federalists often re-enact European theoretical debates between mercantilists and classical economists. This is especially apparent when we turn our attention to a close connection that anti-federalists established between the powers of taxation and of raising armies in the new Constitution. The argument was that the central government was going to use its taxing power as a vehicle of political aggrandizement and standing armies as ‘tax collectors’ (Fronhen, 1999). Since the federal government had been given unlimited powers of taxation, the anti-federalists feared that this would lead, especially when coupled with the general ‘welfare clause’, to an enormous growth of government expenditure. There was no check in the Constitution that would prevent such a development. ‘Philadelphiensis’ explained what was widely agreed among the anti-federalists as a general theory of the state and its legitimate functions, endangered by the new constitutional order: “The only thing in which the government should be efficient, is to protect the liberties, lives and property of the people governed from foreign and domestic violence. This, and this only is what every government should do effectually. For any government to do more than this is impossible and every one that falls short of this is defective” (Storing, 1981: 110).

In an organic unity with this localist-driven economic libertarianism is the consistent re-appropriation by the anti-federalists of other central motives of the country-party ideology described in chapter 1. Their critiques of corruption brought about by a centralized system were offered with a very sophisticated analysis of the institutional dynamic of centralized government, anticipating many insights of the public choice theory. Namely, the crucial antifederalist contribution to the further refinement of the country party ideology was to bring to the forefront the issue only tangentially addressed in the English theory of Cato or Bolingbroke: the close relationship between corruption and centralization of power. Anti-federalists’ localism is traditionally ascribed to their philosophical adherence to Montesquieu; and indeed they very often cite Montesquieu in support of the notion that in order to be free a republic has to be small. However, there is
another and much neglected source of anti-federalist localism by which they follow the old Whig musings of ‘Cato’, and that is the traditional medieval British system of local representation and short electoral terms. The anti-federalists are the true heirs of the revolutionary conservative tradition described by Gordon Wood and Bernard Bailyn.\textsuperscript{136}

The main danger they saw in the new Constitution was that it allowed the federal government to multiply federal bureaucracy and infringe on individual freedom:\textsuperscript{137} relentless harangues against “placemen” so similar to those of English country ideologues and American revolutionary patriots are all over the place. The opposition that consistently runs through the anti-federalist writings is between the ‘aristocratick’ designs of the people in power (and around power) and traditional liberties of the British constitution inherited in the revolutionary America. The fear of “placemen” in the service of central government reverberates in the utterances of the new Constitution’s critics. Thus John Dewitt argues that “there cannot remain a doubt in the mind of any reflecting man, that it is a System purely Aristocratical, calculated to find employment for men of ambition and to furnish the means of sporting with the sacred principles of human nature. The greatest object throughout is the acquisition of property and power, and every possible opportunity has been embraced to make ample provision for supplying a redundancy of the one, to exercise the other in its fullest extent.” (Frohnen, 1999: 507). George Mason seconded him by arguing that Americans were importing with this new Constitution “that aristocratic idol — that flattering idea — that exotic plant which has been lately imported from the ports of Great Britain, and planted in the luxurious soil of this country.” Federal Farmer concurred in warming over the old country-party demonology of “aristocratic court” and fears of cabals of powerful court-aristocrats

\textsuperscript{136} To what extent the state rights’ tradition is a legitimate offshoot of antifederalist critiques of the Constitution is an issue which is still fiercely debated. For the dominant view that it is, see Cornell (1999), Siemers, (2003), for the view that it is not, see Rose (1990).

\textsuperscript{137} One of the expressions of this fear was the insistence on the inclusion of a comprehensive Bill or Rights in the new Constitution.
attached to the government: “The honours and emoluments of public offices are the objects in all communities, that ambitious and necessitous men never lose sight off. The honest, the modest and the industrious part of the community content themselves, generally, with their private concerns; they do not solicit those offices which are the perpetual source of cabals, intrigues, and contests among men of the former description…” (Frohnen, 1999: 249)

Indeed, anti-federalists developed a very astute sociological analysis in the vein of both power elite and public choice approaches to explain the reasons why concentration and centralization of power will be detrimental for American republicanism and liberty. Their analysis sounds sometimes prophetic when paired with political reality of the modern American state. Centinel, for example, takes over the old country-party narrative of the court corruption and applies it to American circumstances:

The ten miles square, which is to become the seat of government, will of course be the place of residence for the president and the great officers of state; the same observations of a great man will apply to the court of a president possessing the powers of a monarch, that is observed of that of a monarch—ambition with idleness—basseness with pride—the thirst of riches without labor—aversion to truth—flattery—treason—perfidy—violation of engagements—contempt of civil duties—hope from the magistrate's weakness; but above all, the perpetual ridicule of virtue—these, he remarks, are the characteristics by which the courts of all ages have been distinguished. (Frohnen, 1999: 15)

This direct attack was repeated many times over by different anti-federalist writers on the celebrated doctrine of the division of powers promoted by Hamilton, Madison and other nationalists. According to them, giving additional powers to the central government is not so dangerous primarily because the three branches of the government will tend to keep in check one another and thereby reduce the danger of
concentration of power in anyone’s hands. ‘Centinel’ replies that this will be largely a fiction: the micro-socialization taking place in the capital city and the convergence of interests among the members of the government coterie and their bureaucratic appointees would lead the actors to cooperate rather than to control each other. They would form a unified power elite nexus rather than a differentiated structure of branches and agencies of federal government. A much more realistic picture of human nature, a much more down-to-earth political anthropology is here on display: a capital city of a large state is not the center of republican governance and virtue but a typical monarchical court with all its corrupt effects and by-products, which include, placemen, flatterers, self-dealers, traitors and so on.

Federal Farmer supplies a further incisive analysis of this critical phenomenon. It combines the deeper sociological account of the relationship between bureaucracy and elected representatives, coming close to the explanation of the phenomenon usually described in modern political science as the “revolving door.” He first argues that corruption and self-dealing were ubiquitous even in the Continental Congress which had far less power than the new federal government, and that things are very likely to deteriorate with the new system giving to self-dealing politicians much more institutional leeway: “at least there will be five, if not ten times as many offices and places worthy the attention of the members, under the new constitution, as there are under the confederation; therefore, we may fairly presume that a very great proportion of the members of congress, especially the influential ones, instead of returning to private life, will be provided for with lucrative offices, in the civil or military department, and not

only the members, but many of their sons, friends and connection” (Frohnen, 1999: 219). This is directly derived from the argumentation of Cato or Bolingbroke in England, but couched in terms of a power elite nexus formed by the increased institutional power of the central government. This is more stringent formulation of the corruption thesis, tying it with the institutional architectonics of a regime.

Moreover, Federal Farmer comes very close to Calhounian and public choice views of the state as a predatory mechanism of class oppression in which the people who profit from taxes and offices exploit the taxpayers and political outsiders by increasing spending and taxation: “If, on a fair calculation, a man will gain more by measures oppressive to others than he will lose by them, generally by increasing the public burdens increase their own share of them; but, by this increase they may, and often do, increase their salaries, fees and emoluments, in a ten-fold proportion, by increasing salaries, forming armies and navies and by making offices…” (ibid. 218). We see now why the “antifederalist” writers well deserved the epithet of the ‘men of little faith’ given to them by Cecilia Kenyon. They subscribed to the standard garden-variety philosophical doctrines of republicanism on a human scale, taken from Montesquieu and the classical tradition, but they also espoused, as we see, the classical liberal scepticism towards government as such, expressed in surprisingly modern fashion. This intersection of a classical republican emphasis on human scale and modern, liberal/libertarian anti-state ideology is often overlooked. We have seen a similar phenomenon in the case of English country party. The true step forward that we see with “anti-federalists” is an articulation of the old generic country party ‘libertarian’ sentiment against the state, in terms of a more rigorous and recognizable political idiom, the one of class conflict and/or public choice style analysis of institutional dynamic of the state.
All this is very far indeed from the Hamiltonian optimistic belief in government as a supreme vehicle of economic and social betterment and from his derision of Adam Smith’s and John Locke’s theories of minimal government.\textsuperscript{139} Although it is difficult to unequivocally identify the economic philosophy of the opponents of the Constitution, since they were a considerably less cohesive group than the federalists, several key characteristic features stand out. First, almost all of them were against centralization of power and argued against the higher taxation that the new Constitution would bring about. Secondly, as far as money is concerned, most of them were not inflationists at all, especially the most prominent figures among them; they believed in the gold standard and hard money and opposed centralization because they believed this could exacerbate the monetary and economic ills of the country. Contrary to the prevailing historiographical narratives, most of them supported the freedom of contract and did not advocate debt forgiveness.\textsuperscript{140} They argued against the new Constitution because they believed it would provide for much higher government spending and deficits. They argued against the protectionist tariffs and subsidies, seeing in them a monopolistic exploitation of the consumer by the producers allied with the government (Sobell, 1999). They especially warned of the danger that high taxation and standing armies envisioned in the Constitution in tandem could present to American liberties. On almost any single issue of economic policy, those ‘men of little faith’ were actually libertarians.

The radical libertarian bent of the anti-federalists is also obvious in their arguments against the government debt and deficit. This is one of the areas where the contrast between the anti-federalists and Hamiltonians is the most striking. Hamilton, as we have seen, considered the public debt to be a “blessing,” in so far as it created a bond of trust and cohesion between the financiers and politicians, a bond necessary for successfully operating a mercantilist machinery of government controls and dirigisme,

\textsuperscript{139} See ch. 5.
\textsuperscript{140} For this, see Appleby, 2000 and Hamond, 1957.
which is indispensable for prosperity. Anti-federalists saw public debt and deficit as the worst possible curse, which was going to be exacerbated, not attenuated, by the new Constitution. ‘A Friend to the Rights of the People’ argued that the new Constitution “will be an unsupportable burden that will sink us deeper under our present embarrassments” (Storing, ibid ). Patrick Henry doubted that political centralization could erase the public debt, adding that the source of the economic problems in America “lies in extravagance and want of industry and can only be removed by assiduity and economy” (Frohnen, 1999: 702).

A similar sentiment is expressed by Cato while zeroing in the ‘necessary and proper’ clause of the Constitution as a legal vehicle with aid of which the rulers could increase public debt indefinitely. ‘Brutus’ predicted: “The power to borrow money is general and unlimited. . . . Under this authority, the Congress may mortgage any or all the revenues of the union. . . . By this means, they may create a national debt, so large, as to exceed the ability of the country ever to sink. I can scarcely contemplate a greater calamity that could befall this country, than to be loaded with a debt exceeding their ability ever to discharge. If this be a just remark, it is unwise and improvident to vest in the general government a power to borrow at discretion, without any limitation or restriction.” (Frohnen, 1999: 274). Later on, Thomas Jefferson echoed the same sentiment by saying that the most critical mistake made in crafting the new Constitution was a power given to the federal government to issue public debt (Jefferson, 1969).

III. Anti-federalists and economic theory of federalism

Modern political and economic theory appropriated to some degree by anti-federalists is complemented by their strong connection of individual liberty with political localism. There are at least two significant ways in which we can talk about anti-federalist conceptions being borne out by history, and indirectly appropriated by at least
some parts of modern economic and political literature. One is the study of the effects of the Constitution on individual liberty and the second one is a more general study, which blossomed in the 20th century, on economic and social effects of “federalism,” i.e. political localism on economic and political liberty.\textsuperscript{141}

To see why it is plausible to argue that the warnings of the anti-federalists about the anti-liberal effects of the adoption of the new Constitution may be correct, we have to bear in mind the general principles of the modern theory of “constitutional economics”: a constitutional regime is conducive to liberty insofar as it imposes on the government two sets of constraints: the “limitations of domain” and institutional checks, or what Randal Holcombe calls “limitations of accountability” (Holcombe, 1991: 303). Antifederalist critiques of the new Constitution could be understood in the language of modern constitutional theory as dire warnings that the new document proposed in Philadelphia would significantly relax the constraints put upon the government in both the domain of allowed action as well in terms of institutional checks and accountability. First of all, the old rules of the game included unanimity as a decision-making rule, which is at the constitutional level superior to the majority rule, because it constrains the government more (Buchanan and Tullock, 1999). The new Constitution, in sharp breach with the existing procedural rules (prescribed in the Articles of Confederation) simply disregarded both its mandate (to amend the Articles) and proposed a completely and radically new document, adopting in the process a new procedural rule in direct conflict with the procedure laid out in the Articles. Instead of unanimity it established that confirmation by nine out thirteen states would suffice for the Constitution to come in force (“among the states so ratifying the same”).

\textsuperscript{141} The standard literature on constitutional economics was by and large inaugurated by Buchanan and Tullock (1999).
Further institutional relaxation of the powers of government was contained in replacing the unanimity rule in federal decision making by popular representation and majority rule. The new Congress devised by the Constitution would have two chambers, one of which would be directly elected and the other appointed by state legislatures, but both would make decisions by simple majority. According to the previous model under the Articles, unanimity was required in daily decision making and all congressmen were appointees of the states, subject to removal in the case of improper representation of their interests. Thus, not only was the numerical decision making role relaxed, important in and of itself as a constraining factor of government’s activity, but also the territorial locus of power was radically removed from the peoples of the several states towards the federal government. Several institutional changes in the new Constitution made significant steps towards the creation of a modern state, by removing the most significant barrier to increased central state power; the overwhelming power of state legislatures that stood in its way before.\textsuperscript{142}

When it comes to the “limitations of domain,” there were two major overhauls in the new Constitution that significantly increased the powers of the federal government to control the economy and society: regulation of commerce and federal powers of taxation (none of which existed under the Articles of Confederation). The case of taxing powers is an obvious one. The standard justification given for the beneficial economic effects of the new Constitution is that it helped solve the problem of fiscal free riding, a chronic problem of under-provision of public goods that plagued the regime under the Articles of Confederation, stemming from the fact that the central government did not have the power to tax individuals directly, but depended instead on tax requisitions, collected by the states. Hence, tax revenue was insufficient because every state wanted to free-ride on

\textsuperscript{142} This is especially the case with commerce clause, taxing powers as well as a couple of clauses with elastic meaning such as general welfare and necessary and proper. For an analysis of how those institutional changes affected the government powers, see Holcombe (1991).
other states, and hence the problems of funding and equipping the confederate army, paying the war debt and so on. And the power of the federal government to collect taxes and tariffs, given in the Article 1 of the Constitution is deemed indispensable for the proper functioning of the common market and common political union, to make it sustainable and politically stable. This is a canonical justification, repeated unanimously in the literature and textbooks.

Yet, a more detailed economic analysis of the issue shows that the picture is much more complicated. First, irrespective of all the problems, the confederate army won the war against the most powerful army in the world with this allegedly dysfunctional system in place. This does not prove conclusively that the system was good but makes the complaints against it much less self-evidently justified. Second, if we look at the actual rate of fulfilling the requisitions, according to various calculations, the average rate of compliance by the states during the period under the Articles of Confederation 1776 to 1787 was between 40% and 50%. This is considered a conclusive proof of the necessity to overhaul the system. But the problem is that the collection rate within the states, for their own taxes was considerably lower than that (Sobell, 1999). And moreover, the collection rate for the federal taxes after the adoption of the Constitution was also much less than 50%. Thus, whatever compliance problems the federal government was facing vis a vis states, an even worse problem was faced by both the states and central government in direct collection of taxes. In other words, giving the federal government the powers of direct taxation did not improve the revenue-raising capacity of the government, as compared to the system under the Articles of Confederation.

The second and much more important consideration for our purposes is that a classical liberal (most of the literature considers the federalists to be classical liberals and anti-federalists “radical democracts”) does not want to choose a constitutional system with the goal of maximizing tax revenue as such; on the contrary, the goal is to limit and check the government’s power of tax extraction. In this regard, the system of requisitions
is far superior for several reasons. First, it is far from obvious that the optimal outcome is that the government has to collect all 100% of tax revenues it wants. It is usual that governments overtax their subjects, and this would be the case equally if it does not have the direct power of taxation. From a classical liberal point of view it is much better to have an inefficient government, i.e. the one which cannot easily collect whatever amount of taxes it wants, because the presumption is that governments do overtax all the time. If they depend on other entities for tax collection, this puts a strong limitation on its power to spend. Secondly, if government faces in a long run the problem of state non-compliance or insufficient compliance, the logical assumption is that the central authorities would tend to ramp up the requisitions in order to deal with the low compliance rates and still provide enough tax revenue. If the revenues collected by the states for confederal taxes were consistently 40-50% of funds requested, the government would very soon learn it needed to request more.143

Another enlargement of the central government’s domain was granting a right to regulate commerce “among the several states… and with the Indian tribes” in the Article 1. In addition to this the states were prohibited from issuing paper currency but the same limitation was not imposed on central government. A uniform system of tariffs and imposts was introduced which effectually transformed what used to be a free trade zone into a customs union. This means that the “system” in which the states were free to impose whatever tariffs they wished to third parties but among themselves were engaging in free trade was supplanted by a uniform model of foreign trade protectionism and government “supervising” the states in regards to their trade policies. This is known to be one of the most common tactics of nation-builders attempting to consolidate by stealth

143 A good example of this is the behaviour of the Soviet government, facing the local managers trying to by-pass the “production quotas” assigned to them by the central planning bodies, by faking the reports on production. The government would simply determine higher quotas to begin with, counting in advance that the managers would try to fake the results. For this kind of difficulties of the Soviet central planning see Birman (1988).
complex, decentralized polities with no common political authority into a single centralized unit.\textsuperscript{144}

When it comes to modern literature on federalism and economic effects of localism in political governance and administration, the anti-federalist view of the relationship between liberty and the scale of the political regimes seems to have been extremely influential, or at least convergent with modern tendencies. One of the major classical liberal arguments, decisively articulated by the literature on federalism, represented a more stringent formulation of antifederalist positions and direct critique of the Madisonian belief in the ‘extended republic’ and large territorial size as the preconditions of stability and controlling “factions.”\textsuperscript{145} Antifederalist localism was reformulated to support the concept of “freedom of exit” as a strong argument against political centralization. The Madisonian fear of factions is in this view an artifact of an excessive territorial enlargement of political units, rather than of excessive localism going unchecked (Rose, 1990: 100). At the local level of cities and counties, and even states, freedom of movement would secure to a certain degree that the oppressive local majorities would be limited in their possibilities in inflict harm to individuals, since political restrictions or high taxes and regulations would function as an incentive to individuals to “vote with their feet,” in other words, to move to those jurisdictions which

\textsuperscript{144} The best known modern example is the European Union, whose “founding fathers” openly compared themselves to the American Framers during the process of writing the founding the EU “founding” document, the so called Lisbon Treaty. And the most common avenue they are using for gradual centralization is a gradual takeover of monetary and trade policy competencies from the national governments.

offer superior and more appealing combinations of public policies more conducive to their liberty.

Generalizing the kind of reasoning behind the conviction that the Articles of Confederation were superior to the Constitution, a large literature in public choice and constitutional economics has appeared that seems to have undermined the very foundations of the historians’ belief in centralization as classical liberal remedy for “chaos.” This literature has come very close to the antifederalist emphasis on localism as a part of a pre-state, pre-modern political order. Charles Tiebout argued in his widely influential article (Tiebout, 1956) that if we assume a perfect freedom of movement between the jurisdictions, the best way to conceptualize local governments would be to treat them as private firms offering competitive packages of public policies to willing buyers/consumers.\textsuperscript{146} The entire machinery of political philosophy, with its emphasis on administration, “citizenship,” checks and balances, and the “state,” after all, in this theoretical framework became all but obsolete. At the local level, all those issues, provided the freedom of exit is reasonably available, are becoming moot. The internal checks on government’s power become far less important, since the external checks become extremely powerful; if a jurisdiction persists in oppressive social or economic policies, they will have to pay a very steep price, by losing capital and labour, to other less oppressive jurisdictions. The objection one can made here is that the barriers to exit very well may have been higher than Tiebout surmises, but the same could be said for the barriers to entry and exit into private markets, and yet, no economist worth his salt would assume this was enough to reject the notion that market is not efficient, only because the

\textsuperscript{146} This is a common assumption accepted in the public choice theory as a heuristic model or a methodological instrument to analyze politics. But Tiebout is thinking literally, and in a more stringent sense, that if we grant certain reasonable assumptions it follows that local governments really function as private firms.
exit is not costless.\textsuperscript{147} No exit from a market is ever costless, so the costly character of the political exit from Tiebout’s local government-firm could not be used as an argument against his treatment of local governments as firms.

This is the point at which a strange overlap becomes apparent between a hypermodern and technical economic thought and the old constitutional theories, predating the modern state. The very distinction between private and public, between firms and local governments, was put into question by modern theory, strangely coinciding (this is not a mere coincidence, I would say) with the so called doctrine of “ancient constitution,” as emphasized by the revolutionary generation, and as taken over and still cherished by anti-federalists (to be almost forgotten by later generations of American localists, Jeffersonians and Jacksonians). This concept of ancient constitution retained the old, territorially confined concept of political rule, and did not yet think of political order in terms of a large scale monarchy or democracy, controlled from within by the set of technical Lockean “checks and balances.” This new concept was unknown to a British colonist of the 17\textsuperscript{th} and much of the 18\textsuperscript{th} centuries, and once it had been introduced during the revolutionary upheavals of 1770s and 1780s it was often treated as a heresy and radical innovation, deeply foreign to the American traditional British constitution. What existed instead was a slightly remolded British doctrine of a ‘mixed constitution’ as an abstract sociological balance of factions and social strata.

Since the late 14\textsuperscript{th} century, when the old concept of a local township as a basic constitutional unit started to lose ground, the British constitution was gradually transformed by developing the model of “king in the Parliament” in which the unity of British realm was based not on the territorial principle any more but on the equilibrium of three estates (Brunner, 1992). This theory of ‘mixed constitution’ based on the balance of

\textsuperscript{147} For the critique of Tiebout, see especially Henderson (1985). For the review of the literature see Gilette (1987).
power between the king, lords and commons was another element of the older constitution that British settlers retained. In America, although divorced from the sociological milieu of British monarchy, this idea of a political order balancing the three estates was accepted with a specific Old Whig twist, best described by Molesworth who claimed that the real Whig was “one who is exactly keeping up to the strictness of the true old Gothic constitution, under the three estates of King (or Queen), Lords and Commons, the legislature being seated in all three together, the executive being entrusted with the first but accountable to the whole body of people in case of maladministration” (Bailyn, 1967: 72).

The prevalence of the older concept of a mixed constitution in colonial America is seen when we consider how American political institutions were designed. From the beginning of colonization the colonists tried to emulate the institutions of the mother country with respect to the mixed constitutionalism of the late-medieval period. According to a well-known historian of the colonial period “[William] Penn had an evident desire to model his government after that of king, commons and lords. The name “House of Commons” appears in the records of Virginia as early as of 1645 as in those of Maryland in 1649. In the Carolinas and the Bahamas, the proprietors themselves, in their instructions to the governors, called the assemblies parliaments, and in South Carolina the term “Common House” or “Common House of Assembly” early came into use.” (Andrews 1924: 39). During the entire colonial period, the ‘mixed constitution’ for the North American colonists meant simply this conscious attempt at emulating the English late-medieval concept of a social equilibrium between the three estates, not any kind of modern functionalist theory of government, derived from Locke and Montesquieu.

It would only be much later and with a great deal of trouble that this idea of a mixed constitution as a sociological balance of various forces in society was supplanted by Locke’s and Montesquieu’s theory of functional division of powers between the three ‘branches’ of a neutral and homogeneous government. This idea was a novelty as far as
the practice of American colonists was concerned. In the colonial period there were multiple, contradictory and competing theories regarding how exactly to achieve this particular balance of forces, but one thing that all these theories had in common is that nobody thought that mechanically matching certain social powers or classes with a single branch of government would do the trick: “The clarity of the modern assumption of a tripartite division of the functions of government into legislative, executive and judicial powers did not exist for the colonists…and in any case the balance of the constitution was not expected to be the result of the symmetrical matching of social orders with powers of government; it was not assumed that each estate would singly dominate one of the branches of functions of government.” (Bailyn, 1967: 71).

This fact is very instructive because it again illustrates the point we emphasized before: the absence of a theory and practice of the sovereign state in the early American political experience. There are two sources of mixed constitution, ancient and medieval. The ancient source of the concept is most commonly discussed, but it is rarely confronted, let alone treated as conflicting with the language of political sovereignty and modern state. Reliance on the entire revolutionary generation on the Roman and Greek classical tradition is a worn-out cliché by now.\textsuperscript{148} However, the tension between the classical political theory that the founding generation accepted and the political theory of the sovereign state is seldom analyzed. The theory of “mixed constitution,” originally developed by Aristotle but in the colonies most often associated with the Roman republican tradition best expressed by Polibius, is essentially a sociological concept. It pertains to the balance of three different social elements of society, aristocracy, populous and magistrates. A Republican equilibrium of the Senate, popular assemblies and

\textsuperscript{148} In the huge literature dealing with the old Roman republican antecedents of the American Revolution see Rahe (1994), Pocock (1975), Banning (1978), Wood (1969).
magistrates was what many people in the founding generation highly cherished and wanted Americans to emulate.¹⁴⁹

At another level, however, the theory of mixed constitution is a late-medieval construct devised to describe the political conditions before the emergence of the modern, sovereign state. Even more surprisingly, for a concept accepted in America, it is a product of feudal system. It existed in a similar form on the Continent as well. The reason why this conception belongs to a political universe irreconcilable with the modern state is that it postulates a mere symbolic unity of three social forces on equal footing, not a supremacy and hierarchy, and does not make any distinction between the state and society, public and private, in a similar way the local attorneyship blurs or removes those same distinction. The King is not “sovereign” in this model and the Parliament is not ‘sovereign’ either. The very idea of the mixed constitution and the estates as three groups controlling the ‘government’ is an anachronism based on projecting the modern understanding of the fundamental difference between the state and society into the medieval world. As Otto Brunner notes: “The image of a ‘population’ articulated into estates, some of which then secure privileges giving them a share in the political rights, is a mirage produced by applying the 19th century disjunction of ‘state’ and ‘society’ to medieval conditions” (Brunner, 1992:331). The modern theory postulates a single entity called “government,” which exists eternally and above and beyond society, and various interest groups who are fighting for the control over that mythical entity; what medieval sources on the other hand, talk about, are three estates which comprise the realm, or the “constitution.” There is no “government” in the entire scheme. It is a mirage of the later

¹⁴⁹ For the influence of Roman tradition of “mixed constitution” on the founders, see especially Sellers 2006.
modern political thought projecting itself into the past, incapable of seeing the medieval world through its own categories.\(^{150}\)

To what extent did this older, late-medieval version of mixed constitution prevail in America even after the revolution? One of the best indicators is seen in how difficult a time the ‘modernizers’ had in selling the new conception of checks and balances as a substitution for the local self-government. James Madison’s theory about the compound republic to be protected from the misuse of power by dividing it up among the branches of the newly consolidated federal government represented a form of plain “vanilla constitutionalism” (Rose, 1990), a novel, mechanistic concept of the 18\(^{th}\) century influenced by Locke, that political equilibrium could be divorced from sociological equilibrium, and that a formalistic structural division within the government can make up for the absence of a social division of real sources of power and authority. As such, this concept was met by a resounding scepticism from the foes of the new Constitution during the famous Virginia Ratification Convention. This response by Patrick Henry best exemplifies what level of confidence the powerful and numerous ‘anti-federalists’ had in this new invention:

We are descended from a people whose Government was founded on liberty: Our glorious forefathers of Great-Britain, made liberty the foundation of every thing. That country is become a great, mighty, and splendid nation; not because their Government is strong and energetic; but, Sir, because liberty is its

\(^{150}\) This anachronistic misconception is exemplified by the popular idea about the Magna Charta as a document by which the estate of nobility secured the privileges and immunities for itself against the king John. But the entire concept is based on the false notion that an English king of the 12th and early 13th centuries was the “government,” that he had an absolute power to begin with, which he could then ‘share’ with other estates or be ‘limited’ by them. The reality is that a medieval king did not have such a power and that the Law was equally above him as above the nobility and that every noble had an equal right to interpret the law and justice in the last resort as king himself. See Holt, 1965; Brunner 1992.
The critical paradigm which prompts Patrick Henry to reject the proposed idea of intra-governmental checks and balances as a sufficient guarantee of liberty stems from the inherited sociological, as opposed to legalistic conception of mixed constitution. For Henry, unlike Madison, the fact that there will be some formal, legal division of powers within the state is irrelevant and worthless, unless it is followed by a real source of political competition, by real social groups and alternative centres of power who would strive to limit each other. In America, the substance of the British scheme of mixed constitution was from the very beginning questionable for the very fact that the feudal hierarchies did not exist there; however, the basic realist intuition behind that scheme, the notion that only real power can counterbalance and check real power was unquestionable. Slowly but surely, the territorial concept of democracy, the idea of political localism stemming from townships and villages and consolidating into the state legislatures, started to emerge as an American equivalent of the medieval “estates.” For Henry and antifederalist orators of the 1780s this was an implicit assumption. It was left to John C. Calhoun to make the decisive step: to revive and re-establish the medieval concept of a mixed constitution as a sociological equilibrium of independent social forces. In his derivation, the states as pre-existing political corporations would be that independent
check, this modern ‘estate’ partaking in the American constitution and holding a veto power over the decision-making process in the union (Calhoun, 1992).

Antifederalist devotion to the older concepts of the ancient constitution is most plainly visible in their extolling of localism. It is thoroughly based on the “ancient constitutionalism” and the old medieval and early modern ideas of subsidiarity, best explained by Althusius. Cato argues that “the strongest principle of union resides within our domestic walls. The ties of the parent exceed that of any other; as we depart from home, the next general principle of union is amongst the citizens of the same state, where acquaintance, habits and fortunes, nourish affection, and attachment; enlarge the circle still further, and, as citizens of different states, though we acknowledge the same national denomination, we lose the ties of acquaintance, habits and fortunes, and thus, by degrees, we lessen in our attachment, till, at length we no more than acknowledge the sameness of the species” (Fronhen: 1999; 13). This sentiment is retained, or rather re-discovered, in modern conceptualizations of liberty as tied with localism and exit options, but an archaic, pre-state conception of political order anti-federalists associated with liberty and exit option has largely been forgotten.

**Conclusion:**

Antifederalist critique of the newly proposed Constitution represented a significant first stage in the American resistance against the modern state being built by domestic political forces. It combined the elements of the older tradition of “mixed” or ancient constitutionalism, with the emphasis on the states’ role in protecting local self-government and decentralization within the American wider polity, as well as the typical

---

151 Althusius is a much neglected German thinker who developed the most significant early modern defense of federalism, see Althusius, Johannes (1997) [1603]. Useful comments on Althusius could be found in Benoist (1999) and Hueglin (1999).
economic arguments against mercantilism and central government’s control over the economic life. This critique has been insufficiently appreciated by historians and political theorists.

Anti-federalists were a diverse group of people who cherished American traditional political concepts mixed with an intuitive and yet sometimes rather sophisticated grasp of the intricacies of free market economics and the dangers for economic liberty posed by the emerging mercantilist machinery of government, promoted and instituted by the proponents of the new Constitution. However, their deeper historical significance, as we shall see, was not in creating a tradition that would last, but in forcing the changes in the Constitution, and especially forcing the hands of federalists to give ground at interpretive level, in other words, to offer a very different interpretation and justification of the Constitution during the process of ratification, much more in tune with antifederalist objections and their concepts and values, than with their own initial motivations and intents.¹⁵² Those significant concessions, forced by antifederalist-inspired resistance, were to become the foundation of later forms of anti-state political resistance, primarily the so called states’ rights tradition and their reliance on reluctant federalist assurances given during the ratification.

¹⁵² See chapters 5 and 7.
Chapter 8.

Jefferson-Jackson Society – a counter-revolution within a form

Introduction:

In his “Politics” Aristotle says with regard to revolutions: “People do not easily change, but love their own ancient customs; and it is by small degrees only that one thing takes the place of another; so that the ancient laws will remain, while the power will be in the hands of those who have brought about a revolution in the state.” (Aristotle: 1999: 134). This snippet of wisdom from the old Master was used and reused so many times throughout history, always to point out the ways in which sly revolutionaries can use and *do* use the old constitutional and legal forms to carry out a revolution by quietly transforming these old forms over time into their own opposite. The examples of the Roman Senate or the assemblies, once a pride of Roman republicanism, which became just the rubber stump bodies for autocratic rule in the time of Caesars, from August on, are the most prominent ones. Augustus and Tiberius did not abolish the Senate; they simply made it irrelevant by soaking all real power from it and making the senators their own political cronies. In the mid-20th century American political commentator, Garet Garett (1938) coined the term for this kind of gradual revolution which does not disturb the legal order “revolution within a form.” Garett was writing with FDR’s New Deal in mind: what the 32nd President has done, was according to Garett akin to what Augustus did: he simply transformed the nature of political system and the constitution while still paying a lip service to the old constitutional forms. But, the real content was that of a
revolutionary socialist state and an all-powerful political leader: gone were days of checks and balances, federalism and all the rest. But, these institutions and traditions were not abolished legally, they were just made irrelevant.\textsuperscript{153}

One of the richest ironies of American history is that this “original,” pre-new Deal Constitution was for the most part itself a product of a similar revolution within a form, that took place largely in the period 1798-1830. The revolution was in direct contradiction with the arguments and publicly declared intentions of the people who written it in Philadelphia in the hot summer of 1787, and was based mostly on a gradual but successful reinterpretation by a decentralist tradition sceptical about the document, that was carried out during the reign of the “Virginian dynasty,” from Thomas Jefferson to James Monroe and all the way to Andrew Jackson. The process started as early as the ratification debates in the states, where the proponents of the new Constitution, in order to sell the product to a mostly sceptical public, wary of anything smelling of consolidation and centralization, had to massage some of its the most problematic features (see chapter 6). However, what started as a mostly cynical selling technique (none of the federalists in 1788 really wanted to interpret the Constitution as a decentralist document) morphed during the 1790s and early 1800s into a full-blown new constitutional orthodoxy. Often citing Alexander Hamilton, George Nicholas, James Madison or James Wilson, and their solemn declarations that the Constitution represented a limited compact, radical decentralists by a slow process inaugurated this new interpretation as the orthodoxy regarding the American Constitution. The document written by staunch nationalists and calculated to create a centralized “military-fiscal state” (Edling, 2003) became the symbol of states’ rights tradition, decentralization and

\textsuperscript{153} Modern classical liberal thinkers in America devoted to constitutionalism often argue that after the Supreme Court confirmed Roosevelt’s unprecedented expansion of the federal powers in the late 1930s, the Constitution itself ceased to exist, or was “exiled,” and the task should be to bring it back reviving the interprations predating the New Deal, see Ginsburg, 1994, Barnett, 2004.
limited power of the central government. This quiet revolution within a form was responsible for what conservative proponents sometimes characterize as the “constitution in exile” or the “original constitution.” Jeffersonians in the period 1798-1820 and Jacksonians 1824-1840 were those revolutionaries who transformed the original Constitution, the tool of the “revolution in favor of government” into a tool of liberty and decentralization.

This chapter will follow this process of constitutional change in two respects: first, a much neglected economic philosophy of this tradition which complemented and expressed its innermost nature, and the adjustments of the argument that Jeffersonians and Jacksonians made to the antifederalist arguments in order to make the same decentralist doctrine fit the new reality of a national political and constitutional system. The states’ rights tradition was responsible this dialectical process in which the old principles were preserved and transformed in the same time.

II. The Compact theory and its discontents

Perhaps the most important medium in which this gradual “revolution within a form” in the early 19th century took place is what came to be known as a compact theory of the American union – a long time dominant interpretation that the central government was created by a compact of several states, and had thereby limited and delegated powers. This is not what the framers of the Constitution in Philadelphia had in mind, but that is what they were for political reasons forced to promise during the ratification debates, and that is what Jefferson and Jeffersonians will be the ones to articulate during the 1790 and later as the national constitutional orthodoxy.

In philosophical terms, Thomas Jefferson had undergone a striking journey in the modern historical interpretations, from being treated as an apostle of Lockean classical liberalism, to the position of a primary expositor of anti-liberal tradition of civic
republicanism, and back again to the Lockean roots. The newest wave of liberal revisionism is a starting point for our analysis here. This revisionism brought back into the picture the undeniable Lockean and natural rights philosophical background of Jefferson’s political thought (Zuckert, 1996; Zuckert, 2002; Dworetz, 1998) and also revived and documented the laissez-faire economic inspiration of his economic philosophy (Appleby, 2000).

However, the missing piece, the real elephant in the room is the theory of the American union which heralds a more general understanding of society and government, and which the analysts from virtually all major schools of thought ignore or minimize or “contextualize”: Jefferson’s compact theory of the union. This third critical element of Jeffersonian political thought, his philosophy of local self-government and the compact theory of the union as its mature expression was largely ignored in this literature. In Zuckert’s book (1996) as well as in Zuckert’s (2002), Appleby (2000) and Dworetz (1990) the words “nullification” or “Kentucky resolves” do not appear in the index of words! This is not a specificity of liberal interpretations though: the most significant, multi-volume biographies of Jefferson barely mention his authorship of the Kentucky resolves and their historical significance (Bassani, 2010). A group of distinguished liberal-nationalist historians succeeded in putting together an entire volume titled “The American Founding: Essays on the Formation of the Constitution” without a single mention of either the compact theory, or nullification or Kentucky and Virginia Resolves (Barlow et al, 1988)!

The reasons for this neglect are not difficult to detect. In the liberal-nationalist reinterpretations, Jefferson is consistently being reinvented as a for-runner of Lincoln and his second (and the only true) American Revolution (Jaffa, 1959; McPherson, 1988). Jefferson – the champion of individual natural rights and even Jefferson a free market economist were consistent with Lincoln’s ‘consummation’ of the Revolution in fulfilling the egalitarian promise of the Declaration. However, Jefferson – the progenitor and the
most extreme and most convincing advocate of the states’ rights philosophy – was a huge embarrassment for this movement to “Lincolnize” his heritage; Jefferson of the year 1798 looks more like an advocate of the Southern secession or as a theorist providing a manual for the hated John C. Calhoun, rather than as a spiritual father of Abraham Lincoln. Hence, erasing the Kentucky Resolves and nullification doctrine from the Jefferson’s corpus was a critical instrument in sanitizing and domesticating his heritage and portraying him as just a mere John the Baptist of the only true Messiah; the first, imperfect embodiment of the real natural-rights Revelation that would be handed down to America (and the world) by the revolutionary Ascent of Lincoln 1861-65.¹⁵⁴

This problematic interpretation of the liberal-nationalist school was matched by no less dubious interpretations of Jefferson by some states’ rights and communitarian authors. Instead of putting the Kentucky Resolves on Index Librorum Prohibitorum, as Jaffa and his followers have done, the anti-Lincoln and pro-Southern writers such as Kendall and Bradford engaged in the tortured interpretations of the Declaration of Independence, in order to purge Jefferson of any natural rights ideas; to prove that “life, liberty and pursuit of happiness” did not really mean the Lockean natural rights and that “all men are created equal” did not really pertain to individual rights, but rather to the collective, communitarian rights of Americans as a people (Bradford, 1979; Kendall, 1965). Jaffa, Zuckert and other Lincoln admirers thought it was enough to show that Jefferson was philosophically a natural rights theorist in order to justify Lincoln’s idea of the supremacy of an all-powerful unitary state (pretty much against everything Jefferson thought and believed), while Bradford, Kendall and others thought it was necessary to bring down completely Locke and natural rights tradition in Jefferson, in order to bring down Lincoln’s dubious ‘Jeffersonianism’. Neither of these strategies is justified.

¹⁵⁴ For this view of the War 1861-65 as a fulfilment of the “promise” of 1776, see McPherson 1988; Wills 2012; Wilson 1998, among other numerous books and articles arguing that Lincoln finished the unfinished job of securing the promise of natural rights enshrined in the Declaration, but tainted by slavery and sectionalism.
Jefferson was both a Lockeian and states’ rights champion, and this duality represented a characteristic and original feature of American early liberalism, and continuation of the antifederalist tradition.

The Kentucky Resolves of 1798 written by Thomas Jefferson is a seminal document of American history. Together with Madison’s Virginia Resolutions and the subsequent ‘Virginia Report’ of 1799 they formed the basis for the long prevailing compact theory of the union, denying the national or unitary character of the American polity, and offering a philosophical and political foundation for the states’ rights and republican policy. The document is beautifully written, in a typical Jeffersonian high style and immediately comes across as an powerful political manifesto of decentralism. The very first paragraph formulates the compact theory in a very pregnant and simultaneously comprehensive way:

1. Resolved, That the several States composing, the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes — delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whenever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: that to this compact each State acceded as a State, and is an integral part, its co-States forming, as to itself, the other party: that the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the

measure of its powers; but that, as in all other cases of compact among powers
having no common judge, each party has an equal right to judge for itself, as well
of infractions as of the mode and measure of redress. (Jefferson, 1969: 128-129)

This paragraph contains the entire compact theory in a nutshell. First, the origins
of the union are defined as a contract among the independent parties, sovereign states,
while the federal government is depicted as their creation having only the narrow and
delegated, derivative powers. Second, in the cases of doubtful constitutionality of a
federal law Jefferson rejects explicitly the idea that any federal body should be assigned
the role of deciding in the last resort. On the contrary, it is the states, the partners in the
contract – draws Jefferson the legal analogy from the contractual law – who are to decide
for themselves in the last resort. And finally the decision does not pertain only to the
proclaiming a law to be unconstitutional (finding ‘infraction’), but also to ‘the mode and
measure of redress’. In other words, the states are to decide both whether a law is
unconstitutional and how they are going to remedy its effects.

Just to avoid any ambiguity or misunderstanding, in another critically important
paragraph Jefferson more closely explains what all that means:

in cases of an abuse of the delegated powers, the members of the general
government, being chosen by the people, a change by the people would be the
constitutional remedy; but, where powers are assumed which have not been
delegated, a nullification of the act is the rightful remedy: that every State has a
natural right in cases not within the compact, (casus non fœderis) to nullify of
their own authority all assumptions of power by others within their limits: that
without this right, they would be under the dominion, absolute and unlimited, of
whosoever might exercise this right of judgment for them (Jefferson, 1969: 130).
Plain and simple, the states, as the partners in the constitutional compact, bore the final responsibility and final right to nullify or abolish the unconstitutional federal laws on their respective territories. Otherwise, America would not have been a federal but a unitary and consolidated government. According to the Sage of Monticello the right to determine ‘the mode and measure of redress’ must of necessity mean the right to nullify.\footnote{As noted before, most of the modern literature not only rejects, but in most cases avoids any discussion of nullification. The notable exceptions are historians such as Woods (2009), Kilpatrick (1957) or Watkins (2004).}

Although the Kentucky resolves are the most widely known documents of the states’ rights theory, the first consistent statement of the theory was given by Thomas Jefferson as far back as 1792. In his letter to James Madison, commenting on the Hamilton’s National Bank legislation and some proposals how to deal with it in Virginia, Jefferson writes:

The assembly should reason thus. The power of erecting banks and corporations was not given to the general government. It remains with the state itself. For any person to recognise a foreign legislature in a case belonging to the state itself, is an act of treason against the state, and whosoever shall do any act under colour of the authority of a foreign legislature whether by signing notes, issuing or passing them, acting as director, or any other office relating to it shall be adjudged guilty of high treason and suffer death accordingly. (Jefferson and Madison, 1995: 432-33).

What is really astonishing in this letter is first that Jefferson describes the unconstitutional federal laws as the laws of a “foreign legislature” and consequently depicts anyone who would cooperate in the execution of such laws as being guilty of high
treason; federal government acting beyond its constitutional powers is a foreign government, just as those of France or Great Britain. And second is the harshness of the penalty he proposes. One of the maneuvers sometimes used by nationalist authors to absolve Jefferson of any culpability for the doctrine is nullification and roll the entire burden of responsibility over to hated John C. Calhoun, is that Jefferson allegedly did not offer a practical measures how to apply the doctrine. As we have seen, in the Kentucky Resolves Jefferson actually says that it is up to the states to define the ‘measure and mode of redress.” But, in this letter to Madison, he is more specific; he says that whoever participates in executing the unconstitutional federal laws on the territory of Virginia should “suffer death”!

James Madison, who by the time of the Alien and Sedition Laws in 1798 had already completed his conversion from a staunch Hamiltonian nationalist to a republican Jeffersonian, wrote along the similar lines in his Virginia Resolution, about the states’ right to resist the unconstitutional federal laws:

…this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.” (emphasis ours)…. (Eliot, 1836: 538)

Moreover, in a follow up Virginia Report written in the late Fall 1799, in which Madison responds to the critics of the Resolution from other states, he reiterates all main
points of the original Resolution, and specifically tackles the often heard argument (which even today the opponents of nullification invoke as the final rebuttal to this idea) that the Supreme Court is the final judge of the constitutionality of any law, state or federal. Madison considers this notion to be a product of a very basic misunderstanding of the nature of the American union. The Supreme Court is a final judge of constitutionality only in relation to other departments of the federal government, and not in terms of having a right to override the opinion of the states which are the original parties in the constitutional compact. This important and (understandably) neglected formulation is actually a restatement of the first paragraph of the Jefferson’s Kentucky Resolves:

The resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution; and, consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another--by the judiciary as well as by the executive, or the legislature. (Eliot, 1836: 547)

However true, therefore, it may be, that the judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government; not in relation to the rights of the parties to the constitutional compact, from which the judicial, as well as the other departments, hold their delegated trusts [emphasis added IJ]. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve (Eliot, 1836: 550)
The doctrine of nullification is nowadays often portrayed by the historians and political scientists as an unfortunate and radical aberration, invented out of whole cloth by Jefferson (and more often by Calhoun) in the specific political circumstances and which did not have any foundation in the real Constitution (Bernstein, 1992). But, the doctrine was anything but new or original. It was, for the most part, just a summary and rhetorically slightly better restatement of the solemn declarations given by the federalists themselves during the ratification debates, in order to convince the skeptics that the new Constitution was not such a terrible centralizing and oppressive instrument as people like Patrick Henry and George Mason had claimed it was (Gutzman, 2012; Woods, 2009; Kilpatrick, 1957). For example, the idea that the new government was a compact of the peoples of the sovereign states was offered by the federalist friends of the Constitution during the Virginia ratification convention as an answer to Patrick Henry’s objection that the phrase ‘we the people’ from the preamble of the Constitution suggested an intent to consolidate government by creating artificially an American, aggregative political community, “the people.” It was James Madison personally, then still a nationalist, who rose up to explain that the phrase “we the people” did not pertain to the American people as an aggregate but to the peoples belonging to different sovereign states: it meant according to the Father of the Constitution ‘not the people as composing one great body, but the people as composing thirteen sovereignties.” (Madison, 1991)\(^{157}\)

So the theory that the union was created by the states was not some sudden Jefferson’s invention in 1798, but rather an argument given by the federalist spokesmen during the ratification process ten years earlier to convince the skeptics to adopt the Constitution! Moreover, the very idea of nullification as a unilateral right to reject the unconstitutional federal laws was also developed by a federalist spokesman during the Virginia Convention. A leading federalist political figure, later on to become an attorney

\(^{157}\) See chapter 6 for a detailed discussion of this issue.
general of Kentucky, George Nicholas, this way answered the complaint made by the
anti-federalists that the federal government would have unlimited powers since it could
determine for itself what is and what is not constitutional. His response sounded almost
like a paraphrase of Jefferson from the Kentucky Resolves:

If thirteen individuals are about to make a contract, and one agrees to it, but in the same time declares that he understands its meaning, signification and intent to be, what the words of the contract plainly and obviously denote; that it is not to be construed so as to impose any supplementary condition upon him, and that he is to be exonerated from it, whenssoever any such impositions should be attempted – I ask whether in this case, these conditions on which he assented to it, would not be binding on the other twelwe? In like manner these conditions will be binding on Congress. They can exercise no power that is not expressly granted to them (Gutzman, 2007: 37).

According to Edmund Randolph, the five critical votes for the Constitution were swung to the federalist column after this speech by Nicholas. Otherwise they did not have enough votes for ratification. So, the Constitution was adopted in Virginia, by far the largest and politically most significant state in the union, only after the proponents of the Constitution gave the explicit and unequivocal guaranties that the state would retain a right to nullify unilaterally any federal law it deems unconstitutional, i.e. against the terms of the ‘contract’ just made!

It is clear then that Jefferson did not invent anything in the Kentucky resolves: he simply reiterated the guaranties given by Madison, Nicholas, Randolph and other proponents of the Constitution during the Virginia ratification Convention: the nature of the union as a compact or a contract among the sovereign peoples of the states, limited grant of power to the federal government (“expressly delegated” powers) and finally, the right to unilaterally suspend any law Virginia finds unconstitutional on its territory (to be
unilaterally “exonerated” from it, as Nicholas has memorably said). Jefferson was simply
holding the federalists to their promises, the kind of remainder they certainly did not like,
(and that today’s nationalist historians also do not like).

We shall see soon that this interpretive manoeuvre served as the cornerstone of the
states’ rights tradition prevalent in American in the antebellum period.

III. Jeffersonian response to the nationalist challenge - Abel Upshur vs Joseph Story

Jefferson’s contribution in formulating the compact theory (“principles of 98”) became the hallmark of the states’ rights tradition which was to emerge in the antebellum America, especially in the South. The conversion of the self-serving, cynical selling technique of the Constitution practised by the federalists in 1787-1788 into a localist, states’ rights constitutional tradition was so thorough that the main legal and political minds of America accepted it as self-evident by the early 1830s. We shall include in this section an analysis of one of the most systematic expositions of the states’ rights tradition, by a former Secretary of State under president Monroe, Abel Upshur, as well as the arguments of John Taylor coupled with economic free market theory.

After the adoption of the new Constitution, the fate of the document and the way how it was going to be interpreted in many decades was determined by the debates waged for and against its adoption, and more specifically by the arguments made by its proponents during those debates. Facing a skeptical audience of people who just emerged from a war against a distant, centralized government in London, the proponents of the new document had to downplay its centralizing and consolidating features, to emphasize its relatively limited character as well as the continuities that existed with the previous regime under the Articles of Confederation. The skeptics seized on these promises and prevarications of the federalists and decided to take them on their word. The entire
“compact theory” could be interpreted as a reading of an essentially centralizing
document by the people who wanted to interpreted it the other way, either for political
expedience to pass it (federalists) or as an instrument of a philosophy opposite to that of
the framers of the document. Federalists had to offer the first formulations of the doctrine
of a compact among the peoples of several states and Jeffersonians would later transform
it into a national orthodoxy.

Before Joseph Story’s compendium “The Commentaries of the Constitution of the
United States,” there has not been a systematically developed nationalist theory of the
origins of the American Union. There were just precedents, and isolated, mostly self-
-serving comments made by politicians and practitioners some of which were reviewed in
chapter 5. Joseph Story’s book was the first systematic exposition of the theory,
published in 1840. Story, a deputy Chief Justice of the US Supreme Court and nowadays
considered the foremost constitutional authority, strove to develop a theory of the union
sharply breaking with its decentralist roots and traditions. He claimed that the
Constitution was created by the American people as a whole, that the state sovereignty
was derived from national sovereignty, and that the American union consequently
represented a national political community, rather than a confederated agglomeration of
independent political societies. Story projected his vision backwards, claiming that in the
very colonial experience of America we can discern the same pattern of common national
identity.

In a sense the theoretical argument was not new; what was new indeed was the
vast learning and legal and theoretical sophistication with which judge Story marshalled
the same arguments invoked sporadically and confusingly by the likes of John Adams,
John Dickinson, Robert Morris, Alexander Hamilton or Daniel Webster on various
occasions throughout the revolutionary and early national periods. And novel was the systematic form of exposition which allowed to the ‘Commentaries’ to become the university and college textbook of constitutional law.

Abel Upshur’s refutation of Joseph Story is one of the most amazing, thoroughgoing and in the same time neglected intellectual demolitions in American history. In upholding the tenets of Jeffersonian compact theory Usphur starts chronologically, with the colonial period. In his ‘Commentaries’ Story says about the conditions of the colonial America; “…although the colonies were independent of each other in respect of their domestic concerns they were not wholly alien to each other. On the contrary, they were fellow subjects, and for many purposes, one people.” Justice John Jay concurs; “All the people of this country were then the subjects of the king of Great Britain, and owed allegiance to him, and all civil authority then existing or exercised here flowed from the head of the British Empire. They were in a strict sense, fellow-subjects, and in variety of respects one people” (Upshur, 1863: 10). Needless to emphasize, this position is accepted as the supreme dogma in modern American academia.

Upshur’s response to this is a re-examination of the colonial record and the logical analysis of the status of the claims put forward by Story. What is remarkable is the fact that Story, Jay and other early 19th century American nationalists took over entirely the arguments offered by the Loyalists and the British imperial government during the Revolutionary crisis; American rebellion was illegitimate, claimed the loyalists, because the colonies were parts of the British state by virtue of owing their

---


159 The best indication of this is a virtual unanimity between the Straussians of both varieties and the followers of progressive and Marxist schools in denouncing the states’ rights doctrines as nothing more than justification of slavery.
allegiance to the British king. The British Empire was a centralized, unitary state, with the colonies as dependent, created dominions, ruled by London. Deriving the American pre-existing national identity from the common status of colonials as “fellow-subjects” of the British state amounts to repudiation of the causes for the Revolution: if Americans were indeed the fellow-subjects, and not the self-governing and independent political societies as they thought off themselves in 1776, then the very Revolution was not a legitimate enterprise. Upshur argues that if the common allegiance to the British throne is the hallmark of political unity then Americans were one people with Canadians and Jamaicans at the time of the Revolution: “so far as the right of the mother country are concerned, they existed in the same form, and to the same extent, over every other colony of the empire. Did this make the people of all colonies ‘one people’? If so the people of Jamaica, The British East India and the Canadas are for the very same reason, one people today” (Upshur, 1863: 13). Incidentally this is exactly the type of argument made in 1770s by the loyalists and other opponents of the Revolution.160

Upshur is denying Story’s version of the origins of the union, echoing the revolutionary pamphlets of the 1770s with their emphasis on the difference between the legitimate right of London to regulate international commerce of the colonies, but without the power of taxation and domestic governance. The vision of the political order Upshur upholds is a vision of a composite political form with divided “sovereignty.” However, paradoxically, the basis for this theory is the general philosophical acceptance of modern sovereignty as a description of what it means to be “a people” or a political community. The composite nature of the American society stems from a particular application of this principle, i.e. the fact that the entire British empire comprised one people, because it united all the aspects of political association and governance, not only taxation and not only regulation of commerce or only the allegiance to one King. A

160 For this see especially historical analysis by Greene (2010), Meyer (1970), Reid (1974).
sovereign political community is “a political corporation, the members of which owe the allegiance to a common sovereignty, and do not owe any allegiance which is not common; who are bound by no laws except such as that sovereignty may prescribe; who owe to one another reciprocal obligations; who possess common political interests; who are liable to common political duties; and who can exert no sovereign power except in the name of the whole” (Upshur, 1863: 15-16). Upshur pinpoints the main problem with the nationalist theory from the very beginning: its inability to consistently conceptualize the territorial dimension of political order and its abstract use of political theory to justify political change without offering a viable constitutional theory, i.e. an account of the internal structure and functioning of the British Empire.

Hence, the debate about the compact vs nationalist theory of the American union ties in with a more general discussion of the nature of political community. Upshur revives the old Jeffersonian picture of the British Empire as a composite, con-federal political association, with a layered and complicated structure of authority and governance and with the preponderance of local control and representation as the main governing mechanisms. Although he retains the language of political sovereignty the logic of the argument empties it of much of its content: sovereign people eventually become an abstract label given to the comprehensiveness of political connections, relationships and forms of interdependence within a huge and institutionally extremely complex Empire in which actually there is NO sovereign political power. This is the deepest layer of Usphurs’ historical foundation of the compact theory of the American union, which will be revived in the 20th century by the scholars like John Philipp Reid or Jack P. Greene.

Upshur offers a plenty of technical arguments for the compact nature of the federal constitution, primarily having to do with the procedural features of the process by which it had been created, of the nomination of delegates for the Constitutional Convention and of the final adoption of the document. But, one general conceptual
argument stands above all that technical discussion, which gained a canonical status among the antebellum proponents of the states’ rights orthodoxy: namely, if the reason for the Americans being one nation at the moment of the Revolution was their common allegiance to the Crown, than the Revolution would have been an act of treason and rebellion. The first Continental Congress was not a “national government,” as Story claims, “for the relations of the colonies were still unchanged and any measure establishing a “national government de facto” would have been an act of open rebellion and would have severed at once all the ties which bounded them to the mother country, and which they were still anxious to preserve” (Upshur, 1863: 24).

Upshur’s theoretical defense of the states’ rights argument is paradigmatic of the general shift that the country party ideology had undergone after the adoption of the American Constitution. A more fluid theoretical framework espoused by the revolutionary pamphleteers and anti-federalists, which contained still many elements of the pre-modern political thought, gave way to the modern theory of popular sovereignty. Upshur accepts the doctrine that the states were sovereign political societies, denying sovereignty just to the federal government. This line of argument will become the basis for the Southern theory of the union, before and during the American War Between the States 1861-65, and the foundational stone of the Southern nation building.

**IV. Economic libertarianism from Jefferson to Philip Barbour**

In addition to the ambiguous shift from the ‘ancient constitution’ to the modern theories of sovereignty applied in a peculiar manner, Jeffersonians continued another thread of liberal-libertarian critique of the modern state, and contributed to it very significantly: economic rejection of the police powers of the modern state. The influence of the British country party on Jeffersonian tradition in America, from Jefferson himself to John Taylor, is emphasized very often by civic republicans (Pocock 1975; Banning
1978; Stromberg 1982) and not only by them (Colbourn 1965; McDonald 1976). However, the analysis of Jeffersonian philosophy is a carbon copy of the misguided treatment of the British Whigs that we had already dealt with: the same tropes of ‘agrarianism’, reactionary suspicion towards “commerce,” “capitalism” or “money” as such pervade the literature on American country party ideologues. Perhaps the best and neatest illustration of this is Forrest McDonald’s description of Jeffersonian philosophy: “In some Edenic past, “the people” – which both Bolingbroke and Jefferson understood to mean gentry and the solid yeomanry, and not to include aristocrats, money jobbers, priests, or the scum of the cities – had enjoyed the proper atmosphere, and therefore had been happy. Relationships were based on agriculture and its “handmaiden” commerce, upon ownership of land, honest labor in the earth, craftsmanship in the cities, and free trade between individuals…Because they were secure in their sense of place, they were also secure in their identities and their sense of values; and manly virtue, honor, and public spirit governed their conduct” (McDonald, 1976: 19).

As most other half-truths, this disparaging account of Jeffersonians is characteristic by what it omits rather than by what it reveals. What is missing is that Jefferson used and quoted Bolingbroke, Burgh, Sidney or Cato together with Adam Smith, Jean Baptiste Say and Destutt de Tracy. The fact that Jefferson considered Adam Smith’s Wealth of Nations the most important book ever written on economics, and recommended its use as a college textbook, is conveniently omitted. Jefferson – a laissez-faire ideologue had no place in this picture. The reason is simple: the narrative of Hamilton’s “commercial liberalism” would have become considerably less convincing if it was to be recognized that while he rejected Smith’s theories of free trade and critiques of public debt as fashionable nonsense ignored by most modern governments, Jefferson, on the contrary, was an ideological follower of Smith, and later on of even more extreme advocates of free trade and liberalism such as John Baptiste Say and Destutt de Tracy. He had de Tracy’s radical laissez-faire treatise on money and banking translated, even before
it had been published in France. In a letter to marquise of Lafayette Jefferson said on Tracy: “his Political economy has got into rapid and general circulation here, that it is already quoted in Congress and out of Congress as our standard code; and that the naming him in that as the author of the commentary on Montesquieu has excited a new demand for that work. . . . These two works will render more service to our country than all the writings of all the saints and holy fathers of the church have rendered.” (Chinard 1979: 397)

His bitter opposition to paper money, tariffs, subsidies, public debt, high taxes and the entire Hamiltonian apparatus of mercantilist capitalism was heavily influenced by Smith, Say and De Tracy. Here is, for example, how Jefferson criticizes tariffs and trade protectionism in general:

Instead of embarrassing commerce under piles of regulating laws, duties, and prohibitions, could it be relieved from all its shackles in all parts of the world, could every country be employed in producing that which nature has best fitted it to produce, and each be free to exchange with others mutual surpluses for mutual wants, the greatest mass possible would then be produced of those things which contribute to human life and human happiness; the numbers of mankind would be increased, and their condition bettered. (Jefferson, 1969: 216)

We have been taught by the generations of historians that Jefferson represented intellectually the ‘yeomanry’: the lower strata of society interested in debt forgiveness, paper money and opposed to Hamiltonian programs out of their narrow-minded agrarian provincialism.¹⁶¹ And yet, the same alleged spokesman of the inflationist and anti-

¹⁶¹ The literature on this is virtually boundless, but Charles Beard and various Beardean followers or iconoclasts are at the forefront, see Beard (1986); McDonald (1976); Maine (1961), Pocock (1975); Banning, (1976), Jensen (1968).
capitalist yeomanry was one of the staunchest advocates of hard money and full reserve banking. In his proposal for currency reform, he lists the following measures to be taken:

Let the whole of the present paper medium be suspended in its circulation after a certain and not distant day...Interdict forever to both the state and national governments, the power of establishing any paper bank; for without this interdiction, we shall have the same ebbs and flows of medium, and the same revolutions of property to go every twenty or thirty years (Jefferson, 1969: 376-77).

While favouring the 100% gold reserve system, abolishing paper currency and fractional reserve banking outright, he in addition thought it was necessary to legislatively prohibit to both the state and national governments to ever again issue the paper or authorize the banks to issue it (Rothbard, 1995). One just has to compare this with Hamilton’s high praise of the bank paper money as the creator of wealth ex nihilo\textsuperscript{162} to see the difference between the two men and their political and economic agendas.

John Taylor of Caroline, probably the most consistent and talented theorist among Jefferson’s followers, accepted his strict hard-money and free trade views, but supplemented them with a very sophisticated analysis of the distributional effects of monetary inflation; the essence of credit inflation is not only to debase currency, but also to redistribute resources from the people on fixed incomes who receive the money last to the bankers and entrepreneurs with connections who get the newly created currency first.

\textsuperscript{162} In his ‘Report on the National Bank’ Hamilton writes: “[paper money causes] augmentation of the active or productive capital of a country, gold and silver, when they are employed merely as the instruments of exchange and alienation, have not been improperly denominated as dead stock; but when deposited in banks to become a basis of a paper circulation, which takes their character and place...they then acquire life, or, in other words, an active and productive quality” (Hamilton, 1957: 54-55).
Taylor developed the first theoretical formulation of this so called Cantillon effect, much later identified by F.A. Hayek as one of the main corollaries of monetary-induced business cycle. In a good praxeological manner championed by French economists whom he read and later Austrian theorists such as Ludwig von Mises, Taylor starts from the elementary definition of money, its proper role and function in a society and then argues that the institution of fractional-reserve landing defeats the purpose of money in a free society and represents an infringement of private property and contractual obligation. This is a supremely important contribution to the economic theory that was lost for the next generation because the entire economic thinking of the 20th century shifted sharply from the free market orthodoxy guiding Taylor’s thought towards interventionist and mercantilist models under the different names and guises: “Money, or a circulating medium of any kind, in its quality of representing property and labour, conveys property and labour to its possessor; and if A, entitled to the menial services of B, contracts to receive of B their value in money, though B may prefer this mode of payment, he must still perform the same value in labour to acquire the money it is commuted for” (Taylor, 1814: ibid).

Every monetary system, insofar as it is subject to sudden, exogenous fluctuations in the value of money creates redistributive outcomes, even the precious metals such as gold in silver, whose value could swing sharply depending on the conditions of supply and demand. Money as a stable instrument of expressing the relative prices of goods and services (of “labour” and “property” as Taylor call them) is a theoretical ideal, rather than the hard reality, even in a pure 100% commodity money system. However, there is a fundamental difference between the pure gold standard and the fractional reserve lending

163 “Cantillon effect” is often used to refer to a phenomenon that the credit expansion by private banks does not affect all prices equally, but rather disproportionately increases the prices of financial assets and producers goods, whereas the agricultural and consumers' goods are increased latest. This change in relative prices leads to a redistribution of income from people on fixed incomes toward speculators and investors in the long term projects, see Hayek, [1933] 2009.
based on paper currency: it is much more difficult to manipulate a commodity standard for the purposes of individual enrichment than the bank money, because the price of gold and silver in terms of goods and services is significantly determined by the conditions of their supply, which means the exorbitant costs of digging up and refining those metals. This puts a natural check on the ability of banks and governments to debase the value of a monetary unit in a pure metal-commodity system. However, no such check is present in the system of fractional reserve banking with paper money.

Even the precious metals have furnished to the contrivers of pillage and oppression a medium for extracting indirectly from nations, a far greater proportion of their labour, than they could ever be made to pay directly by the feudal or any other regimen: but the impossibility of multiplying these metals at pleasure, inflicted a considerable check upon this fraudulent perversion of so useful a representative of property. An artificial currency is subject to no such check, and possesses an unlimited power of enslaving nations, if slavery consists in binding a great number to labour for a few. Employed, not for the useful purpose of exchanging, but for the fraudulent one of transferring property, currency is converted into a thief and a traitor, and begets, like an abuse of many other good things, misery instead of happiness.” (Taylor, 1814: 182)

The supposed champion of the agrarian-debtor class, not only argued for the sanctity of contracts but also for a hard currency, gold standard full-reserve banking and considered ‘artificial’ money as a new form of redistribution of wealth. However, Taylor did not (as often misunderstood) reject the concept of credit or banking as such; quite contrary to the claims by Pocock, Banning and others, Taylor did not invoke the pre-modern, feudal and aristocratic agrarian “economy of masters and servants” as a counter-ideal to “modern commerce and capitalism”; instead, he described this so called

---

164 See Taylor (1822).
“modern capitalism,” i.e. fractional reserve banking coupled with public debt and high taxes, as a new aristocratic and feudal system which denies natural liberty of individuals (Taylor, 1814: 181).

However, the redistribution is not the only problem with the fractional reserve system; a further point in which Taylor contributes to the further development of the country-party ideology is by pointing out the close connection between the fractional reserve banking and taxation: for him, fractional reserve lending is a form of tax that the privileged class of “stock-jobbers” (a typical country party invective) impose via government on the general public:

Suppose a thousand stockjobbers, with the munificence and patriotism of stockjobbers, should say, 'society, create ten millions of stock; you may keep one fifth of it, as payment for four fifths which you shall give us.' The property of stock being to tax, the proposition simply is, 'society, if you will permit us to tax you at eight hundred thousand dollars a year, (computing bank dividends at ten per centum,) you may tax yourselves at two hundred thousand.' As bank stockholders retain their stock, they do not lend it to a nation as a compensation for taxing it by means of that stock. These two hundred thousand dollars, are ingeniously used to dazzle the multitude, so as to conceal from them, that they pay eight hundred thousand to individuals, for the privilege of taking two hundred thousand from themselves, and bestowing it on the government. (Taylor 1814, ibid.).

The third element of the country party triad – financial monopoly, taxes and tariffs – is also elaborated very minutely by Taylor. Trade protectionism is a necessary instrument of aiding and abetting the system of mercantilist control. There are two interrelated reasons why bankers would tend to support high protective tariffs; the first is that this system restricts the inflow of specie from abroad, thereby reducing the competition to their own business of lending. The second reason is that it makes their own investment safer by reducing the foreign competition to domestic industry and
manufacturing businesses. Hence, entrepreneurs contracting the long-term loans with domestic banking institutions are less likely to default on their debt obligations. They are capable of increasing the prices of their products, enlarge the profit margins and reduce substantially the risk of bankruptcy: “Their object is to regulate commerce for the attainment of two ends; one, to prevent it from assailing bank deposits; the other for preventing it from supplying individuals with necessaries, and investing capitalists with a privilege of doing so at double price…by destroying our commerce, they hope to save their banks; by prohibiting importations, they will certainly increase their capitals. And thus the banking and manufacturing capitalists are united by a common interest, the magnitude of which is sufficient to awaken the great talents they possess, and to excite all the industry and perseverance they have shown.” (Taylor, 1822: 87)

Solidly in the footsteps of Adam Smith and David Hume, Taylor castigates the protectionist doctrine of the ‘balance of trade’, invoked by Hamilton and later by Whigs, as a justification for corporate welfare, subsidies and tariffs: “The idea of what is called ‘a balance of trade’ has furnished the authors of all the stratagems for transferring property internally by restrictions, privileges, and monopolies, with ammunition for this formidable political artillery, which has been so successfully used against the liberty and happiness of mankind.” (Taylor, 1822: 72). Taylor sees clearly the same thing emphasized by Adam Smith, that the balance of trade is a very convenient excuse for a host of other mercantilist schemes increasing the power of the government. In addition, Taylor, as a good economist, rejects the collectivist methodological reasoning of Hamiltonians, their emphasis on “macro-aggregates” such as balance of trade which are subject to government manipulation by “public policy,” concentrating instead on individual choice by individual economic subjects. Balance of trade is an individual decision and a result of interpersonal interactions in which every economic agent chooses to participate in or abstain from trade. Sounding almost like F.A. Hayek or Ludwig von Mises in praising the power of individual vs. collective planning and decision-making, he
claims that government could and should not regulate the commercial flows resulting in balance or “imbalance” of trade (by subsidizing or taxing domestic manufactures for example): “We are not obliged to elect between foreign manufactures and household manufactures. Let all be free to individual preference; let our eagle-eyed people choose and abstain for themselves. They generally strive to make some surplus annually, and know how to effect it better than the government can inform them.” (Taylor, 1822: 134).

Again challenging the Hamiltonian-mercantilist theory of prosperity by government action, Taylor joins together decentralist and free market perspectives in a unitary framework of liberty as nurturer of civilization. It is not a coincidence that he invokes the Suisse cantons, the paragons of decentralist political order as a liberal (in economic sense) counterpoint to the Hamiltonian model. In opposition to mercantilism, Taylor doctrinally believes, even more radically and dogmatically than the most ardent of the 20th century libertarians, that the wealth and prosperity of the people directly depend on the modesty and poverty of the state treasure, i.e. modest scope of government activity and low taxes to support such a low level of government action: “Louis the fourteenth, when he bribed Charles the second and other princes, had an overflowing treasury; yet the English, with a treasury insufficient to supply the extravagancies of Charles, were happier than the French. The richest treasury in Europe was at that time united with the most miserable people, instead of being an indication of their happiness and prosperity. The Swiss Cantons are remarkable for the poverty of their treasuries, and the happiness of their people.” (Taylor, 1822: 23)

Another British liberal locus classicus, shared by Smith, Hume, Trenchard, Gordon and Bolingbroke is the exact parallelism between private and public debt, i.e. disinclination to see in the theory of public debt as a vehicle of economic development anything but a self-interested sophistry. We will remember “Cato’s” warnings that the good public debt is protected in the same manner as private credit, by thrift and saving, and Adam Smith’s warning that “What is prudence in the conduct of every private
family, can scarce be folly in that of a great kingdom.” Jeffersonians such as John Taylor and John Randolph were particularly outspoken in this regard. Jefferson himself argued in a letter to James Monroe, almost literally repeating Adam Smith’s analysis: “We are ruined, Sir, if we do not over rule the principles that ‘the more we owe, the more prosperous we shall be,’ ‘that a public debt furnishes the means of enterprise,’ that if ours should be once paid off, we should incur another by any means however extravagant.”

John Randolph theorized that private debt “enslaves the mind as well as it enslaves the body,” and that by the same token “no desperately indebted people…[could] bear a regular and sober Government” (Devanny, 2001: 399).

A complete parallelism between the narratives of corruption and general libertarian view of the government, seen in the teachings of the British country party, in America is perhaps most obvious in John Taylor’s writings: “No form of civil government can be more fraudulent, expensive and complicated, than one which distributes wealth and consequently power, by the act of the government itself. A few men wish to gratify their own avarice and ambition. They cannot effect this without accomplices, and they gain them by corrupting the legislature.” (Taylor, 1822: 153). Libertarian condemnation of redistribution of wealth is joined together with the standard, republican arguments against corrupted legislatures and ministerial government.

The critical theoretical contribution that qualifies Taylor as a champion not only of the states’ rights tradition of American political thought, but also of a more general libertarian decentralist strand of classical liberalism is his explanation of the origins of economic progress and capitalist society. This contribution has largely gone underappreciated, which is even more peculiar having in mind how a thorough and well

165 Adam Smith (1907, 457). The quoted passage referred to the trade restrictions but is equally applicable to all other aspects of economic policy.

thought out alternative to the prevailing mercantilist and nationalist interpretation of economic progress it represents. Taylor is the best and most sophisticated “anti-Hamilton” of the entire Jeffersonian and Jacksonian corpus of political thinkers. In opposition to the mercantilist ideologeme that a society needs a strong centralized government to protect property and encourage the advance of industry – an argument strongly emphasized by Hamiltonian nationalists – Taylor argues that liberty and the absence of a centralized government represent the key precondition of economic advancement. In sharp contrast to Hamilton’s boundless admiration for “great Colbert,” Queen Elisabeth and other mercantilist experimenters, Taylor believes that advance of industry throughout history has always been an effect of government’s weakness and its “hands off” approach to economic affairs:

The revocation of the edict of Nantes at length expelled a great mass of manufacturing knowledge from France, and supplied England with the leading cause of manufacturing prosperity; from this epoch, she dates hers. The improvements of machinery in England were the works of individual knowledge and industry, after her prohibitory system had become nominal. The wonderful art of ship-building, carried to such perfection in the United States, proposed to be checked by commercial restrictions, proves, that when the knowledge of an art is obtained, it is only necessary that it should correspond with the interest of individuals. Compute and compare the progress of the United States in the arts and sciences, in about thirty years, with the progress of Europe during a similar space, and anticipate its reach in six centuries, during which Europe has been employed in effecting her attainments. To what can the vast difference in velocity toward excellence be ascribed, but to a greater freedom of intellect and industry? (Taylor, 1820: 5)

Taylor connects directly religious liberty with economic liberty in a single Lockean notion of integral liberty based on individual self-ownership. He formulates very clearly and powerfully an intuition which the modern libertarians would revive in the 20th
century - the concept of political and economic liberties as inseparable twins that only together can protect humanity from arbitrary power. Taylor compares directly religious fanaticism and oppression with what he calls “pecuniary fanaticism” - a zeal to take other people’s property away, oftentimes under the guise of lofty, philosophical justifications:

Between an absolute power in governments over the religion and over the property of men, the analogy is exact, and their consequences must therefore be the same. Freedom of religion being the discovery by which religious liberty could only be established; freedom of property must be the only means also, for the establishment of civil liberty. Pecuniary fanaticism, undisciplined by constitutional principles, is such an instrument for oppression, as an undisciplined religious fanaticism. A power in governments to regulate individual wealth, will be directly guided by those very motives, which indirectly influenced all governments, possessed of a power to regulate religious opinions and rites. (Taylor, 1820: 10)

A very important aspect of Taylor’s country party argument against corruption is his depiction of modern state as a European invention foreign to American traditions. The concept of sovereignty is according to Taylor tightly bound with the concept of the limitations of power, and actually contradictory to it. The notion of sovereignty of government which saw implied in the nationalist theory could not be reconciled with a genuine American tradition of local self-government and delegation of power to it by the people. Nationalists were in many respects repackaging the tradition of the European absolute monarchy for domestic purposes.
V. Jacksonians

Presidents Andrew Jackson and Martin van Buren with their political and intellectual allies continued the early Jeffersonian liberal tradition. Their most important contribution to this tradition was the further development and refinement of the early antifederalist and Jeffersonian economic liberalism. Also, most of them continued the states’ rights tradition of local self-government.

As in the case of anti-federalists and Jeffersonians, we are accustomed already to find in the literature the dominant practice of recasting economic liberalism as ‘agrarianism’. In the case of Jacksonians this questionable approach is sometimes advanced to the point of utter absurdity. Some authors would claim that Jacksonians were the prophets of unbridled capitalism (Hammond, 1957), and yet the others claim they were deeply disturbed by financial capitalism, and hence opposed to the banks (Meyers, 1957). Even the most radical faction of the Jacksonian movement, the so called ‘Locofocos’, whose main stronghold was New York City, and who included in their ranks primarily the businessmen, bankers and journalists were called by a prominent historian the ‘urban agrarians’ (Degler, 1956). The reason; they were against selective privileges for any business firms and for free competition, and since ‘commercial liberalism’ most often means crony capitalism, and laissez-faire does not exist as an alternative, Locofocos could be only ‘agrarians’ (although probably many of them had never spent a day in the countryside).

Jacksonians were the political generation which came of age in the early 1820s, after the terrible experience of the panic of 1819 and economic crash that it brought about. The future president Jackson also was deeply influenced by this event, which solidified his anti-bank sentiments. Jacksonians, a group of public figures, journalists and
theoreticians were to become a part of a deep controversy over the role of the banks in a free society, especially of the government-privileged central banks and paper money, and the ways how to reform the banking system. This controversy was raging in Europe in the same time, especially in Great Britain and it is usually described as a debate between the proponents of the Banking and Currency Schools. The Banking school theorists believed that the source of business fluctuations is insufficient ability of the banks to create reserves in the cases of severe financial distress to avert the panics. The remedy for this was according to the Banking school to make money supply more “elastic” by allowing to the central bank to print the necessary reserves or to abandon or restrict the gold standard (Rothbard, 1995). The currency school, on the other hand, believed that the problem was in the ability of banks to expand credit and money supply during the good times, which led to speculation and overinvestment that necessarily must end up in a crash. In order to avoid this, the money supply must be restricted, rather than expanded, by limiting the ability of the banks to create the banknotes and demand deposits (de Soto, 2006; Rothbard, 1995). The source of the problem according to the Currency school proponents that money supply was too elastic, and in order to avert the cyclical episodes of boom and bust, followed by bank panics, the banks should be severely restricted in ability to expand their liabilities beyond the cash reserves they hold. Paper money was a major problem.

President Jackson and his major advisors and economic theorists (Condy Raguet, Amos Kendall, William Leggett, William Gouge) were the most extreme advocates of the Currency doctrine in the United States. They were much more extreme and consistent than their British counterparts (Rothbard, 1995). Following in the solid Jeffersonian footsteps they blamed the paper circulation created by the Second Bank of the United States for economic instability and distress. Just as Jefferson did, most of them came to believe that the only solution for financial crises was to abolish paper money outright and impose a 100% reserve requirement for both banknotes and demand deposits. That would
practically mean that the banks would not be able to create any additional money beyond the commodity reserves in gold or silver they hold. The paper would function only as a certificate to a certain quantity of gold, not as a ‘fiduciary medium’ created out of ‘thin air’. This doctrine was more advanced and consistent than the British Currency School insofar as it clearly demonstrated that the American Currency men understood that demand deposits were the part of the money supply and had to be restricted together with the banknotes. The British currency men, however, imposed the 100% restriction only for the banknotes, while allowing the paper to thrive as deposit currency (de Soto, 2006). Jacksonians on the other hand argued not only for suppressing the paper money but also for a complete separation of government and banking, and unrestrained free trade. William Leggett, a very influential Jacksonian writer and the undisputed leader of the Locofocos group, wrote:

In the complete separation of government from the bank and credit system consists the chief hope of renovating our prosperity, and restoring to the people those equal rights, which have so long been exposed to the grossest violations. Leave credit to its own laws. It is an affair between man and man, which does not need special government protection and regulation. Leave banking to be conducted on the same footing with any other private business, and leave the banker to be trusted or not, precisely as he shall have means to satisfy those who deal with him of his responsibility and integrity. All this is a matter for men to manage with each other in the transaction of private affairs…

There are two principles at war on the subject. One of these is the principle of aristocracy, the other the principle of democracy. The first boasts of the vast
benefits of a regulated paper currency, and asks the federal government to institute a national bank ‘to regulate the currency and exchanges,’ or, in other words, to regulate the price of the labourer’s toil, and enable the rich to grow richer by impoverishing the poor. The principle of democracy, on the other hand, asks only for equal rights. It asks only that the government shall confine itself to the fewest possible objects compatible with publick order, leaving all other things to be regulated by unfettered enterprise and competition. It asks, in short, for free trade, and the divorce of bank and state. (Leggett, 1984: 125, 164)

In these passages Leggett formulates the Jacksonian political program in a nutshell: ‘democracy’ means laissez-faire, while ‘equality’ means the absence of government intervention and legal privileges. The often repeated claim by the progressive historians that the Jacksonians were ‘socially aware’ egalitarians who favored social reform and interventionism (Schlesinger, 1953) are based on a misunderstanding of the philosophical basis of the passages like this. This fiction of Jacksonians as predecessors of the New Deal is the product of ahistorical projection of the today prevailing notions of equality and justice back to the moral universe of the early 19th century where they don’t belong. ‘Equality’ was understood by the Jacksonians in a classical liberal way, as the absence of government impediments for individual pursuit of happiness, rather than as a government-orchestrated and guaranteed provision of happiness by intervening and regulating commerce or social life. Instead of ‘redistribution of wealth to create equality’ the Jacksonian version of egalitarianism and equal rights could best be summarized as ‘nobody gets a thing from the government’. For the most part, therefore, the Jacksonian roots of the 20th century progressivism are mistakenly derived from their libertarian egalitarianism, misapprehended as giving a philosophical sanction to income redistribution and regimentation of business. Jacksonians, on the contrary, thought that
redistribution based on government laws and regulations was anti-social and the source of all evil.

Philip Barbour Jr., congressman from Virginia and later associate justice of the US Supreme Court represent the new level of economic sophistication that Jacksonians bought to the American political debate. In the mid-1820s the new “American system” was created under the decisive influence of Senator Henry Clay of Kentucky. It contained a repackaging of the old Hamiltonian arguments (dealt with in chapter 6), emphasizing mostly the benefits of tariffs and “internal improvements” for economic development of the nation. During a debate over the newly proposed tariff bill increasing significantly the protection tariff rates, Henry Clay gave his famous “American system” speech defending protectionism and government intervention as the best guarantees of economic prosperity. A very eloquent and patriotic speech that lasted for two days is usually considered by historians as one of the best speeches in American history. Yet, what is rarely mentioned is that this speech represented an attempt to counter the arguments against the “American system” marshalled a few days earlier by Philip Barbour. Although less rhetorically flowery Barbour’s speech is much stronger on economic substance and the quality of theoretical reasoning.

The significance of this speech is that it went much beyond the usual Jeffersonian arguments based on Adam Smith’s theory of free trade, combined with the constitutional arguments specific for America, to include the first and astonishingly sophisticated version of what has become known as Hayek’s “information problem” argument. F.A. Hayek developed an argument against socialist central planning in the 1930s and 1940 which questioned the economic efficiency of socialism on the grounds that a central planning committee cannot assemble the requisite knowledge of specific circumstances of time and place, local “tacit” knowledge that determines the relative prices of various capital goods and labour services, the knowledge available through prices only to the individual economic actors and entrepreneurs. This argument is by now well-known
especially after Hayek won the Nobel Prize in economics in 1974 in today is at least in its
general form widely accepted by economists, even by those who disagree politically or
ideologically with Hayek. Philip Barbour not only developed the same argument 100
years before Hayek, he applied it to milder forms of government interventionism short of
full socialism, which is a highly original contribution to economic theory. The fact that
this argument is formulated by American politician testifies to the level of sophistication
of the American public debate in the early 19th century.

Barbour first presents the general Hayekian model of “knowledge economizing”
in order to question the possibility of using the central government as an instrument of
improving the overall economic efficiency. He first asserts that individual pursuit of
economic self-interest is the driving force of economic progress and adds: “Before then it
can be justified to invoke the aid of government upon this subject, it is incumbent on
those who would do so, to prove that government knows better to direct this desire…than
the individual citizens themselves. This they cannot do; on the contrary, I think it can
clearly be shown, not only that the government does not know better, but that it does not
know so well, nay, that in the nature of things, it must be whole incompetent to the task”
(Barbour, 1824: 13).

However, this general grounding of free market policy in the knowledge-
economizing paradigm is just the beginning. A still bigger contribution is the
development of a comprehensive theoretical explanation of why is this the case, and
specifying the scope of the argument. In this regard, I would say that Barbour’s argument
is superior to Hayek’s, as formulated in his paper “Use of Knowledge in Society”
(Hayek, 1945). In a clear proto-Austrian fashion, Barbour anchors his theorizing in an
analysis of the relative prices within the economy and in the international trade, as well as
explains why this argument applies to any kind of government intervention with the aim of improving economic efficiency.\textsuperscript{167}

Can any member of this committee united, give me an answer to the following questions? What is the current rate of profit of the great departments of industry, agriculture, manufacturers, commerce, and navigation? What is the particular rate of profit in each? What is the particular rate of profit in each? What is the particular rate of profit in the different kinds of manufactures such as iron, wool, cotton, etc? What is the cause of the difference, in the profit of different manufacturing establishments, engaged in manufacturing the same materials? Does that difference arise from the difference in capital, or in machinery, or in industry or skill, or in economy? What is the rate of profit in England in the different kinds of manufactures, which come into competition with ours of the same kind? Is it greater or less than ours; and how much greater or less? (Barbour, 1824: 13-14)

We see here that Barbour drives home some of the critical points of the “Austrian” analysis: the inability to discern the patterns of price and profit differentials as well as the comparative advantages in productivity outside the system of market prices. This is the problem of economic calculation, as Ludwig von Mises argues in his pioneering work in early 1920s (Mises, [1921] 1990). But again, this work pertained to overt socialist control of all means of production. Barbour, however, applies the same calculation argument to the ordinary government interventionism. In a political speech, the American statesmen formulates actually a better and more comprehensive version of

\textsuperscript{167} This (the application of Hayekian knowledge argument to any kind of government intervention) is an argument that, to best of my knowledge, is yet to be made by modern economics. This author has a work-in-progress manuscript making similar kind of argument, but it is still unfinished and unpublished.
the argument which is celebrated even nowadays by many free market economists – the knowledge or calculation argument:

The wool-grower asks a protecting duty to his wool; the manufacturer explains that the rate proposed will prostrate him manufacture. What data have we, upon which to decide between them?.....the proposed system, as it is without our sphere of action, so it is without our means of information. But whilst we are thus without the necessary information, as to all these complicated subjects, each individual in his own immediate and separate pursuit, has, or may have, all the information required, in relation to his business. [emphasis addes] (Barbour (1824: 14)\textsuperscript{168}

Jacksonians were the staunch supporters of the states’ rights philosophy, although President Jackson himself was less consistent in this regard than most of his followers; although generally in the states’ rights tradition he would nevertheless engage in some political battles in which he took a more nationalist stance, most notably in the dramatic showdown over the tariff nullification with South Carolina. The president who started his first term with an inaugural emphasizing the time honored Jeffersonian states’ rights message has ended up employing a strong nationalist measures and rhetoric, bordering on the willingness to use force against the South Carolina nullifiers led by John C Calhoun.

\textsuperscript{168} Compare this with Hayek (1945: 2) : "The peculiar character of the problem of a rational economic order is determined precisely by the fact that the knowledge of the circumstances of which we must make use never exists in concentrated or integrated form but solely as the dispersed bits of incomplete and frequently contradictory knowledge which all the separate individuals possess. The economic problem of society is thus not merely a problem of how to allocate "given" resources—if "given" is taken to mean given to a single mind which deliberately solves the problem set by these "data." It is rather a problem of how to secure the best use of resources known to any of the members of society, for ends whose relative importance only these individuals know. Or, to put it briefly, it is a problem of the utilization of knowledge which is not given to anyone in its totality."
(Ellis, 1987; McDonald, 2000). However, as even a sympathetic historian Richard E. Ellis emphasizes this produced a strong resistance within the ranks of Jacksonian movement, especially in the South, where even the people who did not support Nullification doctrinally considered threats of war inexcusable nevertheless. As Ellis points out (op. cit.), the Virginian political elite made clear that they would never allow the use of force and advised Martin Van Buren, that if he wanted to have the support of Virginia in his future political ambitions, he was to renounce the warlike rhetoric vis a vis nullification.

However, aside from the nullification episode (that had also a personal angle to it, having to do with the old rivalries between Jackson and Calhoun in the Monroe cabinet, and intrigues surrounding them), Jackson’s position was squarely in the states’ rights camp in the most significant political battle of his life, namely the successful campaign for abolishing the Second Bank of the United States. As Forrest McDonald points out, the states’ rights tradition did not mean only the assertion of state power but even more an instrument of keeping the federal governments at the ‘bare-bones minimum’ (McDonald, 2000: 109). Jackson used the standard states’ rights canon in arguing his case for the abolition of the Bank. Apart from threatening democracy, liberty and equality, the Bank according to President Jackson meant a “grant of monopolies and exclusive privileges” making “poor poorer and rich richer” and undermining the very federal fabric of the union. Echoing Jefferson and his followers, Jackson warned that “our government is not to be maintained and our union by invasions of the rights and powers of the several states” (McDonald, 2000: 110). He also added a decidedly classical liberal twist to the states’ rights doctrine by emphasizing the liberating force of the limitations to the central government’s powers: “attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves – in making itself felt, not in power but in beneficence.” (McDonald, 2000: 110).
Conclusion

In this chapter Jeffersonian and Jacksonian traditions in political and economic theory were reviewed. The main finding is that the Jefferson and his followers formulated a theory of union by forging a compromise between nationalism and the older concepts of decentralized political order, while deepening and refining free market economic ideas. Jacksonians by and large continued along a similar path, adding additional sophistication in economic analysis, and retaining the basic states’ rights approach in political theory. Those two broad movements spanning the period 1800-1840 profoundly redefined the way in which the Constitution was interpreted without changing the text, testifying to the old truth discovered by Aristotle that some revolutions in government could take place by a gradual process of changing the purpose of the inherited institutions, without an overt revolutionary overhaul. The two main features of this Jeffersonian-Jacksonian “revolution within the form” were free market economics and states’ rights philosophy in political theory and practice.
Chapter 9.

The last Stand - John C. Calhoun

Introduction

The South Carolinian politician and statesmen John C. Calhoun probably represents the apex and consummation of early American classical liberal thought. His theories unify economic and political liberalism with a deeper understanding of political philosophy and constitutional theory, which he brought together for the first time in a comprehensive system of political thought. Calhoun is arguably the most original and most systematic political thinker of the early Republic.

Although generally a follower of the Jeffersonian and Jacksonian liberal states’ rights tradition, Calhoun modified and remoulded this tradition in at least three different ways. First, he developed a general libertarian theory of class struggle, explaining the economic and social sources of factions in a way that anticipated and was actually superior to the 20th century public choice theory (Cowen and Tabaroke, 1992). He then developed the so called theory of ‘concurrent majority’ which resolved the general problem of how to protect liberty in a complex country like the USA with ‘territorial’ checks and balances and requiring unanimity and/or supra-majorities. Finally, he refined and systematized the old Jeffersonian and Madisonian theory of state nullification in a comprehensive political doctrine.

Calhoun is an atypical figure in the history of early American political thought. On the one hand, by virtue of breaking sharply with the social contract elaborations of the
states’ rights tradition (from Jefferson to Upshur and Taylor), he went back to the medieval and Aristotelian understandings of politics. On the other hand, he is paradoxically going further than most other states’ rights advocates in reconciling with the logic of a nation-state. His rejection of the social contract tradition of Lockeanism and return to an Aristotelian-Burkean conservative communitarianism with medieval overtones better conformed to the American traditional stateless and localist institutions, intuitions and heritage. And yet, his reconceptualization of the Jefferson-Madison “principles of 98” went far beyond the prevailing understanding of these principles in reconciling them with the logic of centralized state. By doing so, he transformed them from a localist remedy applied by a single state against the federal usurpation into a “national” decision-making rule and mechanism.

In this chapter I will explore Calhoun’s general philosophical departure from the social contract theory, and its many ramifications including his attitude towards slavery, then his political theory of the state, anticipating modern public choice, and finally his further refinement and development of the principles of ’98 through his celebrated theory of “concurrent majority.”

II. General political philosophy

In their magisterial study of the anti-bellum South “The Mind of the Master Class,” Elisabeth Fox-Genovese and Eugene Genovese argue that the intellectual elite of the 19th century South combined in an uneasy philosophical marriage the traditionalism of Aristotle and the European Middle ages with the nascent “radical bourgeois individualism” (Fox-Genovese and Genovese, 2005: 3). John C. Calhoun’s theory of government and politics, most notably developed in his “Disquisition on Government,” represents certainly the most vivid philosophical expression of this Southern duality. His
masterpiece is not only an authoritative statement of the states’ rights political tradition; it is a two-fold major revision of the same tradition. On the one hand, Calhoun philosophically breaks with the social contract theoretical justification of decentralism that dominated the states’ rights school, from Jefferson, via Taylor and Randolph to Jacksonians. On the other hand, he reconciles, paradoxically, decentralism with the logic of nation state. Calhoun is in more than one way a paradoxical thinker.

Calhoun begins his analysis by introducing what may be called an Aristotelian political anthropology, and by taking a direct jab at social contract theories. “…I assume, as an incontestable fact, that man is so constituted as to be a social being. His inclinations and wants, physical and moral, irresistibly impel him to associate with his kind; and has, accordingly, never been found, in any age or country, in any state other than social“ (Calhoun, 1992: 5). However, not only is the “social” state of mankind perennial, so is the government. According to Lockean theory, government emerges by an individualistic process of first realizing and then attempting to remedy the inconveniences of the state of nature by an interpersonal compact. According to Calhoun, however, government exists whenever exists society (that is, always). Moreover, he offers a completely parallel quasi-Aristotelian theory of the meaning and the role of the state. The state is not a product of a social contract made by isolated individuals in the state of nature, but an instrument of “perfection of society”: “To man, [Creator] has assigned the social and political state, as best adapted to develop the great capacities and faculties, intellectual and moral, with which he has endowed him; and has, accordingly, constituted him so as not only to impel him into the social state, but to make government necessary for his preservation and well-being” (Calhoun, 1992: 9)  As we see, Calhoun eliminates the strict dividing line between civil society and government, a hallmark of modern political thought, and goes
back to Aristotelian and scholastic notions of politics as a divinely ordained form of protecting and improving society.\textsuperscript{169}

However, at closer inspection it quickly becomes obvious that this is not a wholesale revision of the entire philosophical framework of modern political theory. Calhoun rejects a macro-political conception of the social contract as a starting \textit{methodological} point of analysis, but he is far from abandoning liberalism and individualism outright. It seems rather that Calhoun introduces through the back door some aspects of Hobbesian-Lockean reasoning, moderated by considerations congenial to the Scottish Enlightenment and Burke. Government is needed – as in an Aristotelian perfection of society – but this perfection of society has conspicuous Lockean-Hobbesian features. The government is an institution ordained to deal with political ramifications of the selfishness of human nature, stemming from the fact that the natural order of charity prompts humankind to value and protect persons closest to them more than those more distant from them. This is why we need an agency called “government” as a disciplining force with regard to human nature: ..”.while man is created for the social state, and is accordingly so formed as to feel what affects others, as well as what affects himself, he is at the same time so constituted as to feel what affects him more intensely than what affects him indirectly through others; or to express it differently, he is so constituted, that his direct or individual affections are stronger than his sympathetic or social feelings\" (Calhoun, 1992: 6).

Unlike Hobbes, Calhoun does not see a generic human sociability and consequent “natural” state of social harmony as artifacts of a mechanistic process or social contract resulting in the absolute state, but as innate traits of human nature that exist perennially, requiring nonetheless cultivation and protection. And one of the major instruments in this

\textsuperscript{169} For the Aristotelian imprint in Calhoun’s thought there is a large literature: see for example Spain (1968), Cheek (2001).
protection and cultivation is a “disciplining” agency called government. Unlike Locke, Calhoun does not see the need for the state as emerging from technical “inconveniences” of the state of nature but as a generic necessity of uplifting the body politic to rebalance a natural order of things in which individual and private overwhelm social and communal. In a manner resembling Edmund Burke, Calhoun is combining an Aristotelian image of human sociability with a more modern image of government as “human invention for human purposes” which owes a lot to the Newtonian mechanistic view of society, impressed in modern political philosophy by both Hobbes and Locke.

What is really important to bear in mind – and what Calhoun is going out his way to emphasize – is that “private” and “individualistic” should not be conflated in this context with merely “selfish” or “greedy.” Calhoun has a much more sophisticated, epistemological rather than ethical, notion of individualism, resembling and anticipating F.A. Hayek’s notion of individualism (Hayek, 1948). Human “selfishness” that needs a kind of Aristotelian corrective in the form of government has to do with the nature of the human situation, in which everyone is more familiar with and better adjusted to those proximate and known, and much less attached to those distant, different and unknown (Calhoun, idem). This does not mean of necessity that one will always prefer known and proximate to different and distant. It only means that as a maxim of practical action we cannot start by ignoring the social consequences of individualism, because history and experience teach us that this epistemological asymmetry creates, as a rule, an action bias, a tendency to favour the people and values closer to one’s individual experience over those further removed from it. This ties in very nicely with the traditional Catholic and Christian notions of a “proper order of charity,” as well as with Aristotelian conception of politics, centered on the notions of human sociability, natural propensity of individuals to form and self-govern their communities. Individualistic bias, as rooted in human nature and its epistemological constitution, should not be seen as the vice of selfishness to be
dreaded, but as a normal condition of human nature that has to be mildly modified by political institutions.\textsuperscript{170}

Having thus defined the need for government, Calhoun’s proceeds to explain the notion of political constitution. This is perhaps his single most significant departure from modern political philosophy. Calhoun by and large abandons the modern notion of a constitution as the set of formal or informal rules restricting or specifying the scope of government’s authority – a philosophy engrained among other things, in the Constitution of the United States. This newer concept of the constitution already assumes a neat distinction between the government and civil society (rather than an Aristotelian-Calhounian continuum). Calhoun’s vision, influenced by Aristotelian and Christian anthropological intuitions, sees the problem in an “organic” perspective: society, including political society is a body or “organism” consisting of harmoniously assembled parts, and the “constitution” of this society is a condition of relationship between these different parts of the social body, a regime of interactions and mutual influences that connects existing social actors and groups within society, rather than mechanical interactions of departments within the government.\textsuperscript{171}

The danger posed by the government to society stems from the same ‘indisputable fact of human nature’ that makes government necessary and unavoidable: self-centeredness of human beings and their tendency to favor more proximate and personal as compared to more distant and foreign. Calhoun’s contribution in this respect is to offer a general philosophical and psychological explanation of the reasons why individualism not only requires the government but also makes it dangerous, which in and of itself is a significant achievement. He also outlines the mechanisms and phenomenology of social

\textsuperscript{170} In a certain sense, the entire Calhounian project could be regarded as a restatement or Lockean philosophical tradition.

\textsuperscript{171} For a detailed elaboration of the differences between the modern and pre-modern notions of constitution and constitutionalism see Brunner, (1992), or Rose (1990).
conflict stemming from this feature of human nature. The main argument is that the government is an instrument of class struggle and oppression, that in every society there are essentially two main competing groups that constantly fight each other, but they are not the capitalists and workers as in the Marxist version of the theory, but rather the net taxpayers and net ‘tax eaters’. He understood the government in a public choice manner (Tabarrok and Cowen, 1992) as machinery of plunder and privileges, and political struggles just as a concealed way of fighting over the material gains and spoils. Every act of taxation and government spending is an act of redistribution of income, and it is always unequal in its outcomes; somebody has to pay and somebody else to spend.

The necessary result of the unequal fiscal action of the government is, to divide the community into two great classes; one consisting of those who, in reality, pay the taxes, and of course, bear exclusively the burden of supporting the government; and the other, of those who are the recipients of their proceeds, through disbursements, and who are, in fact, supported by the government; or in fewer words, to divide it into tax-payers and tax-consumers. (Calhoun, 1992: 21)

Thus, in yet another respect does Calhoun depart from the benign social contract view of the state – in depicting the government as a predatory agency. In this regard, he is a predecessor of the modern predatory theory of the state, such as Mancur Olson’s famous concept of the government as “stationary bandit” (Olson, 1965). In all of its modern formulations, the predatory state theory assumes that this institutionalized “bandit” has always been an instrument of economic exploitation by the physically most powerful elements of society. The context in which Calhoun formulated his own version of the “predatory state” argument was a sectional conflict between the North and the South over the tariffs and imposts. Even before the Nullification crisis in 1833, the tariffs imposed by the federal government hit disproportionately the Southern economic
interests; being a predominantly agricultural society, the South would have to pay taxes on foreign industrial and manufacturing goods or to pay a higher price for inferior domestic products, while having to sell most of the agricultural produce on the world market. On the other hand, the predominantly industrial North profited handsomely from the tariff and other protections because it gave Northern industries a competitive edge over the artificially more expensive foreign products. So, the so called ‘American system’, designed by Hamilton and furthered and perfected by Henry Clay, represented a system of sectional economic exploitation of the South by the North.

Richard Hofstadter in his book “American Political tradition” (Hofstadter, 1948) characterized John C. Calhoun as “Marx of the master class,” a man who developed a theory about the slave master-class of the South as an economically exploited minority, and about the federal state as an instrument in the hands of economically more powerful interests. Although correct in its general form, this characterization misses the mark in one important aspect: Calhoun’s theory was not economic but institutional (Harris, 1984). Marx’s version of the class theory of the state is crude, rudimentary and metaphysical: it only postulates a harmony of economic interests among the members of the bourgeois class, ignoring all possible conflicts among them, and then claims that the state is a technical instrument of preserving and consolidating that fictitious common interest. The

---

172 About the economic basis for the sectional conflict in ante-bellum America, and specifically the economic background of the Nullification Crisis of early 1830s, see Cheek 2011 or Woods, 2009.

173 One can argue that so long as the Northern states allowed those in the south to use slavery to subsidize southern economic elites’ costs of production, this tariff-based advantage was offset by the savings afforded by slavery. However, the problem with this argument that there were no cost savings from slavery because slavery was both a system of production and a welfare state: slaveholders not only economically exploited slaves by not paying them for their work, they also fed, clothed, provided housing and medical care as well old age care for their slaves, free of charge. Planation system was both economic exploitation and a system of social security from “cradle to grave” (which at that time in the Northern system of free labor did not exist at all). Calculations by “clio-metricians” show that close to 95% of revenue from plantation production was used to cover the needs of slave work force (Fogell and Engerman, 1995 ).
state is conceived of as an “executive committee of the bourgeoisie” (Marx). It does not have any autonomous logic, and politics is just a superstructure of “material base.” Marx never contemplates the possibilities of oppression stemming from political power by itself, nor does he sketch out any kind of theory of a political process. The institutional structure of the state is irrelevant.\textsuperscript{174}

Calhoun offers a much more sophisticated version of the class struggle theory. He develops a much more realistic theory of the origins of the state as an instrument of class oppression: for him, as we saw, the real source of this tendency is the power conferred upon the central government, and the more uncontrolled power at the center there is, the more class oppression of taxpayers by “tax eaters” there will be. For political class oppression to develop there need not be any pre-existing social and economic stratification or oppression – political power itself will be sufficient to create it:

The advantages of possessing the control of the powers of the government, and, thereby, of its honors and emoluments, are, of themselves, exclusive of all other considerations, ample to divide even such [perfectly harmonious - IJ] a community into two great hostile parties...The whole united must necessarily place under the control of government an amount of honors and emoluments, sufficient to excite profoundly the ambition of the aspiring and the cupidity of the avaricious; and to lead to the formation of hostile parties, and violent party conflicts and struggles to obtain the control of the government. (Calhoun, 1992: 16,17)

Even in the absence of a profound social conflict the very existence of the state – and larger and more powerful the state, stronger this effect will be – creates conflict by the asymmetric nature of rewards necessary to administer an extensive government apparatus and huge opportunities for graft, patronage and subsidy: “The administration

\textsuperscript{174} On the lack of any political theory in Marx, see Popper, 1971.
and management of a government...must necessarily require a host of employees, agents, and officers — of whom many must be vested with high and responsible trusts, and occupy exalted stations, accompanied with much influence and patronage. To meet the necessary expenses, large sums must be collected and disbursed; and, for this purpose, heavy taxes must be imposed, requiring a multitude of officers for their collection and disbursement” (Calhoun, 1992: 16) Political conflict in a larger and wealthier country will of necessity be much stronger than in a small-scale political order because in the former the spoil of “honours and emoluments” to fight over is much bigger. Thus, the real source of tyranny is not economic interest but power, which has both political and economic ramifications. In this regard, Calhoun’s theory goes back to the 18th century radical Whig opposition between power and liberty, and hereby comfortably falls within the mainstream of the American revolutionary “libertarian” thought as identified by Bailyn and Wood. Far from being a strange reactionary “aberration” per Hofstadter and Hartz, Calhoun in this interpretation becomes actually the most creative developer and “refiner” of the radical libertarian tradition derived from Cato and Bolingbroke and continued in America by anti-federalists and Jeffersonians, and to some extent built into the very fabric of American political society and institutions at large.\textsuperscript{175}

\section*{III. Calhounian constitutional solution and its Discontents}

\textsuperscript{175} For a wide ranging discussion of the arguments for and against Calhoun being a legitimate heir of anti-federalists see Cornel (1999).
The constitution is a system of rules regulating political relations that prevents the government from becoming predatory. This is a clear classical liberal element in Calhoun’s thought; the notion that an arbitrary or absolutist government is a bad one and that the essence of a good constitution is not a mere Aristotelian numerical balance of social groups, but also a proper functional foundation of government powers. This means making sure that whatever kind of numerical balance we establish the resulting government apparatus would have to confine itself to preservation of internal and external peace, and not to exploiting and oppressing minorities.

However, as already noted, Calhoun departs from the standard classical liberal political science insofar as he seeks a sociological rather than legal guarantee of this type of functionality of the state. This means that he does not believe that the regulating principle of limitation of the government should be a mechanical balance of the depersonalized departments of the state (the branches of government), but rather the dynamic equilibrium of relationship between the pre-existing societal groups or factions. Echoing Patrick Henry’s description of Madison’s checks and balances as futile “chain rattling” if no “real” power can exert any control of central government (see chapter 7), Calhoun argues that the controlling entity has to be some “real power” that can stand up to other real power abusing the state mechanism, not the feckless departmental divisions within the system (judiciary, legislature, executive). In a sense, Calhoun is turning Madison upside down: the trick of how to create a constitutional government is indeed to turn one power against the other, it’s just that the different departments of the

---

176 It is obvious that in the context of the slaveholding South, most of black people were excluded from the concept of socially relevant “groups”; however, this is not a peculiarity of the South in the 1840s or 1850 or of Calhoun’s constitutional scheme; black slaves were excluded automatically from any political regime in antebellum America from the very beginning, and even free blacks were often denied basic civil rights, let alone political rights, in the South and the North. When Madison wrote about “factions” and how to control them in Federalist 10 in 1788 he equally excluded black slaves from the concept of “faction,” but we don’t question his analysis of how the factions are dealt with in a large republic by pointing out that he excluded black slaves.
government could not aspire to be that “powers.” Those have to be some previously existing, real political interests and factions, territorially or otherwise organized. He is translating Madison’s theory into the “ancient constitutionalist” idiom, or redefining the legalistic concept of checks and balances into a sociological equilibrium of forces.

Before dealing with Calhoun’s solution for the problem of constitutional government, we would have to mention briefly his rejection of standard classical liberal solutions, prevailing even today. This is also perhaps his timeless contribution to political theor, which has not been appreciated because it went against the trend of accepting stronger and more expansive government within liberalism itself. The theoretical model that Calhoun devised to deal with the problem of constitutionalism started from the realization that the Madisonian hope that the mutual equilibrating competition between the various factions in a large republic as a guarantee of liberty, was futile. The celebrated Federalist 10 has a critical flaw built in: "the more extensive and populous the country, the more diversified the condition and pursuits of its population, and the richer, more luxurious, and dissimilar the people, the more difficult is it to equalize the action of the government – and the more easy for one portion of the community to pervert its powers to oppress, and plunder the other.” (Calhoun, 1992: 15)

This is a direct critique of Federalist 10, but Calhoun does not satisfy himself with this general argument; he provides a mechanism through which the oppression of this kind could and would occur in an extended Madisonian republic. Moreover, he speaks from the 40 years of experience of living within a Madisonian system that had shown already the first glimpses of what was to become a strikingly evident political reality in the 20th century. Calhoun argues that even if there is no single political majority in an extended republic, a coalition will be formed exercising the same powers and inflicting the same kind of political control as any majority faction:
If no one interest be strong enough of itself, to obtain it, a combination will be formed between those whose interests are most alike – each conceding something to the others, until a sufficient number is obtained to make a majority. The process may be slow, and much time may be required before a compact, organized majority can be thus formed: but formed it will be in time, even without preconcert and design, by the sure workings of that principle or constitution of our nature in which government itself originates. (Calhoun, 1992: 15)

In this passage we see many elements of the classical public choice theory, including rent-seeking and log-rolling. Unlike Madison, Calhoun realized that an extended sphere of political activity would not diminish the likelihood of the formation of an oppressive majority faction, but rather increase the likelihood of an oppressive coalition, by increasing the rewards for “negotiating solution”: an unlimited power of patronage, tax disbursements and political rents. And the operative procedure is exactly the standard logrolling “each conceding something to the others until a sufficient number is obtained.”

Calhoun argues that rather than moderating the factional strife, political centralization of government exacerbates the factional exploitation by creating the power elite nexuses of business and political interests working together\(^{177}\) to subvert the purpose of the federal government (Calhoun, 1992; Cheek, 2001; Tabarrok and Cowen, 1992). Contra Madison, the process of transition from a majority rule to the party rule of the minority of party bosses would be much faster and more resolute in a large country than in small one for the simple reason that the resources and “emoluments” of office and patronage are usually much more abundant in larger regimes, so the incentives to corrupt the institutions are also stronger (Calhoun, 1992: 33).

\(^{177}\) Following Jeffersonian and Jacksonian traditions Calhoun by “organized interests” conspiring with the government means primarily industrial and manufacturing interests profiting from protective tariffs, corporations benefiting from government subsidies (such as railroads) and private banks.
But democracy and elections are not enough to prevent this; the established networks of power elites could use their influence and propaganda to limit the effects of any democratic change. Hence, majoritarian democracy, paradoxically, transforms the tyranny of majority into the tyranny of minority. Calhoun rejects the argument, routinely invoked in the democratic and liberal theories even today, that the uncertainty and contestability of elective positions will moderate and keep under control a natural propensity of politicians to misuse their power for personal, financial or other nefarious purposes: “on the contrary, the very uncertainty of the tenure, combined with the violent party warfare which must ever precede a change of parties under such governments, would rather tend to increase than diminish the tendency to oppression” (Calhoun, 1992: 21). This is a powerful critique of the numerical majority system, pointing the high time preference of the office holders: the fact that politicians who are the short time care-taker of public interest would have strong incentive to misuse power because of the uncertainty in exploiting the future flow of benefits from the position.  

However, Calhoun does not reject numerical majoritarianism outright. He rather deems it necessary but not sufficient condition for a constitutional government: “the numerical majority perhaps should be one of the elements of a constitutional democracy; but to make it the sole element…is greatest and most fatal of political errors” (Calhoun, 1992: 35). In order to effectuate a mechanism of protection of individual rights against the encroachments of a strong central government, the numerical majority has to be modified by the concept of societal interest groups as protective buffers that shield the individual from the Leviathan state:

It is only through an organism which vests each with a negative, in some one form or another, that those who have like interests in preventing the government from passing beyond its proper sphere, and encroaching on the rights

---

178 For an elaborate critique of democracy as majority rules from this point of view see Hoppe (2001).
and liberties of individuals, can cooperate peaceably and effectually in resisting
the encroachments of power, and thereby preserve their rights and liberties.
Individual resistance is too feeble, and the difficulty of concert and cooperation
too great, unaided by such an organism, to oppose successfully the organized
power of government, with all the means of the community at its disposal;
especially in populous countries of great extent, where concert and cooperation
are almost impossible (Calhoun, 1992: 21-22).

This is a direct response to Madison and his belief that if the factions are
combined over a large territory with internal checks and balances within the government,
that will suffice to limit their pernicious influence. Calhoun rejects this: in his view, the
constitutions and rules are not going to enforce themselves, and equally the isolated
individuals are not going to be able to resist the monolithic, unitary state, functionally
divided from within or not. Only some countervailing real political power, for
example, state governments acting from their own interest, could do anything to interpose
between the individuals and the central state. Calhoun is the first modern liberal
philosopher who clearly sees through the mirage of Lockean social contract theory, and
who wants to preserve liberal individual rights by rehabilitating the medievalist organic
understanding of local community as a counterbalancing force to central government.
(Grove, 2015)

The solution Calhoun envisages redefines the concepts of a majority and of the
people so as to make them not only quantitative but also qualitative. This means that the
concept of majority of individuals has to be supplemented by a concept of the majority of
political communities and relevant social groups within a larger Madisonian sphere. In a
sense Calhoun is here just reformulating the existing principles of American
constitutionalism, taking into account the experience of the first 60 years of its operation

179 Compare here the discussion in chapter II of the similarities between Locke and Hobbes with
regard to their unitary concept of the state.
and the conclusions that could be drawn from that. Namely, the original design of the federal institutions also represented a combination of individual and corporate majorities, by combining a direct representation in the House of Representatives with the corporate, state-level representation in the Senate, and requiring the concurrence of both of these majorities for federal law making and regulatory activity (and even treaty making, which is in the Senate’s purview). However, the problem is that this good design was subverted by the absence of constitutionalized social or corporate checks, i.e. federal power elites disregarding the variety of different interests and forming a majority coalition to oppress a minority (Cheek, 2001; Maier, 1981).

This concept has failed for a simple reason: it has been based on the notion that the Constitution will enforce itself, without any additional safeguards: “Written constitution certainly has many and considerable advantages; but it is a great mistake to suppose that the mere insertion of provisions to restrict and limit the powers of government…will be sufficient to prevent the major and dominant party from abusing its powers” (Calhoun, idem: 26). He specifically singles out the concept of separating the “several departments” (Congress, the Supreme Court, Presidency, various bureaucracies) of central government as sufficient for this purpose and insists that the real empowerment of the people to control the government means a suitable regime of collective veto rights of various groups, or as he puts it “an organism” (Calhoun, idem). In order to have a really functioning democracy one needs to create a complex web of supra-majoritarian voting rights of different “stakeholders” in the society. Calhoun superimposes the concept of “concurrent majority” upon the numerical or democratic majority, seeking to achieve equilibrium between as many factions as possible. This way he hopes to render a significant number of veto players within the political system, making thereby the decisions more difficult to reach at, and the oppressive policies aimed at hurting the minority more difficult to effectuate. There should be a multi-layered structure of
governance in which the decisions for the most part had to be made by a consensus of different groups or constitutional structures:

It is this mutual negative among its various conflicting interests, which invests each with the powers of protecting itself; and places the rights and safety of each, where only they can be securely placed, under its own guardianship. Without this there can be no systematic, peaceful, or effective resistance to the natural tendency of each to come into conflict with the others ... It is this negative power ... be it called what term it may, - veto, interposition, nullification, check, or balance of power, - which, in fact forms the constitution ... It is indeed, the negative power which makes the constitution, - and the positive power which makes the government (Calhoun, 1992:28)

The core of the doctrine of concurrent majority is to raise the bar for constitutional decisions by imposing a drastic supra-majority and hence prevent most of the decisions made under the majoritarian rule that have exploitative, in the Calhounian sense, effects on individuals. In the case of the United States this would mean that the federal government’s decision will be valid only if the strong majorities of all the state legislatures approve it.

In order to demonstrate practical viability of the concurrent majority as a constitutional system, Calhoun invokes the earlier examples of such regimes, spanning a period from the Roman Republic via Polish early modern system to the confederal tribal model of the Iroquois nations of North America. All these different constitutional regimes exemplified the crucial principle of Calhoun’s political thought: the corporate veto power. In the case of Poland, this power was pushed to the utmost extreme, because Polish kings were elected exclusively by a unanimous consent of all nobles. A Polish parliament, Diet, operated also on the principle of unanimity: every law had to be unanimously accepted by all nobles, bishops and secular magnates, and if a law was
vetoed by anyone not only that particular law, but anything else that might have been enacted during the same session of the Diet would have been nullified. This example (covering the two most prosperous centuries of Polish history) goes much beyond the Buchanan-Tullock normative ideal of unanimous consent in the matters of constitutional law, and applies the principle even in ordinary legislative matters. Calhoun asks – if Poland could have functioned so splendidly during its Golden Age with such a draconian system of concurrent majority, could not many other systems do the same thing?

However, perhaps the most instructive case for demonstrating Calhoun’s “sociological” method of political analysis is the case of the Roman Republic. It demonstrates sharply how different an interpretation of the Roman political experience is given by him as compared to other political figures in early American history. What is Calhoun primarily interested in is the reform made in the early Republic which made tribunes powerful veto players within the Roman constitutional system, who could not only veto any given law decided by patrician Assemblies (Comitia) or by the Senate, but also to block the executions of people. However, he is not emphasizing so much the particularities of the mechanics of this system of checks and balances or concurrent majority, as in the fact that this system was created to reconcile the interests of the two pre-existing social groups with sharply divided interests and values, patricians and plebeians. In Calhoun’s interpretation, the social compromise made between the two orders to establish a system of concurrent majority rule, provided for the stability, progress and durability of Roman political institutions over time. The polemical thrust of his analysis is clear: the reader is at times almost tempted to substitute “American” for “Roman” so much is Calhoun’s interpretation aimed at elucidating the reasons why the system of concurrence is good for America and why the usual objections to it do not hold. Instead of a stronger party violently obliterating or disciplining the weaker and oppressed one, it wisely decided to follow the path of compromise and give to the weaker a veto power over the decisions impacting their interests. The government of concurrent
A particular contribution of Calhoun’s theory of concurrent majority is to the analysis of the elites and how they operate and relate to the political system. Much of this is a direct response to Madison and his arguments about the positive effects of extending the territorial scope of the regime to the quality of political leadership. Calhoun notices that this extension under the model of numerical majority not only increases the temptations and opportunities for class oppression of taxpayers but also, paradoxically undermines the democratic nature of representation and popular control of the leadership. As the regime becomes more complex and overextended, and disparities in wealth and power greater, the control over the leadership positions gradually shifts from bottom up groups and organizations to party elites – the narrow cliques of professional politicians and their cronies and advisors who operate largely in isolation from the true wishes and interests of their constituencies. In an analysis closely resembling Hayek’s theory of why the worst get to the top from his *Road to Serfdom* (Hayek, 1944), Calhoun argues that the nature of the regime in the system of numerical majority encourages and requires unscrupulous demagogues capable of deceit and manipulation to get in the leadership positions: "… as the community becomes populous, wealthy, refined, and highly civilized, the difference between the rich and the poor will become more strongly marked; and the number of the ignorant and dependent greater in proportion to the rest of the community. With the increase of this difference, the tendency to conflict between them will become stronger; and, as the poor and dependent become more numerous in proportion, there will be, in governments of the numerical majority, no want of leaders
among the wealthy and ambitious, to excite and direct them in their efforts to obtain the control.” (Calhoun, 1992: 36)

In this passage Calhoun turns the tables on Madison with regard to his famous argument from Federalist 10 that a larger sphere would allow for a better quality of political elites to be selected. According to Madison, this is guaranteed first by the presence of larger pool of capable candidates in a larger community and also by the larger representation ratio, by which the same number of leaders would be elected by larger number of people, making thereby the usual machinations less likely, and only the worthy candidates competitive (Hamilton et al, 2001: 47). Calhoun, on the contrary, argues that in a larger, more complex and wealthier community, the proportion of ignorant and dependent voters would greatly increase which would produce a field day for demagogues and autocratic characters, ready to exploit and manipulate gullibility and envy of the poor and ignorant majority for their own nefarious purposes. Far from moderating the logic of political predation, extension of territory and centralization of power exacerbate it greatly. When we add to this the fact that in a larger polity these unworthy characters favored by the system of numerical majority and the logic of decay of numerical democracy will enjoy much more ample material means of corrupting legislators and subverting the political system, we have the basic outline of a mature power elite theory, deriving the outcomes from the process not from apolitical determinants, or to put it differently, deriving the quality of political elites from the institutional structure of the regime, rather than from ideational or economic and other exogenous factors.¹⁸⁰

In contrast to the system of numerical majority, according to Calhoun, in the constitutional order guided by concurrent majority, the institutional logic would favour a

¹⁸⁰ For the conventional power elite theory see Wright Mills (1956), Darendorf (1968), Codevilla (2010), or Mosca (1939).
different kind of political leader, inclined to moderation and compromise. These two virtues would be nourished in the system of concurrent majority by the logic of unanimous consent, which requires everyone to cooperate in order to get the machine of government going, without hope of usurping the powers of the whole community for their particular purposes. Again, the institutional incentives determine individual and moral qualities of the leaders that a particular system is likely to yield. The invisible hand of the political market under concurrent majority leads even the self-interested groups to cooperate, making it mandatory for every group, in order to advance any particularistic agenda, to seek the concurrence of others (other groups), and in order to succeed in this endeavor, they would have to elect the leaders who can compromise and cooperate with the leaders of other groups and societies. The common interest would be emerging from this institutional configuration almost as a by-product: “competition would be, not which would yield the least to promote the common good, but which should yield the most (Calhoun, idem. 52). This does not mean that everyone in this system will be motivated to seek common good, but rather that the common good will be produced as a by-product of individual interests seeking to achieve their own goals. The logic of concurrent majority is a logic of peace, unlike numerical majority which of necessity must be a zero sum game, or a permanent civil war for unlimited political power. It is much easier to cooperate, even if you are personally not inclined to cooperation, when conflict would give you little reward or power. Institutional entrenchment of the spirit of cooperation would promote cooperative and compromising characters, in the same manner that the zero-sum logic of pure democracy promotes demagogues and manipulators. The worst politicians rise to the top in majoritarian democracy because the system facilitates the

---

181 The term “invisible hand” is here used in the sense James Buchanan used it when he said that there was not “political equivalent” of the invisible hand of Adam Smith, meaning that mere competition among various elites for political power will not produce rational allocation of political costs and benefits (spending and taxation), i.e. that societies need constitutions to rationalize politics. Calhoun’s theory arguably provides an element of “internal” rationalization that allows us to rely much more on spontaneous competition of the various groups, because the logic of the system makes predatory and exploitative behaviour difficult to sustain.
worst forms of behaviour by them; the best get on the top in a concurrent majority because the system facilitates the best behaviour from all involved in order to function properly.

IV. Calhoun the Nationalist – to the end

One can plausibly argue that the essence of the doctrine of concurrent majority is to limit the power of the government by paralyzing it. Calhoun’s is a rare attempt within classical liberal philosophy to limit the state prerogatives by qualitatively strengthening democracy.\textsuperscript{182} The usual approach by both the 19\textsuperscript{th} and 20\textsuperscript{th} century classical liberals was to outline the ideal of minimal state and to hope that government is somehow to restrain itself from within; the Lockean and Madisionian concept of checks-and-balances is a typical expression of this vain hope, while democracy and popular will are taken as a danger and impediment to liberty. Calhoun, on the contrary, hopes to use (decentralized) democracy\textsuperscript{183} as a weapon of liberty and a remedy for the abuses of the constitution! He explicitly argues that even a universal franchise (a pretty radical idea for the first half of the 19\textsuperscript{th} century) would not lead to the tyranny of majority as long as the system prevents any level of government from imposing its legislative and executive will unilaterally to the body politic. Calhoun went further than Jefferson and Madison in Virginia and

\textsuperscript{182} A deep antipathy to democracy connects such diverse classical liberal thinkers as Adam Smith (himself a monarchist), David Hume, Edmund Burke, Alexis de Tocqueville, John Stuart Mill and F.A. Hayek. Calhoun seems to be an exception to this trend, in his iconoclastic belief that only that (some form of) democracy could be harmless but also the method for limiting the power of government.

\textsuperscript{183} The concept of “decentralized democracy” here is used as opposed to the standard liberal notion of a constitution as a set of rules, formal or informal, specifying what the government is allowed and is not allowed to do with regard to the individual. Calhoun departs from this basic tenet of liberal constitutionalism by putting the pre-existing groups, territorially organized, between the government and the individual, and giving them superior power as to the government. The noun “democracy” is used as a critical category, because Calhoun believes pluralist societal groups can check the government, and considers this a deepening of the concept of a “numerical majoritarianism”. Most of other liberals don’t believe that individual liberty can be protected by ANY kind of deepening or adjusting of the principle of democracy.
Kentucky resolutions, insofar as his novel theory of ‘concurrent majority’ was a universalization of the logic of the old compact theory. It retained a decentralist view that the parties in the federal compact are sovereign, but instead of defining nullification as a unilateral power of aposteriori disallowance of a majoritarian federal decision or a law by an individual state government (which does not oblige other states nor abolishes the law itself), the concurrent majority interferes with this unitary federal power to begin with; it seeks to prevent the decision from being made in the first place, until and unless there exists a consensus or at least an enormous majority for the decision, cutting across the sectional and geographical lines.

However – and this is the flip side of the doctrine showing Calhoun’s unwavering Madisoniansm – the concept of the concurrent majority radically redefines and “nationalizes” the old Jeffersonian “principles of 98.” We will remember that in the original form as formulated by Jefferson in Kentucky Resoles, and under his influence, by Madison in Virginia Resolutions and subsequent Virginia Report, nullification or interposition was conceived as a unilateral weapon of resisting the unconstitutional federal laws, as a right of an individual state to suspend the problematic law on its territory without abolishing the law itself.\footnote{The best introductions in the doctrine of nullification are Kilpatrick (1957), Watkins (2004) and Woods (2009).} Calhoun now wants to end this improvisation: now, nullification was not to be a unilateral, occasional right to resist by an individual state, but a universally accepted, national “decision-making rule.” If a state has an objection to the constitutionality of a given federal law, it can appeal to the federal government to summon the several states and defer to them the final decision. If \( \frac{3}{4} \) decide that law is unconstitutional, it ceases to exist; otherwise, the rebellious states would have to obey. In the famous Forth Hill Speech Calhoun is quite explicit about this:
Should the General Government and a State come into conflict, we have a higher remedy; the power which called the General Government in existence, which gave it all of its authority, and can enlarge, contract or abolish its powers at pleasure, may be invoked. The states themselves may be appealed to – three fourths of which, in fact, form a power, whose decrees are the Constitution itself, and whose voice can silence all discontent. (Calhoun, 1992: 377-78)

This is highly problematic from a standard states’ rights point of view for at least two interrelated reasons. First, Calhoun, by introducing his ¾ rule effectively surrenders and nullifies the Jeffersonian idea of nullification. Jefferson believed that every individual state as such retains its power to judge the constitutionality of federal laws in the last resort, and also to decide by what means it will resist it: “as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.” (Jefferson, 1969: 128-129) Now, South Carolinian surrenders all of that by conferring a right to decide about both the issues of constitutionality and of redress to the convention of the states that can “silence all dissent.” The nationalist overtones of this are painfully obvious: if Calhoun’s conception was applied in 1798, Virginia and Kentucky would not have had the right to protest. They would have been “silenced” by his constitutional “remedy,” since almost all remaining states were sceptical about their resolutions, and in many cases actively supported the law in question (The Alien and Sedition Laws).

Another consequence of this is to surrender the states’ rights interpretation of the very Constitution of the United States. Much of it is based on the undeniable fact that the states seceded from the regime under the Articles of Confederation, and created a new Constitution in Philadelphia and ratified it. But, in this process every single state retained its absolute sovereignty; the decisions made by others to abandon the Articles did not oblige the remaining states to follow suit. The text of the Constitutions concedes this directly and explicitly in Article VII when it says: “The Ratification of the Conventions
of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.” This means that nine states had to ratify in order for the document to be valid, but even in that case the Constitution would apply only to these nine. Had the remaining four rejected it, they would have remained in the regime under the Articles or in any other alternative regime of their choosing; the votes of the majority would not have obliged them to accept the Constitution. Thus, in the very text of the Constitution the principle of absolute individual sovereignty of several states was expressly affirmed, supporting thereby Jefferson’s and Madison’s interpretation of the doctrine of nullification/interposition of 1798. Calhoun obliterates states’ individual sovereignty in order to tweak the national political institutions so as to make them better suited to deal with the sectional conflicts between the North and the South.

V. Calhoun and slavery

In today’s prevailing academic orthodoxy, the states’ rights school of thought in general, and John C. Calhoun in particular, are often identified with the defence of slavery. The very notion of localism and states’ rights is deemed just a smokescreen for defending slavery, or at best segregation and racism. When it comes to this complex set of problems there are three separate but interrelated issues that have to be explored more in detail, to better understand Calhoun’s philosophy and its place in American tradition. First, is the relationship between slavery and states’ rights philosophy exclusive, inherent or accidental? Is there any genuine connection between the two? What does history tell us about this? The second issue is Calhoun’s theory of slavery and its place in the Southern political tradition, and in the American tradition in general. And third, closely connected with the second, what are the real sources of the today’s obsession with race and racism,
and how does this obsession compare with the treatment of both slavery and the problem of race in previous times?

We can begin with the last problem – the inability of many contemporary historians and political scientists to see anything else in the antebellum political conflicts and ideological battles but quarrels over slavery and “human rights.” The best proxy for how much the prevailing wisdom has changed in this regard is what happened to the historiography of the War for Southern Independence. In the last decades of the 19th century, the prevailing historiographical treatment of the War was that it represented a tragic national conflict, a real calamity caused by the clash of economic, political and cultural interests and differences, slavery being just one among them. Courageous, honorable and patriotic men on both sides of the conflict fought bravely for their country and for high ideals of republicanism and democracy. The tragic carnage of fighting in the War for Southern Independence was followed by an also tragic experiment of Reconstruction in which a noble idea of uplifting the newly freed blacks was tainted by the corruption and oppression of the white Southerners by the opportunistic and unscrupulous enforcers of the Republican regime (“carpetbaggers” and “scalawags”). Hence, the experiment was abandoned, and the South reintegrated into the American union with honor. Preservation of the union was the main upshot of the War for

---

185 I am using the term “War for Southern Independence,” instead of a more common, but I believe erroneous, the “Civil War,” because a civil war means a war between the two contending factions for the control of the same national government: in this regard the war between the Royalists and Puritans in the 17th century England, or war between the republicans and Frankists in the 1930s Spain, or the war between the Reds and Whites in Russia were civil wars. But, the war in America 1861-65 was a war to prevent one group of states to secede from the national government, by another group of states. Thus it cannot be called a “civil war” properly. For the defence of the use the term “War for Southern Independence,” see Fox-Genovese and Genovese, 2005: ix.

186 The best and most comprehensive histories of the Reconstruction were written in the first decades of the 20th century by the members of the so called Dunning School (after William Archibald Dunning, professor of History at Columbia University), See especially Dunning, 1907; Hamilton, (1914); Thompson, 1915. Coulter, 1947. They are criticized by “neo-abolitionists” such as Foner (1988) or McPherson (1988).
Southern Independence, but irrespective of this the Southern political and military leaders were honored and numerous confederate memorials were built and maintained for decades. Robert E. Lee and Stonewall Jackson were the members of the American pantheon together with George Washington. Herman Melville, himself a Northerner and supporter of the Union, described the awkward situation this way:

Who looks at Lee must think of Washington;

In pain must think, and hide the thought,

So deep with grievous meaning it is fraught.\textsuperscript{187}

This depiction of the War for Southern Independence as a tragic conflict caused by multifaceted sectional rivalry, and of the Southern politicians and military leaders as honorable men devoted to liberty and republicanism, is seen in the fact that notable 20\textsuperscript{th} century presidents were admirers of the confederate heritage: Franklin D. Roosevelt had many pictures with the confederate flag at confederate memorials. Harry Truman had large pictures of Robert E. Lee and Stonewall Jackson at the entrance in his Presidential Library and considered them heroes (Pearlman, 2008: 24-25); Dwight Eisenhower kept a

large Robert E. Lee portrait in his presidential office. President John F. Kennedy chaired, while the senator, a committee that pronounced John C Calhoun one of the three greatest senators of all times, together with Daniel Webster and Henry Clay. In his Profiles in courage Kennedy offered a sympathetic portrait of Calhoun (Kennedy, 1956).

If anything changed in the early 20th century in the prevailing interpretations of slavery and the War, it was that slavery became less important as an explanation. Progressive historiography, most notably exemplified by Charles Beard, interpreted the War as an economic conflict between the Northern industrial and financial interests and Southern agricultural interests, and considered the issues of tariff and banks, as well as the disputes over economic policy in general, to be the most important causal factors in bringing about the war (Beard, 1986). It was not until 1960s that the simplistic and monocausal narrative “it is all about slavery” began to gain ground. This was spurred by two factors: the civil rights revolution in the South, which put in the spotlight once again the problem of race relations in America and the deeply ingrained prejudices and discrimination against the American blacks, and a gradual takeover of the departments of history at American universities by a new breed of progressive historians, called neo-

188 After a supporter sent him a letter expressing dismay over the fact that he kept Lee’s portrait in his office, Eisenhower responded: “a nation of men of Lee’s calibre would be unconquerable in spirit and soul. Indeed, to the degree that present-day American youth will strive to emulate his rare qualities, including his devotion to this land as revealed in his painstaking efforts to help heal the Nation’s wounds once the bitter struggle was over, we, in our own time of danger in a divided world, will be strengthened and our love of freedom sustained. Such are the reasons that I proudly display the picture of this great American on my office wall.

Sincerely,
Dwight D. Eisenhower” (Eisenhower, 1960)
abolitionists, with often cultural Marxist influences. William Du Bois was a pioneer in the early 20th century, claiming that War was about slavery and reconstruction a struggle to end the class oppression of white landowners over the black slaves (Du Bois, 1935), but his interpretation fell on deaf ears. It was not until a new generation grew up in the 1960s and 1970s and entrenched themselves in academic departments of history that this new radical view of slavery and the War became widespread. The new generation of historians argued that the War was a noble crusade for liberty by the North, not a tragic sectional conflict, and Reconstruction was a noble “unfinished” revolution, as one of the leading lights of neo-abolitionism, Eric Foner (1988) has put it, not a corrupt boondoggle, as pretty much every historian believed before the 1960s.

. According to neo-abolitionists, the War Between the States was a nefarious plot by Southern slavocracy to protect their peculiar institution met by Lincoln’s armies in the battlefield, only to be squandered by the cowardly Northern abandonment of the blacks after Reconstruction and capitulation to white Southerner’s violence and wickedness. The result was that slaveholding South has won the peace, after losing the war, and continued for almost a century with a modified version of its inhumane treatment of the American blacks and unfettered capitalism. The Civil Rights movement of the 1950s and the 1960s was actually for the neo-abolitionists the “second reconstruction,” the final process of finishing off the old South, by completing the “unfinished revolution” of 1865-1873. Since Southern segregationists used the states’ rights language of state nullification to resist the federal rewriting of state laws during the 1950s and the 1960s, neo-abolitionists

189 What is meant here by “cultural Marxism” is a nowadays predominant version of the theory which rejects economic and revolutionary theories of old Marxism but retains the anti-capitalist zeal, with the strongest emphasis on cultural institutions (family, religion, marriage) as responsible for class oppression. The main theoretical influence on this movement in America is the Frankfurt School and the authors such as Adorno and Marcuse, but also Gramsci. The very term “new abolitionism” was first used by a historian Howard Zinn, a self-declared Marxist.

190 This is the gist of the argument made, among others, by Foner 1988, McPherson, 1988 or Stampp 1967.
succeeded in convincing the educated public that any localism must be just a mask for racism and slavery. In this identification, they were followed by conservatives and libertarians who gradually joined in the crusade against the states’ rights and came to accept a level of nationalism and centralization that would have been unimaginable before the 1960s.\footnote{Perhaps the best expression of this process is the level to which American libertarians accepted the 14th amendment “constitutional jurisprudence,” a thinly veiled attempts by the federal courts and their intellectual supporters to use the equal protection clause of the Amendment to centralize and standardize policies across the board: from school prayers, abortion, economic regulation to social policy. See especially Epstein (1985), Barnett (2004), or Bernstein (2012)}

However, the situation with regard to slavery and states’ right philosophy in the antebellum America was exactly the opposite of what today’s prevailing orthodoxy argues. Slavery was constitutionally protected, and President Lincoln himself was ready to give it an additional protection by the original 13th amendment in 1860, by which slavery would be impossible to abolish by any subsequent amendment (the kind of protection only the equal representation in the Senate has). Moreover, the main complaint of Southerners in the years preceding the secession and War was that Northern states “nullified” federal Fugitive Slave laws too often, and that the federal government was shirking its responsibility to enforce these laws. Multiple Northern states (most notably Wisconsin and Ohio) repeatedly nullified federal action in catching and returning the runaway slaves to their Southern masters, which in the case of Wisconsin included even the armed resistance to federal marshals attempting to enforce the federal edicts and direct legislative and judicial nullification of the \textit{Dread Scott} decision of the US Supreme Court!\footnote{See Woods, 2009.} In his farewell address in the American Congress, congressman from Mississippi, Jefferson Davis, sharply condemned the nullification of fugitive slave laws by Northern states; multiple secession ordinances of the seceding Southern states also joined in condemnation of the Northern sister-states refusing to apply the fugitive slave laws.
clause of the Constitution. Slavery was both constitutionally and legislatively protected in the antebellum US, and Southern slaveholders were using nationalist arguments against state nullification, whereas the Northern opponents of slavery were equally trenchantly applying and defending the states’ rights philosophy.

Certainly, this is not meant to suggest that there is an inherent connection between slavery and nationalism, just that both philosophies, nationalist and states’ rights, were used opportunistically to defend and attack various policies through American history. The proper subject of analysis should be the overall impact of both philosophies on society, economy and politics, rather than an attempt to circumvent the debate by a dubious moralistic identification of (any) one of these philosophies with the causes that are considered unacceptable to the modern reader. Hence the prevailing identification of states’ rights philosophy with slavery is both historically wrong and anachronistic.

It is equally anachronistic to use Calhoun’s pronouncements of slavery as a “positive good” and his support for the “peculiar institution” as an argument against his general philosophical principles. Racial views best described as “white supremacism” were universally accepted by most intellectuals and politicians in antebellum America, North and South. Calhoun’s defense of the peculiar institution was not peculiar at all. All right-thinking people of the 19th century agreed that blacks were intellectually, culturally and morally inferior “race”: this is what Jefferson believed, what Madison and Washington believed, and what Henry Clay, Daniel Webster and John C. Calhoun equally believed. This is, after all, what Abraham Lincoln, the “great emancipator,” believed as well. The assumption of social and political equality of blacks and whites was unthinkable to an American politician of the 19th century. Abraham Lincoln voted repeatedly as Illinois state legislator for oppressive anti-black codes, prohibiting the blacks from other states from settling in Illinois, and denying the basic civil rights to existing blacks. From Jefferson to Lincoln, every major American statesman who thought about slavery was a staunch supporter of colonization or deportation of blacks. The
notion that once freed, blacks could live together with whites in social equality was anathema to them. Lincoln wanted to find a place to deport all the American blacks once freed, and was working feverishly, virtually to his dying day,\footnote{For a long time the prevailing theory was that Lincoln used the colonization as a “lullaby” for reluctant Northerners in order to facilitate emancipation, or that he abandoned colonization during the War although he favored it before. A book by Magnus and Page (2011) shows, using a new documentary evidence that Lincoln continued to work on colonization even after the Emancipation Proclamation and that he had important meetings pertaining to this issue a day before he was shot.} to solve the problem of colonization. He viewed Liberia, a country formed in 1816 where many blacks from America were sent and who, unfortunately, mostly died there of heat and malnutrition, as a good model, but wanted to apply the principle on a much grander scale and more competently (Magnus and Page, 2011). For all American politicians and intellectuals, North and South, save for a handful of radical abolitionists, the alternative was not at all among slavery and freedom and equality for blacks in America, but rather between slavery and forcible deportation-colonization of former slaves to Africa or South America.

All this raises an intriguing question: to what extent then Calhoun’s philosophy could be described as “liberal” in any sense? But, this is just a special case of similar questions that American academia is asking about the founding generation in general. What is the value of the Declaration of Independence or the Constitution or anything else, when slavery was protected and codified? How could Thomas Jefferson, the man who wrote “all men are created equal” have been a slaveholder? What is the value of his general principles then? Or George Washington? Or Andrew Jackson? Or even an arch-radical libertarian Samuel Adams, also a slaveholder? A growing tendency in modern America is not to try and excuse the founders anymore, or to make distinctions between
their general principles and their support of slavery, but to discard the principles altogether. 194

The problem getseven more complicated: Hofstadter and Hartz who attempted to expel Calhoun from the American liberal mainstream because of his open support for slavery maintain in the same time that Locke was a dominant American philosopher and Lockean liberalism the American philosophy. Yet, this is the same Locke who wrote the first Constitution for South Carolina in 1665 which among other things said that “Every freeman of Carolina shall have absolute power and authority over his negro slaves, of what opinion or religion soever” (Cooper, 1836: 55). Locke considered here freedom of religion and opinion and freedom to own African slaves equally undeniable legal rights, expressing them in the same sentence! Are we going to deny the status of a liberal to Locke as well? To claim that the concepts such as checks and balances or freedom of religion, or a right to revolution are not liberal because their author supported slavery as well?

In the 19th century people were deciding about general doctrinal principles often without much regard for African black slavery, but were guided by other considerations they deemed more important. John Stuart Mill supported the union, as Karl Marx did. But, Lord Acton supported confederacy. In a letter to Robert E. Lee, written after the end of the War, Acton thus explains the relationship between confederate tradition and liberalism:

194 A good indication of this tendency is novel phenomenon of the left-liberal political and intellectual elites eschewing Jefferson and Jackson as standard-bearers of progressivism. Several state committees of the Democratic Party have recently abolished a long tradition of organizing “Jefferson-Jackson dinners,” the famous fund raising events for the party, with the argument that two presidents were slaveholders. See http://www.nytimes.com/2015/08/09/us/jefferson-jackson-dinner-will-be-renamed.html?_r=0.
I saw in State Rights the only availing check upon the absolutism of the sovereign will, and secession filled me with hope, not as the destruction but as the redemption of Democracy. The institutions of your Republic have not exercised on the old world the salutary and liberating influence which ought to have belonged to them, by reason of those defects and abuses of principle which the Confederate Constitution was expressly and wisely calculated to remedy… Therefore I deemed that you were fighting the battles of our liberty, our progress, and our civilization; and I mourn for the stake which was lost at Richmond more deeply than I rejoice over that which was saved at Waterloo.195

In this historical context Calhoun’s support for slavery while developing a sophisticated liberal-localist constitutional theory is less a contradiction than it may sound to us today. Liberals were not always “nice people,” or to put it differently, they did not always espouse today’s notions of what individual liberty is, who qualifies as a political agent, and when democracy exists. Even John Stuart Mill, who is much closer to the concepts of equality, justice and liberty cherished by most current liberals, “classical” and “social” equally, even he held certain views which would have disqualified anyone today as a liberal in good standing. Calhoun adhered to the basic liberal value of considering the government as danger to be institutionally and politically restrained, and developed a constitutional theory how to achieve this. If anything, we can describe his liberalism as “constitutional,” and in this regard he is a part of the tradition that starts with Locke, continues with Hume, Tocqueville or, in the 20th century, with such thinkers as F.A. Hayek or James Buchanan.


304
Conclusion

John C. Calhoun is a not just a unique but probably the most original and penetrating thinker of the early American liberalism. He saw clearly the two major problems of constitutional design and protection of liberty and offered solutions for them; first, any constitutional limitations of central government are worthless if not followed up by a real, political and territorial checks and balances, in other words, by turning one government against the other. The second critical element of Calhoun’s philosophy is rejection of the Lockean and Hobbesian social contract framework and their understanding of a unified Body Politic represented by a sovereign central government, tied to the individual directly by social contract, by which individuals delegate the power to use force to the government. Calhoun rehabilitates society as an intermediary force between the central government and individuals, by interjecting state governments and local factions as constitutional political actors\(^\text{196}\) (Cheek, 2001: 92-95). He rejects in principle the idea of democracy based on social contract, because the monolithic centralized government (be it democratic or not) “regards numbers only, and considers the whole community as a unit, having but one common interest throughout; and collects the sense of the greater number of the whole, as that of the community” (Calhoun, ibid: 28). As a consequence of this “such a government, instead of being a true and perfect model of the people's government, that is, a people self-governed, is but the government of a part . . . the major over the minor portion” (Calhoun, 1992: 30).

In clear contradiction to all modern theories of democracy and social choice, Calhoun argues that it is not the quantitative, but rather the qualitative majority that

\(^{196}\) It is possible to argue that local political elites could be equally oppressive as the central ones, but this is ameliorated by the fact that they need the concurrence of other elites for almost every decision; thereby the room of exercising their designs narrows down. Additionally, the more the republic is decentralized, the more effective choice its citizens have in voting with their feet, or changing one local community for another (see, chapter VI)
counts in terms of real representation and democracy, which are primarily focused on protecting community powers of self-government. Such a qualified majority, secured by a concurrent majority decision rule in the federal system, not only assures a real representation in that system but also assures the limitation of government power and protection of individual liberty. John C. Calhoun’s political theory is the crowning achievement of early American liberalism, and at the same time, its swan song.
Chapter 10.

Conclusion

Throughout the 20th century different political and scholarly agendas looked back to the American founding period of the late 18th century, searching for the roots of their current concepts and values in the practice and values of the “founding generation.” This should not be taken as illegitimate and this study is not an exception: its innermost drive is perhaps to uncover a forgotten or underappreciated tradition that I labelled “localist-libertarian” which is plainly visible even in today’s America. This stubborn tradition, which is the hallmark of American colonial experience, as well as the American revolutionary experience, got moulded together with the opposite, statist tradition, into a single, indiscriminate conceptual fiction of the “American founding.”

The main impulse animating the analysis of this dissertation was the realization of how dramatically prevailing political culture has changed in the last 150 years. The fact that these people, localists, from revolutionaries of 1770s to Jacksonians of 1830s,

197 This includes the progressive attempts to find the source of modern liberalism in Jeffersonian and Jacksonian traditions, Straussian derivations of American exceptionalism and the ethos of “spreading democracy in the world” in Lincoln’s “second founding” of the union on the basis of equality and democracy, or Hofstadter’s derivation of the “paranoid style politics” of the mid-20th century from the revolutionary thought.

198 The ‘tea party’ movement starting in the fall 2008 and strengthening in the coming years, reshaped American politics by moving the Republican party to the right. This is widely accepted among political scientists (Rasmussen and Shoen, 2010). Yet, the fact that the tea party combined a free market economics with a localist distrust and sometimes visceral hatred of federal government, was not widely emphasized. A combination of localism and “libertarianism” is a very powerful strand of American experience throughout its history to this day. At one level this study is a genealogy of this strand of American political experience and mind.
espoused what is difficult to explain differently than as a “market fundamentalist” point of view, rarely seen even among the most extreme right-wing politicians today, is startling. It should give one a pause when evaluating the traditional progressive interpretations, still lingering on both among the proponents and opponents of progressive historiography, that Jeffersonians and Jacksonians for example were champions of equality and social justice, and progenitors of modern progressivism and “liberalism.” The free market elements in the Jeffersonian and Jacksonian traditions have been hinted at by a few economic historians, but this left little impression on a more general theoretical and historical conceptualization of the American Revolution. I tried to build further on these scattered insightful economic pieces of analysis, to generalize and present them in a more systematic fashion based on the methodology of the Austrian school. The very fact that this school, which is considered extreme even by most of the conservative or free market economists and political thinkers today, bears remarkable similarities with the Jacksonian and Jeffersonian thinking (most notably in banking and monetary policy and the treatment of central planning and government intervention), is a good indication of how misguided prevailing analysis of this problem has thus far been. It also shows how much the ideological paradigm has sharply shifted in the last 150 years – what has been respectable and mainstream then is considered beyond the pale, extreme, and “kooky” today. 150 years ago people who believed that fractional reserve banking was fraud, a central bank an instrument of credit inflation and oppression and public debt of any kind a scourge of the nation were presidents, secretaries of the treasury and leading intellectuals and shapers of public opinion. Today their rare appearances in public

199 We can find this identification both among the apostles of the old Beard-Schlesinger genealogy of the vertical of the American history (Jefferson-Jackson-Wilson-FDR) on the American left, as well as among the strong nationalists, such as Forrest McDonald (1985; 2000), who reject Jefferson and Jackson because they reject Wilson and FDR, taking the Beard-Schlesinger genealogical line, by and large, for granted.
dialogue are denounced even by the most “extreme” proponents of free markets as kooks and extremists.

II. Shortcomings of the dominant interpretations

As it had become apparent over the course of our analysis, the picture of the localist-liberal tradition in America in the dominant currents of literature on the founding period insufficiently incorporated the specificities of this tradition noted above. In the long dominant “Lockean” school which included the Hartzian mid-century arguments (Hartz, 1955) about Lockeanism as the founding philosophy dominating America to this day, the emphasis had been on general philosophical arguments, not on their political imprint or practical context. This had been echoed by the later Straussians (Jaffa, 1982; Zuckert, 1996; Dworetz, 1990) who insisted on the Lincolnian interpretation of the Declaration of Independence as expressing the Lockean birthright of America, entrenching individual liberty and equality of a classical liberal kind into the American mind as well as the political institutions. Libertarian theories of the later 20th and early 21st centuries (Epstein, 1985; Barnett, 2004; Bernstein, 2012) emphasize also the Lockean source of the founding philosophy and use this grounding in Locke as an analytical tool in criticizing the evolution of American society after 1930s, especially insofar as the changed judicial philosophy of the Supreme Court is concerned, allowing much greater infringements with Lockean private property rights by the federal government.

200 A widely read blog by a few prominent economists of the Austrian school, called initially “Austrian economists” changed its name in 2009 to “Coordination Problem” with the explanation that this was done in order to avoid the association with Ron Paul and his popularization of the old, hard-core version of the Austrian theory advocating complete abolition of the Federal Reserve system.
However, a few open questions remain in this literature, with regard to the topic of this dissertation: first, it painted the founding philosophy with the same broad Lockean brush, neglecting both the complications and transformations of liberal philosophy in America as compared to the standard versions of Lockeanism. It also did not analyze economic philosophy of the revolutionary generation. The main contribution to this topic came from specialists interested in the history of economic ideas, rather than from the mainstream historians and political theorists building more general models of the American Revolution. The third weakness is the inability of this school to make a meaningful distinctions between the various currents of political and economic thought in late colonial and early national periods of American history: to account for the disputes between patriots and loyalists, as well as between different groups among the patriots, then between federalists and anti-federalists, or Jeffersonians and Hamiltonians. All these conflict are most often treated as a practical-political sideshow rather than as a scene of the battle of fundamental ideas that divided America.

This assumption about the essential uniformity of the American political ideas in the early period of its history is shared by two other interrelated schools of thought: the “civic republican” and ‘constitutionalist.” The “republicans” challenged in a variety of ways the dominant Lockean paradigm; in the pioneering contribution by Bernard Bailyn (1967; 1968) the main ideological opposition was set between power and liberty, and American radicalism is derived from the British “country party” doctrine, fusing the resistance to a consolidated “monarchical” government with a “libertarian” insistence on individual liberty as well as collective rights of self-government. Gordon Woods’ (1969) contribution was to extend Bailyn’s analysis to revive the concepts of virtue and public good from the revolutionary writings and speeches, and challenge more directly the idea of Lockean individualism as the dominant ideological force in the Revolution: whereas in Bailyn’s interpretation Locke was still present although “waiting in the wings” (Zuckert), Wood removed much of the rationale for considering the American Revolution to be
based in any shape or form on Locke’s philosophy. J.G.E. Pocock (1975) followed up by bringing to bear the “Machiavellian” or renaissance humanism on both the British and the American country parties, and portraying them as just new formulations of this older republicanism: the American Revolution was the “last act of the Renaissance.” Lance Banning (1978) applied Wood’s theoretical model to Jeffersonian tradition and claimed a longer continuity of civic republican thought than Wood hypothesized (he argued that this tradition dies with the new Constitution).

Constitutionalists, on the other hand, led by McIlwain (1924), Greene (1986; 2010) and Reid (1970, 1989, 1991) insisted on the legal and constitutional pretext of the Revolution: McIlwain on the novelty of the consolidating ambitions of British Parliament in the 1760s, and the right of the colonists to speak in the name of Ancient British liberties; Jack Greene used the same constitutional framework to problematize the territorial dimension of the British Imperial order and to show that the Revolution in America was mostly about how to (re)define this framework in lieu of the Parliaments recent encroachments into traditional privileges of local colonial legislatures; Reid provided an extraordinarily rich account of the legal concepts and arguments used by colonists against the Parliament and developed a theory of the Revolution as a continual process of litigation in terms of British legal and constitutional rights which eventually did not succeed.

What connects the significant contributions of these two streams of literature is their common inability to differentiate between various conflicting factions within the American polities and insistence that there was one, mainstream “American” tradition; they provide many significant insights about the revolutionary period and the arguments, thoughts and the mindset of the revolutionary generation. However, when faced with the revolution of 1787, with the new Constitution that erected the American nation-state, their models seem to falter: Bailyn inverts the logic of his own argument about the conflict between power and liberty to claim that the people of 1787 were the descendants
of the people of 1776, although from the standpoint of his own theoretical model they would have to be the exponents of “power” and consolidation rather than of liberty. He goes even so far as to call the statesmen from Philadelphia of 1787 “Philosopher kings,” disregarding that most of his previous analysis was intended to show the Resolution as a protest against Philosopher Kings. Wood argues that civic republicanism dies after 1787, but a modified form survives, always as a single, unified “American” tradition. Reid does not say much about the period after 1776, limiting his theory to the earlier period; Greene portrays the constitutional struggles of the 1780 as an (again “American”) attempt to create a new imperial framework after the breakdown of the old British model – a new constitutional order to connect the “periphery” and the “Center.” There is always one single American prevailing spirit or ideology, just morphing or adjusting to new circumstances or responding to new challenges. A fundamentally dialectical nature of American political experience is by and large eliminated.

That is the reason why this study used the progressive literature as a significant corrective to this literature (Beard, 1986; Main, 1961, Jensen, 1943;1968) recognizes the dualistic character of the early American political tradition; the fact that political battles wagged were not just skirmishes over practical policies or the expressions of the gradual “maturation” of the American spirit, but rather principled conflicts between the two entrenched political traditions, the conflict which lasted for decades. I start from this formal description, but then use the tools provided by other approaches to correct what I perceive to be the misguided analysis of the ideological content of this conflict by the progressives. They argued that from the colonial time to the “age of Jackson,” roughly, from 1760-1840, there was one big and overarching political division in America: radical agrarian democracy against the capitalist and financiers’ class. This conflict was reflected both in terms of economic policy as well as in the debates about the constitutional design and reform. Radical democrats led by anti-federalists, Jeffersonians and Jacksonians argued for a majoritarian democracy, debt foreignness, paper money and universal
franchise, all genuinely democratic reforms; men of conservative bent, led by federalists and Whigs opposed democracy, advocated a stronger central government to protect minorities, property rights and the interests of capitalists and holders of government debt. This depiction flies in the face of the evidence that the “radical democrats” promoted a radical laissez-faire philosophy and nationalists-conservatives a kind of mercantilist inspired government intervention, associated in Europe with nation-building as a modern and “progressive” project (Edling 2003).

While accepting much of the historical analysis of progressives pertaining to the constitutional dynamics of revolutionary America (see chapter VI), I revise their account by showing why their radical democrats were in a sense libertarian “men of little faith” as Cecilya Kenyon has nicely put it. Unlike Edling (2003; 2014) who concentrated on the nationalist side of the debate (and describing it more correctly than progressives – as a nation building philosophy) and Bassani (1999; 2010) who covered the isolated fragments of the localist tradition, this study strived to develop a comprehensive account of this tradition as a tradition. This has been done through an attempt to amplify the Bailyn-Wood analysis of the “country party” ideology that emerged in England and decisively influenced the American radicals who “called the shots” during the revolutionary crisis. The standard interpretations of the English country party were rather similar to the treatment of the Jeffersonian orthodoxy in America, just with an additional gentry-feudal twist: they were the reactionary, romantic defenders of the old aristocratic order and interests of the ‘gentry’ class, sceptical of “modernity,” “commerce” and modern society. However, a more detailed analysis of the writings of Trenchard and Gordon, Bolingbroke or Swift has shown that their understanding of economics was very similar in crucial points to that of Adam Smith and David Hume, in their critiques of paper money, bank credit inflation, subsidies and public debt, standing armies and so on. In chapters V, VI and VII I documented that American localists directly drew on this consensual British liberal economic thought. If anything, we see a growing sophistication
in economic matters as opposed to the English country party. Influenced by Adam Smith, John Baptiste Say and their popularizers (such as Jefferson’s good friend Destute de Tracey) American localists accepted and in some respects further developed and refined the British market philosophy, combining it with the more elegant French formulations (Say, De Tracey). What has been shown in chapter I to be a consensual liberal philosophy connecting classical economists like Smith and Hume with the marginalized country party pamphleteers, in America had grown into a kind of national orthodoxy after Jefferson’s ascent to the presidency in 1800.

A succession of economic writers and analysts can properly be understood as American localist libertarians, starting with Jefferson himself, and continuing with such “Jeffersonian” stalwarts as Nathaniel Macon, John Randolph and especially John Taylor of Carolina, and culminating with Jacksonians such as William Leggett, William Gouge or Philip Barbour. They offered a highly sophisticated and radical critique of the mercantilist philosophy propounded by Alexander Hamilton and later Henry Clay. The contribution of the Jeffersonian-Jacksonian axis of American decentralist liberalism included theoretical arguments in favor of free trade, low taxes, critiques of government subsidies and public debt, as well as very sophisticated theories of money, credit and banking, anticipating the most radical postulates of the “Austrian” and public choice schools. John C. Calhoun developed a full-blown public choice theory of the state more than 100 years before Buchanan and Tullock (chapter VIII), and Philip Barbour crafted the “knowledge argument” against central planning and government interventionism 100 years before F.A. Hayek (chapter VII).

The second pillar of the synthesis attempted here is localism, having its roots in medieval traditions (see chapters 4 and 5 particularly), resistance to the very concept of the monopoly of force, and panoply of institutions, political habits of mind and concepts organized together in the notion of the “ancient British constitution.” This tradition of localism and medieval “anarchy” had already been under attack in Europe, including
Great Britain, with the advent of both absolute and “constitutional” monarchies that laid the foundations for the modern state. American was the last medieval society insofar as it stayed on the sidelines of this process, which really did not take off in America until the beginning of the revolutionary crisis in the 1760s and 1770s. In the interpretive optic of this study, the American Revolution was a resistance against the series of attempts to carry out a European-style consolidation of a centralized state, starting with the British imperial encroachments into local taxation and regulation, through federalist-nationalist experiment with the Constitution, and later on with the policies of Hamiltonians and Whigs, all the way to the Republicans of 1850s. The American Revolution in this view consisted of a series of counter-attacks by the forces hell bent on preserving ancient localism and entrenching the free market principles, as opposed to the mercantilist philosophy that became widely popular with nationalists.

The story about the true American Revolution is a story about men of little faith, about the people who did not want America to follow the European precepts of consolidated monarchism, economic controls and standing armies. It started in the conditions of revolutionary upheaval, employing a combination of ideological “languages”: Lockean, “civic republican,” Christian, and above all, the language of traditional British rights. This latter challenged the notion of the state in North America, first in the form of the British imperial newly emerging state, and later American union. In this process, the revolutionary/reactionary tradition has reshaped itself in a variety of ways. First, the history of the movement’s political science gradually transformed from an insistence on “ancient constitution” and old-style localism (dominating revolutionary pamphlets and anti-federalist writings) to a modified, composite form, called states’ rights philosophy, which spans the universe of early political discourse from Jefferson to Calhoun. The states’ rights tradition has gradually made peace with the modern European concepts of sovereignty and statehood, but attempted to modify it by vesting supreme authority in the states, rather than in the central government. Starting with Jefferson’s and
Madison’s formulations of the “principles of ‘98,” themselves derived from the promises federalist gave during the ratification debates, principles emphasizing states’ sovereign authority and a unilateral right to nullify the unconstitutional federal laws, the tradition morphed to culminate in the powerful synthesis of John C. Calhoun, who transformed this unilateral right into a national decision-making rule. To a certain degree, by codifying and nationalizing the principles of 98, Calhoun abolished them, finishing the reconciliation of the American spirit of localism with the European logic of modern, consolidated state. However, some conspicuous elements of the old traditions, such as a right to resist the government by force of arms (described in detail in Chapter III) are lingering to this day in the form of the II amendment rights which are jealously defended, and even through the revival of the doctrine of state nullification in recent years.\footnote{For an overview of the revival of the doctrine of state nullification see Reid and Allen 2012.}

### III. Theoretical implications and future research

Although this study did not have the ambition to shift any paradigm, the accumulation of anomalies encountered in studying the early American experience forced the author to formulate a tentative alternative hypothesis as to the relationship between political and social modernity. Namely, the conventional political theory requires a parallel emergence of the modern society and advanced economy with a modern, administrative state to provide the necessary “public goods” and “institutional framework” for markets (Ostrom, 1990; Samuelson, 1956; Mises, 1996). The fact that American political institutions were anachronistic, with strong medieval imprint, with little administrative and bureaucratic modernization, and strongly based on localism, did not seem to jibe with the facts of overall economic and cultural modernity of America.
That required an explanation. Also, the fact that a localist political tradition that was strongly resisting nation building and political modernization was leading the way in adopting and further developing a hypermodern, state-of-the-art economic theory, only exacerbated the anomalous character of American experience.

This is the reason I treated early America as a case study in a “modernization decoupling” paradigm. The central claim is that social and economic modernization does not require “bureaucratic rationalization” (Weber) and that archaic political institutions are quite compatible with, and even conducive to individual liberty, entrepreneurship and social mobility. In chapters 1, 3 and 5, some evidence is offered for this claim. For example, following Alexis de Tocqueville, Alan McFarlane and John F. Martin, I argue that individualism and entrepreneurship in the Anglo-Saxon world predated political consolidation. Economic liberty and commercial spirit existed in the Middle Ages, buying and selling land, working for wages, individual entrepreneurship and many other features of “modern economy” were not created at the onset of the Industrial Revolution or due to the favorable legislation by Tudor monarchs (as mercantilist Alexander Hamilton believed) but existed in the anarchic medieval conditions. In France, Tocqueville showed that guilds in medieval times were free associations lacking the monopoly privileges given to them by the 17th century monarchs in order to increase state control of the economy and tax revenues. What conventional thinking ascribed to the Middle Ages (static, stratified, monopolized economic life) was actually a product of early modern state building that was only applied to the forms of medieval cooperation, but transformed them from voluntary organizations into coercive monopolies by its legislative and bureaucratic engineering.

In this general paradigm, the American experience ceases to be puzzling and anomalous, and becomes exactly what one would predict on the basis of theory. A further analysis that could provide a more comprehensive answer as to the question what is the level of universality of this paradigm could include the case studies of 17th century
Netherlands, medieval and early modern Italian city states or Switzerland. These were extremely advanced centers of economic, cultural and scientific progress, yet, mired in very “backward” political systems dominated, no less than early America, by anachronistic medieval localism. Traditional literature has always been puzzled by this; most of the historians of the Dutch Golden Age, for example, simply note the fact of extreme decentralization of the Dutch political system as a “paradox” and “freak” (Prak, 2005), and go on with the theory that “in spite” of a lack of modern centralized state and its “administrative capacity,” the Netherlands were advancing tremendously in the 17th century. Yet, this “in spite” is never proven, it is just assumed. On the contrary, I entertain the hypothesis here that it was not “in spite” but “because of.” And I argue that early America provides a detailed case study illustrating this.

In order to transform what I see as a plausible tentative hypothesis into a fully established paradigm, one would have to include more detailed case studies of a similar kind, the three just mentioned (The Netherlands, Switzerland and Italy of the 13-16th centuries) being the most obvious candidates. How is it that these four cradles of the modern world, responsible for the bulk of economic, financial, cultural and scientific progress (Italy, Netherlands, Switzerland and America), were in their prime “primitive,” localist, medieval political communities?

If the new paradigm holds, this would have major consequences in more than one theoretical field. Most notably, the concepts of the American Revolution and the American “founding” would have to be revised greatly. The American Revolution will have to be understood as a reaction to political modernity in the name of social and economic modernity – by and large the way I treated these in this study. Further, the American “founding” will not be a name for the process of creating the American state, as it is the case now, but the process of creating colonial society, with its cultural, economic, psychological and institutional assumptions. As Jack Greene has memorably said, the “real founders of America were not politicians who created the state in
Philadelphia in 1787, but men and women who created society in the 17th century. And I would add, politicians from Philadelphia of 1787 were actually trying to destroy the American founding, by introducing the European radical innovation of a consolidated, centralized state, foreign to American experience and to American principles of political thought.

On a more general theoretical plane, there is one obvious implication of all of this: classical liberalism has to be re-evaluated. The picture stemming from Locke, and accepted by both the mainstream of the 18th and 19th century classical liberalism, as well as by its modern descendant in the form of “libertarianism,” put the “state” in the opposition to the “individual” and asks “what are the rights of the individual” and “should there be any state to begin with”? The starting assumption is always that localism and political particularism represent the remnants of the bygone “feudal” society, to be replaced by an “efficient” and benevolent central government, with legal taxes, good judiciary and internal division of powers to keep the government machine under control.

Free market liberalism, both in its classical 18th century version and in the contemporary libertarian reiterations, represented an offshoot of enlightened despotism, in a similar fashion Locke himself represented an offshoot of Hobbesianism (see chapter 3); it only argued that the instruments of modern state should be used more wisely – not to control and govern the economy but just to set up a uniform legal-institutional framework for it, but it did not challenge the notion of a consolidated state (Foucault, 2001). I found in America a strong classical liberal tradition that did present such a challenge. The picture emerging from this study is that there is a completely different liberal tradition which does not try modifying the absolutist logic of European monarchies, but to resists it in principle, relying on the “outdated” localism and older, pre-state forms of governance. This shift is best reflected in the reorientation of theoretical references from Locke to the

202 I quote Greene here from memory: the remark in question was given during his lecture at the Jack Miller Centre’s meeting in Philadelphia in August 2014.
“country party,” and from classical political theory in general to the authors such as Tocqueville, Goethe or Carlo Cattaneo, liberals who strongly believed in localism and resisted the equation “political modernity = social modernity.”

The study of early American localist-liberal thought is a window into the world largely closed down with the advent of modern state and theoretical articulations of its logic, supremely, or to borrow Hartz’s dispirited phrase, “tyrannically,” ruling modern minds. It is a window into the possibilities of thinking about liberty, social dynamism, cultural richness and social solidarity, without a typical horror vacui plaguing modern minds – a fear that in the absence of a credible Hobbesian Leviathan, expansive or minimal, with separated or fused powers, everything would fall apart, and society will self-destruct in a sad spectacle of “war of all against all.” Following the logic of American early political thought by Cecilya Kenyon’s men of little faith we encounter a different universe of discourse, allowing us to think in apolitical terms about some of the spheres we instinctively and intuitively think of as political and politicized. It also enriches our understanding of politics, by showing that many things that are nowadays taken for granted are everything but; that the assumptions shared by modern historiography and political science about statehood as the critical element of public order and peace are not universal facts of life, but highly peculiar products of a peculiar social process - the development of the modern state. If anything should be a takeaway from this study it is the notion that it is not slavery that is a peculiar institution in American life – it is rather the modern state. This state came as a radical novelty in America in the late 18th and early 19th century and did not succeed in entrenching itself until the later 19th century. In many European countries the forces of resistance to the process of nation-building were strong in the 19th century (Italy, Germany), in some of them such as Switzerland, they were even victorious. But, seldom has this resistance produced a political thought of such diversity and richness as was the case in America.
Bibliography


329


