

## CLASSICAL ECONOMICS AND THE AMERICAN FOUNDING<sup>1</sup>

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### **Was the Founding Pro-Capitalism, Anti-Capitalism, or Open to Either Position?**

Some critics of capitalism are sure that a market society is just what the Founders intended. Historian Richard Hofstadter writes, “while they [the Founders] thought self-interest the most dangerous and unbrookable quality of man, they necessarily underwrote it in trying to control it. . . . [U]nder the competitive capitalism of the nineteenth century America continued to be an arena for various grasping and contending interests.” Similarly, some conservative scholars argue that according to Locke (and presumably also the American Founders), “the individual’s uninhibited pursuit of economic self-interest is both morally legitimate and conducive to the common good—a view directly contrary to that of both classical and biblical morality.” In other words, a government that protects acquisition of private property is the enemy of religion and moral virtue.<sup>2</sup>

But other scholarly anti-capitalists deny that the Founders’ principles required a capitalistic society. Gordon Wood, in his much-praised *Creation of the American Republic* (1969), even went so far as to claim in effect that the Founders (at least in the 1770s) did not believe it was necessary for government to protect an individual right to private property: “The extensive mercantilist regulation of the economy, the numerous attempts in the early years of the war to suppress prices, control wages, . . . was in no way inconsistent with the spirit of ’76, but in fact was ideally expressive of what republicanism meant.” As the Americans of 1776 understood it, said Wood, “republicanism was essentially anti-capitalistic.”<sup>3</sup>

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<sup>1</sup>Prepared for the Free Market Forum, “The Role of Markets and Governments in Pursuing the Common Good,” Panel Topic: The Moral Foundations of Classical Economics, at Hillsdale College, September 29, 2007.

<sup>2</sup>Hofstadter, *The American Political Tradition* (New York: Vintage, 1948), 16. Marc Plattner, “Natural Rights and the Moral Presuppositions of Political Economy,” in Nichols, *From Political Economy to Economics*, 41.

<sup>3</sup>Gordon S. Wood, *The Creation of the American Republic* (New York: Norton, 1969), 61,

The great debate between Jefferson and Hamilton in the 1790s seems to support the view that the founding was open to either path: industrial capitalism (advocated by Hamilton) or agrarianism (praised by Jefferson). Not only did Hamilton promote policies that would establish a reliable national currency by a national bank and federal takeover of state debts; he also wanted a federal industrial policy that would encourage the rapid growth of manufacturing by protective tariffs and targeted government subsidies. Hamilton openly spoke of the beneficial effect of government promotion of commerce and the fact that this is inseparably tied to people's self-interested pursuit of wealth. "By multiplying the means of gratification, by promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise, it serves to vivify and invigorate the channels of industry, and to make them flow with greater activity and copiousness." Jefferson, on the other hand, lamented the prospect that "From the conclusion of this war we shall be going down hill. . . . [T]he people . . . will forget themselves, but in the sole faculty of making money" (Notes on Virginia, Query 17). Jefferson was repulsed by the prospect that America would become a great manufacturing nation like England: "for the general operations of manufacture, let our workshops remain in Europe. . . . It is better to carry provisions and materials to workmen there, than bring them to the provisions and materials, and with them their manners and principles. . . . The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body" (Query 19).

The great Hamilton-Jefferson quarrel was one of the bitterest in American history. Both men felt that fundamental principles were at stake. Jefferson feared that the Hamiltonians were attempting to establish a monarchy on the British model. Hamilton feared that Jefferson was threatening to undo the Constitution because of his excessive attachment to state governments and to France (letter to Carrington, 5/26/92).

Yet in spite of their assessment of each other, Jefferson and Hamilton were really fighting over means, not principles or ends. Jefferson's preference for agriculture, for state government and for France were tactical. He thought American liberty would be better protected thereby. Hamilton's preference for England, for manufacturing and commerce, and for a strong national

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64. Jennifer Nedelsky supports the same view, in *Private Property and the Limits of American Constitutionalism* (Chicago: University of Chicago Press, 1990), 262, 273.

government were also judgments about the best means to create a nation that could secure and protect liberty. Both Jefferson and Hamilton embraced the political principles of the Declaration of Independence, including the fundamental right to property and the moral authority of natural law.<sup>4</sup> The “first principle of association,” writes Jefferson, is “the guarantee to everyone the free exercise of his industry and the fruits acquired by it.” In almost identical language, Hamilton writes that true liberty “protect[s] the exertions of talent and industry and secur[es] to them their justly acquired fruits.”<sup>5</sup>

But if the Jefferson-Hamilton dispute was not about first principles, does that mean that the principles do not actually require any particular economic order? Is Gordon Wood’s anticapitalist republicanism a permissible option on the basis of the founding principles, no less than Hofstadter’s view that the founding was pro-capitalist?

The answer, as we will see, is that all the Founders were strongly pro-capitalist, if we define capitalism as something more or less like Adam Smith’s “system of natural liberty”—or, to be more precise, as an economic order established by certain government policies to be specified later. If I am correct, Jefferson and Hamilton will prove on closer analysis to be in substantial agreement not only on the purpose of government, but also on the economic policies that government should follow. Those policies, we will see, follow logically from the natural rights and natural law principles of the founding. We may go further and note that today, insofar as America remains a capitalist nation, its policies are the same ones, at least in their elements, as those that the men of the founding generation put into place.

### **The Difficulty of Defining Property Rights**

The Declaration of Independence mentions the laws of nature, but it does not specify what

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<sup>4</sup>John R. Nelson, *Liberty and Property: Political Economy and Policymaking in the New Nation, 1789-1812* (Baltimore: Johns Hopkins, 1987), 77: “when the causes of the slow dissolution of consensus among America’s ruling elites after ratification of the Constitution are detailed, the evidence points to *specific* disagreements over programmatic issues and not fundamental schisms over the essential role of government.”

<sup>5</sup>Letter to Milligan, April 6, 1816, in *Writings of Thomas Jefferson*, ed. Albert E. Bergh (Washington: Thomas Jefferson Memorial Association, 1904), 14:466. Hamilton, “The Defence of the Funding System” (1795), *Papers of Alexander Hamilton*, ed. Harold C. Syrett (New York: Columbia University Press, 1961-), 19:52.

those laws require, other than the right of every nation to a separate and equal station. Nor does its list of inalienable rights include property. However, if we turn to other authoritative documents of the founding, such as the Declarations of Rights in the state constitutions, property is nearly always mentioned as a fundamental right. For example, in 1774 Congress asserted, “That the inhabitants of the English colonies in North-America, by the immutable laws of nature . . . have the following RIGHTS: . . . That they are entitled to life, liberty and property. . . .”<sup>6</sup> The pervasiveness of property as a basic right in the American founding will help us get beyond the mendacious distortions of Progressive-Era historians, who did their best to read property rights out of the founding. We still hear echoes of those distortions today.

The link between the idea of property rights and a free-market society is far from self-evident. In fact, it is not immediately obvious what a natural right to property could mean. Life and liberty, after all, are things which everyone possesses by nature. It is easy to see that the rights to life and liberty are violated whenever someone is murdered or coerced into doing what he does not want to do. But no one possesses property by nature in the way that everyone possess life and liberty. Of course everyone may be said to have property in his own person. Everyone owns himself. But the difficulty is how someone comes to have a right to something that is not part of himself.

Perhaps the most direct way to understand why property must somehow be a natural right is to consider its relation to life and liberty. If we cannot acquire property in the form of food, we die of thirst or starvation. This is Locke’s argument for a right to property in his *First Treatise*.<sup>7</sup> We may add: since the purpose of life for the Founders is not survival but happiness, property must be a basic right insofar as it is a necessary means to that higher end. In his widely read *Letters from a Farmer* (1768), John Dickinson writes “that we cannot be happy, without being free—that we cannot be free, without being secure in our property.”<sup>8</sup>

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<sup>6</sup>Continental Congress, Declaration and Resolves, October 14, 1774, in Philip B. Kurland and Ralph Lerner, ed., *The Founders’ Constitution*, vol. 1: *Major Themes* (Chicago: University of Chicago Press, 1987), 2.

<sup>7</sup>John Locke, *Two Treatises of Government*, 2d ed., ed. Peter Laslett (Cambridge: Cambridge University Press, 1970), *Second Treatise*, sec. 86. Subsequent references to the *Second Treatise* will be in the text. In quotations from Locke, I have modernized the spelling and capitalization, and omitted Locke’s italics.

<sup>8</sup>*The Political Writings of John Dickinson, 1764-1774*, ed. Paul L. Ford (New York: Da

In this view, the fundamental right to property is not to possess what one already owns, but to acquire what one needs. Virginia’s Declaration of Rights states

That all men . . . have certain inherent rights . . . ; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.<sup>9</sup>

If the fundamental right is “the means of acquiring and possessing property,” then it is not enough that others leave you alone in what you possess. There must be some way of getting, some “means of acquiring,” beyond what one already owns. Those who do not yet possess property must somehow have access to the “means of acquiring” property. For the Founders, human rights were supposed to be for the benefit of everyone, not just the rich.

The significance of the distinction between possessing and acquiring property is missed by those who think of the right to property as the right to what one already has. Such a right would benefit only the rich. On the basis of such an assumption, historian Drew McCoy incorrectly accuses “the humane John Locke” of regarding “the propertyless poor as less than fully human.”<sup>10</sup> In fact, Locke says that the social compact must receive “the consent of every individual” if it is to be legitimate (*Second Treatise*, sec. 94). “Every individual” obviously includes the propertyless poor. Moreover, as we will see, Locke defends property rights only on the ground that private ownership creates greater wealth for all, including the poor. Historian Jack Greene claims that the Founders elevated the capacity to have dependents over other rights and therefore regarded those without property as possessing no right to liberty. On the basis of that incorrect view, Greene incorrectly concludes that “The philosophy of civil rights championed by the American Revolutionaries was thus not . . . betrayed but fulfilled by their failure to abolish slavery. . . .”<sup>11</sup> This view of property rights—according to which the rich thrive

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Capo, 1970). Letter 5 [check page ref., 338 or 400].

<sup>9</sup>Other states that used the same language in their Declarations of Rights: Massachusetts, Vermont, New Hampshire, Pennsylvania.

<sup>10</sup>Drew McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: University of North Carolina Press, 1980), 54.

<sup>11</sup>Jack P. Greene, *Imperatives, Behaviors, and Identities: Essays in Early American Cultural*

and the poor are supposed to accept their oppression without complaint—is summed up in the well known cynical remark, “The majestic equality of the law forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.”<sup>12</sup> But that is not the Founders’ position.

The right to acquire property is paramount to the right to possess because natural rights come from natural law, and “the duty of self preservation, [is] commonly called the first law of nature.”<sup>13</sup> The question then becomes, what are the means of acquiring property?

If there were enough land in the natural state for hunting, fishing, fruit-picking, and other similar efforts, it would be easy to answer that question. Property could be acquired without much work, and without any violation of the natural rights of everyone to life and liberty. Nature herself would provide enough for every person who was willing to make the effort to hunt, fish, and pick. But for the most part, nature is not so generous. Besides, when the population grows, as it is likely to when people have enough to thrive, the spontaneous products of the land (such as wild animals to hunt, and naturally growing fruits to pick) will run out. The means to acquire will no longer be available to all. If land is enclosed and cultivated so as to make it more productive for the owners, there will eventually be none left for the have-nots. Necessity will drive the poor to violence and war against those who own land and other things of value. The poor person’s right to acquire property will come into conflict with the rich person’s right to life, liberty, and the possession of property.<sup>14</sup> Instead of everyone being able to keep the honest fruits of his own labor, the rule of the strong and violent will determine who gets to acquire and keep property. What is the solution?

The answer cannot be found in any merely a priori juridical or deontological claim about human rights, for in this case the claims of the poor are no less justified than the claims of the rich. What is required is an empirical analysis of how goods and services are produced in the real

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*History* (Charlottesville: University Press of Virginia, 1992), 265.

<sup>12</sup>Anatole France, as quoted in Justice Stevens’s dissent, *Parents v. Seattle Schools*, 2007, brackets omitted.

<sup>13</sup>Samuel Adams, Rights of the Colonists, 1772, in *Founders’ Constitution*, 5:395. This document was published by the Town of Boston, and is thought to have been written by Samuel Adams.

<sup>14</sup>Implied in Locke, *First Treatise*, sec. 43, and made explicit in Rousseau’s *Second Discourse*.

world. In other words, the right to acquire and the right to possess property can only be actualized and reconciled on the basis of an adequate knowledge of the facts of production. Thus an understanding of economics becomes an essential ingredient in the account of natural law and natural rights.

### **How Free Use of Property and Free Markets, and Not Merely Private Ownership, Secure the Right to Acquire and Possess Property**

Although Adam Smith is often considered the founder of, or at least a leading spokesman for, classical economics, there are two writers preceding Smith who sketched out with great insight the fundamentals of economics—the science of how things useful for life are most effectively produced. Those authors are Plato and Locke. Since Smith’s *Wealth of Nations* is so long and complicated, and since earlier writers anticipated many of his most important insights, I will use those authors to set out these fundamentals. Along the way, I will refer to the American Founders, to show the similarities and differences between their understanding and that of Plato and Locke.

My mention of Plato might come as a surprise. Plato, famous for his apparent advocacy of communism in his *Republic*, is hardly known as a defender of free markets. However, in the first two books of the *Republic*, Plato’s Socrates gives a very good if brief explanation of the basics of economics.<sup>15</sup>

To avoid confusion, let me acknowledge right away the main difference between Plato on the one side, and Locke and the Founders on the other. That is the juridical status of the individual. For Locke, “every man has a property in his own person. This no body has any right to but himself” (*Second Treatise*, sec. 27). The Founders’ formula that every person has an inalienable right to liberty means the same thing: no one is by nature the owner or ruler of anyone else. Plato’s Socrates, however, never speaks of individual rights. That is because Socrates makes the problem of human ignorance the central consideration. In the opening pages of the *Republic*, Socrates made a compelling case against the right of anyone “of unsound mind” to own property (331c-e), including, we can easily infer, property in “his own person.” Anyone who lacks

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<sup>15</sup>Quotations are from the Bloom translation.

sufficient understanding to keep from harming himself or others can hardly be said to have a right to any sort of property. Locke himself admits, when he speaks of the parental right to rule children, that if someone, e.g. a child, “has not understanding to direct his will,” then “he that understands for him, must will for him too” (sec. 58). Locke might even be said to agree with Socrates when he writes, “Thus we are born free, as we are born rational” (sec. 61). Locke argues, however, in apparent disagreement with Socrates, that adults may be presumed to have sufficient understanding to be presumed capable of ownership of themselves and therefore of other forms of property as well.

In spite of this important difference between Plato and Locke on the rights of the individual, the two authors agree about many matters of fact, including economics. And since the Founders’ conception of the right to acquire property depends on an accurate assessment of how wealth is produced, Plato’s treatment of this question, which anticipates that of so-called classical economics, while limiting his arguments to the brief essentials, is very helpful.

*The need for labor.* In *Republic* book 2, Socrates paints a picture of a polis coming into being from scratch.<sup>16</sup> Political communities are needed, says Socrates, because “each of us is in need of much.” Food, clothing, and shelter are not provided spontaneously by nature. We are in need of what the Greeks called *technai*—the arts or skills that produce goods or services, such as housebuilding, farming, weaving, and so on.

Locke similarly emphasizes “the penury of [man’s] condition” and that “his wants forced him to labor” (sec. 32, 35). Locke speaks of a thousandfold increase of value that is added by labor to the products of “unassisted nature.” Discussing the example of breadmaking, he lists many forms of labor that go into its production, among which are plowing, mining, metalworking, milling, and baking, along with a multitude of other skills for manufacturing and transporting to market the tools used in breadmaking—“all which, ’twould be almost impossible, at least too long, to reckon up.” In sum, “labor makes the far greatest part of the value of things, we enjoy in this world: . . . Nature and the earth furnished only the almost worthless materials, as in themselves” (sec. 43).

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<sup>16</sup>This is presented in just a few pages, 369b-371e.

*Division of labor.* It is conceivable that everyone might provide for himself whatever he needs. But for that to happen, each person would have to master all the various skills that produce food, clothing, shelter, and the tools required by these skills. Socrates brings up two arguments against that. First, “each of us is naturally not quite like anyone else . . . ; different men are apt for the accomplishment of different jobs.” Second, each art requires “the man who does it to follow close upon the thing done, and not as a spare-time occupation.” Socrates’ conclusion is “one man, one art,” i.e., specialization and division of labor (369e-370b).

Locke does not make the argument for division of labor explicit, although it is obviously implied in his discussion of breadmaking. James Wilson, an early Supreme Court justice and a leading member of the Constitutional Convention, does remark on this, in his little piece “On the History of Property.”<sup>17</sup> Toward the end of the essay, Wilson goes into the argument for private ownership of property. He agrees with Plato and Locke on the importance of labor and skill: “The full effects of industry cannot be obtained without distinct professions and the division of labor.”<sup>18</sup> But it was Alexander Hamilton, in his Report on Manufactures, who went the furthest among the Founders in giving an account of the role of labor and skill in the production of things of value. Just as Socrates, he says the division of labor enables each person to make the best use of his peculiar nature: “When all the different kinds of industry obtain in a community, each individual can find his proper element, and can call into activity the whole vigor of his nature” (Frisch ed 291). Also in agreement with Socrates, Hamilton notes that the division of labor makes possible “[t]he greater skill and dexterity naturally resulting from a constant and undivided application to a single object” (Frisch ed 288).

In defense of the division of labor, Hamilton presents a powerful critique of the ideal of the subsistence farmer who produces everything he needs for himself. This ideal was celebrated by Jefferson and others in the founding generation who were suspicious of a manufacturing economy. Hamilton pointed out that the separation of farming from manufacturing “has the effect of augmenting the productive powers of labour, and with them, the total mass of the produce or revenue of a Country” (Frisch 289). In a draft of the Report on Manufactures, Hamilton noted

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<sup>17</sup>James Wilson, “On the History of Property,” in *Works of James Wilson*, ed. Robert G. McCloskey (Cambridge: Harvard University Press, 1967), 2:711-20.

<sup>18</sup>Wilson, “Property,” 2:719.

that if farmers did their own manufacturing at home, “the quantity of every species of industry would be less and the quality much inferior.”<sup>19</sup>

*Each expert must serve others—and consequently compensation is necessary.* Socrates argues that specialization of labor means that if people are to have access to the property they need (thus securing the right to acquire), then every producer will have to produce more than he needs for himself (369e). The farmer will grow more crops that he can use himself, and the builder will build more houses than he needs. The greater the degree of specialization, the more the various skills will be oriented toward doing or making good things for others and not for oneself. Lasco Services, a small business in my home town, builds dust-free “cleanrooms” used in the manufacture of microchips and pharmaceuticals.<sup>20</sup>

Locke makes a similar point when he writes:

he who appropriates land to himself by his labor, does not lessen but increase the common stock of mankind. For the provisions serving to the support of humane life, produced by one acre of enclosed and cultivated land, are (to speak much within compass) ten times more, than those, which are yielded by an acre of land, of an equal richness, lying waste in common. . . . For I ask whether in the wild woods and uncultivated waste of America left to nature, without any improvement, tillage or husbandry [Locke was writing in 1690, when America was mostly inhabited by Indians], a thousand acres will yield *the needy and wretched inhabitants as many conveniences of life* as ten acres of equally fertile land do in Devonshire where they are well cultivated? (sec. 37)

I added the italics to the quoted passage to emphasize Locke’s suggestion that when the businessman excludes others from his private property so that he can cultivate it effectively and produce more food than he can eat by himself, he is doing a favor to those who would otherwise be “needy and wretched.”

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<sup>19</sup>Quoted by McCoy, *Elusive Republic*, 149, from the third draft of the Report, from Syrett, ed., *Papers of Hamilton*, 10:80.

<sup>20</sup><http://www.lascoservices.com>, visited August 29, 2007.

It is paradoxical, of course, to argue that the true businessman qua businessman devotes himself selflessly to others. But that is exactly what Socrates maintains in his debate with Thrasymachus in *Republic* book 1. The artisan-expert rules over others in their interest, not his own. The doctor, Socrates observes, rules the patient for the patient's benefit (his health), not the doctor's. The pilot rules the ship's passengers for their sake, to bring them safely into port.<sup>21</sup> This line of argument leads Thrasymachus to raise the obvious objection that shepherds do not rule sheep for the advantage of the sheep but for "their masters' good and their own" (343b). Socrates concedes the point, but adds that precisely because the true artisan puts himself into the service of others, everyone who practices such an art must also practice a second art, that of moneymaking, to complement the art that does something good for others. As Socrates remarks very sensibly, "there must be wages" to compensate him for his service (347a). Passengers have to buy a plane ticket to make it worth while for the airline to fly them to their destination because it is the passengers, not the airline's owners, who want to travel.

*The need for a market.* Socrates's suggestion that every productive artisan must practice two arts is understood in every well-run modern business. First, the company must provide a quality product or service, e.g. computers or car repairs. Second, that product or service must be competently marketed, so that potential buyers will be persuaded to purchase it. As is well known, marketing or salesmanship is a skill that has nothing to do with the actual quality of the product offered, yet it is necessary to the success of any business.

The need for compensation for those who serve others is the basis of the free market. Socrates notes that there must be opportunity to exchange the products of the various skills. There must therefore be a market, a place for buying and selling. To facilitate those exchanges, there must be "an established currency as a token of exchange," i.e., money, a stable measure of value. Specialists in buying and selling will be needed, such as merchants to bring in goods from abroad, and retailers to stock goods in stores for buying and selling (371b-d).

One might object to a society that is so openly based on self-interest. As it happens, James Wilson discusses societies in which people were expected to serve others out of a pure sense of

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<sup>21</sup>More recent presentations of this view: Ayn Rand popularized it in *Atlas Shrugged*. George Gilder made the argument that capitalism is based on altruism in *Wealth and Poverty*.

justice, i.e., a disinterested devotion to the common good. Two of the earliest British colonies in America started out with communism: Plymouth for five years and Virginia for seven. In Plymouth, Wilson writes, the colonists agreed that “the produce of their joint industry should be deposited in a common magazine, and that from this common magazine, every one should be supplied under the direction of the council.” The result: “happy was he that could slip from his labour, or slubber over his work in any manner. . . . Even the most honest and industrious would scarcely take so much pains in a week, as they would have done for themselves in a day.” The introduction of private ownership “immediately produced the most comfortable change in the colony, by engaging the affections and invigorating the pursuits of its inhabitants.” In communist Virginia, “[t]he colonists were sometimes in danger of starvation.” The authorities resorted to “severe whipping, which was often administered to promote labour, [but] was only productive of constant and general discontent.”

Wilson concludes that private property and a market economy are best: “The full effects of industry cannot be obtained without distinct professions and the division of labor. But labor cannot be divided, nor can distinct professions be pursued, unless the productions of one profession and of one kind of labor can be exchanged for those of another.”<sup>22</sup>

Communism may be said to be the logical end result of the self-forgetting kind of justice that young people with noble souls often admire. Hence its prominence in the later argument of Plato’s *Republic*. Unfortunately, human nature is rarely capable of that kind of devotion. Wilson concludes, “The right of private property seems to be founded in the nature of men and of things. . . . Exclusive property multiplies the productions of the earth, and the means of subsistence. Who would cultivate the soil, and sow the grain, if he had no peculiar interests in the harvest?”<sup>23</sup> Or, as Hamilton writes even more bluntly in *Federalist* 12, “By multiplying the means of gratification, by promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise, it [i.e., commerce] serves to vivify and invigorate the channels of industry, and to make them flow with greater activity and copiousness. The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer,—all orders of men, look forward with eager expectation and growing alacrity to

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<sup>22</sup>Wilson, “Property,” 719.

<sup>23</sup>Wilson, “Property,” 718-19.

this pleasing reward of their toils.”

Hamilton’s plans for a national bank, and to have the national government take over the state government debts incurred during the Revolutionary War, were designed in part to give the nation a stable supply of money in the form of government bonds whose value would be constant and reliable. A money supply of durable value is an indispensable element of a market economy.

Locke adds to the Platonic account of the market the role of money in making savings possible, giving men an incentive to produce more than they can presently use, which is yet another incentive for expanding production. Food will rot, but gold will retain its value indefinitely. In other words, Locke expands on Socrates’s observation of the need for compensation to encourage what Locke calls “the honest industry of mankind”(sec. 43).<sup>24</sup> Socrates’s concern was with providing enough food, clothing, and shelter merely to survive. Locke’s was with economic growth: “And that Prince who shall be so wise and godlike as by established laws of liberty to secure protection and encouragement to the honest industry of mankind against the oppression of power and narrowness of party will quickly be too hard for his neighbors” (sec. 42).

*Self-interest.* The premise of the economic argument of Socrates, Locke, and the Founders is that everyone is concerned for his or her own well being or happiness—and rightly so. Human beings are self-interested, and any sensible consideration of economics or politics must begin with that truth. This insight is sometimes attributed to modern philosophers, in contrast to the supposedly more noble and generous conception of man presented in the ancients.<sup>25</sup> Yet one

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<sup>24</sup>Locke also goes much further than Socrates in showing how much value is in fact produced by labor. Finally, Locke, in contrast to Socrates, treats productive laborers as honorable and rational, in contrast to the “quarrelsome and contentious,” who would rather live off the sweat of other people’s labor by violence rather than produce something of value through their own labor. In the Socratic account, productive workers are those whose souls contain bronze or iron, while the quarrelsome and contentious rulers (the warrior-guardians) live at leisure upon the labor of the lower classes.

<sup>25</sup>Certainly all authors, ancient as well as modern, are aware that many human actions are done out of a concern for what is noble. But as a practical matter, what is noble is determined for most human beings by their sense of what is honorable in contrast to what is dishonorable, shameful, and disgraceful. And since the honorable is what is honored by those who form our consciences, the ultimate root of the honorable arises from the praise of those whose good

finds this basic self-interest in human nature affirmed by Plato (in Republic book 9) and by Aristotle (in Ethics books 1 and 10), both of whom argue that happiness is the fundamental desire of every human being (a point agreed to by Locke as well—*Essay* 1.3.3<sup>26</sup>).

Socrates does not mean to suggest that human beings are self-interested in the sense of always being narrowly selfish. On the contrary, his description of the education of the warrior-guardians shows that some people—especially those who are unusually spirited—are willing to perform acts of great generosity, even self-sacrifice, on behalf of their sense of what is honorable or for the sake of those they love. However, Socrates’s remarks on the need for compensation in the arts means that most people will not put themselves into the service of others for very long unless there is something in it for them.

We may sum up the common elements in the economic analysis of Socrates, Locke, and the Founders as follows. Nature’s bounty is limited. It must be supplemented by human labor, directed by *techne*, technical expertise or knowledge of how to produce or do things that make up for nature’s lack (e.g., food or healing the sick through medicine). But expertise requires specialization, which means that people will not be able to provide for themselves by themselves. Instead, there must be some means by which everyone can have access to the things they need. (This is the Founders’ right to acquire property.) The means are (1) privately owned property; (2) the free use of property for any productive purpose, and the free disposal of property by buying, selling, or gift; (3) a stable money supply to enable easy exchange.

These requirements regarding property are indicated in this remark of James Wilson: “Property is the right or lawful power, which a person has to a thing. Of this right there are three different degrees. The lowest degree of this right is a right merely to possess a thing. The next degree of this right is a right to possess and to use a thing. The next and highest degree of this

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opinion we desire to gain or to keep. Our personal interest in honor, then, is at some level, however unconsciously, formed by our desire to be praised or loved. Certainly the sense of what one’s “self” is can be expanded to include one’s family, friends, fellow citizens, fellow believers in a religion or ideology. All that I mean to say at this point is that every human action has in it some measure of concern for one’s own good, if only the good of a conscience not tormented or the approval of one’s group.

<sup>26</sup>“Nature, I confess, has put into man a desire of happiness, and an aversion to misery: these indeed are innate practical principles, which (as practical principles ought) do continue constantly to operate and influence all our actions without ceasing.”

right is a right to possess, to use, and to dispose of a thing.”<sup>27</sup> All three are necessary in order for the market to make it possible for human beings to acquire what they need.

### **The Role of Government**

We have been considering the question of what economic order is best suited to enable human beings to enjoy “the means of acquiring and possessing property” (Virginia Declaration of Rights). So far we have not said anything about government. In Socrates’ account of a city constituted by a market society, and in Locke’s state of nature (the peaceful version of that state, in which everyone obeys the laws of nature), there is no need for government. People relate to each other through voluntary transactions of buying and selling.

The difficulty, of course, is, as Jefferson says, that “wicked and dissolute men, resigning themselves to the domination of inordinate passions, commit violations on the lives, liberties, and property of others.” Some people are too ambitious, greedy, or lazy to work for themselves, so they use violence to get what they want.

We remarked earlier that the rights to life and liberty are easy to understand. How government secures those rights is equally straightforward (although difficult to achieve in practice). Life and liberty are protected by laws against murder, rape, assault, kidnapping, slavery, and the like, enforced by judicial procedures to find out the guilty and protect the innocent, with effective punishments sufficient to deter these predatory actions. As for property, again, it is not difficult to understand how to secure its *possession*, by means of laws against theft, robbery, arson, and so on. Jefferson followed his remark about “wicked and dissolute men” with this: “the secure enjoyment of these [i.e., life, liberty, and property] having principally induced men to enter into society, government would be defective in its principal purpose were it not to restrain such criminal acts, by inflicting due punishments on those who perpetrate them.”<sup>28</sup>

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<sup>27</sup>Wilson, “Property,” 711.

<sup>28</sup>Cf Adam Smith: “It is only under the shelter of the civil magistrate that the owner of the valuable property, which is acquired by the labour of many years, or perhaps of successive generations, can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, though he never provoked, he can never appease, and from whose injustice he can be protected only by the powerful arm of the civil magistrate continually held up to chastise it.” *Wealth of Nations*, bk. 5, ch. 1, pt. 2.

How then should government supplement this protection of the possession of property to secure or rather create the conditions for the *acquisition* of property through honest industry?

Among the items just summarized for securing the right to acquire property are (1) ownership of private property and (2) the right to use it, buy it, and sell it at will. For point 1, government must therefore first define who owns what with great clarity. This is not as obvious as it might sound. Procedures must be established for surveying land, determining such things as whether the land includes the air over the land and the minerals under it. These procedures must be followed impartially. Laws must establish with clarity what happens to a person's property when he dies. In most nations throughout history, these things have not been done. There has been no recognized place where deeds were recorded. Title to land was determined more by who is actually living there than by any legal documents or procedures. And if the land, as is typically the case, is occupied by a family or a number of families, the ownership is vaguely collective. Selling is impractical if no one knows who really owns.

The second consideration—the right to use, buy, and sell property at will—this is even more rarely protected. Most governments impose extensive restrictions on the use of property. In places like Mexico and Peru, one needs a permit to open a business, and permits are available only to the well connected. In Peru in the 1980s, constraints on acquisition were so pervasive that a massive underground economy grew up to evade the official system, in which no one except well-connected elites could prosper. It was so difficult and expensive to get government permission to build a house that half of the population of Lima lived in houses illegally constructed on the black market. Peru has never had a true market economy.<sup>29</sup> Most of the nations that emerged from the former Soviet Union and its Eastern European satellite nations have a similar legal environment for property ownership and use. In Russia, criminal law is enforced only selectively, against those who are not well connected, and property law is such that ownership is not always clear, and the right to use property for business purposes is often denied. Access to markets is frequently blocked by those who have government connections.<sup>30</sup>

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<sup>29</sup>Hernando de Soto, *The Other Path: The Invisible Revolution in the Third World* (New York: Harper & Row, 1989), 18, 134, 201.

<sup>30</sup>Anders Aslund, *Building Capitalism: The Transformation of the Former Soviet Bloc* (Cambridge: Cambridge University Press, 2002).

The Founders' concern for the right to use property was expressed in two ways. First, there was a prohibition of monopolies. Second, they also opposed any other limitation on the use or disposal of property, such as the requirement that the eldest son would inherit the land, or that the will of a dead man could limit the use of property he had once owned. There were two state constitutions, Maryland and North Carolina, that included explicit prohibitions of monopolies. The term *monopoly* is sometimes understood in our time to mean a private company's success in acquiring a high percentage of market share. In the founding, monopoly meant something different: government grants of exclusive privilege to certain persons to conduct a business:

That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce; and ought not to be suffered. (Declaration of Rights, Maryland Constitution, 1776, Art. 39)

They are "odious" because they prevent people from entering markets where the well-to-do are already operating. The "principles of commerce" are those we have been discussing in this essay.

That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed. (Declaration of Rights, North Carolina Constitution, Art. 23)

In many nations today, the practice of requiring licenses to go into business is used to establish monopolies by limiting the number of licenses to one person or company, or a very few.

As for other limitations on use, one of them is alluded to in North Carolina's mention of *perpetuities*. This term refers to limitations set on the future use of property by someone's will or by a government edict.

Hamilton is often viewed as a "conservative" in opposition to the "liberal" Jefferson. Some have even called Hamilton the first American advocate of big government.<sup>31</sup> Yet on all the

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<sup>31</sup>Gordon Wood, "The Statist," *New Republic*, October 15, 2001, 48: "Hamilton would be right at home in our present-day United States and our present-day world. He would love our government's vast federal bureaucracy, its enormous CIA, its huge public debt, its taxes beyond any he could have hoped for. . . ." Wood forgets that Hamilton favored government spending above all for the sake of a strong national defense, to enable property owners to make productive

fundamental questions, Hamilton and Jefferson agreed, as did all the leading founders, federalist and antifederalist, federalist and republican. Here is Hamilton's statement of agreement with Jefferson that feudal property rights did not deserve the protection of government:

[C]ertain feudal rights . . . once oppressed all Europe and still oppress too great a part of it. . . . These rights, though involving that of property, being contrary to the social order and to the permanent welfare of society, were justifiably abolished.<sup>32</sup>

Madison's 1792 article on property shares the position of Jefferson, Hamilton, and James Wilson on the need for government to allow completely freedom to go into any business, to buy and sell, to make use of one's own property, always with the understanding that legal limits are permitted if they protect against injurious use of property.

That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called.

Madison gives this example:

What must be the spirit of legislation where a manufacturer of linen cloth is forbidden to bury his own child in a linen shroud, in order to favour his neighbour who manufactures woolen cloth; where the manufacturer and wearer of woolen cloth are again forbidden the oeconomical use of buttons of that material, in favor of the manufacturer of buttons of other materials!

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use of their talents by investing and producing. Hamilton would have abhorred a welfare state that would restrict the rights of property owners or redistribute income from productive citizens to those who are less productive.

<sup>32</sup>*The Vindication* No. III (1792), *Papers of Hamilton*, ed. Syrett, 11:472.

The linenmaker is thus denied “the means of acquiring property strictly so called.” The government thereby “denies to part of its citizens [the] free use of their faculties.”<sup>33</sup>

In later times, laws creating a monopoly for cable, telephone, or electricity companies violate this founding-era principle. Carlos Slim, the richest man in Mexico, acquired a large portion of his wealth by means of a government-granted monopoly on telephone service.<sup>34</sup>

The connection between such things as the prohibition of monopolies, primogeniture, and perpetuities, and the natural right to *acquire* property, was a theme of the earliest American textbook on political science, Nathaniel Chipman’s *Sketches of the Principles of Government* (1793). Chipman speaks of “primary rights,” among which is

the right which men have of using their powers and faculties, under certain reciprocal modifications, for their own convenience and happiness. . . . I shall here instance . . . *the right of acquisition*. To the security of this right, certain regulations, as to the modes and conditions of enjoying the *secondary rights*, or in other words, *of holding property*, are necessary. . . . To give to any individual, or class of men, a monopoly, an exclusive right of acquisition . . . is an exclusion of the rights of others. It is a violation of the equal rights of man. Of this nature are all exclusive privileges; all perpetuities of riches and honors, and all the pretended right of primogeniture.<sup>35</sup>

Finally, although the Founders regarded taxes as necessary to fund the legitimate purposes of government, they were wary of taxes being either discriminatory (favoring or opposing some kinds of businesses) or too high—violating the right either to acquire or hold property. Madison remarks on taxation in his article on property:

A just security to property is not afforded by that government, under which unequal taxes oppress one species of property and reward another species: where arbitrary taxes invade the

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<sup>33</sup>Madison, “Property,” 29 Mar. 1792, Kurland and Lerner, *Founders’ Constitution*, 1:598.

<sup>34</sup>Andres Oppenheimer, *Bordering on Chaos: Mexico’s Roller-Coaster Journey Toward Prosperity* (Back Bay Books, 1998), 92.

<sup>35</sup>Nathaniel Chipman, *Sketches of the Principles of Government* (Rutland, Vt.: J. Lyon, 1793), 178. The passage is reprinted in Kurland and Lerner, *Founders’ Constitution*, 1:557.

domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor; where the keenness and competitions of want are deemed an insufficient spur to labor, and taxes are again applied, by an unfeeling policy, as another spur; in violation of that sacred property, which Heaven, in decreeing man to earn his bread by the sweat of his brow, kindly reserved to him, in the small repose that could be spared from the supply of his necessities.

If the Founders favored freeing property from legal limitations on its use, then why, a libertarian might ask, is there any need at all for government to regulate the use of property? The answer is that property can always be used in a way that infringes on others' use of their property. In his *Lectures on Law*, James Wilson writes, “[Nuisances are] crimes and offenses which attack several of those natural rights [of individuals. They are] a collection of personal injuries, which annoy the citizens generally and indiscriminately . . . [such] that public peace, and order, and tranquillity, and safety require them to be punished or abated. . . . To keep hogs in any city or market town is a common nuisance. Disorderly houses [i.e., brothels] are public nuisances. . . . Indecency, public and grossly scandalous, may well be considered as a species of common nuisance.”<sup>36</sup>

In Wilson's list of nuisances, he throws together things that we would think of as distinct, namely, the odor created by keeping hogs in a city, the use of property as a place to sell sexual favors, and public nudity. The case of hogs is easy to understand. The general principle that one should be able to use one's property for any purpose must be limited by the principle that one should use one's own property in such a way that it does not injure another's. Vile odors can destroy the enjoyment of property no less than trespassing or arson. As for whore houses and public indecency, one would have to consider the Founders' view that the preservation of society, especially of a free society, presupposes a certain character in the citizens. For now, the point is that the government policies that follow from the Founders' principles do not lead to *laissez faire*. Government regulation of property is essential to the security of the right to acquire. This is evident enough from the Constitution's grant to Congress of the power to regulate commerce among the states.

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<sup>36</sup>Works of James Wilson, ed. Robert McCloskey, 2:670-1.

But there are other things that government can do to encourage or discourage the free use of property. One example is the way in which torts are defined in law. If the rights of the existing owner are elevated too much over the entrepreneur, many kinds of business will be difficult to go into. Any noise at all on one's property could be grounds of a lawsuit. Even a building might be construed as an injury to the owner who enjoyed a pristine view of trees and hills. Throughout the nineteenth century, judges and legislators wrestled with the question of where to draw the line between the reasonable use of one's property to make a living, and the misuse of one's property in such a way that it harmed others. Eric Claeys has shown that the nineteenth-century resolution of this legal question took the form of making sure that whatever limitations were imposed on one person's use of property had the effect of increasing the freedom of others to use their property as they wished.<sup>37</sup> But that proved to be a very complicated matter, requiring careful considerations of such topics as public health and safety, private nuisances such as pollution, traffic regulations, and much more. The question always was, which regulations secure the right to possess as well as acquire property, and which ones do not? After reading through Claeys's account of the remarkably sophisticated results of the natural-law and natural-rights approach to regulation in the history of American law, one can appreciate why Locke thought it would take a "wise and godlike" prince to establish "laws of liberty to secure protection and encouragement to the honest industry of mankind against the oppression of power and narrowness of party" (sec. 42).

Another major reform of the nineteenth century—one that had never been achieved in any previous political order—was establishing a right for anyone to form a corporation. At the time of the founding, corporations were chartered through individual acts of state legislatures. That meant that people with political connections were the only ones likely to be able to form such companies. However, beginning with New York in 1811, states developed general incorporation laws, which opened to every citizen, however poor, the legal right to incorporate under conditions applying equally to all.<sup>38</sup> John Wettergreen writes,

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<sup>37</sup>Eric R. Claeys, "Takings, Regulations, and Natural Property Rights," *Cornell Law Review* 88 (September, 2003): 1549-1671.

<sup>38</sup>L. Ray Gunn, *The Decline of Authority: Public Economic Policy and Political Development in New York, 1800-1860* (Ithaca: Cornell University Press, 1988), 226. Wood, *Radicalism*, 321.

The new laws of incorporation granted, in perpetuity, the privilege of limited liability for debts and torts to any firm doing business for any legal purpose, whereas the old laws usually granted this privilege for the purposes and term specified by the state legislature. So these laws made it possible for investors to define their risk very precisely while leaving their opportunities almost unlimited. Furthermore, corporations were intended to be perfectly free associations, in the sense that any law-abiding citizens could form one without the specific approval of the political authorities. One can scarcely imagine a regulation better fitted for the liberation of commercial activity, or better calculated for the rapid generation of the capital necessary for modernization. Accordingly, whereas prior to the Civil War there existed several hundred profit-seeking corporations, twenty years after the War there were several hundred thousand.<sup>39</sup>

In today's history and government textbooks, the rise of the corporation is often treated as something that made life harder for the poor. In truth, the corporation was a great engine of economic growth that made it possible for the great majority of Americans to live without material deprivation throughout their lives.<sup>40</sup>

In the course of the nineteenth century, laws governing property rights were gradually brought into conformity with the primacy of the right to acquire and the equal right to enjoy and use one's property. Established wealth that had been passed on from one generation of the same family to another in colonial times mostly disappeared in America. Money and positions circulated rapidly, as the efforts of each succeeding generation determined anew their place in society. Children of the poor usually did better than their parents, while children of the wealthy often fell back into the class of those who had to work for a living. Most Irish, Italian, Jewish, and Asian immigrants arrived without money or status. They were often disliked and disfavored by Americans already living here. They began with the lowest-paid and hardest work—the kind of work sometimes dismissed today as “dead-end jobs.” Yet each of these groups produced

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<sup>39</sup>John Adams Wettergreen, “Capitalism, Socialism, and Constitutionalism,” in *Constitutionalism in America*, vol. 1: *To Secure the Blessings of Liberty: First Principles of the Constitution*, ed. Sarah Baumgartner Thurow (Lanham, MD: University Press of America, 1988), 263.

<sup>40</sup>Robert Hessen, *In Defense of the Corporation* (Stanford: Hoover Institution Press, 1979).

children and grandchildren whose average wealth eventually surpassed that of white Anglo-Saxon Protestants.<sup>41</sup>

In accordance with the new understanding of property rights, the relations between rich and poor were transformed in early America. When economic relations are determined by employment contracts or agreements that can easily be dissolved at the will of either party, paternalistic attitudes give way to republican assertiveness and pride on the workers' part, and conciliation rather than harshness on the employers'. In a freely entered contract, both parties reach an agreement in which each offers something that the other wants. The laborer offers his labor; the employer his money. As contractors, both are equal. Gordon Wood points out that after the Revolution those who offered jobs for wages were no longer called "master" but "boss," as an indication of the more equal employer-employee relation. Hired hands in hotels insisted on being called "help" or "waiters," to distance themselves from the condition of permanent inferiority implied in the hateful name of *servant*.<sup>42</sup> The American rich and poor never developed the kind of class consciousness that long poisoned European politics. The poor and middle class have not looked on the rich with destructive envy, but with the confidence that one day they themselves or their children might also become wealthy. In contrast to Europe, as Madison saw, "the universal hope of acquiring property" pervaded America.

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<sup>41</sup>Thomas Sowell, *Markets and Minorities* (New York: Basic, 1981), 8.

<sup>42</sup>Wood, *Radicalism*, 184-5.