

Property: The Forgotten 'Right' We Celebrate on July 4th



By Kirby Timmons

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Quick question: Consider these four Rights which are listed in our nation's Declaration of Independence –

- A.) Life
- B.) Liberty
- C.) Property
- D.) Pursuit of Happiness

Now, imagine that you had to give up one of these, which one would it be? This probably seems to be a particularly onerous choice, unlike those ubiquitous Facebook drills that press you to give up one of four of five breakfast foods, right? The answer there is “spam.”

But stick with me here.

Most people would answer something like, "Well, can't give up Life or Happiness.



ss. Liberty, which has lately been so infringed upon, is central to being American. So I guess the winner, meaning, 'loser,' Is Property."

Ok, thanks for playing. And the answer is ...

Well, the answer is complicated. Ok, I'm being a little disingenuous. While these words do appear in the Declaration of Independence, the word "property" is not on the list.

Sorry for messing with you.

Confused about "property" and the founding documents of our country? According to Lion Calandra, a Jennings Fellow with The National Constitution Center in Philadelphia, we're all a bit confused about a lot that appears, and especially what doesn't appear, in the Declaration of Independence and the Constitution.

"58 percent know that Bill Gates is the father of Microsoft," she says, "but only 2 percent know that James Madison is the father of the Constitution." Calandra goes on, "a whopping 59 percent can name the Three Stooges, while 41 percent can name the three branches of government."

Further, it turns out that 90% of Americans who know that the First Amendment relates to free speech.

Which is pretty good when you consider, as Lion adds wryly, "If not for the First Amendment, you might not be reading this essay."

But, what is "property" really? And why are such arguably mundane things – I.E.: houses, cellphones, my garage door activator – thrown in with vastly important, non-negotiable imponderables such as Life, Liberty and Happiness?

By way of answering, consider this: with today's increased sensitivity to gender issues, a conflict currently rages over which pronouns people may "identify" with – "he", "she", "his", "hers". However, remind yourself that, without the seemingly simple concept of "property", such particles of speech as "mine", "yours", "his", "hers" and "ours" would be all but meaningless.

Property, things outside of ourselves, are our primary way of interacting with the world around us.

When you think about it, "property" is inherently crucial to our lives, and our Life, and esp to our Liberty, in order to "do stuff," to modify ourselves and our circumstances.

According to the Framers, who must've thought a lot about it, "property" is not just physical things – land, tools, objects – but also defined by our relationship to the "thing," and how and whether we can prevent others from having a relationship with our "things." By which I mean "stealing."

According to Roger Pilon, in the CATO Handbook For Policy Makers, "It is no accident that a nation conceived in liberty and dedicated to justice for all protects property rights. America's Founders understood clearly that private property is the foundation not only of prosperity but of freedom itself."

Understand that, when our Founding Fathers said "property," first and foremost, they meant land, hearth and home. Back in jolly old England, it was a sore point. Because in England, no

person actually owned land absolutely: "all the land was held under a tenurial relationship with the Crown."

That was a problem that the Founders of our nation sought to remedy. These upstart gentlemen of our nation were attempting nothing less than to break from the onerous "system" of despotic rules and agreements that had governed much of the world of their time in which the tyrants and rulers of the Old World ruled by "privilege."

In that, the Framers were following a course of thought that had come down to them from the Greeks and Judao-Christian precedents, following the original meaning of "leges", Latin for "laws."

This comes into focus when we realize that our word "privilege" is roughly composed of the two concepts of "private" and "law." Meaning, of course, that a king or despot or local tyrant of any sort could have his or her own "private laws" with the power to enforce them beyond reason, logic or social consequence.

The revolution of our nation was then also a revolution in civilized thought – To break from a convoluted, piecemeal, and non-uniform system of "privileges," And invoke a new system where everyone was accountable equally and without exception to the same laws.

But let me ask one last time: why is "property" not in the "list"? Andrew Cohen, of Berkeley Law, gives us a salient clue, writing that "There is another key value not mentioned in the preamble to the Declaration of Independence: 'equality'."

While we would all think that "equality" is an essential element of the birth of our country, it was not embroidered into the founding documents. One word made that impossible: "Slavery".

Cohen reminds us that the full Declaration of Independence “was written in 1787 for an agrarian slave society.”

Jefferson based his version upon the Virginia constitution, drafted by George Mason in 1776, which declared in its Preamble, that “all men are created equally free and independent and have certain inherent and natural rights among which are the enjoyment of life, and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”

Steven J. Eagle writes in “The Birth of the Property Rights Movement,” that “although (Jefferson) undoubtedly was aware of Mason’s preamble, Jefferson dropped any reference to “property” in the Declaration – writing instead of rights to ‘life, liberty, and the pursuit of happiness’ – in part due to the contradiction between his own version of natural rights philosophy and the continuation of slavery.”

Not that our Founding Fathers didn’t try to square the circle. From their writings, we know that the issue of Slavery did come up among them, and was vehemently argued. The prevailing opinion was that they were an upstart fledgling nation, rebelling against the greatest nation power the world had known up to that time, and grappling with the institution of slavery, that was still common through the world, was beyond the scope. Slavery was something to be left for ‘another day.’ However, in sidestepping slavery in the Constitution, the Framers may have been seen to help to institutionalize it.

In just such a way, decisions of the past go on to cloud and overwhelm future events, sometimes referred to as “the tyranny of small decisions.” It is perhaps the clearest and saddest example in American History, perhaps of world history, of what, in science, is called “sensitive dependency upon initial conditions.”

To whatever extent we might be lenient with the Framers for

attempting so much in their time that was right and due, we must also saddle them with responsibility for postponing the issue of Slavery and, as a consequence, arguably assuring that bloody civil war would follow a mere 84 years hence.

One last question nags at us – where did “property” end up in the founding documents of our nation, if at all? The answer is the sturdy Fifth Amendment, in a section that lawyers, and land owners big and small know very well –the so-called “due process clause,” which states that “No person shall ... be deprived of life, liberty, or property, without due process of law.”

This exploration which began as a reflection upon our use of the word “property,” only to find that the concept lies central, not only to vouchsafing those other rights we hold dear, namely Life, Liberty and Happiness, but also to a skein of human misery that has long compromised those rights for many.

“Property.” If you’re like me, just saying the word has a different meaning than at the beginning of our inquiry. In view of current events, it and other concepts relevant to the founding of our nation are certainly worthy of regular reevaluation, and renewal, in the future.

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[BIO: Kirby Timmons is an award-winning writer, director and producer with 30 years experience in broadcast TV, non-theatrical videos and in print. He attended the University of Southern California where he graduated with a Bachelor’s degree in Philosophy, cum laude. His teleplays have aired on all three major networks, including episodes of “THE WALTONS”, “THE LIFE AND TIMES OF GRIZZLY ADAMS” and “THE INCREDIBLE HULK”. Kirby’s print articles have appeared in THE LOS ANGELES

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