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Property Rights, Freedom, and the Constitution

by Rick Lynch

It is simply impossible to understand the U.S. Constitution without first possessing a thorough understanding of property rights. If you traveled back in time to enter James Madison's mind as he wrote and debated such weighty issues as free speech, the right of self-defense, freedom of the press, and freedom of conscience, but came away lacking knowledge of his and the other Framers' views on property, you still would be woefully ignorant of the Constitution, and even of U.S. history; for it was a whole series of property disputes that gave rise to both the American Revolution and the Constitutional Convention itself. To understand the rights of property in a constitutional context you must know two things: just how important these rights were to the Framers and just what they meant by the term.

In a political context, virtually *nothing* was as important to the Framers as property rights. As Christopher Collier and James Lincoln Collier point out in their book *Decision in Philadelphia*, those men had "an almost religious respect" for property, that "the rights of property were inviolable," and that the Constitution itself is the embodiment of the rights of property as developed primarily by John Locke in the 17th century.

As Walter B. Mead points out in his book *The United States Constitution*, the Framers were favorably disposed to history's great philosophers who held that "concerns for freedom could not be separated from concerns for property" and that the Framers knew "inadequately secured property rights could render vulnerable even the fundamental liberties of speech, press, and meaningful political participation." Or, as the Framers themselves said,

The moment the idea is admitted into society that property is not as sacred as the laws of God and that there is not a force of law and public justice to protect it anarchy and tyranny commence. If "Thou shalt not covet," and "Thou shalt not steal," were not commandments of heaven, they must be made inviolable precepts in every society before it can be civilized or made free. (John Adams)

Property is surely a right of mankind, as really as liberty. (John Adams)

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own. (James Madison)

Most startling of all, perhaps, was Forrest McDonald's observation in his book *Novus Ordo Seclorum* that property rights were so important to the Framers that all but 4 of the 55 men at the Constitutional Convention placed their protection behind only liberty itself as the sacred charge of government. And of the four who disagreed on this point, three of them differed not because they valued property rights *less* than their fellows but because they actually "put [their] protection *ahead* of liberty as the main object of society."

Readers will note that the above formulation does indeed place property ahead of freedom of religion, press, speech, and assembly, the right to petition the government, the right of self-defense, the right to be secure in one's home, and the rights of the accused, including the right against self-incrimination and the right to a fair and speedy trial in which one may face one's accusers. In short, the Framers placed property rights higher than *all* the rights that are most commonly associated with them.

The meaning of property rights

"Property rights" is a multi-faceted concept, encompassing a great many things, and even though many today have probably never even heard the phrase, just as many are still keenly aware of a significant portion of its meaning, for the central tenet of the philosophy merely holds that man has a property interest *in his own being*, is therefore master of himself, and is entitled to freedom of conscience and freedom of self-determination. But as the phrase clearly implies, there is an economic aspect involved here also, and it is that very practical and prosaic aspect that most concerned the Framers.

When the Framers refer reverently to property (and they almost always speak of property in overtly religious terms) they mean not just land, as a great many mistakenly believe when first exposed to the philosophy, but to *all* of one's possessions — his books, his shoes, his pillow shams, his houses, his rusty rakes hanging in the shed, and most certainly his *money*, his *paychecks*, his *bank accounts* — anything, in short, produced by his labor.

The recent uproar, entirely on "property rights" grounds, over the Supreme Court's *Kelo* decision, in which the Court held as constitutional Connecticut's seizure of private land for the benefit of another wholly private party, demonstrates the public's lack of understanding of property rights, for there was simply nothing new or even remotely novel in the government's actions in this case; why it warranted more than two lines in any newspaper in the country is

simply baffling. After all, American governments on all levels have been for *generations* now openly, brazenly, and publicly doing exactly and precisely what engendered so much scorn in the *Kelo* case — seizing private property (money) in sums which the human mind can scarcely even comprehend to transfer to other wholly private concerns. It's called “welfare spending.” And while these welfare programs are often called misguided or counterproductive, they are *never*, unlike the actions that triggered *Kelo*, referred to as an immoral seizure of property and the trampling of people's rights.

The idea that paychecks are on a more-than-equal footing with such things as freedom of conscience is simply unknown to almost all Americans. It is, further, nothing short of incomprehensible to them. Most people, upon hearing that their paychecks, those grubby, sweat-stained little dollar bills of theirs, represent rights as sacred and unalienable as their speech rights will react with ridicule, shock, or disdain at the idea, for nothing could be so totally alien, so utterly foreign, and so simply outrageous as that claim. In this day and age, when government overtly and blatantly conspires before our very eyes to seize ever greater portions of people's paychecks to give to absolutely anybody who can muster the votes, it is very easy, perhaps, to see property as something infinitely less than sacred; but, hard as the idea may be to adjust to, sacred is precisely how history's greatest political philosophers saw property.

Despite the fact that this “sacred dollar bill” concept might initially take some getting used to, a second glance reveals that it is really nothing more than post-World War II American liberal thought, instantly recognized and accepted by all, raising not an eyebrow from the grade schools, to civic organizations, right up to the halls of Congress, and the Oval Office. What is at first shocking, is, on second evaluation, plainly obvious.

Property rights and freedom

For, as noted above, the philosophy behind property rights merely holds that man is born free, is his own master, possessing certain unalienable rights handed down from the Creator, and that no matter what form of government one lives under, no matter how many majority votes a government may summon up, one should still be able to practice his own religion, speak his thoughts, print and read material of his choosing, or engage in any of hundreds upon thousands of activities which do not harm others.

If people are really entitled to engage in activities that do not harm others, why do they so easily accept that this philosophy, which covers their social, political, religious, and moral existence, does *not* include their economic activity? By spending more time engaged in the pursuit of property than all other activities combined, with the possible exception of sleeping, people the world over clearly demonstrate that this is the most important of human endeavors. That being so, and if Americans really believe that they are in any significant way free, why are they so willing to exclude property from that which is constitutionally protected?

How is it that zealously protecting weird and outlandish behavior engaged in by various and sundry freaks (Nazis parading in front of Holocaust survivors in Skokie, Ill., pornographers, et cetera) can be government's sacred charge, to be regulated only under certain, very extreme circumstances; but when a ditch is dug, a computer is programmed, or an automobile is repaired, the government can insert itself into the equation for virtually any reason on earth, cutting itself in for a large share of the pie to finance bike paths, student loans, free needles for crackheads, or a highway to be named for a congressman and placed in his district 3,000 miles from the taxpayers who financed it?

While today's American citizen eagerly, indeed almost by instinct and with no government urging needed, places his economic life wholly and absolutely outside the ever-expanding universe of sacred rights that many believe now includes such things as lap dancing and government-funded drugs and condoms, there is just no intellectually valid reason for repugnant actions that harm no others to receive constitutional protection, while the labor of a mechanic which harms no others, and indeed benefits others, receives no protection whatsoever.

If one accepts the modern American credo that the government should not tell one how to live his life, and that the government cannot and should not "legislate morality," or trample on "personal rights," an attitude nicely summarized, I think, by the famously liberal Supreme Court Justice Harry Blackmun in one of his well-known dissents —

The most comprehensive of rights and the right most valued by civilized men is the right to be let alone, and the concept of privacy embodies the moral fact that a person belongs to himself and not others nor to society as a whole.

— then one must also accept that a laborer should not have to surrender his wages to support another person, subsidize a business, or augment his neighbor's standard of living. For it is a simple and undeniable fact that forcing Americans to give up every single penny of their earnings from January through March, and deep into April, forcing them to work, and toil, and labor for better than 110 days of every year, largely for the benefit of others, is indeed telling them how to live their lives, is indeed "legislating morality," and is indeed trampling on "personal rights."

Again, the words of the Framers reveal that the most sacred, the most important, and the most politically relevant of all our natural rights, the right most in need of protection, and the right that most allows man to realize self-determination and to be truly free is the right to keep the money (property) that he has earned. The Framers' obsession with safeguarding property led them to write about this one right in *The Federalist Papers* **nine times** as often as they did voting rights, speech rights, privacy rights, religious rights, and press rights *combined*. An analysis of the 85 essays that make up *The Federalist Papers* can be instructive.

Forms of the four words “money,” “tax,” “revenue,” and “property” appear approximately 325 times in those essays. That is almost *nine times* as often as forms of the *seven* words “religion,” “speech,” “press,” “privacy,” “newspaper,” “vote” (by citizens), or “suffrage,” which occur approximately 38 times, or *less than once in every two essays*. Indeed, each four of the words from the first set, taken separately, appears more than the seven words in the second set *combined*. Additionally forms of “tax” and “revenue”, taken separately, appear more than *twice* as often as the seven words in the second set combined. The property words receive, on average, 82 “hits” each. The second set averages *less than six* “hits” each.

Similar numbers occur with the Constitution itself, even after the Bill of Rights is included. The four “money” words appear more than four times as often as the words in the second group. Indeed, *none* of the words from the second group appears in the original, unamended Constitution.

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