



INDIVISIBLE

Social and Economic Foundations of American Liberty

Leading Conservatives
Exchange Policy Perspectives

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INTRODUCTION BY JAY W. RICHARDS

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PROPERTY

Property and the Pursuit of Happiness

BY REPRESENTATIVE MICHELE BACHMANN



Michele Bachmann

THE WORDS LIFE, LIBERTY, AND THE PURSUIT OF happiness embody the spirit of the American founding better than any others. They evoke images of American patriots taking a sacred oath to lay aside their own rights as patrician property owners to give birth to a nation in which everyone would have such opportunities, regardless of birth or station.

It may seem passé in this age of Twitter and texting, but a brief examination of these first phrases of our founding document is worth doing now more than ever.

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights”—rights that only God can give. Government must acknowledge these rights, but can neither give them nor take them away. They are the providential jurisdiction of God.

“...that among these are Life...” Life is the most personal of all rights, the one that ascribes dignity and worth to every human being. Without life, we can exercise no other rights. Therefore, it is the ultimate human right.

“...Liberty...”—the right to be free to follow our conscience and free in our decision-making.

“...and the pursuit of Happiness,” which requires economic liberty.

“That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...” Government doesn’t impose its will on the people; the people empower government to maintain for them an ordered liberty that protects our rights and prevents both the state and other people from violating our rights.

The Founders chose “Life, liberty, and the pursuit of happiness” over the triad more common at the time, “Life, liberty, and property.” But their choice did not diminish property. Their view was similar to that of English philosopher John Locke, who argued that property is a natural right that is derived explicitly from one’s own labor. The idea of life, liberty, and the pursuit of happiness, then, entails a right to own property—not necessarily the right and guarantee to an item or piece of land but, rather, the underlying principle and ideal that, if one chooses, one can strive for as much or as little as one would like and that no one can take it away. Our Founding Fathers did not expect equality for all in terms of property and possessions, but they did aspire to a society that allows its citizens to be free to aim for what they wish, as long as they do not violate the rights of others.

The brain trust of the Founders who articulated our first principles fearlessly

declared that our breaking of the bond with Great Britain was justified by natural law, which is the universal and God-given understanding of morality and human rights. The natural law applies to all people and all nations throughout the world for all time. Since they are grounded in this natural law, if we treat our God-given liberties as if they are gifts of a man-made government, we threaten those very liberties with extinction. When we forget the origin of our rights, when we forget the principles from which our rights sprang into being, then we've abdicated the liberties endowed by our Creator.

The idea of life, liberty, and the pursuit of happiness, then, entails a right to own property.

REPLACING RIGHTS WITH ENTITLEMENTS

Today in Washington we are witnessing mass amnesia regarding the origin of our rights. We have mortgaged away our children's future with trillion-dollar deficits as far as the eye can see. In doing so, we have been spending away their rich inheritance of liberty. Personal liberty and economic liberty are entwined. You cannot have personal liberty without economic liberty, nor economic liberty without personal liberty. As we chip away at economic freedoms by taxing, spending, and borrowing ad infinitum, we loosen the bonds that secure political liberty.

In recent months, government has increasingly become the "chief decider" for all Americans, the arbiter of fairness. Government is choosing whose mortgage should be subsidized and whose shouldn't. Government is deciding whose student loans need to be repaid and whose don't. Outcomes that used to be the reward for hard work, thrift, and vision (such as a home and a college education) are increasingly seen as entitlements—pseudo-rights that the government can offer only by drawing away from our real rights grounded in natural law. Risks that made the rewards of our investment all the sweeter have been erased. And if government has to take one person's property to provide that entitlement to another, so be it. In this case, one person's entitlement comes at the cost of another's basic rights.

As we chip away at economic freedoms by taxing, spending, and borrowing ad infinitum, we loosen the bonds that secure political liberty.

This contradicts both the spirit and letter of America's founding documents. It is not the government's role to make such decisions for its citizenry. The American experiment was born of the right of an individual to his or her own liberty and freedom—the right to control his or her own destiny within the bounds set by a proper rule of law. In its very essence, the American Experiment is about our being our own deciders.

Oppressive societies are alive and well in the world today, and the primary characteristic of those who belong to this notorious club is the stringent restriction on personal property. Our Constitution has basic safeguards to prevent the government from seizing one's private property for public use. More specifically, the Takings Clause of the Fifth Amendment states that no private property shall be

taken by the government for public use without just compensation to the owner.

The words of the Takings Clause are simple and provide little room for creative interpretations, if read straightforwardly. But, that clause has been pummeled beyond recognition in recent years, most notably, perhaps, in the Supreme Court decision in *Kelo v. City of New London*.

Under the Fifth Amendment, the United States may invoke its power of eminent domain to take private property—known as “condemnation”—only for a “public use.” Typical cases had been about a person losing his home to make possible a highway right of way. In *Kelo*, however, five Justices gave government unmitigated authority to determine what “public use” means. In this case, private property was taken from one private property owner and given to another. This was justified, according to the Court, because the government had determined that the receiving private property owner would use it for a purpose more beneficial to the public good. The majority agreed with the Connecticut Supreme Court’s determination that if a project creates new jobs, increases tax and other city revenues, and revitalizes a depressed urban area, it then qualifies as a “public” use.

In dissent, the remaining four Justices insisted that “under the majority’s opinion, technically all private property would be vulnerable enough to be taken as long as it could be upgraded under the banner of economic development.” Little did we know then how far that proposition could subsequently expand.

PROPERTY: AN ENDANGERED CONCEPT

Today, we are witnessing the dissolution of the dividing line between private and public use. Consider, for example, the actions of the Administration’s Auto Task Force. Government has kicked private business out of the board room and installed itself as CEO, CFO, and board of directors of American automobile manufacturing companies. The government is making decisions about who to hire and who to fire, how much to budget for advertising, and what car lines to continue to manufacture.

In the case of Chrysler, the Auto Task Force has turned basic American legal principles on their head, by leapfrogging the unsecured debts of the United Auto Workers (UAW) ahead of secured debts of legitimate bondholders. In bankruptcy,

Government is grossly overstepping its boundaries by substituting its own interest over that of property owners.

secured creditors get preference because they loaned money on the contractual promise that if the debt was unpaid they would get specific property back. The Administration may have considered its

political promise to the UAW to supersede that contractual promise; but in doing so, it has set an ugly precedent.

Government is grossly overstepping its boundaries by substituting its own interest over that of property owners. And, at some point the soft glow of “change” is going to fade and someone is going to demand to know where the U.S. Constitution gives government the authority to do this. We have made a

critical, devastating wrong turn, and it is incumbent upon us all to restore our nation to the principles of our founding documents and the intentions of our Constitution's Framers who valued the role and free will of the individual over an imposing government.

From that constitutional principle, the United States has developed a set of rules and regulations that allow individuals not only to attain a piece of physical property that they can call their own, but also to use that property to expand their wealth and increase their capital.

On July 5, 1802, The Reverend William Emerson preached a sermon on American independence and made this observation:

Those venerable men from whom you boast your descent brought with them to these shores an unconquerable sense of liberty. They felt that mankind were universally entitled to be free; that this freedom, though modified by the restrictions of social compact, could yet never be annulled....

Concerning this liberty, however, they entertained no romantic notions. They neither sought nor wished the freedom of an irrational, but that of a rational being; not the freedom of savages, not the freedom of anchorites, but that of civilized and social man. Their doctrine of equality was admitted by sober understandings. It was an equality not of wisdom, but of right; not a parity of power, but of obligation. They felt and advocated a right to personal security; to the fruits of their ingenuity and toil; to reputation; to choice of mode in the worship of God; and to such a liberty of action as consists with the safety of others and the integrity of the laws.

In their eyes honor had no allurements, wealth no value, and existence itself no charms, unless liberty crowned the possession of these blessings.⁴⁴

In its truest sense, the property to which our nation's guiding documents refer denotes not only the narrow interests of material goods, but also our ideas and inventions, as well as our broader human interests and aspirations. The pursuit of happiness doesn't have a street address, nor is it something you can put in a bank vault; yet it is a vital part of our right to property. Today, both the tangible and intangible forms of property are losing their meaning and their context to government avarice and public lethargy. We are not only losing the actual property, but also the meaning that sustained those venerable men of whom Reverend Emerson spoke. We are losing one of the greatest gifts bequeathed to us by our Founding Fathers. We must reclaim it before it is too late.

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⁴⁴ William Emerson, "Fourth of July Oration (July 5, 1802)," *Classics of American Political and Constitutional Thought, Volume 1*, ed. Scott J. Hammond, Kevin R. Hardwick, Howard L. Lubert (Indianapolis: Hackett Publishing Company, 2007), pp. 760–761.

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