When Private Equity Serves the Public Good: Woody Holton's "Capitalist Constitution"

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Woody Holton, *The Capitalist Constitution*, *in* American Capitalism: New Histories, (Sven Beckert & Christine Desan eds., 2019).

Is capitalism good? A growing number of historians suggest no, particularly scholars affiliated with the New History of Capitalism, a trending field with close ties to Harvard and a deep interest in locating slavery at the center of the American experience. However, historian Woody Holton strums a more positive chord in his recent essay, "The Capitalist Constitution," part of a larger anthology edited by Sven Beckert and Christine Desan styled *American Capitalism: New Histories*. Holton reminds us that the Framers' anti-democratic interest in finance may not have been a bad thing, laying the foundations for a dynamic market economy that would propel the United States forward for the next two centuries.

Interested in the "actual motivations" that brought the founders to Philadelphia in 1787, Holton focuses on two compelling, if understudied concerns: an interest in preventing states from printing paper money and a related interest in preventing states from enacting legislation that impaired contracts. Both measures, on their face, seem rather obscure. Neither bore directly on the question of slavery. Nor did they relate to the reasons generally thought to have prompted the call for a robust, national Constitution: including the inadequacies generally associated with the Articles of Confederation.

However, Holton argues persuasively that the Framers shared a deep economic interest in creating a political order conducive to raising capital, an order that, in turn, favored investors by reassuring them that electoral majorities would not use the political system to devalue currency (by printing paper money) and/or erase debt by enacting legislation infringing on contracts. Since most voters were small farmers who relied on debt to carry them through harvest (and faced foreclosure when they could not pay their creditors), they liked the idea of printing paper money and also legislation cancelling contracts (specifically their obligations to pay back their loans). Therefore, the matter of creditors rights became an anti-majoritarian one, interesting primarily to elites.

For example, Holton demonstrates that James Madison—the purported "father" of the Constitution—struggled to raise capital for land deals in New York that he felt promised higher returns than his slave-generated wealth in Virginia. Yet even Madison struggled to find investors willing to front him the money. As Holton puts it, "it was becoming harder and harder for men like [Madison] to convert their land and slaves into cash," meaning that they found themselves increasingly reliant on private equity for their ventures.

Here, capitalism's thirst for credit helped forge a Constitutional order that would—ultimately—prove the undoing of the agrarian, static South. Although Madison, Jefferson and Washington all relied on slavery for their livelihoods, slavery by itself did not generate sufficient wealth for them to grow their enterprises—leaving them oddly in debt. To compensate, they became entrepreneurs/speculators, a move that is often forgotten but worth remembering, if for no other reason than it ties together a fistful of loose historical ends. For example, the Framers' need for private equity explains the alarm generated by debtor revolts like Shay's Rebellion, which convinced the Framers that contracts warranted more protection than democracy. Further, it explains why those Framers who relied on slavery, a static form of capitalism rooted in coercion, also endorsed a more dynamic version of investor capitalism rooted in competition and risk. They realized, for example, that making America friendly for investors would ultimately benefit themselves more in the long run than myopic schemes aimed at debt-relief.

Holton's concise essay should be of interest to legal historians interested in the Contracts Clause, as well as Constitutional historians generally. For one, it helps to explain why slave-owners like James Madison favored a dynamic form of investor capitalism that would—by 1860—dramatically out-produce the slave-South. For another, it underscores the anti-democratic tendences rampant at the Founding, even as it adds nuance to arguments about American democracy like the one made by Michael Klarman in his recent book *The Framers' Coup: The Making of the United States Constitution* (OUP 2016). Klarman laments the anti-democratic nature of the Constitution's structure, even calling for a rethinking of the modern Senate.

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