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**Life, Liberty, and the Protection of Intellectual Property:
Understanding IP in Light of Jeffersonian Principles**

by

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On July 4, America celebrates its Declaration of Independence. In its pronouncement of the causes which impelled the United States of America to separate from Great Britain, the Declaration set out the basic ends of American government: to secure the peoples' unalienable rights to life, liberty, and the pursuit of happiness.

As the principal drafter of the Declaration, Thomas Jefferson was an intellectual force for the American Revolution – if not its intellectual leader. The classical liberal principles that Jefferson advanced and articulated formed a critical part of the intellectual backdrop to the U.S. Constitution and Bill of Rights.

But while Jefferson's primary contribution to American constitutionalism was in shaping American philosophical understanding of the nature and purpose of government, his influence on public understanding of intellectual property (IP) is peripheral at best. And yet a "Jeffersonian mythology" has overstated Jefferson's role in shaping the constitutional contours of patent and copyright protection.

To the extent Jefferson expressed anti-IP views in private letters during America's founding period, there is little to no evidence that his sentiments regarding patents or copyrights had any bearing on the Constitution. Jefferson was in Paris during the 1787 Philadelphia Convention and

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ratification period. He likewise was absent when the Bill of Rights was drafted. Accordingly, his letters appear to have done little or nothing to shape public understanding of the IP Clause.

The Article I, Section 8 IP Clause expressly grants to Congress power to provide patent and copyright protection to inventors and authors, respectively: “The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” So it is self-evidently the case that the Constitution authorizes IP protection. The fact that the Constitution expressly confers on Congress the power to protect copyrights and patents suggests that the few scattered criticisms of IP were, in principle, rejected in the Constitution’s formation.

For that matter, there is good reason to conclude that Jefferson’s apparent opposition to IP was less-than-persuasive. It proves too much to read all of Jefferson’s concerns about British Crown grants of commercial trade monopolies into his misgivings about IP rights. The Constitution’s framers and ratifiers grasped the crucial distinctions between unlimited trade franchise monopolies bestowed by a monarch regime and limited grants of exclusive property rights to inventors and authors under constitutional republicanism. On the one hand, a trade franchise monopoly by design placed market power in the franchise holder – much in the sense in which we understand “monopoly” in the modern era. While on the other hand, a so-called, but ill-denominated, “limited monopoly” granted a patent or copyright holder the exclusive use of a particularly specified creative work for a limited period of time. Indeed, the patented or copyrighted work might have many close, attractive substitutes in the marketplace. And no entry barriers would have prevented inventors or authors from bringing forth such substitutes.

It also deserves consideration that Jefferson’s misgivings about monopolies and IP were in some measure owing to his attraction to an Enlightenment-influenced 19-year generational theory about when constitutions and laws should expire. That peculiar theory was never incorporated into the U.S. Constitution or otherwise accepted by the American public. Moreover, the extent of Jefferson’s opposition to IP has also been overstated at times. While still in Paris, Jefferson appeared at least partially reconciled to the IP Clause and its property rights protections for patents and copyrights. This coincides with Jefferson’s overall reconciliation to the Constitution he had initially opposed.

Importantly, patent and copyright protection fits comfortably within the Constitution’s classical liberal framework for limited government and protection of individual rights that Jefferson so eloquently espoused. To the extent inventions or literary works themselves constitute fruits of labor, inventors or authors by nature possess unalienable rights to those fruits. And through laws guaranteeing exclusive rights to the proceeds of those inventions or works for limited periods, society has established alienable property rights for the respective inventors and authors. And in practice, Jefferson, as a public administrator, oversaw the implementation and even the expansion of these IP protections.

Jefferson’s ideals for administering the government were thus one in the same with those espoused in the Declaration. Jefferson’s *First Inaugural Address* is the paradigmatic expression of his philosophy for administering the federal government. At the core of that natural rights understanding was a conviction that “a wise and frugal government...shall not take from the

mouth of labor the bread it has earned.” Inventions and artistic works are the bread that labor has earned and which government should not take. Conferring exclusive property rights in the proceeds of such labor coincides with the rendering of what Jefferson termed “equal and exact justice to all men,” rather than granting monopolistic controls over entire commercial enterprises or prohibiting individual industry.

Indeed, at a practical level, IP rights coincided with Jeffersonian administration of government. As President, Jefferson oversaw the modest expansion of IP rights through the appointment of the first Superintendent for the federal government’s patent process and by signing the Copyright Act of 1802, conferring copyright protection on maps, charts, engravings, etchings, and prints.

The contributions of Thomas Jefferson to the public philosophy of the Constitution should not be understated. Americans enjoying their unalienable rights to life, liberty, and pursuit of happiness ought to celebrate Jefferson’s role in drafting the Declaration of Independence, especially on each July 4. But his apparent misgivings about IP shouldn’t be overstated. Nor should Jefferson’s private letter views about IP be read into the Constitution over and against the IP Clause’s clear recognition of patents and copyrights.

Jefferson’s Private Letters on Intellectual Property

It is not uncommon for critics of IP to cite various private letters by Thomas Jefferson in making claims that Jefferson had a fundamental distaste for IP, or that he at least had serious reservations about it. For instance, in letters sent from Paris to James Madison while the Constitution and Bill of Rights were being considered, Jefferson expressed concerns about perpetual government monopolies and the need to restrict or prohibit them. And in a 1788 letter to Madison shortly after the Constitution’s ratification, Jefferson opined:

The saying there shall be no monopolies lessens the incitements to ingenuity, which is spurred on by the hope of a monopoly for a limited time, as of 14. years; but the benefit even of limited monopolies is too doubtful to be opposed to that of their general suppression.

Also, IP critics will sometimes quote from Jefferson’s letter to Isaac McPherson (1813):

If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we

breathe, move, and have our physical being, incapable of confinement or exclusive appropriation.

While the focus of that letter is on patents, IP critics will often extend Jefferson's points to copyrights. And in so doing the name of Jefferson is invoked as part of a claim that property rights in inventions and literary works are illegitimate or at least a serious danger deserving to be severely curtailed.

Of course, IP law's idea-expression dichotomy prohibits patenting or copyrighting mere ideas – as opposed to particular inventions or specific expressions of ideas. Notwithstanding, criticisms of IP that claim the authority of Thomas Jefferson are misplaced, or at least exaggerated. Indeed, scholars such as Thomas B. Nachbar and Adam Mossoff have persuasively dismantled the “Jeffersonian mythology” that has unnecessarily elevated Jefferson's historical role regarding IP, particularly with regard to patents. Without seeking to retread the important work of those scholars, this paper will nonetheless consider Jefferson's relative lack of influence on the drafting of the Constitution and the public meaning of the IP Clause. It will also explore some of the limitations and overstatements of Jefferson's opposition to IP rights.

Jefferson's Exaggerated Opposition to IP and Peripheral Influence on Constitutional IP Policy

The Article I, Section 8 IP Clause expressly grants Congress the power to provide patent and copyright protection to inventors and authors, respectively: “The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” So it is self-evidently the case that the Constitution authorizes IP protection. But more than that, common sense observations about the Constitution's historical context should lead one to reject the idea that IP is somehow conceptually inconsistent with the Constitution's basic logic.

The private correspondence of the Founders sometimes provides an important source of insight into constitutional meaning and logic. But that doesn't mean that all viewpoints ever expressed by individual Founders should be read into the Constitution. The Constitution was a product of political compromise. The 1787 Philadelphia Convention decided certain disputes one way or the other, decided other disputes through middle-ground solutions, and left other disputes unresolved. Owing to the fact that the Constitution is a public document ratified by the people, non-public or obscure intentions of particular Founders should not override or control what “We the People” would have understood its words to mean in 1787-1788.

The fact that the Constitution expressly confers on Congress the power to protect copyrights and patents suggests that the few, scattered criticisms of IP were, in principle, rejected in the Constitutional compromise.

Moreover, to the extent Jefferson was an anti-IP voice, there is little to no evidence that his sentiments regarding patents or copyrights had any bearing on the Constitution. Jefferson was in Paris during the 1787 Philadelphia Convention and ratification period that followed. According

to biographer Dumas Malone, “[i]nsofar as he exerted any influence on opinion this was probably against the Constitution, since his earliest comments were the least favorable and the fight in America was practically over before anybody there was informed of his final acceptance of the new frame of government.”

Jefferson was likewise absent when the First Congress proposed the Bill of Rights to the States for ratification. And he arrived at the nation’s capital to assume his duties as Secretary of State only a handful of weeks before the Patent and Copyright Acts of 1790 were signed into law.

Indeed, Madison countered Jefferson with respect to patent and copyright protection. Madison wrote to Jefferson in Paris on October 17, 1788:

With regard to monopolies they are justly classed among the greatest nuisances in Government. But is it clear that as encouragements to literary works and ingenious discoveries, they are not too valuable to be wholly renounced? Would it not suffice to reserve in all cases a right to the Public to abolish the privilege at a price to be specified in the grant of it? Is there not also infinitely less danger of this abuse in our Governments, than in most others? Monopolies are sacrifices of the many to the few. Where the power is in the few it is natural for them to sacrifice the many to their own partialities and corruptions. Where the power, as with us, is in the many not in the few, the danger can not be very great that the few will be thus favored. It is much more to be dreaded that the few will be unnecessarily sacrificed to the many.

Madison was instrumental in securing IP’s place in the American constitutional order and for placement of the IP Clause in the Constitution, in particular. (See Randolph J. May and Seth L. Cooper, “[Literary Property: Copyright’s Constitutional History and Its Meaning for Today](#).”)

For that matter, there is good reason to conclude that Jefferson’s opposition to IP was less than persuasive, and that the extent of his opposition has also been overstated.

It proves too much to take all of Jefferson’s misgivings about monopolies and read them into limited grants of exclusive property rights to inventors. In his Paris letters to Madison, Jefferson took particularly sharp aim at commercial trade monopolies. The Crown-chartered monopolies established in Britain undoubtedly factored into his thinking. Colonists protested against monopolies like the East India Company in the lead-up to the American Revolution. Previously, Jefferson attacked British trade monopolies in his pamphlet *A Summary View of the Rights of British America* (1774). No doubt Jefferson was also familiar with Britain’s Licensing Act of 1662, which granted a monopoly charter under which copyrights could only be secured by publishers’ guild members or sold to members, and they lasted forever.

Of course, even Jefferson recognized, in his letters, that patents and copyrights along the model adopted in nearly every state prior to the Constitution were only limited forms of “monopolies.” In any event, he surely understood that they did not constitute monopolies in the same sense we understand and use the term today to assess market power for antitrust purposes. It is true that patent and copyright confer a right to exclude for a limited period of time. But this is only with

regard to specifically identifiable properties. Many substitutes in the marketplace might already exist for such inventions or works, and no barriers prevent such substitutes from being introduced into the market.

The Constitution followed this approach by giving Congress the power to confer on inventors and authors the exclusive rights to the proceeds of their inventions and artistic works, respectively. As a form of property rights established under the IP Clause, patents and copyrights could be alienated, and they were not perpetual. (We explained the basic historical background on commercial trade franchises and how those differ from patents and copyrights in American constitutionalism in our *Perspectives from FSF Scholars* paper, "[The Constitution's Approach to Copyright: Anti-Monopoly, Pro-Intellectual Property Rights](#).") Jefferson's misgivings about monopolies should therefore be read in light of the crucial distinctions between unlimited trade franchise monopolies conferred by a King or Queen and limited grants of exclusive property rights to inventors and authors under constitutional republicanism.

It also deserves consideration that Jefferson's misgivings about monopolies were in some measure owing to an Enlightenment-influenced generational theory that was never incorporated into the U.S. Constitution or otherwise accepted by the American public. In his September 6, 1789, letter to Madison, Jefferson expressed concerns about monopolies as a case in point for his schema for applying the principle that "the earth belongs in usufruct to the living." Out of that general principle Jefferson contrived a 19-year term for each "generation," and posed 19-year lifetimes for all constitutions, laws, and contracts, effectively throwing mankind back into a state of nature every 19 years to allow a new majority will to reconstitute the fundamental laws of society. Interestingly enough, that led Jefferson to express support for an extension of copyright terms to 19 years rather than 14 years – as was the practice under Britain's Statute of Anne, in several states, and under the Copyright Act of 1790.

Jefferson's friend Madison politely rejected the generational theory as a system for constitutionalism in a responding letter sent in February 4, 1790. Madison suggested that concerns about the intergenerational impact of laws constituted "a salutary restraint on living generations from unjust and unnecessary burdens on their successors." As Dumas Malone would put it in *Jefferson and the Rights of Man* (1951), "if Jefferson's mind needed to be recalled to American realities too far away for him to see, Madison was the best of all men to point them out."

Two years earlier, writing in Federalist No. 49, Madison had similarly rejected as injurious to stability and veneration of good government the idea of frequent appeals to constitutional conventions for rewriting the established forms of government advanced by Jefferson in his *Notes on the State of Virginia* (1784). Apparently, Jefferson later moderated his own position. As he wrote to Samuel Kercheval in 1813, "I am not an advocate for frequent changes in laws and constitutions, but laws and constitutions must go hand in hand with the progress of the human mind." In the end, Jefferson's generational theory was an outlier in the intellectual climate that surrounded the Constitution at its framing. Accordingly, Jefferson's apparent concerns about "monopolies" should be discounted to the extent that such a speculative theory factored into those concerns.

Finally, it should be recognized that while still in Paris Jefferson appeared to be at least somewhat reconciled to the IP Clause and its property rights protections for patents and copyrights. This coincides with Jefferson's overall reconciliation to the Constitution he had initially opposed. In particular, Jefferson's apparent acceptance of IP rights under the Constitution can be found in his August 28, 1789, letter to Madison. There he stated his wish that the proposed Bill of Rights recently drafted by the First Congress and sent to the States for ratification had provided that "Monopolies may be allowed to persons for their own productions in literature and their own inventions in the arts for a term not exceeding — years but for no longer term and no other purpose." Here Jefferson appears to accept the important distinction between commercial trade monopolies – that were odious to Americans – and IP rights – which were expressly adopted in the U.S. Constitution.

In light of these conceptual and historical considerations about the Constitution and Jefferson's letters from Paris, the important question is the extent to which Jefferson's private sentiments were a significant influence upon or reflection of a broader public understanding about IP at the time of the Constitution's adoption. The stronger inference to be drawn from evidence is that Jefferson's views were not a significant influence or reflection of the public understanding of patents, copyrights, or the IP Clause. Jefferson's broader class of concerns about monopolies was widely held in America. But the IP Clause traded on crucial distinctions between commercial trade monopolies and IP. And from Jefferson's subsequent acceptance the Constitution – including its protection of IP – one can also reasonably infer that Jefferson too recognized that critical distinction.

IP in Light of Jefferson's Philosophy of Constitutional Government

Jefferson was not likely an influential force on the shape of constitutional IP policy. But it is useful to consider IP in light of those areas where Jefferson's influence on American constitutionalism was indispensable – namely, American constitutional philosophy. Importantly, patent and copyright protection fits comfortably within the Constitution's classical liberal framework for limited government and protection of individual rights that Jefferson so eloquently espoused. And in practice, Jefferson, as a public administrator, oversaw the implementation and even the expansion of those protections.

Among scholars, Jefferson has justifiably earned the distinction as the "intellectual leader of the Revolution" for his articulation of the purpose and principles of constitutional republicanism in the years leading up to American independence. As scholars have pointed out, Jefferson's Revolutionary-era writings, such as the *Summary View of the Rights of British America*, built upon classic liberal principles previously set out by Algernon Sidney, John Locke, John Milton, and 18th Century English opposition writers.

The Declaration of Independence, of which Jefferson was principal drafter, ranks first and foremost among Jefferson's contributions to America's constitutional order. As adopted by the Second Continental Congress on July 4, 1776, the Declaration sets out the conceptual foundation for the American constitutional order in its memorable preamble:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The context and purpose of the Declaration was recalled nearly a half-century later by Jefferson. In an 1825 letter to Henry Lee, Jefferson wrote:

[W]ith respect to our rights, and the acts of the British government contravening those rights, there was but one opinion on this side of the water. All American whigs thought alike on these subjects.

When forced, therefore, to resort to arms for redress, an appeal to the tribunal of the world was deemed proper for our justification. This was the object of the Declaration of Independence. Not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we are compelled to take. Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion.

All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, &c. ...

Encapsulating in the Declaration's "expression of the American mind" the "common sense of the subject" of the purposes and ends of government, Jefferson articulated the intellectual foundation upon which the U.S. Constitution and Bill of Rights were built.

As alluded to above, the Declaration drew richly from John Locke's *Second Treatise on Government*, in both the concepts and terminology it employed. For instance, Locke described government's role in protecting "life, liberty, and estates." Locke also maintained that "governments of the world that were begun in peace" were "made by the consent of the people." And he insisted that when corrupt legislative power breached its trust "it devolves to the people, who have a right to resume their original liberty and, by the establishment of a new legislative, such as they think fit, provide for their own safety and security, which is the end for which they are in society."

As explained in our prior IP paper, “[The Constitutional Foundations of Intellectual Property](#),” the classical liberal philosophy – which Jefferson no less than his friend Madison espoused – deemed governments based on consent the safeguard to individual rights to life, liberty, and property. This philosophical approach defined “property” broadly to include one's own person and faculties, as well as the fruits of one's labor.

The Declaration described the purpose of government to secure life, liberty, and the pursuit of happiness. But that phrasing's omission of government's role in protecting estates or property by no means intended any rejection of property rights. The U.S. Constitution left private property law primarily to the States, but its various provisions certainly presupposed the institution of property rights. And the Fifth Amendment offered certain explicit protections of property through due process and just compensation protections. For that matter, Jefferson defended property – in both its broader and narrower senses – throughout his career. In his *Second Inaugural Address* (1805), for instance, Jefferson spoke in defense of “that state of property, equal or unequal, which results to every man from his own industry, or that of his fathers.”

Constitutional scholar Douglas Scott Gerber insists in *To Secure These Rights: The Declaration of Independence and Constitutional Interpretation* (1995) that “the pursuit of happiness’ was considered by both Locke and the Founders to be synonymous with property, when property is conceived in a broad sense.” Gerber also points out the significance of Jefferson's listing only “unalienable” rights in the Declaration: “Property in the narrow sense of ownership of material goods is certainly indispensable if man is to satisfy his obligation to his Creator to preserve his life and liberty and to pursue happiness. But as important as property is in this material sense, it is alienable. Life, liberty and the pursuit of happiness are not.”

Jefferson's letter to Isaac McPherson (1813) may go the furthest in illuminating his (Jefferson's) nuanced conceptual underpinnings of property. Immediately preceding the lengthy section from that letter quoted earlier, Jefferson verbosely and ponderously wrote:

It is agreed by those who have seriously considered the subject, that no individual has, of natural right, a separate property in an acre of land, for instance. By an universal law, indeed, whatever, whether fixed or movable, belongs to all men equally and in common, is the property for him the moment of him who occupies it, but when he relinquishes the occupation, the property goes with it. Stable ownership is the gift of social law, and is given late in the progress of society.

IP critics who might rely on Jefferson's letter to McPherson for support of the idea that natural rights don't exist in patents or copyrights should therefore be mindful that Jefferson also rejected the idea of natural rights in real property. By treating Jefferson's nuanced rejection of natural rights in patents as a delegitimization of IP it follows that all property would be delegitimate.

However, Jefferson was a defender of property as a social institution throughout his career. Accordingly, from Jefferson's regard for IP as an institution established by society, the most immediate implication appears to be the necessity that society make discretionary judgments about the scope and boundaries of such IP rights. Of course, society makes precisely those kinds of judgments when it comes to other forms of property.

Another possible inference to be drawn from IP being a right established by society is that IP rights are not eternal. But any need to definitively solve that puzzle through speculation is avoided by the IP Clause's express restrictions of patent and copyright protection to "limited times." Indeed, much of Jefferson's concerns about over-extended patent terms can be squared with the IP Clause and accepted by pro-IP advocates. For example, the idea-expression dichotomy familiar to IP law – whereby mere ideas cannot be patented or copyrighted, but particular expressions of ideas in particular inventions or artistic works might receive protection – do address Jefferson's concerns that "an idea, the fugitive fermentation of an individual brain, could, of natural right, be claimed in exclusive and stable property."

Of course, the prevailing view of Founding-era IP supporters, such as Noah Webster and James Madison, was that patents and copyrights were ultimately rooted in rights of nature. The preambles to several state copyright laws predating the Constitution make natural rights references. The natural rights connection exists in recognition of patents and copyrights as the fruits of one's labors.

To the extent inventions or literary works themselves constitute fruits of labor, the inventors or authors by nature possess unalienable rights to those fruits. The IP Clause grants Congress power to guarantee exclusive rights to the proceeds of those inventions or works for limited periods. In so doing and? American society has established patent and copyright as alienable property rights. Thus, accepting Jefferson's nuanced position that one may not possess an unalienable natural right for all time in a particular expression of an idea does not necessitate a rejection of a natural rights-basis for IP rights. Rather, accepting Jefferson's nuanced understanding about natural rights and all property simply requires a corresponding nuanced understanding about the connection between natural rights and IP. So understood, patent and copyright protection fits comfortably within the classical liberal principles of limited government and protection of individual rights that Jefferson so eloquently espoused in the Declaration.

IP in Light of Jefferson's Philosophy of Public Administration

Another significant contribution of Jefferson to American constitutionalism is an applied philosophy for administering the government under the Constitution. As Leonard W. White explained in *The Jeffersonians: A Study in Administrative History* (1951), "Jefferson was not interested...in the normal process of day-to-day administration" and "thought administration was mostly common sense applied to concrete situations." Rather, "on the larger scene where administration, policy, strategy, and constitutional relationships were involved, he made contributions of the first order." Thus, Jefferson's "significance in American history flows much less from his contribution to the art of administration than from his convictions about democracy, liberty, and the capacity of the people for self-government."

A similar verdict was regarding Jefferson's significance to the administration of constitutional government is rendered by Lynton K. Caldwell in his examination of Jefferson's administrative theory. According to Caldwell:

Jefferson's contribution to thought on public administration derives from both [practical and intellectual] aspects of his leadership and from the traditions concerning his leadership, but it is fair to say that Jefferson's greater contribution derives from the ideal. For, although ideal ends are distinguishable from means, it is the ends that ultimately determine the nature and direction of the means, and it is the Jeffersonian ideals which in large measure still persist in American political thought which have had a decisive influence in shaping the administrative theories and practices of American government.

Scholars of Jefferson – including both White and Caldwell – point to Jefferson's *First Inaugural Address* (1801) as the paradigmatic expression of his philosophy for administering the federal government. Reviewing the *First Inaugural*, Jefferson biographer Dumas Malone wrote that “its enduring appeal may be attributed to its verbal felicity and to the fact that much of it has been deemed timeless.” Jefferson's verbal felicity and timelessness are both encapsulated in his First Inaugural pronouncement:

A wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.

Among the “essential principles” of his administration Jefferson described a limited federal government based on popular consent, remaining accountable to the people and respecting their individual rights, including property rights.

Jefferson's ideals for administering the government were thus one in the same with those espoused in the Declaration of Independence. Whereas the Declaration set out principles upon which government was established, Jefferson's *First Inaugural* invoked those same principles as guideposts for administering that government. Jefferson would later describe the connection of those principles in a letter to Spencer Roane (1819). In admittedly hyperbolic terms, Jefferson described his election and the commencement of his administration as the “revolution of 1800,” deeming it “as real a revolution in the principles of our government as that of 1776 was in form.” According to Malone, the word “revolution” had a “predominantly political connotation” to Jefferson, akin to the word “restoration.” Thus, “[t]he most accurate statement of the matter, it seems, is that in 1801 he was seeking to return to the principles of the American Revolution.”

At a conceptual level, protections of limited rights of property for inventors and authors fully coincide with the “essential principles” of Jefferson's philosophy of public administration. Inventions and artistic works are the bread that labor has earned and which government should not take. Conferring exclusive property rights in the proceeds of such labor coincides with the rendering of what Jefferson termed “equal and exact justice to all men,” rather than granting monopolistic controls over entire commercial enterprises or prohibiting individual industry.

At a practical level, IP rights coincided with Jeffersonian administration of government. Jefferson did not hesitate to take aim at policies he deemed inconsistent with the essential

principles he espoused in his *First Inaugural*. Alien and Sedition Act curtailments of the freedom of the press, for instance, did offend those essential principles. Accordingly, pardons were issued and those laws were permitted to expire. Jefferson also signed legislation repealing the Judiciary Act of 1800, thereby rolling back the appointment of “midnight judges” that he believed were intended to thwart the will of the people to govern themselves. But Jefferson never publicly attacked the patent or copyright policies that existed when he assumed the Presidency.

In fact, as President Jefferson oversaw the modest expansion of IP rights. First, his Secretary of State James Madison appointed Dr. William Thornton as the first full-time clerk or Superintendent to oversee patent applications. In light of the Jefferson Administration’s attentiveness to fiscal frugality, the fact that it devoted additional taxpayer dollars to the patent process is not insignificant. Nor should one overlook President Jefferson’s 1807 letter to Oliver Evans, in which he wrote that “[c]ertainly an inventor ought to be allowed a right to the benefit of his invention for a certain time,” and that “[n]obody wishes more than I do that ingenuity should receive a liberal encouragement.” Moreover, President Jefferson signed the Copyright Act of 1802 into law. The 1802 Act expanded the scope of copyright protection, to include maps, charts, engravings, etchings, and prints.

All told, patent and copyright protections violated no Jeffersonian principle of administration, but such protections were in keeping with the essential principle that the fruits of one’s labors not be taken away. And in practice IP rights were not curtailed under the Jefferson Administration, but IP rights were modestly expanded.

CONCLUSION

The contributions of Thomas Jefferson to the public philosophy of the Constitution should not be understated. Americans enjoying their unalienable rights to life, liberty, and the pursuit of happiness ought to celebrate Jefferson’s role in drafting the Declaration of Independence, especially on each July 4. But his apparent misgivings about IP shouldn’t be overstated. Nor should Jefferson’s private letter views about intellectual property be read into the Constitution over and against the Intellectual Property Clause’s clear recognition of patents and copyrights.

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Further Readings

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