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Paine and Socioeconomic Rights

Mark Philp, University of Warwick

I

This paper addresses a number of puzzles about Thomas Paine's thinking in his *Rights of Man* and subsequent writings, in which he seems to move from what we would describe as a position of economic liberalism, to one in which he accords extensive social and economic rights, requiring redistribution of property. The paper sets out the nature of the position that Paine develops, since much secondary literature ignores the details of his case, and it seeks to explain what led Paine to develop his position in this direction. In doing so, I make three claims. While a great deal of the literature on Paine underplays the changes in his thinking, assuming that it remains largely unchanged from *Common Sense* (1776) to the end of his life, I argue that that characterisation is untenable and that *Agrarian Justice* represents a further development in his thinking about rights that leads him to see that social rights are an essential component of the economic order. Secondly, it has been argued that Paine's thinking was deeply influenced by his contacts in the *Cercle Social* and that this encouraged his development of a more radical stance in the second part of the *Rights of Man*.¹ While there is undoubtedly some truth in this, we need also to recognise that Paine's thinking about equality and the economy in the 1790s drew heavily on the principle of generational sovereignty that he worked out in the late 1780s and early 1790s, and its later development in relation to property occurred after most of his friends from these circles were executed. Finally, while the developments in Paine's thinking concern both the scope and the underpinnings of his claims for rights, and are relatively abstract in character, we should recognize that they were in part a response to his experience of a political order in which the character of true equality was often violently and extensively contested. On the account given here, I argue that we should see Paine as responding to a set of practical and intellectual challenges and as drawing on and developing the inherent logic of ideas that he first worked out only in the late 1780s. Commentators on Paine are keen to assign him to one national context or another, or to

¹ G. Kates, 'Liberalism to Radicalism: Tom Paine's Rights of Man', *J Hist of Ideas*, 50 (1989), 569-87.

one set of influences rather than another. But this reductive way of thinking misses the fact that, for all the rhetoric and bombast, Paine was thinking deeply and innovatively about the challenge of equality in the 1790s. In response he produced an innovative account of social rights that saw them as an integral component of commercial society.

It is difficult to identify the precise influences leading to Paine's changing views. Paine left America in 1787 and, while he spent some time in Paris and was introduced into French reform circles through his contact with Jefferson, the bulk of the time between 1787 and the Autumn of 1792 was spent in Britain (and in the earlier years was focussed on securing scientific approval and funding for the bridge he had designed – although there was also considerable discussion of the proposed Federal Constitution of the United States).² He was a resident in France from August 1792 until he returned to America in 1803 but our knowledge of Paine's activities and connections for his years in France (save during his imprisonment between December 1793 and November 1794) is patchy. We know he was on the committee for the constitution in 1792-3, and Paine's editor has included the 'Plan of a Declaration' in Paine's collected works, although Condorcet is also acknowledged as a possible contributor.³ After his imprisonment, Paine was reinstated and returned to the National Convention in 1795, but he did not play a very active role. His grasp of French politics was probably always rather limited given his poor French but this was compounded by the loss of most of his closest friends in the Terror of 1793-4. Precise information is, then, scarce. There are also wider methodological issues about how best to explain changes in intellectual positions: do they involve responding or adapting to one's perceived audience? Are the changes prudential or pragmatic? Does the logic of an argument have some independent explanatory role? In this case, I will suggest, some component of each of these might well have been at play in the development of Paine's work. The account I will give charts the evolution of a sophisticated defence of social and economic rights at the heart of French events between 1792 and 1796 that points to instabilities in the ideas of rights and equality that played out in French debates, and which Paine came to

² M. Philp, *Reforming Ideas in Britain* (Cambridge, 2013), 187-209.

³ The editor of Paine's *Collected Works*, Phillip S. Foner, took the document from Moncur Conway's edition of Paine's *Writings III* but did not mention, as Conway had, that it came from *Oeuvres complètes de Condorcet*, ed., M. L. S. Caritat et al (Brunswick, 1804) t. xviii, p.271-8. See J. C. D. Clark, *Thomas Paine: Britain, America, & France in the Age of Enlightenment and Revolution* (Oxford, 2018), 425; see C. Lounissi's similarly sceptical view of this as a work by Paine, or even one in which he played a major role, in her *Thomas Paine and The French Revolution* (London, 2018), 18.

equipped with an older customary understanding of the social character of the economy. This prompted and enabled Paine to develop a new line of thought that was neither merely liberal nor strongly egalitarian.

II

In the second part of the *Rights of Man*, Paine's opening chapter addressed the relationship between society and government and declared the superior character of the former. In *Common Sense* (1776) he had proclaimed that 'society in every state is a blessing, but government, even in its best state, is but a necessary evil.'⁴ In his *Letter to the Abbe Raynal* (1782), he expressed a growing confidence in commerce as a means of uniting the interests of nations (and rendering outdated and irrelevant the European system of war) and these themes were picked up and developed further in his *Rights of Man: Part the Second, Combining Principle and Practice* (1792).

The mutual dependence and reciprocal interest which man has upon man, and all the parts of a civilized community upon each other, create that great chain of connection which holds it together. The landholder, the farmer, the manufacturer, the merchant, the tradesman, and every occupation, prospers by the aid which each received from the other, and from the whole. Common interest regulates their concerns, and forms their law...In fine, society performs for itself almost everything which is ascribed to government.⁵

We might think that this position is continuous with that in *Common Sense* (1776), but the emphasis is clearly different. *Common Sense* ascribed the need for government to our 'vices'; *Rights of Man II* relegated it to a minor remedial role: 'Government is no farther necessary than to supply the few cases to which society and civilization are not conveniently competent...' While the earlier text had a whiff of protestant theology - 'Government, like dress, is the badge of lost innocence'⁶ - the later displayed neither - 'man is so naturally a creature of society, that it is almost impossible to put him out of it.'⁷ What also becomes clear is that by the early 1790s Paine had come to see 'society' as comprised largely of relations of exchange and commerce, there was no separation of economy from society, no sense that the former might be antagonistic to the latter,

⁴ M. Philp (ed.), *[R]ights of Man, Common Sense and other [P]olitical [W]ritings* (Oxford, 1995), 5.

⁵ *RPW*, 214.

⁶ *RPW*, 5.

⁷ *RPW*, 215.

and little concern with luxury. At the same time, the emphasis was placed on mutuality, reciprocity, and the advantages of cooperation in commerce, not on appetitive and egoistic competition. That said, Paine's remarks at this stage were made with express reference to America, rather than to the corrupt monarchies and degenerate societies of Europe.

The other striking aspect to Paine's statement is the tension between chapter 1 and his final chapter 4, which addresses the expenditure of the British state, taxation and commerce. In that final chapter Paine emphasized the incompatibility between monarchical regimes and the growth of commerce and national wealth and went on to itemize the taxation raised in Britain to support the costs of monarchical wars. Given the new era of peace between nations that he anticipated the American and French revolution would usher in, Paine asked his readers what should be done about the immense sums being raised in taxes in Britain (some £15.5 millions). He suggested that 'whoever has observed the manner in which trade and taxes twist themselves together, must be sensible of the impossibility of separating them suddenly.'⁸ Instead, he advanced a series of welfare proposals that seem to have no underlying principle, save helping the poor and weak, and that were offered wholly as a way of redirecting spending. He proposed that poor relief be removed as a local tax and replaced by central provision from government coffers; that pensions be offered for those advanced in age, starting at 50, and in full form at 60; that provision be made for the education of the poor; that maternity benefit be granted to all women immediately after the birth of a child; that a fund be established for the burial of those who die away from home; and that arrangements be made for the many young people who travel to the metropolis in search of a livelihood to provide initial accommodation and support until they find work. He ended by identifying provision for those who have served in the army and navy, and suggesting that, as demand on the public purse from these sources declined, then items of indirect taxation might also be lifted, and the burden of taxation gradually shifted towards a progressive taxation on landed property, coupled with the abolition of primogeniture, and a progressive tax on the income from investments. The two striking things about these measures are the absence of any clear set of underlying principles to justify the allocations, and the apparent paradox of combining an emphasis on minimal

⁸ *RPW*, 291.

government in chapter 1, with something like a welfare state in chapter 4. What we seem to be faced with is, in modern terms, a position close to libertarian, which nonetheless argues for extensive welfare provision.

This raft of proposals was a major innovation for Paine. The factors that led to this development are unclear, partly because Paine rarely acknowledged others as influences on his writing, but also because he spent a considerable amount of time in both France and England prior to completing the text. He was almost certainly brought to an awareness of the problems of poverty in France by his acquaintance, through Jefferson, with Condorcet and members of the *Comité de Mendicité de la Constituante*. At the same time, it seems likely the influence was two-way, and he would have drawn on his own experiences as a young man in England, and of the hardship he encountered in London on his return to Britain that was fuelling a growing debate about the problem of poverty.⁹ Nonetheless, while it is possible that he influenced the draft declaration in 1793 that stated 'Les secours publics sont une dette sacrée', it was not a phrase he used in *Rights of Man* and there was no basis in that text to justify such a claim.¹⁰

Modern readers also see a tension between the raft of proposals at the end of *Rights of Man II* and Paine's claims about barely needing government, yet this seemed to have caused him no discomfort at all. It is true that the discussion of the system of welfare does not make rights claims, and could be justified entirely on the basis of social utility, rather than as a scheme of redistributive rights, nonetheless the essentially libertarian sentiments of the opening of the second part of *Rights of Man* (extolling the self-sufficiency of society and the limited need for government) sits oddly alongside this raft of welfare proposals. One explanation is that the former comments invoked an uncorrupt order, America; the other is that Paine clearly did not think about these reforms as an extension of *government*. Although he did not make this precise point, they seem more a matter of administration, and that is consistent with his essentially consensual view of the formal exercise of responsibilities by those invested with the

⁹ See G. Dyer, whose *Complaints of the Poor People of Great Britain* (London, 1792) was influenced by Paine but was clearly conceived before Paine's work, being an issue in his *An Inquiry, into the nature of subscription to the thirty-nine articles* ([London, 1790], 362), and one which the second edition on *An Inquiry...* ([London, 1792] p. 9) indicated he would address more fully at a later date.

¹⁰ In 'Plan of a Declaration', in P. S. Foner (ed.), *The Life and Major Writings of Thomas Paine*, (New Jersey, 1948), vol. 2, 558-560. In this and the Condorcet edition this is article 24. The proposals discussed in the Convention on 17 April 1793 has this as Article 23; in the final version it is article 21.

confidence of the nation as a whole.¹¹ Indeed, the implementation of the reforms are essentially seen as administrative in character; government, in contrast, seems to be associated more closely with the exercise of executive authority, the conduct of foreign affairs and the politics of faction.

This *ad hoc* turn to welfare in the second part of *Rights of Man* (1792) was followed up more systematically in Paine's short pamphlet, *Agrarian Justice* (written in 1795-6, and published in 1797). Here the French context looks more clearly of relevance. Paine was in France from late August 1792; he was a member of the National Assembly having been elected by four departments and having chosen to sit for Pas de Calais; he was a member of the committee on the constitution in 1792-3 and his sympathies with Condorcet and his allies would probably have ensured that he attended to the debates on the new constitution in April 1793, when issues of substantive equality, the 'Maximum' and the rights of the poor to assistance were extensively discussed. It is also likely that his earlier work influenced some contributors. For example, Jean-Baptiste Harmand sought to add to the list of rights an article insisting, 'A people always has the right to revise, reform and change its Constitution. One generation does not have the right to subject future generations to its laws. And any hereditary principle applied to offices is absurd and tyrannical.'¹² What these debates did was to underline the problem of fixing a principled balance between legal equality (*l'égalité de droit*) and social equality (*l'égalité de fait*), with the former generating unacceptable inequalities and the latter threatening a return to an uncivil state. Those most inclined to equality in these debates tended to favour a 'maximum', or price fixing on necessities, but few considered how the two might be reconciled without friction in a society not burdened with war and counter-revolution. That situation may have provided a frame for Paine's thinking, but, if so, it remained dormant for most of the next two years.

¹¹ There is some remit for seeing this distinction beginning to develop in the French context, as the language of 'office' is replaced by that of 'fonctionnaire' and of 'responsabilité'; F. Brunot, *Histoire de la langue Française*, vol. ix (pt. 2) (Paris, 1924-48), 1050. The more basic point, however, is that there is a growing sense, which goes on to inform the utopian socialists, that power changes its character when legitimate and institutionalised.

¹² J. Mavidal, *[A]rchives [P]arlementaires de 1787 à 1860* (Paris, 1867-1913), vol. 62, (17 Avril 1793), 276: 'Un peuple a toujours le droit de revoir, de réformer et de changer sa Constitution, une génération n'a pas le droit d'assujettir à ses lois les générations futures, et toute hérédité dans les fonctions est absurde et tyrannique..

Paine's opening 'Inscription' suggests that *Agrarian Justice* was a response to the unrest in Paris in 1796-97, which culminated in Babeuf's Conspiracy of Equals 'and that of some obscure personages who decorate themselves with the despicable name of "royalists"'.¹³ But his 'Preface' says the text was written in the winter of 1795-96. The substantive content of the pamphlet then wholly pre-dates Babeuf's insurrectionary activities, rather than being a response to them. In referencing these events he underlines his view that the central defect of the 1795 constitution (as he emphasised in his *Dissertation on First Principles of Government*, written in May/June 1795) was the failure to institute universal manhood suffrage. He concluded the 'Inscription' by claiming that, if Babeuf had compared 'the condition of France under the constitution with what it was under the tragical revolutionary government' he might have noted that 'Famine has been replaced by abundance, and by the well-founded hope of a near and increasing prosperity.'¹⁴ These comments suggest that the 'Inscription' is a late addition, written around 1796-97, whereas the main body of the text was written a year before.

If the pamphlet was not actually a response to Babeuf, what might have led Paine to write it? He says in the 'Preface' that he was prompted 'to publish' it by a reference at the end of the sermon by Richard Watson, Bishop of Llandaff, whose attack on Paine's *Age of Reason* included a reference to an earlier work in which the creation of rich and poor is ascribed to God's providence. J. C. D. Clark's recent account of Paine insists that this means we should see *Agrarian Justice* as essentially driven by a deist agenda that became Paine's '*idée fixe*' in the last period of his life.¹⁵ But it is unclear that this is Paine's obsession, rather than Clark's. Clearly, Paine found unacceptable Watson's attribution to God of a set of divine ordinances in respect of inequality, but he did so without thinking that inequality was itself necessarily wrong. What he objected to was the idea that the present degree of inequality was inevitable and uncriticizable. He had long held the view (i.e., well before the *Age of Reason*) that men are created equal (with the one natural distinction allowed being between male and female). The question was simply one of what implications that might have for their rights in society.¹⁶ That issue was one which he addressed on several occasions before he wrote *Agrarian Justice*.

¹³ RPW, 412..

¹⁴ RPW, 412-413..

¹⁵ J. C. D. Clark, *Thomas Paine*, 349-55.

¹⁶ For example, *Rights of Man* (1791) in RPW, 117-118.

Indeed, we can see him progressing from his 'Letter to Jefferson' (c. 1788)¹⁷, through to the development of the account of perfect and imperfect rights in *Rights of Man I*, to the extension to justify male adult suffrage in his *Letter Addressed to the Addressers* (1792), which he reiterated (and extended) in his 'Letter to Thibaudeau'¹⁸ and his *Dissertation on First Principles of Government* (1795), culminating in his account of original property rights in *Agrarian Justice*.¹⁹

These steps also involved a progression from concerns with civil and political rights to the recognition of social and economic rights. What, then, led him to move from the account of natural (negative) rights in *Rights of Man*, in which the salient distinction was between rights that we have the power to exercise without assistance (such as liberty of conscience) and rights that require the support of the civil power (such as rights to liberty and property), to develop an account in which (positive) social and economic rights emerge?

This development in his account did not simply extend the range of rights claims, it also deepened the justification for them. The first time he expressly committed himself to universal manhood suffrage was in *Letter Addressed to the Addressers* (Autumn 1792), where he based the claim on the fact that as 'everyman' pays tax in some form 'either out of the property he possesses, or out of the product of his labour, which is property to him...so everyone has the same equal right to vote.'²⁰ Suffrage thus seems to be justified by contribution. When he returned to voting three years later in his *Dissertation on First Principles*, contribution was relegated to an afterthought. Instead, the system of representation rests on the recognition that the right to vote 'appertains to him in right of his existence, and his person is his title deed.'²¹ There is a connection to property, but it is an essentialist claim, rather than a contributory one:

Personal rights, of which the right of voting representatives is one, are a species of property of the most sacred kind... The right of voting is the primary right by which other rights are protected. To take away this right is to reduce a man to a

¹⁷ RPW 81-2.

¹⁸ Published in A-C Thibaudeau, *Mémoires sur la Convention et le Directoire*, 2 vols, 2nd ed. (Paris, 1827), vol. 1, 112-16.

¹⁹ Also conveyed in his speech to the Convention on 7 July 1795; *L'ancien moniteur*, vol. 25, 171-172; Foner (ed.), *The Life and Major Writings of Thomas Paine*, vol. 2, 588-594. See also A. Jainchill, *Reimagining Politics after the Terror: the Republican Origins of French Liberalism* (Ithaca, NY, 2008), 45-6.

²⁰ RPW, 377.

²¹ RPW, 396.

state of slavery, for slavery consists in being subject to the will of another, and he that has not a vote in the election of representatives, is in this case.²²

Moreover, while it is possible to exclude people from voting, 'it is impossible to exclude them from the right of rebelling against that exclusion.' (The 'Letter to Thibaudeau' also talks about the inequality of rights generating 'la guerre civile ou la contra-révolution' and as fundamentally compromising the Convention's legitimacy).²³ And when the 'Inscription' to *Agrarian Justice* talked of the conspiracies against the Constitution, he identified the major defect of the Constitution as the imposition of a property-based franchise, seeing that as a basis for legitimate popular resentment: 'The right of voting for persons charged with the execution of the laws that govern society is inherent in the word liberty, and constitutes the equality of personal rights.'²⁴

This suggests a tight connection between the concerns of *Dissertation...* and the opening comments of *Agrarian Justice*. Paine's account of rights became closely tied to his sense that a system could rule legitimately only if it respected the liberty and judgment of each of its citizens, and to do that they had to be able to participate in the political process and have a say in who would legislate for them and stand in authority over them. That account is not there in the *Rights of Man*, nor in *Letter Addressed...* and it seems to be a function of his thinking changing and developing as he reacted to the 1795 Constitution. This also helps us to see why Paine's account of welfare began to change.

Unlike *Rights of Man*, *Agrarian Justice* did provide a principled defence of welfare provision, rooted in a conception of the original equality of man and the view that the earth in its uncultivated state was 'the common property of the human race.'²⁵ Paine emphasised that there were benefits to allowing private property in land and to permitting its private cultivation, and he accepted that inequality was the inevitable outcome of doing that. But he also believed that private enclosure diminished the access of others to the resources they required to generate their subsistence. To compensate for this, every proprietor owed the community a ground-rent for the land he held, to be used to support a right of inheritance for all. This would involve paying

²² RPW, 397-398.

²³ Thibaudeau, *Mémoires sur la Convention et le Directoire*, v.1, 113-5. The letter also points to the problems France will have in securing the allegiance of its armies if it does not grant all men equal rights, rather than basing citizenship and its rights on property.

²⁴ RPW, 412

²⁵ RPW, 417.

each person (seemingly irrespective of gender)²⁶ the sum of £15 as a compensation for the loss of natural inheritance at the age of twenty-one and providing an annual grant to the aged. These payments would be a matter of right, not of charity. They responded to the individual's claim against the common stock that rested on the basis that 'no person ought to be in a worse condition when born under what is called a state of civilization, than he would have been had he been born in a state of nature...' ²⁷The money was to be raised from progressive taxation on inherited wealth and would contribute to its more equal distribution.

A further component in Paine's thinking that developed alongside his reflections on rights (and did not feature in his American writings), but that he shared with Jefferson and was clearly linked to this discussion of both political and property rights, was his endorsement of the principle of generational sovereignty. Paine certainly sometimes talked of the natural state as one in which God gives all to man in common. But he also thought in time-slice terms. For each generation to be sovereign it cannot be bound by the political arrangements established by any previous generation. The essence of political rights is to be free to judge what arrangements are optimal, without thinking that they could or should be imposed on future generations. That gives us a rights-based account of the delimited legitimacy of collective judgments that Paine deployed in relation to government in *Rights of Man I* in rejecting Burke's argument in his *Reflections....* 'that the *English nation* did, at the time of the Revolution, most solemnly renounce and abdicate it (the right to choose their governors) for themselves, and for *all their posterity, for ever.*'²⁸ If government cannot be imposed on future generations, what about distributions of wealth and ownership of property? Paine came to see that these questions faced the same difficulty. If the first generation had rights over the earth, then it would be a violation of the equal rights of subsequent generations not to allow them the same rights. He does not seem to have seen the implications in relation to landed property in 1792, although it is possible that he was conscious of it as a parallel issue. But by 1795 he clearly started to consider this.

Paine first reflected on generational sovereignty in discussions with Jefferson when the latter was in Paris as American Minister in 1787 and 1788. They also

²⁶ A subject on which Paine was normally entirely traditional.

²⁷ *RPW*, 420

²⁸ *RPW*, 91.

discussed the proposals from the US Constitutional Convention. Both men were concerned about the absence of a bill of rights from the US Federal Constitutional proposals. In Jefferson's case, he first expressly touched on a set of arguments about the sovereignty of each generation in his correspondence with Madison in September 1789. Paine subsequently gave the argument considerable prominence in the first part of *Rights of Man* (1791).²⁹ This was clearly an idea that was circulating in discussions that centrally involved a Parisian group that included Paine, Jefferson and Condorcet. It is also probable that these discussions drew on Adam Smith's discussion in *Wealth of Nations* where he explained that primogeniture might have emerged as a necessary adjunct in conditions of major insecurity, but that, when countries were able to protect their citizens, the natural system for the division of inheritance would be equality.

'in the present state of Europe, when small as well as great estates derive their security from the laws of the country, nothing can be more completely absurd [than primogeniture and entail]. They are founded upon the most absurd of all suppositions...that every successive generation have not an equal right to the earth, and to all that it possesses; but that the property of the present generation should be retrained and regulated according to the fancy of those who died perhaps five hundred years ago.'³⁰

However, the implications of the principle of generational sovereignty for critiques of unequal property holdings were not clear to Paine until the winter of 1795. Certainly, it formed no part of his case for the welfare proposals in *Rights of Man II* – even though that text did denounce the 'excess an inequality of taxation' which throws a great mass of the community into poverty.'³¹

There were others at the time who might have made the connection and drawn the consequences more easily, but in ways Paine could not accept. Thomas Spence, in *The Rights of Man* (1793) argued that '....it is plain that the land or earth, in any country or neighbourhood, with everything in or on the same, or pertaining thereto, belongs at all times to the living inhabitants of the said country or neighbourhood in an equal

²⁹ See my 'Revolutionaries in Paris: Paine and Jefferson' in Philp, *Reforming Ideas in Britain: Politics and Language in the Shadow of the French Revolution* 197.

³⁰ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* ed Roy Harold Campbell and Andrew S. Skinner (Indianapolis, Indiana, 1976), Bk. III., ch. ii., sect, 6, 384-85.

³¹ *RPW*, 217

manner.³² It is probable that Paine was aware of Spence's position, but he was not an enthusiast for Spence's vision because he was concerned to protect the conditions for commerce, for which Spence had little fondness.³³ He may also have been aware of the writing of William Ogilvie, whose *Essay on the Right to Property in Land* (1782) distinguished 'the original value of the soil ...prior to all cultivation...the accessory or improved value of the soil; that to wit, which it has received from the improvements and cultivation bestowed on it by the last proprietor, and those who have preceded him....[and] the further value which it still may receive from future cultivation.'³⁴ That distinction is one which Paine (and Oglivie) could have drawn from Locke's account in the *Second Treatise*, but Ogilvie went further in wanting to arrange things so that every person would be able to command, from their community, forty acres (although he also expressed the view that this would require such a radical re-ordering of the social and political order in existence that it could not really be contemplated immediately. Instead he looked for a variety of partial remedies – none of which did justice to the right that he claimed for people). In both cases, however, the principle was one rooted in a commitment to securing landed property for all. Paine resisted that claim. Paine was also probably aware of a series of controversies in Britain, in which anti-Jacobin loyalists caricatured domestic reformers' desire for formal equality as threatening the forced equalization of property – indeed, the Association for the Preservation of Liberty and Property against Republicans and Levelers, founded in December 1792, emblazons the threat in its title, and reformers' claims to equality were very widely represented as claims to substantive distributive equality. Reformers found this a difficult case to answer – in large part because few had ever countenanced equalization of property, even those who understood that the power of the ruling elite relied heavily on their wealth and their monopoly of landed property. But this was not part of their agenda. When John Thelwall responded to the Gagging Acts of 1795 he was careful to underline the distinction between equal rights and equal property:

³² Thomas Spence, *Pig's Meat*, ed G. Gallop, (Nottingham, 1982, 60). Spence's main pamphlet arguing for a form of agrarian law appeared in 1793 as *The Real Rights of Man*. It had been a lecture to the Newcastle Philosophical Society in 1775, although it is doubtful that this circulated at all widely. William Ogilvie's *Essay on the Right of Property in Land* (1782) certainly influenced Spence

³³ Spence was an egalitarian while, in Samuel Moyn's terminology, Paine was a sufficiency theorist: *Not Enough: Human Rights in an Unequal World* (Cambridge, MA., 2018), although Moyn does not acknowledge Spence's work, which was prior to Babeuf's.

³⁴ Cited in Noel Thompson, *The Real Rights of Man* (Pluto Press, London, 1998), 15-16.

Remember, I do not mean equality of property. That is totally impossible in the present state of intellect and industry; and if once you could be seduced to attempt a system to wild and extravagant, you could only give to rascals and cut-throats an opportunity, by general pillage and assassination, of transferring all property into their own hands, and establishing a tyranny more intolerable than anything of which you now complain. The equality I mean is the equality of rights.’³⁵

Agrarian Justice might then be seen as Paine’s considered response to the situation in Paris, to the radicalism of Ogilvie and Spence, and potentially to the exigencies of the reformers’ position in Britain, but it is difficult to say which was the most influential. The timing of his writing of the pamphlet gives us ground for seeing his interest in property as arising from his thinking about what generational sovereignty should mean and he came to see the issues of voting and original property as linked only from the Spring of 1795. This led him to ask more probing questions about what the rights to liberty and equality entailed, not just for the political order, but for the social and economic order. How can we sustain generational sovereignty and individual liberty, without either insisting on equal distributions of land (the more classical Roman Agrarian Law), or allowing the acquisition, accumulation and exchange of property to generate massive inequalities (which violate generational sovereignty)? ‘When wealth and splendor, instead of fascinating the multitude, excite emotions of disgust; when, instead of drawing forth admiration, it is beheld as an insult upon wretchedness...the case of property becomes critical...it is necessary to remove the antipathies, and this can only be done by making property productive of national blessing, extending to every individual.’³⁶

In the wake of the social unrest in the Spring of 1795 (the Journées of 12 Germinal (1 April 1795), 10 Floreal (29 April), and 1 and 2 Prarial (20 and 21 May)), Paine’s *Dissertations on the First Principles of Government* (which he sent to Thibaudeau to be printed with his letter in June 1795), argued for universal manhood suffrage, but also claimed that ‘...wealth is often the presumptive evidence of dishonesty; and poverty the negative evidence of innocence.’³⁷ As to the great landed estates handed down

³⁵ *Peaceful discussion, and not tumultuary violence the means of redressing national grievance. The speech of John Thelwall, at the general meeting ...* (London, 1795), 14.

³⁶ *RPW*, 429

³⁷ *RPW*, 398

through descent, 'If it be asked how they could have been acquired, no answer but that of robbery can be given. That they were not acquired by trade, by commerce, by agriculture, or by any reputable employment is certain. How then were they acquired? Blush, aristocracy, to hear your origin, for your progenitors were Thieves.'³⁸ Clearly, the issues of voting and equality were coming together for Paine.

The delay between the writing of *Agrarian Justice* in the Winter of 1795 and its publication, in Spring 1797, with the 'Inscription' and the 'Preface' being later additions, may have resulted from Paine's concerns about the potential for his critique of inequality further to destabilize the republic in late 1795 and early 1796. Others may well have warned him of his intemperance towards the rich after the publication of his *Dissertation...* and his wholly unsuccessful 'Speech in the National Convention', July 7, 1795.³⁹ For more prudential grounds we might point to the decree of April (27 Germinal) 1796, authorizing the death penalty for those proposing the *loi agraire*.⁴⁰ Paine was certainly not a friend to popular disorders and he may have feared his pamphlet would contribute to social unrest. Above all, he would have been concerned to handle the question in a way that did not threaten the 'pacific system' of commerce, 'operating to cordialize mankind, by rendering nations, as well as individuals, useful to each other.'⁴¹ Consequently, he sought to work out the implications of generational sovereignty for issues of property, especially in relation to the dramatically unequal holdings in land that he associated (like Smith) with primogeniture and (like Spence, Ogilvie and Thelwall) with the exploitation of ordinary working men and women, who had only the value of their own labour to support themselves. But he also delayed publication of the pamphlet until he saw the political situation as less threatening. And when he did publish, he used the opening 'Inscription' to link the arguments in the text back to his wider account of rights, having reached a clearer view that property,

³⁸ *RPW*, 401

³⁹ Foner, *Collected Writings of Thomas Paine*. II.588-94 – this shares the reference to the indefensibility of marshalling soldiers to fight for a country that does not accord them the rights of a citizen with Paine's letter to Thibaudeau. For Paine's contribution to the debate see C. Lounissi, *Thomas Paine and The French Revolution*, 232-43.

⁴⁰ This re-institutes the decree of 18 March 1793. See P. M. Jones 'The "Agrarian Law": Schemes for land redistribution during the French Revolution', *Past and Present* 133 (November 1991), 96-133; and J.-P. Gross, *Fair Shares for All: Jacobin egalitarianism in practice* (Cambridge, Cambridge University Press, 1997).

⁴¹ *RPW*, 265 – Foner's edition uses 'unite' rather than cordialize.

generational sovereignty, and political rights are integral components in the preservation of the individual's liberty.

III

In *Agrarian Justice* Paine insisted on the distinction between natural property in earth, air and water that is each person's birthright and should be distributed in some form equally, and artificial or acquired property that arises from human invention and labour and should be proportional to the individual's contribution and that is theirs by right to have, to hold, and in part to bequeath. So much, so Lockean. But in contrast to Locke, Paine argued that while labour does improve the earth, and allows a more extensive population to be supported, the unequal distribution of property associated with European regimes results in millions being in a far worse condition than had they been born among 'the Indians of North America.'⁴² Moreover, the poor had become an 'hereditary race' unable to escape poverty, with more being added annually. That meant that modern property rights could not meet the condition of leaving 'good and enough for all'.

This led Paine to distinguish between the contribution of labour, which is all the proprietor can reasonably claim, and the value of the land itself, for which every proprietor owes a ground rent for the privilege of working it. Citing the stadial theory of the Scottish Enlightenment, and largely following Smith, Paine argued that landed property could not exist in hunting and gathering societies, or in herding societies, and that it was only in societies engaged in cultivation that it could have developed, at which point the distinction between the original value of the land and the product of labour becomes blurred. But whereas labour increases the productivity of land up to ten-fold, the development of monopoly in land subsequently produces the greatest evils, having 'dispossessed more than half the inhabitants of every nation of their natural inheritance, without providing them with any indemnification... for that loss [and creating] a species of poverty and wretchedness that did not exist before.'⁴³

In contrast to Spence and Ogilvie, and in line with the decrees of the Convention, Paine rejected agrarian law and the idea that the current system of property should be

⁴² *RPW*, 416 – 'the life of an Indian is a continual holiday, compared with the poor of Europe.'

⁴³ *RPW*, 419

swept away. But he saw the absence of compensation for the loss of the original birthright as the key problem. To mend that deficiency he proposed to provide a grant to each person on attaining the age of 21 as a recompense for the loss of his natural right to access land. This would be financed through death duties (at 10%) imposed on landed estates following their owner's death. The sovereignty of each generation allowed Paine to reject any right to 'the monopoly of natural inheritance' since natural inheritance is a right that each has, irrespective of when they are born. The taxation on land on the death of its proprietor provides a return to the community of the natural value of the land, passing it to the next generation.

Paine also admitted that the tax would fall not only on landed property but on all personal property on death. He justified taxation on all inherited wealth (including some that is the product wholly of the testator's labour) on the grounds that personal property is the effect of society, 'All accumulation...of personal property, beyond what a man's hands produce, is derived to him by living in society; and he owes, on every principle of justice, of gratitude, and of civilization, a part of that accumulation back again to society from whence the whole came.'⁴⁴

Robert Lamb shows that this gives three types of property on only two of which did Paine see taxation as justified: natural property in land (for which a ground rent is due); property created by labor (which is inviolably one's own); and property created by labour but passed on through inheritance (which might be taxed, on something like a principle of 'a debt to social institutions' or reciprocity).⁴⁵ Paine's account, however, raises another potential ground for taxation on all property. The third category of property created by labour that the agent has a complete right to dispose of but not a complete right to pass on, is linked to the claim that personal property is the effect of society. Paine's arguments here, about accumulation being in many instances a function of paying too little for labour and, centrally, about the uncertain relation between labour and the profit it produces, gives us a distinct ground for the taxation of property acquired through labour. It can be taxed on bequest because it is only through the cooperative scheme of society that the agent has acquired and maintained his holdings, and he owes a portion in recognition of that social contribution. This principle would also permit the taxation of acquired property during an agent's lifetime, a claim Paine

⁴⁴ *RPW*, 428

⁴⁵ R. Lamb, *Thomas Paine and the Idea of Human Rights* (Cambridge, 2015), 142.

resisted largely on prudential grounds: we need certainty and security in property holdings if society is going to flourish and attacking people's holdings in their lifetime would cross a line and breach the confidence necessary for commerce. He saw benefits to all in allowing individual lifetime accumulation on the grounds of encouraging enterprise and commerce. But this was a question of prudence or utility, rather than a principled objection to taxation of income during one's lifetime. Moreover, this restriction refers to taxation on wealth and income for redistributive purposes; Paine had no problem with taxation of the fruits of labour to support traditional government expenditures.

On this interpretation, Paine's *Agrarian Justice* is not an especially egalitarian text. It insisted that men have rights as an expression of their personhood and as a means to exercise their liberty, and those rights include claims deriving from an original common property in the earth. Moreover, he was keen to emphasize that, although the current system had monopolized land with no indemnification for the dispossession of this original title, 'the fault, however, is not in the present possessors...[it] is in the system, and it has stolen imperceptibly upon the world...'⁴⁶ That was an additional reason not to fuel hostilities. Nonetheless, Paine's 'economic liberalism' includes extensive social rights that the government (and population collectively) has a duty to meet. It is important to recognize that this is not the characteristic view of modern economic liberals. . Paine's thinking about the economy was probably much influenced by Smith either directly or indirectly (and perhaps also by the Physiocrats equation of society and commerce), but this was an eighteenth century rather than a twentieth century reading of Smith; and it was an eighteenth-century view of the social character of commercial relations.⁴⁷

Smith was well-aware of the dangers associated with the truck and barter of trade, and the tendencies of trades to conspire against the public. Paine seems to have thought of such tendencies as short-sighted and misguided. He viewed commerce as potentially harmonious and as reciprocally and collectively beneficial. His view of the practices of trade has a distinctly early modern character. As Craig Muldrew describes

⁴⁶ *RPW*, 420

⁴⁷ It is also important to recall that 'liberal' as a political or economic label with content is something that emerges from Spain only after 1810; M. Philp and E. Posada Carbo, 'Liberalism and Democracy', in J. Innes and M. Philp (eds.), *Re-imagining Democracy in the Mediterranean, 1760-1860* (Oxford, 2018) 179-204.

early modern exchange: ‘...the contractual bargaining of trade was described as mutual benefit, and the word interest was not used in the sense of self-interest, but referred to mutual advantage, benefit or profit of two or more parties.’⁴⁸ Paine’s account of commerce and exchange expressed exactly this kind of vision in its account of what a system would be like in which force and fraud have been eliminated and in which each can see the benefit they gain from the success of others. It is a highly social conception of the economy that, in effect, does not distinguish society and economy. Socio-economic rights are an integral part of that picture, not an adjunct to it, because they are central to sustaining a community of free and equal persons pursuing their own happiness, in which each has a sense of just treatment and of the collective benefit generated by the prosperity of some. That view was one which many physiocrats in France had held to early in the revolution and to which several returned under the Consulate following the collapse in faith in generating patriotic virtue.⁴⁹ What *Agrarian Justice* provided was a principled account that recognized the extensive poverty in the current state and proposed a principled system for a frictionless redistribution to re-establish the balance that a just social and economic order should ensure.

IV

In Paine scholarship there has been lamentably little recognition of the changing character of his ideas yet, as should be clear, Paine’s thinking about rights, their nature, their scope, and their implications did change in important ways, especially between 1787 and 1797. Some of those changes involved reacting to the arguments of others, as in his ‘Letter to Jefferson’ or in relation to Burke’s *Reflections*... and its quasi Hobbesian account of natural rights (that they are surrendered on entering society). In some cases, the reaction was to political events – it is likely that the *Letter Addressed to the Addressers* (1792) while presented as a reaction to the campaign for loyal addresses to the King was partly a result of Paine’s experience of the reform objectives of the Society for Constitutional Information and the emerging London Corresponding Society. The essays of 1795-97 are further examples of the argument developing greater depth and confidence, connecting together sets of issues that Paine had not previously seen as related, especially in relation to welfare and distributive shares. While partly reactive,

⁴⁸ C. Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (London, 1998), 140.

⁴⁹ R. Whatmore, *Republicanism and the French Revolution* (Oxford, 2000), ch. 9.

responding in a number of ways (not least prudentially) both in the timing of their publication and in the developing link between political and social and economic rights, there is also a sense of Paine's case developing in part under its own pressure. Once he had adopted a view of society as potentially self-regulating on the basis of rights and had committed to generational sovereignty, he faced the problem of how to handle inequality – both to explain its emergence and to respond to the problem it posed for the well-being of many in the community. He was not an egalitarian in any strong sense. But he believed that people's liberties or negative rights, should be equally protected. He began by raising questions about what political rights were necessary to ensure that equal protection. And these reflections brought up issues about how principles of generational sovereignty had wider implications for the legitimacy of property and its monopoly. He could see that the existing distribution of property had murky foundations and created a situation in which labour might be unfairly exploited. And his experience, especially in Paris, brought him to see that people who were impoverished and excluded both politically and socially, tended to react accordingly. That led him to rework his account of rights – less as instruments or protections from others, more as an integral component of what it meant to be a person and a citizen. That brought him back to the question of social and economic inequality. *Agrarian Justice* sought to turn an unjust into a just order – one in which all people were accorded a standing as citizens and could see the political and social system in which they participated as fair and mutually beneficial. The questions of legitimacy, mutual benefit, reciprocity, and political and social rights came to be seen as intrinsically related. But this was something he only gradually came to appreciate. He did so in part because he began to see that *égalité* was a slippery slope and he was persuaded that the deeper priority was to protect the liberty of the person. In constructing that defense he came to see that there could be no bright line between negative and positive rights: if the goal of rights is to enable the liberty of the person, then this must involve rights against the interference of others alongside positive rights to make claims on the common inheritance of mankind. As this line of thought developed he also further articulated a conception of society in which economic activity worked for all, and in doing so, further reduced the need for government to interfere in people's lives, and further reduced the dangers of force and fraud in government.

Paine's position is important because it is not 19th Century laissez-faire or free market capitalism, but neither is it agrarianism. Thomas Spence, unsurprisingly, was not impressed by *Agrarian Justice*: 'The poor beggarly stipends which he would have us to accept in lieu of our lordly and just pretensions to the soil of our birth, are so contemptible and insulting that I shall leave them to the scorn of every person conscious of the dignity of his nature...'⁵⁰ But, Spence saw the accumulated wealth of the propertied class as derived from the labour of the exploited masses. While both men recognized the unequal bargaining power that ownership of land conferred they differed dramatically in their prescription. Spence insisted that the contribution of labour was almost everything and that claims to unequal shares of land were unjust and compounded other injustices. In doing so, he bequeathed an insistence on land rights for the poorer sections of the community that came to form a central plank of the chartist movement. In contrast, Paine believed that the free play of commerce would suffice, once the distorting influence of accumulated property was eroded by taxation on inheritance, the end of primogeniture, and the distribution of a grant to those reaching their majority and to all as they aged or were threatened with indigence. In that system, Paine thinks, all could contribute to a growing economy, which all could benefit from.

Paine largely ignored the line we now insist on between negative and positive rights, in part because of his reading of Smith and his discussions in France and England. By locating the justification of rights claims in individuals who were members of sovereign generations, both governing institutions and property were rendered matters for decision. And while part of the grounds for such decision should be (in broad terms) utility (and the preservation of a flourishing economic life), it would also be framed by an account of our equal natural liberty, our common inheritance and the positive right to the earth and its fruits. Paine did not see redistribution through inheritance tax as a problem for property rights, but as a necessary condition for the liberty we must have as human beings, which takes precedence over the social institution of property.

Paine's ideas circulated widely in Britain, but much less so in France. In 1816, the *Morning Post* contained an article discussing the Spencean Land Scheme, in which it

⁵⁰ Spence, *Pig's Meat*, 112.

drew attention to the similarities with the groundwork in Paine's *Agrarian Justice*, although it recognised that with the Spenceans 'the operation is more extensive, more levelling, and more destructive of all ranks and orders'.⁵¹ From 1821 Richard Carlile began reprinting Paine's works for a popular audience, and ten years later James Watson was doing the same, with the work being advertised and discussed in the *Poor Man's Guardian*.⁵² In Britain his position chimed well with popular complaints about the 'old corruption' and unsocial character of the economy in the wake of the Napoleonic wars. In France, his position was largely ignored, in part because of a richer flourishing of a socialised political economy among the St Simonians, Fourierists, and others. But in both cases, the emphasis on rights ebbed.

That said, in neither country was the theoretical discussion of the grounding of social and economic rights as complex or sophisticated as Paine's. The Chartists inherited a platform that sought to go back to the land (which Paine denied was possible); but ideas of just redistribution based on original communal ownership of property, limitations on inheritance, and the dependence of property on the wider institutions of society, on the basis of which just claims can be made to support the needs of all, were rarely discussed. That this is so might be partly because there remained tensions in Paine's case, between the natural rights claims arising from original common ownership of property, and the claims that relate to acquired or artificial property. The right to some compensation for the appropriation by others of land, was a clear claim about the state of nature and the inviolability (and inalienability) of such primordial rights.

The claim about the dependence of acquired property on society was rather different: it appealed not to natural right, but to claim about reciprocity and obligation that arise through association. And, while the former could be set out in terms of claims about just restitution, the latter became, in Paine's prose, something that rested on an implicit contract of mutual benefit: 'When the riches of one man above another shall increase the national fund in the same proportion; when it shall be seen that the prosperity of that fund depends on the prosperity of individuals; when the more riches a man acquires, the better it shall be for the general mass; it is then that antipathies will

⁵¹ *Morning Post*, London, Thursday Dec 19, 1816, p. 3, *British Library Newspapers, Part I: 1800-1900*.

⁵² See, for example, the repurposing of *Dissertation on the First Principles of Government* for the campaign for political reform and the abolition of aristocracy in *The Poor Man's Guardian* (London, England), Saturday, December 15, 1832; Issue 80, *British Library Newspapers*.

cease, and property be placed on the permanent basis of national interest and protection.⁵³ But that language modified considerably the impact that claims about an equal right to natural property had on the claims for social and economic rights. It becomes one underlying justification for people's claims, but a wider set of considerations are brought in to determining the exact set of positive rights that a society will accord to its members.

Abstract

This essay focuses on Thomas Paine's *Agrarian Justice* (1796-7). It argues that it represents a major development in his thinking linking social and economic rights to liberty and seeing positive and negative rights as closely connected. It locates the impetus for these changes in doctrine to his working out of the implications of the principle of generational sovereignty in relation to his developing case for universal manhood suffrage, against the background of discussions of the Directory constitution of 1795. This account emphasizes the developing character of Paine's thought and its increasing subtlety as he ties social and economic rights into an account of the pacific character of commercial society, thereby combining economic liberalism with a significant dimension of egalitarianism.

⁵³ *RPW*, 429.