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THOMAS JEFFERSON AND THE RIGHT TO PROPERTY IN REVOLUTIONARY AMERICA

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THOMAS Jefferson died at the age of eighty-three on July 4, 1826. His dying words are reported to have been the inquiry, "Is it the Fourth?" Astonishingly, John Adams passed away during the same summer night, and it is recorded that his final utterance was, "Thomas Jefferson still survives."¹ And indeed the great Virginian still survives, but in 1976 his image is so complex and so confused that it may be no idle task to reexamine even part of his contribution to our revolutionary era.

Jefferson, we must remember, was both a man of property and a prophet of the Enlightenment. He was born the son of an Albemarle County planter, Peter Jefferson, and, thanks to the rule of primogeniture, inherited the right to two-thirds of his father's 7,500 acre estate when only fourteen years of age. Trained as a gentleman and a lawyer, Jefferson devoted himself to improving his patrimony and serving his country, Virginia. In 1767 he began the planting and planning for his magnificent house on the "little mountain," Monticello, into which he moved after his marriage to the wealthy widow Martha Wayles Skelton in 1772. Martha Jefferson's father died in 1773, leaving the young couple with an inheritance of 11,000 acres of land and 135 slaves. By 1776 Jefferson managed three large plantations and several smaller ones (together they came to more than 10,000 acres) and he owned about 180 slaves. He served in the Virginia legislature and the Continental Congress, and he had begun to display the artistic, scientific, and intellectual virtuosity which characterized his entire life: he ". . . could calculate an eclipse, survey an estate, tie an artery, plan an edifice, try a cause, break a horse, dance a minuet, and play the violin."² He was, as Kurt Vonnegut aptly remarks, ". . . a slave owner who was also one of the world's greatest theoreticians on the subject of human liberty."³ How can one deal with such a man, such a mind, and such a revolution?

My strategy is to isolate one theme in Jefferson's thought in order to blaze a tenuous trail through the richness of his mind and life and, at the same time, to try to show one of the ways in which Jefferson helped to shape the legacy of 1776: that theme is the right to property.

¹ Merrill D. Peterson, *The Jefferson Image in the American Mind* 3 (1962).

² James Parton, *Life of Thomas Jefferson* 165 (1874).

³ Kurt Vonnegut, Jr., *Breakfast of Champions* 34 (1973).

In 1776 every American colonist was aware that his legal and political rights were threatened. For those patriots who demanded independence from Great Britain, the issue was the preservation of their historic rights (variously described as the rights of Englishmen and natural rights) in the face of imperial tyranny. They revolted in order to preserve their rights. For those loyalists who opposed independence, Great Britain and its traditional regard for the rights of individuals was the best safeguard against that revolutionary anarchy which threatened the traditional order of things in America. For most colonists, however, the best alternative was not so clear. The only certainty was that they would have to make a perilous political choice as to how best they could preserve their lives, liberties, and estates. The very fact of revolutionary ferment threw their rights into question, and they were thus confronted with the hard choices that face the politically inactive mass in the early stages of any revolution. Liberty and property were both thrown into question.

As in other pre-modern revolutions, it was not the intention of the American patriots, the revolutionary party, to destroy property rights or systematically to redistribute property. For one thing, it was pretty clearly not in the interest of Jefferson or the other patricians who formed the core of revolutionary leadership to throw either their own property or the fundamental arrangements for social order into doubt. It may be helpful to remember that the same attitude was true in France a decade later. In the early phases of the French Revolution demands for political reform were frequently radical, but there was an articulated consensus that the legal and economic arrangements for the perpetuation of the property system were to remain substantially as they had been before, a demand which grew more insistent as the revolution progressed. For instance, in Maximilien Robespierre's proposed declaration of rights of April 24, 1793, it is stated that

property is the right of each and every citizen to enjoy and to dispose of the portion of property guaranteed to him by law. 10. The right of property is limited, as are all others, by the obligation to respect the property of others. 11. It may not be detrimental to the security, or the liberty, or the existence, or the property of our fellowmen.⁴

Even the great revolutionary radical saw the right to private property as the basis of the new society.

For Englishmen in the years since the seventeenth-century civil war, the problem of reconciling revolution with the continuation of the traditional property system had taken a characteristic form, which has been analyzed in a doctoral dissertation by Professor Paul Lucas. The difficulty, Lucas argues, which first emerged in 1688 and is best expressed in the work of John Locke, was to destroy the monarchy without destroying the social system

⁴ Robespierre's Proposed Declaration of Rights, 24 April 1793, in *A Documentary Survey of the French Revolution* 431 (John Hall Stewart ed. 1951).

which was the legal and logical consequence of the royal system of government: the right to the Crown was, legally, an hereditary property right, and if this most significant of all property rights could be abolished, how could one revolt without also destroying the right to property everywhere in the society? We must remember here that we are discussing a world which was only barely post-feudal. The solution, as Locke defined it, was to separate the “two paths of descent,” by arguing that the principles of inheritance of government were altogether separate from those of the inheritance of private property.

Most commentators on Locke emphasize the idea that, if property is a natural right, landowners are to be protected from the depredations of the crown. It is well to remember, however, that military tenures, and certain other feudal inconveniences to landowners, had been abolished in 1679. Locke had, therefore, a more important purpose. By insisting that men had a natural right to the land on which they had first laboured; by proving that their legitimate title to the land did not require the explicit consent of others, but was permitted by the law of reason; Locke made private property antecedent to government and divorced society from government, thereby allowing for limited revolutions: an alteration in government need not alter the existing property structure, the dissolution of government did not dissolve society.⁵

Locke accomplished this theoretical feat first by denying that public government was “a piece of divinely given and divinely transmitted property following the private rule and indefeasible inheritance of the common land law,” and secondly, by positing a “divine and natural basis for private property and its indefeasible inheritance.”⁶ The result was Locke’s provision for insuperable hereditary rights for subjects, but not for the government. Lucas goes on to demonstrate how the problem of the “two paths of descent” played an important part in the thought of Blackstone, Burke, and other eighteenth-century English theorists in a way that I find most convincing. I do not want to suggest that the formulation explains Jefferson’s thought, as indeed it could not—since for Jefferson one of the primary purposes of revolution was to destroy *royal* government, he was only obligated to defend a single path of descent. The point is that it would be to misunderstand Jefferson’s radicalism not to see how consistently he defended private property rights.

What one must stress is that the right to property was an unquestioned

⁵ Paul Lucas, *Essays on the Margin of Blackstone’s Commentaries* 230-31 (unpublished PhD. dissertation, Princeton University, 1963).

⁶ “Like Marx and every other revolutionist, Locke had to ‘turn off’ the revolution after it had accomplished his object, he had to prevent the perpetuation of revolution, he had to bind men to the new order. Thus he introduced a consensual basis of property in addition to his natural basis. Locke wanted the king under the law, yet sufficiently outside it (not above it) so that revolt would not endanger the law. . . . Locke wanted to imply consent to the rightly ordered state, but a natural right to one’s property during rebellion in a wrongly ordered one.” *Id.* at 212.

assumption of the American revolutionaries. To assert this is merely to assert that they were eighteenth-century men. But one must go on to say that they did not defend property as an end in itself but rather as one of the bases of republican government. It is the sense in which property had political value that it was most important to Thomas Jefferson, and it is therefore in that sense that it is crucial to this lecture.

Lest I bore you with theory, allow me to take a few moments to explain the legislative changes which Jefferson proposed in revolutionary Virginia. Having done that, I hope it will be easier to understand what Jefferson's theory of property was and how it related to his notions of government. Jefferson's initial fame was as a lawmaker, and during the year 1776 he proposed a number of legislative ideas, many of which were adopted and some of which were persuasive elsewhere in the new states. In his *Notes on the State of Virginia*, written a few years later, he explained why he felt the time was ripe for such change in 1776:

It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in convulsion.⁷

In June, 1776 Jefferson sketched out (in three separate drafts) a proposed constitution for his beloved state of Virginia. Several of its provisions dealt importantly with property. One conferred the franchise on adult males who had a freehold estate of a quarter of an acre of land in any town or twenty-five acres of land in the country, as well as to all persons "resident in the colony who shall have paid *scot* and *lot* to the government the last [two years]."⁸ He made clear his concern with the broad distribution of property in the society:

Every person of full age neither owning nor having owned [50] acres of land, shall be entitled to an appropriation of [50] acres or to so much as shall make up what he owns or has owned [50] acres in full and absolute dominion, and no other person shall be capable of taking an appropriation.

Lands previously held of the crown in fee simple ("and those hereafter to be

⁷ Thomas Jefferson, *Notes on the State of Virginia* 161 (William Peden ed. 1955) [hereinafter cited as *Jefferson Notes*].

⁸ The Virginia Constitution: Third Draft of Jefferson, in 1 *The Papers of Thomas Jefferson* 356, 358 (Julian P. Boyd ed. 1950) [hereinafter cited as *Jefferson Papers*].

appropriated”) were to be held “in full and absolute dominion, of no superior whatever.” The draft also dealt with the problem of Indian lands:

No lands shall be appropriated until purchased of the Indian native proprietors; nor shall any purchases be made of them but on behalf of the public, by authority of acts of the General assembly to be passed for every purchase specially.

He proposed that primogeniture, the rule of succession by which the property of an intestate should pass to his eldest son, should be abolished, and that females should take equally with males. Perhaps more surprisingly, he suggested that: “No person hereafter coming into this country shall be held within the same in slavery under any pretext whatever.”⁹

Many of these ideas were not made into law for many years, and some were never enacted, but Jefferson pressed ahead with several of them in the course of spearheading a movement to reform the law of the state. The first of these was his bill abolishing entail, the ancient English legal device by which a testator could limit the capacity of his descendants to alienate his estate. Jefferson felt that entail, one of the legal buttresses of the massive property holdings of the ruling families of England, was socially and politically undesirable in Virginia, since it tended to create

a distinct set of families who, being privileged by law in the perpetuation of their wealth were thus formed into a patrician order. To annul this privilege, and instead of an aristocracy of wealth, of more harm and danger, than benefit, to society, to make an opening for the aristocracy of virtue and talent, which nature has wisely provided for the direction of the interests of society, & scattered with equal hand through all it's conditions, was deemed essential to a well ordered republic. To effect it no violence was necessary, no deprivation of natural right, but rather an enlargement of it by a repeal of the law. For this would authorize the present holder to divide the property among his children equally, as his affections were divided; and would place them, by natural generation on the level of their fellow citizens.¹⁰

Jefferson next turned to the abolition of primogeniture and formulated a bill which proclaimed that “when any person having title to any real estate of inheritance, shall die intestate as to such estate, it shall descend and pass in parcenary to his kindred male and female. . . .”¹¹ Jefferson’s colleague in the revision of the Virginia laws, Edmund Pendleton (to whom we shall be returning shortly) objected to this radical change in the traditional system (which, it is easy to recognize, also aided landed families in preventing the fragmentation of their landed estates) and argued that, as Jefferson recalled:

. . . we should adopt the Hebrew principle, and give a double portion to the elder son. I observed that if the eldest son could eat twice as much, or do double work, it

⁹ *Id.* at 362-63.

¹⁰ Thomas Jefferson, *Autobiography 1743-1790*, in 1 *The Works of Thomas Jefferson* 3, 58-59 (Paul Leicester Ford ed. 1904 [hereinafter as *Jefferson Works*]).

¹¹ A Bill Directing the Course of Descents, in 2 *Jefferson Papers* 391-93.

might be a natural evidence of his right to a double portion; but being on a par in his powers & wants, with his brothers and sisters, he should be on a par also in the partition of the patrimony, and such was the decision of the other members.¹²

Jefferson was tremendously proud of the bills abolishing primogeniture and entail and he was later to claim that they formed:

. . . a system by which every fibre would be eradicated of antient or future aristocracy; and a foundation laid for a government truly republican. The repeal of the laws of entail would prevent the accumulation and perpetuation of wealth in select families, and preserve the soil of the country from being daily more & more absorbed in Mortmain. The abolition of primogeniture, and equal partition of inheritances removed the feudal and unnatural distinctions which made one member of every family rich, and all the rest poor, substituting equal partition, the best of all Agrarian laws.¹³

A fourth proposed piece of legislation in 1776 was Jefferson's draft of a bill for the disestablishment of the Church of England in Virginia. Since Virginia had been one of the colonies in which the Anglican Church had been established by law (which is to say that all Virginians were required by law to attend Anglican services and to support the Church financially), the revolution necessitated some change in the legal status of the Church. Since the majority of Virginians were Anglicans (and had to reconceptualize themselves as Episcopalians), it was thought desirable to preserve the Church while doing away with its legal uniqueness. Jefferson proposed that ". . . the establishment of the Church of England by law in this Commonwealth may be discontinued, and that no pre-eminence may be allowed to any one Religious sect over another. . . ." He objected to "the several laws establishing the sd. Church of England, giving peculiar privileges to it's ministers, & levying for the support thereof contributions on the people independent of their good will. . . ." Such laws ought to be repealed,

. . . saving to such incumbents as are now actually seised of Glebe lands, their rights to such Glebe lands during their lives, & to such parishes as have received private donations for the support of the sd. Church the perpetual benefit of such donations.¹⁴

During 1776 and subsequently during his career, Jefferson defined and defended another fundamental attitude toward property—" . . . that every emigrant to the West must be enabled to take up and hold securely the lands he needed." He argued that the Virginia legislature, rather than either the Crown or land speculators, held title to Virginia's land claims west of the mountains, that Virginia should extract minimal fees for the sale of this land,

¹² 1 Jefferson Works 68-69.

¹³ *Id.* at 77-78. I have discussed the question of the reform of inheritance and Jefferson's role extensively in my Thomas M. Cooley Lecture, Property and the American Revolution: The Law of Inheritance, delivered at the University of Michigan Law School, November 3, 1975.

¹⁴ Rough Draft of Jefferson's Resolutions, in 1 Jefferson Papers 530-31.

that it should be sold in small parcels, and that the western territories should be quickly organized on a republican basis. These will be recognized as the sentiments which lay behind the Northwest Ordinance of 1787 and also, less obviously, behind the Louisiana Purchase of 1803.¹⁵

It seems fairly clear that several principles lay behind these legislative proposals. In the first place, Jefferson believed in the principle of equality where the state was compelled to allocate property—thus, equal shares among the heirs of intestates, the provision of a fifty-acre head right for each Virginia resident, and small land parcels for western frontiersmen. Secondly, and relatedly, he believed in the wide distribution of property. The law of descents, the abolition of entail, and the land distribution system all reflected this feeling. Thirdly, Jefferson was committed to the protection of existing property relationships. He was careful to defend the interests of the Church of England in its previously lawful property, he defended the right of heirs to inherit, and he supported the traditional western land claims of Virginia. I want to stress, however, that it was not only property rights in the abstract, but *land* which Jefferson thought critical for the development of this country. “Property,” to Jefferson, meant “land.”

The reason why is suggested in a famous passage in Jefferson’s *Notes on the State of Virginia* (written in 1780 or 1781, but not published until 1785). Jefferson was here responding to a series of queries from François Marbois, the Secretary of the French legation at Philadelphia, about the conditions of the American states. In the course of describing the state of manufactures in America, Jefferson launched into an attack on the economic theory of mercantilism: “. . . that every state should endeavour to manufacture for itself.” The Virginian thought that the unique environment of America rendered such a principle inappropriate and he described the American condition in words so compelling that it is worth setting them out at some length:

In Europe the lands are either cultivated, or locked up against the cultivator. Manufacture must therefore be resorted to of necessity not of choice, to support the surplus of their people. But we have an immensity of land courting the industry of the husbandman. Is it best then that all our citizens should be employed in its improvement, or that one half should be called off from that to exercise manufactures and handicraft arts for the other? Those who labour in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue. It is the focus in which he keeps alive that sacred fire, which otherwise might escape from the face of the earth. Corruption of morals in the mass of cultivators is a phaenomenon of which no age nor nation has furnished an example. It is the mark set on those, who not looking up to heaven, to their own soil and industry, as does the husbandman, for their subsistence, depend for it on the casualties and caprice of customers. Dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of

¹⁵ Anthony Marc Lewis, *Jefferson and Virginia’s Pioneers, 1774-1781*, 34 *Miss. Valley Hist. Rev.* 551 (1948).

ambition. This, the natural progress and consequence of the arts, has sometimes perhaps been retarded by accidental circumstances: but, generally speaking, the proportion which the aggregate of the other classes of citizens bears in any state to that of its husbandmen, is the proportion of its unsound to its healthy parts, and is a good-enough barometer whereby to measure its degree of corruption. While we have land to labour then, let us never wish to see our citizens occupied at a work-bench, or twirling a distaff. . . . The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body. It is the manners and spirit of a people which preserve a republic in vigour. A degeneracy in these is a canker which soon eats to the heart of its laws and constitution.¹⁶

Here we have it. In the early stages of his career Jefferson was firmly wedded to the notion that land ownership and the tilling of one's own soil was not only good economics but good politics. It was only by independent labor (and in the mid-eighteenth century that was typically farming) that a man could divest himself of subordination to superiors and cultivate that inner strength upon which republicanism depended. As Jefferson wrote to John Jay in 1785:

Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous, and they are tied to their country and wedded to its liberty and interests by the most lasting bands. As long therefore as they can find employment in this line, I would not convert them into mariners, artisans or any thing else.¹⁷

Jefferson is here operating in the context of John Locke's theory of private property, according to which the earth and its fruits were given to mankind in common but a man's person and labor were his alone, and his property was whatever he produced by dint of his personal labor:

The Earth, and all that is therein, is given to Men for the Support and Comfort of their being. And though all the Fruits it naturally produces, and Beasts it feeds, belong to Mankind in common, as they are produced by the spontaneous hand of Nature, and no body has originally a private Dominion, exclusive of the rest of Mankind, in any of them, as they are thus in their natural state: yet being given for the use of Men, there must of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial to any particular Man.

According to Locke man extracts his property from a common stock:

Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with it, and joynd to it something that is his own, and thereby makes it his Property.¹⁸

Locke imposed two limitations upon man's capacity to appropriate property

¹⁶ Jefferson Notes 164-65.

¹⁷ Letter from Thomas Jefferson to John Jay, Aug. 23, 1785, in 8 Jefferson Papers 426-28 (1953).

¹⁸ John Locke, *Two Treatises of Government*, bk. II, ch. 5, ¶ 26-27, at 185 (1698).

to himself: first, there must be “enough, and as good left in common for others” and second, no one must take more than he can use. Locke recognized that these limitations were significant in the context of English society, but he speculated that conditions might be far different across the Atlantic. He argued that where growing population and “the use of Money” rendered land scarce the limitations on property holding might prove oppressive, but where land abounded and there was little commerce:

. . . there Men will not be apt to enlarge their Possessions of Land, were it never so rich, never so free for them to take. For I ask, What would a Man value Ten Thousand, or an Hundred Thousand Acres of excellent Land, ready cultivated, and well stocked too with Cattle, in the middle of the in-land parts of *America*, where he had no hopes of Commerce with other Parts of the World, to draw Money to him by the Sale of the Product? It would not be worth the enclosing, and we should see him give up again to the wild Common of Nature whatever was more than would supply the Conveniences of Life to be had there for him and his family. Thus in the beginning all the World was *America*¹⁹

Jefferson frequently expressed himself in similar terms. For instance, in an 1816 letter to Pierre Samuel du Pont de Nemours, Jefferson wrote that “. . . a right to property is founded in our natural wants, in the means with which we are endowed to satisfy those wants, and the right to what we acquire by these means without violating the similar rights of other sensible beings.”²⁰ And of course for Jefferson, America was the perfect environment for the operation of the Lockean theory of property shorn of its limitations, for in America the endless abundance of land in the inexhaustible continent rendered it unthinkable that either mere accumulation or unavailability could deprive each man of his due share of the natural stock of plenty. But we must remember that for Jefferson it was not so much the provision for one’s natural wants, although that was obviously important, but the maintenance of a moral standard which was the most important product of a society composed of small, freeholding farmers. It was the virtue and judgment produced by such independent labor that rendered them capable of becoming republicans, and therefore rendered America capable of republican government.

This is as good a moment as any to explain that Jefferson rationalized the existence of slavery in his early political theory largely by ignoring the problem. His best suggestion, in the *Notes*, was that emancipated slaves should be colonized in “other parts of the world,” since he believed that: “Deep rooted prejudices entertained by the whites; ten thousand recollections, by the blacks, of the injuries they have sustained; new provocations; the real distinctions which nature has made . . . will divide us into parties, and

¹⁹ *Id.*, ¶ 27, 31, 48-49, at 186, 188, 201.

²⁰ Letter from Thomas Jefferson to P. S. Du Pont de Nemours, April 24, 1816, in 11 *Jefferson Works* 519, 522 (1905).

produce convulsions which will probably never end but in the extermination of the one or the other race."²¹ He would also doubtless have agreed with his friend St. George Tucker who, in 1806, declared that the preamble of the Declaration of Independence was framed with "a cautious eye" to the subject of slavery, "and was meant to embrace the case of free citizens, or aliens only; and not by a side wind to overturn the rights of property. . . ."²²

Jefferson analyzed the connection between property and government as early as 1774 in his widely circulated pamphlet, *A Summary View of the Rights of British America*. In justifying colonial complaints against the increasingly tyrannical imperial policy of Great Britain, Jefferson pointed out that America "had been acquired by the lives, the labors and the fortunes of individual adventurers" and thus had been unfairly "parted out and distributed among the favorites and followers" of the Stuarts who erected the American lands into "distinct and independent governments," undoubtedly an unjustified "dividing and dismembering" of the country. Jefferson went on to proclaim that American free trade with "all parts of the world" was a "natural right" which could not be withdrawn.²³

For our purposes the most interesting passage is the one in which Jefferson discussed "an error in the nature of our landholdings." This error was the introduction of "the Feudal tenures" into colonial law. Jefferson explained why such tenures were in error by resort to history. Harkening to a theme then familiar in England, he argued that prior to the Norman invasion of the British isles

. . . feudal holdings were certainly altogether unknown. Our Saxon ancestors held their lands, as they did their personal property, in absolute dominion, disencumbered with any superior, answering nearly to the nature of those possessions which the Feudalists term Allodial: William the Norman first introduced that system generally.

In fact many Saxon lands never fell to the Normans and thus were held "of no superior, and not subject to feudal conditions," but "the Norman lawyers soon found means to saddle them also with all the other feudal burthens." The result was that a general rule was proclaimed that all lands in England were held either mediately or immediately of the Crown. Jefferson argued that the historically accurate rule was that allodial tenure ("under which all lands were held in absolute right") was the correct general rule of the common law, and that feudal tenure was the exception. Since America had never been conquered by "William the Norman, nor it's lands surrendered to him or any of his successors," American lands rightfully were allodial in charac-

²¹ Jefferson Notes 138.

²² *Hudgins v. Wrights*, 11 Va. 133, 140 (1806).

²³ Draft of Instructions to the Virginia Delegates in the Continental Congress, in 1 Jefferson Papers 121, 123. This is the July manuscript text of *A Summary View* from which the manuscript was printed by Jefferson's friends later in 1774, without his permission.

ter. "Our ancestors however, who migrated hither, were laborers, not lawyers. The fictitious principle that all lands belong originally to the king, they were early persuaded to believe real, and accordingly took grants of their own land from the crown." So long as the Crown requested only a small tax, the quitrent, on such land, Americans were not moved to protest, but since the Crown had recently doubled its taxation, American interests were likely to be injured: ". . . the acquisition of lands being rendered difficult, the population of our country is likely to be checked." It was thus incumbent upon Americans, reasoned Jefferson, to redress the original legal wrong:

From the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed around itself, are assumed by that society, and subject to their allotment only. This may be done by themselves assembled collectively, or by their legislature to whom they may have delegated sovereign authority: and, if they are allotted in neither of these ways, each individual of the society may appropriate to himself such land as he finds vacant, and occupancy will give him title.²⁴

Jefferson returned to the subject of government and property in a fascinating exchange of correspondence with the lawyer Edmund Pendleton in August of 1776. In a missing letter Jefferson apparently laid out his theory that all Virginia lands were allodial in nature, and therefore that Virginians held them in fee simple and were not subject to any tenurial obligations to the state. He also suggested that unsettled lands should be sold. Pendleton responded that the sale of lands in fee simple would produce useful revenue but would be against "sound Policy." He pointed out that the original Virginia charter had entitled every newly arrived settler to fifty acres of land to be held in soccage tenure upon payment of a modest annual quitrent. He had two objections to changing the old system:

First we should alter the terms of Our Original Institution in this point and have our people holding Lands on different terms, and Secondly you would throw all the unappropriated Lands into the hands of men of property, in exclusion of the poor, who would not be able to bid against the others

Pendleton suggested that these reasons would also work against Jefferson's "allodial scheme," since it would be no better to put new settlers in a better condition than the old than vice versa—" . . . unless you release the old from the payment of Quitrents they have been long accustomed to, against which I think there are Objections of great weight." He concluded that it would be best to continue "the old mode, transferring rights, former and future quitrents and Escheats to the Common Wealth from the Crown, only confining the grants to small quantities to give the Poor a chance with the Rich of

²⁴ *Id.* at 132-33. The Act doubling the quitrent, which so provoked Jefferson, was the Land Ordinance of 1774. See Anthony Marc Lewis, *supra* note 15, at 552.

getting some Lands.”²⁵ A week later he wrote to Jefferson again, this time urging that the franchise

. . . be confined to those of fixed Permanent property, who cannot suddenly remove without injury to that property or Substituting another proprietor, and whom I alone consider as having Political Attachment. The Persons who when they have produced burthens on the State, may move away and leave them to be born by others, I can by no means think should have the framing of Laws, but may stay, enjoying their benefits and submitting to their Obligations as a kind of Sojourners, so long as they like them and then remove, or may at a very easy rate purchase a right of Suffrage by realizing a very small portion of their property²⁶

Jefferson responded that the question of whether land tenures in Virginia were allodial had become “a mere speculative point” since 1774 and “we have it in our power to make it what it ought to be for the public good.” One objection, in his eyes, to the collection of quitrents (taxes owed as a condition of landholding) was that they would establish “a perpetual revenue,” which experience with Great Britain had taught the colonists ought to be avoided—“Is it safe to make the governing power when once seated in office, independent in it’s revenue?” Moreover, Jefferson argued that the feudal tenures were in any case really a lawyer’s trick—“was not the separation of the property from the perpetual use of lands a mere fiction?” Other countries, he stressed, held their lands in absolute dominion and Virginia would be better completely to abolish the feudal system and thus to “. . . return at once into that happy system of our ancestors, the wisest and most perfect ever yet devised by the wit of man, as it stood before the 8th century?” He went on to say that Pendleton had misunderstood him, and that he was against selling unallocated lands at all. Those who moved to the West would in any case be subject to taxation in order to retire the Continental debt and they would tend to be poor people who ought not to be alienated from the central government by having to purchase the lands upon which they settle.

They will settle the lands in spite of every body. I am at the same time clear that they should be appropriated in small quantities.²⁷

Jefferson later responded to Pendleton’s plea for property requirements in officeholdings. He said that there ought to be two qualifications for service in the upper house: to be wise and to be “perfectly independent.” He admitted that this might be facilitated by having indirect election, but did not feel it necessary to require the Senate to possess “distinguished property.” He confessed that he did not think

²⁵ Letter from Edmund Pendleton to Thomas Jefferson, Aug. 3, 1776, in 1 Jefferson Papers 484-85.

²⁶ Letter from Edmund Pendleton to Thomas Jefferson, Aug. 10, 1776, in 1 Jefferson Papers 488-91.

²⁷ Letter from Thomas Jefferson to Edmund Pendleton, Aug. 13, 1776, in 1 Jefferson Papers 491-94.

. . . integrity the characteristic of wealth. In general I believe the decisions of the people, in a body, will be more honest and more disinterested than those of wealthy men: and I can never doubt an attachment to his country in any man who has his family and peculium in it. Whoever intends to live in a country must wish that country well, and has a natural right of assisting in the preservation of it. I think you cannot distinguish between such a person residing in the country and having no fixed property, and one residing in a township whom you say you would admit to a vote.²⁸

Pendleton's final response was to protest that he saw no danger in establishing a perpetual revenue, "provided the quantum be certainly below the unavoidable expence of Government, and the disposition left to the Representatives of the people annually chosen." As to feudal tenures, Pendleton said that while he admired "the old Saxon Laws," he could not help but think that the experience of intervening centuries had not made them outdated. On the whole, he was for a continuation of the state obligation:

It was the slavish nature of the Feuds which made them oppressive to the tenant and inconsistent with Freedom, and the establishment of a Military force independent of the Legislature, which proved injurious to the Community, but I confess I am not able to discover disgrace to the tenant or injury to the Society from their holding of the commonwealth, upon the terms of paying a small certain annual sum disposeable for common benefit, by their own representatives: nor what this will retain of the old Feuds?

He admitted that the old Saxon laws might be "better calculated for a few, Hardy, virtuous men" than for "a great Countrey made Opulent by commerce," but nevertheless suggested that the matter was not sufficiently important for legislative intention, in order to secure objectives "of greater moment."²⁹

It seems to me that the discussion makes clear the extent of Jefferson's understanding of the symbiotic relationship between the wide accessibility of arable land, the prevention of undue aggregations of landed property, and the close relationship of government to the governed. It was to secure such ends that Jefferson proposed legislation in 1776 in his effort to secure the Revolution by rooting out the last vestiges of the entrenched aristocracy and footing the new government on a broad and propertied base. But it is also clear that by "property" he meant something slightly different than Pendleton did.

Permit me to digress for a moment in order to point out that Jefferson's reasoning about property might have carried him much further than it did. His point was that republicanism required a wide distribution of land and that in America with its apparently endless resources of landed wealth, the

²⁸ Letter from Thomas Jefferson to Edmund Pendleton, Aug. 26, 1776, in 1 Jefferson Papers 503-7.

²⁹ Letter from Edmund Pendleton to Thomas Jefferson, Aug. 26, 1776, in 1 Jefferson Papers 507-8.

problem was primarily one of distributing unallocated lands in small parcels. While some of his reforms, such as the abolition of primogeniture and entail, would have the long range result of winnowing down the extent of the great landed estates, he did not propose anything which would immediately have a destructive impact on existing property holdings. His general sympathies, and his labor theory of property, might, however, have carried him farther in the direction of redistribution, and so they did for a brief moment in his career. The occasion was his visit to France during the 1780's, when he for the first time experienced the impact of the property rules of the Old Regime on a society which lacked America's unsettled frontier. In a famous letter of October 1785 written from Fontainebleau, Jefferson mused on the inequality of the European division of property, which he thought "absolutely concentrated in a very few hands . . ." He attributed European poverty to the fact that the nobility had enclosed great tracts of land and withdrawn them from production "mostly for the sake of game."

I am [he wrote] conscious that an equal division of property is impracticable. But the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for subdividing property, only taking care to let their subdivisions go hand in hand with the natural affections of the human mind.

He remarked that the abolition of primogeniture would be one way of moving toward this result, as would progressive taxation: ". . . to exempt all from taxation below a certain point, and to tax the higher portions of property in geometrical progression as they rise." He concluded:

Whenever there is in any country, uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labour and live on. If, for the encouragement of industry we allow it to be appropriated, we must take care that other employment be furnished to those excluded from the appropriation. If we do not the fundamental right to labour the earth returns to the unemployed. It is too soon yet in our country to say that every man who cannot find employment but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landholders are the most precious part of a state.³⁰

This was the same line of thought which later led Jefferson to try out on Madison the proposition which he supposed to be ". . . self evident, *'that the earth belongs in usufruct to the living.'*"³¹ Staughton Lynd has pointed out

³⁰ Letter from Thomas Jefferson to James Madison, Oct. 28, 1785, in 8 Jefferson Papers 681-83.

³¹ Letter from Thomas Jefferson to James Madison, Sept. 6, 1789 in 15 Jefferson Papers 392 (1958).

the radical potential of this line of thinking, but Jefferson never pursued the thought after his return to the United States in 1789.³²

There were probably two reasons why Jefferson did not espouse such a radical, redistributive line of thought. In the first place, it ran squarely athwart one of the cardinal principles of his political thinking, namely, that the state should exercise no more than the minimum powers necessary to maintain social order. Taxation, confiscation or any other broadly redistributive program would necessitate precisely the kind of governmental action which Jefferson was pledged to avoid. Second, and probably more important, Jefferson did not think that such radical surgery upon the body politic was necessary. For, in a country in which all men had land upon which they could labor and in which they participated freely in governmental process, redistribution was not necessary. We can understand this best by a brief examination of the assumptions which underlay the republican thinking of Jefferson and his contemporaries.

Our conception of revolutionary thought has been deepened and strengthened over the past ten years, especially due to the remarkable work of Professor Bailyn and his student Professor Gordon S. Wood, and it is Wood's account in *The Creation of the American Republic* that will be most useful here.³³ Wood remarks that "The sacrifice of individual interest to the greater good of the whole formed the essence of republicanism and comprehended for Americans the idealistic goal of their Revolution."³⁴ American revolutionaries were committed to the idea that the public good, the people's welfare, was the end of government and it was axiomatic for them that freedom of political participation in representative assemblies was the best way to achieve public good in a free government. Republicans did, of course, believe in a government which included an executive and an upper house, but they had confidence that a properly constructed government would promise "a new era of stability and cooperation between rulers and ruled" in spite of their personal experience of the incredible turbulence of eighteenth-century American politics.

At the heart of this faith was the assumption that the people, especially when set against their rulers, were a homogeneous body whose "interests when candidly considered are one. . . ."

This common interest was not, as we might today think of it, simply the sum or consensus of the particular interests that made up the community. It was rather an entity in itself, prior to and distinct from the various private interests of groups and individuals. . . . Because politics was conceived to be not the reconciling but the

³² Staughton Lynd, *Intellectual Origins of American Radicalism* 67-99 (1968).

³³ Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (1969).

Although of course we are indebted to the work of a great many scholars, among them Gerald Stourzh, Caroline Robbins, J.G.A. Pocock, Pauline Maier, Richard Buel, J.R. Pole, Trevor Colbourn.

³⁴ *Id.* at 53.

transcending of the different interests of the society in the search for the single common good, the republican state necessarily had to be small in territory and generally similar in interests.³⁵

The corollary to this line of thinking was that organized political parties were inimical to the public interest and in fact signs of ill-health in a republican society. On the contrary, the republican assumption was that political representatives would act in an entirely disinterested spirit.

Republicans were typically not concerned with the protection of individual liberty, and hence minority interests, because they assumed an identity between individual liberty and the public good—“. . . the important liberty in the Whig ideology was public or political liberty.”

In 1776 the solution to the problems of American politics seemed to rest not so much in emphasizing the private rights of individuals against the general will as it did in stressing the public rights of the collective people against the supposed privileged interests of their rulers.

Thus the people collectively would serve as guarantors for individual rights. This led Thomas Paine, for instance, to declare that “All property is safe under their protection.” Another corollary was that since the public welfare and individual interest were identical, it was possible to restrict severely various sorts of private rights during the Revolution—especially those of nonconforming Tories.³⁶

But Americans were realistic enough to perceive that republicanism created a severe theoretical problem—the nature of obedience in a political state. Obedience was of course not a problem in the monarchical system under which they had lived, for English political theory demanded obedience to the Crown in Parliament, and British government had clear sanctions for enforcing its authority. In a republic, however, where authority came from below, obedience would have to be self-imposed, since government was explicitly denied any coercive principle existing independently of popular sovereignty. “In a free government the laws, as the American clergy never tired of repeating, had to be obeyed by the people for conscience’s sake, not for wrath’s.”³⁷ This of course flew in the face of establishmentarian English thought. Blackstone, for example, had proclaimed in his *Commentaries* that “. . . obedience is an empty name, if every individual has a right to decide how far he himself shall obey.”³⁸

The republican conundrum was thus how to change the flow of authority, from top-down to bottom-up; the republican solution was that obedience must be internalized.

³⁵ *Id.* at 57-58.

³⁶ *Id.* at 61-62.

³⁷ *Id.* at 66.

³⁸ William Blackstone, 1 *Commentaries on the Laws of England* 244 (1765).

. . . each man must somehow be persuaded to submerge his personal wants into the greater good of the whole. This willingness of the individual to sacrifice his private interests for the good of the community—such patriotism or love of country—the eighteenth century termed “public virtue.”

This notion of public virtue was at the core of republican political thought, and it in turn rested on the assumption that individuals living in a republican society would be willing to exercise a highly self-conscious form of self-restraint, subordinating their private interests to the good of the state. The basic premise of republicanism was thus the assertion, astonishing to modern ears, that: “Once men correctly perceived their relation to the commonwealth they would never injure what was really their personal interest to protect and sustain.”³⁹ Republicanism thus rested on public virtue, which in turn rested on private virtue, which itself rested upon the faith that individuals could bring themselves to subordinate their narrow self-interest to the interest of the community at large.

This, I hope you will recognize, was precisely the idea which Jefferson had in mind in the long passage I quoted from the *Notes on Virginia*. You will remember that Jefferson there said that “Those who labour in the earth” are possessed of “substantial and genuine virtue,” and that they are free of that “corruption of morals” which is the product of “dependance.” Such virtue was impossible in the degraded conditions of hierarchical European society, for virtue flowed from social arrangements, it did not create them: “It is the manners and spirit of a people which preserve a republic in vigour.”⁴⁰

I hope it is also clear from the preceding discussion that widespread landholding and the predominance of farming in the economy might well be seen as essential to republicanism, as it was precisely this sort of individual industry which produced the virtue upon which the republican state depended. Jefferson was not the only one to perceive this connection. A similar point was made in a 1787 newspaper article in the Connecticut *Gazette*, which I think you will recognize as typically New England as well as characteristically republican: The “considerable forces” acquired by commerce in Massachusetts, the *Gazette* argued, prevented “the general manners of the people from being so strictly republican . . . as in Connecticut.”⁴¹ Consider also the Federalist Noah Webster’s analysis:

Virtue, patriotism, or love of country, never was and never will be, till mens’ natures are changed, a fixed, permanent principle and support of government. But in an agricultural country, a general possession of land in fee simple may be rendered perpetual, and the inequalities introduced by commerce, are too fluctuating to endanger government. An equality of property, with a necessity of alienation, con-

³⁹ Gordon S. Wood, *supra* note 33, at 68-70.

⁴⁰ Jefferson Notes 165.

⁴¹ Connecticut *Gazette*, Nov. 9, 1787, quoted in Jackson Turner Main, *The Social Structure of Revolutionary America* 224-25 (1965).

stantly operating to destroy combinations of powerful families, is the very *soul of a republic*.⁴²

Innumerable examples of this connection between property, virtue, and republicanism could be cited, although most of them appear in the very early years of the Revolution, for the truth of the matter is that pure republican theory had only a very brief moment of triumph in America. The years 1776-1787 may be thought of as the republican years, although by the early 80's, under the pressure of depression and despair at the seeming ineffectiveness of the government under the Articles of Confederation, the forces of American political realism began to reassess the social situation and to develop the principles upon which the constitution of 1787 and the modern American political tradition were to be founded. Seventeen-seventy-six in particular, and the late 1770's in general, constituted the "Jeffersonian moment" in American history.

Of course, one immediately associates Alexander Hamilton with the more modern view, but it is worth pointing out that the former republican and Jefferson's close friend James Madison also rejected the tenets of pure republicanism. In responding to Jefferson's plan for revision of the Virginia constitution in 1783, Madison sketched out his understanding of the relationship between property and government. He spoke of ". . . the two cardinal objects of Government, the rights of persons, and the rights of property." Arguing that the rights of persons would be protected by the lower house of the legislature and the rights of property by the upper, he stressed the need for a "middle way" to be taken.

Give all power to property, and the indigent will be oppressed. Give it to the latter and the effect may be transposed. Give a defensive share to each and each will be secure.

Like Jefferson, he resorted to history to demonstrate his proposition.

The necessity of thus guarding the rights of property was for obvious reasons unattended to in the commencement of the Revolution. In all the Governments which were considered as beacons to republican patriots and law givers, the rights of persons were subjected to those of property. The poor were sacrificed to the rich. In the existing state of American population and American property, the two classes of rights were so little discriminated that a provision for the rights of persons was supposed to include of itself those of property, and it was natural to infer from the tendency of republican laws that these different interests would be more and more identified. Experience and investigation have however produced more correct ideas on this subject.

Madison went on to argue that a minority of citizens in a republic would be

⁴² [Noah Webster], *An Examination into the Leading Principles of the Federal Constitution Proposed by the Late Convention Held at Philadelphia*, in *Pamphlets on the Constitution of the United States* 29, 59 (Paul Leicester Ford ed. 1888).

committed to the preservation of property rights, and that therefore the function of a constitution must be to protect property at that critical time of state-formation “. . . when the bulk of the people have a sufficient interest in possession or in prospect to be attached to the rights of property, without being insufficiently attached to the rights of person.” He thus opposed giving government over either to the rich or the poor and favored that sort of constitution which would balance rights of individuals and of property.⁴³

At the federal convention in 1787 he returned to this theme, speculating that in the future there would be a “great majority” of Americans who would be without either landed or any other type of property. His fear was that this propertyless class “. . . will either combine under the influence of their common situation; in which case, the rights of property & the public liberty, [will not be secure in their hands] or which is more probable, they will become the tools of opulence & ambition, in which case there will be equal danger on another side.”⁴⁴ This analysis led him to favor the constitution of 1787 and to give short shrift to those who believed in equality and poverty, or at least minimal possessions, as the basis of republicanism. In the tenth *Federalist* he attacked republican theorists who: “. . . have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions.”⁴⁵ He then went on to develop his famous interest analysis of large scale republics.

The position was of course elaborated with even more directness and clarity by that exemplar of federalism, Alexander Hamilton.

We may preach [he commented in 1782] till we are tired of the theme, the necessity of disinterestedness in republics, without making a single proselyte. The virtuous disclaimer will neither persuade himself nor any other person to be content with a double mess of porridge, instead of a reasonable stipend for his services. We might as soon reconcile ourselves to the Spartan community of goods and wives, to their iron coin, their long beards, or their black broth. There is a total dissimulation in the circumstances, as well as the manners, of society among us; and it is as ridiculous to seek for models in the simple ages of Greece and Rome, as it would be to go in quest of them among the Hottentots and Laplanders.⁴⁶

Hamilton was above all a realist, and he felt that politics must come to terms with existing and potential economic and social divisions in American society. At the federal convention he noted that: “The difference of property is already great amongst us. Commerce and industry will still increase the

⁴³ Madison's Observations on Jefferson's Draft of a Constitution for Virginia, in 6 Jefferson Papers 308, 310 (1952).

⁴⁴ 2 The Records of the Federal Convention of 1787, at 203-204 (Max Farrand ed. 1911).

⁴⁵ The Federalist No. 10, at 81 (Clinton Rossiter ed. 1961) (James Madison).

⁴⁶ Alexander Hamilton. The Continentalist No. VI, in 3 The Papers of Alexander Hamilton 99, 103 (Harold C. Syrett ed. 1962).

disparity. Your government must meet this state of things, or combinations will in process of time, undermine your system."⁴⁷ And at the New York ratifying convention in 1778 he stood republicanism upon its head:

As riches increase and accumulate in a few hands; as luxury prevails in society; virtue will be in a greater degree considered as only a graceful appendage of wealth, and the tendency of things will be to depart from the republican standard. This is the real disposition of human nature: It is what, neither the honorable member nor myself can correct. It is a common misfortune, that awaits our state constitution, as well as all others.

He went on to rub in the point:

Look through the rich and the poor of the community; the learned and the ignorant. Where does virtue predominate? The difference indeed consists, not in the quantity but kind of vices, which are incident to the various classes; and here the advantage of character belongs to the wealthy. Their vices are probably more favorable to the prosperity of the state, than those of the indigent; and partake less of moral depravity.⁴⁸

Here, as so often, Hamilton was following the psychological and political realism of David Hume, who had advised legislators ". . . to comply with the common bent of mankind and give it all the improvements of which it is susceptible," while warning that ". . . that policy is violent which aggrandizes the public by the poverty of individuals."⁴⁹ The emergence of this psychological realism and the rapid destruction of the briefly flourishing revolutionary faith in republican virtue, necessitated entirely new principles for the establishment of government.

In his thoughtful analysis of this transformation, Gerald Stourzh concludes that this emerging era of Federalist political thought

. . . asserted the primacy of the private passions for individual self-preservation, self-enrichment, and self-aggrandizement in three respects. First, on the level of psychology, these selfish passions were assumed to be fundamental to human nature. . . . Second, on the level of morality, the self-interest of the individual was made the yardstick of the public good. . . . Third, on the level of political and social theory, the private passions were believed to work to the advantage of the body politic.⁵⁰

If Stourzh is correct, what we see after 1787 is a second revolution in American political thought occurring within the lifetime of the original rev-

⁴⁷ 1 The Records of the Federal Convention of 1787, at 432 (Max Farrand ed. 1911).

⁴⁸ Alexander Hamilton, Address Before the New York Ratifying Convention of Poughkeepsie, New York, June 21, 1788, in 5 The Papers of Alexander Hamilton, *supra* note 46, at 36, 42-43.

⁴⁹ David Hume, Of Commerce, in David Hume's Political Essays 130, 134 (Charles W. Hendel ed. 1953).

⁵⁰ Gerald Stourzh, Alexander Hamilton and the Idea of Republican Government 73 (1970).

olutionary generation. The simple faith of the Jeffersonian republican in the capacity of the individual to repress his desires in deference to the common good was replaced by the notion that it was not only inevitable that individuals should pursue their own self-interest, but that indeed it was possible to construct a modern republican government in such a way that the multiplicity of private interests would in the end conduce to the general welfare. How this theory was worked out is of course principally the history of the Constitutional Convention of 1787 and of the work of the Hamiltonian Federalists in the early years of the new nation. I trust it is clear how thoroughly this modern theory of politics reverses Jeffersonian concepts about the individual right to property and about the function of property in the political process.

As you will realize if you know anything about his public career, Thomas Jefferson was able to accommodate himself to the new system and his ideas changed markedly in response to it. At the very least, he came to appreciate the political and economic advantage, if not the virtue, of commerce and urban growth, and his presidency clearly indicates that he disabused himself of the feasibility of truly minimal government, but all that came well after our brief era of revolutionary republicanism.

I have focused on the Thomas Jefferson of 1776 and his early ideas about property and government not only because our lecture series addresses itself to the particular impact of the great revolutionary year in Western social thought, but also because the most characteristic and, perhaps in the long run, most significant Jeffersonian idea is that of republican virtue. The more important tension in American intellectual life has been between the perhaps naive Jeffersonian faith in the capacity of the individual for self-development and self-restraint and the more generally accepted realism and consecration of self-interest which we associate with Alexander Hamilton.

Americans, we have long been told, venerate Washington, love Lincoln, and remember Jefferson.⁵¹ In trying to understand why Jefferson remains such an ambiguous figure for us, it may be helpful to think of him in a rather unusual way. When Bernard Bailyn was at the Law School last week, he was asked by one of our students why he had chosen to write the biography of Thomas Hutchinson, the unhappy man who had been the last royal governor of Massachusetts.⁵² He replied that he had fixed upon Hutchinson because he was "a loser," and went on to argue that the historical virtue in such a study was that it enabled one to imagine what the world would have been like if men such as Hutchinson had prevailed in 1776. Only by considering the historical losers, Professor Bailyn suggested, can we conceive what the alternatives were at any given moment in the past. It occurred to me, listening to this exchange, that it would also be helpful to think of Thomas

⁵¹ Merrill D. Peterson, *supra* note 1, at 457.

⁵² Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (1974).

Jefferson as “a loser,” for there is little doubt that Jefferson the republican symbolizes an alternative rejected in American history. Jefferson was, after all, the man who in the Declaration of Independence rewrote Locke’s “life, liberty and property” into “life, liberty and the pursuit of happiness.” It is both fascinating and a little sad to imagine what might have happened if the Jefferson of 1776 had prevailed.