

Property Rights: Knowing Where to Draw the Line

Lillian Duan
lilliduan5@gmail.com

ABSTRACT

This paper examines federal property regulation in the United States according to the framework established by the Constitution. As a teenager who has grown up in this country, I am inspired by the challenges associated with gun control and the problems inadequate regulation of property can have on American society. The primary question I seek to answer is whether the founders of the American Constitution were successful in establishing a permissible extent to which the government could control property, creating an effective balance between protecting an individual's property and allowing government interference when necessary. To answer this question, I carefully analyze the historical context and the philosophical foundations of the Constitution. After doing so, I evaluate it according to my standards for success, which include an emphasis on protection, fairness, and adaptability. I conclude that the founders partially succeeded in securing property rights and preventing government overreach, but they ultimately failed to ensure equal protection for all people and provide a flexible foundation for future debates over the changing nature of property. Understanding the government's intentions and choices regarding property rights can help us better assess modern policy changes and allow us to imagine a future in which property is used more responsibly to prevent further abuse and harm.

INTRODUCTION

Property rights are necessary in shaping how Americans understand freedom: the significance of personal choice and the limits of federal control. Yet access to these same human rights become much more complex in situations when they threaten public safety. I see these tensions most clearly when it comes to the abuse of gun laws, which has been a major problem in the United States for decades. Ever since I was a child, I've been taught how to hide from shooters during school. As a high school student now, we annually practice routines to protect ourselves from potential school shootings: looking for objects to seal the doors shut, identifying the best exits to leave from in every class, finding places to hide in case an active shooter breaks into the room. A teenager should not have to worry about potentially being shot during the school day, yet it is so normalized in our country that it is almost tradition. I have always been under the impression that guns need to be better regulated in order to protect the children of America, so I began to wonder why they were not. Limiting people's rights to their property, even in order to prevent public danger, has major implications for what the government should be allowed to control regarding people's use of their property. Therefore, it is important to understand the extent of control government is

Sep 2026
Vol 11. No 2.

allowed to exercise over property according to the Constitution, and evaluate whether I believe decisions were justified. These are crucial steps in recognizing both the danger of government overreach as well as the danger that too little regulation can create. However, while gun control is what inspired me to research property rights, and it is certainly a pressing issue of our time, a detailed analysis of gun control is not the direction I want for this paper. The broader questions on my mind at the moment are: whether the founders of our Constitution adequately protected property rights, why they made certain decisions, and what could be improved in the future. Answering these questions allows me to look deeper at problems regarding property, including but not limited to gun control. With the knowledge I've gained from researching and writing this paper, I conclude that the founders partially succeeded in securing property rights and limiting government overreach. But, they failed to ensure equal protection for all people and provide a flexible foundation for future debates over the changing nature of property.

THE PROBLEM OF PROPERTY RIGHTS

The core of the property rights problem is the question: to what extent should the government control what individuals can do with their property? The government having control over people's property is itself widely controversial. For the purposes of this paper, we define "federal control of property" as the restrictions and obligations placed on the ownership, use, and disposition of property by the government (US Const.). This includes federal actions like taxation, regulation of land transfer, and taking private property to use for the good of the public. Currently, there are many existing restrictions for various aspects of property, such as eminent domain and other forms of government regulation. The 14th Amendment explicitly prevented states from creating arbitrary laws that deprived people of their property, while the more modern Measure 37, adopted by Oregon in 2004, had required federal compensation to owners if federal regulation of property causes economic burdens on their property (Jacobs). Naturally, these actions often cause outrage, which is why establishing the permissible extent of government control over property is important. How much should the government be allowed to tax? What can the government take? When does control become a deprivation of freedom?

Setting clear boundaries for a government's power over their people's property is necessary to protect individual freedom. Individual property establishes a private sphere that secures personal autonomy by limiting government intrusion, while still being subject to legal regulation for the broader public good. It gives people a space to act freely without government interference, but laws can still be imposed if necessary to protect society as a whole. Owning property gives people control over their own lives by allowing them to make choices without being dependent on others, making property an essential liberty. Protecting people's freedoms is the only way that the government can properly maintain order and serve in a way that is truly beneficial to the governed (Tuckness).

Even the framers of our Constitution disagreed bitterly on where the line of balance between permissiveness and freedom should lie regarding property rights. The exigence of the issue lay in the fact

that (due to previous failures) their nation was growing increasingly unstable, leaving our founders with little time to resolve the problem before economic collapse.

PROPERTY RIGHTS

Property rights are most commonly legally described as the power to use and have authority over an economic good in certain publicly enforced and acceptable ways (Alchian). The term has been defined in various ways throughout history, though property is generally perceived as a tool to help people pursue their values or desires (Cooter). These values and desires are emphasized in contrasting conceptions of property, differing in how they determine its purpose: ranging from maximizing utility and social welfare to ensuring fairness and social justice.

Disputes have emerged among these distinct concepts regarding the “right way” to use property. For example, there is common property, which depends on the belief that ownership of property is entirely communal. Restrictions to property are made to make sure all people have secure and fair access to commonly-held property, as well as to prevent certain property from being overused and abused (Ostrom & Hess). This way of handling property is often criticized by the Tragedy of the Commons theory which explains that shared resources will inevitably be depleted because mankind’s inherent selfishness will cause people to begin acting in ways to maximize their own gain (Hardin). Collective property depends on the collaboration of a community (Alden Wily). It argues that the community should come together to decide how property can be used, ensuring that social interest is the basis of decisions over property. These ideas of property being used for social good are reflective of utilitarian values on property where the purpose of property is believed to be maximizing the total amount of happiness that can be created by using it (Mill). While the terms “common property” and “collective property” are often used interchangeably, they are not necessarily identical. Common property generally refers to resources managed by a defined community under shared regulations, but collective property is a broader term for property jointly owned and controlled by a group (Alden Wily).

On the other hand, private property allows individuals the freedom of having significant rights over their own property. Although, they must adhere to certain rules for the good of the nation. The exclusion of others in private property is a controversial aspect, but it is often justified by its supporters as a necessary tool for self-expression and personal liberty (Cooter). Philosophers like Locke and Blackstone defended the idea of private property by contending that, although it results in inequality, people are responsible for the work that they put into owning their own property (Penner). Therefore, they claim, the inequality is justifiable. The current economic structure of the United States was founded on and continues to primarily be committed to the system of private property (Jacobs).

The importance of property rights depends on the way one views property. In American society, property rights reflect a fundamental value of separating private rights from government power (Locke). Owning property (in American society based largely on the idea of private property) allows a sense of

independence from others' control. The government is explicitly prevented from interfering with certain aspects of property, enforcing a limitation to governmental power. These concepts reflect the Americans' justifications for and the significance they see in private property. Having ownership and control over one's property is necessary for self-sufficiency (Locke), as well as markets and trade between individuals. This power of having control over economic life bleeds into other aspects of life, allowing individuals more control over their own lives as a whole. In this way, private property prevents the government from having dictatorial authority over their people.

However, private property is also dangerous in the same way. Certain eras like the Middle Ages and the Gilded Age, when wealth was concentrated to a few aristocratic families or large monopolies, private property actually attained a domineering, centralized power. Therefore, the effectiveness of private property relies on a balance between economic freedom and regulation of excessive wealth and power. To Americans, since even before the American Revolution when they had truly become the United States, property rights have been about social order and equality.

THE COMPLEXITY OF PROPERTY RIGHTS

A key reason for the highly controversial nature of establishing property rights stems from the Enlightenment era. This period produced a complicated web of perspectives in which each emerging concept had its own reasons for being the way it was. These new concepts marked a shift from earlier traditions, emphasizing reason, individual rights, and different ways of intellectual thinking about government and authority (Kant). The trouble came in deciding which perspective was the most reasonable: the right one.

Take Thomas Hobbes for example. He believed that, without an extremely strong authority that controlled nearly everything in the nation, people would be too self-centered and disorderly to form a proper society (Duncan). John Locke later developed contrasting views to Hobbes'. He believed that the government should work for the people: its only job should be to protect the natural rights of the governed people. Years later, William Blackstone (an English lawyer and Oxford professor in the eighteenth century (Cook)) applied this argument to property. He suggested that private property should be a priority in our legislation if the government was meant to protect freedom (Ely 2016). Beyond Locke and Hobbes, other philosophers also offer competing views on property. Some, like Plato, emphasize collective ownership for social unity (Kraut 2026). Others, like Aristotle and Kant, connect private property to freedom, responsibility and personal rights (Kraut 2022). These differing perspectives portray why property rights have always been difficult to define and balance.

HISTORICAL CONTEXT BEHIND AMERICAN PROPERTY

The complications surrounding property rights for our founders began before our nation was even founded. Property rights first became a major issue when Americans were still colonies under British rule. King George III abused his power by imposing unfair taxes and policies on the American colonies (Wood). Americans claimed the King was violating their rights as Englishmen as according to the original 1215 Magna Carta. They pointed specifically to Clauses 12 and 14, which required “common counsel of the kingdom” through various societal leaders (Vincent) before the king could impose scutage (medieval English military tax). This conflict eventually inspired the famous protest “no taxation without representation.” Small protests like this soon led to massacres, which eventually led to war. After the American Revolution, our founders were determined to create a system where states were free to let individuals do what they wanted with their property. At the time, federal authority was extremely limited due to the nation’s novelty. Thus, individual states were largely in control of their people’s rights, which gave each state considerable control over local property laws and practices. This meant that individual rights were closely tied to state governments, with each state shaping how property could be used by its people within its boundaries.

Thus came the Articles of Confederation. To the founders’ dismay, the Articles of Confederation did not produce the effect that they had hoped for. Contrary to what many had believed, the freedom permitted by lack of central government caused disunity and unregulated chaos rather than widespread liberty and stability. Constant disagreement kept the government from establishing new laws, funding reconstruction after the war because of resistance to taxes, and solving any disputes between states. The states possessed too much authority for a federal government function effectively. The result of the Articles of Confederation was a desperate need for a more centralized government as well as an entirely new political structure (Maggs).

After convening, our founders drafted a new Constitution, one that is still in use today. However, the establishment of such a document was not without its struggles. American politics were divided into two distinct, opposing parties: the Federalists and the Anti-federalists. Federalists thought that economic order depended on stable rules for property and only a strong national government could reliably provide that. Anti-federalists thought that property was foundational to independence and freedom, and this is something that can be abused or limited by strong centralized power (Wootton). These competing views on property and government authority have greatly shaped how the Constitution is perceived and has been amended.

Even after the establishment of the Constitution, government control over property rights remained controversial. Eventually, property became more complex than simply determining who owned what. It became a question of what we should own according to our values, what we are legally allowed to own, how much we can own. Westward expansion led to divisions between states, with some landlocked states feeling it was unfair for others to have disproportionate amounts of land compared to their own. State claims on the western frontier augmented this conflict, making settlement increasingly difficult. Once the

western frontier was secured, policies were made to make management less difficult. However, because the federal government began selling and granting land freely to pay off debt and promote westward expansion, the result was a very fragmented landscape that was extremely hard to handle (Ruple 2020). Additionally, to further their agenda of expansion, the nation also began to take land from Native Americans. These acts contributed to the question of what we should own. Since it was Indigenous land first, its seizure was morally contested. Nonetheless, it was justified at the time through flawed concepts such as the Doctrine of Discovery (Alexander VI). Furthermore, a heated debate had emerged within our states which would continue to grow until our nation became divided to the point of war: the issue of slavery (Manning). The debate over whether or not it should be legal to own slaves separated our nation with sectionalism and complicated the question of what people are allowed to own.

American history reveals both the difficulties of controlling property and the consequences of handling it in an inadequate manner. King George III demonstrated the effects of a dictatorial government that offered no freedom to its people: internal revolution and separation. Conversely, the Articles of Confederation revealed the result of allowing too much freedom to the people: a government that could not control its nation, and disorder to the point of economic instability and political disunity. The Constitution was created as a compromise to these two extremes. It served as a middle ground, seeking to provide enough government authority to maintain order without depriving their people's freedom.

Finding a proper balance was not at all simple. American constitutional culture shows that owning property does not mean a permanent control over something. Rather, property is always changing and society must continually adjust to those changes (Schneiderman 2008). This operative conception of property is mainly reflected in American politics by the Supreme Court's interpretations of the Takings Clause. For example, *Penn Central Transportation Company v. New York City* reflected a legal shift in the idea of owning property. Instead of being something that can be fully controlled by its owner, property is something with economic and societal expectations for use (Lang). In addition, the infamous *Kelo v. City of New London* expanded the understanding of "public use" in the exercise of eminent domain to include economic development and other indirect benefits for the public (*Susette Kelo v. City of New London, Connecticut*, 2005). While the Constitution, written in the eighteenth century, did help solve many of the major issues of its own time, it could not possibly anticipate and account for all the problems modern society would face.

SUCCESS PARAMETERS FOR THE CONSTITUTION

To determine if our founders succeeded in protecting property rights by answering the question at the core of this paper (limiting government power to a fair extent through the Constitution), I will evaluate their actions according to a set of parameters for success. These standards reflect my own moral beliefs about what fair protection of property rights should entail, rather than a universally accepted measure of success. A reader could reasonably use a different standard to evaluate the Constitution. For example, one could compare property rights protections in the Constitution to those offered by other governments at the

time or assess how well the Constitution fulfilled our founders' stated goals (as expressed in historical works such as the Preamble and the Federalist Papers).

The ideal would be to have a fairly established policy for government control of property rights that all the citizens are happy with. But, this perfection is unfortunately impossible. A better definition for success would include a deeper look into the many pieces making up the policy that defined the new nation of America. To begin, a successful policy should have appropriate protection of property. This protection should first include protection of one's property from other people's abuse. No one should have the power to take or mistreat another's property without proper reason (for example, taking away a drunk man's car keys would be a righteous reason as it prevents public danger) in order to ensure social stability (Tuckness). Furthermore, this protection should also include protection of one's rights to property from societal abuse and inequality. Nobody should be prioritized when it comes to practicing rights, not any race, gender, socioeconomic standing, or any inherent and unchangeable human trait. While much of my belief in equality is based on my own moral standing, it is also supported by social science. Research has found that more equal societies tend to have more interpersonal trust in the community, better social cohesion, and lower rates of violence between individuals (Wilkinson).

The policy should place limits on the government's power. Under specific definitions of property, owning property should mean setting a boundary to how far the government may reach an individual (Ely). Therefore, to protect this personal independence, the government's control over property should be limited as well. For a policy to be successful, it must balance individual autonomy and government authority. Similar to how the Constitution was a balance between a dictatorial government and a powerless government, success (in this case) should mean a balance to when the government can act. Of course, there are times when the government should be allowed to seize property in order to fulfill other responsibilities, but this can not limit another individual's right to own and use their own property. For these government limitations to be just, there must be an established legal framework to judge by. I believe that, consistent with our founders' goals as stated in the Preamble, key priorities of this framework should include: fairness to both the individuals affected and the public as a whole, prevention of unjustified or arbitrary government interference, and full consideration of future impacts before making government decisions.

Finally, the policy must be able to uphold itself for a long period of time. Although the nature of property changes over time, the basic principles behind property policy must remain consistent. If the laws are constantly changing in response to every small issue, people may lose respect and trust in their legitimacy. Laws should be sufficiently clear and stable for people to effectively understand the legal consequences of their actions (Paunio). Therefore, a successful policy must be flexible enough to adapt to future circumstances but stable enough to provide guidance and maintain deference.

PROPERTY RIGHTS IN THE CONSTITUTION AND BILL OF RIGHTS

Due to the failures of King George III's dictatorial rule, protection of property was a major concern for the early American people. Therefore, there were multiple important protections definitively stated within the Constitution and Bill of Rights. Initially, the founders of the Constitution had declared that every citizen of the nation had a natural right to the "pursuit of property." This wording was later changed to "the pursuit of happiness," as it better aligned with our founders' ideologies at the time. To them, happiness was not simple pleasure, but a virtue in which individuals built their own lives in a way that was responsible and moral within society (Conklin). Accordingly, protecting the "pursuit of happiness" is allowing individuals to pursue a virtuous and fulfilled life. A concept that encompasses the protection of property without being limited to it.

These rights to pursue "happiness" through property were protected by certain policies such as the 5th and the 14th Amendments. The 5th Amendment provided Americans with the well-known Takings Clause in which it stated that private property can only be taken for public use (in what is known as eminent domain) with proper compensation for what was taken. In addition, the 14th Amendment promised that the government can never prevent a citizen from obtaining or having their own property without going through a fair legal process. Other policies on land property, monetized property, and contractual property can be found in later sections of Article 1 of the Constitution. More specifically, Section 8 of Article 1 in the Constitution explains that Congress has the power to legislate federal land regulation. Section 9 states that direct taxes should be based on state population and banned from exported goods. Lastly, Section 10 states that laws made to weaken land contracts are prohibited (US Const. Art. 1). The legal system as a whole includes many more protections and regulations of property outside of the Constitution as well. Taken together, these reflect the reality that property is a social and legal construction continually defined and reinforced by political institutions. The Constitution serves as the United States' framework of shaping and protecting that construct.

Perhaps what is more important than the law itself is how it is interpreted by the courts (shaped by the ideals of the people). The way our justice system has handled certain property protection policies has greatly shaped the way they are perceived by the American citizens. For instance, in the case of *Lucas v. South Carolina Coast Council*, the state of South Carolina had enacted a law for environmental protection that made it impossible for Lucas to construct inhabitable structures on his land. This rendered the land that Lucas had bought to build family homes on practically worthless in economic value (Supreme Court of South Carolina). The courts ruled in favor of Lucas, establishing stricter protections on government regulation by solidifying the idea that depleting a land of its economic value counted as taking private property (therefore, in accordance with the Taking Clause, required just compensation to the owner).

Later on, in the *Jacque v. Steenburg Homes* case, the Court deemed it not excessive that the Jacques fined Steenburg Homes for \$100,000 dollars because of intentional trespass to land, although there was no harmful intent or damage to the property. The case secured the idea that excluding others from an individual's property was a fundamental aspect of private property ownership rights, and such rights

would be “hollow if the legal system provides insufficient means to protect it” (Supreme Court of Wisconsin).

Even now, laws are still continuing to change as technology and society evolves. More recently, forms of digital property such as cryptocurrency and NFTs are emerging and popularizing relatively fast. Property laws have struggled to keep up with these innovations (Wyczik). Courts and legislatures have only just begun to define how ownership and protection may apply to these decentralized digital assets. Ultimately, this evolution of property law demonstrates that it is not a fixed concept exactly as it is stated in the Constitution, and instead is something constantly adjusting to legal judgements and societal values.

PHILOSOPHICAL FOUNDATIONS OF THE CONSTITUTION

Many point to Locke and Montesquieu as the primary influences on the Constitution. The idea of having natural human rights that need to be protected when people leave a state of nature and come into a governed society is mainly attributed to John Locke (Regen). Montesquieu is known for developing the separation of powers as a balance to prevent corrupt governments. However, the philosophical foundations of the Constitution are much more complex than this, as many different philosophies influenced its creation. As a newly formed nation, the American revolutionaries had to develop their own political ideology through the Constitution, drawing from existing philosophies to create something original. Building off of ideas like Hobbes's desire for extreme authoritative power and Blackstone's criticism of limiting government power, American revolutionaries concluded that freedom depended on dividing political power in a way that would restrict excessive government authority. Our framers also relied heavily on Enlightenment ideals that promoted governments controlled by the people and encouraged intellectual thought in everyday life (Kant). The establishment of a Bill of Rights in multiple state constitutions, as well as a federal Bill of Rights, reflects these core values of individual freedom and reason. This is because they allow authority to always be held accountable for protecting their people's liberties.

The framers also drew from classical philosophers such as Aristotle, Socrates, and Plato who believed that rational thought was necessary for a virtuous life (Kraut 2022). Aristotle, specifically, influenced the framers by arguing that virtue was learned from practical wisdom in everyday life. Therefore, he says, a government should protect the conditions that allow their citizens to practice personal autonomy and wise judgment. Furthermore, our framers believed in the political theory that written law would create a sense of permanence and legitimacy (Alexander). This explains the creation of physical documents for the Constitution and the Bill of Rights. This emphasis on political legitimacy reflected Rousseau's ideas that legitimate authority comes from a social agreement in which laws are justified by the people and serve for the common good (Peter). Implementing these principles in the Constitution helped to ensure that citizens would understand the laws they were governed by and be able to contribute to making rational decisions that would benefit the nation.

Furthermore, the framers of our Constitution were also heavily inspired by the Magna Carta, the established framework for English law that Americans had previously followed as colonies under English rule. Their views on property were largely shaped by the original Magna Carta (1215), especially Clauses 12 and 14. When put together, these clauses state that taxes could generally not be imposed without the agreement of the kingdom, which the king could obtain by summoning other major landholders (such as archbishops, bishops, and greater barons) to deliberate on the proposed levy. By highlighting the need for federal decisions grounded in reason and the voices of the public, the Constitution guaranteed protection of their citizen's rights and prevented major power imbalances between the government and the governed.

Our American revolutionaries even indirectly relied on ancient ideas of the Stoics, including the ideas that all human beings have a natural capacity for good and reason, education allows people to take charge of their lives, and that good citizens must care about all of humanity (Nussbaum). These ideas are reflected in our framers' emphasis on universal inherent rights, informed citizenship, and human equality.

EVALUATING THE CONSTITUTION

The Constitution succeeds in some ways by protecting individual property rights from excessive government control, but in other ways it deeply contradicts the framework that I believe defines success. The Constitution largely succeeded in protecting property rights from government overreach in principle by establishing a legal framework limiting unwarranted federal regulation and seizure of property (especially with the 5th and 14th Amendment's Takings and Due Process clauses). Structurally, the Constitution includes overall limitations on government power through separation of powers and an emphasis on natural human rights protection. The judiciary also successfully provides a structured system for resolving property disputes.

Nevertheless, despite its initial successes in creating a durable system that aimed to protect property rights against federal power, it failed to produce a fixed policy that remained consistently fair throughout history. Balance continuously shifted over time by redefining limitations posed in the Amendments and changing political priorities throughout different eras. Interpretations of the Constitution have evolved dramatically, and property rights protections have changed a lot in practice.

Furthermore, the well-created protections failed to promote equality in practice. Historically, marginalized groups (such as women, enslaved Africans, Indigenous peoples, and other minorities) were denied meaningful rights or protections over their property. For example, before 1830, the legal rights of married women were largely vested in their husbands. This meant that a married woman's personal property generally became her husband's property, and he could use and discard these belongings as he pleased. Moreover, her income and land would also be managed by her husband (Fernández). There is a clear disparity here: while men retained control over their property after marriage, married women were forced to relinquish autonomy over property they had previously owned or later acquired. A more specific example of inequality can be seen in *Johnson v. M'Intosh*. In this case, the Supreme Court ruled in favor

of William M'Intosh. He had legally purchased land from the U.S. government, despite the fact that the Johnson family had previously bought the same land from the Piankeshaw Indian tribe. The decision was made on the basis that Native Americans did not have the authority to legally sell their lands to private individuals (*Johnson & Graham's Lessee v. McIntosh*, 1823). American law therefore failed to protect the rights of Indigenous peoples by denying them the same authority over the sale and transfer of their land that white property owners generally had. Together, these examples demonstrate how the American legal system had applied protections for property rights unequally, limiting ownership and autonomy based on unfair distinctions such as gender and race.

CONCLUSION

The Constitution can only be seen as a partial success in meeting my criteria of establishing a fair and equitable stance toward property. It managed to create durable foundations that limit unregulated federal power, protect individual freedoms with property, and provide effective ways for the judicial system to resolve disputes. Yet, it still fails in some ways by not establishing a policy that stays true and fair for all American people. It also falls short by not maintaining a fixed policy that balances individual property rights with government authority over long periods of time. Although creating a policy that would last forever is both impossible and impractical, the Constitution failed as its policies were unstable from the start. It was clear that the Constitution would not stay the same for very long from the moment it was created. By excluding the protection of all people in the nation, the policy was destined to face major changes in order to adapt to the voices of the people.

The historical debate of property rights still continues into modern time as the meaning of property continues to expand and become more complex. Property can no longer be limited only to land and money. For example, there is now an entirely new category to consider: digital assets. Now, the government must decide how strongly ownership of digital information and goods should be protected. In the rising age of AI, all property can not be traced back to human creation with AI replication and independent activity becoming more popular. Property law has always been able to define ownership, even with abandoned possessions. So, the future of such laws becomes increasingly unsure with contemporary innovations (Brown). Modern forms of property like this show that the Constitution can only provide a foundation to the ongoing conflict of property rights, but not a complete answer. However, that is not to say that legal flexibility is inherently bad. It provides a way to constantly ensure our national values (equality, freedom, etc.) are being met as the world continues to change. This stands especially true in the case of property law considering that property, by nature, is always changing.

Modern challenges of property rights also include conversations connecting back to the issue that prompted this paper: gun control. Guns are a form of property, but the freedom offered by owning this property can create irreparable damage and societal harm. The debate over gun laws reflects the same tensions explored throughout this paper: how to protect individual rights while still allowing the government enough authority to protect the public. Understanding property rights in this way shows the

goal should not be unlimited freedom or unlimited control, but a careful balance that prioritizes the wellbeing of all people in a nation.

REFERENCES

- Alchian, Armen A. "Property Rights." *The New Palgrave Dictionary of Economics*, Palgrave Macmillan, 1987. https://doi.org/10.1057/978-1-349-95121-5_1814-1. Accessed 10 May 2026.
- Alchian, Armen A., and Harold Demsetz. "The Property Right Paradigm." *The Journal of Economic History*, vol. 33, no. 1, Mar. 1973, pp. 16-27. *JSTOR*, <https://doi.org/10.1017/s0022050700076403>. Accessed 10 May 2026.
- Alden Wily, Liz. "Collective Land Ownership in the 21st Century: Overview of Global Trends." *Land*, vol. 7, no. 2, 2018, pp. 68. *MDPI*, <https://doi.org/10.3390/land7020068>. Accessed 10 May 2026.
- Alexander, Larry. *Constitutionalism : Philosophical Foundations*. Reprinted ed. *Google Books*, books.google.com/books?hl=en&lr=&id=VyBV5HihqD8C&oi=fnd&pg=PP13&dq=philosophies+of+the+constitution&ots=wmDBg-lbO2&sig=qHrw6xQZ-BGmNmGrwBoGNwGHaDE#v=onepage&q&f=false. Accessed 10 May 2026.
- Baynes, Kenneth. "Kant on Property Rights and the Social Contract." *The Monist*, vol. 72, no. 3, 1989, pp. 433-53. Accessed 10 May 2026.
- Berman, Harold J. "The Impact of the Enlightenment on American Constitutional Law." *Yale Law School Lillian Goldman Law Library*, openyls.law.yale.edu/server/api/core/bitstreams/d7a31462-bd02-43e7-b7f3-e78371a774b4/content. Accessed 12 May 2026.
- Blackstone, William. *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765--1769*. University of Chicago Press, 1979. Accessed 10 May 2026.
- Boyce, Bret. "Property as a Natural Right and as a Conventional Right in Constitutional Law." *Social Science Research Network*, 1 Mar. 2007, papers.ssrn.com/sol3/papers.cfm?abstract_id=1435087. Accessed 10 May 2026.
- Brown, Rafael Dean. "Property Ownership and the Legal Personhood of Artificial Intelligence." *Information & Communications Technology Law*, vol. 30, no. 2, 2021, pp. 208–34. doi:10.1080/13600834.2020.1861714. Accessed 10 May 2026.
- Carli N. Conklin. "The Origins of the Pursuit of Happiness." *WASHINGTON UNIVERSITY JURISPRUDENCE REVIEW*, vol. 7, 2015, p. 195, https://openscholarship.wustl.edu/law_jurisprudence/vol7/iss2/6. Accessed 10 May 2026.
- Cleve, George Van. "The Anti-Federalists' Toughest Challenge: Paper Money, Debt Relief, and the Ratification of the Constitution." *Seattle University School of Law Digital Commons*, 2014, digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1828&context=faculty. Accessed 10 May 2026.
- Cook, Douglas H. "SIR WILLIAM BLACKSTONE: A LIFE AND LEGACY SET APART FOR GOD'S WORK." *Regent University*, 5 Mar. 2013,

- regentparents.regent.edu/acad/schlaw/student_life/studentorgs/lawreview/docs/issues/v13n1/13RegentULRev169.pdf. Accessed 11 May 2026.
- Cooter, Robert, and Thomas S. Ulen. *Law and Economics*. 6th ed. *University of California, Berkeley*, lawcat.berkeley.edu/record/1127400?v=pdf. Accessed 10 May 2026.
- Duncan, Stewart, "Thomas Hobbes." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta and Uri Nodelman, Spring 2025 ed., Stanford University, <https://plato.stanford.edu/archives/spr2025/entries/hobbes/>. Accessed 10 May 2026.
- Ely, James W., Jr. "Property Rights in American History." *Hillsdale College*, 3 Dec. 2013, www.hillsdale.edu/wp-content/uploads/2016/02/FMF-2008-Property-Rights-in-American-History.pdf. Accessed 10 May 2026.
- Fernández, Raquel. "Women's rights and development." *Journal of Economic Growth*, vol. 19, 2014, pp. 37–80, <https://doi.org/10.1007/s10887-013-9097-x>. Accessed 10 May 2026.
- Fagan, Frank. "Autonomous AI and Ownership Rules." *Dickinson Law Review*, vol. 130, 2026, p. 523, <https://insight.dickinsonlaw.psu.edu/dlr/vol130/iss2/4>. Accessed 10 May 2026.
- Hardin, Garrett. "The Tragedy of the Commons." *Science*, vol. 162, no. 3859, 1968, pp. 1243–48. *JSTOR*, <http://www.jstor.org/stable/1724745>. Accessed 12 May 2026.
- Jacobs, Harvey M. "20th Century Regulation of Private Property in the United States: Disasters, Institutional Evolution, and Social Conflict." *Progress in Disaster Science*, vol. 5, Jan. 2020. *ScienceDirect*, <https://doi.org/10.1016/j.pdisas.2019.100047>. Accessed 10 May 2026.
- Gross, Jörg, Martin Götz, and Johannes Ullrich. "Why do people oppose new rules? Policy change, norm change, and public outrage." *Current Opinion in Psychology*, vol. 64, 2025, article 102041, <https://doi.org/10.1016/j.copsyc.2025.102041>. Accessed 10 May 2026.
- Kant, Immanuel. "What Is Enlightenment?" Translated by Mary C. Smith. *Columbia University*, 1784, www.columbia.edu/acis/ets/CCREAD/etscc/kant.html#note1. Accessed 10 May 2026.
- Kashi, Lauren M. *THREE ESSENTIALS OF PRIVATE PROPERTY IN KANT*. 2024. Doctor of Philosophy, PhD dissertation. *Digital Commons@University of Nebraska-Lincoln*, digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1144&context=dissunl. Accessed 10 May 2026.
- Kraut, Richard. "Aristotle's Ethics." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta and Uri Nodelman, Fall 2022 ed., Stanford University, <https://plato.stanford.edu/archives/fall2022/entries/aristotle-ethics/>. Accessed 10 May 2026.
- Kraut, Richard. "Plato." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta and Uri Nodelman, Summer 2026 ed., Stanford University, <https://plato.stanford.edu/archives/sum2026/entries/plato/>. Accessed 10 May 2026.
- Lang, Margaret V. "Penn Central Transportation Co. v. New York City: Fairness and Accommodation Show the Way Out of the Takings Corner." *The Urban Lawyer*, vol. 13, no. 1, 1981, pp. 89–106. *JSTOR*, <http://www.jstor.org/stable/27890985>. Accessed 10 May 2026.
- Locke, John. *Second Treatise, Chap. V. Of Property*. 1689. *The Founders' Constitution*, U of Chicago P, press-pubs.uchicago.edu/founders/documents/v1ch16s3.html. Accessed 10 May 2026.
- Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Accessed 10 May 2026.

- Madison, James. "The Federalist Papers : No. 10." 23 Nov. 1787. *The Avalon Project*, avalon.law.yale.edu/18th_century/fed10.asp. Accessed 10 May 2026.
- Maggs, Gregory E. "A Concise Guide to the Articles of Confederation as a Source for Determining the Original Meaning of the Constitution." *THE GEORGE WASHINGTON LAW REVIEW*, Mar. 2017, www.gwlr.org/wp-content/uploads/2017/03/85-Geo.-Wash.-L.-Rev.-397.pdf. Accessed 12 May 2026.
- "Magna Carta." 1215. *Orange County Superior Court*, www.occourts.org/system/files?file=magna_carta_english_translation.pdf. Accessed 12 May 2026.
- Manning, Chandra. "What This Cruel War Was Over: Soldiers, Slavery, and the Civil War." *Civil War Book Review*, vol. 9, no. 3, 1 June 2007, <https://doi.org/10.31390/cwbr.9.3.2>. Accessed 10 May 2026.
- Mill, John Stuart. *Utilitarianism*. 1879 ed. *Hillsdale College*, www.utilitarianism.com/jsmill-utilitarianism.pdf. Accessed 10 May 2026.
- Nussbaum, Martha C. "Symposium on Classical Philosophy and the American Constitutional Order," *Chicago-Kent Law Review*, vol. 66, 1990, p. 213, <https://scholarship.kentlaw.iit.edu/cklawreview/vol66/iss1/15>. Accessed 10 May 2026.
- Ostrom, Elinor, and Charlotte Hess. "Private and Common Property Rights." *School of Public & Environmental Affairs Research Paper*, no. 2008-11-01, Indiana University Bloomington, 29 Nov. 2007, SSRN, <https://doi.org/10.2139/ssrn.1936062>. Accessed 10 May 2026.
- Paunio, Elina. "Beyond Predictability – Reflections on Legal Certainty and the Discourse Theory of Law in the EU Legal Order." *German Law Journal*, vol. 10, no.11, 2009, pp. 1469–93. <https://doi.org/10.1017/S2071832200018332>. Accessed 10 May 2026.
- Peter, Fabienne. "Political Legitimacy." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta and Uri Nodelman, Fall 2024 ed., Stanford University, <https://plato.stanford.edu/archives/fall2024/entries/legitimacy/>. Accessed 10 May 2026.
- Pope Alexander VI. "Demarcation Bull Granting Spain Possession of Lands Discovered by Columbus." 4 May 1493. *The Gilder Lehrman Institute of American History*, www.gilderlehrman.org/sites/default/files/2026-01/T-04093.pdf. Accessed 12 May 2026.
- Regan, Donald H. "Philosophy and the Constitution." *University of Michigan Law School Scholarship Repository*, 1986, repository.law.umich.edu/cgi/viewcontent.cgi?article=1406&context=book_chapters. Accessed 10 May 2026.
- Ruple, John C. "Chapter 2: Western Public Land Law and the Evolving Management Landscape." *Utah Law Digital Commons*, 2020, dc.law.utah.edu/cgi/viewcontent.cgi?article=1005&context=stegner_pubs. Accessed 10 May 2026.
- Salmon, Marylynn. THE PROPERTY RIGHTS OF WOMEN IN EARLY AMERICA: A COMPARATIVE STUDY. 1980. Ph.D, PhD dissertation. ProQuest, www.proquest.com/openview/72f6b89bb5b33991e735c2177ee24583/1?pq-origsite=gscholar&cbl=18750&diss=y. Accessed 10 May 2026.

- Schneiderman, David. "Property Rights and Regulatory Innovation: Comparing Constitutional Cultures." *International Journal of Constitutional Law*, vol. 4, no. 2, 1 Apr. 2006, pp. 371-91. *Oxford Academic*, <https://doi.org/10.1093/icon/mol009>. Accessed 10 May 2026.
- Tuckness, Alex. "Locke's Political Philosophy." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta and Uri Nodelman, Summer 2024 ed., Stanford University, <https://plato.stanford.edu/archives/sum2024/entries/locke-political/>. Accessed 10 May 2026.
- United States. *Harvey F. Jacque v. Steenberg Homes, Inc. North Western Reporter, Second Series*, vol. 563, 16 May 1997, p. 154. *Wisconsin Court System*, www.wicourts.gov/sc/opinion/DisplayDocument.html?content=html&seqNo=17010. Accessed 10 May 2026.
- United States, U.S. Supreme Court (U.S.). *Johnson & Graham's Lessee v. McIntosh*. *United States Reports*, vol. 21, 1823, p. 543. Justia, supreme.justia.com/cases/federal/us/21/543/. Accessed 10 May 2026.
- . *JOHNSON and GRAHAM'S Lessee v. WILLIAM M'INTOSH*. *United States Reports*, vol. 21, 1823, p. 543. *Library of Congress*, tile.loc.gov/storage-services/service/ll/usrep/usrep021/usrep021543/usrep021543.pdf. Accessed 11 May 2026.
- . *Susette KELO v. CITY OF NEW LONDON, CONNECTICUT*. *United States Reports*, vol. 545, 2005, p. 469. *Utah Department of Commerce*, commerce.utah.gov/wp-content/uploads/2013/06/kelonew13.pdf. Accessed 10 May 2026.
- US Constitution. Amendment V. *Constitution Annotated*, constitution.congress.gov/constitution/amendment-5/. Accessed 10 May 2026.
- US Constitution. Amendment XIV, sec. 1. *Constitution Annotated*, constitution.congress.gov/constitution/amendment-14/. Accessed 10 May 2026.
- US Constitution. Art. I, sec. 10. *National Archives*, www.archives.gov/founding-docs/constitution-transcript. Accessed 10 May 2026.
- US Constitution. Art. I, sec. 9. *National Archives*, www.archives.gov/founding-docs/constitution-transcript. Accessed 10 May 2026.
- US Constitution. Art. I, sec. 8. *National Archives*, www.archives.gov/founding-docs/constitution-transcript. Accessed 10 May 2026.
- US Constitution. Art. IV, sec. 3. *National Archives*, www.archives.gov/founding-docs/constitution-transcript. Accessed 10 May 2026.
- Waldron, Jeremy and James Penner. "Property and Ownership." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta and Uri Nodelman, Spring 2026 ed., Stanford University, <https://plato.stanford.edu/archives/spr2026/entries/property/>. Accessed 10 May 2026.
- Wilkinson, Richard G. *Impact of Inequality : How to Make Sick Societies Healthier*. New Press, 2006. Google Books, books.google.com/books?hl=en&lr=&id=cLY7C0F82gsC&oi=fnd&pg=PR5&dq=why+is+inequality+detrimental+to+society&ots=OZ2C_tduew&sig=tRgqmkexk60SpkOsfS0KKncgeZc#v=onepage&q=why%20is%20inequality%20detrimental%20to%20society&f=false. Accessed 10 May 2026.

- Wood, Gordon S. *The Creation of the American Republic : 1776-1787*. The University of North Carolina Press, uncpress.org/9780807847237/the-creation-of-the-american-republic-1776-1787/. Accessed 10 May 2026.
- Wootton, David. *The Essential Federalist and Anti-Federalist Papers*. Hackett Pub., 2003. Google Books, books.google.com/books?hl=en&lr=&id=_8pgDwAAQBAJ&oi=fnd&pg=PR3&dq=federalist+vs+anti-federalist&ots=dPQiFLkPW&sig=7DQWID9y0X6n-LMPtfN2FgBT3CE#v=onepage&q=federalist%20vs%20anti-federalist&f=false. Accessed 10 May 2026.
- Wyczik, Jakub. (2025). "Ownership in the 21st Century: Property Law of Digital Assets." *Information & Communications Technology Law*, vol. 34, no. 2, 2025, pp. 187–206, <https://doi.org/10.1080/13600834.2024.2408917>. Accessed 10 May 2026.