

# The Economic Principles of America's Founders: Property Rights, Free Markets, and Sound Money

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**Abstract:** *Although there are many scholarly treatments of the Founders' understanding of property and economics, few of them present an overview of the complete package of the principles and policies upon which they agreed. Even the fact that there was a consensus among the Founders is often denied. Government today has strayed far from the Founders' approach to economics, but the older policies have not been altogether replaced. Some of the Founders' complex set of policies to protect property rights are still in force. America has abandoned the Founders' views on the gold and silver standard, the prohibition of monopolies, the presumption of freedom to use property as one likes, freedom of contract, and restricting regulation to the protection of health, safety, and morals. But in other respects, America continues to offer a surprising degree of protection to property rights in the Founders' sense of that term.*

In light of the stark differences between the economies of the present day and the late 18th century in which the Founders lived, can we learn anything about economics by studying the principles and approach of our Founders? Perhaps surprisingly, the answer is “yes.” If we look to the actions they took and the rationale they offered for their actions, we will see that the Founders' approach still offers us a guide to pressing economic questions of our day.

Although there are many scholarly treatments of the Founders' understanding of property and economics, few of them present an overview of the complete package of the principles and policies upon which they agreed. Even the fact that there *was* a consensus among the Founders is often denied. Scholars who study this topic often focus on their differences rather than their agreements.

It is true that there were bitter disputes over particular policies during the Founding era, such as the paying of the national debt, the existence of a national bank, and whether to subsidize domestic manufactures, and these differences seemed tremendously important in the 1790s. But in spite of these quarrels, there was a background consensus on both principles and the main lines of economic policy that government should follow. John Nelson's verdict on the 1790s is sound: “[W]hen 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>[1]</sup>

The danger is that by concentrating on these and other Founding-era contests, we will fail to see (as the Founders themselves often failed to see) their agreement on the three main policies that, taken together, provide the necessary protection of [property rights](#): the legal right to own and use property in land and other goods; the right to sell or give property to others on terms of one's own choosing (market freedom); and government support of sound money. Their battles were fought over the best means to those ends and over such subordinate questions as whether and how large-scale manufacturing should be encouraged.

The Founders' approach to economics, when it is discussed by public figures and intellectuals, has been much criticized. One reason many on the Left reject the Founders' economic theory is that they think it encourages selfishness and leads to an unjust distribution of wealth. The prominent liberal thinker Richard Rorty believed that the "moral and social order" bequeathed to Americans by the Founders eventually became "an economic system which starves and mutilates the great majority of the population." Such is the "selfishness" of an "unreformed capitalist economy." For this reason, there is "a constant need for new laws and new bureaucratic initiatives which would redistribute the wealth produced by the capitalist system."[\[2\]](#)

Another common opinion is that the Founders' view of economics is obsolete. It may have been reasonable to protect property rights and free markets in a simpler time with vast tracts of available land, but these policies, we are told, cannot address the problems of today's complex industrial society. William Brennan, the Supreme Court's leading liberal during the second half of the 20th century, wrote:

Until the end of the nineteenth century, freedom and dignity in our country found meaningful protection in the institution of real property.... [B]efore this century... a man's answer to economic oppression or difficulty was to move two hundred miles west. Now hundreds of thousands of Americans live entire lives without any real prospect of the dignity and autonomy that ownership of real property could confer.[\[3\]](#)

Besides this supposed problem of the closing of the frontier, many economists claim that the modern economy is subject to "market failure," or the inability of free markets to provide a fair allocation of goods and services.[\[4\]](#) This view assumes that current knowledge of economics and production is unquestionably superior to that of the long-dead amateurs who founded the American regime.

Even many conservative intellectuals are quick to criticize the Founders' work in establishing a free economy, arguing that market capitalism is a system which undermines morality and erodes the character of citizens.[\[5\]](#)

All of these criticisms—that the Founders' approach to economics is unjust, that it is too primitive to be applied today, and that it cultivates selfishness and undermines morality—are based on a caricature of the Founders' actual approach to economics. As for the Founders' supposedly primitive understanding of economics, we will see that their views were remarkably sophisticated and arguably superior to the dominant views of our day. They provide principles and policies by which even the most complex economic order can be governed. And the economic system they established, far from appealing to greed and selfishness and leading to an unjust distribution of wealth, has helped to create the wealthiest nation in human history—a nation in which even those Americans who are classified as poor enjoy prosperity unimaginable to the wealthiest citizens of a few generations ago.

## **The Justice—and Utility—of the Right to Property**

In the Founding era, defenses of property rights proceeded along two main lines: justice and utility. The justice approach treats property as a fundamental right that it would be morally wrong to infringe, regardless of whether it served a useful purpose. The Continental Congress declared in 1774, for example, that “by the immutable laws of nature,” the people “are entitled to...property.” In the Virginia Declaration of Rights (1776), property is an “inherent” right. Massachusetts (1780) called it a right “natural, essential, and unalienable.” Four other states used similar language.<sup>[6]</sup> Viewed in this way, to deprive someone of his property is to violate a right—to commit an injustice.

Over the past two centuries, writes Greg Forster, “the moral argument for capitalism became less prominent. The case for capitalism was more often made on efficiency grounds alone.” Earlier defenders of property rights—“from Aquinas to Locke to our own time—have successfully availed themselves of both approaches.”<sup>[7]</sup>

The Founders’ argument from justice rests ultimately on the claim that “all men are by nature equally free and independent, and have certain inherent rights,” one of which is “the means of acquiring and possessing property.”<sup>[8]</sup> All six of these early state declarations of rights use almost the same language. In this understanding, all are born free; that is, they own their own minds and bodies. Since all are free, all may freely use their talents to acquire property and to keep or use the property they acquire. For individuals or government to forcibly prevent someone from acquiring property, or to use coercion to transfer property from one person to another, deprives that person of the fruits of his labor. It is a violation of his liberty as well as his property. From the point of view of justice, deprivation of property rights is immoral.

Property rights were also understood and defended in terms of their usefulness to life and society, independently of the question of justice. The Founding generation argued that protecting property rights was the best way to ensure prosperity for society. Charleston, South Carolina, affirmed that without property rights, “soon would desolation frown over the uncultivated earth.”<sup>[9]</sup> But property is also a means to something more than mere life. It is necessary for liberty and happiness. There is, then, both a low (mere life) and a high (freedom and happiness) use of property. Everyone needs food, clothing, and shelter, and therefore has a right to acquire and possess these goods, for the sake of mere life and for the sake of the good life—of happiness. Government must protect that right so that people can survive and thrive.

Defenders of property rights today generally neglect the first way of treating property (as a matter of justice) and turn instead to the second way (expedience or utility). However, the utility of private property is typically described in terms of material abundance as opposed to life, freedom, and happiness. When property rights are no longer spoken of in terms of justice, and when usefulness is defined in merely materialistic terms, capitalism comes to be seen as low and ignoble. This is, of course, a widespread conviction in our time.

## ***The Right to Possess and Acquire Property***

So far, I have spoken of “property rights” as though the meaning of that phrase is obvious. It is not. To begin, we must dispose of the most common misconception. It is a mistake to think of property rights merely in terms of possession of what one already has. Adopting this error, law professor Kenneth Karst, for example, writes that “the protection of property and economic liberty” is something that matters only “to people at the top of the heap.”<sup>[10]</sup> Karst is thinking of property as something that the rich possess and the poor lack, but this is to conceive of property as static rather than dynamic, as if one person’s ownership is another’s deprivation. This view of property rights is summed up in the well-known cynical remark, “[T]he majestic equality of the laws...forbid[s] rich and poor alike to sleep under the bridges, to beg in the streets, and to steal their bread.”<sup>[11]</sup>

The Founders anticipated this criticism by insisting that the right to property includes not only *possession* of what one has, but also *acquisition* of what one needs. The Virginia Declaration of Rights states that “all men...have certain inherent rights,” including “the means of acquiring and possessing property.”<sup>[12]</sup> Five other state constitutions omit “the means,” but all speak of the right of “acquiring, possessing and protecting property.”<sup>[13]</sup> If the right includes both *acquiring* and *possessing* property, then it is not enough to be allowed to keep what you possess. Such a right would benefit only those who already have what they need. There must be some “means of acquiring” more than one already owns so that the poor as well as the rich can benefit from property rights.

In the Founding, the right to acquire property precedes the right to possess it because the right to acquire is the foundation of the right to possess, not only because of the needs of the poor, but also because of the natural right to liberty itself. As James Madison’s *Federalist* 10 explains, there is a “diversity in the faculties of men, from which the rights of property originate.... The protection of these faculties is the first object of government.” Madison is saying that property rights originate in the fact that each person owns himself, his “faculties” (his mind, body, and talents). This is the basic premise of the Founders’ natural law approach: “all men are born free” means that no one has a natural right to own anyone else. There are no natural masters or natural slaves. Therefore, the *first* object of government is not to protect the physical property acquired by the employment of our faculties, but to protect the faculties themselves. They are the means of *acquiring* property, as Madison says: “From the protection of different and unequal faculties of acquiring property, the possession...of property immediately results.”<sup>[14]</sup>

No one would make the effort to acquire anything that would immediately be stolen. The right to acquire is primary, for possession serves acquisition. Government protects the possessions of the rich in order to guarantee the right of the non-rich to acquire what they need for their convenience and happiness.

### *Is There a Conflict Between Possession and Acquisition?*

The existence of a natural right to acquire property leads to a surprising consequence. If everyone has a right to acquire *and* to possess property, a conflict between the haves and have-nots will be unavoidable in a condition of extreme scarcity. Unless the possessors voluntarily choose to spread their wealth around, those who are starving will have no way of getting what they need except by theft or violence.

One might argue that there is no conflict of rights here because, as John Locke writes, “it would always be a sin, in any man of estate, to let his brother perish for want of affording him relief out of his plenty.”<sup>[15]</sup> But Locke supposes a state where some property owners have “plenty.” What happens when the possessors do not have “plenty,” but only barely enough to subsist? Then one party or the other must starve. The non-owners will have a right to acquire, and the owners will have a right to defend their possessions. It will be a war of all.

This potential and sometimes actual conflict between natural rights was also acknowledged during the Founding era. The property rights of the individual cannot always be respected when the survival of the community is at stake—for example, in a time of foreign invasion. In an 1810 letter, Jefferson recalls examples of grave but necessary government inroads on property rights during the Revolutionary War:

When, in the battle of Germantown, General Washington’s army was annoyed from Chew’s house, he did not hesitate to plant his cannon against it, although the property of a citizen. When he besieged Yorktown, he leveled the suburbs, feeling that the laws of property must be postponed to the safety of the nation.<sup>[16]</sup>

Would the Founders’ principles lead to the conclusion, then, that socialism or some other scheme of government redistribution of income could be the most just economic order? Using government coercion to redistribute property certainly violates the natural right to *possess* property, but what if this policy is the best way to enable everyone to exercise their right to *acquire* it? Would that not be in greater conformity with natural right than the starvation or deprivation of the poor?

That conclusion would follow only if there is no way to reconcile the right to acquire and the right to possess. The Founders’ natural rights principles therefore require the analysis of an empirical question: What government policies most effectively enable property owners to keep their property while enabling everyone else to acquire property of their own? The answer requires an understanding of how wealth is produced. Economics thus becomes an indispensable part of the practical application of natural law and natural rights.

Someone might object that an analysis of the facts of economic production has nothing to do with natural law. We seem to be exceeding, and therefore exposing, the limits of the natural rights theory. But this objection misunderstands the idea of natural right. The theory provides only the basic principles of moral and political order. It does not lead self-evidently to a complete legal code. The challenges in the application of natural law to political life arise from

nature itself, which gives us the goals and the broad, general rules but leaves it up to us to find out what laws and government structure best achieve those goals.

It is easy to state that there is a natural right to acquire and possess property, but it is a much more difficult task to spell out what rules will enable everyone to exercise the right to acquire property effectively. That is what we will now proceed to explain.

### **Elements of Economic Theory in the Founding**

For the Founders, government has an extensive set of responsibilities that it must fulfill in order to enable people to exercise their right to acquire and possess property. There are three main Founding-era economic policy principles that make possible sufficient production, for rich and poor alike, of the goods that are needed for life and the pursuit of happiness.

- The first principle is *private ownership*. Government must define who owns what, allow property to be used as each owner deems best, encourage widespread ownership among citizens, and protect property against infringements by others, including unjust infringement by government itself.
- The second principle of sound policy is *market freedom*. With some exceptions, everyone must be free to sell anything to anyone at any time or place at any mutually agreeable price. Government must define and enforce contracts. Means of transportation must be available to all on the same terms.
- The third principle is *reliable money*. To facilitate market transactions, there must be a medium of exchange whose value is reasonably constant and certain.

One finds the same three principles both in classical economists like Adam Smith and Jean-Baptiste Say and in some current economists. For example, the core of Anders Aslund's book on the recovery of capitalism in Eastern Europe is three chapters on each of these three topics.[\[17\]](#) The first author known to have explained these three elements of a market economy is (perhaps surprisingly) Plato in his account of the "healthy city" in the *Republic*.[\[18\]](#) In other words, the Founders were following or anticipating the best writers on economics, ancient and modern.

The beginning of economic wisdom, for the Founders as for all serious economists, is the need for the division of labor. Hamilton, Madison, and James Wilson all mention its importance in their writings. For example, Hamilton wrote 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." This "has the effect of augmenting the productive powers of labor, and with them, the total mass of the produce or revenue of a country."[\[19\]](#) The greater the division of labor, the more and the better will be produced for all.

## **Private Property**

The first of the Founders' economic principles is private property. Several government policies adopted during the Founding era contributed to this end. Five in particular merit our attention.

### ***Policy #1. Government must define with precision what constitutes ownership of property.***

This is often taken for granted, but government cannot protect the right to property unless it establishes clear legal rules determining who owns what. Five early state constitutions therefore specifically mention the office of register or recorder of deeds.[\[20\]](#)

Outside of the Western nations, titles of ownership mostly do not exist. “[T]oday,” writes one economist, “only about 1 percent of land in Africa is registered under the formal system.”[\[21\]](#) Without clear title, there can be no mortgages, no title insurance, no use of property as collateral for business loans, and no confidence in the continued right of occupancy for those who improve their property. It is important to reiterate that there is a legitimate and even *necessary* role for government in this regard in order to preserve the right to acquire and possess property.

### ***Policy #2. There must be few restrictions on the use of property.***

The owner alone—and no one else, especially not government officials claiming to be experts—is most likely to have either the necessary skill for production or a financial interest in hiring or renting to someone with skill. As Madison said, “if industry and labor are left to take their own course, they will generally be directed to those objects which are the most productive, and this in a more certain and direct manner than the wisdom of the most enlightened legislature could point out.”[\[22\]](#)

### ***Policy #3. Government must encourage widespread ownership.***

This will enable property to be put to maximum productive use and hold open to the poor the greatest opportunity to acquire property. The Land Ordinance of 1785 set the example for the next century of federal land policy. This law arranged for the sale to private owners of almost all public land west of the original 13 states.

Since about 1900, the presumption in favor of private ownership has faded. Private owners are viewed with growing suspicion as threats to the environment or exploiters of the poor. Contrary to Madison's claim, government is now presumed to know best how property is to be used. One consequence is that in the Western states, which were settled last, the federal government owns over 50 percent of the land. In the Northeast, which was settled earliest, federal land amounts to only 3 percent.[\[23\]](#)

***Policy #4. Government, through civil and criminal law, must protect property owners against harm to property by fellow citizens or by foreign nations.***

Without a strong national defense and an effective criminal law, none of the measures already explained will suffice. Property cannot be secure if it is exposed to violence or theft, whether foreign or domestic. Government protects us against domestic violence by means of the criminal laws (providing for government prosecutions) and civil laws (providing for private lawsuits to recover damages). The Massachusetts Declaration of Rights explains:

Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws.... Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character.[\[24\]](#)

Government secures property rights against foreign violence by maintaining strong armed forces and using them to defend against those who would subordinate America to the will of another nation. In Mexico, in Russia, in most of Africa, and in some American cities, the laws do not reliably protect businesses and persons against the violence of thieves and competitors. This is an abdication of government's basic economic responsibility to protect property rights from injury by other individuals.

***Policy #5. Government must protect property owners against harm to property by government itself.***

Government officials can deprive someone of property just as effectively as fellow citizens or foreign nations can. The Founders' remedy is to allow government to take property only by laws formally enacted and enforced with appropriate judicial procedures to protect the innocent (such as jury trial, right to examine witnesses, and right to hire a lawyer). Six state constitutions and the U.S. Constitution's Bill of Rights therefore included "due process" or "law of the land" clauses along with specifications of trial procedures.

Today, government is given a wide leeway to seize property without having to prove in court that a law has been violated. Drug laws allow government officials to seize cars and money without trial. The Internal Revenue Service freezes people's bank accounts and credit for months merely on suspicion of wrongdoing.[\[25\]](#) The situation is even worse in countries outside the West. In 2000, a man driving from Germany to Kyrgyzstan reported that police stopped him 120 times to pay "fines" (bribes).[\[26\]](#)

Sometimes government needs to take private property for such purposes as roads, public buildings, and military bases. The Fifth Amendment of the Constitution provides, "nor shall private property be taken for public use, without just compensation." Five state constitutions had similar provisions.[\[27\]](#) Besides the "just compensation" limit, in both the state and federal constitutions, government could take property only for "public use." Government was therefore forbidden, as one federal court stated, to "take land from one citizen, who acquired it legally, and vest it in another."[\[28\]](#)

Today, it is routine, as famously shown in the *Kelo* case,[\[29\]](#) for government to take property from one person and give it to someone else who is expected to pay more taxes, create more jobs, or build more attractive buildings. Again, the situation is far worse in other countries.

### ***The Right to Own Property in the U.S. Constitution***

Someone might ask why, if property ownership was considered so fundamental, the U.S. Constitution was silent on the subject. The answer is that although the Constitution does not explicitly mention property, it is in fact not as silent as one might think. We have already noticed the Due Process and Takings Clauses of the Fifth Amendment, which was added soon after the Constitution went into effect. Moreover, in the original Constitution, “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”[\[30\]](#)

The pre-Civil War case law applying this provision generally agrees with the finding in a 1797 Maryland case, *Campbell v. Morris*, that “one of the great objects [of the clause] was the enabling [of] the citizens of the several States to acquire and hold real property in any of the States.”[\[31\]](#) In these ways, the U.S. Constitution affirms property rights throughout the United States. The Fourteenth Amendment extended federal protection to the privileges and immunities of a state’s own citizens.

### **Free Markets**

So far, we have discussed how government secures the rights of those who own property, but that is only the first step. In order for specialists in the various productive skills to get what they need from each other, they must have an opportunity to exchange the goods they produce for other people’s products. Markets must be permitted and protected by government.

For the Founders, free markets were secured by three fundamental policies that were affirmed in state and federal constitutions, as well as in other official and unofficial documents of the Founding period.

#### ***Policy #1. In general, everyone must be free to sell anything to anyone at any price.***

The right “to take, hold and dispose of property, either real or personal”[\[32\]](#) is one of the privileges of citizenship protected in the U.S. Constitution. The right of a property owner to “dispose of property” may seem obvious, but the colonial American law of primogeniture (inheritance went to the oldest son) prevented fathers from dividing their land among their children. Entail required the current owner to keep his land intact for his descendants. It could not be sold either as a whole or in part.

All states that had primogeniture and entail abolished them during the Revolution. The abolition of entail had the additional effect of expanding the number of people who owned land, which was another of the Founders’ property policies.

Monopolies are a second limitation on the right to buy and sell. Today, a monopoly is often understood as a private company that dominates a particular market, such as Microsoft in

computer software. In the Founding, however, a monopoly was a government grant of “exclusive advantages of commerce” to particular persons. Four state constitutions prohibited monopolies. Maryland’s constitution gave this explanation: “[M]onopolies are odious, contrary to the spirit of a free government, and the principles of commerce; and ought not to be suffered.”[\[33\]](#) They contradict “the principles of commerce” because by arbitrarily excluding some citizens from particular trades or professional pursuits, they impose a legal obstacle to the natural right to acquire property.

The U.S. Constitution permitted Congress to give authors and inventors monopolies “for limited times” to “promote the progress of science and useful arts.”[\[34\]](#) The important phrase here is “limited times.” To allow a permanent right to produce a particular kind of property is to create a permanent monopoly. It would therefore deny to many their natural right to acquire, possess, and use property. The Founders would not have approved of today’s practice of indefinite protection of intellectual property rights. The Copyright Act of 1790 provided for a 28-year maximum protection of published works. The 1998 Copyright Term Extension Act, in contrast, covers publications for up to 120 years.

Today, it is customary for government to establish quasi-monopolies through licensing requirements that limit market entry in a variety of areas, from air conditioning repair to public transportation to cosmetology. Licensing requirements that truly protect the public against harm, such as licensing of doctors, were indeed employed in the early Republic. Today, however, licensing is often used to prevent new or small businesses from competing in markets dominated by existing businesses. Carlos Slim, the world’s richest man in 2010, acquired much of his wealth by means of a government-granted monopoly on telephone service in Mexico.[\[35\]](#)

The principles that I have sketched in this discussion of market freedom were not always observed during the Revolutionary War. Serious obstacles to free trade were imposed by state governments. Forrest McDonald explains: “New York and Pennsylvania, through which neighboring states did most of their importing, collected sizable revenues from import duties that were ultimately paid by consumers in New Jersey, Delaware, and Connecticut.”[\[36\]](#)

In one of the few areas where the federal government was authorized to interfere with the domestic policy of the state governments, the U.S. Constitution prohibited state taxation of imports and exports.[\[37\]](#) The Constitution also instructed Congress that “no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.”[\[38\]](#) These and similar provisions, together with Congress’s power to regulate commerce among the states, were meant to establish a nationwide free market.

### ***Policy #2. Government must define and enforce contracts.***

A second requirement of freedom of exchange is that there must be both clear legal definitions and impartial enforcement of contracts. That is why the right “to institute and maintain actions of any kind in the courts of the state” was considered a privilege of citizenship.[\[39\]](#) Seven early state constitutions therefore said that everyone “ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character” (or an equivalent phrase).[\[40\]](#)

A corollary to this is the provision of the U.S. Constitution providing that “No state shall...pass any...law impairing the obligation of contracts.”[\[41\]](#) The Northwest Ordinance of 1787, anticipating this provision of the Constitution, explicitly links its contracts clause with security of property rights:

And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud, previously formed.[\[42\]](#)

In the Founding, a voluntary contract between two individuals or associations was understood as a sign of the equality between them. Each agrees to give up some of his own property in exchange for property that he values more than his present possession. In an employer–employee relation, the owner has money that he wants to exchange for labor, while the workers have, to quote Madison’s article on property, “free use of their faculties, and free choice of their occupations, which...constitute their property in the general sense of the word.”[\[43\]](#) Historian William Forbath writes that “abolitionists talked about the freedom of the Northern worker in terms of self-ownership, that is, simply not being a slave, being free to sell his own labor.”[\[44\]](#)

There was one exception to the rule that everyone is legally obliged to fulfill his contractual obligations. In colonial America and even after the Founding, when a person did not have enough property to pay, he was sometimes sent to debtors’ prison. Recognizing that the inability to pay debts is not necessarily due to a moral fault, states began to allow bankruptcy. The U.S. Constitution authorizes Congress to “establish...uniform laws on the subject of bankruptcies throughout the United States.”[\[45\]](#)

Freedom of contract is viewed with widespread suspicion today. Many believe that such freedom leads to exploitation and oppression of workers by employers. America now limits freedom of contract in many ways: for example, by minimum wage laws, laws that allow unions to coerce employers into bargaining, and affirmative action and disability laws that deny employers the right to hire and fire as they choose.

***Policy #3. There must be equal access to transportation.***

The privileges of citizenship protected in the Constitution and by the state governments included the right to travel and to have access to “common carriers” such as coaches, ships, and (later) railroads. The Northwest Ordinance explicitly guaranteed access to the public waterways and highways that were used to transport goods to market.[\[46\]](#)

## Stable Money

Besides private property and free markets, there is a third major requisite for the protection of property rights: money. In particular, there must be a stable and reliable measure of market value. The reason is simple: If there is no stable measure of market value, the prices of goods and services can fluctuate rapidly. Rapid fluctuation in prices means that debts and investments can be eliminated through inflation, and property can be taken by manipulating the supply of money.

Lack of money was a major difficulty that almost led to the failure of the American Revolution. Congress, lacking the power to tax, issued “bills of credit,” paper money known as “Continental.” The state governments did the same. By 1780, these bills had lost almost all of their face value. Historian Forrest McDonald explains that this policy, in effect, “engineered a massive expropriation of private property through a calculated policy of inflation.”<sup>[47]</sup> James Madison later justified this dishonesty by pointing to the desperate situation of a war for national survival: “Being engaged in a necessary war without specie [gold or silver] to defray the expense, or to support paper emissions for that purpose redeemable on demand, and being at the same time unable to borrow, no recourse was left, but to emit bills of credit, to be redeemed in future.”<sup>[48]</sup>

Congress and the states also financed the war by borrowing money from American and European lenders. These loan certificates were eventually paid off as a consequence of Hamilton’s financial policies in the 1790s, but the worthless bills of credit were never redeemed.<sup>[49]</sup>

Due in large part to these difficulties and the subsequent economic turmoil caused by manipulation of money by both state and national governments during the 1780s, there was a strong demand for an end to government-issued paper money. The remedy was to be a return to the gold and silver standard. The U.S. Constitution therefore specifies that the states may not “coin money; emit bills of credit; [or] make any thing but gold and silver coin a tender in payment of debts.”<sup>[50]</sup> Emitting bills of credit was not on the list of powers given to Congress. “Fiat” paper money (bills of credit), issued by the U.S. government (and every other government in the world) since the 1930s, was precisely what the Framers of the Constitution were trying to prevent.

James Madison summarized the Founders’ arguments against fiat money in *Federalist* 44, where he wrote that:

The extension of the prohibition to bills of credit must give pleasure to every citizen in proportion to his love of justice, and his knowledge of the true springs of public prosperity.... [S]ince the peace, [America has suffered] from the pestilent effects of paper money, on the necessary confidence between man and man; on the necessary confidence in the public councils; on the industry and morals of the people, and on the character of Republican Government.<sup>[51]</sup>

Here, importantly, Madison explained that the problems of fiat money were both moral and economic. The argument was as much about justice, character, and morality as it was about economic efficiency and prosperity.

## Legitimate Restrictions on Property Use and Free Markets

An objection to the preceding analysis may be raised. Not only did all of the states engage in regulation of commerce, but Congress too was given the power to “regulate commerce with foreign nations, and among the several states.”[\[52\]](#) Is not regulation a power of government to interfere with market freedom? Does this not demonstrate that the Founders were not as devoted to free markets as I have maintained? The answer depends on what sort of regulation we are discussing.

*First*, some regulations, such as prohibitions of excessively loud or dangerous activities in crowded neighborhoods, benefit property owners generally. They are meant to enable every owner to enjoy the use of his property as much as possible, consistent with other owners’ enjoyment of their property. Negligent use of property, such as reckless driving, can lead to fatal accidents. These are “police power” regulations that protect the public health, safety, and morals. They do not conflict with the Founders’ natural law theory. In fact, they are required by it.

*Second*, government may intrude on private property by taxation. Since government really does provide a service to the people (securing their natural rights), the Founders viewed it in the same light as they viewed any other “producer” who asks for compensation for providing something of value to the consumer.[\[53\]](#) As the Massachusetts Constitution stated, everyone is obliged “to contribute his share to the expense” of government protection of the person and property of all.[\[54\]](#)

*Third*, the misuse of property can harm others in more subtle ways. In his *Lectures on Law*, James Wilson writes that:

[Nuisances are] a collection of personal injuries, which annoy the citizens generally and indiscriminately.... [P]ublic 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 [brothels] are public nuisances.... Indecency, public and grossly scandalous, may well be considered as a species of common nuisance.[\[55\]](#)

In Wilson’s list of nuisances, he links together things that we would think of as distinct: the stink created by hogs in a city, the use of property as a place to sell sexual favors, and public obscenity and nudity. The case of hogs is easiest to understand. Wilson’s assumption is that the right 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 impair or destroy the use of one’s property (for example, as a residence) no less than arson can.

As for brothels, when Wilson compares them to pigsties, he implies that they create what one might call a “moral stink.” To explain this, one would have to consider the Founders’ view that the preservation of a self-governing society, including the security of property rights, presupposes a certain character in the citizens. In particular, the integrity of the family, the institution for the generation and civilizing of children, was thought to require self-restraint in sexual conduct. The public sale of sex was believed to contribute to a moral atmosphere hostile

to the sexual fidelity required for stable families. The same concern informed the prohibition of public nudity and obscenity.[\[56\]](#)

This brings up a topic that is rarely treated as part of economic theory: the relation between the character of a people, including the integrity of the family, and the security of property rights. The Founders did not believe that property rights or any other kind of rights could be protected without some degree of self-restraint, reasonable self-assertion, and public belief in the natural law and natural rights ideas of the Founding.

## **Objections and Comparisons**

There are two final objections that deserve at least a brief response. Ralph Lerner argues that the commercial republic produced by the Founders' natural law principles is "built on" "the common passions for private gratification and physical comfort."[\[57\]](#) This raises a question: Did the Founders undertake heroic labors for unheroic or even base objectives? Is there any place in the society created by the Founders for beauty, poetry, or greatness? Or is the pursuit of economic self-interest the highest thing that people strive for in a free-market society?

The Founders were wise enough to know that property is not an unambiguous good and not the highest object of human pursuit. "From the conclusion of this war," wrote Jefferson in 1781, "we will be going down hill." The people "will forget themselves, but in the sole faculty of making money."[\[58\]](#) John Adams worried that "without virtue, there can be no political liberty.... Will you tell me how to prevent riches from being the effects of temperance and industry?... Will you tell me how to prevent luxury from producing effeminacy, intoxication, extravagance, vice, and folly?"[\[59\]](#)

Hamilton wrote, "True liberty, by protecting the exertions and talents of industry, and securing to them their justly acquired fruits, tends more powerfully than any other cause to augment the mass of national wealth and to produce the mischiefs of opulence." However, after acknowledging the difficulty, Hamilton then posed this sensible question: "Shall we therefore on this account proscribe liberty also?... Tis the portion of man assigned to him by the eternal allotment of Providence that every good he enjoys shall be alloyed with ills, that every source of his bliss shall be a source of his affliction—except virtue alone."[\[60\]](#)

In response to these concerns, the Founders developed policies and practices that would help to sustain a society not only where public spirit and self-restraint would not be overwhelmed by the wealth and money-making spirit unleashed by freedom, but also where they would be encouraged by a variety of private institutions and public policies.

The 20th century forgetting of the Founders' understanding may be seen in a story told by President Dwight Eisenhower. At the end of World War II, Eisenhower commanded the armed forces of America and its Western allies, while Georgy Zhukov commanded the Soviet forces. After the war, Eisenhower toured the Soviet Union with Zhukov. Eisenhower later reported:

[O]ne evening we had a three-hour conversation. We tried, each to explain to the other just what our systems meant, our two systems meant, to the individual, and I was very hard put to it when

he insisted that their system appealed to the idealistic, and we completely to the materialistic. And I had a very tough time trying to defend our position, because he said: “You tell a person he can do as he pleases, he can act as he pleases, he can do anything. Everything that is selfish in man you appeal to.”[\[61\]](#)

Eisenhower, who served America honorably during the war, had a “very tough time” defending America’s system of self-government and free enterprise against the verbal attack of a high-ranking official in an oppressive Communist system whose leader was the mass murderer Joseph Stalin.[\[62\]](#) Clearly, Eisenhower no longer embraced or even understood the view of the Founders, for whom, as was often said in the Founding era, liberty “is totally different from licentiousness. Many have no other idea of liberty, but for everyone to do as he pleases—to be as honest as he pleases—to be as knavish as he pleases.... Such a liberty...ought to be done away with.”[\[63\]](#) Capitalism, after all, requires people to keep their legally binding promises and pay their debts.

Nor would the Founders have hesitated for a moment to repudiate a claim of “idealism” raised by Zhukov, a man whom they would have regarded as a minion of a bloody tyrant. If “idealistic” policies are those that enable the poor to escape poverty and allow all to live in freedom (not licentiousness) under law, then the most idealistic economic order is one that secures the natural right to acquire and possess property.

At the end of the Declaration of Independence, the Founders pledged to each other “our lives, our fortunes, and our sacred honor.” They did not think they were striving for an unworthy goal. They were prepared to give up life and property in the noble fight to establish a nation based on the true principles of justice: a nation that would secure the lives and property of their families and descendants. Such a nation was judged worthy of their devotion because they believed that justice is the purpose of civil society. If all went well, America was going to be the most just nation ever created. The opposite of life, liberty, property, and the pursuit of happiness is not some sort of transcendent political perfection. It is death, slavery, poverty, and misery.

A second objection may be raised: Property rights will lead to inequality in the distribution of property. The Founders were aware of this. In *Federalist* 10, as noted, Madison correctly observes that “From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results.” People with more talent and ambition will generally acquire greater wealth. Can that be just? The Founders’ answer was “yes,” for two reasons.

First, no adult can justly be compelled to submit to the will of another. Whatever differences in wealth may emerge, property rights benefit all classes equally insofar as they protect the body and mind of every individual from exploitation or enslavement by others. Whenever government uses compulsion to redistribute wealth for the purpose of equalization, it violates the “first principle of association”: the right to liberty, the right to the free exercise of one’s own mind and body. Jefferson wrote:

To take from one, because it is thought his own industry and that of his fathers has acquired too much, in order to spare to others, who, or whose fathers, have not exercised equal industry and

skill, is to violate arbitrarily the first principle of association, the guarantee to everyone the free exercise of his industry and the fruits acquired by it.[\[64\]](#)

The Founders' second argument justifying unequal distribution of property is summarized by James Wilson: "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?"[\[65\]](#) An economic order in which some acquire more than others is the condition of greater prosperity for all.

The Founders were aware that there will always be some who, through no fault of their own, are unable to provide for themselves. The families of children, the disabled, and the unemployed were expected to take care of them. If their families were unable or unwilling, churches, private charities, and other private associations would often step in; but if private institutions failed, government assumed the obligation to provide a "safety net" of last resort.

That safety net, however, must not be so generous that it would entice people to prefer government benefits to gainful employment. The poorhouse, where people would be required to work to the extent of their ability in exchange for room and board, came to be the preferred solution, and the administration of the "poor laws," as they were called, was to be done by local government so that the true circumstances of those claiming to be in need would be known.[\[66\]](#)

## **Conclusion**

Government today has strayed far from the Founders' approach to economics. However, the older policies have not been altogether replaced. Some of the Founders' complex set of policies to protect property rights are still in force.

America has abandoned the Founders' views on the gold and silver standard, the prohibition of monopolies, the presumption of freedom to use property as one likes, the freedom of contract, and restricting regulation to the protection of health, safety, and morals. But in other respects, America continues to offer a surprising degree of protection to property rights in the Founders' sense of that term.

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[1] John R. Nelson, Jr., *Liberty and Property: Political Economy and Policymaking in the New Nation, 1789–1812* (Baltimore: Johns Hopkins University Press, 1987), p. 77.

[2] Richard Rorty, *Achieving Our Country: Leftist Thought in Twentieth-Century America* (Cambridge: Harvard University Press, 1998), pp. 47 (quoting with approval Herbert Croly's 1909 critique of capitalism) and 76.

[3] William Brennan, "To the Text and Teaching Symposium," Georgetown University, October 15, 1985, in Edwin Meese III *et al.*, *The Great Debate: Interpreting Our Written Constitution* (Washington: The Federalist Society, 1986), p. 19.

[4] Francis M. Bator, "The Anatomy of Market Failure," *Quarterly Journal of Economics*, Vol. 72, No. 3 (August 1958), p. 351.

[5] For instance, Gertrude Himmelfarb, quoting Joseph Schumpeter, argues that "Capitalism creates a critical frame of mind which, after having destroyed the moral authority of so many other institutions, in the end turns against its own." Gertrude Himmelfarb, *One Nation, Two Cultures* (New York: Vintage Books, 2001), pp. 12–13.

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[9] Resolution of Charlestown, South Carolina, June 4, 1774, in *American Archives: Fourth Series: Containing a Documentary History...from...March 7, 1774, to the Declaration of Independence*, ed. Peter Force (Washington: M. St. Clare Clarke and Peter Force, 1837–1853), Vol. 1, pp. 383–384.

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[11] Anatole France, *The Red Lily*, trans. Winifred Stephens (New York: John Lane, 1910), p. 95.

[12] Virginia Declaration of Rights, 1776, Art. 1.

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[14] *Federalist* 10, in Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter, intro. and notes by Charles R. Kesler (New York: New American Library, Signet Classic, 2003), p. 73.

[15] John Locke, *Two Treatises of Government* (1690), ed. Peter Laslett (Cambridge: Cambridge University Press, 1960), *First Treatise*, sec. 42.

[16] Thomas Jefferson, letter to James B. Colvin, September 20, 1810, in *The Founders' Constitution*, ed. Philip B. Kurland and Ralph Lerner (Chicago: University of Chicago Press, 1987), Vol. 4, p. 127.

[17] Anders Aslund, *How Capitalism Was Built: The Transformation of Central and Eastern Europe, Russia, and Central Asia* (New York: Cambridge University Press, 2007), ch. 4, "Liberalization: The Creation of a Market Economy"; ch. 5, "From Hyperinflation to Financial Stability"; and ch. 6, "Privatization: The Establishment of Private Property Rights."

[18] *The Republic of Plato*, trans. Allan Bloom (New York: Free Press, 1968), 369b–372e. The absence of slavery from this part of the *Republic* reflects its free-market orientation. Everything is done by voluntary agreement.

[19] Alexander Hamilton, "Report on Manufactures," 1791, in *The Papers of Alexander Hamilton*, ed. Harold C. Syrett (New York: Columbia University Press, 1961–1979), Vol. 10, pp. 255, 249.

[20] Pennsylvania Constitution, 1776, ch. 2, sec. 34; New Hampshire, 1784; Vermont, 1776, sec. 31; Massachusetts, 1780, ch. 6, sec. 2; Delaware, 1776, Art. 14.

[21] William Easterly, "Can the West Save Africa?" National Bureau of Economic Research Working Paper No. 14363, September 2008, at <http://www.nyu.edu/fas/institute/dri/Easterly/File/can%20the%20west%20save%20africa.pdf> (September 28, 2009).

[22] James Madison, Speech of April 9, 1789, First Federal Congress, in *The Founders' Constitution*, Vol. 2, p. 442.

[23] U.S. Bureau of the Census, *Statistical Abstract of the United States: 1997* (Washington: U.S. Government Printing Office, 1997), Table 369 (Total Federally Owned Land), p. 228. A more recent *Statistical Abstract* (2008, Table 349) does not provide regional percentages of federal ownership, but the state-by-state figures have not changed much.

[24] Massachusetts Declaration of Rights, 1780, Arts. 10 and 11.

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[35] Matthew Miller and Luisa Kroll, "Bill Gates No Longer World's Richest Man," *Forbes.com*, March 10, 2010; Andres Oppenheimer, *Bordering on Chaos: Mexico's Roller-Coaster Journey Toward Prosperity* (New York: Back Bay Books, 1998), p. 92.

[36] Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), pp. 102–106.

[37] U.S. Constitution, Art. I, sec. 9.

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[41] U.S. Constitution, Art. I, sec. 10.

[42] Northwest Ordinance of 1787, Art. II.

[43] James Madison, “Property,” March 29, 1792, in *The Founders’ Constitution*, Vol. 1, p. 598. The Founders would have rejected Ayn Rand’s extreme libertarianism in regard to sex and the family (to say nothing of other topics), but they would have agreed with this assessment of market freedom: “To trade by means of money is the code of the men of good will. Money rests on the axiom that every man is the owner of his mind and his effort. Money allows no power to prescribe the value of your effort except the voluntary choice of the man who is willing to trade you his effort in return. Money permits you to obtain for your goods and your labor that which they are worth to the men who buy them, but no more.... When money ceases to be the tool by which men deal with one another, then men become the tools of men. Blood, whips and guns—or dollars. Take your choice....” Ayn Rand, *Atlas Shrugged* (New York: Dutton, 1992; orig. pub. 1957), Pt. 2, Ch. 2, pp. 411, 415 (speech on money by Francisco D’Anconia).

[44] William E. Forbath, “The Ambiguities of Free Labor: Labor and the Law in the Gilded Age,” *Wisconsin Law Review*, Vol. 4 (1985), p. 783, summarizing Eric Foner, *Politics and Ideology in the Age of the Civil War* (New York: Oxford University Press, 1980), p. 73.

[45] U.S. Constitution, Art. I, sec. 8.

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[47] McDonald, *Novus Ordo Seclorum*, p. 154.

[48] James Madison, “Money,” 1791, in *The Papers of James Madison*, ed. William T. Hutchinson and William M. E. Rachal (Chicago: University of Chicago Press, 1962), Vol. 1, p. 305.

[49] E. James Ferguson, *The Power of the Purse: A History of American Public Finance, 1776–1790* (Chapel Hill: University of North Carolina Press, 1961), pp. 25–47, 57–69.

[50] U.S. Constitution, Art. I, sec. 10.

[51] *Federalist* 44, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 278.

[52] U.S. Constitution, Art. I, sec. 8.

[53] Boston, Rights of the Colonists, 1772, in *Writings of Samuel Adams*, ed. Harry Alonzo Cushing (New York: Octagon Books, 1968; orig. pub. 1904–1908), Vol. 2, p. 354, explicitly compares government officials to hired employees who deserve pay for their services.

[54] Massachusetts Declaration of Rights, 1780, Art. 10. Similar taxation provisions are in the Declarations of Rights of Pennsylvania, 1776, Art. 8; Maryland, 1776, Art. 13; Vermont, 1777, Art. 9; and New Hampshire, 1792, Art. 12.

[55] James Wilson, “Of Crimes, Affecting Several of the Natural Rights of Individuals,” ch. 6 of *Lectures on Law*, 1792, in *Collected Works of James Wilson*, ed. Kermit L. Hall and Mark David Hall (Indianapolis: Liberty Fund, 2007), Vol. 2, p. 284.

[56] Thomas G. West, *Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America* (Lanham, Md.: Rowman & Littlefield, 1997), ch. 4, “Women and the Family.”

[57] Ralph Lerner, *The Thinking Revolutionary: Principle and Practice in the New Republic* (Ithaca: Cornell University Press, 1987), p. 201. In the passage quoted, Lerner is discussing European thinkers like Adam Smith and David Hume who promoted the idea of the commercial republic, but he implies later in the chapter that the Founders were broadly in agreement with their program.

[58] Thomas Jefferson, *Notes on Virginia*, Query 17, in *Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), p. 287.

[59] John Adams, letter to Thomas Jefferson, December 21, 1819, in *The Adams–Jefferson Letters*, ed. Lester J. Cappon (New York: Simon & Schuster, 1959), p. 551.

[60] Alexander Hamilton, “Defense of the Funding System,” July 1795, in *Papers of Alexander Hamilton*, Vol. 19, p. 32.

[61] Dwight D. Eisenhower, Presidential News Conference, July 15, 1957, The American Presidency Project, ed. John T. Woolley and Gerhard Peters, University of California at Santa Barbara, at <http://www.presidency.ucsb.edu> (August 7, 2008).

[62] Stéphane Courtois *et al.*, *The Black Book of Communism: Crimes, Terror, Repression* (Cambridge: Harvard University Press, 1999), perhaps the definitive account of the quantity of Stalin’s many millions of victims.

[63] “A Freeman: To the People of Connecticut,” *Connecticut Courant*, December 31, 1787 (arguing for ratification of the Constitution), in *The Documentary History of the Ratification of the Constitution*, ed. Merrill Jensen *et al.* (Madison: State Historical Society of Wisconsin, 1976–), Vol. 3, p. 519. The New York Constitution, 1777, Art. 38, makes the same distinction: “the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness.”

[64] Thomas Jefferson, letter to Joseph Milligan, April 6, 1816, in *The Founders’ Constitution*, Vol. 1, p. 573.

[65] James Wilson, “History of Property,” in *Collected Works*, Vol. 1, pp. 305–306.

[66] For more on the Founders’ poor laws, see ch. 6, “Poverty and Welfare,” in West, *Vindicating the Founders*.