CONSTITUTIONAL CAPITALISM:
Economic Freedom, Social Justice, and the Myth of Modern Liberalism

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Introduction

Can capitalists care about social justice? I believe that they can and should. In this book, I develop an interpretation of classical liberalism that I call constitutional capitalism. Constitutional capitalism emphasizes economic freedom as a means to social justice.

Classical liberalism, as I use that term, is a political ideology. As such, classical liberalism includes a set of moral foundations and a set of institutional recommendations. The moral foundations of classical liberalism are usually said to be found in some principle of self-ownership and/or of economic efficiency. On the institutional level, thinkers in the classical liberal tradition advocate capitalism and a government of strictly limited legislative powers. Most classical liberals assign the state three main functions: defense against foreign powers, provision of public goods (typically including education and a minimum income), and the protection a small set of liberties, economic freedoms prominent among them.

When I refer to “social” or “distributive” justice, I mean an idea that has appeared only recently in the history of liberal thought. Exemplified most dramatically in the work of John Rawls, social justice encompasses a substantive rather than a merely formal or procedural notion of equality. Thus social justice, as I use the term, demands not merely formal political equality, but fair political equality in the sense of the equal worth of citizen’s political liberties. Similarly, social justice requires not merely formal equality of opportunity in the sense of careers open to talents, but substantive equality of opportunity in the sense that people of similar talents should have similar chances of winning desired positions. Further, advocates of social justice recognize that the worth of citizen’s liberties is importantly
connected to their control of material resources. So they insist that the basic institutions of society be arranged in such a way that the material preconditions of free and equal citizenship might be available to all citizens.

Like classical liberalism, “modern liberalism” is an ideology that includes moral foundations and institutional recommendations. The moral foundations of modern liberalism lie in the idea of social justice just described. Indeed, it was modern liberal thinkers who pioneered the idea of social justice and made explicit its connection to fundamental liberal values. On the institutional level, modern liberals advocate any one of the various “big state” regimes that march together under the banner of social democracy. This group ranges from welfare-state liberalism to liberal socialism, with the mixed capitalist/socialist regime that G.H. Meade called “property-owning democracy” residing near the social democratic center. Basic to the self-understanding of modern liberals is their claim that social democratic institutions are uniquely fitted to realizing social justice. Modern liberals view the “laissez-faire” institutional forms of classical liberalism as unjust.

When I ask whether capitalists should care about social justice, I am not asking an historical or exegetical question. Many thinkers in the classical liberal tradition have vehemently rejected the idea of social justice. Instead, the position I am defending is above all a philosophical and normative one. That position is this: the morally most attractive interpretation of classical liberalism is the view that I call constitutional capitalism, and constitutional capitalism is foundationally committed to social justice.

Constitutional capitalism shares features with two views that are often presented as irreconcilable rivals: the modern liberal ideal of social democracy just described, and the libertarian interpretation of classical liberalism. On the institutional level, constitutional capitalism is like libertarianism in that it assigns great importance to private economic freedom. On the moral level, however, constitutional capitalism is like modern liberalism in that it affirms the idea that the primary function of the state is to secure the conditions in which people can develop and exercise the powers they have as free and equal citizens.

Constitutional capitalism is a hybrid. It combines institutional insights of classical liberalism with moral insights of modern liberalism. In doing this, it also seeks to avoid defects that plague each of those rival views: moral defects in the case of libertarianism, and in the case of social democracy defects of feasibility. Constitutional capitalism, we might say, is a classical liberal institutional
home built atop a modern liberal moral foundation. Compared to either the social democratic regimes advocated by modern liberals or the libertarian interpretation of classical liberalism, constitutional capitalism offers a more attractive home to all liberals.

Constitutional capitalism offers us a more nuanced, and potentially more healthy, way to understand the structure of ideological disputes within liberal societies. Most people in the academy think of the dispute between classical and modern liberal conceptions of the state as having a fairly simple structure. According to this common view, the dispute between classical and modern liberals about institutional regime types reflects a dispute between classical and modern liberals about moral principles. Thus, people who think of themselves as classical liberals are people who affirm a distinctive interpretation of liberalism’s most foundational moral principles, an interpretation that in turn calls for an enthusiastically capitalistic interpretation of liberal institutions. By contrast, modern liberals are people who advocate a different interpretation of liberalism’s foundational moral principles, principles that call for the social democratic institutional forms they prefer.

On this familiar view, the dispute between classical and modern liberals about rival institution forms—roughly, free-market capitalism vs. democratic state-control---is based upon a dispute between classical and modern liberals about moral principles. What is the shape of the moral dispute? Well, we are told, it is a dispute about the nature and requirements of liberal justice. Modern liberals think of justice in substantive, distributive terms. They thus affirm various versions of what they call “social justice.” Classical liberals, by contrast, think of justice in formal, or individualistic terms. Classical liberals think of justice as a property of individual actions rather than of the distribution of social goods. This is how defenders of modern liberalism characterize the nature of the dispute; it is how defenders of classical liberalism understand that dispute as well.

Both sides seem to agree, therefore, that to adjudicate the institutional dispute between advocates of the capitalistic and of the social democratic interpretations of liberal good-governance, we must take up the moral
dispute between them about the proper nature and requirements of justice. The dispute between capitalist and social democratic liberals, on this view, is at base a dispute about moral principles. The question of which type of regime we should work toward is, ultimately, a moral question to be decided by the discipline of philosophy.\textsuperscript{5}

I shall propose a very different way of understanding the structure of the dispute between classical and modern liberalism. In my opinion, it is unproductive to think of the dispute between classical and modern liberals at the level of institutional advocacy as reflecting a moral dispute between them at the level of justice. Instead, I shall argue that capitalistic and social democratic versions of liberalism are based on a common conception of social justice. Or, at least, I hope to demonstrate that the conception of liberal justice that is most morally compelling for advocates of classical liberal institutions is the same conception of justice that is most morally compelling for advocates of social democracy. The classical and the modern schools of liberalism are best understood as resting upon a common set of principles of justice. These principles are in turn derived from a set of ideas concerning the moral nature of personhood and society that are also held in common by most classical and modern liberals. The dispute between the modern and the classical schools of liberalism is not really a dispute about principles of justice or moral values. It is thus not a dispute that can be adjudicated by the discipline of philosophy.

If the dispute between classical and modern liberalism is not a dispute about justice or other moral ideas, what is it a dispute about? It is a dispute not about a philosophical question but about a complex and nuanced empirical one. That empirical question is this: which institutional orientation, the classical liberal one with its emphasis on economic liberty or the modern liberal one with its emphasis on legislative processes, is most likely to enable us to realize the conception of social justice that all liberals, left and right, should affirm?

There is no morally interesting difference between social democrats and constitutional capitalists regarding the nature of social justice. This does not mean that there are no interesting differences between the classical liberal and the modern liberal conceptions of the state, of course. Indeed, beneath the text of this book, my great hope is to encourage in scholars and students
an interest in the very different approaches to social construction represented by the constitutional capitalist and the social democratic views. For the differences between these two views is a difference that, from the perspective of political theory, and thus from the perspective of the experience of people living in actual liberal societies, is the difference that matters most of all. This is a healthy difference of opinion between classical and modern liberals about which strategy of social construction is most appropriate for the realization of social justice in our time.

Should we work to make our society one more based on the economic liberties and constrained political powers that undergird commercial society? Or should we work to make our society one based more on the political control of economic affairs that characterize social democracy? This is not a philosophical debate about what moral values liberals should affirm. It is a practical debate about how we should go about building a social world that would be a worthy home for free and equal citizens. Free-market capitalists have equal moral standing with the deliberative democrats as that vital discussion begins.

However, there is a powerful idea blocking our path to this new way of thinking. This idea is so powerful, so pervasive, so relied-upon by contemporary academics, that it is rarely itself subjected to direct examination. Because of the unexamined way this idea shapes people’s beliefs, and because I am skeptical of this idea, I shall refer to it as the myth of modern liberalism. It is the myth of modern liberalism that practically guarantees that the dispute between classical and modern conceptions of the liberal state must be conducted in moral terms. According to the myth of modern liberalism, if one is morally committed to social or distributive justice, then one should advocate one or another of the political regime-types that march together under the banner of social democracy. As a corollary, if one advocates any of the more enthusiastically capitalistic regime-types associated with the slogan laissez-faire, one must rejects social justice as a moral ideal. How did this myth arise? Why has it persevered? Let’s find out.
I use the terms “small state” and “big state” here advisedly, adopting them merely to follow common usage. I do not find the terms descriptive of the important difference between the institutional orientation of modern and classical liberals. The “state” advocated by classical liberals is no “smaller” than that advocated by the modern one any physical sense. Nor do classical liberal institutions necessarily require state enforcement of rules that are fewer than those of the modern liberals (the English common law, to take one quick example, would fill many more pages than the proposed constitution of the European Constitution). A more accurate short-hand of the difference in institutional orientation might be that, while modern liberals seek to legitimate economic-decision-making by putting power over economic matters in the hands of democratically elected bodies of officials, classical liberals seek to disperse economic decision-making power by constitutionally entrenching economic freedoms as basic rights. But that’s not very short. [[readers: that’s also a VERY quick formulation of an idea I need to get right. I would especially appreciate any help you might give me here.]]

The feasibi- lity defects that economists have long pointed out regarding social democratic institutions seem to be exacerbated by globalization. Indeed, David Miller has suggested that, with the rise of the global market economy, it is possible that “the era of social justice is drawing to its close.” (Principles of Social Justice, at p. 2 and generally at 245-265). I agree with Miller that global markets add daunting new feasibility challenges to the attempt to realize social justice by way of social democratic institutions. I’m intrigued by the possibility, though, that the attempt to realize social justice by way of what I call constitutional capitalist institutions is NOT undercut by the rise of global markets. Perhaps it is merely the era of pursuing social justice by way of social democratic institutions that is drawing to a close…?

The question of what regime a society should work toward is distinct from the question of what reforms any society should immediately adopt. I distinguish three levels of political argumentation: 1) “political philosophy,” the level of moral identification; 2) “political theory,” the level of regime advocacy; and 3) “public policy,” the level of immediate political campaign. The question of what regime-type a society should work toward arises at the level of what I call political theory; that of what reforms one should immediately adopt, the level of what I call public policy. Positions at both those levels are guided by norms identified at the level of political philosophy, but are conditioned by empirical facts in different ways. I shall say much more about these distinctions beginning in chapter 2.