

What Is Property? Why Protect It?

BACKGROUND ESSAY

The Founders were very concerned about property rights. Indeed, half of the Bill of Rights deals with property. Most people think of property as land, but property is much more than just land. Houses, cars, and other material things are forms of property. An individual's property also includes her conscience, thoughts, and reputation as well as future profits from the sale of an existing object or idea. In addition to securing these things for individuals, property rights secure freedom.

What Are the Origins of American Property Rights?

Early Americans had certain things in mind when they used the word "property." For example, if someone owned a horse, they had both a legal right to use the horse and a legal right to stop others from using the horse.

Another example of property is one's own body. People usually do not call themselves "property," but they clearly have a general right to do what they want with their bodies and to stop others from doing things to them. Thus, an individual owns his or her own body. This concept, called selfownership, helps explain why the Founders took so many steps to protect property.

The Founders were deeply influenced by English legal history. The Magna

Carta (1215) and the Declaration of Rights (1689) restricted the power of the king or queen to take property or put people in jail at random. Eventually, British abuse of property rights, beginning with taxation without representation, pushed many colonists to argue for revolution. They had had enough of being forced to house troops, being searched without warrants, and being fined excessively.

How Did the Founders View Property?

Thomas Jefferson used one of natural rights philosopher John Locke's famous phrases about property in the Declaration of Independence (1776). Locke wrote that people have natural rights to "life, liberty, and property." Jefferson changed it to "life, liberty, and the pursuit of happiness." Jefferson did not change Locke's meaning, but expanded it. Colonists would have thought of ideas, as well as material things, as "property." Jefferson believed that enjoying material things and satisfying creativity were essential to happiness.

James Madison, who was important in developing the Bill of Rights (1791), believed property rights were essential to protecting all rights. Protecting rights is the purpose of "a just government,"

as he wrote in his essay entitled “Property,” which was published in 1792. In it, Madison argued that man owns his body and possessions as well as the right to express his opinions and religious beliefs. Madison noted that security of property plays a big role in personal growth because it allows each person to make his own decisions about his life and property.

Madison strongly believed in a commercial republic. He urged Americans to protect the earning and owning of property through hard work. He criticized excessive taxes. Madison ended “Property” by warning his fellow citizens that if the United States wanted to be considered “wise and just,” then they must respect property rights. It is no accident that half the Bill of Rights contains property protections.

The Third and Fourth Amendments assure freedom and security of one’s

home and possessions, while the Fifth Amendment guarantees due process and just compensation when the government takes one’s property. The Seventh Amendment addresses the right to jury trial in common lawsuits involving more than twenty dollars, and the Eighth protects citizens from excessive fines. The Founders understood that the protection of all kinds of property was needed to uphold their rights.

How Do Property Laws Affect Modern Life?

Questions of property law are at the center of many social concerns today. Some examples are environmental issues, protection of endangered species, and even the legality of media downloading websites. Individual property rights must be reconciled

with [considered alongside] government concerns about natural resources, and media sharers must consider whether they are “sharing” or “stealing.”

The property protections in the Bill of Rights are essential to liberty. If the government can take anything from anybody at any time, no one can be free. As students and as citizens, your right to control your own property is one way you have the power to live as you wish.



Most people think of property only as land, but it also includes material items, ideas, thoughts, and reputations.



Comprehension Questions

1. What is self-ownership? How did the Founders use this philosophy in the Constitution and Bill of Rights?
2. Philosopher John Locke wrote that people have the right to “life, liberty, and property,” while Founder Thomas Jefferson wrote that people have the right to “life, liberty, and the pursuit of happiness.” How are these phrases different? Do they mean the same thing?
3. Why did the Founders believe that protecting property was necessary to protect all rights?