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**PROPERTY AND HAPPINESS IN THOMAS JEFFERSON'S POLITICAL
THOUGHT**

Draft

A recent survey of rank and file libertarians in America shows that the top intellectual heroes of the past they venerate are Thomas Jefferson and Ayn Rand (the Mises-Rothbard dyad would be much better, but that is another story). Most of these people are not professional scholars and some might also be unaware of the fact that Jefferson is depicted, in academic circles, as a quasi social-democrat, as the champion of majority rule and a powerful enemy of the “possessive individualism” that permeated the revolutionary period and the early republic. It is my contention that the expert academics are wrong and the amateur libertarians are right. This article - or at least the complete version of it - should reassure libertarians who revere Jefferson as a supporter of individual rights, freedom of choice, limited government and above all property rights, that they are right, in spite of the extravagance that has come out on this old subject from the universities in the past century.

1. Human rights and the rights of property

It is common to associate Vernon Parrington, who wrote the classic treaty on American thought for the generation that came of age between the two world wars, with the fullest narration of Jefferson as

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the champion of human rights against the rights of property. The Declaration of independence was seen by the Harvard graduate as a “classical statement of French humanitarian democracy, [while the Constitution] an organic law designed to safeguard the minority under republican rule”.¹ It was obvious to Parrington that the two documents were part of the all encompassing “ceaseless conflict between the man and the dollar”.²

The author of *Main Currents in American Thought* was clearly influenced by J. Allen Smith, Frederick Jackson Turner, and, of course, Charles Beard. The progressive historians of the early 1900s had developed what is known as the conflict interpretation of American history, i.e., the idea that the country was entrapped from the beginning in an endless fight between persons and property, democracy and aristocracy. It was Beard’s moot claim to fame to have articulated this opposition in terms of rights of persons and rights of property (incorporated respectively in the Declaration and in the Constitution).³ This devious dichotomy has unfortunately shaped the American mind of the past century and in spite of the bankruptcy of the progressive school it has captured the imagination of many jurists, influencing Supreme Court critical decisions and much of the literature on the subject of property rights.

It is well known by most of you that the best refutation of this opposition is to be found in the works of Murray Rothbard, which to a certain extent could be considered the most forceful arguments ever advanced to prove that every human right is actually a property right, and that where there is no property there is no right and hence no liberty.

However, since it is so uncommon to hear some sense from the juridical quarters, it might be interesting to quote judge Potter Stuart, in the decision *Lynch v. Household Finance Corporation* of 1972. Writing the majority opinion he stated that “the dichotomy between personal liberties and property rights is a false one. Property does not

¹ Vernon L. Parrington, *The Beginnings of Critical Realism in America (1860-1920)*, (Norman: University of Oklahoma Press, 1987), p.411. The book is the last of the three-volume classic *Main Currents in American Thought*, published between 1927 and 1930. This was published posthumously and in fragmentary form since the author died in 1929.

² *Ibid.*, p.412.

³ See Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1913) and *Economic Origins of Jeffersonian Democracy* (New York: Macmillan, 1915).

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.”⁴

2.

To better understand the person *v.* property dichotomy one has to go back to the supposed source of it, the American Revolution, and its European intellectual heroes.

According to Jefferson, it was John Locke who had a most relevant role in shaping the “harmonizing sentiments” of the American Revolution. He thought the Declaration to be no original document, but merely a recapitulation of the American sentiments of 1776. In fact, Richard Henry Lee (1732-1794) accused Jefferson of plagiarism. According to the man who signed the first motion for independence in June 1776, the Declaration was copied from John Locke’s *Second Treatise*.

The Virginian had no reason to contend that allegation. In fact he considered it to be its real strength:

This was the object of the Declaration of Independence. Not 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, and to justify ourselves in the independent stand we are compelled to take. Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion. 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, &c..⁵

At the end of his life, again Jefferson was ready to put the author of the

⁴ 405 U.S. 538, 552 (1972), quoted in Leonard W. Levy, “Property as a Human Right”, *Constitutional Commentary*, 5, 1988, p.184.

⁵ Th. Jefferson a H. Lee, May 5, 1825, Paul Leicester Ford, ed., *The Writings of Thomas Jefferson*, (New York-London: Putnam-Knickerbocker Press, 1892-99), 10 vols. [*Writings*] v.10, p.343.

Second Treatise in the American Olympus on liberty and government:

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, and the United States.⁶

The conventional wisdom of the historians up to the 1960s was pretty much in line with what Jefferson and other protagonists of the Revolution stated so clearly: The Lockean influence on the late colonial and revolutionary generation. In his seminal work of 1922, Carl Lotus Becker (1873-1945), analyzing the theoretical framework of the Declaration of Independence, concluded that Jefferson had imported Lockean natural rights philosophy into the birth certificate of the country.⁷ According to Becker: "the lineage is direct, Jefferson copied Locke and Locke quoted Hooker".⁸ During the 1950s the Lockean thesis had its climax in the work of Louis Hartz (1919-1986): "Locke dominates American political thought, as no thinker anywhere dominates the political thought of a nation".⁹

However, Jefferson's words, and the conventional wisdom of a generation of scholars, have fallen on deaf ears later on, and with few notable exceptions, academics in the past fifty years have tried to present a Jeffersonian mind, as well a revolutionary one, more or less "debugged" of any sort of Lockean influence.¹⁰

In general, as far as the whole revolutionary period is concerned, it has

⁶ Th. Jefferson, "From the Minutes of the Board of Visitors", University of Virginia, 1822-1825, October 3, 1825.

⁷ C.L. Becker, *The Declaration of Independence, a Study in the History of Political Ideas* (New York: Harcourt, Brace, 1922).

⁸ *Ibid.*, p.79.

⁹ L. Hartz, *The Liberal Tradition in America: An Interpretation of American Political Thought since the Revolution* (New York: Harcourt, Brace, 1955) p.140.

¹⁰ See in particular, Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (New York: Doubleday, 1978). The proper title of this work should be *Inventing Jefferson (and Hutcheson)* as the author tries to argue that the Virginian was "enlightened" in his political thought by the authors of the Scottish Enlightenment, and totally ignorant of Locke's work. Of course, after construing a never existed Jefferson Wills goes on to build up a totally deceptive Hutcheson, who supposedly influenced the Declaration's ideas on property, natural rights and moral philosophy in general. This book has been attacked with deserved severity: see Ronald Hamowy, "Jefferson and the Scottish Enlightenment: A Critique of Garry Wills's *Inventing America*", *William & Mary Quarterly*, 3rd series, 36, 4, 1979, and K.S. Lynn, "Falsifying Jefferson", *Commentary*, 66, 4, October 1978, pp.66-71.

been the task of the so-called “Republican synthesis” to challenge the long accepted notion of a Lockean influence on the colonists. The works of John Pocock, Bernard Bailyn, Gordon Wood and Lance Banning, just to name the front runners of a vast intellectual revisionist movement, have been a powerful challenge to what they call the “Lockean myth”.¹¹ In the past forty years these authors developed a real school that has its center in the devaluation of any influence of classical liberalism, particularly of the Lockean inclination, on the men of 18th century America.

As far as the *pars contruens* is concerned these scholars have modified the notion of “republicanism”, transforming what was once considered merely a crystallized form of government into a dynamic ideology. It is their contention that this ideology molded both the ancient world and the modern one, and in particular, dominated the Florentine political universe of the Cinquecento, reaching England in the 16 hundreds and America in the revolutionary and early republic era. The key modern figures of this novel interpretation are Machiavelli, Harrington and ... Thomas Jefferson. The most talented historian of the republican school, J.G.A. Pocock, asserted in the 1970s: “an effect of the recent research has been to display the American Revolution less as the first political act of revolutionary enlightenment than as the last great act of the Renaissance”.¹²

Let’s briefly review the main points of contrast between the republican interpretation of the American past and classical liberal/Lockean one.

Republicanism’s most important conjecture is that the supreme political end is the pursuit of the “public good”, which in turn is defined almost always *ex negativo* as the opposite to the search for private interests. It follows that liberty is essentially the Florentine ideal of “vivere civile”, or civic virtue, and it has nothing to do with the classical liberal definition of liberty in terms of non interference of public authorities in

¹¹ See J.G.A. Pocock, *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, Princeton University Press, 1975); Bernard Bailyn *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967); Gordon S. Wood, *The Creation of the American Republic, 1776-1787*, (Chapel Hill: University of North Carolina Press, 1969); Lance Banning, *The Jeffersonian Persuasion, Evolution of a Party Ideology* (Ithaca: Cornell University Press, 1978). Strictly speaking, Bailyn should not be included in the bunch, as his analysis tends to put Locke somewhat more behind the scenes than it used to be, but it is perfectly compatible with the classical historical readings of the American Revolution.

¹² J.G.A. Pocock, “Virtue and Commerce in the Eighteenth Century”, *Journal of Interdisciplinary History*, 3, 1, 1972, p.124.

the lives of the individuals.¹³

The cardinal category of the republican school is that of “virtue”, understood very broadly as a sacrifice of the self (especially of self interests) in order to perfection the individual participation to the construction of the *res publica*. The central thesis of a successful book by Gordon Wood, *The Creation of the American Republic, 1776-1787*, one of the most radical assessments of the republican view, is that for the Americans the essence of the Revolution was the regeneration of the people’s character, the pursuit of the public good, and the search for “virtue”, as self-denial.¹⁴

Property in this framework isn’t much more than an instrumental tools; a pathway to public participation and a safeguard of autonomy and independence. As Wood puts it: “Property in a republic was still conceived of traditionally - in proprietary terms - not as means of personal profit or aggrandizement but rather as a source of personal authority or independence”.¹⁵ But it was no natural right, rather a conventional and society given right. The whole discourse of natural rights is in fact quite estranged from the republican tradition.

Classical liberalism, most notably embodied in Lockean political thought, guarantees the full moral and political legitimacy, to the pursuit of purely private interests. This vision implies a fundamental consequence: the individual is seen in duplicity of relations, with other fellow human beings in the free market, and with agents acting on behalf of the government. The free market consensual relations regulate the legitimate order of dealings with other individuals, and the natural rights doctrine (the idea that there are certain inalienable rights that cannot be encroached upon by the State) limits the actions of legitimate government conduct. The limitations of power, thus, being so clearly linked to liberty, become the most important political end of the classical liberal tradition.

At the end of the 1970s the republican school was enjoying a popularity soon to be challenged. A fine example of the overstated optimism that was cultivated by scholars can be found in the words of

¹³ See Philip Pettit, *Republicanism. A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997) and Quentin Skinner, *Liberty Before Liberalism* (Cambridge, Cambridge University Press, 1998) pp.80-86.

¹⁴ See Gordon S. Wood, *The Creation of the American Republic*, pp.91-124.

¹⁵ G.S. Wood, *The Radicalism of the American Revolution. How a Revolution Transformed a Monarchical Society into a Democratic One Unlike Any That Had Ever Existed*, (New York: Knopf, 1992) p.178.

Lawrence Stone: “the history of political thought in the west is now being rewritten, primarily by J.G.A. Pocock, Quentin Skinner, and Bernard Bailyn”.¹⁶

Finally some very persuasive works came out to question the republican synthesis.¹⁷ Recently Jerome Huyler, who in the book *Locke in America* has definitely shown the diffusion of Lockean liberalism in the revolutionary age, believes it is high time to abandon the fallacious dichotomy “republican v. Lockean”.¹⁸

However the most succinct and successful refutation of entire intellectual republican construction is to be found in a *divertissement* by John Diggins: the rewriting of the Declaration using the rhetoric of republicanism.¹⁹ The result is so grotesque that the Jeffersonian political universe comes out clean of any influence of “vivere civile” and civic humanism.

Actually, what comes out of almost every Jefferson page we read is preference for an extremely limited government, so limited it could hardly be called a government by our standards. Moreover, as Joyce Appleby noted very aptly, “the private came first. Instead of regarding the public arena as the locus of human fulfillment where men rose above their self-interest to serve the common good, Jefferson wanted government to offer protection to the personal realm where men might freely exercise their faculties”.²⁰

When a thinker is revisited with the categories and fallacies of the republican school, (virtue, public good, political participation and the like) all questions concerning the limitations of power and coercion by

¹⁶ Lawrence Stone, “The Revival of Narrative: Reflections on a New Old History”, *Past and Present*, 85, 1979, p.14.

¹⁷ See, among the various works that dispute the republican interpretation: Stephan Dworetz, *The Unvarnished Doctrine, Locke Liberalism, and the American Revolution* (Durham: Duke University Press, 1990); Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton: Princeton University Press, 1994) and *The Natural Rights Republic, Studies in the Foundation of the American Political Tradition* (Notre Dame: University of Notre Dame Press, 1996) Paul A. Rahe, *Republics Ancient and Modern: Classical Republicanism and the American Revolution*, (Chapel Hill: University of North Carolina Press, 1992). From another perspective, a neo-Marxist one, a notable historian has criticized the school, see Isaac Kramnick, *Republicanism and Bourgeois Radicalism. Political Ideology in Late Eighteenth-Century England and America* (Ithaca: Cornell University Press, 1990).

¹⁸ See Jerome Huyler, *Locke in America. The Moral Philosophy of the Founding Era* (Lawrence: University Press of Kentucky, 1995) p.39.

¹⁹ See John Diggins, *The Lost Soul of American Politics*, (New York: Basic Books, 1984) pp.364-365.

²⁰ Joyce O. Appleby, “What is Still American in the Political Philosophy of Thomas Jefferson”, in: *William & Mary Quarterly*, 3rd series, 39, 2, April 1982, p.293.

governments on the individuals simply disappear. This is peculiarly deceptive when it comes to Thomas Jefferson, a man who spent all his life reflecting on the best instruments to prevent concentrations of power, of the state against the individuals and of federal government against the states.

It has been noted by Erler that “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 the 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”.²¹

This seems particularly true. The third president, comparing the Glorious to the American Revolution in 1824, affirmed that “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.”²²

The real *deus absconditus* (but this god is hidden only for republican historians) of the whole Jeffersonian political thought is the natural rights doctrine, and inside the constellation of modern natural rights doctrine, he has no better guide than John Locke.

3. The great omission/substitution: pursuit of happiness in lieu of property.

The idea of a Jeffersonian hostility to property rights - or better, to the natural foundation of property rights - although quite common, is based upon very scanty evidence. Actually on no evidence at all, as we shall see shortly.

Evidence number one, by far the most quoted, is an omission. An omission and a substitution: the pursuit of happiness in lieu of property. Let's quote the famous passage, as Jefferson first drafted it:

We hold these truths to be sacred & undeniable; that all men are

²¹ Edward J. Erler, “The Great Fence to Liberty: The Right to property in the American Founding”, *Liberty, Property, and the Foundations of the American Constitution*, Ellen Frankel Paul and Howard Dickman, eds., (Albany: State University of New York Press, 1989) p.47.

²² Th. Jefferson to John Cartwright, June 5, 1824.

created equal and independant, [sic] 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 rights 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.²³

Once again we have to go back to Parrington for the classical formulation of the supposed importance of this change: “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”.²⁴

The first thing one may want to point out is that if Jefferson had had a contrast with John Locke on matters of property he would have made it quite clear. He, in fact, had usually little respect for authorities (the proof is that at the age of 71, while he was reading again Plato's *Republic* he had no problem writing to John Adams that the Greek philosopher was a much overrated thinker).²⁵ However, not only did he never criticize Locke, but he constantly praised him, stating that “Locke's little book on Government, is perfect as far as it goes”²⁶ and

²³ Th. Jefferson's “original Rough draught” of the Declaration of Independence, Julian P. Boyd, *et al.*, eds., *The Papers of Thomas Jefferson* (Princeton, Princeton University Press, 1950-present) vols. 1-27. [*Papers*] vol.1, pp.423-424. This is the first draft, not the final one that came out from the committee with the self-evident truths (probably Thomas Jefferson himself changed sacred and undeniable for self-evident).

²⁴ V. Parrington, *Main Currents in American Thought, The Colonial Mind*, (New York: Harcourt, Brace, 1927), v.1, p.350.

²⁵ “Having more leisure there than here for reading, I amused myself with reading seriously Plato's republic. I am wrong however in calling it amusement, for it was the heaviest task-work I ever went through. I had occasionally before taken up some of his other works, but scarcely ever had patience to go through a whole dialogue. While wading thro' the whimsies, the puerilities, and unintelligible jargon of this work, 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?” Th. Jefferson to John Adams, July 5, 1814, Lester J. Cappon, ed., *The Complete Correspondence between Thomas Jefferson and Abigail and John Adams* (Chapel Hill: University of North Carolina Press, 1988) p.432.

²⁶ Th. Jefferson to Thomas M. Randolph, 30/5/1790, *Writings*, v.5, p.173.

he is referring to the *Second Treatise*, which contains Chapter V, “Of Property”.

The fact remains: the famous Lockean triad “Life, Liberty and Estate” was changed to the even more famous “Life, Liberty and the Pursuit of Happiness”. Before making too much of it, several questions should be addressed.

First, does this indicate a total eclipse within the Jeffersonian political reflection of the natural rights of the classical liberal tradition, i.e. “life, liberty and property”? The answer is a macroscopic NO. The terms “life and property”, “liberty, life, and property”, “liberty and property” are scattered all over his writings. And these terms are used in a context that is perfectly consistent with the entire classical liberal tradition. A few examples will be sufficient to prove the point.

In 1775, writing one of his first official documents, Jefferson stated that it was the colonists’ right “to protect from every hostile hands our lives & our properties”.²⁷ Half a century later we find in the last official document he wrote for the Virginia Assembly in 1825, 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”.²⁸

In between we find a series of allusions to the natural rights of the classical liberal tradition that should leave no doubt in an honest historian about his inclinations. In 1809 he declared his satisfaction about the relative success of the American experiment of self-government, and added: “in no portion of the earth were life, liberty, and property so securely held”.²⁹

His private correspondence is rich of analogous references. In 1823, talking about the various state constitutions, he asserted that, although very different, “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”.³⁰

In 1803, when he was trying to convince the American people of the wisdom of the Louisiana Purchase, he also mentioned what had to be

²⁷ Th. Jefferson, “Declaration of the Causes and Necessity for Taking up Arms, Jefferson’s draft, 23 June-6 July”, 1775, *Papers*, v.1, p.197.

²⁸ Th. Jefferson, “Declaration and Protest of the State of Virginia, 1825”, Andrew A. Lipscomb and Albert Ellery Bergh, eds., *The Writings of Thomas Jefferson*, (Washington DC: Thomas Jefferson Memorial Foundation, 1904-5) 20 vols. [*Memorial Edition*], v.17, p.446.

²⁹ Th. Jefferson, “Reply to the Virginia Assembly, 1809”, *Memorial Edition*, v.16, p.33.

³⁰ Th. Jefferson to A. Coray, 1823, *Memorial Edition*, 15, p.489.

done:

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, and for ascertaining the geography of the country acquired. Such materials for your information, relative to its affairs in general, as the short space of time has permitted me to collect, will be laid before you when the subject shall be in a state for your consideration.³¹

In spite of all this evidence, the substitution remains a problem for many commentators. In my opinion, the pursuit of happiness appears to be relatively ample as to comprehend the right to acquire and dispose of property as an individual saw fit. No one explained the authentic meaning of pursuit of happiness better than Ronald Hamowy: “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 asceticism, in a word by determining the path of their own earthly and heavenly salvation as they saw fit”.³²

As it usually happens in America, the case of was even settled by Court. In 1906 the Supreme Court of Wisconsin in the decision *Nunnemacher v. State*, established that the expression “pursuit of happiness ... unquestionably ... [comprehends] the acquisition of private property”.³³ However historians were not satisfied and went on quarreling for the next century on the very same thing that was adjudicated in 1906.

It has been often noted how various contemporary documents draw together property and happiness in a perfectly Lockean and individualistic fashion. The Virginia Declaration of Rights, of June

³¹ Th. Jefferson, “Third Annual Message, October 17, 1803” (italics mine). One need only be vaguely familiar with Jefferson’s ideas about liberty of conscience to appreciate the importance of this passage.

³² Ronald Hamowy, “Jefferson and the Scottish Enlightenment”, p.519.

³³ 129 Wis. 190, 108 N.W. (1906), p.629, cit. in Stanley N. Katz, “Republicanism and the Law of Inheritance in the American Revolutionary Era”, *Michigan Law Review*, 76, 1, 1977, p.6.

1776, written by George Mason (1725-1792) and probably read by Jefferson prior to the drafting of the Declaration, comes immediately to mind. But one should also consider the Pennsylvania Constitution, declaring “that all men are born equally free and independent, and have certain natural, inherent, and inalienable rights, amongst which are, the enjoying and defending of life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety”³⁴ In a similar fashion, the first New Hampshire Constitution stated that “acquiring, possessing and protecting property - and in a word, ... seeking and obtaining happiness” were among the natural rights of men.³⁵

The point is that in spite of the amount of ink wasted on the controversy, it does not seem possible to construe an opposition between property and happiness in revolutionary American rhetoric. Life, Liberty, Property, Security, Happiness are probably the five most recurrent terms in America’s discourse on natural rights. Looking for a powerful trio, it is reasonable to believe that Jefferson preferred happiness to property mainly because of style (it was less legalistic and conveyed the same idea).³⁶ Probably William Scott is correct in asserting that “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”.”³⁷

Still, a good majority of Jeffersonian scholars are inclined to believe that Jefferson, *à la* Maximilien Robespierre (1758-1794),³⁸ did not consider property a natural right, but only a conventional right, subject to the free decisions of the majority, and clearly distortable according

³⁴ Pennsylvania Declaration of Rights, 1776, Bernard Schwartz, ed., *The Roots of the Bill of Rights*, (New York: Random House, 1971), v.2, p.264.

³⁵ *Ibid.*, p.375.

³⁶ That it had been an aesthetic choice is affirmed by Adrienne Koch, *Power, Morals, and the Founding Fathers* (Ithaca: Cornell University Press, 1961), p.28.

³⁷ William B. Scott, *In Pursuit of Happiness: American Conception of Property from the Seventeenth to the Twentieth Century*, (Bloomington-London: Indiana University Press, 1977) p.42.

³⁸ I am referring to the well-known fact that Robespierre, following his master Jean-Jacques Rousseau, believed the right to property to be a mere convention to be regulated by the law. On April 1793, during the discussion of the new Declaration of Rights, he argued the “property is the right that every citizen has to enjoy and dispose of the portion of goods guaranteed to him by the law”, see “Le Moniteur”, séance of April 24, 1793, v.16, p.213.

to the will of the community. In short, according to the prevailing interpretation, property for Jefferson would not be a natural right, but merely a civil right.³⁹

As this construction risks becoming the standard one, let me briefly try to clarify one concept: the relationship between civil rights and natural rights in Jeffersonian thought. Because those who believe that property could be a civil right but not a natural one in the Virginian's political thought, are in error from the beginning: The division of individual rights into two different fields (natural and civil) does not pertain to the Jefferson, or to any consistent natural rights thinker.

For American, as well as European, theorists of natural rights this division simply does not exist. The idea, expressed in simple and clear terms in the opening sentences of the Declaration, is that the only legitimate end of government is the protection of the natural rights of men. The origin of these rights - as the word natural (inalienable, inherent, intrinsic were synonyms used by European and Americans) immediately suggests - is antecedent to any law written or agreed upon by men. Human beings possess all their rights prior to entering into a state of political society. The question of civil rights and natural rights, according to this framework of analysis, is quite different from the simplistic one depicted by many scholars as an opposition between conventional and natural, or society given and nature given rights.

Civil rights are those that derive from the social contract, that is they come into existence with the government. There is basically only one civil right: It is the individual right of seeing the government as a protector of his natural rights. It is a right to securely enjoy life, liberty and property. So, whether our contemporary Jeffersonian students like it or not, a civil right is the right to freely and securely have command over one's natural rights. It does not have anything to do with majorities, societies, political communities and the like: it is conventional only insofar as it is contractual (because society itself is born out of a social compact). If there were not a lot of confusion around the terms "rule of law", one could argue that the civil right is the right to the "rule of law", or to be governed according to the laws,

³⁹ See, among the very many pundits who subscribe to this nonsense, Richard K. Matthews, *The Radical Politics of Thomas Jefferson: A Revisionist View*, (Lawrence: University Press of Kansas, 1984) pp.19-29, and Edward Dumbauld, *Thomas Jefferson and the Law*, Norman, University of Oklahoma Press, 1978, p.153. Although Matthews portrays himself as a revisionist he is actually an orthodox, as this position is defended by many scholars.

which in turn are to mirror natural rights.

The right to revolution, the individual right of resistance, in this design is the first natural right and it is somewhat opposed to the civil right that one has vis-à-vis the government. While the latter is a right to be protected *by* the government, the former is a right to protection *from* the government.⁴⁰

If this is the general horizon of any consistent natural rights justification of government, it is peculiarly rigorous in Jefferson's case. In a letter of 1816, echoing once again Locke's moral philosophy, he states 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.⁴¹

4. The rest of the evidence

The major corroboration of the fact that Jefferson did not consider property rights in the category of natural rights has been found in an episode which was first disclosed by one of the Virginian most deceptive scholars, Gilbert Chinard during the 1920s.⁴² Luckily the whole story is now in the *Papers of Thomas Jefferson*, with excellent editorial notes, that explain pretty much everything.

The episode, as narrated by Chinard and everybody else after him, is as follows. Jefferson, still in Paris, in July 1789 would have told Lafayette (Marie-Joseph-Paul-Yves-Roch-Gilbert du Motier, 1757-1834) to delete the right to property from the first draft of the French Declaration of Rights. Whether true or not, and we shall soon see it is not, one thing Jefferson "forgot" to suggest Lafayette was to erase from the list of natural rights, is the right to "la disposition entière de sa personne, de son industrie, de toutes ses facultés" (the full control of

⁴⁰ For a good explanation of this point see Michael P. Zuckert, "Thomas Jefferson on Nature and Natural Rights", *The Framers and Fundamental Rights*, R.A. Licht, ed., (Washington D.C.: American Enterprise Institute, 1991) pp.166-169.

⁴¹ Th. Jefferson to Francis W. Gilmer, June 27, 1816, *Writings*, v.10, p.32.

⁴² See G. Chinard, *Thomas Jefferson. The Apostle of Americanism*, (Boston: Little, Brown, 1929) p.233, and also Gary Wills, *Inventing America*, p.238.

his person, his industry, and all his faculties), that is to say a stronger and even more Lockean rephrasing of the right of property.

However, the Jeffersonian changes and suggestions to “Lafayette’s Draft of a Declaration of Rights” about property right and honor, are these: “Tout homme nait 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 resistance à l’oppression”.⁴³ In editorial note 1, it is clearly established that the first parenthesis *was never closed*, and it is also noted how in the final version the rights of property, was not in the first place, as in the first draft, but in the third (by the way, exactly where Locke put it).⁴⁴ It seems only reasonable to come to the conclusion that Jefferson wanted only to suggest a different order or priority, as far as the right of property is concerned, while he wanted to have the cure of his honor expunged. That is why in one case he closed the parenthesis, in the other he did not.

The relative importance of the punctuation was clearly grasped by Chinard, who, editing the document we are talking about, decided to close the parenthesis himself.⁴⁵

A rapid reading of a Jeffersonian letter⁴⁶ - in which he affirms clearly that we have no property on ideas as we do on things, and considers the utilitarian nature of the laws for patents - has brought other scholars to a gross misunderstanding about Jefferson’s view of property rights. I shall not dwell on this too much, because I need only to quote an authority on intellectual property rights. Rothbard argues that nobody can assimilate material goods - that may legitimately become *exclusive property* - and ideas that circulate freely and are not lost by the owner once another person becomes acquainted with them. This of course does not mean that the author of a text or an invention may not look out for contractual agreements in order to make a profit out of his work.⁴⁷

Rothbard does not quote Jefferson, but his line of reasoning is exactly the same as the one pursued by the great Virginian.

⁴³ Th. Jefferson, “Lafayette’s Draft of a Declaration of Rights”, *Papers*, v.15, p.230.

⁴⁴ Editorial note, *Ibid.*, p.233.

⁴⁵ *The Letters of Lafayette and Jefferson*, G. Chinard, ed., (Baltimore-Paris: The Johns Hopkins Press & “Les Belles Lettres”, 1929) p.138.

⁴⁶ See Th. Jefferson to Isaac McPherson, August 13, 1813, *Memorial Edition*, v.13, pp. 333-336.

⁴⁷ See Murray N. Rothbard, *Man, Economy and State*, (1962) Los Angeles, Nash, 1970, pp. 652-660.

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, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. 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. Society may give an exclusive right to the profits arising from them, as an encouragement to men to pursue ideas which may produce utility, but this may or may not be done, according to the will and convenience of the society, without claim or complaint from any body.⁴⁸

So, in order to ascertain that Jefferson, because of his ideas on intellectual property, was hostile to property rights in general, one would have to prove also that Murray Rothbard considered property not a natural right but a gift of government. And that would be quite a difficult matter to demonstrate.

I believe that the question should be put in the following terms. Being Jefferson undoubtedly a natural rights thinker if, and only if, he had ever argued that human beings do not possess material goods legitimately in the “state of nature”, we could talk of him considering property a non-natural right. This of course never happens. Every criticism of Jefferson regarding the rights of property is always focused on the existing laws, on the simple fact that governments (supposedly justified as the protectors of everybody’s property) guaranteed privileges to a group of people against all the others.

However, it is now time to turn to several passages in which Thomas Jefferson unequivocally advocates the inalienability and naturalness of property rights.

In a letter to the noted economist Pierre Samuel Du Pont de Nemours

⁴⁸ Th. Jefferson to Isaac McPherson, p.335.

(1739-1817), Jefferson ascertained that it is justice and not majority rule the fundamental law of society. Moreover he affirmed that property is based on nature. It might be useful to quote his entire creed, just to show how socialist Jefferson was:

[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; that no one has a right to obstruct another, exercising his faculties innocently for the relief of sensibilities made a part of his nature; that justice is the fundamental law of society; that the majority, oppressing an individual, is guilty of a crime, abuses its strength, and by acting on the law of the strongest breaks up the foundations of society; that action by the citizens in person, in affairs within their reach and competence, and in all others by representatives, chosen immediately, and removable by themselves, constitutes the essence of a republic⁴⁹

In 1816 he writes to his friend Samuel Kercheval, a Virginian writer: “The true foundation of republican government is the equal right of every citizen, in his person and property, and in their management.”⁵⁰ This is very important, as Jefferson justifies his faith in democracy through individualism and property rights. He might have been near sighted, considering what happened later on, but this is a crucial point. As Michael Zuckert appropriately puts it “far from rejecting a natural right to property in favor of some “higher” form of democracy, Jefferson derives his “higher” democracy from the right to property”.⁵¹ Even more clearly an inflexible Jeffersonian like John Taylor of Caroline county (1753-1824) tied together popular and individual sovereignty “the sovereignty of the people arises ... out of each man’s right to govern himself” and “with this individual right, political structures are built”.⁵² And Jefferson himself linked property rights and democracy in a way that leaves no room for misinterpretation: “no

⁴⁹ Th. Jefferson to P.S. Du Pont de Nemours, April 24, 1816, *Writings*, v.10, p.24.

⁵⁰ Th. Jefferson to S. Kercheval, July 12, 1816, *Writings*, v.10, p.39.

⁵¹ Michael P. Zuckert, *The Natural Rights Republic*, p.240.

⁵² J. Taylor, *An Inquiry into the Principles and Policy of the Government of the United States*, (1814) edited by W. Starr, with an introduction of R. Nicholas (London: Routledge, 1950) p.365. Jefferson said of the book and the author: “I acknowledge myself indebted for many valuable ideas, and for the correction of some errors of early opinion, never seen in a correct light until presented to me in that work. ... I know that Colonel Taylor and myself have rarely, if ever, differed in any political principle of importance” Thomas Jefferson to Thomas Ritchie, December 25, 1820.

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”.⁵³

Although, as I said a welfarist and quasi-socialist image of Jefferson has been construed in the past years, this happens to be at odds with what the author of the Declaration thought about redistribution of wealth. “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 skills, is to violate arbitrarily the first principle of political association, “the guarantee to everyone of a free exercise of his industry, and the fruits acquired by it”.⁵⁴

Likewise, in his first inaugural address (March 4, 1801) he says his preference goes to a “a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities”. Four years later in his second inaugural address (March 4, 1805) he affirmed that “equality of rights [has to be] maintained, and that state of property, equal or unequal, which results to every man from his own industry, or that of his fathers.”⁵⁵

What is really lacking in Jefferson’s thought is the very basis that renders redistribution possible, that is, an organic view of society and the idea that wealth is a social product. In the famous letter “the earth belongs in usufruct to the living” - written in 1789 from Paris to James Madison (1751-1836) - he declared: “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.”⁵⁶

Considering all we have said and all we know about Jefferson’s thought on property - and also the fact that we are approaching Oscar night, we have to give the award for the most bombastic idiocy ever written on the subject. And the winner is Staughton Lynd and the

⁵³ Th. Jefferson “Answers to Soules questions, 1786”, *Memorial Edition*, v.17, p.133.

⁵⁴ *The Complete Jefferson*, Saul K. Padover, ed., (New York, Duell, Sloan & Pearce, 1943) p.372.

⁵⁵ Th. Jefferson, “First Inaugural Address”, and “Second Inaugural Address”, *Writings*, v.8, p.3 and p. 344.

⁵⁶ Th. Jefferson to J. Madison, September 6, 1789, *Writings*, v.5, p.116.

statement is: “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”.⁵⁷

⁵⁷ Staughton Lynd, *Intellectual Origins of American Radicalism* (New York: Random House, 1968), p.77.