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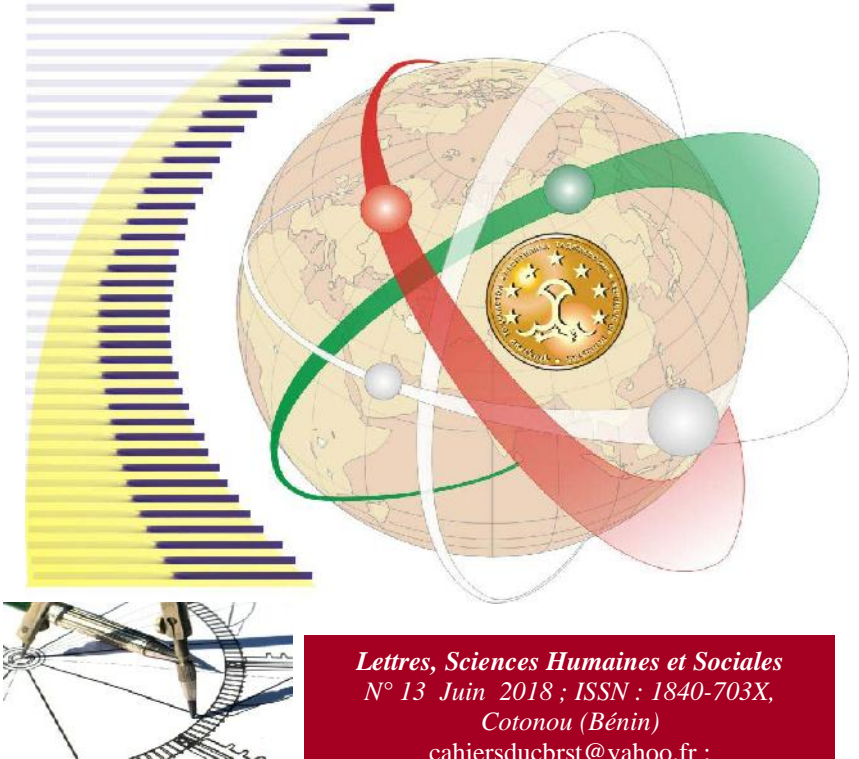


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PROPERTY RIGHTS IN THE CONTEXT OF THE AMERICAN NATION

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ABSTRACT

Property rights is one of the key notion if not the most important in American life. The paramount importance of property rights lies in the fact that the notion has determined people behavior and thought for centuries. As illustration, property rights is the main philosophy that sustains the Declaration of Independence, it represents the cardinal determinant that guided the Representatives at Philadelphia Convention. More than that, the frame of the U.S government has something to do with the preservation of property rights. To some extent, property rights is among the concurrent causes that triggered the American Civil War. Property rights is nothing without the fruits it yield that is the economic growth, source of American economic power. This article gives me the opportunity to explore the link between property rights and the economic growth as far as American economic power is concerned.

Key words: property rights, economic growth, ownership, labor, slavery.

RESUME

Le droit de propriété est l'une des notions essentielles de la civilisation Américaine. A lui tout seul, ce droit à fait et défait les



Etats Unis depuis son origine. En effet, ce droit fait partie intégrante de la Déclaration d'Indépendance. Ce droit était également dans la tête et dans le cœur des participants à la Convention de Philadelphie. Ce même droit a des ramifications avec les causes de la Guerre de Sécession qui opposa le nord et le Sud des Etats Unis. En fait le droit de propriété n'est rien sans le fruit qu'il est sensé porté : la croissance économique gage de la puissance économique Américaine. Par le truchement de cet article, je me propose d'explorer le lien entre le droit de propriété et la croissance économique en référence à la puissance économique Américaine.

Mots clés : *droit de propriété, croissance économique, propriété, travail, esclavage*

INTRODUCTION

Property rights represent one of the founding pillars on which the United States is erected. They function as the cement that keeps the whole country together as a single entity. Property rights can be seen as the reality that rallies Americans despite the different political opinions. They are also a compromising and unquestionable value that a lot of white Americans share. According to S. Adams (2008, p.7), "among the natural rights of the colonists are these: first a right to life, secondly to liberty, and thirdly to property, together with the right to defend them in the best manner they can." With this classification, Samuel Adams' statement put property rights in its historical American context. This paper has undertaken to analyze the concept of property in the context of America through the lens of economic growth and social status. Property rights considered as natural rights by the American settlers had excluded natives and slaves living in the same environment.



1.1 Property Rights and Social Norms

1.1.1 Implications of property rights

E. Juraimin (2003, p. 3) has an interesting position on property rights. According to him, it is not possible to own scarce resources like lands since we are not totally free to exploit them without respecting social norms. For example, I cannot grow opium on my land, “or turn my house into a loud recording studio.” A. A. Armen. and H. Demsetz (1973, pp.16-27) believe that “What is owned actually is a portion of socially recognized rights to use the resource not the resource itself.” As illustration, H. Demsetz (1967, pp.347-359) maintained that “we own the right to live, to sell, but not to force someone to buy a house. It is these rights that determine the value of what we exchange.” Then and as a conclusion, a resource considered as a property implies a “bundle or a portion of rights” according to Demsetz. It is important to add “that property rights convey the right to benefit or harm one or others.” On page three of the same document, Harold Demsetz is more precise by saying that “property rights specify how persons may be benefited and harmed and therefore who must pay whom to modify the actions taken by the persons.” This aspect of property rights introduces the notion of externality that can be defined by E. Juraimin (2003, p. 3) as “a situation in which one person’s action imposes cost (or benefit) on others.” H. Demsetz (1967, p.3) adds that “to become an externality, the cost of bringing effect on one or more of the interacting parties has to be too high to make it worthwhile.” Externality can then be perceived as a serious damage caused to others by our deeds. To bear the effect of externality, “the interacting parties develop the process of internalizing” the effect, as added by Demsetz. The fact of internalizing the effect of externality is described as a “change in property rights.” So internalizing the effect consists in supporting the damage caused to someone in order to repair the breach of their property rights. For example, let’s consider a situation in which a



law grants freedom to a person; that person will require a certain amount of money from the firm as compensation for having used that person's labor. But if a law entitles a firm to enslave a person, that person is obliged to pay the firm for his freedom. This principle is a possible explanation of the fact that a slave is obliged to pay a certain amount of money to buy his freedom.

In the framework of slavery there was an unwritten law that conferred the slaves' masters the exclusive power to exploit slaves as a means of production or entitled the masters to be the sole owners of the slaves' labor. These costs thus become internalized in the process. So, property rights function as "guiding insensitive" to achieve a more important internalization of externalities. As far as business activities are concerned, the transaction cost of negotiating: the right between parties must exceed the gain from the internalization for the costs and benefit to be considered as externalities. If the transaction cost is zero (that is very improbable) it will be profitable for both parties. Most of the time, the negotiation cost may be too high because of the initial definition of property rights. Changing the initial definition of property rights is required to minimize the transaction cost in order to internalize externalities. Changing the definition of property rights is equivalent to the conversion of ownership form; like privatization of public ownership.

It becomes then important to determine the differences between public and private ownership. A. A. Armen. and H. Demsetz (1973, p.2) finds the difference in "the inability of a public owner to sell his share of public ownership," that is the ability to buy a share without purchasing rights. The changing of ownership from several to one person results in the concentration of ownership mainly because we have only one person with higher share. This process increases the reward and cost in the enterprise. The transferability of ownership obliges the businessmen to adopt the law of comparative advantage to have greater wealth.



1.2. Property Rights and Economic Growth

according to Demsetz, on page 3, property rights concern several other rights that is why they are considered as “bundles of interrelated rights” that allow to use, to sell, to transfer, to bequeath, restrict to use by others... These rights can be vested on an individual, a household or a community. The contents of the right vary according to the specific context. For instance, the right of someone to use a resource does not allow him to alienate it. This definition is similar to Effendy Juramin’s view when he maintains that what is owned actually is a portion of socially recognized rights to use the resource not the resource itself. It is then clear that property rights are not absolute as long as their use is concerned. Property rights imply possible limitations like Eminent Domain. But as far as slavery is concerned, the right of the slaves’ owners is practically unlimited. Even if the Code Noir does not allow the masters to kill their slaves, if it happened there would not be any consequence since the blacks have no rights that the whites are obliged to respect. The contradiction observed concerning slaves issues can be extended to the technical aspect of possession.

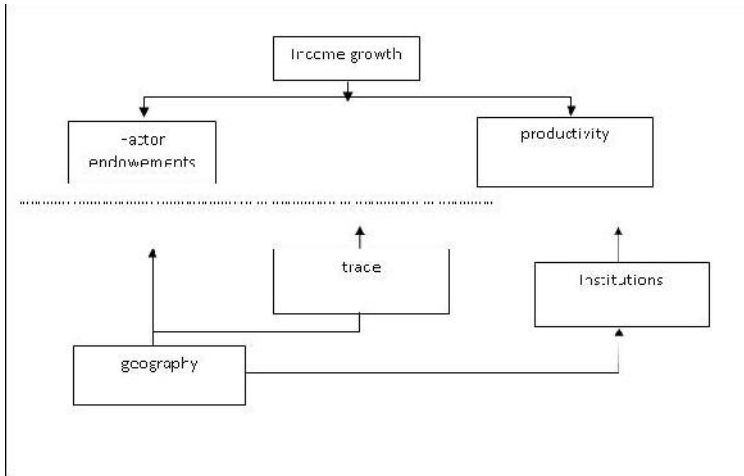
Property rights cannot be socially useful if they are not secure. Property rights are secure when the holder of the rights perceives them to be stable and predictable over a reasonable period of time. Property rights must also be protected against expropriation, arbitrary change. Property rights suppose a claim that is back up by an authority. Secure property rights imply the ability to appropriate benefit. H. De Soto (2000, p. 161) adds that; “property rights need to be private and individual; expressed in a formal and legal form back up by the State.”

K.Deininger (2003, p.33) believes that “it is more explicitly recognized that formal property rights underpinned by titling may be neither necessary nor sufficient to insure security of rights,



depending on how such rights are recognized and enforced in a particular context.” As for D. Rodrik (2000, p 11), he determines the condition on which property rights could be effective. He thinks that ; “formal property rights will not be effective if they do not confer control rights, sufficiently strong control rights may serve the purpose even in the absence of formal property rights.” Formal property rights are necessary as far as economic growth is concerned. The different system of control lead to income growth that depends on items like: factor endowment, productivity, geography, trade and institutions. A table below synthesizes the relationships among the different items.

1.2.1 Table1 summary of economic growth¹



This table depicts the connection among the following items: income growth, productivity, geography, trade, and institutions. In the framework of my research, my aim here is to know how

¹Source: Dani Rodrick in Anna Locke: Property Rights and Development: briefing <https://www.ordi.org/files/ordi.assets>.



property rights generate economic growth and the mechanism out of which this economic growth is possible. First of all I can notice that economic growth is impossible without income growth. Technically speaking, income growth depends on factor endowments and productivity. So, the two levers are decisive for income growth. Property rights to be efficient must have an impact on both factor endowments and productivity. This basic economic truth is taken into account in the colonial America. I can infer that the main factors of production: lands, labors and capital were privately owned by the founding fathers so as to assure a certain income growth. So, the Founding Fathers were determined to protect their property rights on lands labor and capital so that no external forces should stop the exploitation of those factors. To guarantee the ownership of factors of production, American society institutes private ownership of factors of production and the main role of the central government is to protect property rights on the factors of production.

Maintaining that property rights are the foundations of American economic power, means the right of property that the Founding Fathers have on immense lands stolen from Indian communities and the intensive labor imposed on slaves represented the engines that launched the economic development of the country. The marvelous discourse of the Founding Fathers to defend private property rights stresses in fact the importance of the factor endowments as far as income growth is concerned. The role of productivity in the process of income growth is simple: when lands labor and capital are well combined they produce commodities sold to make the highest profit possible. Income growth occurs after several series of commodities are made and sold to make the highest profit. Factors endowments and productivity cannot yield income growth that lead to economic growth without the contribution of geography, trade and institutions.



The first element: geography symbolizes the natural conditions in general. The natural conditions take into account the position of the country, its climate, its vegetation, its soil, its hydrographic as well as its mineral resources. In the case of the colonial America the different items listed above had sharpened American's Founding Fathers' need for property rights. In the Founding era, they had assessed the enormous natural opportunities made of a diversified climate that made it possible for them to grow various crops like sugar cane, tobacco, cotton, and many others. If it had not been possible to produce such a various crops at that time it would not have been necessary to import such a great number of slaves and if the productions were not economically important, the working conditions of the slaves would not have been inhumane. So, the wonderful climate made it possible to adopt intensive manual agriculture. The incomparable vegetation, the rich soil, the powerful hydrographic resources and the favorable reliefs represent the other assets that empowered the intensive and extensive agriculture in colonial America. I can then take it for granted that nature has played an important role in offering ideal conditions to the adoption of property rights and to the development of agriculture.

Apart from the generous nature, the second motivator of income growth as is shown in the table is man. I mean *man made in American* that is the typical European immigrants who had faced the savage and virgin America and ardently desired property rights that gives economic growth. The preliminary condition to property rights is the conviction that you do own something. It is good to insist on how the mentality and the activities of the Americans made them ready for property rights. The first attributes of the Americans is their religious mentality. The Americans considered America as their promised land like in the Bible. To some extent, I think that the favorable echo of property rights among the Founding Fathers lies in that mentality. Full of that mentality, they tamed the savage nature in order to draw wealth from it. It is also



good to add that the Founding Fathers had well internalized the theory of possession by John Locke and Jean Jacques Rousseau among others. The permanent obsession of the Founding Fathers for property rights was rooted in their deep assurance that America belonged to them.

The determination of Americans should be read in the light of their conviction of being predestined to possess America. In fact, they believed their continent had been given to them by God. Accordingly, territorial expansion of the United States became inevitable, and it was viewed by settlers as part of God's master plan. In conquering the continent, they were following manifest destiny, the idea that a Christian God had granted white Americans a right to control North America. To see how the natural gift and the attribute of Americans contribute to create economic power it is necessary to analyze human action in the process of economic accumulation. To explore human actions I will just take into account two levels: the political organization and the governmental actions. As far as the political actions are concerned they will be detailed later. Roughly speaking, I can say that the American Constitution and the American Government with its deferent parts are mostly founded on economic motivations. Speaking of political organization, I must not neglect the economical role played by institutions like the Supreme Court whose role is fundamental in defending property rights of the White class. I must say that it has contributed to a partial interpretation of laws just to discriminate the blacks. The impact of the Supreme Court is to legalize the exclusion of blacks in the process of the acquisition of wealth. The main action of the Supreme Court is to perpetuate racial and financial discrimination by the institution of social inequalities.

Table I is also important since it specifies the importance of trade as one of the contributing factors to income growth as the essential part of the economic growth. Trade is vital for property rights to thrive in the United States. In the Colonial America, organized



trade was useful to the supply of trade. Trade came into play concerning the selling of raw materials produced in America as well as the finished goods produced in the northern industries. Trade was precious for America since it offered the country its first financial accumulations. In fact, the clash between the United States and Great Britain took place because the Crown tempted to limit American Trade.

The opportunities offered by the geographical position of the country are important. That is why America has developed the different means of transport. To insure the potentialities of trade, air, land and sea transport have been highly modernized. American superpower can be perceived through the high development of plane, train, boat used for home and foreign trade. America uses its diplomacy to impose its interests in the rest of the world. The concept of America first is expressed and revived through trade.

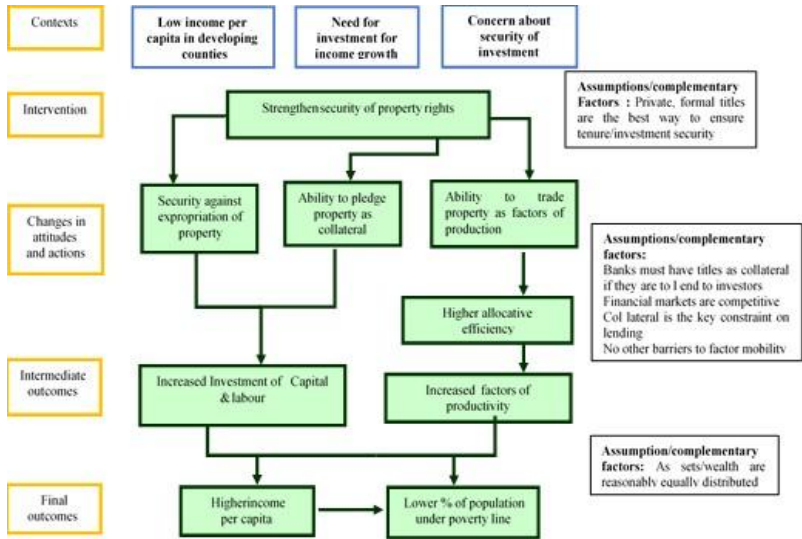
From what has been saying so far, it can be inferred that property rights leads to economic growth through the development of certain financial sectors described above. This description enlightens another conception of property rights as a tool that developed both natural and humane potentialities of American nations. Property rights is an abstract notion that has concrete and measurable effects. Apart from the noticeable effect of property rights on the development of a country, the specialists have some appropriate tools to quantify economic growth. R. Lucas and William (1988, pp. 3-4) give useful precisions in the following lines. They maintain that “Economic growth measured through the increase in the real Gross Domestic Product (G.D.P.) per capita over the time has traditionally been attributed to accumulations of factor of production (labor and capital), and increased total factor of productivity.” William continues the description of the process on same pages by saying that; “these, in turn, are influenced by underlying factors; the degree of the integration with the global economy, macroeconomic stability, public sector governance,



public financial discipline, institutional framework, degree of government interventions and many others.” Some authors agree on the relationship between economic growth and investment. For them, growth depends on investment; however, investors do not invest if there is a risk of government or private expropriation. In this context, property rights are equated with private property rights whereby proper owners can legally exclude others from using goods or assets. Besley and Ghatak identify four channels throughout which property rights prompted economic activity and resource allocate

1.2.2 TABLE 2: Diagram of Theory of Change – Property Rights and Economic Growth²

²Source: Rodrick Dani in Anna Locke: Property Rights and Development: briefing <https://www.ordi.org/files/ordi.assets>.



The table demystifies economic growth. It shows that economic growth based on property rights produces results even in developing countries. I can say that when property rights principles are properly followed they give economic growth. The starting point shows that when the security for investment does not exist there are two main consequences: lack of investment for income growth, and low income per capita. The two consequences make it impossible for development to take place. In another words, the situation of the developing countries are mainly caused by lack of security for investment meaning absence of a structured property rights. In order to improve the situation, security on property rights can be introduced through the following actions: security against property expropriation, ability to pledge property as collaterals and ability to trade property as factor of production. In one word property rights imply the capacity of the owner of property to exploit it in order to have some profit. As soon as the three actions are carried out there an immediate result: a higher allocative efficiency characterized by more intense bank activities like more



titles, competitive markets, greater profits generated through bank loans; all these lead to no barriers and factor mobility. At this stage, economic activities thrive.

Two results can be perceived in the country: higher investment of capital and labor and increase factor of production. The two results are sign of economic performance and success. The final outcomes are: higher income per capita and a lower percentage of population under poverty line. The final outcome means that wealth is equally shared in the nation. Even if it is hardly possible to have a country where wealth is effectively equally shared; it is obvious that a country where fewer people live under poverty line is a sign of social welfare. This table simply shows the mechanism of development in a country. It also depicts how secured property rights are beneficial for the country as a whole. It is also good to precise that the mechanism described here concerns the capitalist countries. Socialist countries like China or Russia may obtain the same result through other steps.

CONCLUSION

The notion of property rights in the U.S inherited some of its aspects from three different sources: the Black Code of 1685 issued by Louis XIV, John Locke, and Jean Jacques Rousseau. The actions of the colonists find certain favorable echoes in the following theory of Jean Jacques Rousseau. The French thinker J.J. Rousseau (1964, p. 35) believed that: “the first man who has fenced off the plot of lands, thought of saying this is mine and find some people simple enough to believe him was the real founder of civil society.”

By taking the lands of the Indians, the colonists apply a part of Locke’s theory of possession owing to which the natural resources become a person possession as soon as he works on them. After stealing the Indians’ lands, it became necessary to find someone to



work on them. The Code Noir comes into play. In fact, it is the source of inspiration of those who deprive the slaves and the African - Americans of their basic rights. That Code in Article eighteen stipulates that Blacks can't own property. As for the thirty first article, it denies the slaves a legal status since "a slave shall not be a party either in a Court or a civil matter as a litigant or a defendant". That disposition had been confirmed by the principle according to which the blacks have no rights that the whites are obliged to respect. The three theories emanating from authorized sources give the main exclusive aspect of property rights in the United States of America. Property rights as specifically defined codify the whole society. The American nation succeeds in using that definition to found its development.

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