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# EN ROUTE TO THE US CONSTITUTION FOUNDING FATHERS AND LOCKEAN PHILOSOPHY

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**SUMMARY:** I. Introduction. II. Philosophy and Law in West. III. Locke in US Legal History. IV. Lockean Philosophy and Founding Fathers. 4.1. Samuel Adams. 4.2. Thomas Jefferson. 4.3. James Madison. 4.4. Alexander Hamilton. 4.5. John Adams. V. Conclusion. VI. Acknowledgment.

**Abstract:** With numerous shared aspects, philosophy and law are two distinct but closely interrelated disciplines. With that said, the present paper aims to address the impact of Lockean philosophical inclinations on the process of the US Constitution development by means of textual and historical analysis. In so doing, attention is directed towards the influence of Lockean philosophy upon the Founding Fathers, particularly through scrutinizing the writings of the figures playing leading roles in the procedure of drafting the Constitution. Locke's natural approach to law, and to citizen rights and liberties in particular, is among the most outstanding sphere of influence put upon the examined figures. From adoption of the contract theories for justifying their break from England, to taking a natural approach in their dealing with the rights to life, liberty, and property, the Founding Fathers have been under influence of Locke's epistemological principles and conceptions. This study concludes based upon the investigated materials and historical context that the American Founding Fathers have extensively employed Lockean notions at legal philosophy level in drafting the Constitution.

**Keywords:** John Locke; United States; Constitution; Founding Fathers; Natural Law

## I. INTRODUCTION

Mr. Locke has often been quoted in the present dispute between  
Britain and her colonies, and very much to our purpose.  
Samuel Adams, Boston Gazette, 23 December 1771

The US Constitution, drafted and signed by the Founding Fathers in 1787, is perhaps the most significant legal document through the history of America. The process leading to formation of the US Constitution actually commenced on 21 February 1787 when the Articles Congress called a convention of state delegates at Philadelphia to propose a plan of government. The process of preparation of the Constitution took place in a period of few months; nonetheless, that which speculatively acted upon the process included a host of various determinants, some rooted in the distant past, ranging from the political thoughts of Founding

Fathers to European philosophical schools, and even to the “Scottish Common Sense philosophy”<sup>1</sup>.

As a highly influential factor, the European Enlightenment is basically significant as a key to better understanding the US history, most notably in terms of government, politics, and religion. Many of the central ideas of the Enlightenment were the basis for the Declaration of Independence and the Constitution. Besides novel ideological trends of the political structure, such concepts as liberty and natural rights straightly originated from the works of Enlightenment philosophers like Thomas Hobbes, John Locke, Baron Montesquieu, and Voltaire. Drawing upon a list of political writings by Americans published between 1760 and 1805, Lutz’s findings establish that European Enlightenment writers extensively influenced upon American political thought during the era<sup>2</sup>.

Berman refers to the impact of the Enlightenment on the American Constitutional law, noting that it is undoubtedly a big step forward to include the history of the European Enlightenment in the intellectual and political history of America<sup>3</sup>. Separation of powers, system of checks and balances, and social contract are all concepts that Americans, in a sense, borrowed from Enlightenment philosophers and practiced in the process of Constitution development. As a matter of fact, the language of natural rights to life, liberty, and property, which had been actually reaped from the Enlightenment philosophy, gained prominence through the writings of American early elite community.

Amongst the most significant figures of the European Enlightenment was John Locke who played a leading part in shaping the philosophical cornerstone of American constitutional developments in the eighteenth century. Aiming at shedding light on the influence of Lockean philosophy upon the US Constitution, this paper addresses the English philosopher’s impact on the thoughts of American Founding Fathers, and on their considerations in drafting the Constitution. To attain this objective, historical analysis were practiced which is, according to Gardner, a research method that “seeks to make sense of the past through the disciplined and systematic analysis of the traces it leaves behind”<sup>4</sup>. To reach the purpose of the research, the texts written by the most influential Founding Fathers were also studied to investigate the extent to which they reflect the ideas raised in Lockean philosophy.

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<sup>1</sup> Michael S. Moore, “*Morality in Eighth Amendment Jurisprudence*”, Harvard Journal of Law & Public Policy, 2008, pp. 47-65.

<sup>2</sup> Donald S. Lutz, “*The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought*”, The American Political Science Review, 1984, pp. 189-97.

<sup>3</sup> Harold J. Berman, “*Impact of the Enlightenment on American Constitutional Law*”, Yale JL & Human, 1992, pp. 311-334.

<sup>4</sup> Philip Gardner, “*Historical Analysis*”, in Victor Jupp (edit.), *The Sage Dictionary of Social Research Methods*, SAGE Publications, London, 2006, pp. 135-37.

## II. PHILOSOPHY AND LAW IN WEST

The relationship between philosophy and law, as two distinct but interrelated fields of study in humanities, has been addressed from various perspectives in the literature. From the Platonic dialogues in Greek early history of philosophy to nineteenth century pragmatism in America and even beyond, philosophy, as Francis<sup>5</sup> and Horwitz<sup>6</sup> note, has acted upon the historical development of law. The very existing developmental edifice of law could not be fully appreciated without understanding its fundamental relationship with philosophy. Law is an independent branch of learning and scholarly instruction; however, legal academia faces serious disciplinary challenges<sup>7</sup> since law deals with “the methods of scientific and humanistic inquiry to enlarge our knowledge of the legal system”<sup>8</sup>. As a matter of fact, methods in the realm of philosophy are, in many cases, essential tools of legal reasoning. Stelmach and Brożek believe that philosophical traditions such as analytic philosophy propose methods which could be harmoniously applied in legal dogmatics and practice<sup>9</sup>. In addition to a long history of mutual influences in between, law and philosophy are closely linked due to the similar styles of rational argument and analysis.

Developing an illustration of the historical influence of philosophy on law, Francis refers to a relationship between “the skepticism about values of the logical positivist and the judicial neutrality advocated by constitutional theorists”<sup>10</sup>. Philosophy, as Craiovan maintains, sheds light on law for man’s sake, while the philosophically founded law appears to be the normative project of the human<sup>11</sup>. Images of the methods of philosophy, as stated by Francis, shape accounts of legal reasoning<sup>12</sup>. Indeed, constitutional decisions wrestle with philosophical issues such as justice, liberty, rights, and the like. Retrospectively, constitutional alterations have been, more often than not, in tandem with prevailing philosophical approaches. Thus, understanding a legal document such as the Constitution of a country requires the perusal of the efficacious philosophical trends and inclinations of the time.

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<sup>5</sup> Leslie Pickering Francis, “*Law and Philosophy: From Skepticism to Value Theory*”, Loy. LAL Rev, 1993, pp. 65-88.

<sup>6</sup> Morton J. Horwitz, *The Transformation of American Law, 1780-1860*, Harvard University Press, 1977.

<sup>7</sup> Douglas W. Vick, “*Interdisciplinarity and the Discipline of Law*”, Journal of Law and Society, 2004, pp. 163-193.

<sup>8</sup> Richard A. Posner, “*The Decline of Law as an Autonomous Discipline: 1962-1987*”, Harvard Law Review, 1987, pp. 761-80.

<sup>9</sup> Jerzy Stelmach, and Bartosz Brożek, *Methods of Legal Reasoning*, Springer, Dordrecht, 2006.

<sup>10</sup> Leslie Pickering Francis, “*Law and Philosophy: From Skepticism to Value Theory*”, op. cit., p. 69.

<sup>11</sup> Ion Craiovan, “*On the Philosophy with Juridical Norms*”, Proceedings of the XXII World Congress of Philosophy, 2008, pp. 31-38.

<sup>12</sup> Leslie Pickering Francis, “*Law and Philosophy: From Skepticism to Value Theory*”, op. cit., p. 65.

Philosophy has had an influence upon the norms of law and politics as well as the attitudes toward legal and political issues in Western civilization<sup>13</sup>. In point of fact, it would be a grave mistake to deny the massive influence of philosophy on modern Western law<sup>14</sup>. Roman law was influenced by philosophy and then began its great period of development and growth<sup>15</sup>. Greek early law was also under the influence of such figures as Socrates, Plato, and Aristotle. Moreover, Greek natural philosophy played a foundational role in laying the basis for the principal legal and political institutions of the West<sup>16</sup>.

### III. LOCKE IN US LEGAL HISTORY

The US Constitution and Declaration of Independence, along with many other historically prominent documents in the America, cannot be fully comprehended without a grounding in the writings of John Locke. It would be difficult to ignore Locke's influence upon the American Revolution, and subsequently, upon the people who drafted the Constitution and developed the government. As Doernberg Locke advanced a set of political ideas which has very largely served as the basis for American political values as well as the institutional structure<sup>17</sup>. In his words, "there is probably no better short summary of the ideas of Locke than the American Declaration of Independence"<sup>18</sup>. Jaffa presents arguments to propound the view that the equality of man proclaimed by the Declaration of Independence is to be understood by comparison with the inequality that portrays man's relationship with the lower living beings<sup>19</sup>. Compared to this inequality, in the arguments of Locke, no human being is marked out by nature to rule, while others are marked out for subjection.

In pursuance of a detective approach to historical investigation, it is critically important to ask how come Locke and his philosophical inclinations grasped the attention of the elite society in the America. To riposte this question, one needs to notice the seventeenth and eighteenth century paradigmatic shifts in the West first off. With the advent of European Enlightenment, the definition of authority as well as the relationships within the structure of power in the West happened to change, seeing that divinity-oriented ruling was gradually replaced with reason, and, more importantly here, with liberal conceptions originated from Lockean

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<sup>13</sup> Gray L. Dorsey, "The Influence of Philosophy on Law and Politics in Western Civilization", Washington University Law Quarterly, 1960, pp. 69-71.

<sup>14</sup> Thom Brooks, "Does Philosophy Deserve a Place at the Supreme Court?", Rutgers Law Record, 2003, pp. 1-6.

<sup>15</sup> James A. Gardner, "Legal Idealism and Constitutional Law", Villanova Law Review, 1964.

<sup>16</sup> Gray L. Dorsey, "The Influence of Philosophy on Law and Politics in Western Civilization", op. Cit., pp. 69-71.

<sup>17</sup> Donald L. Doernberg, "We the People": John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action", California Law Review, 1985, pp. 52-118.

<sup>18</sup> *ibid*, p. 57.

<sup>19</sup> Harry V. Jaffa, *Storm over the Constitution*, Lanham, Lexington Books, 1987.

philosophy. Ergo, the revolutionary thinking became broadly popularized in the Europe which was, in nature, against irrational tyranny of one kind or another. Drastically shifting political landscape brought on by the Enlightenment philosophical inclinations gained the favor of the elites in the thirteen American colonies.

The American Founders adopted the contract theories expounded by Locke in his *Second Treatise of Government* in order to justify their break from England during the reign of King George III. This attitude was originated from the natural rights which was a fitting alternative for European imperial approach of government. In 1688, England went through a revolution in which the English monarchy was overthrown. A year later, Bill of Rights was introduced in the Britain. Following the Glorious Revolution, Locke was a major influence expanding on the contract theory of government. Several of the rights in the Bill were influenced by the state of political societies introduced by Locke. He stated that a social contract is established with the purpose of preserving the natural rights of the people. This contract is signed between the people and the representatives of the majority. In this political contract, both the parties have certain rights and duties to be fulfilled. Locke advances the principle of consent of the governed, for instance, by noting that

Men being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own Consent. The only way whereby any one devests himself of his Natural Liberty, and puts on the bonds of Civil Society is by agreeing with other Men to joyn and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it<sup>20</sup>.

Lockean philosophy followed by the Glorious Revolution vividly influenced the self-identity of the people, and in particular, elites in the American colonies. Through investigation of Glorious Revolution, “one can balance the local peculiarities of each colony against the general uniformities in American society at the close of the seventeenth century”<sup>21</sup>. Acting as a catalyst, the revolution intensified American resistance against the emerging imperial system.

#### **IV. LOCKE AND FOUNDING FATHERS**

Influenced by the ideas of Locke, the Founding Fathers of America made attempt to build a ‘union’ in which the consent of ‘citizens’ was the matter of

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<sup>20</sup> John Locke, *Two Treatises of Government*, Peter Laslett (edit.), Cambridge University Press, Cambridge, 1988, p. 300.

<sup>21</sup> Richard S. Dunn, “Book Review: *The Glorious Revolution in America: Documents on the Colonial Crisis of 1689*, edited by Michael G. Hall, Lawrence H. Leder, and Michael G. Kammen”, *Pennsylvania Magazine of History and Biography*, 1965, pp. 221-223.

concern. They believed, as reflected in the second paragraph of the Declaration of Independence, that a state would lack legitimacy and legal authority without the consent of the citizens. Besides, several historians believe that the origin of phrases like “Life, Liberty and the pursuit of Happiness” in the Declaration of Independence derives from Locke’s claim that “no one ought to harm another in his life, health, liberty, or possessions”. In his *Two Treatises of Government*, Locke holds that political society existed with the purpose of protecting property, which he defined as a person’s “life, liberty, and estate”. He wrote in *A Letter Concerning Toleration* that the power of magistrate must be confined to preserving a person's ‘civil’ interests.

Since the times of Founding Fathers, the roots of American society in its political sense lie in the ideas reflected in the writings of John Locke<sup>22</sup> who accentuated on the rule by consent of governed, rule of law, majority rule, separation of power, and natural law<sup>23</sup>. Myrdal calls these principles cements holding American society together<sup>24</sup>. Language of Lockean liberalism was also particularly evident in the rhetoric of revolutionary period<sup>25</sup>. The literature of the time is reported to be under influence of Locke’s works such as *Second Treatise of Government*, in which he opposes colonial policies of the Britain. Among the influenced writings of the Americans, Kramnick refers to James Otis’s *Rights of the British Colonies Asserted and Proved*, Richard Bland’s *An Inquiry into the Rights of the British Colonies*<sup>26</sup>. Likewise, the traces of Lockean philosophy could be detected within the lines and among the ideas of the Founding Fathers. Samuel Adams’ *A State of the Rights of the Colonists* and the Declaration of Independence penned by Thomas Jefferson are illustrious examples of written literature notionally inspired by Lockean philosophy.

#### 4.1. Samuel Adams

Samuel Adams was a delegate to both Continental Congresses in 1774 and 1775, who also organized the first Committee of Correspondence. He believed that as the British government increased its taxes and duties after the end of French and Indian War in 1763, it was reducing the individual liberties of the colonists. From 1775, Adams was a delegate to the Second Continental Congress. He helped to write the Massachusetts state constitution. Moreover, Adams was part of the Massachusetts ratifying convention for the US Constitution.

Adams’ idea of developing a Committee of Correspondence was mainly founded on the time-honored principles of Locke alongside with others such as

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<sup>22</sup> Donald John Devine, *The Political Culture of the United States*, Little Brown, Boston, 1972.

<sup>23</sup> Steven G. Koven, and Frank Götzke, “Immigrant Contributions to American Culture”, in *American Immigration Policy*, Springer, New York, 2010, pp. 93-122.

<sup>24</sup> Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy*, Harper & Brothers, New York, 1944.

<sup>25</sup> Isaac Kramnick, “Ideological Background”, in Jack P. Greene and Jack Richon Pole (edit.), *A Companion to the American Revolution*, John Wiley & Sons, 2000, pp. 88-93.

<sup>26</sup> *ibid*.

Hooker and Sydney<sup>27</sup>. Flynn extensively discusses the strong influence of Locke's natural rights idea on Samuel Adams mind-set<sup>28</sup>. Adams' *Independent Advertiser*, as case in point, mirrors his profound reading in Lockean philosophy, advocating republicanism, liberty and independence from the Britain. As a matter of fact, his essay *Out in the World*, to a considerable extent, follows Locke's ideas of liberty raised in the English philosopher's *Second Treatise of Government*<sup>29</sup>. It is probable that Adams became familiar with Lockean philosophy at Harvard during his education. At all events, Adams' writings did a good service in terms of popularization of Locke amongst Puritans in the New England. As a follower of Locke, Adams, according to Miller, believed in tolerance of all the religious sects except for those teaching doctrines subversive of society<sup>30</sup>.

Among the philosophers and thinkers espousing the virtues of a land-owning citizenry, Locke had the greatest influence on Adams' thoughts<sup>31</sup>. Numerously referring to Locke in his writings, Adams barrows Lockean ideas on issues like "Prerogative of the Crown", noting further that the "supreme power says Mr. Locke, is not, nor can possibly be absolutely arbitrary, over the lives and fortunes of the people"<sup>32</sup>.

In line with Lockean ideologies, Adams was strongly against the British taxation of colonies. Adams states that "if any one, adds Mr. Locke, shall claim a power to lay and levy taxes on the people by his own authority and without such consent of the people, he thereby subverts the end of government"<sup>33</sup>. To this, he adds later that

But the parliament's laying taxes on the Colonies for the express purpose of raising a revenue, takes the purse strings out of their hands, and consequently it is "repugnant to, and subversive of (the end of) our constitution" -Liberty. Mr. Locke says, that the security of property is the end for which men enter into society; and I believe Chronus will not deny it: Whatever laws therefore are made in any society, tending to render property

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<sup>27</sup> William Wells, *The Life and Public Services of Samuel Adams*, Applewood Books, Boston, 1865.

<sup>28</sup> Helen Mae Flynn, *The Natural Rights Idea of Locke as Used by Samuel Adams*, 1942.

<sup>29</sup> John K. Alexander, *Samuel Adams: America's Revolutionary Politician*, Rowman & Littlefield Publishers, Lanham, 2004, p. 4.

<sup>30</sup> John C. Miller, *Sam Adams: Pioneer in Propaganda*, Stanford University Press, Stanford, 1936, pp. 87-88.

<sup>31</sup> Benjamin Irvin, *Samuel Adams: Son of Liberty, Father of Revolution*, Oxford University Press, 2002.

<sup>32</sup> Samuel Adams, Boston Gazette, 9 September 1771, as cited in Harry Alonzo Cushing, *The Writings of Samuel Adams Collected and Edited*, Forgotten Books, London: 2013, p. 210.

<sup>33</sup> Samuel Adams, Boston Gazette, 23 December 1771, as cited in Harry Alonzo Cushing, *The Writings of Samuel Adams Collected and Edited*, Forgotten Books, London: 2013, p. 300.



insecure, must be subversive of the end for which men prefer society to the state of nature; and consequently must be subversive of society itself<sup>34</sup>.

## 4.2. Thomas Jefferson

Thomas Jefferson was in France serving as the United States minister when the Federal Constitution was written in 1787; however, he was able to influence the development of the federal government through his correspondence. Many scholars have cited the influence of John Locke on Jefferson's line of political thoughts. Jefferson's approach is so prominently marked in the Declaration of Independence that Becker states, in this regard, that "Jefferson copied Locke"<sup>35</sup>. Stephens, in his book *Locke, Jefferson, and the Justices* comprehensively scrutinizes the impact of Locke on the ideas of Jefferson, calling the English philosopher the "founder of the Founders"<sup>36</sup>.

The influence of Locke on Jefferson, furthermore, is evident in the Declaration of Independence<sup>37</sup> in various issues such as natural rights, compact theory as well as right to overthrow the government. Jefferson got his ideas of the rights of a citizen from Locke's state of nature. In Virginia Declaration of Rights as well, Jefferson mentions that "all men are by nature equally free and independent, and have certain inherent rights". Very much influenced by Locke, Jefferson was convinced that the rights of equality and independence are natural rights provided to all men in the world. And yet, controversy still remained, as discussed in the class, on whom to be called a 'citizen' to be provided with the assumed rights.

Practicing Locke's theory, Jefferson raised the argument that the king of Britain misuses America and its people for his own self-interested desires. The king, according to Jefferson's argument, exploited the 'natural' rights of the people introduced by Locke in his explanation of state of nature. Rather than protecting the rights of the Americans, the government in London took away the rights of Americans. This was clearly a violation of the social contract based upon which the people of America would be given the right to overthrow the governor. According to Locke, when the government becomes the enemy of the people instead of being their guards, the people have the right to dissolve the contract. Thereby, Locke and his philosophy played a leading part in making the Americans aware of the harmful impacts of the British rule.

Emphasizing on the influence of Locke upon Jefferson, McFerran notes that this influence "may be ascertained by noting that in the parlor of his home at the

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<sup>34</sup> Samuel Adams, Boston Gazette, 20 January 1772, as cited in Harry Alonzo Cushing, *The Writings of Samuel Adams Collected and Edited*, Forgotten Books, London: 2013, p. 158.

<sup>35</sup> Carl L. Becker, *The Declaration of Independence: A Study in the History of Political Ideas*, Knopf, New York, 1945, p. 79.

<sup>36</sup> George M. Stephens, *Locke, Jefferson, and the Justices: Foundations and Failures of the Us Government*, Algora Publishing, New York, 2007, p. 29.

<sup>37</sup> Lewis F. Powell Jr., "A Tribute to Two Professors: Eugene Gressman and George Wythe", North Carolina Law Review, 1986, p. 851.

Monticello hung portraits of three men”<sup>38</sup> among whom one is Locke. Apart from parlor of Jefferson’s home, the influences of the English philosopher could be traced in other fragments of his life. It is no wonder, then, that Jefferson came to regard John Locke as one of “the three greatest men that have ever lived, without any exception”<sup>39</sup>.

Philosophical notions of Locke is evident in Jefferson’s approach to church-state relations. Jefferson starts from a Lockean position of church-state separation. However, he moves to a position of universal Unitarianism, where church and state are conceived as grounded in the rational powers of the ethical individual<sup>40</sup>. Jefferson mentions that

I rejoice that in this country of free inquiry and belief, which has surrendered its creed and conscience to neither kings nor priests, the genuine doctrine of one only God is reviving, and I trust that there is not a young man now living in the United States who will not die a Unitarian<sup>41</sup>.

Slavery is another issue on which both Locke and Jefferson share the same vantage point. On one hand, Locke participated in the institutions of slavery through investment in slave trading companies as well as acting as “secretary and to some degree policy advisor to three different groups involved in the affairs of the American colonies, including the provision and regulation of slaves”<sup>42</sup>. Slavery in Lockean perspective, was considered as the legitimate result of just war<sup>43</sup>. On the other hand, Jefferson was owner of hundreds of slaves at the very time when he was proclaiming that all men were created equal and that they were “endowed by their creator” with the ‘unalienable’ rights of “Life, Liberty and the pursuit of Happiness”. Morgan states, in his article *Slavery and Freedom: the American Paradox*, that simultaneous developments of liberty and slavery from 17th to 19th century is the central paradox in the history of America<sup>44</sup>. Jefferson, as Helo and Onuf mention, can be precisely recognized as a “progressive republican in the Lockean mode”<sup>45</sup>.

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<sup>38</sup> Warren L. McFerran, *Political Sovereignty: The Supreme Authority in the United States*, Southern Liberty Press, Gretna, 2005, p. 40.

<sup>39</sup> Thomas Jefferson, as cited in Joyce Appleby, “What is still American in the political philosophy of Thomas Jefferson?”, *The William and Mary Quarterly*, 1982, pp. 287-309.

<sup>40</sup> David Peddle, “*Puritanism, Enlightenment and the Us Constitution*”, *Animus*, 1998, pp. 125-44.

<sup>41</sup> Thomas Jefferson, *Letter to Benjamin Waterhouse*, 26 June 1822.

<sup>42</sup> Wayne Glausser, “*Three Approaches to Locke and the Slave Trade*”, *Journal of the History of Ideas*, 1990, pp. 199-216.

<sup>43</sup> Ari Helo, and Peter Onuf, “*Jefferson, Morality, and the Problem of Slavery*”, *William and Mary Quarterly*, 2003, pp. 583-614.

<sup>44</sup> Edmund S. Morgan, “*Slavery and Freedom: The American Paradox*”, *Journal of American History*, 1972, pp. 5-29.

<sup>45</sup> Ari Helo, and Peter Onuf, “*Jefferson, Morality, and the Problem of Slavery*”, op. cit., pp. 584.

### 4.3. James Madison

James Madison was the leading architect of the US Constitution<sup>46</sup> and later became the fourth President of the country. During the Revolution, he helped draft Virginia's state constitution and served in the Continental Congress. In the years immediately following the war, he grew convinced that domestic and international disasters would follow unless the national government was reformed, and therefore joined those calling for a Constitutional Convention. Madison teamed with Alexander Hamilton and John Jay to publish the Federalist Papers.

When it comes to the powers of the legislature, Madison followed the precepts of John Locke in formulating a set of restrictions planned to protect property rights. Locke theorized the roll of factions at the hypothetical moment in which a society celebrates its social contract and Madison acted on those principles at his chance to influence the constitutional process in America and most particularly its contents regarding factions<sup>47</sup>. Besides, in Madison's opinion, and similarly in Locke's, citizen rights and property rights indispensably supported each other. Physical property for Madison was similar to the spirit of Locke's original justification of property in terms of mixing labor and land<sup>48</sup>.

Madison drew his most central doctrines of liberty and government from Locke. Both Locke and Madison, according to Ross, were indebted to Hobbes for their conception of the source, nature, and limits of public authority<sup>49</sup>. In fact, the liberal trend in America finds its origins in Locke and Madison<sup>50</sup>. Madison, on Locke, notes that

Locke, notwithstanding the early date of his work on civil government, and the example of his own government before his eyes, admits that the particular powers in question, which, after some of the writers on public law he calls federative, are really distinct from the executive, though almost always united with it, and hardly to be separated into distinct hands. Had he not lived under a monarchy, in which these powers were united; or had he written by the lamp which truth now presents to lawgivers, the last observation would probably never have dropped from his pen<sup>51</sup>.

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<sup>46</sup> Joseph E. Fallon, *"Federal Policy and US Territories: The Political Restructuring of the United States of America"*, Pacific Affairs, 1991, pp. 23-41.

<sup>47</sup> Michelle Vyoleta Romero Gallardo, *"El Problema De Las Facciones En Locke Y Madison"*, Estudios políticos, 2012, pp. 101-20.

<sup>48</sup> Neal Riemer, *"James Madison and the Current Conservative Vogue"*, The Antioch Review, 1954, pp. 458-70.

<sup>49</sup> Thomas Ross, *"Taking Takings Seriously"*, Northwestern University Law Review, 1985.

<sup>50</sup> Arthur DiQuattro, *"The Market and Liberal Values"*, Political Theory, 1980, pp. 183-202.

<sup>51</sup> James Madison, *Letters of Helvidius*, 1793, as cited in Rosamaria Alibrandi, *"British ideas, American parliamentarism. Republican and Liberal echoes in the Philadelphia Constitutional Convention of 1787"* Parliaments, Estates and Representation, 2013, pp. 20-33.

Influenced by Locke, Madison also believed that religious settlements are generally the main source of conflict and the model for the relation between government and civil society<sup>52</sup>. Locke and Madison both opposed the imposition of an official religion in a country. Madison remarks

It was the belief of all sects at one time that the establishment of Religion by law, was right and necessary; that the true religion ought to be established in exclusion of every other; and that the only question to be decided was which was the true religion<sup>53</sup>.

Asserting that religion “flourishes in greater purity, without than with the aid of”<sup>54</sup> the government, Madison was valiant and successful in his battle to establish the conditions to “make a purer and more vital religious life possible”<sup>55</sup>. In the case of social contract in Lockean terms, there must reign unanimity amongst a group of people deciding whether or not to leave the state of nature. However once civil society is born, homogeneity of opinion is no longer required nor likely to happen. Rather than exterminating groups and individuals failing to behave as the majoritarian canon commands, there must prevail tolerance between groups and especially between religions. Just as Locke did, Madison thought of factions as so inevitable and proclaimed that attempting against them would violate a regime’s freedoms. Madison’s distinctive approach, nonetheless, focuses on the figure of representative government.

Author of Federalist Number 10, Madison most extensively discusses the roll of factions in a federation. Whilst Locke had minorities in mind once he wrote about factions, for Madison a faction can represent either the majority or a minority of a society, as long as it is a group that congregates around a shared distinctive interest<sup>56</sup>.

#### 4.4. Alexander Hamilton

Alexander Hamilton was the first Secretary of the Treasury in the US history. A nationalist and leading voice for governmental reform during the Critical Period, Hamilton solely wrote 51 of the 85 papers of the Federalist Papers during the debate over ratification of the US Constitution<sup>57</sup>.

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<sup>52</sup> Mitja Sardoc, “*Toleration and the Fair Terms of Engagement with Diversity*”, GRITIM-UPF Working Paper Series, 2011.

<sup>53</sup> James Madison, *Letter to Edward Livingston*, 1822, as cited in Robert L. Cord, “*Original Intent Jurisprudence and Madison's Detached Memoranda*” Benchmark, 1987.

<sup>54</sup> *ibid.*

<sup>55</sup> Neal Riemer, “*James Madison and the Current Conservative Vogue*”, *op. cit.*, p. 467.

<sup>56</sup> Michelle Vyoleta Romero Gallardo, “*El Problema De Las Facciones En Locke Y Madison*”, *op. cit.*, pp. 101-20.

<sup>57</sup> Robert A. Bosch, and Jason A. Smith, “*Separating Hyperplanes and the Authorship of the Disputed Federalist Papers*”, *American Mathematical Monthly*, 1998, pp. 601-08.

Lockean Enlightenment thoughts are evident in Hamilton's writings. Hamilton was a strong advocate of natural rights for the most part. The influence of Locke on Hamilton's substantive doctrine of natural rights and his epistemology of morals could be traced in views he had advocated as a young revolutionary, and later raised in his writings<sup>58</sup>. In Federalist Paper Number 51, for example, Madison maintains that state of nature is one in which anarchy may be said to reign. The idea is a reminiscent of Locke who asserts in the second chapter of his *Second Treatise of Civil Government* that "every one has the Executive Power of the Law of Nature" in a state of nature.

Hamilton believes that the key to understanding American independence is to "apply yourself without delay to the study of the law of nature"<sup>59</sup>. He further asserts, "I would recommend to your perusal Grotius, Puffendorf, Locke, Montesquieu, and Burlamaqui"<sup>60</sup>. As Weaver notes, the concept of leadership in the Federalist Papers recapitulates similar ideas discoverable in Locke's works<sup>61</sup>. Also, when Hamilton argued for selective economic intervention on the part of the new American government in such a way as to furnish "greater scope for the diversity of talents and dispositions, which discriminate men from each other"<sup>62</sup>, he was tracing the logic of the argument that Locke put forth in his *Two Treatises of Government*<sup>63</sup>.

Hamilton, as well as Madison, was a moral realist<sup>64</sup>, believing in the moral metaphysics of John Locke. That metaphysics holds that all persons have certain rights that exist independently of any laws or beliefs validating their existence<sup>65</sup>. Moore presents arguments to emphasize that Hamilton also shared Locke's epistemological beliefs that "one can know the truths of morality as easily, and demonstrate them with as much certainty, as one can know and demonstrate the truths of mathematics"<sup>66</sup>.

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<sup>58</sup> Morton Gabriel White, *Philosophy, the Federalist, and the Constitution*, Oxford University Press, 1987.

<sup>59</sup> Alexander Hamilton, "The Farmer Refuted", 23 February 1775, in Harold C. Syrett (edit.), *The Papers of Alexander Hamilton*, Columbia University Press, New York, 1961, p. 86.

<sup>60</sup> *ibid.*

<sup>61</sup> David R. Weaver, "Leadership, Locke, and the Federalist", *American Journal of Political Science*, 1997, pp. 420-46.

<sup>62</sup> Alexander Hamilton, "Report on the Subject of Manufactures", 5 December 1791, in Harold C. Syrett (edit.), *The Papers of Alexander Hamilton*, Columbia University Press, New York, 1961, p. 254.

<sup>63</sup> Paul A. Rahe, "The Political Needs of a Toolmaking Animal: Madison, Hamilton, Locke, and the Question of Property", *Social Philosophy and Policy*, 2005, pp. 1-26.

<sup>64</sup> Michael S. Moore, "Morality in Eighth Amendment Jurisprudence", *op. cit.*, p.52.

<sup>65</sup> *ibid.*, p.59

<sup>66</sup> *ibid.*

#### 4.5. John Adams

The first vice-president and second president of the US, John Adams was a leader of the American Revolution. He assisted Thomas Jefferson in drafting the Declaration of Independence in 1776. A political thinker, Adams did much to shape, explain and defend the US Constitution. He penned *Defenses of American Rights* in the 1770s and was one of the earliest advocates of colonial independence from Britain.

Adams paid a great deal of attention to the philosophy of John Locke. The significance of English philosopher for Adams was so much so that he believed that children should learn about Locke<sup>67</sup>. Adams's idea on liberty is very much comparable to Lockean reading of this concept. Liberty, according to Adams, cannot be preserved without a general knowledge among the people. For Adams, like Locke, the purpose of government is to be found in the goal of happiness. Not surprisingly, John Adams supported the system of checks and balances and the separation of powers in the Constitution in order to achieve the Lockean objective of protecting the life, liberty, and property of the citizens<sup>68</sup>.

#### V. CONCLUSION

Philosophy has been permanently a factor at work through the process of law development in the human history. And the US Constitution does not happen to be an exception for this convention. A number of various philosophical movements, including but not limited to that of Locke, have touched upon the process in which the document was developed. First and foremost, it is not credible to claim that the Founding Fathers indiscriminately followed and absolutely practiced either Locke's or any person else's philosophical lines of contemplation. In some ways, American political philosophy even went beyond Locke as, for example, by its provisions for removal of officials and alteration of the form of government without political revolution<sup>69</sup>; and even with that, the influence of Lockean philosophy on the people who formed the US government cannot be denied with no small spot of hesitation.

The very fundamentals of Lockean philosophy have been transferred to the Founding Fathers through various channels including their direct presence in the European academic and political context. Locke's natural approach to law, and citizen rights in particular, is among the most outstanding sphere of influence put upon the examined figures. Having adopted the contract theories expounded by Locke in order to justify their break from England, the American Founders

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<sup>67</sup> Jim Powell, *John Locke-Natural Rights to Life, Liberty, and Property: One of Freedom's Most Influential Philosophers*, Freeman, 1996, pp. 577-83.

<sup>68</sup> Chuck Braman, "The Political Philosophy of John Locke and Its Influence on the Founding Fathers and the Political Documents They Created", 1996, <<http://www.chuckbraman.com/political-philosophy-of-john-locke.html>> [accessed 10 January 2015]

<sup>69</sup> Donald L. Doernberg, *"We the People": John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action*, op. cit., p. 58.

were, at the end of the day, practitioners of his ideas in many aspects. Seeing the fundamental distinction between legal practice on the one hand, and legal theory or philosophy on the other<sup>70</sup>, this study could be concluded based upon the investigated materials and historical context that the American Founding Fathers have employed Lockean notions at legal philosophy level whilst drafting the Constitution. And yet, the extent to which Lockean philosophy is engaged in American legal practice is a matter remaining to be investigated in further studies.

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<sup>70</sup> Robert Alexy, *“On Two Juxtapositions: Concept and Nature, Law and Philosophy. Some Comments on Joseph Raz’s “Can There Be a Theory of Law?”*”, Ratio Juris, 2007, pp. 162-69.