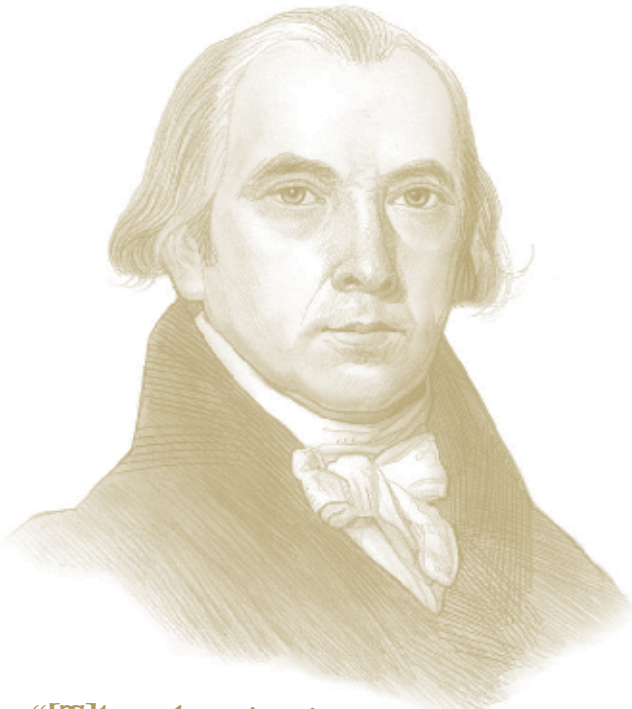




Why America is Great:

**Private Property:
Is It Mine or Thine?**

Volume IX



“[T]hat alone is a just government, which impartially secures to every man, whatever is his own.

—James Madison, March 29, 1792¹

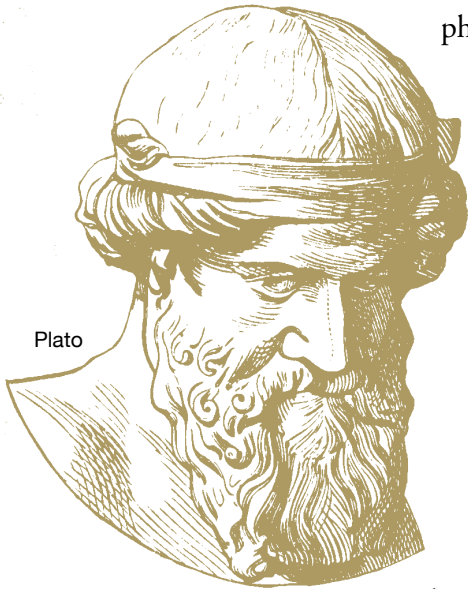
In Search of Utopia

The idea of abolishing private property for the supposed benefit of the community has been around for centuries. Private property has occupied the writings of some of history’s greatest thinkers and has been at the crux of the most notorious social revolutions. In Western Civilization in particular, private property has at times been extolled as civil society’s greatest good and condemned as its greatest evil. And in the 18th century, this debate came straight to America’s doorstep, where the right to private property took on a unique meaning.

The history-long discussion over private property has nearly always hinged on the question of how to create an orderly, peaceful society. Philosophers, politicians, and religious leaders have all struggled to define “utopia”—that state of perfection where humans live happily and peacefully with one another. Such thinkers have generally fallen into one of two categories: those who believe humans are capable of bettering themselves and bringing order to society through their own efforts, and those who believe humans are essentially incapable of ordering their lives without the influence of transcendent principles. The former have tended to treat private property as a man-made convention, a potential source of evil that needs to be heavily regulated or removed altogether. The latter have treated it as a natural right and a pillar of freedom that must be guarded with the utmost care. Traditionally, Americans have taken the latter view. Today however, we are flirting with the former.

‘Mine’ and ‘Not Mine’

While it is impossible to trace the origins of debate over private property, we know the discussion began early in history. One of the earliest well-known figures to challenge private property was the Greek philosopher Plato (died c. 347 B.C.). Living in Athens during a period of cultural decline, Plato was distressed to see wars raging abroad and depravity increasing at home.² Through his philosophical discourses, he sought the “key” to order and virtue in human society. In *The Republic*, Plato—through the character of his former teacher, Socrates—pondered what this virtuous society would look like. If people were to live in harmony with each other, he reasoned, they would need to abandon social conventions that prompted strife. Whatever encouraged greed, envy, dishonesty, and selfishness would need to go. “[W]here there is no common but only private feeling a State is disorganized,” says the



philosopher in *The Republic*. “Such differences commonly originate in a disagreement about the use of the terms ‘mine’ and ‘not mine,’ ‘his’ and ‘not his.’”³ Private property—the chief tool for distinguishing between “mine” and “not mine”—was a primary culprit of this disunity. Thus, in this ideal society, the most prominent citizens, such as “guardians” of the state, would be forbidden to hold private property. They would not be permitted to own houses, land, or material possessions, but would share all such things with the community. This would free them from worldly distractions and petty quarrels, allowing them to “preserve their true character” and virtue as guardians of the state.⁴

On the surface, this plan made sense: if a society was to have peace, it needed to remove the supposed causes of strife—in this case, material objects like private property. Interestingly enough, however, Plato and his fellow philosophers intuitively recognized two other conditions that would be required for this model to work, even in theory. First, if the guardians couldn’t hold any private possessions, someone else would still have to provide for them. (In *The Republic*, this apparently falls to other citizens, who would pay the guardians with food.) Second, if the guardians were to be *truly* free from all private cares and influences, they would have to share not only all material possessions with their neighbors, but their wives and children as well. After all, a man with a wife and children puts his family’s needs above the needs of the community. He provides a home only for them and expends his labor especially on their behalf. **In a socialistic context then, a family becomes a harmful influence, drawing a person’s affections away from the community and toward “private pleasures and pains.”**⁵ In Plato’s republic, a man should not be able to call one woman his wife; she should be a wife to many. And he should not call any one child *his* child; all children should be raised collectively by the community so that no citizen can distinguish or favor his child above another’s.

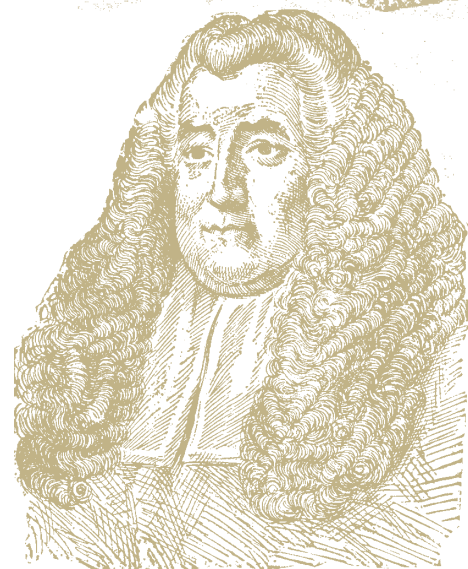
This discourse, though focused only on an imaginary society, touched on the “problem” of tampering with private property: if “mine” and “not mine” are harmful distinctions for a community, then how far is that community able to go in eradicating such differences? After all, if a society has no problem taking away a person’s house, why would it have a problem taking away anything else that belongs to him as long it benefits the community? Who decides what truly belongs to the individual as a right?

A Natural Right

Centuries after Plato, a different approach to private property was at work in medieval Europe. This approach taught that property was a *natural right* given by God to human beings for their benefit. As such, an individual’s private property was sacred; it couldn’t be violated, and couldn’t be seized by a temporal authority without due process of law. This concept, while ancient in origin, gained particular expression in England. The English encapsulated this idea in many of their landmark documents throughout history, including Magna Carta (1215) and the English Bill of Rights (1689). But the right of private property had been preserved even long before this in *unwritten* form, in England’s ancient common law. Through the common law, rich and poor alike understood that it was wrong for one person to unjustly take the property of another. As jurist William Blackstone later articulated in his 18th-century *Commentaries on the Laws of England*: “[B]y a variety of antient

statutes it is enacted, that no man's lands or goods shall be seized into the king's hands, against the great charter, and the law of the land; and that no man shall be disinherited, nor put out of his franchises or freehold, unless he be duly brought to answer, and be forejudged by course or law; and if any thing be done to the contrary, it shall be redressed, and holden for none."⁶

While this viewpoint clarified property rights in regard to the individual, how was arrangement supposed to look in a society? How did a single person's right to maintain his property actually benefit the broader community? And what was government's role in regard to private property? As the Middle Ages gave way to the Modern Era and, then, the Age of Enlightenment, these questions received more and more attention.



William Blackstone

The Community Pitted Against the Individual

The late 17th and early 18th century ushered in the Age of Enlightenment. As scientific inquiry increased and ideas were more easily transmitted from place to place, people began to challenge the authority of old political and religious establishments. Social revolutions gained traction as the middle and lower classes began to chip away at the monarchical foundations of Europe. As concepts like popular sovereignty grew in popularity, people began to debate what a truly modern government and society should look like—and where property ought to fit in the grand scheme.

TWO
TREATISES
OF
Government:
In the Former,
The False Principles and Foundation
OF
Sir Robert Filmer,
And His FOLLOWERS,
ARE
Detected and Overthrown.
The Latter is an
ESSAY
CONCERNING
The True Original, Extent, and End
OF
Civil-Government.
LONDON: Printed for Amstemon and John Churchill, at the
Black Swan in Peter-Nolter-Row. 1698.

Around 1690, British philosopher John Locke (1632–1704) broke onto the European philosophical scene with his *Second Treatise of Government*. Locke's purpose was to refute some of the prevailing political theories of his day. One of these was the "Divine Right of Kings," the doctrine that monarchs had absolute power given to them by God. The kings of Europe had used this doctrine for centuries to justify their power (including violent and arbitrary uses of it) over their subjects. Locke argued that this concept of government fell outside the created order. Government was, in fact, a man-made institution, developed for the safety and benefit of its citizens. Locke explained this by exploring society's origins, writing that man's "state of nature"—his original living condition before the evolution of towns, cities, and governments—was one of unbridled freedom and independence. God had created man a free being and had given him inherent rights to "life, liberty and estate" (estate being another word for property).⁷ In this condition, a man could freely stake a claim in the wilderness, cultivate the land, and fully enjoy its fruits. However, this primitive bliss also had its dangers. The individual had no sufficient means to defend himself or his property from other people, should the need arise.

People solved this problem, said Locke, by coming together and forming a civil society. The society provided the individual with the protection of laws and the security of a community. There was a trade-off, of course: people who chose to join the society had to surrender their personal sovereignty to the sovereignty of the new community. The individual agreed to live under the laws and government of the society, and the government agreed to protect him and his property.

Locke thus concluded that the
“great and chief end therefore, of Mens uniting into Commonwealths, and putting
themselves under Government, is the Preservation of their Property.”⁸

Locke’s ideas, of which the above is only a small part, would influence different contemporary movements but in different ways. The American Founding Fathers adhered to parts of the Locke’s writings, particularly to the idea that a government’s purpose was to protect the property of its citizens. But when it came to the idea of the individual surrendering his sovereignty to the sovereignty of the community, Locke perhaps gave the community too much credit. How could an amorphous human society be trusted to do what was right for the individual? **What if a society decided it knew better than the individual what was right for the individual?**

Such dilemmas came into focus later in France. Enlightenment thinker Jean Jacques Rousseau (1712–1778), writing several years before the French Revolution, went much further than Locke in his confidence of the community.⁹ Rousseau suggested that the proper way for a society to govern itself was through the “general will” of the people. The general will is sovereign, for “the general will alone can direct the State according to the object for which it was instituted, i.e., the common good.”¹⁰ The general will is qualified to decide the common good, said Rousseau, because it “considers only the common interest,” while an individual citizen “takes private interest into account.”¹¹



This sounds nice in theory, but what if the general will decides that private property—or any other individual rights—are *not* in the common good? If we are to judge by some of Rousseau’s other writings, private property rights don’t stand much of a chance in his model. *To Rousseau, property was a source of social inequality and all the evils that flowed from it.* It was purely a man-made convention, a corrupting influence that soiled man’s primitive and innocent nature:

The first man, who, after enclosing a piece of ground, took it into his head to say, “This is mine,” and found people simple enough to believe him, was the true founder of civil society. How many crimes, how many wars, how many murders, how many misfortunes and horrors, would that man have saved the human species, who pulling up the stakes or filling up the ditches should have cried to his fellows: Be sure not to listen to this imposter; you are lost, if you forget that the fruits of the earth belong equally to us all, and the earth itself to nobody!¹²

After all is said and done, is there any way to have a society that both respects the individual’s private property rights, but also *benefits* from those rights?

A Right to Property, and a Property in Rights

The American Founding Fathers were educated, well-read men. They had studied many of history's greatest philosophers and political theorists. They kept up with the times and understood the significance of the era they lived in. They too, like so many of the philosophers, saw the need for order and harmony in human society. But unlike many others, they believed the right to own property was a *key* to such order and prosperity, rather than a hindrance to it.

The Founders may have been classicists in their training, but they were also Judeo-Christian in thought, English in heritage, and practical in temperament. And these influences made a big difference in their approach to private property.

As Judeo-Christians, the Founders believed that human beings were created in the image of God and were highly capable of creating a sophisticated, prosperous, and free society. But they also believed that humans were inherently corrupt and could only build such a society upon transcendent—not solely man-made—principles. This is why they hallowed the concept of natural rights: God had bestowed these rights, and therefore only God could revoke them. No temporal power had a right to violate or deny these rights.

As Englishmen in heritage, the Founders were heavily influenced by England's traditional approach to property through the concept of natural rights and the common law. No one could touch another's property rights without due process of law. And everyone—king and commoner alike—were bound *equally* by the law.

Being practical in temperament, the Founders looked for what *worked* in experience as they created America's government and system of laws. Even in pre-Revolution America, private property was the rule, not just a theory. At the beginning of European migration, the New World had offered countless acres of wild land to anyone who was willing to work hard and hack out a life in the wilderness. For early American settlers, private property had not only offered the sole means of survival, but had also laid the foundation for flourishing farms, families, communities, and, eventually, colonies. In this way, America had the unique opportunity of forming a distinct culture and complete way of life before it even became a nation, and this culture was based largely on private property. So from the beginning, private property was not simply a “nice to have”—it was the rule, and it was the foundation of Americans' independence and freedom. So when the Founders began designing a new government, they looked for what accommodated the freedoms and rights already in operation on American soil.



But the Founders went a step further. A person's property was sacred because it intertwined with his very personhood. To the Founders, “property” meant much more than land, houses, money, and material possessions. The full definition of property, wrote James Madison, “embraces every thing to

which a man may attach a value and have a right; and *which leaves to every one else the like advantage.*”¹³ Thus, property includes:

- A person’s **opinion** and his right to communicate it freely.
- A person’s **religious beliefs** and his freedom to profess and practice them (conscience being “the most sacred of all property”).
- **Personal safety and liberty**, which, Madison notes, includes freedom from “arbitrary seizures of one class of citizens for the service of the rest.”
- A person’s **free use of his faculties** (skills, talents, and abilities), choice of occupation, and the ability to earn and keep wealth. For, as Madison explains, “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 domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor.”

“In a word,” said Madison, “as man is said to have a right to his property, he may be equally said to have a property in his rights.” This is precisely why the Founders took property violations so seriously. A violation of one’s property is an assault on all his other rights. When the government is allowed to encroach on one individual right, it will inevitably encroach on all the others. Such a government is not just, and such a people are not free.

And while the Founders cared about individual rights, they also believed the right to property blessed the community in many of the same ways sought by the utopists. ***First, allowing people the right to property harnesses the power of self-interest. Private property engages a person’s energy and motivates him to work for himself and his family.*** He knows he will rise or fall based on his own efforts. However, self-interest alone is not enough to produce a free, happy society. It must be balanced and directed in ways that are beneficial to the whole community. When human beings are held *responsible* for their own property, it provides an intangible restraint, holding the individual accountable for his conduct and giving him a healthy way to relate to the community. The citizen who is responsible for his own property has an incentive to think ahead and to be productive. He naturally wants what is good for his community because it will also be good for him. Secondly, property also produces in the citizen an empathy for his neighbors who are also being held responsible for their labor and possessions. When people cease to be held responsible—for their property, their labor, their families, or anything else that can truly be called their “own”—freedom loses its meaning. When nothing is expected of the individual and all his needs are simply provided to him as an entitlement, his heart begins to grow cold and turn inward.

The Threat Today

In America, private property is integral to who we are. So when government eviscerates that right, it undermines the very idea that people have an inviolable right to call something their own.

Unfortunately, in America we are increasingly influenced by the idea that private property is simply an old social convention—something that can be manipulated or pushed aside at any time for the “benefit” of the community. A classic example is the notorious 2005 case *Kelo v. City of New London*. In this instance, the town of New London, Connecticut, seized the private property of several citizens to



sell to private developers. They justified this by saying that the developers would create jobs, increase tax revenues, and produce other benefits for the wider community. The Supreme Court, siding with New London against the private property owners, argued that this type of property seizure did not violate the Constitution.¹⁴ The underlying message from the case? It's acceptable for the government to arbitrarily seize an individual's private property as long as it can make an argument that it benefits the community. Suddenly, the individual's rights don't matter anymore. And the government's word does.

However, a government doesn't have to physically take away someone's property to infringe on property rights. A government can implement arbitrary or unjust taxes, policies, and legal hindrances that make it difficult for citizen to acquire or maintain their property. Americans need to take a stand against any and all such infringements on property rights, for they infringe not only on our property but on our freedom. As John Adams wrote in 1787, "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."¹⁵

Endnotes

1. James Madison, Property, dated March 29, 1792. Excerpted from The Papers of James Madison at The Founders' Constitution, accessed at <http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>. Emphasis original.
2. Russell Kirk, The Roots of American Order, 3rd ed. (Washington, DC: Regnery Gateway, 1991), 85
3. Plato, The Republic, Book V., accessed at Project Gutenberg, http://www.gutenberg.org/files/1497/1497-h/1497-h.htm#link2H_4_0008 (The Project Gutenberg EBook of The Republic, by Plato).
4. Ibid.
5. Ibid. Emphasis added.
6. William Blackstone, Commentaries on the Laws of England, Volume 1. Accessed at The Founders' Constitution, <http://press-pubs.uchicago.edu/founders/documents/v1ch16s5.html>.
7. John Locke, Second Treatise of Government, Section 87, accessed at <http://www.justiceharvard.org/resources/john-locke-second-treatise-of-government-1690/>.
8. John Locke, excerpted from Second Treatise, Chapter IX, accessed at The Founders' Constitution site of the University of Chicago, <http://press-pubs.uchicago.edu/founders/documents/v1ch16s3.html>. Emphasis original.
9. Russell Kirk, The Roots of American Order, 3rd ed. (Washington, DC: Regnery Gateway, 1991), 286-287.
10. Jean Jacque Rousseau, Social Contract: Book II, accessed at The Constitution Society, http://www.constitution.org/jjr/socon_02.htm.
11. Ibid.
12. Jean Jacque Rousseau, A Discourse Upon The Origin And The Foundation Of The Inequality Among Mankind, accessed at Project Gutenberg, <http://www.gutenberg.org/cache/epub/11136/pg11136.html> (The Project Gutenberg EBook of A Discourse Upon The Origin And The Foundation Of The Inequality Among Mankind, by Jean Jacques Rousseau).
13. James Madison, Property, dated March 29, 1792. Excerpted from The Papers of James Madison at The Founders' Constitution, accessed at <http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>. Emphasis original.
14. "KELO v. CITY OF NEW LONDON," The Oyez Project at IIT Chicago-Kent College of Law, accessed May 8, 2013, http://www.oyez.org/cases/2000-2009/2004/2004_04_108.
15. John Adams, Defence of the Constitution of Government of the United States, 1787, accessed at <http://press-pubs.uchicago.edu/founders/documents/v1ch16s15.html>.

