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LIFE, LIBERTY, AND . . . : JEFFERSON ON PROPERTY RIGHTS

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> Property does not exist because there are laws, but laws exist because there is property.[1]

Surveys of libertarian-leaning individuals in America show that the intellectual champions they venerate the most are Thomas Jefferson and Ayn Rand.[2] The author of the *Declaration of Independence* is an inspiring source for individuals longing for liberty all around the world, since he was a devotee of individual rights, freedom of choice, limited government, and, above all, the natural origin, and thus the inalienable character, of a personal right to property.

However, such libertarian-leaning individuals might be surprised to learn that, in academic circles, Jefferson is depicted as a proto-socialist, the advocate of simple majority rule, and a powerful enemy of the wicked "possessive individualism" that permeated the revolutionary period and the early republic.

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[1]Frédéric Bastiat, "Property and Law," in *Selected Essays on Political Economy*, trans. Seymour Cain, ed. George B. de Huszar (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1964), p. 97.

[2]E.g., "The Liberty Poll," *Liberty* 13, no. 2 (February 1999), p. 26: "The thinker who most influenced our respondents' intellectual development was Ayn Rand. . . . Thomas Jefferson . . . was a very close second to Rand (who edged him by .0008%)."

In this article, I argue that the professional academics' portrayal of Jefferson, particularly in the area of property rights, is mistaken.

Jefferson was a radical political thinker who was uncompromising in his defense of the rights of individuals and of the states vis-à-vis the federation. His fundamental statement on the rights of man is the *Declaration of Independence*; the *Kentucky Resolutions*, published twenty-two years later, embodied his vision of the proper relations between the states and the federation. These are political documents in all respects. Partially emended, they were endorsed by the Continental Congress and the Kentucky assembly. Indeed, he effectively regarded them as the property of the legislative bodies that had approved them rather than as his own creations. He wrote: "Having become the acts of public bodies, there can be no personal claim on them."[3]

The unifying element of the entire corpus of Jeffersonian political thought—and above all of the transition from the rights of man to those of states, in a continuum of reflections on political affairs and institutions—is his unreserved support for the doctrine of natural law. He believed that safeguarding the rights of man was the end (and limit) of the powers granted to government. States' rights, likewise specifically defined as "natural" in his draft of the *Kentucky Resolutions of 1798*, arose from the constitutional pact and derived from the contractual nature of the American union. The same radical Lockean approach both underlies the features of his political thought and represents the logical and hermeneutic tool that gives direct insight into the heart of Jeffersonian political doctrine.

This article will show that Jefferson regarded property as a natural right. As will become clear, all proto-socialist interpretations of his political doctrine stem from exactly the opposite assertion, i.e., that Jefferson did not consider property a natural right. Thus, what Jefferson actually thought about property rights becomes of crucial consequence, since it is the only path leading to his political doctrine; if the wrong direction is taken, his political theory becomes murky and unintelligible.

The works that form part of the "revisionist" interpretation have very few textual footholds to grasp for support, as I will show. But the fact remains that they have been taken seriously in academic circles,

[3]Thomas Jefferson to John W. Campbell, September 3, 1809, *The Writings of Thomas Jefferson*, ed. Andrew A. Lipscomb and Albert Ellery Bergh (Washington, D.C.: Thomas Jefferson Memorial Association, 1904–1907), vol. 12, p. 309.

and contribute significantly to shaping the "scholars' Jefferson,"[4] a view which is far removed from the popular opinion that still recognizes the third president as a champion of limited government and individual rights.

THE DECLARATION OF INDEPENDENCE AND NATURAL LAW

It is germane to start with the Preamble to the *Declaration of Independence* in the form in which it was articulated by Jefferson:

> We hold these truths to be sacred & undeniable; that all men are created equal and independent, that from that equal creation they derive rights inherent and inalienable, among which are the preservation of life, & liberty, & the pursuit of happiness; that to secure these ends, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government shall become destructive of these ends, it is the right of the people to alter or to abolish it, & to institute new government laying it's foundation on such principles and organising it's powers in such forms, as to them shall seem most likely to effect their safety and happiness.[5]

This preamble has been extensively scrutinized and subjected to in-depth reading, and though its content may be "self-evident," every single linguistic and conceptual component has been repeatedly and comprehensively dissected.

Jefferson's first draft differs from the final version because "sacred & undeniable" truths became "self-evident" truths.[6] The expression

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[4]See, e.g., Peter S. Onuf, "The Scholars' Jefferson," *William & Mary Quarterly*, 3rd series, 50 (1993), pp. 671–99.

[5]Thomas Jefferson, "Original Rough Draught of the Declaration of Independence," in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd, et al. (Princeton, N.J.: Princeton University Press, 1950), vol. 1, pp. 423–24. The quotation is from the first version drafted by Jefferson. A second version is the one submitted by the Committee composed of Jefferson, Sherman, Livingston, Franklin, and Adams. A third version of the Declaration is the one adopted by the Continental Congress.

[6]This change was once attributed to Benjamin Franklin, then generally deemed as inserted by Jefferson himself. See Boyd, "Editorial Note," *The Papers of Thomas Jefferson*, vol. 1, p. 427. More recently, the view that the author of the change could actually have been Franklin is gaining favor. See, e.g., for

"self-evident" has caught the mind of scholars.[7] It is maintained that here lies the entire epistemology of Jeffersonian natural law.[8]

The postulate of self-evidence is typically Lockean, as pointed out by several Jeffersonian scholars.[9] Locke addressed this issue in his 1690 work *An Essay Concerning Human Understanding*, illustrating it with a series of practical examples, and clearly delineating the meaning of these truths that can be grasped by means of intuition. Locke defined such awareness as intuitive knowledge, which consists in perceiving the truth of the principle immediately upon understanding its terms.[10] The other forms of knowledge, on the other hand, are not immediate and require proof.

Mathematics is no more than a model: knowledge of this kind can also be obtained with regard to political and social issues. In a September 1789 letter to Madison, which we will discuss in greater detail further on, Jefferson stated, "I set out on this ground which I suppose to be self evident, that the earth belongs in usufruct to the living; that the dead have neither powers nor rights over it."[11] More than thirty years later, taking up the same concepts, he declared, fully in harmony with the Lockean view of intuitive knowledge:

> These are axioms so self-evident that *no explanation can make them plainer*; for he is not to be reasoned with who

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the pro-Franklin view, Walter Isaacson, *Benjamin Franklin: An American Life* (New York: Simon & Schuster, 2003).

[7]Michael P. Zuckert, in "Self-Evident Truth and the Declaration of Independence," *Review of Politics* 49, no. 2 (1987), pp. 319–39, contends that "self-evident" is to be related to the initial "we hold," thus weakening the axiomatic basis of natural rights and stressing its political significance.

[8]The pursuit of happiness captured the scholars' attention in the past generations, but it is now the self-evident truths that draw most of the intellectual consideration. See, e.g., Allen Jayne, *Jefferson's Declaration of Independence: Origins, Philosophy, and Theology* (Lexington: University Press of Kentucky, 1998), pp. 109–38; and Hans L. Heicholz, *Harmonizing Sentiments: The Declaration of Independence and the Jeffersonian Idea of Self-Government* (New York: Peter Lang, 2000).

[9]See, e.g., Morton White, *The Philosophy of the American Revolution* (New York: Oxford University Press, 1978), pp. 9–96.

[10]See the discussion of Locke's concept of self-evidence in White, *The Philosophy of the American Revolution*, pp. 15–20, 23–36.

[11]Thomas Jefferson to James Madison, September 6, 1789, *The Papers of Thomas Jefferson*, vol. 15, p. 392.

> says that non-existence can control existence, or that nothing can move something.[12]

As for the Revolution's historiography, it is well-known that various authors consider the traditional or positive rights of the Englishmen as the underlying foundation of the settlers' rebellion. But the Preamble to the *Declaration*, with its emphasis on natural rights, not positive rights, belies this idea. Attempts have been made to bypass it, but many remain unconvinced of the irrelevance of natural law and natural rights for a generation of politicians who voted for and approved the document; even less is it likely for such doctrines to have been irrelevant for the person who drafted it.

In the revolutionary document *par excellence*, all rights, starting from the colonies' right to independence, are unequivocally prescribed by the "Laws of Nature and Nature's God." Despite much literature assessing quite the opposite:

> It was the change from historical prescription to natural rights that represents the radical core of the American Revolution and the American Founding. It was not the rights of Englishmen . . . that was the subject of the Declaration, but the rights of man derived, not indeed from any particular constitution or positive law, but from nature.[13]

This simple truth, valid for the entire revolutionary generation, translates into absolute certainty in Thomas Jefferson's case. In an 1824 letter, the third president compared England's Glorious Revolution to the American Revolution:

> Our Revolution commenced on more favorable grounds. It presented us an album on which we were free to write what we pleased. We had no occasion to search into musty records, to hunt up royal parchments, or to investigate the laws and institutions of a semi-barbarous ancestry. We appealed to those of nature, and found them engraved in our hearts.[14]

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[12]Thomas Jefferson to Thomas Earle, September 24, 1823, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 15, p. 470, italics added.

[13]Edward J. Erler, "The Great Fence to Liberty: The Right to Property in the American Founding," in *Liberty, Property, and the Foundations of the American Constitution*, ed. Ellen F. Paul and Howard Dickman (Albany: State University of New York Press, 1989), p. 47.

[14]Thomas Jefferson to John Cartwright, June 5, 1824, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 16, p. 44.

That the *Declaration* contains a general philosophy of relations between political power and civil society appears indisputable. This notwithstanding, it has often been regarded by scholars as the birth certificate of a new nation, admittedly rich in striking phrases, with considerable stylistic effect and potentially evocative, destined to reverberate in citizens' hearts throughout the ages, yet virtually devoid of practical relevance save for one specific point: namely, the severance of links between the colonies and the mother country.

The general or purely American meaning of the fourth of July was disputed even among the founding fathers. In 1826, during the celebrations for the fiftieth anniversary of the *Declaration*, John Adams and Thomas Jefferson were each invited to give a short speech. Neither was able to attend on account of their physical frailty (in fact, both were destined to pass away precisely on that day), but the organizer of the event, Washington D.C. mayor Roger Weightman, insisted on obtaining from them a few thoughts on the meaning of that commemoration for the Americans. Adams wrote only one sentence: "Independence Forever!" "Should we add anything?" enquired the slightly perplexed members of the committee. "Not a word," Adams replied.[15]

By contrast, Jefferson did satisfy the mayor's request by writing the final lines of his long-lived epistolary production: a letter embodying not only his assessment of the Revolution but also his political testament. First and foremost, he reiterated his constitutional and generational philosophy, composed of the claim—which occupies a central position throughout his thought—that each generation has absolute freedom to make its own decisions concerning the political set-up and the form of government. He reflected with satisfaction that today, "our fellow citizens . . . continue to approve the choice we made."[16]

Jefferson firmly believed that his generation's decision represented a torch of freedom for the rest of the planet as well.

> May it [the Declaration] be to the world, . . . the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind

[15]See Richard B. Bernstein, "Thomas Jefferson's Letter to Roger D. Weightman," in *Roots of the Republic: American Founding Documents Interpreted*, ed. Stephen L. Schechter (Madison, Wis.: Madison House, 1990), p. 444.

[16]Thomas Jefferson to Roger Weightman, June 24, 1826, *The Writings of Thomas Jefferson*, ed. Paul L. Ford (New York: Putnam, 1892–1898), vol. 10, p. 391.

> themselves, and to assume the blessings and security of self-government. That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God. These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them.[17]

This powerful message of emancipation embracing the whole of mankind also represents the authentic interpretation of the *Declaration*, inasmuch as the latter has an innovative conceptual structure and is addressed, as was customary during the Enlightenment, not only to Americans but to all men on earth. The protection of the inalienable rights of individuals—it emerges incontrovertibly from the text—is the only possible function of the government, the latter consequently being reduced to a "philosophical minimum," that is, to a very strict contract between citizens and policemen.

The *Declaration* is rather nonspecific on the degree of severity of violations such as would justify recourse to revolution: the reference is to "a long train of abuses." Many scholars have noted[18] that Jefferson has in mind a specific Lockean passage:

> If a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, . . . it is not to be wondered that they should then rouse themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected.[19]

Jefferson does not quantify the abuses a population can tolerate before rebelling:

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[17]Thomas Jefferson to Roger Weightman, pp. 391–92.

[18]E.g., see Ronald Hamowy, "Jefferson and the Scottish Enlightenment: A Critique of Garry Wills's *Inventing America*," *William & Mary Quarterly*, 3rd series, 36, no. 4 (1979), pp. 507–8.

[19]John Locke, "An Essay Concerning the True Original Extent and End of Civil Government," *Two Treatises on Government* (London: Awnsham and Churchill, 1698), chap. 19, "Of the Dissolution of Government," §225.

> Prudence, indeed, will dictate that Governments long established should not be changed for light & transient causes. Accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.[20]

Again, we can compare Jefferson's language with Locke's:

> Till the mischief be grown general, and the ill designs of the rulers become visible . . . the People, who are more disposed to suffer, than right themselves by Resistance, are not apt to stir.[21]

Canadian scholar Ronald Hamowy provides an elegant and correct definition of the meaning of a "just political order" (the Jeffersonian "pursuit of happiness") as it is evinced by the *Declaration*:

> [Men] may act as they choose in their search for ease, comfort, felicity, and grace, either by owning property or not, by accumulating wealth or distributing it, by opting for material success or ascetism, in a word, by determining the path to their own earthly and heavenly salvation as they alone see fit.[22]

It is important to underline that the clearest confirmation of Jefferson's espousal of the principles of natural law resides in the right to "alter or to abolish" government.[23] The government—the state, according to continental terminology—is by no means a "natural given" of human society. It may be a necessary evil, or even a perfect mechanism for safeguarding the natural liberties of man, but it is not the ineluctable horizon of political communities. In a letter he wrote to James Madison from Paris, Jefferson timidly manifested an embryonic preference for a society without a state, while nevertheless revealing awareness of the impracticality of such an approach:

> Societies exist under three forms, sufficiently distinguishable. 1) Without government as among our Indians. . . .

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[20]Jefferson, "Original Rough Draught of the Declaration of Independence," p. 424.

[21]Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 19, §230.

[22]Hamowy, "Jefferson and the Scottish Enlightenment," p. 519.

[23]"Whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it." Jefferson, "Original Rough Draught of the Declaration of Independence," p. 424.

> It is a problem, not clear in my mind, that the first condition is not the best. But I believe it to be inconsistent with any great degree of population.[24]

Although he had substantial confidence in the experiment of self-government that was taking shape in America, Jefferson did not hesitate to assert that if he were called upon to decide between the two opposite poles, anarchy was preferable to despotism:

> Those societies (as the Indians) which live without government enjoy in their general mass an infinitely greater degree of happiness than those who live under the European governments. Among the former, public opinion is in the place of law, & restrains morals as powerfully as laws ever did anywhere. Among the latter, under pretence of governing they have divided their nations into two classes, wolves & sheep.[25]

It is interesting that Jefferson's universalism led him to pass a highly positive judgment on native American societies. In another 1787 letter, he wrote: "The only condition on earth to be compared with ours, in my opinion, is that of the Indian, where they have still less law than we."[26] What should be particularly emphasized is that Jefferson appears to have been completely devoid of the specter of *orror vacui* that commonly raises its ugly head whenever there is talk of absence of government. His fears were always about too much government. For Jefferson, the real political problem is that government has to be made "good and safe," tamed like a wild beast.

There is a gulf, or perhaps an abyss, that separates Jefferson's conception from the doctrine that sees "tyranny" (exploitation, prevarication, dominion, and so forth) as the natural product of social interaction, and political power as a possible solution. Indeed, one could easily argue that, for Jefferson, the possibility of systematic coercion simply cannot exist outside of the political arena. Government and freedom seem to be diametrically opposed, and the advancement of the one entails a diminishment of the other. And the struggle, as he asserted in 1788, was clearly moving toward the paired

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[24]Thomas Jefferson to James Madison, January 30, 1787, *The Papers of Thomas Jefferson*, vol. 11, pp. 92–93.

[25]Thomas Jefferson to Edward Carrington, January 16, 1787, *The Papers of Thomas Jefferson*, vol. 11, p. 49.

[26]Thomas Jefferson to Governor Rutledge, August 6, 1787, *The Papers of Thomas Jefferson*, vol. 11, p. 701.

terms government and tyranny: "The natural progress of things is for liberty to yield and government to gain ground."[27]

JEFFERSON AND LOCKE

As pointed out by Joseph Ellis, the *Declaration* contains a vision of "a world in which all behavior was voluntary and therefore all coercion unnecessary."[28] The synthetic description of the state of nature, of the ends of government, and of the natural rights of individuals as expressed in the first propositions leave no doubt in this regard. The philosophical underpinning of the *Declaration* is the doctrine of inviolable rights of the Lockean tradition, and the influence of the English philosopher is so striking that only a lazy student or a scholar of great erudition could fail to recognize them.[29]

The influences present in the "birth certificate" of the American republic were already well known at the time. Richard Henry Lee, who had undersigned the motion for independence at the Continental Congress in June 1776, perhaps nursing a slight feeling of resentment toward the man who had usurped his claim to fame by drawing up the celebrated text, accused Jefferson of having copied the *Declaration* from John Locke's *Second Treatise on Government*.[30] And many founding fathers had voiced the idea that the document that was beginning to gain so much attention was actually nothing more than a simple synthesis of what had been discussed in those years.

Jefferson, for his part, not only did not deny the charge, but maintained that this was the true strong point of the text. In fact, many

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[27]Thomas Jefferson to Edward Carrington, May 27, 1788, *The Papers of Thomas Jefferson*, vol. 13, p. 208.

[28]Joseph J. Ellis, *American Sphinx: The Character of Thomas Jefferson* (New York: Vintage Books, 1998), p. 69.

[29]See, e.g., James R. Stoner, Jr., *Common Law and Liberal Theory: Coke, Hobbes, and the Origins of American Constitutionalism* (Lawrence: University Press of Kansas, 1992), p. 137.

[30]In a letter to Madison, Jefferson noted, "Richard Henry Lee charged it as copied from Locke's treatise on government." Thomas Jefferson to James Madison, August 30, 1823, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 15, p. 462. Lee was one of the few people to receive a copy of the original rough draft, and he believed that Congress had worsened the document. See Dumas Malone, *Jefferson the Virginian* (Boston: Little, Brown, 1948), p. 230.

years later, he stated that in drafting the *Declaration*, he did not believe it was his task to

> find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent. . . . [The Declaration] was intended to be an expression of the American mind. . . . All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc.[31]

Moreover, in a letter to Benjamin Rush, Jefferson mentioned those he regarded as immortal heroes in the history of humankind: Locke, Francis Bacon, and Isaac Newton.[32] Hence, Richard Matthews is mistaken when he claims: "At no time . . . does Jefferson claim Locke —or any other philosopher—as his guiding political theorist."[33] It is clear that Locke is Jefferson's polar star as far as political theory goes, while Newton is the guide for natural science, and Bacon is his mentor for moral philosophy.

To the end of his life, Jefferson never tired of repeating that the author of the *Two Treatises* should be considered as one of the greatest authorities to be included in the Olympus of the political concepts to which Americans most widely subscribed:

> As to the general principles of liberty and the rights of man, in nature and in society, the doctrines of Locke, in his "Essay concerning the true original extent and end of civil government," and of Sidney in his "Discourses on government," may be considered as those generally approved by our fellow citizens of this [Virginia], and the United States.[34]

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[31]Thomas Jefferson to Henry Lee, Jr., May 8, 1825, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 16, p. 118.

[32]Thomas Jefferson to Benjamin Rush, January 16, 1811, *The Writings of Thomas Jefferson*, ed. Ford, vol. 9, p. 296.

[33]Richard K. Matthews, *The Radical Politics of Thomas Jefferson: A Revisionist View* (Lawrence: University Press of Kansas, 1984), p. 135.

[34]Thomas Jefferson, "From the Minutes of the Board of Visitors," University of Virginia, October 3, 1825, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 29, p. 461.

This should be no cause for surprise. Lockean political doctrine, or at least a popular version of it, became common currency in the colonies, partly on account of *Cato's Letters*, the collection of political essays written by English pamphleteers John Trenchard and Thomas Gordon in the 1720s, and partly by virtue of the spread of works of Sir William Blackstone. While some chapters of Blackstone's *Commentaries* could be interpreted as a departure from Lockean moral philosophy, Blackstone was famous among the colonists because he considered the rights of life, liberty, and property, and also the rights of preservation and self-defense, as absolute. The parts of the *Commentaries* that were read and appreciated the most, as well as the more understandable ones, were in total harmony with the *Two Treatises*.

That idea that Jefferson's vision shared much with the Lockean fabric was commonplace not only among his contemporaries but also at a later period, in the second half of the nineteenth century. In that time, a general climate of contempt toward natural rights theory had become predominant, and the association between the two thinkers was hardly likely to be flattering to the memory of Jefferson. For instance, conservative sociologist George Fitzhugh argued that there existed an unbridgeable split between the political theories of Aristotle on the one hand, and those of Jefferson and Locke on the other. In a commentary on the Republican Party platform presented at the 1860 Chicago Convention, the author of the 1854 book *Sociology for the South*, the preamble of which had just been adopted by Lincoln's party, contended that the *Declaration of Independence*

> [was] at war with the institution of domestic slavery, and equally at war with Christian marriage and with private property in lands: for such marriage deprives the wife of liberty, which is unalienable, and property in lands destroys human equality, and begets serious loss of liberty.[35]

Fitzhugh's aim was to demonstrate the absurdity of a Lockean standpoint, or rather, that "Aristotle was right and Locke and Jefferson wrong."[36] The ideas ascribable to Locke and Jefferson were contrary to private property because in such a framework "man holds property only by consent of the majority." And property itself ought to be

> confiscated to public use . . . the majority never having consented or agreed to it. . . . If they had so consented and

[35]George Fitzhugh, "The Declaration of Independence and the Republican Party," *Debow's Review* 29, no. 2 (1860), p. 177.

[36]Fitzhugh, "The Declaration of Independence," p. 178.

> agreed, the contract would be null and void, according to the Declaration of Independence . . . which asserts that the equal rights of all are "unalienable."[37]

Fitzhugh's tortuous convolutions of reasoning into which he recklessly pitched headlong—suffice it to recall that Locke is famous precisely for arguing that property rights derive from nature and not from consensus—was obviously designed exclusively to demonstrate the absolute moral soundness of the institution of slavery. However, it is important to note that he was just as ready to acknowledge the parallel between Jefferson and Locke as he was to regard both men as advocates of a political doctrine that opposed property rights.

Such claims, put forward by an interesting and highly controversial thinker—embroiled in a political and ideological wrangle with the new Republican Party—who accused Locke's and Jefferson's systems of being potentially in opposition to property rights, should not be considered as purely the whim of a bizarre theorist. During the 1900s, this line of interpretation (at least in reference to Jefferson) became almost commonplace among scholars. In fact, some interpretations of Locke as a radical majoritarian theorist have had their impact on the scholarly literature. According to such explanations, Locke regarded civil society, acting in its full political capacity (that is, following the will of the majority), as fit to do everything it pleased in regard to property rights.[38]

This brings us to the question to which we will now turn—that which seeks to ascertain the degree of Jefferson's adherence to the Lockean approach on the issue of property rights—since that appears to be of prime significance.

JEFFERSON AGAINST LOCKE?

According to Jefferson, Locke's thought was extremely influential in shaping the "harmonizing sentiments" of the revolutionary era, particularly in the drafting of the *Declaration.* But many scholars have felt that such an interpretation presented a largely incomplete, if not totally deceptive, picture, and have sought additional sources that may have contributed to Jefferson's intellectual stance, some going so far as to extirpate Locke himself from Jefferson and, thus, from

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[37]Fitzhugh, "The Declaration of Independence," p. 181.

[38]See, e.g., Willmore Kendall, *John Locke and the Doctrine of Majority Rule* (Urbana: University of Illinois Press, 1965).

the founding. Garry Wills, for example, in his 1978 work *Inventing America*, launched the most comprehensive, though unpersuasive, attack against the (presumed) influence of John Locke on the *Declaration of Independence*.[39] The author not only replaces Locke with the Scotsman Hutcheson as the primary philosophical authority whose influence can be discerned in the *Declaration*, he also invents an organicist, communitarian, and anti-individualist Scottish Enlightenment about which one may legitimately harbor more than a few doubts.

In a book on Jefferson's political philosophy, Garrett Sheldon does not directly deny the Lockean roots of his thought, but proposes a looping interpretation of Jefferson's political stance. He claims that Jefferson was influenced by Locke during his early days, subsequently assuming the attitudes of a classical Republican during his maturity, only to revert to a Lockean period in his last period: "The statist as Picasso," as Michael Zuckert comments ironically. Locke and/or Jefferson—to reword the title of a famous pamphlet by Ezra Pound, *Jefferson and/or Mussolini*—is a theme that appears to be decisive for an understanding of the type of philosophy of natural rights that colored the political horizon of the author of the *Declaration* and, to a large extent, of revolutionary America as well.[40]

Other scholars, while acknowledging the Lockean influence, have nevertheless argued, on the basis of various types of evidence, that Jefferson was hostile to property rights, or at least he did not regard them as natural rights. This, in effect, is tantamount to depicting his political thought as far removed from Locke's, since without the doctrine of the legitimate origin of property in the state of nature, Locke would hardly have the same stature as an original political thinker.

Basically, then, although authoritative historians, such as Forrest McDonald, maintain that "[a]lmost to a man, Patriots were agreed that

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[39]Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (New York: Doubleday, 1978). This work has been attacked with well-deserved severity. See, e.g., Ronald Hamowy, "Jefferson and the Scottish Enlightenment," *Commentary* 66, no. 4 (1978), pp. 503–23; and Kenneth S. Lynn, "Falsifying Jefferson," *Commentary* 66, no. 4 (1978), pp. 66–71.

[40]Garrett W. Sheldon, *The Political Philosophy of Thomas Jefferson* (Baltimore: Johns Hopkins University Press, 1991); Michael P. Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame: University of Notre Dame Press, 1996), p. 209; and Ezra Pound, *Jefferson and/or Mussolini, l'Idea Statale, Fascism as I have Seen it* (London: Nott, 1935).

the proper ends of government were to protect people in their lives, liberty, and property,"[41] some believe that the exception, pertaining specifically to the last of these, was represented by Jefferson himself.

A fundamental element that helps to shed light on this historiographic operation of severing or attenuating the links between Jefferson and Locke is the old distinction proposed by the "progressive school" between property rights and human rights. The truth is that those who have sought to present a non-Lockean Jefferson have done so while shackled, consciously or otherwise, by the categories of the progressive school. It is, therefore, necessary to offer a brief analysis of how the idea that property rights could stand in opposition to human rights arose in the historiography.

The scholar whose name is linked to the clearest presentation of Jefferson as the champion of "human rights v. the rights of property" is Vernon Parrington, who wrote what the generation between the two wars came to see as the classic treatise on American thought: *Main Currents in American Thought*. Parrington believed that the *Declaration of Independence* was a "classical statement of French humanitarian democracy," whereas the *Constitution* was "an organic law designed to safeguard the minority under republican rule." For Parrington, it was incontestable that the two documents formed part of a "conflict between the man and the dollar" that had characterized American history ever since its origins.[42]

However, Parrington was merely echoing ideas already expressed by Abraham Lincoln, blending them with the progressive school's theories. In an important letter in which the future president apologized for not being able to take part in the celebrations for Jefferson's birthday, Lincoln stated "that the Jefferson party formed upon the supposed superior devotion to the personal rights of men, holding the rights of property to be secondary only and greatly inferior."[43] On

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[41]Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), p. 1.

[42]Vernon L. Parrington, *The Beginnings of Critical Realism in America, 1860–1920*, vol. 3 of *Main Currents in American Political Thought: An Interpretation of American Literature from the Beginnings to 1920* (New York: Harcourt, Brace, 1930), pp. 411, 410.

[43]Abraham Lincoln to H.L. Pierce et al., April 6, 1859, *The Collected Works of Abraham Lincoln*, R.P. Basler, ed. (New Brunswick, N.J.: Rutgers University Press, 1953), vol. 2, pp. 374–76. The letter is also reprinted in *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol.1, p. xv.

the question of his party, which he regarded as the true heir of Jeffersonism, Lincoln declared: "Republicans . . . are for both the man and the dollar, but in case of conflict the man before the dollar."[44]

This idea of a struggle between man and the dollar was taken up repeatedly by Parrington, who transformed Jefferson into one of the great champions of this titanic and totally far-fetched clash. In this, the Harvard scholar was unquestionably influenced by the works of J. Allen Smith, Frederick Jackson Turner, and the leading figure of the progressive school, Charles Beard.

RIGHTS OF PERSON AND RIGHTS OF PROPERTY

These early twentieth-century historians developed what has come to be known as the "conflictual" interpretation of American history. Not only did they view the history of the republic as torn by bitter clashes, they also pointed to the feature that formed a constant element of these tensions: an unceasing struggle between persons and property, between democracy and aristocracy.

In his 1903 work *History of American Political Theories*, which gained considerable popularity, Charles E. Merriam launched the first attack on the *Constitution*, arguing that from the point of view of its fundamental inspiration, it ran absolutely counter to the Revolution. The Revolution, he claimed, was authentically democratic, while the *Constitution* was conservative, if not outright reactionary.[45]

This line of interpretation was taken to much greater extremes four years later by J. Allen Smith in *The Spirit of American Government*. Smith adopted a strongly polemical stance with a marked tendency to project present controversies into the past—the evident original flaw of the entire school. The *Constitution* was seen as a tool exploited by conservatives and property owners for their own defense against the "natural" rights of the numerical majority. Protection of property was the aim to which the wealthy classes conspired. In their perspective, democracy was nothing more than wool pulled over people's eyes.[46]

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[44]Abraham Lincoln to H.L. Pierce et al., p. xv.

[45]Charles E. Merriam, *History of American Political Theories* (New York: Macmillan, 1903).

[46]James Allen Smith, *The Spirit of American Government* (New York: Macmillan, 1907).

Charles Beard presented the most comprehensive indictment of the *Constitution*. Beard's fame springs precisely from having cast the conflictual element in American history in terms of "rights of persons" versus "rights of property," which he believed were incorporated in the *Declaration* and the *Constitution*, respectively.[47]

Unfortunately, this dichotomy exerted protracted influence on American research, and its effects have made themselves felt almost to the present day, miraculously surviving the intellectual bankruptcy of the "progressive school." Much of the literature on the founding period is still to some extent under "progressive" influence, with varying degrees of awareness. Moreover, above and beyond appearances, today, almost a century after its crystalization, much still remains of the widely followed, though highly misleading, property vs. human rights dichotomy.

Jennifer Nedelsky, in her work *Private Property and the Limits of American Constitutionalism*, does not conceal her radically democratic vision, and declares herself convinced that the care taken by those who drew up the American *Constitution* "with protecting property from democratic incursions . . . led to the greatest weakness of our system: its failure to realize its democratic potential."[48] While not providing an in-depth account of her own conception of the opposition between democracy and rights of property—indeed, this is consistently taken for granted—Nedelsky's criticism of the framers, and of Madison in particular, nevertheless emerges quite clearly. It is based on her assumption that greater protection awarded to property rights necessarily entails a decrease in the rights to political participation. Thus, her fundamental tenet is that the founding fathers, when contemplating the bifurcation between property and equality, opted for defense of the former. It matters little that they never genuinely faced a political dilemma of this type, or that they were profoundly convinced that the protection of property and the protection of freedom were one and the same, inasmuch as property, freedom, and political participation formed a close-meshed and indivisible conception of politics.

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[47]Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1913); and Charles A. Beard, *Economic Origins of Jeffersonian Democracy* (New York: Macmillan, 1915).

[48]Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism: The Madisonian Framework and Its Legacy* (Chicago: University of Chicago Press, 1990), p. 1.

However, not all scholars have addressed the question according to the paradigms of the progressive school. It is precisely because illustrious jurists have long been under the sway of progressive historians—perhaps in the belief that it was actually their duty to shift the axis of the American legal system from excessive defense of "property rights" toward a greater safeguarding of "the rights of persons"—that it is appropriate to quote Supreme Court Justice Potter Stewart. His 1972 decision on *Lynch v. Household Finance Corporation* was a forceful criticism of the indestructible progressive construction. Writing the majority opinion, he maintained that:

> The dichotomy between personal liberties and property rights is a false one. Property does not have rights. People do. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right. . . . In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other.[49]

The dichotomy is both logically unfounded and historically unacceptable. None of those who took part in the Revolution believed that defense of the person and of rights of the person entailed denial of the rights of property. Although there was fervent debate on legitimately or illicitly acquired property, no one sought to utilize democracy, the extension of suffrage, and parliaments for the purpose of expropriation. The redistribution of wealth by means of legislative assemblies is a practice that dates from fairly recent times; from the theoretical point of view, it was unknown in the Revolutionary era.

The idea that property was endowed with a characteristic that approached sacrality was closely connected with the love of freedom. As Edmund Morgan put it:

> For eighteenth-century Americans, property and liberty were one and inseparable, because property was the only foundation yet conceived for security of life and liberty: without security for his property, it was thought, no man could live or be free except at the mercy of another.[50]

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[49]405 U.S. 538, 552 (1972), quoted in Leonard W. Levy, "Property as a Human Right," *Constitutional Commentary* 5, no. 2 (1988), p. 184.

[50]Edmund S. Morgan, "The American Revolution: Revisions in Need of Revising," *William & Mary Quarterly*, 3rd series, 14, no. 1 (1957), p. 11.

In a suitably peremptory tone, the well-known historian also pointed out to his colleagues that "we should totally abandon the assumption that those who showed the greatest concern for property rights were not devoted to human rights."[51]

LIFE, LIBERTY, AND PROPERTY

If the dichotomy between rights of property and rights of persons appears to be devoid of meaning, the attempt to separate Locke and Jefferson on the question of property rights is even more unfounded. Contrary to arguments that can be put forward on the basis of documents from the period, or simply through analysis of the political universe embodied in the *Declaration*, among scholars of Jeffersonian thought one encounters an abundance of speculations on the status of property rights in Jefferson's political theory. Some authors maintain that Jefferson, à la Robespierre, did not consider property as a natural right but as a mere convention subject to the decisions of the majority, a custom that could be regulated, compressed, or repealed at will, according to the resolutions expressed by the community.[52]

Since this line of interpretation risks becoming generally accepted, it is necessary to clarify the relation that held between civil rights and natural rights in the eyes of American natural rights jurists of the era. Those who contend that, for Jefferson, property may have been a civil right but not a natural right fall into an error of perspective that goes far beyond simply fitting the right of property into the wrong field. They divide rights into two fields that do not correspond to the Jeffersonian political outlook.

The idea, expressed in clear terms in the *Declaration* itself, is that the only legitimate end of government is that of assuring rights whose origin precedes any law written down by man. Men are already endowed with all their rights prior to entering into a state of society. The question of "civil rights," those that derive only from man's leap into "political society," is, in this framework of thought, vastly different from the facile opposition between civil rights and natural rights. For there is but one and only one civil right: it arises with the very genesis of political society, and it is the individual

[51]Morgan, "The American Revolution," p. 12.

[52]See, e.g., Matthews, *The Radical Politics of Thomas Jefferson*, pp. 19–29; and Edward Dumbauld, *Thomas Jefferson and the Law* (Norman: University of Oklahoma Press, 1978), p. 153.

right to be protected in the enjoyment of one's natural rights. Individuals who have entered into political society have a "global" civil right vis-à-vis the government: the right to enjoy protection not of artificial rights—which are the fruits of changing circumstances and of the preferences of lawmakers—but of their natural rights. They are always endowed with a further natural right which, by its very nature, cannot be the object of a contract: the right of resistance, the right to revolution, their right to protection not by the government but against the government.[53]

John Trenchard and Thomas Gordon, in *Cato's Letters*, wrote on the aims of government, perfectly combining the Lockean approach with the spirit of the new Whigs:

> [E]ntering into political society, is so far from a departure from his natural right, that to preserve it was the sole reason why men did so; and mutual protection and assistance is the only reasonable purpose of all reasonable societies.[54]

And if this is the overall pattern of the relation between civil rights and natural rights for the Whigs and the American patriots, it is particularly cogent in Jefferson. In a letter written in 1816, he reiterated, in a manner that John Locke would have appreciated, that:

> Our legislators are not sufficiently apprized of the rightful limits of their power; that their true office is to declare and enforce *only* our natural rights . . . and to take none of them from us. No man has a natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him . . . and the idea is quite unfounded, that on entering into society we give up any natural right.[55]

The question of property rights thus becomes crucial in order to throw into sharp focus the type of system of natural rights embraced

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[53]On this point, I am very much indebted to Michael P. Zuckert, "Thomas Jefferson on Nature and Natural Rights," *The Framers and Fundamental Rights*, ed. Robert A. Licht (Washington, D.C.: American Enterprise Institute, 1991), pp. 166–69.

[54]John Trenchard and Thomas Gordon, *Cato's Letters, or Essays on Liberty, Civil and Religious, and Other Important Subjects*, ed. Ronald Hamowy (Indianapolis, Ind.: Liberty Press, 1994), vol. 1, p. 427, n. 62, January 20, 1721.

[55]Thomas Jefferson to Francis W. Gilmer, June 27, 1816, *The Writings of Thomas Jefferson*, ed. Ford, vol. 10, p. 32, italics added.

by Jefferson. We seek to pinpoint the supposed evidence, which some have seen as genuine proof, that Jefferson was opposed to viewing property rights as natural rights. But on one point, absolute transparency is required: the burden of proof lies with those who espouse the bizarre picture of a champion of Lockean natural rights—considered by his contemporaries as the most representative of the ideas of an entire generation steeped in natural law tradition—denying property as a natural right. And the clinching evidence is lacking.

Let us start by observing that if Jefferson had opposed Locke on the question of property rights, he would certainly have made this known unambiguously. For he did not generally recognize the *auctoritates*, not even those of his much-loved classical world—in fact, at the age of seventy-one, after rereading *The Republic*, he had no qualms in asserting that Plato was a thoroughly overrated thinker.[56] However, not only did he never advance any criticism against Locke, he repeatedly praised the English philosopher, to the point of stating that "Locke's little book on government is perfect as far as it goes,"[57] whereby he was conclusively referring to the *Second Treatise* which contains the famous chapter "Of Property."

The fundamental question concerns why Jefferson, in the *Declaration*, replaced the Lockean triad "Life, Liberty, and Estate" with "Life, Liberty, and the Pursuit of Happiness." Once again, we cite Vernon Parrington for the classical formulation of the (alleged) importance of this alteration:

> The substitution of "pursuit of happiness" for "property" marks a complete break with the Whiggish doctrine of property rights that Locke had bequeathed to the English middle class, and the substitution of a broader sociological conception; and it was this substitution that gave to the document the note of idealism which was to make its appeal so perennially human and vital.[58]

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[56]"I amused myself with reading seriously Plato's Republic. . . . I laid it down often to ask myself how it could have been that the world should have so long consented to give reputation to such nonsense as this?" Thomas Jefferson to John Adams, July 5, 1814, *The Adams–Jefferson Letters: The Complete Correspondence between Thomas Jefferson and Abigail and John Adams*, ed. Lester J. Capon (Chapel Hill: University of North Carolina Press, 1988), p. 432.

[57]Thomas Jefferson to Thomas Mann Randolph, May 30, 1790, *The Papers of Thomas Jefferson*, vol. 16, p. 449.

[58]Parrington, *Main Currents in American Thought*, vol. 1, p. 350.

It would be superfluous to dwell in any detail on the innumerable interpretations of this substitution, since most do not substantially differ from Parrington's, so it will suffice to recall only one among the many, a recent reformulation:

> Substituting "the pursuit of happiness" for Locke's right of "property," Jefferson attempted to extend the concept of rights for all mankind all over the globe for all times, not just property holders.[59]

It is worth noting that if the Congressmen had felt the replacement of the Lockean triad to be a denial of the "natural" character of the right of property, then without a shadow of doubt they would have rejected it. Whoever proposes, by adducing the famous substitution, the conception of Jefferson as soft on property rights implicitly accuses him of having duped his fellow citizens and revolutionaries. Hence, the "progressive" reading of the *Declaration* comprises the insertion of a bizarre conception at the very heart of what were supposed to be the harmonizing sentiments of the Americans.

But before endorsing rash and unwarranted interpretations such as those outlined above, it is well to analyze several issues of capital importance. First, were the two terms "happiness" and "property" opposed to one another in America at that time? Second, does the substitution point to a definitive eclipse of the Lockean triad from the horizon of Jeffersonian reflection: in other words, would he never at any time associate liberty, life, and property?

The answer to these queries is totally negative. We will illustrate this first through analysis of documents dating from the period of the *Declaration*, and then by perusing some of the Jefferson papers—restricting ourselves to a mere selection, inasmuch as they are extremely numerous—in which life, liberty, and property are presented in association, fully in line with the whole classical liberal tradition.

It has often been pointed out that many American political documents dating from that period present just such an association between property and happiness, in a clearly individualist and Lockean manner. Indeed, the right to the pursuit of happiness appears to be so all-encompassing as to include the right of property. The *Declaration of*

[59]Gisela Tauber, "Notes on the State of Virginia: Thomas Jefferson's Unintentional Self-Portrait," *Eighteenth Century Studies* 26, no. 4 (1993), p. 645. It is a peculiarly preposterous idea, as well as unquestionably at odds with Lockean and Jeffersonian thought, that only property holders have property rights.

Rights of Virginia, drawn up by George Mason, which dates from one month prior to the *Declaration of Independence*, states:

> That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.[60]

The *Constitution* of Massachusetts, drawn up in 1780, illustrates the same themes in the following manner:

> All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.[61]

The *Constitution* of Pennsylvania stated:

> That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.[62]

And New Hampshire's 1784 *Constitution* established that "acquiring, possessing, and protecting, property; and, in a word, . . . seeking and obtaining happiness" were among the natural rights of man.[63]

As is often the case in America, the question was decided by a court. In the 1906 case *Nunnemacher v. State*, the Supreme Court of Wisconsin stated that the expression "pursuit of happiness . . . unquestionably . . . [entails] the acquisition of private property."[64] The

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[60]Schechter, *Roots of the Republic*, p. 154.

[61]Schechter, *Roots of the Republic*, p. 196.

[62]"Pennsylvania Declaration of Rights, 1776," in *The Roots of the Bill of Rights*, ed. Bernard Schwartz (New York: Random House, 1971), vol. 2, p. 264.

[63]"New Hampshire Constitution, 1784," in *The Roots of the Bill of Rights*, p. 375.

[64]129 Wis. 190, 108 N.W. (1906), p. 629, quoted in Stanley N. Katz, "Republicanism and the Law of Inheritance in the American Revolutionary Era," *Michigan Law Review* 66, no. 1 (1977), p. 6.

court was right, overall: It seems highly implausible to suggest that happiness and property in America could be invoked in opposition to one another. Life, Liberty, Property, Security, and Happiness are the most frequently recurring terms in all discussions on natural rights in late eighteenth-century America. It is quite reasonable to assume that Jefferson, in his search for a potentially evocative triad, resolved to utilize what he believed to be the three stylistically most attractive and least legalistic terms, since these were also terms that cast a light of "new Humanism" on the entire Revolutionary upheaval.[65] According to Adrienne Koch, "there is ample evidence" that Jefferson regarded property as a natural right.[66]

In fact, as suggested by Cecilia Kenyon, the replacement may well have a subjectivistically ultra-individualist significance:

> The idea of happiness as an end of government was firmly rooted in colonial attitudes before 1776. It was . . . a far more individualistic end than the protection of property. Property was a tangible, objective element, while happiness was a subjective goal depending on individual interpretation.[67]

Or, as argued by William Scott:

> It is tempting to conclude, but impossible to prove, that in 1776 Jefferson sensed the disparity between certain contemporary forms of private property and Locke's idealized "natural property" and that in an effort to restore the old moral content to the concept of individual property, Jefferson substituted in its stead the more suggestive phrase "pursuit of Happiness."[68]

Some might wish to contend that although happiness and property were considered *uno et idem* at that time, Jefferson nevertheless

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[65]That it had been an aesthetic choice is affirmed by, among others, Adrienne Koch, *Power, Morals, and the Founding Fathers* (Ithaca, N.Y.: Cornell University Press, 1961), p. 28.

[66]Adrienne Koch, *The Philosophy of Thomas Jefferson* (New York: Columbia University Press, 1943), p. 175.

[67]Cecilia M. Kenyon, "Republicanism and Radicalism in the American Revolution: An Old-Fashioned Interpretation," *William & Mary Quarterly*, 3rd series, 19, no. 2 (1962), p. 172.

[68]William B. Scott, *In Pursuit of Happiness: American Conceptions of Property from the Seventeenth to the Twentieth Century* (Bloomington: Indiana University Press, 1977), p. 42.

introduced a substitution. Thus—leaving aside the general problem of actions and omissions—an omission in a political document is certainly a fact that calls for an explanation. In this case, however, the fact in itself is rather less conclusive than it might appear at first glance. As already mentioned, Jefferson would continue to associate the terms of the Lockean triad throughout the rest of his writings, showing that the substitution by no means indicated an implicit purpose to exclude property from the catalog of natural rights. The terms "life and property," "liberty, life, and property," and "liberty and property" constantly recur throughout Jefferson's work, and are used in a manner fully consistent with the typical utilization and contextualization of the entire classical liberal tradition. A few examples will suffice to demonstrate this point.

In 1775, penning one of his first official documents, Jefferson stated that it was the settlers' right "to protect from every hostile hands *our lives & our properties*."[69] Half a century later, in the last official text he proposed to the 1825 Virginia Assembly, a document that was never approved, we find clear expression of the idea that "man is capable of living in society, governing itself by laws self-imposed, and securing to its members the enjoyment of *life, liberty, property*, and peace."[70]

During this half-century span, one finds many allusions to the doctrine of natural rights that should leave the unbiased interpreter with no doubt as to Jefferson's true inclinations. In 1809, in a statement addressed to the Assembly of Virginia, after declaring his satisfaction for the considerable success and acclaim being achieved by the American experiment of self-government, he went on to declare that "in no portion of the earth were *life, liberty, and property* so securely held."[71]

His private correspondence likewise abounds in similar references. One citation will suffice: in 1823, musing on the constitutions of the

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[69]Thomas Jefferson, "Declaration of the Causes and Necessity for Taking up Arms," June–July 1775, *The Papers of Thomas Jefferson*, vol. 1, p. 197, italics added.

[70]Thomas Jefferson, "Declaration and Protest of the State of Virginia, 1825," *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 17, p. 446, italics added.

[71]Thomas Jefferson, "Reply to the Virginia Assembly, 1809," in *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 16, p. 33, italics added.

various states, which undeniably presented a wide range of apparently discordant political ideas, he nevertheless was at pains to underline that "there are certain principles in which all agree, and which all cherish as vitally essential to the protection of *life, liberty, property*, and the safety of the citizen."[72]

Finally, even those with only the faintest awareness of the extent to which the author of the *Declaration* cherished the right—always and constantly proclaimed to be natural—to freedom of conscience cannot fail to agree that the association between rights of conscience and rights of property enunciated in a public speech surely constitutes definitive proof of this close interconnection. In 1803, as the President endeavored to explain to America what would turn out to be his greatest political success story, the Louisiana Purchase, he mentioned the necessary steps that still remained to be completed:

> With the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and temporary government of the country; for its incorporation into our Union; for rendering the change of government a blessing to our newly-adopted brethren; for securing to them *the rights of conscience and of property*: for confirming to the Indian inhabitants their occupancy and self-government, establishing friendly and commercial relations with them.[73]

On this point, it is germane to quote from *Cato's Letters*, which stated that freedom of expression "is so essential to free government, that the security of property; and the freedom of speech, always go together." And, so add the authors, "in those wretched countries where a man can not call his tongue his own, he can scarce call any thing else his own."[74]

THE CORRECTIONS TO LAFAYETTE'S DRAFT

As definitive evidence that Jefferson did not consider property to be a natural right, above and beyond his alteration of the Lockean

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[72]Thomas Jefferson to Admantios Coray, October 31, 1823, *The Writings of Thomas Jefferson*, ed. Lipscomb and Berg, vol. 15, p. 489, italics added.

[73]Thomas Jefferson, "Third Annual Message, October 17, 1803," in *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 3, p. 353, italics added.

[74]Trenchard and Gordon, *Cato's Letters*, February 4, 1720, vol. 1, p. 110.

triad in the *Declaration*, some have pointed to an episode that was remarked upon by Gilbert Chinard in the 1920s.[75] The account of the event has long been part of *The Papers of Thomas Jefferson*, whose excellent editorial notes should help scholars not to draw over-hasty conclusions. It is generally reported that Jefferson, while in Paris in July 1789, advised Lafayette to strike the right of property off the list of natural rights in the famous draft of the *Declaration of Rights*.

Before ascertaining whether there is any truth in this report, it should be noted that what commentators fail to emphasize is that Jefferson did not recommend that Lafayette remove from the list of natural rights which appears immediately afterwards in the document the right to "la disposition entière de sa personne, de son industrie, de toutes ses facultés" ("the absolute possession of his person, of his industry, of all his faculties"), an even stronger, precise, natural, and Lockean version of property rights. As Jefferson was hardly a novice in political theory, had he really intended to strike property rights off the list of natural rights, he would have removed the cited sentence.

The Jeffersonian position on Lafayette's *Draft of a Declaration of Rights* on questions pertaining to "rights of property" and "defense of one's honor" is as follows:

> Tout homme naît avec des droits inaliénables; tels sont [le droit de propriété, le soin [de son honneur et] de sa vie, la disposition entière de sa personne, de son industrie, de toutes ses facultés, la recherche du bien être et de la résistance à l'oppression.
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> (Every man is born with some inalienable rights; such as [the right of property, the care [of his honor and] of his life, the absolute possession of his person, industry, and all his faculties, the pursuit of well being and of resistance to oppression.)[76]

Note 2, by the editor, asserts that the first parenthesis was opened and never closed, and points out that in the definitive *Declaration of Rights* presented by Lafayette on July 11, 1789, property does not appear

[75]Gilbert Chinard, *Thomas Jefferson: The Apostle of Americanism* (Boston: Little, Brown, 1929), p. 233. For a mention of this very same alleged anecdote, cf. Wills, *Inventing America*, p. 238.

[76]Thomas Jefferson, "Lafayette's Draft of a Declaration of Rights," July 1789, *The Papers of Thomas Jefferson*, vol. 15, p. 230.

first on the list, but instead occupies the third position.[77] One may reasonably infer that Jefferson had no intention of advising his friend to delete property from the list of rights, but rather to move it. Why should it be moved? The reason is obvious: throughout the Whig tradition, property comes after life and freedom (nor indeed could it be otherwise). It was William Blackstone who ultimately awarded property the bronze medal which the entire school had already assigned to it: "The third absolute right, inherent in every Englishman, is that of property."[78]

The failure to close the parenthesis must also have caught the attention of Gilbert Chinard. Always insistent on portraying Jefferson as opposed to property rights, Chinard resolved to take the matter in his own hands and, in a work that quoted the document *verbatim*, Chinard himself closed the parenthesis.[79] In this context, it cannot be overlooked that Chinard was one of the main editors and commentators of Jeffersonian thought, although, as an overall assessment, it can be said that his interventions have been questionable from a philological point of view.

Again on the issue of property rights, Chinard attributed to Jefferson's hand a letter that had actually been written to Jefferson by Tom Paine.[80] The letter in question sketches a distinction between natural rights and "secondary rights," the latter including property rights, but there remains the small detail that, far from being written by Jefferson, he was instead its recipient.[81] Realizing his appalling mistake many years later, Chinard republished the letter, claiming that those words,

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[77]"Editorial Note," *The Papers of Thomas Jefferson*, vol. 15, p. 233.

[78]William Blackstone, *Commentaries on the Laws of England* (Chicago: University of Chicago Press, 1979), vol. 1, p. 134.

[79]See Marie Joseph Paul Yves Roch Gilbert du Motier, Marquis de Lafayette, and Thomas Jefferson, *The Letters of Lafayette and Jefferson*, ed. Gilbert Chinard (Baltimore–Paris: The Johns Hopkins Press & "Les Belles Lettres," 1929), p. 138.

[80]The letter is found in the "Jefferson Papers" at the Library of Congress, and has been published in Thomas Paine, *The Complete Writings of Thomas Paine*, ed. Philip S. Foner (New York: Citadel Press, 1945), vol. 2, pp. 1298–99.

[81]See Chinard, *Thomas Jefferson*, p. 81. However, mistakes of this kind tend to multiply. Years later, one could come across articles that discussed Jefferson's view of property that based their major arguments on Paine's letter. See, e.g., Joyotpaul Chaudhuri, "Possession, Ownership, and Access: A Jeffersonian View of Property," *Political Inquiry* 1, no. 1 (1973), pp. 78–95.

although written by Paine, were truly a perfect representation of the thought of Thomas Jefferson. It is worth reproducing the fragment in which Chinard blithely confesses his mistake and deliberately perseveres in his error. So powerfully swayed is the French professor by his own biased paradigm that he produces a travesty of Jefferson's thought.

> In the first edition of this study was inserted at this point a document which I erroneously attributed to Jefferson, when, in fact, it came from the pen of Thomas Paine and was probably written ten years later. While expressing my regrets and apologies to the writers who have been misled by this false attribution, I still believe that it sums up so concisely the early philosophy of Thomas Jefferson that it may be not out of place to reproduce it again.[82]

INALIENABLE RIGHTS AND NATURAL RIGHTS

Some scholars, while recognizing that the opening propositions of the *Declaration* are of Lockean derivation, explain the modified triad through recourse to a concept of "inalienability" which does not completely coincide with that of "naturalness." In other words, certain rights are argued to be natural, but not inalienable, and among these is the right of property. This, it is maintained, is the key to Jefferson's removal of the term from the document.[83]

Before going into these arguments in some detail, it is perhaps appropriate to state, as a premise, that alienable natural rights do indeed exist, but only if "natural" is taken to mean those rights that men possess in the state of nature. For example, in the Lockean version of natural rights, the right to self-defense is natural in the sense that it belongs to men in the state of nature, yet not only is it alienable, but it must necessarily be transferred to political society during the course of the transition from the state of nature to that of civil society. This notwithstanding, the construction of the distinction between "inalienable" and "natural" rights is, to say the least, founded on a distortion. Let us examine why.

Morton White, while asserting that happiness and property can not be considered disjunctly, and proposing Geneva philosopher Jean

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[82]Gilbert Chinard, *Thomas Jefferson: The Apostle of Americanism*, 2nd ed., rev. (Ann Arbor: University of Michigan Press, 1957), p. 80.

[83]See White, *The Philosophy of the American Revolution*, pp. 195–228.

Jacques Burlamaqui as one of the sources of Jeffersonian thought,[84] believes that:

> Jefferson could hardly have regarded the right to property . . . as unalienable . . . because the idea that one may alienate what one owns is at least as old as Aristotle.[85]

Although Jean Yarbrough does not acknowledge that property rights have the character of naturalness in Jeffersonian thought, nevertheless she realizes the absurdity of considering them a mere fruit of conventions. "Jefferson . . . believed that men entered into society to secure their property as well as their persons, and that the protection of property was a legitimate concern of society."[86] Despite this correct insight, even Yarborough subscribes to White's stance when she states:

> [I]nalienable rights refer to that category of natural rights that we cannot give up or transfer to another. . . . Although all inalienable rights are natural rights, deriving their inalienability from man's inherent nature, not all natural rights are inalienable. Stable and exclusive property, being less than a natural right, cannot be inalienable.[87]

The relation between natural and inalienable rights thus becomes increasingly complicated. In an essay composed in the early 1980s, a well-known and respected scholar of Locke, John Simmons, put forward a similar line of reasoning, although his investigation did not focus specifically on Jefferson.[88] Starting out from the obvious consideration that the term "inalienable" does not appear in the *Second Treatise*—although, in my view, the utilization of the concept is more than evident—his entire construction was designed to demonstrate

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[84]The first scholar to draw attention to the Burlamaqui connection was Ray F. Harvey, *Jean Jacques Burlamaqui: A Liberal Tradition in American Constitutionalism* (Chapel Hill: University of North Carolina Press, 1937), pp. 119–23.

[85]White, *The Philosophy of the American Revolution*, p. 214.

[86]Jean M. Yarbrough, "Jefferson and Property Rights," in *Liberty, Property, and the Foundations of the American Constitution*, p. 69.

[87]Jean M. Yarbrough, *American Virtues: Thomas Jefferson on the Character of a Free People* (Lawrence: University Press of Kansas, 1998), p. 90.

[88]A. John Simmons, "Inalienable Rights and Locke's Treatises," *Philosophy and Public Affairs* 12, no. 3 (1983), pp. 175–204. The same essay has been reproduced with very significant alterations in A. John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton, N.J.: Princeton University Press, 1993), pp. 101–46.

the existence of natural rights that were at the same time alienable. After a tortuous explanation of the differences that can be traced between certain types of rights versus others in Lockean thought, Simmons attempted to highlight several points by recourse to illuminating examples. To demonstrate that the right of property is regarded as alienable despite being natural, Simmons offers this example: "I may decline to exercise my property rights by allowing the neighborhood children to play baseball in my yard."[89]

Despite Simmons's view that this shows alienability, surely, in this specific case, I am clearly making full use of my rights of property over the yard, inasmuch as these imply the possibility of excluding or including others as I please. Simmons further contended: "There is no oddity in the idea of a right being, for a specified period of time only, alienated (as in a contract granting temporary property rights)."[90] Of course there is not. But one again may wonder what relevance this could have for the issue of the "alienability" of property rights.

These reflections reveal the existence of an underlying confusion which, were we not talking about serious and refined scholars, one might be tempted to say are ludicrous: a confusion between a right and the object of a right. The right of property entails the power to alienate the goods that form the object of this right. This triviality was espoused by Jefferson to an Indian chief: "The lands were your property. The right to sell is one of the rights of property. To forbid you the exercise of that right would be a wrong to your nation."[91]

Individuals could conceivably never exchange a single good during the entire course of their life and still fully enjoy the inalienable and natural right of property, on a par with the greatest investor or real estate owner in the world. This is so because the right of property in no way derives from market transactions. An exchange transfers rights over things, but it does not create the right. Rather, property rights derive from the nature of human beings, first and foremost from their full ownership of themselves.

The real foundation of the natural right to property is not rights over things, but self-ownership. One cannot deprive oneself of self-ownership, while on the other hand, rights over tangible things are

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[89]Simmons, "Inalienable Rights and Locke's Treatises," p. 180.

[90]Simmons, "Inalienable Rights and Locke's Treatises," p. 180.

[91]Thomas Jefferson to Handsome Lake, November 3, 1802, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 16, p. 395.

perfectly alienable. Since man cannot abjure himself and his own nature, all rights that constitute the essence of a human being are inalienable: they cannot form the object of a transaction, whether voluntary or involuntary. To put it simply, "[w]e may alienate (or destroy) the object of an inalienable right, but not the right itself."[92] As far as property rights are concerned, it is perfectly plain that the possibility to alienate property rights over things in no way entails the right to alienate the right itself, or otherwise stated, the moral capacity to be the holder of property rights.[93]

The paradox of inalienable rights, all of which are, of course, natural rights, lies precisely in the fact that no one can legitimately deprive himself of them. Or rather, even if a person were to do so, others could not take this into account. Imagine the case of a man who abandons a monastic order, where he had taken a vow of poverty, in order to return to broader society. Can he be said to have alienated his right of property to the extent that anyone may feel entitled to take over the goods he legitimately possesses? Obviously not. Or consider the much more striking case of the inalienable and natural right to life. Can someone who has attempted suicide then be killed by anyone, given that the would-be suicide has signaled he has "alienated" his right to life? If the importance of self-ownership within the concept of human nature is not fully understood, then it becomes difficult to comprehend why property rights took on such immeasurable importance for eighteenth-century thinkers. It is the right to dispose fully and freely of one's own body, of one's own faculties, of the fruits of one's labors, and of all that is acquired without violating the rights of others.

But defining rights as "inalienable" simply means that they cannot be estranged from the subject, either by the holder of these rights or by anyone else. These are rights that cannot be disposed of by the government; in fact, government is the most typical violator of such rights. In the eighteenth century, the adjectives "natural," "inalienable," inherent," and "essential" always appear as synonyms. In the case of Jefferson, for example, the rights that governments had been set up among men to safeguard were defined as "intrinsic and unalienable" in the *Declaration*, while "freedom of religion [is] the most

[92]Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton, N.J.: Princeton University Press, 1994), p. 245.

[93]Zuckert, *Natural Rights and the New Republicanism*, pp. 245–46.

inalienable and sacred of all human rights."[94] There exists a less-than-rigorous usage of the terms (in a strictly logical perspective, inalienability admits of no gradations), because the doctrine to which these terms refer is clear and familiar. Inalienable simply means that no one can deprive himself (or his descendants) of these rights, not even voluntarily. But inalienability bears the imprint of nature. Nature makes certain rights inalienable by branding them with her own imprint. By creating man, the "God of Nature" has also endowed man with natural and inalienable rights. These two characteristics of the rights imprinted by nature are inseparable.

If one wished at all costs to find a means of distinguishing between these two categories, one could perhaps argue that inalienability refers directly to the "inner" space of a right, while naturalness has a bearing on the political sphere. I cannot relinquish my inalienable rights, just as the government cannot legitimately violate my natural rights. From the point of view of the government, these rights must be considered natural, while for the individual they must be considered inalienable. Consequently, the fact that a right is inalienable means that the individual cannot surrender it, and, since it is natural, the government cannot sever it from the individual.

Although such comments may appear too simplistic in the eyes of sophisticated contemporary observers, these were precisely the terms and the framework the founding fathers had in mind when reflecting on rights. They would never have believed it possible that a right to a certain quality of life could be put forward, or a right over another person's goods, or the right to have a minimum income guaranteed through taxation. If these particular conceptions of what constitutes a right have become common currency, and indeed perfectly respectable, within present-day social philosophy, then this is all the more reason why extreme care should be taken to restrict such conceptions to the contemporary debate.

However, it is a fact that current interpreters generally do little justice to the fervent supporters of natural rights of many generations ago, because they do not believe—it is claimed they cannot any longer believe—that nature herself prescribes man's rights. When a

[94]Thomas Jefferson, "From the Minutes of the Board of Visitors, University of Virginia, 1822–1825, Report to the President and Directors of the Literary Fund," October 7, 1822, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 19, p. 416.

building technique declines, its secrets are lost: what appeared simple to the architects of Gothic cathedrals remains a mystery for posterity. In the same manner, current debates on rights, even when conducted in the apparent attempt to reconstruct a lost world, lead to such a complicated rendering of what used to be simple and clear in the eighteenth century as to make it totally unrecognizable. We stand today in the wake of a protracted spell of juridical normativism, in which the ancient notion "*Quod principi placuit legis habet vigorem*" ("what pleases the Prince is law")[95] has been enormously refined. That this tendency has also succeeded in making it impossible for scholars to grasp the concept of an order founded not on the volition of a sovereign authority but on nature is one of its most predictable consequences.

PROPERTY OVER IDEAS?

A hasty reading of a Jeffersonian reflection in which he considers the full right over ideas to be illegitimate, and explicitly acknowledges the utilitarian character of such a right, has led some scholars to fabricate a further piece of a mosaic to be fitted into the construction of a Jeffersonian softness on property rights.[96]

The conclusion that Jefferson was against copyright by no means allows one to deduce that he was opposed to the natural origin of the rights of property. In fact, the question of intellectual property is far from being resolved unequivocally within classical liberal doctrine of Lockean descent. While an important nineteenth-century classical liberal such as Gustave de Molinari was in favor of a perpetual intellectual right of property, and conceived ownership of ideas as perfectly analogous to ownership of a material good, other classical liberals argued in favor of the natural right of single individuals to copy and reproduce whatever is legitimately theirs. In the latter perspective, such thinkers also argue against the claim that there can exist a monopoly —even if only for a bounded period of time—guaranteed by the State and consenting to the exploitation of this or that intellectual creation. Even in cases in which they have analyzed the possible alternatives

[95]Ulpianus, *Digestæ*, 1.4.1.

[96]See Thomas Jefferson to Isaac McPherson, August 13, 1813, *The Writings of Thomas Jefferson*, ed. Lipscomb and Berg, vol. 13, pp. 333–36; cf. David N. Mayer, *The Constitutional Thought of Thomas Jefferson* (Charlottesville: University Press of Virginia, 1994), p. 78.

between the current public safeguarding of intellectual property rights and a hypothetical free order that would require authors to internalize the costs of introducing protection against imitation (by means of contracts, technical solutions, and so forth), economists and jurists of the classical liberal tradition have not reached the same conclusions.[97]

In order to gain insight into the importance of the reasons which have been brought to bear, within the Lockean tradition, against any kind of public protection of copyrights in matters concerning literary production or patents, it is sufficient to read what Murray Rothbard wrote about government protection of property rights over ideas. No one, according to Rothbard, can maintain that material goods, which can become exclusive property, should be regarded as equivalent to ideas that are freely circulating and are not lost at the moment when another person also comes into contact with them. This does not mean that the author of a text or the inventor of a patented device cannot find suitable strategies to exploit his own work in the most successful manner possible, while still respecting classical liberal principles. For in ceding a text or the utilization of an invention, an author or an inventor can require a clause to be signed whereby the purchaser is forbidden to carry out reproductions, or to utilize the intellectual content incorporated in the object beyond a certain date.[98]

Rothbard does not cite Jefferson, but his arguments seem to echo those in the above-mentioned letter. The third president totally denies that inventors have any "natural and exclusive right" to their inventions:

> If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea. . . . The moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it.[99]

What is the specific characteristic, he wonders, of an idea? "Its peculiar character . . . is that no one possesses the less, because every other possesses the whole of it." But the argument against exclusive

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[97]For the best case argued in the Jeffersonian and Rothbardian tradition, see N. Stephan Kinsella, "Against Intellectual Property," *Journal of Libertarian Studies* 15, no. 2 (2001), pp. 1–53.

[98]Murray N. Rothbard, *Man, Economy, and State* (Los Angeles: Nash, 1970), pp. 652–60.

[99]Thomas Jefferson to Isaac McPherson, August 13, 1813, p. 335.

possession is entirely derived from the very nature of the "good" describable as an idea.

> That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property.[100]

Thus, all rights arising from exploiting of one's own ideas have a contractual character or are of a customary type. Indeed, it is precisely Jefferson's position, which denies the naturalness of a monopoly over the exploitation of mere ideas, that appears to be more consistent with the classical liberal and Lockean tradition.

THE SOVEREIGNTY OF THE PRESENT GENERATION

While typically Lockean concerns can clearly be perceived as regards the need to root out the vestiges of *ancien régime* that persisted in Virginia—and, to my knowledge, there is no author who argues that Jefferson's fierce battle against entail and primogeniture in his own state had any anti-Lockean traits—there is another famous piece by Jefferson in which he displays a position that most authors find hard to reconcile with the doctrine of property rights of Lockean lineage. The reference here is to the famous letter written during the final stage of his stay in Paris, where the French Revolution was by now in full swing. It is addressed to James Madison and dated September 1789. The contents of the letter underline that the "Earth Belongs in Usufruct to the Living."[101]

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[100]Thomas Jefferson to Isaac McPherson, August 13, 1813, p. 335.

[101]Thomas Jefferson to James Madison, September 6, 1789, pp. 392–97. For well-reasoned comments on this letter, see Herbert Sloan, "The Earth Belongs in Usufruct to the Living," *Jeffersonian Legacies*, ed. Peter S. Onuf (Charlottesville: University Press of Virginia, 1993), pp. 281–315; Daniel J. Boorstin, *The Lost World of Thomas Jefferson* (Chicago: University of Chicago Press, 1948), pp. 204–13; Adrienne Koch, *Jefferson and Madison: The Great Collaboration* (New York: Oxford University Press, 1964), pp. 62–96; and Merrill D. Peterson, "Mr. Jefferson's 'Sovereignty of the Living Generation'," *Virginia Quarterly Review* 52, no. 3 (1976), pp. 437–47.

The reflections on generational sovereignty put forward by Jefferson have now become a classic of American political literature of the era, but far from being an expression of anti-property extremism (as some have sought to claim), it is, instead, one of the most radical assertions of the idea of founding a society by "taking reason for our guide, instead of English precedent."[102] Indeed, reason has priority over any other manner of building a society, because it is the law of nature. According to John Locke:

> The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions.[103]

The question that Jefferson put to his friend—a question Jefferson believed to be rather original—was that of "whether one generation of men has a right to bind another." His answer was totally negative: "I set out on this ground which I suppose to be self evident, that the earth belongs in usufruct to the living."[104] Because, he went on:

> 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.[105]

These thoughts have been interpreted by some scholars as a sort of momentary aberration by the Virginian, carried along as he was on the wave of emotion arising from the events in France. Julian Boyd states without hesitation that such a vision "is irrelevant for the American situation."[106] The same opinion is also voiced by Noble Cunningham.[107] Certainly, the letter was written at a very critical time, just a few days after the National Assembly had thrown out the proposal to insert the clause Jefferson had discussed with Lafayette, referring

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[102]Thomas Jefferson to James Madison, September 6, 1789, p. 397.

[103]John Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 2, "Of the State of Nature," §6.

[104]Thomas Jefferson to James Madison, September 6, 1789, p. 392.

[105]Thomas Jefferson to James Madison, September 6, 1789, p. 395.

[106]Julian P. Boyd, "Editorial Note," *The Papers of Thomas Jefferson*, vol. 15, p. 388.

[107]Noble E. Cunningham, Jr., *In Pursuit of Reason: The Life of Thomas Jefferson* (New York: Ballantine Books, 1988), p. 127.

to the right of future generations—*le droit des générations qui se succèdent*—to revise the *Constitution* (August 26, 1789). But there is reason to believe Jefferson was not thinking only of France. The tone of his letter is very general, and the mention of the law of nature as the only yardstick in the relations among generations leaves little room for doubt: The range of application of the principles expressed is extremely wide and addressed to all human communities that have decided to live in accordance with the rules of reason.

Furthermore, Jefferson asked Madison to go ahead and make use of the letter, and the suggestions contained therein, within the framework of American legislation.

> Your station in the councils of our country gives you an opportunity of producing it to public consideration. . . . At first blush it may be rallied as a theoretical speculation; but examination will prove it to be solid and salutary.[108]

The American circumstances appeared a most promising terrain for the prompt implementation of such a principle, since "we do not owe a shilling which may not be paid with ease principal and interest, within the time of our own lives."[109]

Let us focus again on the idea that "the Earth belongs in usufruct to the living." Much has been written on this concept, in some cases with startling and highly contestable interpretations.[110] Among the latter category, perhaps the most remarkable is that offered by Staughton Lynd when he makes this claim:

> The most important American reflection . . . about property was Jefferson's doctrine that the earth belongs to the living. It was in this form that the Revolutionary generation approached most nearly the socialist conception that living labor has claims superior to any property rights.[111]

By contrast, the Jeffersonian approach, with its powerful thrust toward sweeping away any order that is based on privilege or runs

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[108]Thomas Jefferson to James Madison, September 6, 1789, p. 397.

[109]Thomas Jefferson to James Madison, September 6, 1789, p. 397. Jefferson was soon to find out how wrong he was.

[110]For a sample of unpersuasive pages on this Jeffersonian reflection, see, e.g., Staughton Lynd, *Intellectual Origins of American Radicalism* (New York: Random House, 1968), pp. 67–88; Matthews, *The Radical Politics of Thomas Jefferson*, pp. 19–29; and Wills, *Inventing America*, pp. 132–48.

[111]Lynd, *Intellectual Origins of American Radicalism*, p. 77.

counter to reason, is truly revolutionary, even though it is predominantly grounded in the common sense of his era. And it is revolutionary, pace a widely held view, in a genuinely Lockean sense.

Given the absolutely speculative nature of Jefferson's letter-essay, totally devoid of references to possible sources, I will put forward an interpretation based on logical inferences and cogency of arguments. Let us start from Locke's *Second Treatise*, a potential background that has been unjustly uncharted in this regard.

Crawford B. Macpherson suggests repeatedly that Locke was responsible for transforming the natural right of property of the individual to the means for his subsistence into a right of illimitable appropriation, leaving non-property owners no choice but to sell their labor.[112] The assessment is not novel, as it moves along the same lines of the "Georgist" critique. Henry George was convinced that whoever owned the land could also reduce his fellow men to slavery:

> Place one hundred men on an island from which there is no escape, and whether you make one of these men the absolute owner of the other ninety-nine, or the absolute owner of the soil of the island, will make no difference either to him or to them.[113]

However, at least in the first state of nature (the second arises with the institutionalization of money), Locke's theory of appropriation appears anything but unlimited. Quite the opposite, in fact: the limits he sets are so stringent (and probably logically unsustainable[114]) that one might even go so far as to hypothesize the impossibility of

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[112]For a synthetic statement of this view, presented by this author in numerous works, see, e.g., Crawford B. Macpherson, "The Social Bearings of Locke's Political Theory," *Western Political Quarterly* 7, no. 1 (1954), p. 8.

[113]Henry George, *Progress and Poverty* (New York: Robert Schalkenbach Foundation, 1979), p. 347.

[114]On the Lockean proviso and its economic relevance, see Geoffrey P. Miller, "Economic Efficiency and the Lockean Proviso," *Harvard Journal of Law and Public Policy* 10, no. 2 (1989), pp. 401–10. Many economists of Austrian inclinations consider the Lockean proviso totally indefensible. See, e.g., Israel M. Kirzner, "Entrepreneurship, Entitlement, and Economic Justice," in *Reading Nozick: Essays on Anarchy, State, and Utopia*, ed. Jeffrey Paul (Totowa, N.J.: Rowman & Littlefield, 1981), pp. 385–413; and Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998), p. 244.

private property in the Lockean state of nature. (Locke's proviso and its restrictions on appropriation are discussed later in this article.)

A clearer understanding of this question can be obtained by first examining some of the main points of the Lockean theory of property. In the Lockean vision, the prerequisite of natural justice is common ownership without individual appropriation. Jefferson echoed this conception almost verbatim in a note from Paris written to Rev. James Madison, head of William and Mary College and father of his considerably more renowned namesake: "The earth is given as a common stock for man to labour and live on."[115]

What Locke sought to demonstrate was that a developmental path could be traced, starting out from this state of affairs in which the whole of the earth was given by God to all men in common and eventually leading to private property, without violating the principles of justice. Given the fact that the earth was originally given by God to Adam and then to all of Adam's descendants, it follows that it was given to all men in common. However, Locke makes clear, what has never been held in common is self-ownership:

> Though the earth and all inferior creatures be common to all men, yet every man has a "property" in his own "person." This nobody has any right to but himself.[116]

A person acquires rights of property over a *res nullius* by blending his or her own labor with the object. That which previously was inert and without any utilization whatsoever now is no longer characterizable in this manner, by virtue of human labor. That which an individual removes from the state of nature should properly be considered as his because he has mixed his labor with matter. According to Locke:

> [This] excludes the common right of other men. For this "labour" being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to.[117]

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[115]Thomas Jefferson to James Madison, October 28, 1785, *The Papers of Thomas Jefferson*, vol. 8, p. 682.

[116]Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 5, "Of Property," §26. This passage has given some legitimacy to the socialist interpretation of John Locke. See, e.g., Max Beer, *The History of British Socialism* (London: National Labour Press, 1921).

[117]Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 5, "Of Property," §26.

The perfect legitimacy of this process derives from the fact that every person has full title to her own body, faculties, and talents. By no means can this be regarded as a sort of escamotage designed to justify the original acquisition. For Locke, consensus and communal property must be taken at face value. If a man's body and will belonged to other individuals, and not exclusively to the subject himself, he would have to ask other human beings, the true proprietors, for permission to act.

Locke, however, adds a stringent condition for the possibility of appropriation, namely, there must be "at least . . . enough, and as good left in common for others."[118] It is this which constitutes the Lockean proviso, the meaning of which is further clarified:

> Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough and as good left, and more than the yet unprovided could use. . . . Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst. And the case of land and water, where there is enough of both, is perfectly the same.[119]

The other restriction on original appropriation is that of the possibility of utilizing the appropriated products:

> As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. . . . God and his reason commanded him to subdue the earth —i.e., improve it for the benefit of life and therein lay out something upon it that was his own, his labour. He that, in obedience to this command of God, subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.[120]

The Lockean proviso, apparently intended to be valid for all goods, actually applies most particularly to the case of land.[121] However, with

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[118]Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 5, "Of Property," §26.

[119]Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 5, "Of Property," §32.

[120]Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 5, "Of Property," §31.

[121]Compare and contrast paragraphs 27, 32, and 33 of the *Second Treatise*.

the transition to the second state of nature, which comes about through the invention of money, and above all to political society, by means of the contract, both the proviso and the limit of perishability and effective utilization of the products vanish completely.

Some scholars have argued that in the Lockean framework, with the transition to the second state of nature and then to political society, private property becomes illegitimate. Since the institutionalization of money supersedes all the natural limitations to private appropriations, the system goes back to the original premise of common ownership. As the proviso is not satisfied anymore—there is not enough and as good left for others—the goods once legitimately owned in private revert to common ownership.[122]

The possibility of accumulating incorruptible goods such as gold and silver leads to the logical disappearance of the limits, because "the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of anything uselessly in it."[123] The spread of precious metals leads to a world in which man

> may, rightfully and without injury, possess more than he himself can make use of by receiving gold and silver, which may continue long in a man's possession *without decaying for the overplus*.[124]

Taken at its face value, the Lockean proviso would result in a prohibition against appropriation in the state of nature. As Murray Rothbard has pointed out:

> Locke's proviso may lead to the outlawry of all private ownership of land, since one can always say that the reduction of available land leaves everyone else, who could have appropriated the land, worse off.[125]

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[122]See, e.g., John L. Mackie, *Ethics: Inventing Right and Wrong* (Middlesex: Penguin, 1977), p. 176; and Jerome Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980), pp. 163–70. According to these authors, Locke provided a specific window of opportunity for private property: from Creation to the invention of money. Were this not a fallacious interpretation, Jefferson could be considered both a consistent Lockean and a genuine enemy of private property.

[123]Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 5, "Of Property," §46.

[124]Locke, "An Essay Concerning the True Original Extent and End of Civil Government," chap. 5, "Of Property," §50, italics added.

[125]Rothbard, *The Ethics of Liberty*, p. 244.

Moreover, again within the framework of the economic analysis put forward by the Austrian school, Israel Kirzner has made clear that a discovery act does not necessarily leave anybody worse off, because, prior to that discovery, the resource simply did not exist.[126]

Such an interpretation is particularly interesting inasmuch as it explicitly harks back to the Lockean doctrine of property, while rejecting the proviso. In Rothbard's account, "[t]he homesteader—just as the sculptor, or miner—has transformed the nature-given soil by his labor and his personality."[127] He argues:

> The land communalists, who claim that the entire world population really owns the land in common, run up against the natural fact that before the homesteader, no one really used and controlled, and hence owned the land. The pioneer, or homesteader, is the man who first brings the valueless unused natural objects into production and use.[128]

By contrast, Robert Nozick accepts the proviso. Indeed, he awards it a pivotal position in his analysis of justice in the acquisition of property by root of title.[129]

Thus, contemporary debate on this issue is multifaceted, but it is clear that the abandonment of the Lockean proviso comes from scholars belonging to the Austrian school of economics. It is only through elaboration of the analyses put forward by a tradition that sprang from Carl Menger, and was worked out in greater detail in the works of Ludwig von Mises, that a blatant contradiction is thrown into sharp relief. The incongruity is in considering a resource to have been nonexistent for mankind up to that specific moment, while also regarding it as unappropriable because this would worsen another individual's situation. Clearly, this theoretical option was totally absent both in the era of Locke and in Jefferson's time, for knowledge of the "discovery" mechanisms typical of a market economy was still in its infancy.

Jefferson's assertions concerning land and the sovereignty of the present generation is nothing other than an extension of the limits on

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[126]Israel M. Kirzner, "Discovery, Private Property, and The Theory of Justice in Capitalist Society," *Journal des Économistes et des Études Humaines* 1, no. 3 (October 1990), p. 221.

[127]Rothbard, *The Ethics of Liberty*, p. 49.

[128]Rothbard, *The Ethics of Liberty*, p. 49.

[129]Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 175–82.

exploitation set by Locke. Utilizability (a prohibition against waste) and the Lockean proviso (appropriation of goods without causing a deterioration in the condition of others) are restrictions that hold in the relations between generations, and they illuminate the theoretical scaffold of Jeffersonian thought.

For the author of the *Declaration*, as we have seen, the generations stand facing one another as do whole nations, or individuals in the state of nature.[130] Therefore, their relations are regulated by the law of nature. Hence, the duty of a generation is to leave land enough and as good for the following generations. This is evidently an extension of the proviso, because the properties are the same: one's own successors do not enjoy a generic right to unexplored lands, but to the specific property already owned by their parents. Just as the new generations have the right to obtain property that is not burdened with debts, so also the "others," those who do not participate in that specific appropriation, have exactly the same right to enjoy land "enough and as good," in the Lockean state of nature. By the same token, property cannot be exploited and destroyed, jeopardizing the future of the coming generations. Waste is not countenanced by the law of nature.

The sovereignty of the present generation is, thus, definable as the right to receive a world in which the present has not been mortgaged by the ancestors. Every nineteen years, according to Jefferson's calculations, which were based on the mortality tables formulated by Georges Louis Leclerc, Comte de Buffon, a generation comes into the world. This generation has the right to a fresh start, whereas the one that preceded it has the duty not to destroy the world in which the present generation must live.

Jefferson enormously expands the range of action of this principle. All laws, constitutions, personal and public debts are erased at the close of the nineteen years. "Every constitution . . . and every law, naturally expires at the end of 19 years. If it be enforced longer, it is an

[130]One should keep in mind that, according to the doctrines of Grotius, Vattel, and many others, *jus gentium* (international law) was, in fact, natural law. This was peculiarly so for Jefferson, who, in 1810, translated a Roman law passage "*Quod per Alluvionem agro tuo flumen adjecit*, jure gentium *tibi acquisitur*" in this manner: "What the river adds by Alluvion to your field becomes yours *by law of nature*." Thomas Jefferson, *The Proceedings of the Government of the United States in Maintaining the Public Right to the Beach of the Mississippi, adjacent to New Orleans, against the Intrusion of Edward Livingston* (New York: Ezra Sargeant, 1812), p. 42, emphasis added.

act of force and not of right."[131] However—and many commentators place excessive emphasis on the present generation, often losing sight of the meaning of the duties to which the previous generation is beholden—this idea, which in itself appears radical and revolutionary, is conservative in the etymological sense, if considered in reference to the preceding generation. Debts that extend beyond one's own generation cannot be valid. The sins of the fathers do not pass on to their children, but they are undeniably sins. We are dealing with a principle of personal and generational self-restriction that is endowed with the full force bestowed on it by virtue of being grounded in natural law.

Jefferson imagines a sort of "permanent revolution," a constant transition between society and the state of nature, such as will maintain the criteria of justice intact. The new and "innocent" beginning that is the birthright of each generation is also a social contract by means of which everything can be thought out afresh, except for the idea that this may be possessed of extragenerational effect, or may in any other way run counter to natural law. Since laws tend over time to stray from natural law, the reiteration of the contract enables each generation to re-establish its bond with the natural order. This can be understood as a sort of device intended to revive the identity between natural and "municipal" laws that lies at the center of Jefferson's political concerns. It would ensure a means for unfailingly restating at regular intervals that natural law and the provisions deriving from nature itself and from reason are in full force. The relations prevailing between the generations are formed by the law of nature alone, and, at every new beginning of a generation over the world, a new contract, or an explicit statement of support for the old contract, would be compulsory. Jefferson thereby sidestepped the problem of "tacit consent" that had arisen in the Lockean framework where, by merely living in a place, the individual implicitly gave consent to the system of government in force. Instead, Jefferson moved toward a fully consensual conception of political obligation.

This vision was regarded with disapproval by Madison. While appreciating its principle, Madison could not fail to realize that it would severely undermine the security of property rights. The fears voiced by Madison in connection with frequent constitutional changes are well known.[132] The Jeffersonian doctrine, if applied coherently,

[131]Thomas Jefferson to James Madison, September 6, 1789, p. 396.

[132]See James Madison to Thomas Jefferson, February 4, 1790, *The Papers of Thomas Jefferson*, vol. 16, pp. 147–50.

would have involved fixed-term constitutions and laws which would be subject not merely to the possibility but rather to the certainty of revision in the space of less than two decades. In fact, it would have resulted in a situation in which it would no longer be possible for approval to be implicit. Naturally, a given generation could simply reiterate approval of all the laws passed by the previous one, but this would have required unequivocal action.

Madison replied that land could be transferred only in its natural state, devoid of the improvements ushered in by the deceased, because the present generation draws advantage from the enhancements of property that were the work of those no longer among the living. In essence, if we accept the benefits, then we are also duty bound to accept the damage that previous generations inflicted on the heritage they have handed down to posterity. Furthermore, public debts, Madison added, can also be contracted for a good cause, as had been the case for the funding of the American Revolution.

Madison's worries were indeed momentous: Jeffersonian radicalism was difficult to reconcile with the certainty of property rights. But the debate should by no means be conceived of as a contrast between a socialist and a classical liberal. Rather, it was fully internal to the Lockean tradition of natural rights, a tradition that was reshaped by Jefferson into one of its most radical formulations, consistently individualistic and property-based. In fact, Jeffersonian thought is twofold: there exists a sort of "normal" flow of political thought, and a utopian momentum. In the latter, he forced the horizon beyond its customary limits and demonstrated that, by following the classical principles that presided over the construction of modern natural law, one can reach extremes of radicalism capable of subverting any non-natural order. One cannot but agree with Herbert Sloan, who affirms that "Jefferson is . . . capable of creating his own form of utopia, debt-free, beneficent, and in keeping with the teachings of natural law."[133]

Finally, a specific question must be addressed. Why was a reflection of this type received with such embarrassment by those who see a Lockean Jefferson, a Jefferson as a champion of limited government and natural rights, and with such jubilation by those who advocate a departure from this view in various ways? This is to be explained by the fact that neither side appreciated the revolutionary character of classical liberal doctrine. The majority of commentators we have

[133]Sloan, "The Earth Belongs in Usufruct to the Living," p. 303.

mentioned composed their works when, in Europe, "liberalism" had become synonymous with social conservatism, and the self-proclaimed heirs of the classical American liberal tradition had become avowedly conservative.

Jefferson, on the other hand, both in his most radical writings and in his condemnation of feudal vestige, seemed to be driven by concerns springing from that historical approach—of radical and classical liberal origin—which claimed that the feudal overlords had built up their wealth thanks to the favors granted by political power and by a system that cannot be reconciled with the natural order. Over time, these favors have been paid by the underclasses, by those who had far less access to political power and, thus, to the iniquitous means of acquiring property. Adopting Jefferson's line of reasoning, it would seem that one could envisage a genuinely revolutionary program designed to expropriate the expropriators.

Justice demands respect for rules, procedures, guarantees. Over two centuries ago, Jefferson pondered the hypothesis of striking out against those who drew advantage from an unjust system. He believed in a strong version of natural rights, in particular property rights, legitimized on the basis of a reconstruction that included the historical framework. A person is the proprietor of a certain house because he has purchased it with honestly earned money, or because he won it in a lottery, or because it was donated to him, and so forth. A correct procedure, one that does not encroach on the property rights of others, legitimates ownership. But if this is true in a positive sense, it must be so in a negative sense as well. Illegitimate procedures must (should) be followed by expropriation and restitution.

In sum, Jefferson the political thinker (not, of course, Jefferson in power) was spurred by an impetus toward a radical rethinking of the whole of society and its rules, prompted by total rejection of any point of reference other than reason. And this radicalism is difficult to reconcile with the concept of "liberalism" held by many historians. Consequently, those who have embarked on the project of interpreting the great Virginian as a classical liberal have done so by giving a very wide berth to his "utopias," while those who have endeavored to seriously address the most utopian aspects of his thought have ended up fabricating a collectivist, organicist, and proto-socialist Jefferson. Thus, an in-depth understanding of the revolutionary character of the classical liberal theory of natural rights represents one of the necessary steps in order to do justice to Jefferson.

CONCLUSION

As a politician and a statesman, "Jefferson consistently opposed the destruction of property rights by agents of government, even with majoritarian support."[134] Doubt has never been cast on this view, as far as I am aware. Those who would classify Jefferson in the role of a proto-socialist and veritable champion of man in a non-existent struggle between the latter and the dollar restrict themselves to speculating on his thought. And, as I hope to have demonstrated, the line of reasoning they espouse is deceptive.

Given the character of this analysis, it is germane to dwell in greater depth on Jefferson's support for a conception of property rights that adheres rigorously to natural law. Over time, Jefferson voiced numerous criticisms against various laws on property whenever such laws effectively guaranteed the property of certain individuals at the expense of other people's property. However, all of Jefferson's criticisms are grounded on positive laws, contending that the government which had been established to safeguard the property of all of the people was now being redesigned to safeguard the property of some at the expense of that of others.

Let us turn to some passages in which Jefferson's statements in favor of the naturalness of rights of property are crystal clear. In his discussion of the state constitutions, Jefferson wrote that these were sound fundamental laws since, despite all their differences, they enshrined the concept that citizens "are entitled to freedom of person, freedom of religion, freedom of property, and freedom of the press."[135] This view is mirrored in other reflections he put forward elsewhere, which make it clear that he fully endorsed a Lockean conception, in an oblique yet no less significant manner. In his annotations to the work by Antoine-Louis-Claude Destutt de Tracy, Jefferson wrote:

> If the overgrown wealth of an individual is deemed dangerous to the State, the best corrective is the law of equal inheritance to all in equal degree; and the better, as this enforces a law of nature, while extra-taxation violates it.[136]

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[134]Scott, *In Pursuit of Happiness*, p. 43.

[135]Thomas Jefferson to John Cartwright, June 5, 1824, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 16, p. 45.

[136]Thomas Jefferson, "Note on Destutt de Tracy's Political Economy," April 6, 1816, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 14, p. 466.

In addition, in another important consideration on finance and on the tools required for a sound credit system, Jefferson offered a more classical line of reasoning: "No one has a natural right to the trade of a money lender, but he who has the money to lend."[137] And if a person who has money to lend has a natural right to practice the profession of money lender, then his entitlement to his own money is likewise original and natural.

A letter from Jefferson to well-known Physiocrat and free trade advocate Pierre Samuel Du Pont de Nemours, who lived in America, contains a statement whereby the Virginian maintains that justice, not majority rule, constitutes the foundation of society. Moreover, he openly recognizes that property is founded on the natural rights of individuals.

> I believe . . . that 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.[138]

Again in 1816, he wrote in a letter to his friend Samuel Kercheval that "the true foundation of republican government is the equal right of every citizen, in his person and property, and in their management."[139] Therefore, the legitimacy of democracy itself derives from firm support for the principles of individualist natural law. Indeed, Jefferson reiterated that political rights are inextricably associated with natural rights, and more specifically with rights of property: "no Englishman will pretend that a right to participate in government can be derived from any other source than a personal right, or a right of property."[140] On this point, Michael Zuckert aptly asserts that Jefferson did not reject the natural right of property in favor of a higher form of democracy, but rather derived his higher form of democracy from the right of property.[141]

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[137]Thomas Jefferson to John Wayles Eppes, June 24, 1813, *The Writings of Thomas Jefferson*, ed. Lipscomb and Bergh, vol. 13, p. 277.

[138]Thomas Jefferson to Pierre Samuel Du Pont de Nemours, April 24, 1816, *The Writings of Thomas Jefferson*, ed. Ford, vol. 10, p. 24.

[139]Thomas Jefferson to Samuel Kercheval, July 12, 1816, *The Writings of Thomas Jefferson*, ed. Ford, vol. 10, p. 39.

[140]Thomas Jefferson, "Comments on Soulé's Histoire," August 3, 1786, *The Papers of Thomas Jefferson*, vol. 10, p. 396.

[141]Zuckert, *The Natural Rights Republic*, p. 240.

It is also important to note, with regard to the closely connected theme of the redistribution of wealth, that Jefferson spoke a language that was unequivocally in harmony with classical liberal thought, ruling out that variations in the structure of the majority in the assemblies might lead to a power to legislate on questions of property:

> To take from one, because it is thought that his own industry and that of his fathers has acquired too much, in order to spare to others, who, or whose fathers have not exercised equal industry and skill, is to violate arbitrarily the first principle of association, "the guarantee to every one of a free exercise of his industry, and the fruits acquired by it."[142]

In his first inaugural address as president, he reiterated that he prefered a "Government, which . . . shall leave them . . . free to regulate their own pursuits of industry and improvement."[143] Four years later, in his second inaugural address, he declared that the government must maintain the "state of property, equal or unequal, which results to every man from his own industry, or that of his fathers."[144]

Of prime importance is the celebrated passage from the *Notes on the State of Virginia* in which Jefferson states that the government's acts with regard to freedom of conscience are illegitimate because conscience inflicts no harm on any citizen.

> The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbour to say that there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.[145]

Here, in addition to a foreshadowing of the classical theme of nineteenth-century liberalism, it can clearly be seen that Jefferson regarded property and protection against physical harm as closely correlated. In what way can one inflict injury on others? By encroaching on the natural rights of others. As a suitable example, Jefferson

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[142]Jefferson, "Note on Destutt de Tracy's Political Economy," April 6, 1816, p. 466.

[143]Thomas Jefferson, "First Inaugural Address," March 4, 1801, *The Writings of Thomas Jefferson*, ed. Ford, vol. 8, p. 3.

[144]Thomas Jefferson, "Second Inaugural Address," March 4, 1805, *The Writings of Thomas Jefferson*, ed. Ford, vol. 8, p. 344.

[145]Thomas Jefferson, *Notes on the State of Virginia*, ed. William Peden (Chapel Hill: University of North Carolina Press, 1955), p. 159.

mentions picking a pocket and breaking a leg: the absolute goods to be safeguarded are precisely one's property and freedom from physical harm. That such a conception is fully in tune with Locke's approach can clearly be seen by comparing it with the Epistle: "No injury is thereby done to anyone, no prejudice to another man's good."[146]

Basically, then, although eclectic in his economic persuasion—a Physiocrat in his early days, subsequently converted to the teachings of Adam Smith and an admirer of Destutt de Tracy in his maturity—Jefferson evinced a preference for a *laissez-faire* regime which would allow the free operation of talents, efforts, and prior situations (e.g., inheritance, possibly impartially divided among all the offspring), as compared to any conceivable redistribution of wealth. Jefferson is, thus, correctly presented in a recent dictionary of American political thought as one of the early American champions of *laissez-faire* capitalism.[147]

This should be no cause for surprise, since Jeffersonian thought is totally devoid of that collectivist view which is conducive to the acceptance of a redistributional approach. In the above-mentioned letter on the theme of generational sovereignty, Jefferson states: "What is true of every member of the society individually, is true of them all collectively, *since the rights of the whole can be no more than the sum of the rights of individuals*."[148] It is precisely this outlook that must be kept in mind in order to understand the true meaning of the "pursuit of happiness" in Jeffersonian doctrine: the right to have a government that does not infringe on one's own natural rights, in particular on property rights.

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[147]J. David Hoeveler, Jr., "Conservatism," in *A Companion to American Thought,* ed. Richard Wightman Fox and James T. Koppenberg (Oxford: Blackwell, 1995), p. 143.

[148]Thomas Jefferson to James Madison, September 6, 1789, p. 394, italics added.

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