

ABSTRACT

Lockean Property Rights and the American Founding

Megan Erin Sarsfield

Director: Steve Block, PhD

This thesis provides an in-depth, comprehensive examination of the different views regarding Lockean property rights held by the American Founding Fathers. This will be done through a comparative analysis of the writings of Thomas Jefferson and James Madison. This examination will culminate in two proposals: first, while Madison and Jefferson both have the Lockean idea of property rights in mind in their writings, they clearly did not read, interpret and use Locke's thought on property in the *Second Treatise* in the same way as one another; second, Jefferson was a precursor to 20th Century Progressives who distinguish certain rights (civil rights and human rights) over other rights (property rights).

APPROVED BY DIRECTOR OF HONORS THESIS

Dr. Steve Block, Department of Political Science

APPROVED BY THE HONORS PROGRAM:

Dr. Elizabeth Corey, Director

DATE: _____

LOCKEAN PROPERTY RIGHTS AND THE AMERICAN FOUNDING

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Megan Erin Sarsfield

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CHAPTER ONE

Introduction

John Locke's *Second Treatise of Government* is perhaps one of, if not the, most important philosophic treatises of the modern era. Following in a new tradition of political philosophy begun by Machiavelli and Sir Francis Bacon then elaborated upon by Thomas Hobbes, Locke seemingly perfected this new, liberal tradition of political philosophy that broke with the ancients. His work hid its Hobbesian nature, allowing for it to be accepted widely by his countrymen and those around the world during the Enlightenment Era. As Leo Strauss explains in *Natural Right and History*, Locke "was listened to by many people, and he wielded an extraordinarily great influence on men of affairs and on a large body of opinion" because he "had the good sense to quote only the right kind of writers [Hooker] and to be silent about the wrong kind [Hobbes], although he had more in common...with the wrong kind than with the right."¹ Locke's most famous readers include the Founding Fathers, who accepted, grappled with and, at times, differed from his political thought.

Chapter V of Locke's *Second Treatise* is concerned with property, which is the ultimate reason why people leave the state of nature to enter civil society. Locke

¹ Leo Strauss, "Modern Natural Right," in *Natural Right and History*, by Leo Strauss (Chicago: University of Chicago Press, 1953), 165.

describes how property, which is common to all men in the state of nature, is transformed into individual property by means of human labor. Property is insecure and land acquires its worth only through human labor in the state of nature, because it is actually a state of penury. This development of individual property is what causes people to leave the state of nature in order to establish a civil society. Thus, the aim of government in this society is the preservation of property (in both the material and non-material sense of that word).

Locke seemingly grounds his theory in the Christian tradition by repeatedly referring to Scripture and stating that God gave the Earth to man in common. In fact, he initially identifies the duty to preserve mankind as rooted in man being the property of God, its maker. Locke, however, reveals that an individual actually has property in his own person rather than being property of God: “every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his” (27, 287 - 8).² Every person has a right to self-possession, which is the foundation for a system of rights in which there is a mutual, reciprocal recognition of everyone’s rights by all individuals. Property is then able to be extended beyond self-possession when an individual adds his labor to an object provided by Nature, which allows for that object to become that individual’s property.

There is in the state of nature a limit to private property, however: “As much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a Property in. Whatever is beyond this, is more than his share, and belongs to

² John Locke, *Two Treatises of Government*, 287 – 288. All subsequent parenthetical references (paragraph, page number) in the text are to this edition.

others” (31, 290). This limit allows individuals to acquire as much as they are able to without being wasteful. This limit on acquisition is circumvented, however, with the invention of money because goods can be sold in exchange for money, which does not spoil. Moreover, since money allows for an insatiable desire for more, it is not the root of evil, but actually the liberator of humans from a state of penury. That is, nature and Earth provide almost worthless materials (36, 293), so human labor is what actually gives value to the commodities that arise from the land. The acquisition of wealth is therefore unlimited because an individual’s prosperity grows through labor. Thus, there is actually a right to accumulate as much property as possible. Locke’s thought on property rights provides the moral rules that guide economics as well as the moral foundations of capitalism. This is evident in Locke’s support for competitive acquisitiveness, in which everyone labors and works productively in order to acquire more and more wealth. If land is not being used by productive laborers, then it needs to be given to those who will use the land. Locke does not provide an elaborate formulation for capitalism, a task which is left to his successors; instead, he describes the moral justification of capitalism as well as the basic goals of a government to protect property and promote acquisitiveness.

Finally, according to Locke, the government is responsible only for protecting the property and liberty of the governed. This aim of government leads Locke to a discussion about inheritance and primogeniture. There is a basis in the state of nature for inheritance, but it is fragile and incomplete because it is simply an extension of self-preservation. That is, parents have a desire to continue themselves through their offspring. Moreover,

inheritance explains why the receiving children have a loyalty not only to their parents, but also to their country. Thus, Locke is able to prove that primogeniture is not natural: because a father is tasked (by the Law of Nature) with taking care of and providing for his children even after death, parents need to pass on an inheritance not just to the eldest male but to all of their children in order to fulfil this parental duty. If they do not, they will be ignoring their parental duty, as well as ensuring that the rest of their children will be loyal to the eldest son who will have an inheritance rather than to the father.

Locke's understanding of property rights was not wholeheartedly accepted by every Founding Father, however. Thomas Jefferson, for example, provides a view on property rights in a series of letters that both adheres to and conflicts with Lockean property rights. In the "Letter to Pierre Samuel Dupont de Nemours (1816)," the "Letter to Isaac H. Tiffany (1816)," and the "Letter to Samuel Kerchaeval (1816)," Jefferson clearly evokes Lockean ideas about property when he discusses the structure and moral principles upon which the government is to be founded and why elected representatives must always be kept in check by the people (to neither abuse their power nor tax the people into perpetual debt). Further, in the "Letter to James Madison (1785)," Jefferson proposes equalizing property on Lockean grounds. That is, Jefferson agrees with Locke that concentrated ownership of land leads to much of it not being productively used, and land that is not being productively used should be redistributed to those who will productively use it.

But Jefferson breaks with Locke on the matter of property at times, specifically with regards to inheritance. This is due to the fact that Jefferson's concerns for self-

government and government by consent have the effect of diminishing his commitment to Lockean property rights. For example, his clear hostility to inheritance is evident in the “Exchange on the Binding of Generations.” Jefferson writes that one generation cannot bind another because, in his opinion, it is against natural law. He argues that since the earth belongs to the living, the “portion occupied by an individual ceases to be his when he himself ceases to be.”³ Thus, inheritance is allowed “not by natural right, but by a law of the society.”⁴ Further, Jefferson argues that one generation cannot bind the following generation with monetary debts or even legal debts. Thus, Jefferson advocates for a new constitution to be created every nineteen to twenty years because laws are debts based in the consent of the generation who created them while the current generation never explicitly consents to them. In fact, Jefferson writes that because each generation is independent from the one before it, each generation has an equal right to “choose for itself the form of government it believes most promotive of its own happiness.”⁵ Locke, on the other hand, argues against primogeniture, but he is not hostile to the practice of inheritance in every form like Jefferson. This is due to the fact that Locke views inheritance as a way for parents to gain and maintain their children’s loyalty and as a

³ Thomas Jefferson, “Letter to James Madison” (6 September 1789), from the National Archives, *Founders Online*, accessed 3 February 2017, <http://founders.archives.gov/documents/Jefferson/01-15-02-0375-0003>, 1.

⁴ Jefferson, “Letter to James Madison” (6 September 1789), 1.

⁵ Thomas Jefferson, “Letter to Samuel Kerchaeval” (12 July 1816), in *Selected Writings*, ed. Harvey C. Mansfield (Illinois: Crofts Classics, 2012), 90.

means to self-preservation after death.⁶ In the “Letter to John Adams (1813),” it is revealed why Jefferson is so hostile to the practice of inheritance, however. It is due to the fact that he does not want an aristocracy, which traditionally is rooted in wealth that is associated with birth. Jefferson provides a couple of ways to dismantle the aristocracy, one of which is through legislation. Jefferson, in fact, was able to abolish entails and primogeniture through the Virginia legislature. This is what Locke said to do in his *Second Treatise*. Thus, it is evident that Jefferson clearly followed Locke on some issues regarding property, specifically the rejection of primogeniture.

This is important for a number of reasons. First, Jefferson’s view that inheritance between generations should be abolished would potentially mean that there would be no shared history or heritage between generations, no legal tradition upheld over hundreds of years, nor would a current generation be held accountable to paying back the monetary debt of former generations. Second, by calling for a new constitution every twenty or so years, Jefferson is also assuming that human progress is continual; he ignores human nature by assuming that violence will not arise when citizens re-enter the state of nature in order to consent to a new constitution. Third, if Jefferson’s argument for the abolition of inheritance had been accepted, there would most likely be a very different constitution for the United States. Instead, Americans can invoke fundamental, timeless laws established nearly 250 years ago in the United States Constitution, (though, if need be, Americans can revoke or change these laws). Jefferson does promote an idea similar to the “Living Constitution,” however. This shows how Jefferson prepares for the 20th

⁶ It is also a means to the liberation of women from under their husbands.

century Progressives, who began the call to treat the Constitution as something that should no longer bind the current society. Finally, and most importantly, the Jeffersonian view of Lockean property rights, which is an altered version of Lockeanism, reveals how both Jefferson preempts the 20th Century Progressives who give priority to one right (life, liberty, pursuit of happiness, etc.) over another (property). Both Jefferson and the Progressives appear to weigh which right is most important, such that when the rights themselves conflict, a government can protect and promote one over another.

James Madison, on the other hand, is a better reader of Locke, in that he makes all rights forms of property. This can be seen in two of his works, an article aptly titled “Property,” and Federalist 10. In “Property,” Madison provides two definitions of property. The first is “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual,”⁷ so a person’s land, merchandise or money. The second definition “embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.*”⁸ This includes a person’s opinions and the free communication of those opinions. This is clearly reminiscent of Locke, who wrote in the *Second Treatise* “Lives, Liberties, and Estates, which I call by the general Name, *Property*” (123, 350). Thus Madison is identifying all rights to be forms of property. By doing so, the weight of these rights is

⁷ James Madison, “Property,” from the University of Chicago, *The Founders’ Constitution*, accessed 3 February 2017, <http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>, 1.

⁸ *Ibid.*, 1.

equalized, which prohibits a government from protecting and promoting one right over another. Thus, when Madison argues that the only end of government is “to protect property of every sort,”⁹ he is explaining that the government’s duty is to protect every right of its citizens rather than protecting only material property. Furthermore, Madison played a key role in writing the U.S. Constitution, a document which reinforces and proves that this Lockean idea that the protection of property of all forms is the goal of government is clearly a fundamental principle behind the United States government. Madison provides a logical extension of Locke’s simple claim that the government needs only to protect property in order to account for a commercial republic. In Federalist 10, for example, Madison describes factions and their causes, some of which are intrinsically tied to property and its unequal distribution and acquisition. The government needs to promote and support acquisition, however, because diverse, competing factions are actually needed to help a commercial republic, like the United States, flourish. If the government does not do this, one faction can harm another faction. Madison provides this logical extension because Chapter V of the *Second Treatise* leaves out the practical ways to go about executing Locke’s new system of government, meaning that Lockean property rights could potentially be at odds with a constitutional system. Madison was thus able to implement realistically this natural extension of Locke’s political thought through the U.S. Constitution and provide the justification for doing so in his writings.

⁹ Madison, “Property,” 1.

Thus, this thesis will first analyze Chapter V, “Property” of Locke’s *Second Treatise*. My own analysis will be provided, as well as the analyses of prominent scholars on this subject, including Leo Strauss and Michael Zuckert. There will then be a comparative discussion of a collection of writings by two Founding Fathers who accepted, grappled with and differed from Lockean property rights. These Founding Fathers are Thomas Jefferson and James Madison. Jefferson used Lockean property rights as a way to end the pseudo-aristocracy and create a system of government that always had explicit consent of the governed. Because of Jefferson’s concern for self-government and government by consent, he advocated for policies which would weigh one right over another, which is a perverted alteration of Locke’s political thought regarding property rights. Madison, on the other hand, was a better reader of Locke inasmuch as Jefferson rejected key Lockean arguments about property rights while Madison did not. He used Locke’s political thought as a way to justify the goals of a new constitutional form of government – that is, the promotion of acquisition and inquisitiveness in order for a commercial republic to flourish and increase the wealth of everyone, as well as the protection of people’s property in both the material and non-material sense. Thus, Madison, unlike Jefferson, equalized all rights as forms of property that are to be protected by the government. Finally, there will be a discussion on why this examination matters. The disagreement over whether all rights should be equalized or weighted over and against one another has contemporary significance. Modern progressives have been attempting to distinguish certain rights (human rights and civil rights) over other rights (property rights) with the result that property rights are often

disparaged and sacrificed when they come into conflict with the exercise and protection of human rights and civil rights. Thus, this practice has a Jeffersonian, rather than Madisonian, heritage, and is thus a continuation of altered Lockeanism.

CHAPTER TWO

John Locke

In John Locke's "An Essay Concerning the True Original, Extent, and End of Civil Government," more commonly known as his *Second Treatise of Government*, he departs from his classical and medieval predecessors in his reason for why people leave the state of nature and establish a political society.¹ Thomas Hobbes, for example, argues in *Leviathan* that there is "no mine and thine" in the state of nature; rather, because there is no property, everything is available to be seized by anyone.² In this account, there is no injustice because nothing belongs exclusively to anyone (because there is no security in the state of nature which is actually a state of war), and thus one cannot give or receive what belongs to them, including the body. This situation contrasts with the practice of justice in accord with the classic definition of justice, which is to give to each that which is owed. Locke, on the other hand, articulates how property common to all men in the state of nature can be transformed into individual property by means of human labor, and the perceived need to secure this property from others, is what causes people to leave the state of nature and establish a political society. Consequently, Locke not only claims that

¹ Peter Laslett, introduction to *Two Treatises of Government* by John Locke (New York: Cambridge University Press, 2015), 101.

² Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Hackett Publishing Company, Inc., 1994), 76.

the aim of government should be the preservation of property, but he also provides the moral foundations for capitalism. Locke's political thought, especially his ideas concerning property rights, was influential on a number of prominent men, most notably the American Founders. In fact, America has a Lockean founding, but Locke's theory is extremely complicated, especially in regards to property rights, with the result that it simultaneously provides the basis for the commercial republic in James Madison's writings, yet is altered in Thomas Jefferson's writings.

There is much disagreement among scholars about Locke, specifically on whether Locke is Hobbesian or not. For example, Leo Strauss contends that Locke is an esoteric Hobbesian. Strauss writes in *Natural Right and History* that "Locke deviated considerably from the traditional natural law teaching and followed the lead given by Hobbes."³ According to Strauss' view, Locke was actually an atheist following Hobbes and Spinoza.⁴ Locke, however, had learned from Hobbes, who became unpopular due to his radical new thought. Locke instead "had the good sense to quote only the right kind of writers [Hooker] and to be silent about the wrong kind [Hobbes], although he had more in common...with the wrong kind than with the right."⁵ Many scholars disagree with this interpretation of Locke, however. There is even disagreement among Strauss'

³ Strauss, "Modern Natural Right," 221.

⁴ James R. Stoner, Jr., "Was Leo Strauss Wrong About John Locke?," *The Review of Politics* 66 (2004): 553.

⁵ Strauss, "Modern Natural Right," 165.

students and students' students. For example, Michael Zuckert, rejects the close connection Strauss draws between Locke and Thomas Hobbes.⁶ According to Zuckert, "Locke did indeed go through a 'Hobbesian moment' in his own development...but...Locke assimilates, rejects and moves beyond the Hobbesian."⁷ Zuckert has outlined in his work the key differences between Hobbes and Locke to prove this point: first, "Locke insists that there is property by nature – a proposition Hobbes had denied – and, therefore, that in nature there is a natural measure of justice and injustice, again a proposition that Hobbes denied;" second, "Locke's rights doctrine also differs from Hobbes'...in that it is not based in or expressive of the strongest passion, but is based instead on either divine or self-ownership, or (somehow) both together."⁸ Further, while this is not a disagreement, Strauss does not take a position on the extent of Locke's influence on the American Founding, the main theme of Zuckert's work is Locke's influence on the American Founding.⁹ The Cambridge school, which was influenced by John Dunn, also provides a different interpretation than Strauss. The Cambridge scholars interpret Locke's political thought in relation to his family's background in Calvinism,

⁶ Stoner, Jr., "Was Leo Strauss Wrong About John Locke?", 554.

⁷ Michael P. Zuckert, *Launching Liberalism: On Lockean Political Philosophy* (Lawrence, Kansas: University Press of Kansas, 2002), 3.

⁸ Michael P. Zuckert, "He Was," *The Review of Politics* 66 (2004): 567. See page 18 for discussion on Paragraph 88 of the *First Treatise*, which proves Zuckert false on this specific point (that is, his second argument for how Locke and Hobbes differ).

⁹ Stoner, Jr., "Was Leo Strauss Wrong About John Locke?", 555.

while Richard Ashcraft focuses on showing Locke as a revolutionary during the Restoration, and James Tully insists that Locke is merely defending Whig landholding.¹⁰

Locke begins his argument on property in Chapter V of the *Second Treatise* with appeals to God and Scripture. For instance, he mentions various biblical characters, such as Adam, Noah and David, and writes that in Psalm CXV, David states that God “*has given the Earth to the Children of Men*” (25, 286).¹¹ Locke also states that he will “endeavour to shew, how Men might come to have a *property* in several parts of that which God gave to mankind in common” (25, 286). Further, he writes that God also gave men reason in order to make use of the world to “the best advantage of Life, and convenience”. Thus, the Earth and its natural resources were given to Men for “the Support and Comfort of their being” (26, 286). By referring to Scripture, as well as repeatedly stating that God gave the Earth to man in common, Locke is appearing to ground his theory in the Christian tradition. However, because Locke spent the entirety of his *First Treatise* refuting the claims made by Sir Robert Filmer, who had attempted to justify the principle of divine rights of kings, he is actually able to argue that no particular individual has an original private dominion over the Earth and its natural resources.

Because no one has an original private dominion over the Earth and its natural resources, however, Locke articulates that there needs to be a way to appropriate this

¹⁰ Stoner, Jr., “Was Leo Strauss Wrong About John Locke?”, 553.

¹¹ This psalm also has a constant refrain of “Sons of Israel, Trust in the Lord/He is your help and your shield.”

common property so that it becomes individual property. He begins his attempt to do this by first explaining the property of the person: “every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his” (27, 287 - 8). Locke is thus articulating that every individual has a right to self-possession, which is a clear break from his initial claim that man was the property of God. Locke is thus departing from the natural law tradition, which refused to identify human beings as self-owners because it claimed they were creatures of God.¹² This right to property in oneself is the foundation for a system of rights in which there is a mutual, reciprocal recognition of everyone’s rights by all individuals. Property can then be extended beyond self-possession. This happens when a person adds his labor to an object provided by Nature, which allows for that object to become that individual’s property. He illustrates this with an example involving acorns and fruit: “He that is nourished by the Acorns he pickt up under an Oak, or the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself.” The acorn or apple becomes the property of the individual who first picked the object itself, then ate it, thus exerting the labor necessary for the acorn or fruit to become his own.

The acquisition of private property does have an apparent limit, however. First, Locke writes that no man “can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others” (27, 288). This limit is in accord with Scripture. Then, he later writes: “As much as any one can make use of to any

¹² Thomas L. Pangle and Timothy W. Burns, *The Key Texts of Political Philosophy: An Introduction* (New York: Cambridge University Press, 2015), 156 – 160.

advantage of life before it spoils; so much he may by his labour fix a Property in. Whatever is beyond this, is more than his share, and belongs to others” (31, 290). This spoilage limit is in accord with reason, and allows individuals to acquire as much as they want provided that they are not wasteful in doing so. Thus, in accordance with the acorn and apple example, an individual could pick as much as he or she wanted provided that the amount they took would not go to waste. Locke then applies this rule to land, in which a person can have as much as he or she can use: “As much Land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property” (32, 290). In addition, Locke explains that when God gave the world to man, he commanded all men to labor, and the “penury of his Condition required it of him” (32, 291). He adds that “it cannot be supposed he [God] meant [the world] should always remain common and uncultivated. He gave it to the use of the Industrious and Rational, (and *Labour* was to be *his Title* to it;)” (34, 291). Thus, God, by commanding men to subdue the Earth, also gave men the authority to appropriate. Further, “the Condition of Humane Life, which requires Labour and Materials to work on, necessarily introduces *private Possessions*” (35, 292). This is, again, an argument from reason, rather than from Scripture.

Following this discussion on private property, Locke discusses the invention and uses of money in the latter half of Chapter V. He describes how there is no spoilage limit placed upon property with the invention of money because goods can be sold in exchange for money. Money does not spoil, and thus it is man’s invented blessing; further, wealth is unlimited and an individual’s prosperity will continue to grow through labor. Thus, due

to the invention of money, which circumvents the spoilage limit, there is a right to as much property as one can acquire. Similarly, it would follow that the invention of money also allows for the labor requirement to be ended. For example, if an individual were to grow more food than he or she or his family needs to survive, they can barter with others. This allows an individual to sell his surplus of food to another person, who will use what the original owner will not be able to consume, in exchange for money. Finally, Locke describes how money allows for the desire for more to take off: “so this Invention of Money gave them [Men] the opportunity to continue and enlarge them [possessions that arise from human labour]” (48, 301). Locke is arguing that money, rather than being the root of evil, is actually the liberator of humans from penury. Locke then articulates that, without labor, the earth is of little value. In other words, nature and Earth provide almost worthless materials, so it is human labor which gives value to the commodities that arise from the land. For instance, Locke states:

Bread, Wine and Cloth, are things of daily use, and great plenty, yet notwithstanding, Acorns, Water, and Leaves, or Skins, must be our Bread, Drink and Clothing, did not *labour* furnish us with these more useful Commodities. For whatever *Bread* is more worth than Acorns, *Wine* than Water, and *Cloth* or *Silk* than Leaves, Skins or Moss, that is wholly *owing to labour* and industry. The one of these being the Food and Rayment which unassisted Nature furnishes us with; the other provisions which our industry and pains prepare for us (42, 297).

Land that is left to nature – that is, when human labor is not mixed with the land, thus giving the land no value – is a waste.

Locke’s property rights provide the moral rules that guide economics in his *First Treatise*, which are then elaborated upon in his *Second Treatise*, thus also providing the moral foundations of capitalism. In Chapter IX of the First Treatise, “*Of Monarchy*, by

Inheritance from Adam,” Locke first states that men have a right to hunt for comfortable self-preservation (86 – 7, 205 – 6). Then he states that property is for the sole advantage of the proprietor because of his right to self-preservation, and the proprietor can even choose to destroy his property (92, 209).¹³ Locke is doing two things here: first, he is revealing that the World’s goods are not, in fact, limited (this is due to the fact that “good” is now being defined as comfortable self-preservation), and, second, he is advocating consumerism when he reveals that an individual has a right to destroy his property. He then illustrates the moral foundations of capitalism in his *Second Treatise*, although he leaves his successors the task of creating the complete formulation for capitalism. He argues that if there is an abundance of one good, the price will be driven down. This can be done through private property, and it works only because the state of nature is one of penury rather than being a state of bounty (as the Bible claims). Thus, if you sell your goods to others, everyone else can do so as well with their own goods that they have also acquired through labor. Thus, everyone can become industrious and improve the land (through human labor) in order to make it bountiful.

Finally, according to Locke, the great art of government is consequently “the increase of lands and the right of employing them” (42, 297 – 298). This is not the first chapter in which Locke articulates this claim; rather, he first establishes this idea in the *First Treatise*: “but Government being for the Preservation of every Mans Right and Property, by preserving him from the Violence or Injury of others, is for the good of the

¹³ If one hunts, the property that is being destroyed is the animal which you have to kill.

Governed” (92, 209 – 210). Locke asserts that an increase in personal property and the use of money is the cause for communities to settle the boundaries of their territories, and, by their own laws, regulate the property of private men of the community (45, 299). Moreover, he states that in civil society “Laws regulate the right of property, and the possession of land is determined by positive constitutions” (50, 302). By limiting the goals of government to just protection of property and the liberty of the governed, a large, private sphere is created, a civil society, where most business is conducted and where individuals will spend most of their lives, while the state will be responsible only for making sure civil society remains peaceful.

In Chapter V, Locke clearly means for property to be taken in a material sense, for he discusses land and the tangible goods that can be created from using the land for the benefit of all. This material meaning of property is not how Locke uses it in other sections of his *Second Treatise*, however. For instance, he later describes a much more general interpretation of ‘property’: “Lives, Liberties and Estates, which I call by the general name Property” (123, 350). If Locke meant for “property” to be interpreted only in a material sense, Chapter V could be interpreted as “an uncompromising defence of wealth and its power,” whereas a symbolic interpretation would seem “to express all human rights as market commodities.”¹⁴ However, these two meanings of property are not mutually exclusive. For instance, both the protection of material possessions and of non-material property (life, liberty and estate) can be the aims of government without

¹⁴ Laslett, introduction, 105.

infringing upon one another. After all, according to Locke, the government is responsible for protecting the property and liberty of the governed.

Locke goes on to examine the topic of inheritance, which he discusses at length in both the *First* and *Second Treatises*. He writes in Chapter IX (“*Of Monarchy, by Inheritance from Adam*”) of his *First Treatise*:

The first and strongest desire God Planted in Men, and wrought into the very Principles of their Nature being that of Self-preservation...But next to this, God Planted in Men a strong desire also of propagating their Kind, and continuing themselves in their Posterity, and this gives Children a Title, to share in the Property of their Parents, and a Right to Inherit their Possessions” (88, 206 – 207).¹⁵

There is a certain basis in the state of nature for inheritance, as Locke is able to show, but it is fragile and incomplete. It is suggested that inheritance is simply an extension of self-preservation. There is a strong desire for parents to continue themselves through their offspring, and children have the right of inheritance – that is, as long as they are like their parents or how their parents wish them to be. However, inheritance is viable only in property, not in dominion. For example, Locke writes that a son has a “Right to succeed to his Fathers *Property* for his own good, but this can give him no Right to succeed also to the *Rule*, which his Father had over other Men” (93, 210). Moreover, Lockean inheritance and self-ownership appear to be in tension. That is, if human beings are self-owners, and things become private property only through labor, inheritance would be baseless because it was not made through an individual’s labor since it was a gift.

¹⁵ This directly contradicts Zuckert’s argument for how Locke differs from Hobbes (see footnote 8 on page 12).

Inheritance would be earned, however, if one considers the labor that the parents put into it, as well as the labor the children put into it by obeying their parents in order to ensure that they would, in fact, inherit the property.

In addition, inheritance, according to Locke, provides an explanation for maternal and paternal love. Locke asserts in Chapter VI of his *Second Treatise* that, while parents do have rule over their children when they are first born, it is a temporary rule (55, 304): “The Bonds of this Subjection are like the Swadling Clothes they are wrapped up in, and supported by, in the weakness of their Infancy. Age and Reason, as they grow up, loosen them till at length they drop quite off,” and each individual child is left at his own free disposal (55, 304). Thus, parents have no right to count on help from their children in old age unless the parents give their children something. In other words, an inheritance is basically an investment in the future on the part of the parents. Moreover, a mother especially needs to provide an inheritance for her children because, according to Locke, there is competition at the heart of the family between the mother and the father. For example, when discussing the “*Absolute Arbitrary Dominion* of the Father” in the *Second Treatise*, Locke writes that “in this power the *Mother* too has her share with the *Father*” (64, 310). Thus, the father is not necessarily always the leader of the household. Locke allows for women to not only be the leaders of their households, but for women to own property. Furthermore, it follows that an inheritance provides for the receiving children a loyalty to not only their parents, but also to their country (73, 315). For instance, if an individual were to inherit land that is in a country where he or she can leave, this suggests that there is no natural tie to the country one lives in; rather, self-interest is what

motivates people to remain in, or move to, a country just as self-preservation and gain is what motivates children to remain loyal and helpful to their parents.

Following his discussion on inheritance, Locke addresses the topic of primogeniture. In his *First Treatise*, Locke, as a part of his efforts to critique the work of Sir Robert Filmer, works to debunk the myth that primogeniture is natural. He first states that there are Countries in which “their particular Municipal Laws give the whole Possession of Land entirely to the First Born...some have been apt to be deceived into an Opinion, that there was a Natural or Divine Right of Primogeniture” (91, 209). He then articulates, however, that “the First Born has not a sole or peculiar Right by any Law of God and Nature, the younger Children having an equal Title with him founded on that Right they all have to maintenance, support and comfort from their Parents, and nothing else” (93, 210). A father, according to Locke, is tasked with “taking care, and providing for his own Children” (90, 208), and this duty is expected to be extended after the death of the parents because they need to leave their children, not just the eldest child, their property once they have died. This, as mentioned before, allows for self-preservation of the parents, who will more-or-less live on through their children because the children inherit their property. Parents who provide an inheritance for only the eldest son are not providing for their other children, however, which goes against their parental duty. Furthermore, primogeniture causes the children to be against the will of the father because those who are not the eldest son will be trying to please the eldest son rather than the father.

In conclusion, Locke argues in his *Two Treatises* that people leave the state of nature to form a political society because of the need to secure property. In the state of nature, every individual has possession of his own person rather than being the property of God, and when they add their labor to the Earth, which God has given to all men in common, private property arises. This labor is what gives value to the commodities that subsequently arise from the land because the state of nature is one of penury.

Furthermore, according to Locke, accumulation of private property in the state of nature was limited by spoilage, which was then circumvented by the invention of money. Locke then argues that the ultimate aim of government is to protect the property of those it governs and promote acquisition. Finally, Locke also discusses the ramifications of how property relates to inheritance (the transfer of property from parents to children following death) and primogeniture (for which Locke is not an advocate), two topics which are discussed at-length by Thomas Jefferson. Locke is an important political philosopher not simply because he differed from his predecessors; rather, he is important because his contributions to political thought, especially in regards to property rights, greatly inspired the prominent statesmen helping create the foundations of emerging countries in the late eighteenth and early nineteenth centuries, most notably Thomas Jefferson and James Madison of the United States of America.

CHAPTER THREE

Thomas Jefferson

In the *Declaration of Independence* (1776), Thomas Jefferson, arguably the most well-known and widely read of the Founders, wrote that all men “are endowed by their Creator with certain unalienable Rights,” including “Life, Liberty and the pursuit of Happiness.”¹ The preamble of this document is considered by many scholars to be simply a summary of John Locke’s political thought in the *Second Treatise*. It is then odd that Jefferson chose to state “Life, Liberty and the pursuit of Happiness” rather than repeat Locke’s phrase, which is “Lives, Liberties, and Estates, which I call by the general Name, *Property*” (123, 350). Some scholars, such as Michael Zuckert, argue that this absence of property rights in the triad of rights is irrelevant and Jefferson is still perfectly Lockean. Zuckert writes that Jefferson did not disagree “with the ideas expressed in the document; so far as they went, he almost certainly did believe them to be true.”² Rather, he shared these truths with his fellow Americans, and they are not unique to him. Further, “Locke inspired the Declaration and it has a basically Lockean meaning.”³ Other scholars, such

¹ Thomas Jefferson, *Declaration of Independence* (1776) in *Selected Writings*, ed. Harvey C. Mansfield (Illinois: Crofts Classics, 2012), 8.

² Zuckert, *Launching Liberalism*, 205.

³ Michael P. Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame, Indiana: University of Notre Dame Press, 1996), 40.

as Garry Wills, place a lot of weight on the absence of property from the triad of rights in the Declaration in order to suggest that Jefferson departs sharply from Locke. Wills argues that Jefferson was instead chiefly inspired by Scottish Enlightenment thinker Francis Hutcheson. This is not an adequate proposal, however, because Jefferson clearly did not simply abandon property rights as natural rights.

This slight difference in wording in the Declaration does not negate Locke's influence upon Jefferson, but it does reveal a curious paradox found within Jefferson's other writings dealing with property. In many of these documents, including the "Letter to Pierre Samuel Dupont de Nemours (1816)," the "Letter to Isaac H. Tiffany (1816)," the "Letter to Samuel Kerchaeval (1816)," the "Letter to James Madison (1785)," the "Exchange on the Binding of Generations (1789)" with James Madison, and the "Letter to John Adams (1813)," Jefferson provides an interesting view on property rights that, at times, adheres to and, at other times, conflicts with Locke's own understanding of property rights. Further, Jefferson does not abandon property rights altogether, but he does diminish their importance by indicating that there is a hierarchy and ranking of rights.

In the "Letter to Pierre Samuel Dupont de Nemours (1816)," the "Letter to Isaac H. Tiffany (1816)," the "Letter to Samuel Kerchaeval (1816)," and the "Letter to James Madison (1785)," Jefferson clearly evokes Lockean ideas about property. In the "Letter to Pierre Samuel Dupont de Nemours (1816)," for example, Jefferson is discussing the structure and moral principles upon which the government is to be founded. Jefferson uses a Lockean right to property as one of these moral principles: "a right to property is

founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings.”⁴ Further, in the “Letter to Isaac H. Tiffany (1816),” Jefferson articulates why elected representatives must always be kept in check by the people: “no authority existing [is] not responsible to the people, whose rights, however, to the exercise and fruits of their own industry can never be protected against the selfishness of rulers not subject to their control.”⁵ Moreover, Jefferson argues in the “Letter to Samuel Kerchaeval (1816)” that to preserve independence “we must not let our rulers load us with perpetual debt.”⁶ This debt, which leads to taxation, will leave in its wake a “train of wretchedness and oppression.”⁷ This argument can also be seen in the list of grievances within the *Declaration of Independence*, in which Jefferson states that King George III imposed taxes on the colonies without their consent. Finally, in the “Letter to James Madison (1785),” Jefferson proposes equalizing property on Lockean grounds. He agrees with Locke that ownership of land concentrated in the hands of a few often leads to much of it not be productively used: “Whenever there is in any country, uncultivated lands and unemployed poor, it is clear that the laws of property have been so

⁴ Thomas Jefferson, “Letter to Pierre Samuel Dupont de Nemours” (24 April 1816) in *Selected Writings*, ed. Harvey C. Mansfield (Illinois: Crofts Classics, 2012), 82.

⁵ Thomas Jefferson, “Letter to Isaac H. Tiffany” (26 August 1816) in *Selected Writings*, ed. Harvey C. Mansfield (Illinois: Crofts Classics, 2012), 88.

⁶ Jefferson, “Letter to Samuel Kerchaeval” (12 July 1816), 88.

⁷ *Ibid.*, 89.

far extended as to violate natural right.”⁸ This land should thus be redistributed to those who will productively use it.

Despite this evidence that Jefferson agrees with Locke in regards to property, he also breaks with Locke on this matter. For example, he is clearly hostile to inheritance, which is evident in the “Exchange on the Binding of Generations.” In this letter to James Madison, Jefferson discusses “whether one generation of men has a right to bind another,” because it is, according to Jefferson, “a question of such consequences as not only to merit decision, but place also, among the fundamental principles of every government.”⁹ He does not believe that one generation has the right to bind another, and uses natural law to justify his opinion. Since the earth belongs to the living, the “portion occupied by an individual ceases to be his when himself ceases to be.”¹⁰ Thus, when an individual dies and his land is taken over, it is allowed “not by natural right, but by a law of the society.”¹¹ Jefferson denies that there is a natural right to inherit property or, by extension, to bequeath property to another, because inheritance rests only on positive law and convention – that is, society is permitted through legislation to abolish or to permit the practice of inheritance:

⁸ Thomas Jefferson, “Letter to James Madison” (28 October 1785), from the University of Chicago, *The Founders’ Constitution*, accessed 5 April 2017, <http://press-pubs.uchicago.edu/founders/documents/v1ch15s32.html>, 2.

⁹ Jefferson, “Letter to James Madison” (6 September 1789), 1.

¹⁰ *Ibid.*, 1.

¹¹ *Ibid.*, 1.

...between society and society, or generation and generation, there is no municipal obligation, no umpire but the law of nature. We seem not to have perceived that, by the law of nature, one generation is to another as one independent nation to another.¹²

In other words, Jefferson argues that natural law is silent on inheritance in this sense with the result that if an individual decides to pass down his property after death, it is ultimately subject to the control of society. Jefferson clearly did not like the practice of inheritance, however, and this view denying the natural right to bequeath one's property allows for Jefferson's property reforms, which include severe restrictions on inheritance. This suggests that the property one acquires is not actually one's own completely; instead, one's control over what happens to their property is subject to legislation. This would also mean that Jefferson's property reforms are in contradiction to Locke, who argues that the power to bestow property is essential practice needed to free humans from the penury of nature (I, 88, 206 – 207).

Jefferson then launches into a discussion about why one generation cannot leave monetary debts to a successive generation. He writes that "if the 1st [generation] could charge it [the 2d. generation] with a debt, then the earth would belong to the dead and not the living generation."¹³ Thus, no generation should be allowed to accumulate debts greater than what can be paid back during its own lifespan. To illustrate this point, Jefferson discusses the possible debt the king and all the French would have to the

¹² Jefferson, "Letter to James Madison" (6 September 1789), 3.

¹³ *Ibid.*, 1.

Genoese who loaned them money. The French should not be responsible for repaying the Genoese creditors with their own land because: “They derive these [same] rights [over the soil] not from their predecessors, but from nature.”¹⁴ Thus, both individuals and the soil are clear of debts of those who came before due to natural law.

Moreover, Jefferson then discusses why legal debts should not extend from generation to generation. Jefferson concludes that a new constitution is needed every nineteen to twenty years because a constitution and every law “naturally expires” at that point.¹⁵ If laws are enforced longer than this period of time, “it is an act of force, and not of right.”¹⁶ Thus, according to Jefferson, laws are like debts because they are obligations based in the consent of the generation who created them which are then given to the current generation who have not explicitly consented to them. Jefferson believes in the progress in human understanding, and thus does not view his proposal as preposterous. For example, in the “Letter to Samuel Kerchaeval (1816),” Jefferson writes that “I am certainly not an advocate for frequent and untried changes in the laws and constitutions... But I know also, that laws and institutions must go hand in hand with the progress of the human mind.”¹⁷ This progress must also occur in civil institutions, as well, otherwise

¹⁴ Jefferson, “Letter to James Madison” (6 September 1789), 2.

¹⁵ *Ibid.*, 3. Also see Jefferson, “Letter to Samuel Kerchaeval” (12 July 1816), 90.

¹⁶ Jefferson, “Letter to James Madison” (6 September 1789), 3.

¹⁷ Jefferson, “Letter to Samuel Kerchaeval” (12 July 1816), 89.

“We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.”¹⁸ Thus, Jefferson argues that because each generation is independent from the one before it, each generation has an equal right to “choose for itself the form of government it believes most promotive of its own happiness.”¹⁹

James Madison, in his reply to Jefferson’s letter, finds Jefferson’s argument about inheritance between generations to be inherently problematic for multiple reasons. Madison initially writes that his “first thoughts...lead me to view the doctrine as not in all respects compatible with the course of human affairs... [and it] seems liable in practice to some very powerful objections.”²⁰ First, Madison objects to Jefferson’s assertion that because one generation is like an independent nation to another generation, there would be no requirement for a current generation to pay back a preceding generation’s debt due to natural law. Madison states: “Debts may be incurred for purposes which interest the unborn, as well as the living... Debts may even be incurred principally for the benefit of posterity.”²¹ Thus, there is, in fact, “a foundation in the nature of things, in the relation which one generation bears to another, for the descent of obligations from one to another.

¹⁸ Jefferson, “Letter to Samuel Kerchaeval” (12 July 1816), 89.

¹⁹ *Ibid.*, 90.

²⁰ James Madison, “Letter to Thomas Jefferson” (4 February 1790), 4.

²¹ *Ibid.*, 5.

Equity requires it. Mutual good is promoted by it.”²² Second, Madison reveals how impractical and chaotic it would be to have every generation re-establish the same, fundamental laws every nineteen years. If this had to be done, society would essentially return to a state of nature, which is always on the verge of becoming a state of war, every nineteen years. By returning to nature, individuals would lose their property and fight one another: “All the rights depending on positive laws, that is, most of the rights of property would become absolutely defunct; and the most violent struggles will be generated between those interested in reviving and those interested in new-modelling the former state of property.”²³ Third, Madison uses reasoning based in economic opportunity to reject Jefferson’s theory. Madison explained in Federalist 10 that the government needs to help promote competing factions in order for a commercial republic to be prosperous.

In this exchange with Jefferson, Madison further elaborates on this point:

the frequent return of periods superseding all the obligations depending on antecedent laws and usages, must by weakening the reverence for those obligations, co-operate with motives to licentiousness already too powerful; and that the uncertainty incident to such a state of things would on one side discourage the steady exertions of industry produced by permanent laws, and on the other, give a disproportionate advantage to the more, over the less, sagacious and enterprising part of the society.²⁴

Fourth, Madison rejects Jefferson’s claim that every member of each new generation does not give his consent to the pre-existing government. Madison argues that everyone

²² Madison, “Letter to Thomas Jefferson” (4 February 1790), 5.

²³ *Ibid.*, 5.

²⁴ *Ibid.*, 5.

does, in fact, give individual consent to the government and its laws. He asks: “on what principle does the voice of the majority bind the minority?”²⁵ His answer is tacit assent, because if unanimity was required, “either a unanimous repetition of every law would be necessary on the accession of new members, or an express assent must be obtained from these to rule by which the voice of the majority is made the voice of the whole.”²⁶ Finally, Madison argues that Jefferson’s plan would simply not work because there is a natural conservative prejudice within Americans, because “The evils suffered and feared from weakness in Government, and licentiousness in the people, have turned the attention more towards the means of strengthening the former than of narrowing its extent in the minds of the latter.”²⁷

Although Madison successfully dismantles Jefferson’s theory of abolishing inheritance between generations, it is still worth examining how Jefferson’s thought on the issue of inheritance is contrary to Lockean property rights. For example, Locke does not advocate for primogeniture, while Jefferson is clearly hostile to the practice of inheritance in every form. He differs from Locke for an important reason, however: he does not want an aristocracy, which traditionally is rooted in wealth that is accrued into the hands of a few families over time. This discussion about how to abolish the

²⁵ Madison, “Letter to Thomas Jefferson” (4 February 1790), 6.

²⁶ *Ibid.*, 6.

²⁷ *Ibid.*, 6.

aristocracy is found in the “Letter to John Adams” (1813). Jefferson agrees with Adams that there is a natural aristocracy, which is based on virtue and talents, as well as an artificial (that is, the traditional meaning of) aristocracy, which is based on wealth and birth.²⁸ Jefferson considers the natural aristocracy to be “the most precious gift of nature for the instruction, the trusts, and government of society” while the artificial, or pseudo, aristocracy is “a mischievous ingredient in government, and provision should be made to prevent its ascendancy.”²⁹

Adams and Jefferson disagree with how to deal with the pseudo-aristocracy, however. Adams, according to Jefferson, has decided that they need to be put in a separate chamber of legislation (i.e. the Senate as opposed to the House of Representatives), while Jefferson argues: “I think the best remedy is exactly that provided by all our constitutions, to leave to the citizens the free election and separation of the *aristoi* from the Pseudo-*aristoi*.”³⁰ This is problematic, however, because Jefferson never says that the natural aristocracy has a natural right to govern, nor that the people have a natural obligation to obey them. Thus, Jefferson is tasked with reconciling the principle that just rule arises only from the consent of the governed with the need for the best to rule, which can be done only if the people consent to be ruled by the best. Jefferson

²⁸ Thomas Jefferson, “Letter to John Adams” (28 October 1813) in *Selected Writings*, ed. Harvey C. Mansfield (Illinois: Crofts Classics, 2012), 75.

²⁹ Jefferson, “Letter to John Adams” (28 October 1813), 75 – 76.

³⁰ *Ibid.*, 76.

advocates for the education of the people and describes a continual progressive human nature, which would allow for the people to have the ability and virtues needed to elect the best: “Education would have raised the mass of the people to the high ground of moral respectability necessary for their [that is, the mass of the people] own safety, and to orderly government; and would have completed the great object of qualifying them to select the veritable aristoi, for the trusts of the government, to the exclusion of the Pseudalists.”³¹ It is not clear, then, what the difference between the natural aristocracy and the people is because the people are also wise and prudent. It thus is confusing whether Jefferson’s proposals about public education, property ownership, local self-government, and human progress are ways in which Jefferson sees the natural aristocracy arising, or whether these actually eliminate the need for the natural aristocracy (because the people will have been improved to the point that they are able to govern themselves well).

Jefferson provides another way to dismantle the artificial aristocracy – that is, through legislation. To illustrate this point, Jefferson recounts his influence upon the Virginia legislature in this regard:

At the first session of our legislature after the Declaration of Independence, we passed a law abolishing entails. And this was followed by one abolishing the privilege of Primogeniture, and dividing the lands of intestates equally among all their children, or other representatives. These laws, drawn by myself, laid the axe to the root of Pseudo-aristocracy.³²

³¹ Jefferson, “Letter to John Adams” (28 October 1813), 78.

³² *Ibid.*, 77.

This abolition of entails and the privilege of primogeniture is exactly what Locke recommends in his *Second Treatise*. Thus, it is evident that Jefferson clearly followed Locke on some issues regarding property, specifically the rejection of primogeniture. Locke rejected primogeniture, however, on the basis that it was against the interests of the parents. That is to say, Locke insists that inheritance should be spread among every child in a family in order for parents to gain and maintain their children's loyalty, as well as to ensure that they live on after their deaths through their children. Jefferson, on the other hand, argues for the abolition of inheritance because he takes issue with wealth based on birth.

In this letter to Adams, Jefferson also relies on property as a means to stabilize society. For example, the major issue of this letter is how to reconcile the natural aristocracy with the right to self-government. The only way to do so is if the people willingly and knowingly select the natural aristocracy to govern them, and Jefferson provides a two-fold solution: first, destroy the pseudo-aristocracy in order to make it easier for the people to recognize the natural aristocracy; second, give the people the ability/knowledge to know who the best are in order to choose them. Thus, he proposes a public education system, and proposes that everyone have some property so the people will willingly elect the natural aristocrats because they will know that their property interests will be better taken care of by the natural aristocrats. Jefferson is thus using property rights as the means to form a people capable of making the right, prudent political decisions which would stabilize society.

Jefferson clearly held certain Lockean views of property rights while rejecting others which is important for many reasons. First, Jefferson provides an interpretation of how the US should conduct itself domestically and internationally that is very different than the interpretation Americans accepted and promoted in his own time and subsequently. For example, when Jefferson argues that it is against natural law for one generation to receive inheritance (either monetarily or legally) from a proceeding generation, he is calling for a new understanding of what constitutes a nation. There would potentially be no shared history or heritage between generations, no legal tradition upheld over hundreds or even thousands of years, nor would a current generation be held accountable to paying back the monetary debt of former generations. Second, he is also assuming that human progress is continual; he is assuming that violence will not arise every twenty or so years when citizens essentially willingly re-enter the state of nature in order to consent to a new constitution because humans will be becoming enlightened and moving away from their barbarism. Finally, if Jefferson's argument for the abolition of inheritance had been widely accepted and implemented, there would most likely be a very different constitution for the United States nowadays. Instead, Americans are able to evoke fundamental, timeless laws that are found within the United States Constitution, and, if need be, repeal or change these laws. That being said, however, Jefferson clearly anticipates the 20th century Progressives on a number of issues that stem from his alterations of Lockean property rights. First, he argues for a new constitution every twenty years to keep up with the demands of every generation, an idea that is similar to the "Living Constitution." Progressives argue that the Constitution needs to be treated as

something that should no longer bind the current society, and thus must change in accordance with the opinions and needs of the current society. Second, Jefferson provides for a severe distinction of rights, in which certain rights (human rights and civil rights) are weighted above and against other rights (property rights).

CHAPTER FOUR

James Madison

When the American states convened the Constitutional Convention in 1787 in order to rectify the problems that arose from the Articles of Confederation, it was ultimately decided that the United States needed to create and adopt an entirely new constitution. James Madison, who was the author of the Virginia Plan, which would be the embryo of the Constitution, and who later became the fourth President of the United States, was unsurprisingly an outspoken proponent of this new Constitution. In a series of newspaper articles called the “Federalist Papers,” Madison, Alexander Hamilton, and John Jay each advocated for this new Constitution they helped create, and in Federalist 10, “The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection” (1787), which is the accepted theory of the Constitution, Madison describes the threat of factions in civil society. Madison demonstrates a very Lockean understanding of property in Federalist 10 that can also be seen in another article he wrote, aptly titled “Property” (1792), in which he discusses and expands upon Lockean property rights. The property rights doctrine developed in Federalist 10 and “Property” point to the specific influence of Locke’s property rights doctrine on Madison’s political thought, inasmuch as Madison first insists that the government of a commercial republic needs to promote acquisition in order to flourish, then identifies all rights to be forms of

property, meaning that the government must protect every right of its citizens rather than protecting only their material property.

Madison's view of property rights is most clearly developed in the essay "Property." He provides two definitions of property. He writes that the particular application of property is "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."¹ That is, a person's land, merchandise or money. There is a "larger and juster" meaning, as well: "it embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage*."² This includes a person's opinions and the free communication of those opinions. The former definition Madison provides is obviously Lockean as it reflects the understanding of property articulated by Locke in Chapter V of the *Second Treatise*. Locke writes that "every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his" (27, 287 - 8). Property is extended beyond self-possession when a person adds his labor to an object provided by Nature, which allows for that object to become that individual's property. The "larger and juster" meaning of property goes beyond physical property to include a person's opinions and religious beliefs. This non-material definition is also Lockean, who wrote later in the *Second Treatise* "Lives, Liberties, and Estates, which I call by the general Name, *Property*" (123,

¹ Madison, "Property," 1.

² *Ibid.*, 1.

350). Thus, except in Chapter V and in other places where it is clearly meant to be understood in the material sense, Locke's use of the word 'property' can be interpreted in the non-material sense which Madison describes.³

Moreover, in "Property" Madison describes how property is a natural right. He writes:

He [that is, any individual] has a property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, *as a man is said to have a right to his property, he may be equally said to have a property in his rights.*⁴

If property is a natural right, then it is unalienable. In other words, with the original social contract used in the formation of civil society, such an agreement is not an agreement that takes away one's right to property. Further, it then follows that the government needs to protect it. It is important to note that because Locke limits the goals of government to just protection of property (and the lives and liberty of the governed), a large, private sphere is created. This large, private sphere will be where most business is conducted and where individuals will spend most of their lives. The government, on the other hand, will be responsible for making sure civil society remains peaceful.

Madison thus also follows Locke's understanding of what the ends of government should be, which can be seen in both Federalist 10 and "Property." Madison writes in

³ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge UP, 1988), 102.

⁴ Madison, "Property," 1.

“Property” that “Government is instituted to protect property of every sort.”⁵ He also states in Federalist 10 that “the protection of these faculties [from which the rights of property originate] is the first object of government.”⁶ Likewise, Locke argues in his *Second Treatise* that “The great and *chief end* therefore, of Mens uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property*” (124, 350 – 351). This Lockean principle can also be seen in the Bill of Rights, a document that Madison penned although he did not initially support its creation. For example, the 1st Amendment guarantees freedom of speech, while the 4th Amendment provides that no person will be subject to an unlawful search and seizure, and the 5th Amendment of the Bill of Rights states that no Person shall “be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation”. Madison likewise argues in “Property,” which was written after the adoption of the Bill of Rights, that the government of the United States will not be one which

provides that none [property] shall be taken directly even for public use without indemnification to the owner, and yet *directly* violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which *indirectly* violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares, the influence [inference?] will have been anticipated.⁷

⁵ Madison, “Property,” 1.

⁶ James Madison, “Federalist No. 10: The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection,” from the Library of Congress, *The Federalist Papers*, accessed 3 February 2017, <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-10>, 2.

⁷ Madison, “Property,” 2 – 3.

Thus, Locke's idea that the protection of property is the goal of government is clearly a fundamental principle behind the United States government as seen by Madison's own words.

Furthermore, if the goal of government is simply to protect property and the faculties from which property rights originate, then a government can be just or unjust depending on how closely it they aligns to that principle. For example, Madison argues that only a government that protects property of every sort is a just government for it "impartially secures to every man, whatever is his own."⁸ An unjust government, on the other hand, is one in which "the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest" and one in which "arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations."⁹ Finally, Madison argues that if the United States wishes to obtain or deserve full praise of being a wise and just government, then it will need to "equally respect the rights of property, and the property in rights."¹⁰ That is, the governments of the United States (federal and states) will "rival the government that most sacredly guards the former; and

⁸ Madison, "Property," 2.

⁹ *Ibid.*, 2.

¹⁰ *Ibid.*, 3.

by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.”¹¹

By articulating just and unjust in this way, Madison is clearly invoking the definition of justice as Locke argues for it, rather than the classical definition. Locke is the first philosopher to argue that “peacefully competitive acquisitiveness is the core of justice.”¹² In other words, Locke makes the claim that justice “requires society to devote itself chiefly to encouraging every individual to pursue the limitless, self-interested acquisition of ever more and more private material possessions and economic buying power (money)” as long as “each person respects the right of every other person to do likewise.”¹³ The Christian – Aristotelian traditions, however, condemn material acquisitiveness. In Aristotle’s *Politics*, for example, Aristotle lays out four cardinal virtues – courage, moderation, justice, and prudence. Moderation is the “rational control of one’s desires for pleasure” and justice is the “rational subordination of self-interest to the common good.”¹⁴ Locke, and thus Madison as well, clearly breaks with the Christian-Aristotelian traditions, and champions the opposite (the individual’s pursuit of his own

¹¹ Madison, “Property,” 3.

¹² Pangle and Burns, *The Key Texts of Political Philosophy: An Introduction*, 289.

¹³ *Ibid.*, 288 – 289.

¹⁴ *Ibid.*, 74.

interest, which will ultimately be in the collective interests of everyone) as justice in his new political thought.

Madison, however, is understandably concerned with the problem often found in democracies: government by the majority tends to lead to the unjust treatment of minorities. He clearly thought that a well-structured legislature that used its power well, such as the one created by the Constitution, its separation of powers, and system of checks and balances, would make a Bill of Rights unnecessary because it would prevent the violation of rights by an overbearing majority. For example, in his letter to Jefferson of 17 October 1788, Madison writes that “that among the advocates for the Constitution, there are some who wish for further guards to public liberty and individual rights.”¹⁵ That is, they are advocates for the Bill of Rights, which would “consist of a constitutional declaration of the most essential rights,” although “there are many who think such addition unnecessary, and not a few who think it misplaced in such a Constitution.” Madison is one of those who believes it to be an unnecessary addition. He writes that “there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude,” and “I am sure that the rights of Conscience in particular, if submitted to public definition would be narrowed much more than they are likely ever to be by an assumed power.”¹⁶ Thus, Madison not only saw

¹⁵ Madison, “Letter to Jefferson” (17 Oct 1788), from the National Archives, *Founders Online*, accessed 5 April 2017, <http://founders.archives.gov/documents/Madison/01-11-02-0218>, 1.

¹⁶ Madison, “Letter to Jefferson” (17 Oct 1788), 1.

certain dangers in an inclusion of a list of rights, but he also thought that the Constitution would prevent the violation of rights of the minority by an overbearing majority.

This can be seen in Federalist 10, in which Madison describes factions and their causes, which are intrinsically tied to property, as well as a means (beyond the Bill of Rights) for stopping one faction from infringing upon the rights of another faction. A faction is a group of citizens “who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”¹⁷ Further, the “most common and durable source of faction has been the various and unequal distribution of property”:

Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views.¹⁸

Moreover, Madison argues that there are two methods of removing the causes of faction that plague society: “the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.”¹⁹ Madison writes that the first method is “worse than the disease” while the second method is “as impracticable as the first would be unwise.”²⁰ It is

¹⁷ Madison, Federalist No. 10, 2.

¹⁸ *Ibid.*, 3.

¹⁹ *Ibid.*, 2.

²⁰ *Ibid.*, 2.

impracticable because “As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed.”²¹ Further, Madison writes that “The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests.”²² The government has one end, as mentioned earlier: to protect these faculties. By protecting “different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.”²³ These diverse and various factions are, in fact, needed to help a commercial republic, like the United States, flourish, which is why the government needs to promote and support acquisition: “The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.”²⁴

If the government does not regulate these “various and interfering interests”, however, factions (not only the economic factions, but more likely those formed out of opinions and passions) can cause serious harm. For example, there are various issues

²¹ Madison, Federalist No. 10, 2.

²² *Ibid.*, 2.

²³ *Ibid.*, 2.

²⁴ *Ibid.*, 3.

which can arise if the majority is not tempered by various competing factions. An example of this is the potential abuse of taxation by one faction upon another: “there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice.”²⁵ Madison’s views about the object of government – that is, the protection of property and thus the support of various factions being created in order to help a commercial republic flourish – is in line with Locke’s principle that the only goal of government is to protect both the material and non-material property of its citizens.

Madison clearly articulates a Lockean understanding of property in two of his writings, Federalist 10 (1787) and “Property” (1792). He writes that there are two types of property: one that is the “dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual,” and a second that “embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.*”²⁶ Both of these definitions are reflected by Locke’s understanding of property, which encompasses “Lives, Liberties, and Estates” (123, 350). Further, Madison argues that the only end of government is “to protect property of every sort.”²⁷ Property and its unequal distribution and acquisition is a common cause of faction in civil society, but competing factions are, in fact, required for

²⁵ Madison, Federalist No. 10, 4.

²⁶ Madison, “Property,” 1.

²⁷ *Ibid.*, 1.

a commercial republic to flourish. Thus, the government needs to promote and support acquisition, as well: “The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.”²⁸ If the government does not support the formation and competition between the various factions, however, one faction can cause harm to another faction.

Locke clearly influenced James Madison, especially in regards to property rights, which is evident upon inspection of these two documents. Madison is a better reader of Locke than Jefferson inasmuch as he understands property as Locke does. He appears to take this understanding further than Locke, however, in Federalist 10, in which he discusses the need for government to promote competing factions in a commercial republic to avoid tyranny of the majority. This Lockean influence is important for two reasons. First, as seen in Federalist 10, Madison, through his implementation and natural expansion upon Locke’s political thought, is able to discuss how the United States government should combat the tyranny of any one faction over another. Second, the fingerprints of Locke’s thought on property can be seen in the Bill of Rights, which are the first ten amendments to the United States Constitution, and “Property.” In these documents, Madison identifies all rights to be forms of property. Thus, the weight of these rights is equalized, which prohibits a government from protecting and promoting one right over another, which is created by Jefferson’s alteration of Lockean property

²⁸ Madison, Federalist No. 10, 3.

rights. When Madison argues that the end of government is “to protect property of every sort,”²⁹ then, he means that the government’s duty is to protect every right of its citizens rather than protecting only material property.

²⁹ Madison, “Property,” 1.

CHAPTER FIVE

Conclusion

Locke's political thought, especially his ideas concerning property rights, as expressed in his *Second Treatise of Government* was influential on the American Founders. America, in fact, has a Lockean founding. Locke's theory on property rights is extremely complicated, however, so it simultaneously provides the basis for the commercial republic in James Madison's writings, yet is altered in Thomas Jefferson's writings. Further, it appears that Madison is a better reader of Locke than Jefferson because he accepts Lockean property rights, which allows for all rights to be equalized as forms of property that need to be protected by the government, while Jefferson alters Lockean thought allowing for rights to be weighted over and against one another by 20th century Progressives.

In Chapter V "Property," Locke explains how common property in the state of nature is transformed into individual property by means of human labor, and the need to secure this property is what ultimately causes people to leave the state of nature and establish a civil society. Thus, the aim of government is the preservation of property. James Madison likewise wrote that the end of government is "to protect property of every sort."¹ Further, while Locke wrote in the *Second Treatise* that "Lives, Liberties, and

¹ Madison, "Property," 1.

Estates” are included in the term property (123, 350), Madison also argues that there are multiple types of property. One is “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual,”² and the second “embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.*”³ By articulating two types of property – one material, one non-material – Madison is equalizing all rights as forms of property. This prevents a government from protecting and promoting one right over another (as the Jeffersonian tradition does).

This is also a means of allowing the government to prevent competing factions from oppressing one another. Locke argues that there is no limit to private property once money is invented because goods can be sold in exchange for money, which does not spoil, and the acquisition of wealth is unlimited (due to an individual’s ability to grow his prosperity through labor). Thus, there is a right to accumulate as much property as possible in order “to increase the common stock of mankind” (37, 294), so it is the government’s duty not only to protect simply both meanings of property, but it must also promote competitive acquisition. Madison discusses this at-length in Federalist 10, in which he explains how the government needs to promote and support acquisition because diverse, competing factions are needed to help a commercial republic, like the United States, flourish. If the government does not do this, one faction can harm another faction:

² Madison, “Property,” 1.

³ *Ibid.*, 1.

Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents.⁴

Madison suggests that the government promote acquisition and support citizens' rights through the Constitution rather than a Bill of Rights, which could potentially limit those rights, although he eventually does write the list of those enumerated rights. The Bill of Rights ultimately protects citizens' material and non-material property rights.

Thomas Jefferson, on the other hand, adheres to and then clearly breaks with Lockean property rights on a number of issues. For example, in "Letter to James Madison (1785)", he proposes equalizing property on Lockean grounds: concentrated ownership of land leads to much of it not being productively used, thus land that is not being productively used should be redistributed to those who will productively use it. In the "Exchange on the Binding of Generations," however, Jefferson is clearly hostile to inheritance of all forms, a proposition which is not Lockean. Locke viewed inheritance as way for parents to fulfil their parental duty to their children and as a means of self-preservation, while Jefferson saw it as the foundation for the pseudo-aristocracy, which is based on wealth and birth. Further, Jefferson articulates that one generation cannot bind another, either monetarily or legally, because to do so would be against natural law since the earth belongs to the living and the "portion occupied by an individual ceases to be his when he himself ceases to be."⁵ Thus, Jefferson advocates for the creation of a new

⁴ Madison, "James Madison to Jefferson" (17 October 1788), 2.

⁵ Jefferson, "Letter to James Madison" (6 September 1789), 1.

constitution every nineteen to twenty years because laws are like debts based in the consent of the generation who created them while the current generation never explicitly consents to them. He argues that each generation has an equal right to “choose for itself the form of government it believes most promotive of its own happiness.”⁶ Madison, however, expertly dismantles Jefferson’s argument by arguing that everyone does, in fact, give his consent to the government and its laws through tacit assent.

Despite Madison’s rejection of it, Jefferson’s thought that arises from altered Lockeanism clearly prepares for 20th century Progressives who advocate for a “Living Constitution,” which is a call for the Constitution to be changed in accordance with the opinions and needs of the current society, as well as to weigh certain rights over and against one another. The latter is evident in President Franklin Roosevelt’s 1944 State of the Union address, which promotes his “Second Bill of Rights.” Roosevelt writes that the beginning of the Republic and its growth to its present strength was “under the protection of certain inalienable political rights [to life and liberty] – among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures.”⁷ As the nation grew in size and stature, however, “these political rights proved inadequate to assure...equality in the pursuit of happiness.”⁸ Thus, the American people

⁶ Jefferson, “Letter to Samuel Kercheval” (12 July 1816), 90.

⁷ Franklin D. Roosevelt, “State of the Union Message to Congress” (Washington, D.C., 11 January 1944), *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=16518>, 7.

⁸ *Ibid.*, 7.

“have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence.”⁹ Roosevelt then proposes a second Bill of Rights, “under which a new basis of security and prosperity can be established for all regardless of station, race, or creed.”¹⁰ This new Bill of Rights is composed of:

The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation; The right to earn enough to provide adequate food and clothing and recreation; The right of every farmer to raise and sell his products at a return which will give him and his family a decent living; The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad; The right of every family to a decent home; The right to adequate medical care and the opportunity to achieve and enjoy good health; The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment; The right to a good education.¹¹

These benefits have since been referred to as rights – that is, they are human rights and civil rights which encompass a right to work, to salary, to housing, to health care, to education – although they have never been formally added to the Constitution as such. These “rights,” in contrast to those in the original Bill of Rights, tend to require the income of some citizens to pay for other citizens’ so-called rights. Thus, Roosevelt’s new conception of rights actually diminishes the importance of the older notion of rights, especially an individual’s right to property, inasmuch as these new human rights and civil

⁹ Roosevelt, “State of the Union,” 7.

¹⁰ *Ibid.*, 8.

¹¹ *Ibid.*, 8.

rights force property rights to be sacrificed on the part of one citizen in order to secure the rights of another.

America clearly has a Lockean founding based on Locke's property rights as expressed in his *Second Treatise*. There are two traditions in American political thought that stem from this complicated theory of property rights, however: the Madisonian and the Jeffersonian traditions. Madison, who was clearly a better reader of Locke than Jefferson in regards to property, calls for the government to not only promote acquisition to keep the commercial republic flourishing, but he also equalizes all rights as forms of property. Thus, the government is responsible for protecting both the material and non-material rights of its citizens, all of which Madison as well as Locke would consider to be property, rather than considering certain rights to be more important than other rights. This can specifically be seen in the Bill of Rights, which protects both material and non-material property rights. Jefferson, on the other hand, has so much concern for self-government and government by consent, that his commitment to Lockean property rights is diminished. He advocates for a new constitution every twenty or so years on the basis that inheritance is against natural law. This proposal for a new constitution is similar to the idea of the "Living Constitution," which calls for the Constitution to be changed in accordance with the opinions and needs of the current society. Moreover, Jefferson's alterations to Lockean property rights appear to be a direct precursor to 20th century Progressives who do, in fact, negate the importance of property rights time and again in order to promote "better" rights – that is, human rights and civil rights.

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