Preface

This book’s recurring theme is that, his standing as the ‘father of economics’ notwithstanding, economists have strayed far from Adam Smith’s procedurally based, consequence-detached political economy, and from his understanding of human nature. Whereas *homo economicus*, the stylized agent of modern economists’ imagination is autonomous, transcendental, and possessed of an exogenously determined and intertemporally stable preference structure, Smith insisted that man has an innate moral sense, that preference and value structures are mutable, that private and public virtue can be cultivated, and that there is a reciprocal relationship between society’s formal institutions – in particular, the body of constitutional and statutory law – and the promotion of respect for the moral law; for the duty to treat morally equivalent persons impartially.

Smith, like Kant, whom Smith influenced, embraced a procedural understanding of justice as impartiality. Equally important, in Smith’s non-teleological system, respect for rights and their correlative duties is a concomitant of respect for the moral law. In sharp contrast, the economist’s theory of the state, social welfare theory, deploys only one utilitarian or outcomes based dimension of moral appraisal, Pareto optimality or economic efficiency. Moreover, whereas respect for exchange and property rights is instrumentally important to the achievement of first-best Pareto optimal outcomes, utilitarian considerations can always be used to rationalize rights attenuations.

Adam Smith’s ‘science of the statesman or legislator’ was animated by his prior ethical commitment to the moral equivalence of persons, and by an understanding of the duties correlative to such a commitment. These ideas inform Smith’s insistence that government has a duty to promote just, in the sense of impartial constitutional and statutory law and, from the perspective of members of the polity, the greatest possible equal political participation. These institutional imperatives have no counterpart in the
economist’s institutionless, intendedly value-free and relentlessly utilitarian theory of the state. Characteristically, emphasis is placed on constrained utility maximization and, through the theory’s second fundamental welfare theorem, on distributive, rather than procedural justice.

Finally, the economist’s consequence based, procedurally-detached theory has, in its application, been conjoined to a public philosophy that insists upon the ‘perfection’ both of the market system and of representative democracy. Central to this enterprise is an emphasis on egalitarian outcomes, and on negative and positive rights. While the former contemplates rights, possessed prior to civil society, against preferences persons have ‘about what others should do or have’, the latter emphasizes the economic and social rights ‘necessary to true individual freedom’.

I argue that the nexus between social welfare theory and what has been called the ‘public philosophy of modern America’ has resulted in the emergence, often surreptitiously, of discriminatory government programs and policies that would be alien to Adam Smith’s imagination. That this can be traced to the deployment of social welfare theory’s first and second fundamental welfare theorems in the service of special interests is a part of the problem. Equally important is economists’ failure to embrace Smith’s and, it should be said, Kant’s, Rawls’s and America’s Founders’ understanding of procedural justice; of justice as impartiality.

That the economist’s theory of the state should be used in this way is, along many dimensions of appraisal, problematic. At the most rudimentary level, the failure to account for fundamental features of observable reality renders both the efficiency frontier and the social welfare function indeterminate. This, in turn, calls into question the normative use of the first and second fundamental welfare theorems. Yet even if this were not granted, the inability of the economist’s utilitarian theory to accommodate the moral force of rights means that the path to the efficiency frontier is not assured. Moreover, if ‘minimal privacy rights’ are respected, the impossibility of the Paretian liberal militates against the specification of a social welfare function. Add to this the lack of a theory of procedural justice, and an implicit reliance on an inadequate time-slice theory of distributive justice, and the result is that economists cannot meaningfully engage phenomena that, I suggest, threaten the survival of our self-governing republic.
Consider, first, the erosion of trust in government. This, I suggest, is both a natural concomitant of the institutional skepticism that the public philosophy of modern America engenders, and a consequence of a growing public perception that many government programs and policies are fundamentally discriminatory; that their defining characteristic is targeted benefits and dispersed costs. Add to this the realization that legislative and administrative processes frequently involve little or no public participation, and the result is a decline in trust in government institutions. If, as James Madison suggested, ‘All power has been tied up to opinion’, and ‘The stability of all governments and [the] security of all rights may be traced to the same source’ (Madison [1792b] 1999, p. 503), this is a cause for profound concern.

If the decline in public trust in government is a threat to our self-governing republic, so too is the ‘egalitarian spirit’ that, like institutional skepticism, is characteristic of the public philosophy to which the economist’s theory of the state is conjoined. Informed by an understanding of human nature and of the equal treatment imperative that Adam Smith and America’s Founders would reject, modern public policy is utilitarian, with emphasis placed on outcomes and upon the ‘forbidden inequalities’ to which the market system gives rise. A corollary of this is that attention centers on distributive justice, a concept about which the economist’s theory has little to say, rather than on procedural justice, about which the theory, in contrast to Adam Smith and America’s Founders, has nothing to say.

Granting the logic of my argument, the question becomes: What should economists do? This question was posed 50 years ago by the Nobel laureate James Buchanan. To paraphrase Professor Buchanan, the imperative is to ‘examine the “traveling of the minds of men who sit in the seat of Adam Smith”, those who try to remain within the “strict domain of science”’ (Buchanan [1963] 1979, p. 17). With this as my point of departure, I argue that those who ‘sit in the seat of Adam Smith’ should, as Buchanan suggests, reject their consequence based, procedurally-detached theory of the state, and embrace Smith’s procedurally based, consequence-detached political economy, and the political and moral philosophy from which it derives.
While these ideas are more fully developed in the text, I emphasize that James Buchanan shared with Adam Smith, Immanuel Kant and John Rawls a prior ethical commitment to the moral equivalence of persons. Moreover, like Smith, Kant, Rawls and, notably, James Madison, Buchanan insisted that, while they possess an innate moral sense, ‘men are not angels’; that they are capable, in their private and public lives of opportunistic, narrowly self-interested ‘factious behavior’. While Smith, Kant, Rawls – and America’s Founders – understood that private and public virtue can and should be cultivated, and that there is a reciprocal relationship between law and respect for the equal treatment imperative, each understood that the moral imperative is, to borrow a phrase from Geoffrey Brennan, to promote institutions that ‘economize on virtue’. If, for Buchanan, taking men as they are, ‘warts and all’, means that social welfare theory’s benevolent despot-omniscient economist paradigm has no empirical counterpart, it also means that an economist’s theory of the state should use as its template Adam Smith’s science of the legislator and the enterprise that it informed, America’s Founders’ republican self-government project. The following quotes are heuristic. On the one hand, Professor Buchanan wrote this about his research program:

I have always considered myself as working within the program laid out by Adam Smith … my emphasis has been on the necessary characteristics of the legal structure itself, on the ‘constitution’, broadly conceived, and in particular on the limits placed on politically motivated intrusions with persons’ ‘natural liberties’, again a familiar Adam Smith term. (Buchanan [2002] 2005, p. 30)

On the other hand, he saw ‘the roots of a public choice perspective’ in the writings of America’s Founders, particularly those of James Madison:

When persons are modelled as self-interested in politics, as in other aspects of their behavior, the constitutional challenge becomes one of constructing and designing framework institutions or rules that will, to the maximum extent possible, limit the exercise of such interest in exploitative ways and direct such interest to furtherance of the general interest. It is not surprising, therefore, to discover the roots of a public choice perspective … are to be found implicitly in the writings of the American Founders, and most notably in James Madison’s contributions to The Federalist Papers. (Buchanan [1983b] 2000, p. 23)
The book is organized as follows. Chapter 1, *The Smithian inheritance*, concentrates on an adumbration of the ideas that informed Smith’s ‘science of the statesman or legislator’, and the institutional imperatives to which it gives rise. Emphasis is placed on Smith’s prior ethical commitment to the moral equivalence of persons and on his characterization of the ‘sovereign’s’ correlative duties. Chapter 2, *Institutions matter*, takes as its point of departure that America’s Founders’ republican self-government project was animated by a Smithian/Kantian understanding of the self, and by an appreciation of the need to promote both informal and formal institutional restraints on narrowly self-interested ‘factious’ behavior. Emphasis is placed on the instrumental importance and intrinsic value of the Madisonian ‘auxiliary precautions’ and, given their prior ethical commitment, shared with Smith, to the moral equivalence of persons, on the imperative to promote both impartial statutory law, and the greatest possible equal political participation. Chapter 3, *What economists do*, contrasts the economist’s utilitarian, intendedly value-free, and procedurally-detached theory of the state, social welfare theory, with Smith’s non-teleological, procedurally based ‘science of the statesman or legislator’. Chapter 4, *The Founders’ republican self-government project derailed*, provides an account of the emergence and embrace of a public philosophy that emphasizes the prerogatives and ‘wants and needs’ of a transcendental autonomous self that neither Smith nor the Founders would recognize. Central to this enterprise is the imperative to ‘bracket’ persons’ ‘moralistic’ external preferences, to promote the ‘economic rights’ of ‘necessitous’ men, and to secure ‘social’ or distributive justice. If all of this would be alien to Adam Smith’s and the Founders’ imagination the same would be true of the instrumental role played by the economist’s teleological, procedurally-detached theory of the state. Chapter 5, *What has been wrought*, concentrates on the implications of the embrace of a public philosophy and an economist’s theory of the state that have no correspondence either to the Founders’ Smithian/Kantian moral and political philosophy or to their political economy. Emphasis is placed on a federal enterprise that focuses on the achievement of desired outcomes, with no account taken of the moral imperative to promote both impartial laws and the greatest possible equal political participation. If, as I argue, this is congenial to the self-interested ‘factious’ behavior that Adam Smith and the Founders...
abhorred, it is also corrosive of the trust that is a *sine qua non* for the legitimacy and stability of republican self-government. Chapter 6, *What went wrong*, concentrates on the logical, empirical, ontological and other problems that attend both the public philosophy of modern America and the theory to which it is conjoined, the economist’s theory of the state. Finally, Chapter 7, *What should economists do?*, argues for a return to the moral and political philosophy that informed Adam Smith’s ‘science of the statesman or legislator’, and the Founders’ republican self-government project. If this means that economists must reject their relentlessly utilitarian, teleological theory of the state, it also means that they should embrace the Nobel laureate James Buchanan’s constitutional political economy project.