


ROBERT LAMB

# Thomas Paine

and the  
Idea of Human Rights







## *Thomas Paine and the Idea of Human Rights*

Thomas Paine is a legendary Anglo-American political icon: a passionate, plain-speaking, relentlessly controversial, revolutionary campaigner, whose writings captured the zeitgeist of the two most significant political events of the eighteenth century, the American and French Revolutions. Though widely acknowledged by historians as one of the most important and influential pamphleteers, rhetoricians, polemicists and political actors of his age, the philosophical content of his writing has nevertheless been almost entirely ignored. This book takes Paine's political philosophy seriously. It explores his views concerning a number of perennial issues in modern political thought, including the grounds for, and limits to, political obligation; the nature of representative democracy; the justification for private property ownership; international relations; and the relationship between secular liberalism and religion. It shows that Paine offers a historically and philosophically distinct account of liberalism and a theory of human rights that is a progenitor of our own.

ROBERT LAMB is Associate Professor of Political Philosophy at the University of Exeter.





# Thomas Paine and the Idea of Human Rights

ROBERT LAMB



**CAMBRIDGE**  
UNIVERSITY PRESS

**CAMBRIDGE**  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107106529](http://www.cambridge.org/9781107106529)

© Robert Lamb 2015

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2015

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication data*

Lamb, Robert, 1979–

Thomas Paine and the idea of human rights / Robert Lamb.

pages cm

ISBN 978-1-107-10652-9 (hardback)

1. Paine, Thomas, 1737–1809. 2. Human rights – Philosophy. 3. Political science – Philosophy – History – 18th century. I. Title.

JC177.A4L36 2015

323.01–dc23

2015008285

ISBN 978-1-107-10652-9 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

*For my parents,  
Seumas and Elisa,  
with gratitude, in awe*





# Contents

|  |           |
|--|-----------|
| <i>Acknowledgements</i>  | page viii |
| <i>Note on texts</i>   | xi        |
| Introduction   | 1         |
| 1 Paine as political philosopher: interpretation and understanding | 8         |
| 2 Political obligation, human rights and the moral universe        | 25        |
| 3 Rights of democratic inclusion and the virtues of citizenship    | 74        |
| 4 Private property, the natural inheritance and rights to welfare  | 111       |
| 5 Cosmopolitanism and the rights of nations                        | 152       |
| 6 Religion, creation and liberalism                                | 179       |
| Conclusion   | 200       |
| <i>Bibliography</i>  | 203       |
| <i>Index</i>   | 211       |

## *Acknowledgements*

I have been reading, writing and thinking about Thomas Paine – on and off – for over ten years and I have accumulated a mountain of intellectual debts, most of which blur any supposed boundary between professional and personal life.

Although I have been threatening to write this book for what feels a long time, it did not become a serious undertaking until 2013. I wrote the majority of it in the first half of that year while a visiting fellow at the University of Sydney's Institute for Democracy and Human Rights. I am extremely grateful to several people there: to John Keane for arranging such a fabulous visit and for numerous thought-provoking discussions, as well as much hospitality and enthusiasm for my project; to Giovanni Navarria for so many lovely conversations in the sun and in our office; to Alex Lefebvre for being so welcoming, and for allowing me to expose my thoughts on Paine to his undergraduates; to David Allinson and Ben Moffitt for beer and sympathy; to the Australian Lambs – Archie, James, Aidan and Janeen – for their warmth and generosity; and to the University of Exeter for awarding me the sabbatical and also providing additional funding for my stay down under.

I finished the book during a typically chaotic teaching term in the autumn and am indebted to my colleagues in the Department of Politics for their toleration of my preoccupation with it. The study of political theory has flourished splendidly at Exeter in recent years and I have had the great fortune to be surrounded by a tremendous bunch of talented peers, who have been both stimulating interlocutors and good friends: particular thanks goes to Kate Berrisford, Mike Cailes, Robin Douglass, Robin Durie, Chris Fear, Jack Griffiths, Keith Hyams, Stuart Ingham, Craig Lundy, Laura Moralee, Chris Nathan, Nikola Regent, Andy Schaap, Ed Skidelsky, Ben Thompson and Nathan Widder. I owe special thanks to the two people who have done the most to make my academic life at Exeter so fulfilling since I first arrived as a doctoral

student in 2002. Dario Castiglione has been an unfailing source of kind, selfless support and sagacious advice and his infectious senses of humour and mischief have enriched my working life. As first my PhD supervisor and now my colleague, Iain Hampsher-Monk has been extraordinarily generous with his counsel, indulging even my earliest jottings with the ideal mixture of sharp criticism and sympathetic encouragement. In addition to his supererogatory mentoring, I am – along with the thirstier theorists at Exeter – indebted to Iain for his legendary hospitality, not least all the single malt whiskies enjoyed over the years in the wee small hours at Clifton Hill.

Parts of the book have been presented to seminars at the Universities of York, Exeter, Plymouth, Kent, Oxford, Sydney, Cardiff and Cambridge, and to the Western Political Science Association meetings in San Antonio, Portland and Seattle. I am grateful to those audiences and to other scholars: Mark Philp has been a friendly critic of my work since he examined my doctorate; I have learned a great deal from Mark Bevir, whose advice and encouragement I have also benefited from; Matt Sleat provided very useful comments on the second chapter of the book; Sarah Pemberton did likewise on the third; and Christopher Fear offered some characteristically perceptive thoughts on how I might articulate my methodological commitments. Two anonymous reviewers supplied constructive suggestions about specific aspects of the manuscript and the editorial efficiency of John Haslam and Carrie Parkinson at Cambridge University Press has been exemplary. Earlier versions of parts of [Chapter 4](#) and most of [Chapter 5](#) have been published already, in *The Review of Politics* ('Liberty, Equality and the Boundaries of Ownership: Thomas Paine's Theory of Property Rights', Vol. 71 (2010): 483–511) and *The Journal of Politics* ('The Liberal Cosmopolitanism of Thomas Paine', Vol. 76 (2014): 636–48) and are reprinted with permission of Cambridge University Press.

I owe profound gratitude to others whose assistance with the book was less directly academic than those noted above: to Alan Black, for over twenty years of laughter and spiritual fortification; to Simon Townsend, for many amusing and dissolute ramblings in and around Exeter; to Corinna Wagner, for first introducing me to Paine and for much provocation over the years; to Sarah Drews Lucas, for her delightful companionship during much of this writing process – when she was emotionally proximate though geographically remote – and also for carefully reading, and offering vital criticisms of, the

entire manuscript; and to the whole Lamb/Mazzoni clan, especially my brothers, David, Simon, and Andrew, for their camaraderie. Finally, this book is dedicated to my parents, Seumas and Elisa, though it is really a paltry gesture in light of all the succour they have given me.

R.L.  
*Exeter*  
*August 2014*

## *Note on texts*

All references to Paine's works are from Philip S. Foner's two-volume edition, *The Complete Writings of Thomas Paine* (henceforth CW I or II) (New York: Citadel Press, 1969). His major essays are cited using the following abbreviations:

*Common Sense* – CS

*Rights of Man* – ROM

*Rights of Man, Part the Second* – ROM II

*Dissertation on First Principles of Government* – DFPG

*The Age of Reason* – AOR

*The Age of Reason, Part Second* – AOR II

*Agrarian Justice* – AJ

Foner's edition of Paine's works is the best currently available, but there are reasons to doubt the authorship of some of the minor essays included therein. This is especially true of some of the journalism, where the author is identified pseudonymously. I have tried therefore to avoid reference to essays with ambiguous authorship and do not use them to defend any important interpretive claims. For references to the writings of other canonical figures, I have – where possible – used the 'Cambridge Texts in the History of Political Thought' series.





## Introduction

Thomas Paine is an Anglo-American political icon: a brandy-swilling, swashbuckling, straight-talking, revolutionary campaigner, whose writings – more than those of any other – captured the zeitgeist of the two most significant political events of the eighteenth century, the American and French Revolutions. Widely acknowledged by historians as the most important pamphleteer, polemicist and political activist of his age, his writing has nevertheless suffered remarkable neglect from political theorists and philosophers. Indeed, despite having been the subject of much valuable scholarly attention throughout the twentieth century, there has been relatively little interest expressed in Paine that has not been either of a purely historical or of a biographical nature.<sup>1</sup> He is rarely thought to have advanced any intrinsically interesting or original viewpoints about politics; nor are his works often included in the lists of great modern texts that students of political philosophy are required to read during their studies. His uniqueness as a writer is thought to be found not in the substance of his theoretical reflections, but to lie instead in the provocative manner he adopted and demotic language he used, as well as in the political action that his works inspired and influenced.<sup>2</sup> At the same time, Paine's political legacy is

<sup>1</sup> John Keane's *Tom Paine: A Political Life* (London: Bloomsbury, 1995) is, by some distance, the most comprehensive and impressive biographical treatment of Paine. Previous biographies include Moncure Conway, *The Life of Thomas Paine* (London: Knickerbocker Press, 1892); W.E. Woodward, *Tom Paine: America's Grandfather* (London: Secker and Warburg, 1946); Alfred Owen Aldridge, *Man of Reason: The Life of Thomas Paine* (London: Cresset, 1959); D. Hawke, *Paine* (New York: Harper and Row, 1974); D. Powell's *Tom Paine: The Greatest Exile* (London: Croom Helm, 1984); A.J. Ayer, *Thomas Paine* (London: Secker and Warburg, 1988); Jack Fruchtman, Jr., *Thomas Paine: Apostle of Freedom* (New York: Four Walls Eight Windows, 1984).

<sup>2</sup> There are notable exceptions to this tendency, such as Gregory Claeys, *Thomas Paine: Social and Political Thought* (London: Unwin Hyman, 1989), Mark Philp, *Paine* (Oxford: Oxford University Press, 1989), Jack Fruchtman, Jr., *Thomas Paine and the Religion of Nature* (Baltimore: The Johns Hopkins University

today somewhat schizophrenic, insofar as he is lauded at once by the libertarian ‘Tea Party’ right in the USA and by the Bennite socialist left in the UK, his memory invoked warmly and authoritatively by American presidents as ideologically divergent as Ronald Reagan and Barack Obama.

With this scholarly neglect and ambiguous public legacy in mind, my aim in this study is to rehabilitate Paine’s theoretical reputation and demonstrate that his writing contains a political philosophy that is fundamentally coherent and of continuing interest and relevance for the way in which we think about human rights and their implications. To this end, I present an analytical reconstruction of his political theory, which demonstrates his commitment to the concepts of individual freedom and human moral equality. I draw on a variety of Paine’s essays, pamphlets and letters across a diverse range of themes that are prominent both in his writing and in contemporary political philosophy. These themes include the grounds for (and limits to) political obligation; the nature of and justification for representative democracy; the right to own private property and entitlements to welfare provisions; international relations and global justice; and the nature of religion and its relationship to secular liberalism. I argue that on each of these topics Paine has something to say that is genuinely unique within the history of ideas and, when taken as a whole, his thought represents a distinct contribution to political philosophy.

In addition to the individual interpretive claims put forward about particular political themes, there is a general, overarching argument that I pursue throughout the book. This argument concerns the identity

Press, 1993), Jack Fruchtman, Jr., *The Political Philosophy of Thomas Paine* (Baltimore: The Johns Hopkins University Press, 2009). These works do, however, only go so far to address the neglect of Paine as a political theorist of enduring significance. Although Claeys achieves his objective of ‘a fairer and more detailed treatment of [Paine’s] ideas’ (3), the thrust of his analysis is contextual: he thus suggests that ‘If one thread runs through my interpretation of Paine, it is the attempt to place his ideas and their reception in the context of the recrafting of republican ideals by political reformers in the light of their increasing acceptance of commercial society’ (5). Philp’s book succeeds in its aim to offer ‘a much fuller account of Paine’s political theory . . . than can be found in most of the work on him published so far’ (x), but is intended primarily as an introduction to his thought. The emphasis in Fruchtman Jr.’s two studies is again historical and his interpretive claims about Paine’s homiletic style and naturalistic religious beliefs stem from an interest in the political languages he invoked rather than the substantive theory he articulated.



of Paine's thought. I aim to show that his thought offers a *liberal* theory of human rights, one that is historically and philosophically distinct and should be regarded as theoretical progenitor of our most familiar understanding of this idea. This suggestion requires some immediate clarification. Most obviously, I need to spell out what I take liberalism to mean, why we should think Paine an affiliate and why we might consider his thought as a historically significant variant of it. The definition of liberalism that I work with here should hopefully not be too controversial. I conceive it broadly as a historical tradition comprised of individual viewpoints that – though not necessarily shared in an exact sense – overlap sufficiently for it to have definitive intellectual characteristics, such that it can be distinguished from others.<sup>3</sup> This construal allows for the existence of a number of subterranean intellectual traditions within liberalism (as in the case of libertarianism) as well as for crossovers between traditions (as in the case of liberal feminism). The reconstruction of intellectual traditions – and location of past thinkers within them – is one of the main tasks undertaken by historians of ideas. An obsession with classifying a thinker can of course become tiresome if approached in too partisan a fashion, or if the label is regarded as an interpretive straightjacket that tries to force a thinker exclusively into one political camp. But if done with an open mind, there is huge value in properly situating thinkers within traditions: doing so improves our understanding of the philosophical identity of the former and of the historical development of the latter.

Though a rich and diverse tradition, liberalism is usually characterised by its commitment to the normative sanctity of the individual.<sup>4</sup> The striking feature of modern liberalism as an intellectual tradition is the ascription of inviolable human rights to all persons in recognition of

<sup>3</sup> The fact that traditions identified by historians must have some definitive characteristics does not imply that they are hypostatized entities with essential characteristics, but are rather contingent products of individual thought. The understanding of tradition that I invoke is outlined by Mark Bevir in *The Logic of the History of Ideas* (Cambridge: Cambridge University Press, 1999), 200–213.

<sup>4</sup> It might be objected that utilitarian theories – those that call for the maximisation of happiness as a matter of political right – provide an example of a variant of liberalism that is incapable of adequately protecting the individual. But even if this is true in terms of its implications, it cannot be denied that utilitarianism is itself a fundamentally individualistic doctrine, grounded in Bentham's justification of aggregation: the insistence that 'every man [is] to count for one, and nobody for more than one'.

that commitment. The rights that liberals ascribe to individuals are explained with reference to the status of persons as moral *equals*. Such rights are, in turn, most often ascribed to individuals for the purpose of protecting, or enabling, individuals to exercise, or benefit from, *freedoms*. Rights, equality and freedom are the concepts that define modern liberalism. These concepts are central to Paine's political thought.

While the substantive character of Paine's liberalism will be borne out during the course of my reconstruction of his thought, the question of his historical significance within that tradition should be mentioned at the outset. His thought is not novel purely by virtue of its individualism, nor because of the inviolability of the rights he identifies; nor is it so because of his commitments to basic equality and to the protection of valuable freedoms. Several of these themes are prominent features in the writings of canonical early modern political thinkers, most notably in the contractualist thought of Thomas Hobbes, John Locke and Jean-Jacques Rousseau. Yet, as I argue, Paine is importantly different from these writers because the nature of his thought marks him out as the progenitor of our modern understanding of human rights.

As my analysis does not – at least not by design – concern itself with the development of Paine's thought over time, its structure is not chronological. Nor does it approach each of his works separately, though certain chapters will focus on only one or two texts in some detail. In each chapter, I explore Paine's viewpoints on questions prominent in modern political thought, which together comprise a theory of human rights. In the [first chapter](#) – before I get to Paine's writing – I address some methodological issues: I explain why it is both possible and valuable to treat his texts as works of political philosophy concerned with perennial problems, rather than as pamphlets to be understood only in their particular ideological contexts. I then move on, in the [second chapter](#), to the fundamentals of his political beliefs: this involves attention to his understanding of the moral universe, his account of basic liberal rights and his axiomatic commitment to human equality. His thinking on these issues is most explicit in *Rights of Man*, where he engages with the conservatism of Burke, which he rejects in favour of a rights-based liberalism. Through his rejection of Burke, Paine outlines a seemingly libertarian theory of political obligation, which insists that the existence of a general duty of obedience to government is entirely dependent upon the consent of living

individuals. I outline this argument as well as his commitment to basic liberal rights to freedom of action, thought and expression and to a state that is neutral between competing visions of the good life. I argue that his commitment to such rights is based on the value that freedom has for individuals and his belief in the legitimate pluralism of a political community.

Having established that consent and the protection of individual rights are the necessary conditions for legitimate political authority, I turn, in the [third chapter](#), to Paine's account of the structure of the just political system, attention to which undermines the plausibility of a purely libertarian interpretation of his thought. He makes it quite clear – in *Rights of Man, Part Two*, and elsewhere – that government must adopt a certain structure: it has to be a representative democracy. I unpack Paine's argument for representative democracy and show that he believes it can protect equality amongst citizens through a kind of 'publicity principle' that requires there to be public fora that enable comprehensive political engagement across – and the display of civic virtue within – a community. I then provide a theoretical reconciliation between his liberal commitment to rights and his republican commitment to civic virtue.

The [fourth chapter](#) focuses on Paine's view of economic rights, reconstructing his theory of private property and distributive justice. I draw on his work *Agrarian Justice* to explain his account of legitimate acquisition and ownership. His theory of property stands singularly in the history of political thought, not least because of the way in which it fuses commitments to liberty and equality. I show that Paine offers a labour theory of acquisition, which departs from Locke by placing normative justification on the value added through initial acts of cultivation on the natural world. This departure generates a radical egalitarianism from within an otherwise libertarian theory of property by insisting that the value of the natural world that preceded such cultivation remains commonly owned in a significant moral sense. After showing how Paine manages a simultaneous adherence to libertarian rights of ownership and the egalitarian principle of redistribution through government taxation, I discuss the rights to welfare provisions that he defends in *Rights of Man, Part Two*.

In the [fifth chapter](#), I consider how Paine's individualistic theory of liberal rights translates to the global sphere by examining his conception of international relations. I argue that while there is much evidence

to explain why he is understood to be a cosmopolitan theorist committed to universal political norms, this reading becomes problematic when his defence of the rights of nations is appreciated fully. In order to resolve the tensions between his cosmopolitanism and his idea of nationhood, I argue that national sovereignty must be thought conditional on a background of liberal rights. What emerges following this resolution is a species of cosmopolitanism, one that accords absolute priority to the protection of universal human rights. The Paineite theory of international relations raises questions about possible liberal intervention between states, while the trumping force of libertarian consent means that the prospect of global governance is accorded legitimacy without actual endorsement.

In the sixth and [final chapter](#), I turn to an important but oft-ignored area of Paine's thought: the question of its religious basis and how his professed Deism fits with his political ideas. I outline the nature of Paine's Deist religious commitments and his reasons for rejecting Christianity and then examine the connection between his belief in God and his political philosophy. I argue that it is through God – and specifically through the idea that we are created by God – that Paine grounds his assertion of equality, but that his theology does not make any thick imprint on his broader account of justice. I then turn finally to consider his vindication of God's existence, which I suggest is best understood as a phenomenology of religion, rather than an attempt at deductive reasoning. At the heart of considerations of his religious beliefs is the identity of his liberalism itself, which emerges as normatively secular but foundationally theological.

The overall argument that I pursue throughout the book – and to which each chapter should be thought a contribution – is that Paine's views comprise a liberal theory of human rights. His texts provide the statement of a philosophy that remains highly relevant to twenty-first-century politics. It is nevertheless important to emphasise from the beginning that this study is not an attempt at a vindication of Paine's theory. Nor is it an attempt to solve problems in contemporary political theory, if this is understood to mean finding final answers or solutions in the writings of a long-dead thinker. It is rather an exercise in interpretation, one in which I seek to animate the spirit of Paine's thought in a novel, productive, yet faithful way, and to include his voice in conversations from which he has traditionally been excluded. My objective

is to depict him in a manner akin to the portrait by Laurent Dabos on the front of this book: as someone who – as well as being an influential political actor writing during dangerous, raucous times – spent a lot of time at a desk in a quiet study, writing about and grappling with the most significant and enduring problems in political philosophy.

# 1 *Paine as political philosopher: interpretation and understanding*

In this book, I offer an analytical reconstruction of Paine's political philosophy: I examine his texts and offer interpretations of his views about important political problems that concerned him. My focus is on his engagement with those long-standing problems that not only occupied his contemporaries and the writers who preceded him, but are also of interest today and will almost certainly remain so for future minds. The aim is to determine what his overall contribution to modern thought is, that is, what a Paineite political theory looks like. Before proceeding with my analysis, I want to address some important issues concerning its feasibility and value. While it is tempting to consider the fruits of my interpretive labour to be themselves capable of justifying the approach I take, such an attitude will not convince those sceptical about treating Paine's writings as works of political philosophy capable of speaking across time to perennial problems. Scepticism towards such an approach might derive either from general worries about anachronistically taking Paine's ideas out of their context or from particular doubts that his writing is suitable for this kind of analysis. To assuage such worries, I will – as tersely as possible – advance the following arguments: (1) that the concept of anachronism makes sense only when understood in evidentiary terms and therefore, in principle, poses no threat to my approach to Paine; (2) that political philosophy should be construed broadly as an activity and that such a construal invites Paine's inclusion; and (3) that the historical understanding of thought involves (and need involve nothing more than) the ascription of beliefs to individuals. A chapter on methodology might strike some readers as unnecessary, because the nature of my project is uncontroversial and its potential value obvious. Readers who hold such a view should feel free to skip this discussion and proceed directly to the analysis of Paine's writings in the [next chapter](#). For my part, having encountered so much of what strikes me as muddled thinking about the nature of historical understanding, I feel I should be as upfront as possible about my interpretive approach.

## The concept of anachronism (and how not to worry about it)

My reconstruction of Paine's political theory involves clarifying the concepts that he deploys, investigating their implications, identifying the theoretical tensions that emerge from them and assessing whether or not such tensions can be overcome. I divide his thought thematically and look at his attempts to address perennial or recurring problems in modern political thought. The hope is that we will have at the end something like a complete picture of his theory of human rights. This sort of approach to historical texts is not especially novel. In fact, the writings of most of the canonical thinkers in western political thought have been subject to the kind of sympathetic, analytical interpretation that I offer here.<sup>1</sup> There is nevertheless a general objection to this type of enquiry that should be addressed and dismissed. This objection concerns the danger of anachronism, which in this case means taking Paine's ideas out of their historical context and placing them where they do not belong, such that their meaning is misunderstood. An important reason for being upfront about this issue is to avoid any ambiguity about the status of my claims herein. In particular, I want to insist that my interpretation of Paine's political theory as a coherent account of liberal rights be considered as much a work of historical understanding as of philosophical analysis. In other words, the interpretive claims that I make throughout this study are about the *historical* meaning and implications of Paine's arguments and are not merely the results of a philosopher thinking he can do what he likes with old texts.<sup>2</sup>

<sup>1</sup> A small list of examples includes G.A. Cohen, *Karl Marx's Theory of History: A Defence* (Oxford: Oxford University Press, 1978); Jean Hampton, *Hobbes and the Social Contract Tradition* (New York: Cambridge University Press, 1986); Gregory S. Kavka, *Hobbesian Moral and Political Theory* (Princeton: Princeton University Press, 1986); A. John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992); Gabriella Slomp, *Thomas Hobbes and the Political Philosophy of Glory* (Basingstoke: Palgrave MacMillan, 2000); Matthew Kramer, *John Locke and the Origins of Private Property: Philosophical Explorations* (Cambridge: Cambridge University Press, 2004).

<sup>2</sup> J.G.A. Pocock distinguishes between the forms of understanding appropriate to the historian on the one hand from that of the philosopher on the other. According to him, when considering, for example, the writing of Hobbes, the philosopher might be entitled to consider the abstract arguments he advances, if it is thought 'useful', but must not invoke the apparently illusory notion that such a consideration could ever correspond to what "Hobbes said" or more troublingly the dishonest pseudo-present "Hobbes says" (J.G.A. Pocock, *Politics*,

R.G. Collingwood provides a pithy and widely accepted description of what historical interpretation involves. For him, a proper understanding of past thought requires conceiving of it as an attempt to answer a question or solve a problem.<sup>3</sup> It entails grasping what an individual is ‘driving at’ with her expressed thoughts.<sup>4</sup> For Collingwood, anachronisms arise in the history of ideas when there is a failure to think in terms of this ‘logic of question and answer’, something that, in his view, stems most often from the assumption that past thinkers are engaging with the same set of timeless concepts, regardless of the context and the particular writer’s intentions. His claim is that there are ‘no eternal problems in philosophy’ and ignorance of this fact generates anachronisms.<sup>5</sup> As Collingwood points out, if a historian thinks that the problem of ‘the state’ is an eternal one, and considers its existence to be a fact of the human condition, then she might also find it visible in the writing of Plato as much as Hobbes, even though the concept has no place in ancient Greek thought.<sup>6</sup>

There is every reason to accept Collingwood’s claim here: it is surely without question the case that there are no necessarily eternal problems in the history of ideas. Any belief in such a notion of eternality would beg extremely controversial metaphysical questions about their status. Eternal problems have infinite duration – they are without beginning or end – and so their existence would have to depend on a dubiously mystical view about the nature of human existence, whereby individuals are somehow compelled to always ponder the same essential

*Language, and Time: Essays on Political Thought and History* (London: Methuen, 1972), 8). He continues, ‘something like “if we repeat these words of Hobbes under given conditions, there ensue the following results” is more your meaning’. The notion of considering Hobbes’s thought as a set of abstract philosophical propositions is thus granted a kind of backhanded, fraudulent endorsement, such that it is rendered permissible only on the basis that it is a useful fiction, an enterprise that serves a function that is different from, and antithetical to, proper historical understanding. What I wish to do here is not only press for the obliteration of this spurious distinction between historical and philosophical forms of understanding, but also rehabilitate the habit of talking in the present tense about past thinkers, about what Paine *says* about a particular, perennial problem in political theory.

<sup>3</sup> See, in particular, R.G. Collingwood, *An Autobiography* (Oxford: Clarendon Press, 1978), 29–43.

<sup>4</sup> R.G. Collingwood, *The Principles of History, and Other Writings in the Philosophy of History* (ed.) W.H. Dray and W.J. van der Dussen (Oxford: Clarendon Press, 1999), 51.

<sup>5</sup> Collingwood, *An Autobiography*, 68.      <sup>6</sup> *Ibid.*, 59–64.



questions, across time, space and culture. Collingwood's insight might at first appear to threaten my approach to Paine, since my whole interest is in his take on trans-historical problems, such as the grounds for political obligation or the justification for property ownership. Thus, having granted the truth of Collingwood's insight, it is extremely important to stress that the rejection of eternal problems *in no way* implies a rejection of *perennial* problems in the history of ideas. Perennial problems are simply those that either come to occupy human minds for long periods or keep recurring over the course of time, spanning what might be thought distinct historical and cultural contexts. It can be happily admitted that there are no timeless philosophical problems, which thinkers are *necessarily* bound to consider as if by some universal law, while also accepting the possibility that a large number of political problems *do* enjoy longevity over time or recur in human affairs.<sup>7</sup> And while a denial of eternality is uncontroversial, the denial of the possibility of the perennial looks extremely odd given the obvious continuities in and repetitions of the problems that have engaged human minds over time.

We can comfortably acknowledge the existence of perennial problems in political philosophy without reliance on any controversial ontological claim. The existence of such problems is an obviously evident but contingent social fact about human affairs. While there is no doubt that erroneous historical conclusions could follow from the assumption that all political thinkers necessarily ponder the same questions – as in Collingwood's example of Plato and Hobbes – it is nevertheless undeniable that individual writers can (and do) theorise about problems that are sufficiently abstract to remain of recurring interest. It is not anachronistic to suggest that Hobbes – while certainly attendant to a number of other problems – asked and answered

<sup>7</sup> The most influential version of this confused derivation – of a rejection of the perennial from a rejection of the eternal – has been put forward by Quentin Skinner. From his assertion 'that there are no perennial problems in philosophy', which he mistakenly ascribes to Collingwood, Skinner concludes that 'any statement is inescapably the embodiment of a particular intention on a particular occasion, addressed to the solution of a particular problem, and is thus specific to its context in a way that it can only be naïve to try to transcend' (Quentin Skinner, 'Meaning and Understanding in the History of Ideas' in J. Tully (ed.), *Meaning and Context: Quentin Skinner and His Critics* (Cambridge: Polity Press, 1988), 65). For a more thorough account of the eternal/perennial distinction with regard to the writings of Collingwood and Skinner and their implications for historical understanding, see Robert Lamb, 'Quentin Skinner's Revised Historical Contextualism: A Critique', *History of the Human Sciences* 22 (3) (2009): 51–73.

an abstract question about the nature of and grounds for political obligation. The same can be said of Locke and the existence of private property, of Hegel and Marx about the nature of history, of Descartes and Hume about the possibility of knowledge, of Rousseau and Mill about the relationship between the individual and the political community and, crucially, of Paine about (amongst other things) the nature and implications of individual rights. The admission that there can be perennial problems or questions in philosophy that exist over time sits with perfect ease alongside the view that there is not set of concerns that texts *must* always, necessarily engage with. Some of the questions that individual authors address will be more localised and particular, whereas others will be more general and thus more likely to be the subject of trans-historical interest.

Important methodological conclusions follow from the view of perennial problems as a contingent social fact. Indeed, it changes the concept of anachronism fundamentally, because it becomes unfastened from any methodological requirement to understand an argument in one particular context or using one special interpretive technique. The question of whether or not Paine is trying to answer a problem that was specific to his own, immediate context, or engaging with one at a higher level of abstraction, which has also been considered by individuals that went before and came after him, becomes an open one, to be debated with reference to appropriate evidence and argument. The consequence of this conclusion is a shift in the status of what we might normally consider to be an anachronism. What is implied is that judgements about anachronisms in the history of ideas – when the ascription of ideas to individuals is deemed inappropriate because they do not belong in that particular historical context – should be thought in evidentiary rather than methodological terms. That is to say, anachronism only makes sense as a concept when it is understood to refer to specific instances of historical error that stem from mistaken evidence or argument, rather than when conceived as a distinct category of error triggered by the deployment of a specific approach to interpretation. The upshot of this is that the historian who suggests that Paine, say, favoured European integration is – likely to be<sup>8</sup> – making an

<sup>8</sup> The equivocation does justice to Paine's claim that 'It is too soon to determine to what extent of improvement government may yet be carried. For what we can foresee, all Europe may form but one great republic, and man be free of the whole' ('ROM II', 397).

indefensible claim, but its falsity will stem from an absence of evidence. It will not be because of any methodological mistake, traceable to the ascription of a concept to a thinker that he could not, in principle, have been able to formulate in his mind. Whether my interpretation of Paine errs anachronistically depends therefore on the specific arguments being put forward; its success or failure cannot be determined externally, through assessment of my general approach.

### **The nature of political philosophy**

There can be no doubt that scholarly interest in Paine has tended more towards the details of his life as a political actor than the content of his writings. That he has been subject to so many biographical studies is in one sense unsurprising. After all, not only was his writing hugely influential on popular discourse and movements, his life was also incredibly tumultuous, even by the standards of controversial late eighteenth-century political icons. The obscure first thirty-seven years of his life did not bring him much success: after brief stints first in his father's trade of corset-making – something later used by his enemies to ridicule him – and then, subsequently, in the position of excise officer, and following two short-lived marriages about which very little is known, Paine left Britain in 1774, bound for America with a letter of introduction from Benjamin Franklin. There he found fame as a gifted and prolific writer, with his 1776 essay *Common Sense* becoming something akin to a manifesto for the Revolutionary War. His passionate defence of American revolt against British rule and independent sovereignty was a phenomenal success due in part to the strikingly demotic, populist voice with which he wrote. Paine returned to Europe in 1787 and championed the French Revolution as soon as it began, two years later. Due again in part to his consciously plain-speaking discourse, his 1791 pamphlet *Rights of Man* became a controversial, inflammatory text, one that divided a nation between those who sought to spread its radical republican ideas – even reading it aloud to the illiterate – and others who burnt his effigy in disgust. The sequel to that work led to his trial and conviction for treason, though the verdict was passed *in absentia*, as he had already fled to post-Revolutionary France where he was – initially, at least – welcomed warmly into the new republic, although he later narrowly avoided the guillotine there after a sudden change in the political tide cast him adrift

as an enemy of the state. Paine eventually returned to America, where he died in 1809, by which time his reputation had suffered great damage on account of his religious writings, which had prompted mistaken charges of atheism against him.

Even a severely truncated biographical account such as this should make it no surprise that fascination with Paine's life has often eclipsed interest in his political philosophy. But one could go further and speculate that it might actually be that the content of Paine's writings has suffered relative neglect precisely because of the life that he lived. It seems plausible that the absence of many attempts to appreciate him as a significant political theorist stems from the assumption that there is a real tension between the roles of political actor and demotic pamphleteer on the one hand and of the philosopher on the other. It might be thought that the activity of political theorising belongs to the armchair philosopher who has time to reflect, refine and systematise arguments rather than to the activist who addresses a public audience consciously and with immediate ideological goals in mind.

The view that Paine is in some sense most accurately appreciated as a writer who sacrificed real substantive theoretical argument for the sake of the style and rhetorical flourishes of a polemicist is visible even amongst his most sympathetic interpreters. Mark Philp, for instance, suggests that Paine's

political philosophy is less the product of a system and more a response to the polemical cut and thrust of contemporary political controversy . . . Paine's political theory was forged in conflict and hammered out in the midst of war and revolution. When writing he drew on the arguments of coffee-house political circles and on the cultural baggage he had accumulated on his travels.<sup>9</sup>

These observations are accurate but the conclusion that Philp appears to draw from it, that Paine 'was not an abstract political theorist', could potentially mislead.<sup>10</sup> It is wise to be alert to the political context of, and immediate pressures on, Paine's thought. At the same time, however, we must caution against the vision of his writing as necessarily cobbled together in an *ad hoc* manner demanded by his immediate

<sup>9</sup> Mark Philp, 'Introduction' in Mark Philp (ed.), *Thomas Paine: Rights of Man, Common Sense and Other Political Writings* (Oxford: Oxford University Press, 1995), x.

<sup>10</sup> *Ibid.*

circumstances, at least in such a way as to diminish its status as political philosophy. The judgement that Paine is not really a proper political philosopher and is instead best thought a talented campaigner or pamphleteer has received explicit endorsement elsewhere. In his *A Short History of Ethics*, Alasdair MacIntyre mentions Paine only once and does so in order to dismiss his writing as ‘not a source of philosophical argument’.<sup>11</sup>

The view that the form that Paine’s writing takes – political pamphlets designed to incite readers into action – somehow undermines its philosophical status invites a robust response. In particular, it requires that the nature of political philosophy as a human activity be clarified. The most important point to make in this regard is that it is quite odd to think that a person has to be a professional philosopher in order to advance philosophical claims or engage in philosophical reasoning or argument. There is something fundamentally accessible and democratic about philosophy as an activity: participation is open to all, provided there is sufficient aptitude and ability, in much the same way as playing football is. One does not need formal training or professional status to play football, but rather merely some basic physical capacities – some like-minded fellows and a ball. Even a proper venue is not really necessary. The same principle holds for philosophy, where a ball is not even required. It might well be true that to engage in meaningful, reasoned reflection or argument about certain specific elements of philosophy – such as the philosophy of physics – a fair amount of background knowledge is necessary. But it is still true to say that the activity itself is, in principle, open to all. There is no established qualitative benchmark for what counts as philosophy, any more than there is for playing football. Philosophy is best thought of as simply second-order level reflection on and argument about various aspects of natural and social existence. We can therefore happily admit that Paine was not a trained political philosopher and still maintain that his political writing houses a huge amount of philosophical argument.

The openness and inclusivity of such enquiry is true in a particularly urgent way about *political* philosophy. Different accounts of the nature of political philosophy abound, but Jeremy Waldron captures its

<sup>11</sup> Alasdair MacIntyre, *A Short History of Ethics: A History of Moral Philosophy from the Homeric Age to the Present* (London: Routledge, 1987), 227.

essence perfectly when he characterises it as ‘simply conscientious civic discussion without a deadline’.<sup>12</sup> Philosophical arguments about politics are advanced not only in university classrooms or academic journals, but also in public houses and parliaments, on park corners and at dinner tables. The only truly distinct aspects of political philosophy as practised in the academic sphere are that more time is allocated to it, that the discussions tend to take place at a higher level of abstraction – with more fanciful hypothetical thought experiments as well as a more rarefied, specialist jargon – and that it is of ultimately less consequence, because it is – ironically enough – divorced from the civic sphere where decisions actually need to be taken, final conclusions reached and discussions terminated in a (un)timely manner. Once all this is appreciated, it becomes clear that the pamphlet designed to incite and excite is as much a vehicle for political philosophy as the abstract scholarly treatise. Whether or not Paine’s particular political philosophy is interesting, coherent or convincing is, of course, yet to be established, but its credentials for consideration as such are uncompromised by worries about the form through which it is expressed.

### **The hermeneutic priority and nature of beliefs**

There is another potential argument to consider as to why Paine should be read as a pamphleteer and not a political philosopher. As noted, Collingwood insists that historical understanding requires the discovery of what an individual was ‘driving at’ in his writing. The idea of a person ‘driving at’ something in her writings is, however, rather ambiguous and can license two different understandings of the entailed interpretive task. Both of these understandings place authorial intentions at the centre of their analyses, but they diverge in how such intentions are construed: one regards intentions as the beliefs that a person expresses through her text and the other thinks of them as the motivations that underlie such expressions. In his writings on historical interpretation, Quentin Skinner often appears to define authorial

<sup>12</sup> Jeremy Waldron, ‘What Plato Would Allow’ in I. Shapiro and J. W. DeCew (eds.), *Nomos XXXVIII: Theory and Practice* (New York: New York University Press, 1995), 148. Waldron is right to ‘insist on a basic continuity between political theory and civic discourse’, such that ‘it is a mistake to regard our thinking and arguing in political philosophy as qualitatively different from that of a citizen-participant in politics’ (147–148).

intentions in terms of motives. His suggestion is that understanding a text means grasping the intention the author had to *do* something with his text, the intention to *perform* an action.<sup>13</sup> He argues that political texts should be regarded as weapons utilised in rhetorical battles and that attempts to treat them as abstract works of philosophy miss this vital aspect of them.<sup>14</sup> So, for him, determining the meaning of a particular utterance requires establishing what an author was doing in articulating it, which in turn means revealing the particular political or ideological position the person was seeking to endorse. His argument is that past political texts should be considered as written by ‘innovative ideologists’ who are aware that ‘it is in large part by the rhetorical manipulation of [normative] terms that any society succeeds in establishing, upholding, questioning or altering its moral identity’.<sup>15</sup> On this account, historical understanding appears to retain the Collingwoodian definition of determining what a person is ‘driving at’, but it understands what is being driven at as an ideological end to be achieved.

There is no doubt that Paine’s writing is brazenly performative and that it is designed, often quite explicitly, to bring about certain political ends. In *Rights of Man*, as John Keane points out, Paine ‘paid close attention to techniques such as the choice of idiom, the rhythm of the prose, and the pattern of sentence construction, all of which aimed to subvert’ his political opponent and thus represents a ‘masterful exercise in the use of rhetoric to hide rhetoric’.<sup>16</sup> Keane’s conclusion is that ‘readers who concentrate on the substantive themes of *Rights of Man* – who treat it as if it were just like any other text of modern political philosophy – miss half of what is really interesting about it’.<sup>17</sup> But some

<sup>13</sup> The focus of Skinner’s contextualism is language and specific instances of its conscious manipulation by individual actors. His argument is that in order to understand a past text, it is necessary to understand it in performative terms, to treat it like a historically particular ‘speech-act’. The interpretive task is therefore, for him, to study the linguistic conventions that frame an utterance in order to ‘decode’ the writing in question and determine its intended illocutionary force (Skinner, ‘Meaning and Understanding’, 63–64).

<sup>14</sup> ‘Nobody is above the battle’, Skinner claims, because ‘the battle is all there is’ (*Visions of Politics, Volume I: Regarding Method* (Cambridge: Cambridge University Press, 2002), 7).

<sup>15</sup> Skinner, *Regarding Method*, 149. He also claims that ‘all attempts to legislate about the “correct” use of normative terms must be regarded as equally ideological in character’ (182).

<sup>16</sup> J. Keane, *Tom Paine: A Political Life* (London: Bloomsbury, 1995), 294, 296.

<sup>17</sup> *Ibid.*, 294.

scholars have gone even further than argue that Paine's rhetoric is the most important or interesting aspect of his writing. Indeed, his writing has on occasion been treated as if it were comprehensible only as ideology rather than political philosophy. One of the most impressively put together of these readings is offered by Isaac Kramnick, who casts Paine alongside a number of his contemporaries as espousing a form of 'bourgeois radicalism'. According to Kramnick, this ideology represented the interests of emerging late eighteenth-century mercantilism and was committed to the overthrow of the arbitrary privilege associated with monarchy and feudalism, and to promoting instead middle-class values of unfettered commercial activity and the reward of meritorious behaviour.<sup>18</sup> Such a reading, if accepted, jars with the attempt to accord to Paine's political writings the status of philosophy, because it views him as the ideological mouthpiece of relevant class interests, with the expression of his thought a superstructural emanation driven towards a very specific end.

There is, however, no need whatsoever to consider a political text as exclusively or even primarily ideological when trying to understand it. The reason for this is that acts of communication first and foremost express beliefs or viewpoints that are not equivalent or reducible to the ideological motivations that underlie them.<sup>19</sup> The beliefs expressed by a writer might coincide with underlying ideological motivations, such that, for example, Paine might express a belief in the rightness of republican government while being motivated by an antipathy for monarchy. But this is nothing more than a contingent relationship, since Paine might, alternatively, have expressed such beliefs while being motivated by a desire to justify the ideology of the emerging British bourgeoisie. Beliefs and motivations are therefore, though occasionally coincident, conceptually distinct in a real and important sense.<sup>20</sup> And regardless of the political end Paine is seeking to achieve

<sup>18</sup> Isaac Kramnick, *Republicanism and Bourgeois Liberalism* (Ithaca: Cornell University Press, 1991).

<sup>19</sup> The belief-based account of authorial intentionality as the locus of hermeneutic meaning, on which my argument leans heavily, is delineated comprehensively in M. Bevir, *The Logic of the History of Ideas* (Cambridge: Cambridge University Press, 1999), 31–77, 127–173. As Bevir points out, 'both our phenomenological conception of ourselves and our habitual treatment of others suggest that people generally use language to express thoughts that they hope others will understand' (129).

<sup>20</sup> *Ibid.*, 131–134.



in his writing, the expression of his beliefs is a far more basic and fundamental part of his communicative act than his motivation for writing. This is because before we can even attend to the question of his motivations, we need to understand the meaning of such beliefs, the very ideas being communicated through language. The motivation that lies behind a political utterance is therefore at best only a secondary object of study when it comes to historical understanding. What follows from this is that even if Kramnick happens to be correct in his claim about Paine's ideological motivation, that motivation is entirely irrelevant to understanding his thought.

Whether one is interested in the philosophical content or ideological purpose of a piece of political writing will depend on the interpreter's object of study, which will, in turn, be generated by the subject – or, in Collingwood's terminology, the question – of interest to the scholar. The upshot of this is that the question of whether or not consideration of a writer's expressed beliefs must involve extensive attention to a particular context becomes a contingent one: it is dependent on what the beliefs being considered are themselves about. If pitched at a sufficient level of abstraction, no significant deference to context is warranted because it will have no explanatory power or relevance. There may, of course, be occasions when some contextual knowledge can aid understanding, such as were Paine to invoke concepts using linguistic terms that mean something quite different to eighteenth- and twenty-first-century audiences. Carelessness about such issues could potentially generate an evidentiary anachronism. But broader contextual and ideological matters can be legitimately ignored for the purposes of my analysis and Paine's abstract utterances can be treated as propositions that carry with them a variety of implications that invite philosophical exploration. This also means ignoring some rhetorical aspects of Paine's utterances. To pick just one example, in [Chapter 5](#), I refer to Paine's statement that 'the cause of America is in great measure the cause of all mankind'.<sup>21</sup> It could be argued that the significance of this utterance cannot be properly grasped without due appreciation of the context of wider social commentaries about the decline of European civilisation in the late eighteenth century. The response to such an argument would be to insist that even if attention to context helps explain the significance of such a statement, it has

<sup>21</sup> Paine, 'CS', CW I, 3.

nothing whatsoever to do with its meaning, which is an expression of Paine's beliefs that can, in turn, be linked to others, to then generate a viewpoint on the relationship between, in this case, American independence and a global understanding of justice. The realisation that beliefs are the proper locus of interpretive meaning has another important implication for historical understanding. This implication concerns the issue of authorial coherence. Any treatment of texts as performative ideological contributions is likely to play down the possibility that a particular author's utterances may together comprise a coherent theory.<sup>22</sup> However, as Mark Bevir argues persuasively, a focus on the beliefs expressed by an author actually entails a primary interest in their coherence.<sup>23</sup> The reason for this is the nature of beliefs themselves: the fact that they generally take the form of a web wherein they are connected to and dependent on each other.<sup>24</sup> Our beliefs (and intentional states in general) do not exist in isolation in our minds; it is rather the case that they link up with, inform and depend on others. If I fear being crushed by an avalanche, that belief implies a series of others, that an avalanche is capable of crushing me, that I do not wish to be so crushed and so on. The interpreter looking to understand an author's beliefs expressed in a work will therefore be interested primarily in how they all hang together and can without controversy ascribe a basic coherence to her intentionality. As I am interested in the meaning of Paine's thought and thus the nature of his beliefs, my analysis will be inevitably concerned with establishing their basic coherence.

It is of course a presumption of coherence that is generated by such an understanding of beliefs, and *not* an assumption to be held stubbornly in the face of evidence that points in the other direction. Furthermore, it is a minimal account of coherence that is legitimised, one that says nothing about how an author's beliefs are to be understood across time; individuals do after all change their views. The

<sup>22</sup> See, for example, Skinner, 'Meaning and Understanding', 38–43.

<sup>23</sup> See Bevir, *The Logic of the History of Ideas*, 142–173, where he demonstrates that the web-like nature of beliefs implies that understanding their expression involves presumptive interpretive norms of sincerity and consistency when approaching them. Elsewhere in *The Logic*, Bevir contrasts this approach with the contextualist tendency to 'crush out personal identity', something he illustrates through Pocock's focus on the different languages deployed by an individual author, rather than how that person is using them to put across a coherent viewpoint (216–217).

<sup>24</sup> *Ibid.*, 213–218.

question of whether a thinker holds a coherent political philosophy across time then becomes an empirical question, which must be settled through evidence and argument. My aim in this study is certainly not to insist that Paine definitely held all and exactly the same beliefs throughout his life and never changed his mind about anything. It is rather to examine his corpus as a whole and see what his principal and most abstract philosophical beliefs amount to as a political theory. There will be occasions where Paine's expressed beliefs stand in tension with each other. In such circumstances, there is not always clinching evidence either for or against an overall coherence. In these cases, I try to show how arguments that might seem to stand in tension with each other can be reconciled, either explicitly through textual evidence across his writing or implicitly through inference to the best explanation. So, in cases where the evidence does not surely tell either way it is not that I ignore the possibility that Paine's thought be incoherent, but rather that I *explore the possibility* of its coherence.

### **The value of the history of political philosophy**

Having argued first that anachronisms can only be considered in evidentiary terms; second, that political philosophy as an activity should be construed capaciously to include demotic pamphlets; and third, that the basic task of recovering hermeneutic meaning requires attention to expressed beliefs with a level of basic coherence, I can now focus on the value of my approach to Paine and explain what it is that can be gained from going back to past writers for the purpose of political theorising. After all, it might be thought better for us to 'learn to do our own thinking for ourselves'<sup>25</sup> rather than seek wisdom relevant to our contemporary problems in historical texts. This view might be coupled with the thought that political theory has progressed, such that we can ignore its ancestry when engaging in normative enquiry or conceptual analysis. Philosophers might take the view that interpretation of texts is a poor substitute for arguing from an abstract set of first principles. Such sceptics might propose that as natural scientists happily ignore Aristotle's *Physics*, we can (and should) do likewise with his *Politics*. It is worth addressing this sort of question directly rather than either

<sup>25</sup> Skinner, 'Meaning and Understanding', 66.

considering its answer to be implicit or dismissing it as irredeemably philistine.

Why, then, do (and should) political theorists bother consulting past texts with the aim of speaking, in some way, to the present, rather than just for the broader historical purpose of tracing and explaining ideational change over time? When a 'presentist' concern is the objective for historical enquiry, there tend to be two different motivations at play and, in turn, two different attitudes to the subjects at hand. On the one hand, political theorists turn to the writers of the past in search of some kind of otherness: that is to say, they look for past ways of thinking about politics, the good life and so on that are, in some important sense, culturally alien to us. Scholarly encounters with such alien assumptions, premises, arguments and ways of thinking force us into confronting what we can at times take for granted and even potentially become bewitched by. One recent and prominent example of such an encounter within political theory involves the idea of freedom. Scholars like Quentin Skinner and Philip Pettit argue that the writings of historical figures like Machiavelli and Harrington reveal a distinctly 'republican' way of conceptualising freedom, one that has vanished from our political landscape.<sup>26</sup> Their suggestion is that an appreciation of this now alien concept can provide an instructive and useful challenge to dominant understandings.

The second present-focused reason that political theorists customarily turn to the texts of the past is to undertake an examination of thinkers who, broadly speaking, *share* our worldview, or at least some of its fundamental presuppositions or commitments. The objects of study here are those thinkers who remain part of the intellectual traditions within which we tend to frame our civic discussions. We engage with these thinkers because they tend to worry and argue about political problems that are very similar to (if not always precisely the same as) ours. The aim of such engagement is, however, not necessarily anything so crude as to find direct answers to our questions or solutions to our problems. The purpose is rather to enter into some kind of meaningful dialogue and conversation with past thinkers, one that can provoke, challenge or enlighten us, one that can provide us with

<sup>26</sup> See, for example, Quentin Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998); Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).

intellectual stimulation and theoretical resources, without necessarily giving firm prescriptive direction. In this vein, Jeremy Waldron wisely cautions against the inanity that frequently results from reducing our interest in the history of ideas to an obsession with the ‘normative bottom line’ of arguments, such that we are only interested in the conclusions that past theorists have reached, which we can then treat as detachable policy recommendations that can then be ascribed the unimpeachable intellectual authority that comes with historical respectability. As Waldron notes, historical interpretation all too often goes awry because of its preoccupations with ‘what Plato and Locke would *allow*, what Rousseau would *require*, and what Hobbes would *prohibit*’.<sup>27</sup> Such an approach generates a kind of dual crudeness: we simultaneously reduce the writings of past thinkers to their ideological motivations and devalue the rigours of their philosophical reflection by treating them as active politicians.<sup>28</sup>

Rather than searching for such detachable normative principles and prescriptions, the real reason why we should turn to consider the political writings of those historical thinkers with whom we have certain overlapping concerns – whom we can identify as belonging to intellectual traditions that still fill our skies – is instead in search of a kind of intellectual and ethical therapy. What such a therapy entails is an articulation and exploration of problems tackled by a past thinker that have some bearing on our own: through philosophical engagement and a genuine, open-minded and intellectually honest attempt at dialogue with the writings of a particular thinker, we are able to confront and work through – though not necessarily resolve – political problems that we recognise. We begin from the premises that we share with past writers, examine the extent to which we do share them, then follow the logic of their arguments, focusing on where they go, chasing them down whatever paths they may lead, assessing whether they could have gone in other directions and, ultimately, asking whether the whole is genuinely coherent and, perhaps, also attractive to us.

<sup>27</sup> Waldron, ‘What Plato Would Allow’, 139.

<sup>28</sup> ‘In our reading of the canon, and in the development and criticism of our own current theories and models, we run a great danger if we think of theory – even *evaluative* theory – as primarily the laying out of a social or a constitutional “wish-list”. We should think of it instead, I want to say, literally as *political philosophy* – a deepening of our insight into the realm of the political and of our understanding of what is involved in making judgements and decisions in that realm’ (*Ibid.*, 143).

It is with these sorts of aims in mind that I attempt to enter into such a dialogue with Paine, to put him in conversation with contemporary concerns, to determine what he has to say about some of the perennial problems of modern political thought. Though the idea of conversation to which I appeal is obviously figurative, my interpretation of Paine's writings adheres to several conventions and virtues that we associate with this activity. Thus, during a genuine conversation, we usually presume the other person is trying to communicate something worth taking seriously and, furthermore, we tend to presume that their utterances cohere in some fashion, at least until we see otherwise. We do not jump to put words in the mouths of our interlocutors, but we are not afraid to translate their ideas into our own language if it aids our appreciation of the viewpoint that they are trying to get across; nor do we worry about suggesting that their views have certain implications or entailments, some of which they may not themselves have recognised. We certainly do not presume their expressed beliefs to be wholly reducible to their place in a particular social structure and nor do we actively try to deny or limit the relevance of their views beyond their immediate context. The specific value of any one particular instance of historical dialogue – including the one I attempt to have with Paine – is, of course, still to be established. But whether or not it is valuable will depend, like any political conversation undertaken sincerely, not on the exact quality of the answers or outcomes it yields, but rather from what is learned through the process.<sup>29</sup>

<sup>29</sup> Gadamer appeals frequently to the idea of conversation in his phenomenology of historical understanding. As he insightfully puts it, 'to reach an understanding in a dialogue is not merely a matter of putting oneself forward and successfully asserting one's own point of view, but being transformed into a communion in which we do not remain what we were' (H-G. Gadamer, *Truth and Method* (London: Continuum, 1989), 371).

## 2 | *Political obligation, human rights and the moral universe*

In the [Introduction](#), I briefly touched upon the somewhat contradictory legacy of Paine’s political thought: the curious tendency for it to be the subject of admiration for both American libertarians on the one hand and British socialists on the other. One of my aims in this study is to demonstrate that there is nothing substantively schizophrenic about Paine’s political *theory*, as expressed in his mature writings. I intend to show that it hangs together with a reasonable amount of coherence and thus suggest that the ideological disunity of those who celebrate his memory is explicable only with reference to the contingent historical receptions of his particular works. Navigation of these tasks is not as tricky as it might at first appear. After all, both libertarian and socialist political traditions tend to invoke a common conceptual currency, one that is given absolute normative priority in Paine’s writing: a steadfast commitment to the inviolability of individual rights. While libertarians and socialists obviously diverge when it comes to the *content* of rights – the particular rights individuals actually have – both generally display passionate commitments to the view that such rights do exist and, furthermore, that they have a trumping force in the moral and political sphere.<sup>1</sup>

A commitment to inalienable rights is a definitive characteristic of Paine’s political theory, appearing more prominently than any other concept in his writings. Indeed, his works as a whole reveal a sustained attempt to articulate the moral and political rights held by each individual. This is not to say that his writings contain merely a catalogued list of asserted entitlements, the justification for which should be thought self-evident. It is rather the case that Paine’s view corresponds to that of

<sup>1</sup> This conceptual connection – understood as a commitment to the value of self-ownership capable of grounding libertarian defences of absolute property rights and socialist accounts of exploitation – is explored with dazzling rigour and doggedness by G.A. Cohen in *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press, 1995).

Hillel Steiner, for whom individual rights represent ‘the elementary particles of justice’.<sup>2</sup> For Paine, such rights function as the mechanism through which a polity can appropriately protect the fundamental liberal value of basic moral equality amongst individuals. As we will see, each individual person is an *equal* bearer of rights for Paine, and the purpose of several of these rights is to protect certain vital *freedoms*. It is because of his commitments to the values of basic equality and individual freedom that Paine specifies the rights that he does. A just polity is, for him, one that guarantees the protection of fundamental individual rights and, by extension, an unjust one can be identified by their violation.

The purpose of this chapter is to outline the main foundations of Paine’s liberal theory of human rights. I begin with a ground-clearing conceptual discussion about the nature of a rights-based theory and a brief consideration of the history of natural rights arguments. This discussion will reveal the structure of Paine’s political theory and also indicate what marks it out as historically distinct. I turn then to focus on Paine’s identification of the necessary conditions for an entity to be a rights-bearer in the first place, his understanding of the moral universe. The remainder of the chapter will delineate some of what might be termed the basic liberal rights that Paine is committed to. These rights are basic in two respects. In the first place, they are basic in that they are the essential foundations of any liberal political theory, because their purpose is to protect or guarantee individual freedoms fundamental to that intellectual tradition. The second sense in which they are basic can be articulated in the terminology offered by legal philosopher H.L.A. Hart. They are what Hart calls ‘general rights’, rights that are held by each member of the moral universe.<sup>3</sup> These can be distinguished from ‘special rights’, which come into existence through consensual activity, usually as a consequence of the conventional contracts that individuals inevitably enter into during the course of their lives. These basic general rights do not require any action on the part of those members in order for them to exist: they are, by their very nature, held universally and equally.<sup>4</sup>

<sup>2</sup> Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), 2.

<sup>3</sup> H.L.A. Hart, ‘Are There Any Natural Rights?’, *Philosophical Review* 64 (2) (1955): 175–191.

<sup>4</sup> Or, to put it in the language used by Hillel Steiner, the basic rights identified by Paine are ‘foundational’ or ‘non-derivative’ rights: they do not derive their



Paine's account of the nature and basis of rights is outlined in the most vivid and detailed terms in *Rights of Man* through his opposition to Edmund Burke's conservatism and defence of the ideals underpinning the French Revolution. The demotic language of this legendarily controversial political pamphlet has been the main object of study for scholars in recent years, but, as I will demonstrate, its plain-speaking rhetorical style masks novel arguments about the grounds for and limits of political authority. Paine's rejection of the Burkean account of state legitimacy enables him to posit his own alternative, which maintains that the necessary conditions of political obligation are (1) the 'consent of the living' and (2) the guaranteed protection of individual rights. After discussion of Paine's conception of the moral universe and his consent-based account of the grounds and limitations of political obligation, I locate his theory within the social contract tradition to consider the significance of Paine's distinction between 'natural' and 'civil' rights, before explaining his reasons for valuing the freedoms that such entitlements are supposed to protect.

### The nature of rights theories and their history

Robert Nozick's *Anarchy, State, and Utopia* – the most systematic and impressive philosophical defence of libertarian political morality put forward in the twentieth century – opens with the following sentence: 'Individuals have rights, and there are things no person or group may do to them (without violating their rights).'<sup>5</sup> This simple assertion about individual rights reveals the key justificatory principle that underpins his libertarianism. The political theory developed by Nozick is *rights-based*: the normative arguments he advances stem from the fundamental claim that rights exist, that they are held by individuals and that they are inviolable. As I will argue later, it is ultimately a mistake to characterise Paine's thought as politically libertarian. Nevertheless, I do wish to suggest that his political philosophy shares the same fundamental basis as Nozick's, because both are

existence from prior rights and, at the same time, subsequent rights can (through binding consensual agreements) be derived from their existence. Hillel Steiner, 'Moral Rights' in D. Copp (ed.), *Oxford Handbook of Ethical Theory* (Oxford: Oxford University Press, 2006), 472–473.

<sup>5</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), ix.

rights-based. It is therefore necessary to be clear about exactly what this means from the outset.

What makes a theory 'rights-based' and how can one be confidently identified? This might initially seem quite a difficult question to answer. As legal philosophers often point out – in order to complain about the tendency – the language of rights is deployed with unhelpful ubiquity in moral and political argument. References to rights are made so promiscuously that it is tempting to regard any claim that a particular theory is *rights-based* as practically meaningless. There is also the additional problem that political arguments about rights often talk past each other, in the sense that there is little public agreement even about what sort of entity constitutes a bearer of rights. Thus, some people believe that non-human animals have rights, others human foetuses, others the biosphere itself. Similarly deep disagreement attends debates about the particular rights that their bearers are said to hold: for example, some contend that the right to bear arms is sacred, while others defend the right to an unconditional basic income. It is worth stressing that such fundamental disagreement about the capacity for and character of rights is in no way restricted to public discourse. Moral and political philosophers are as thoroughly divided about exactly the same issues. There is even scholarly debate about the very nature and definition of rights, with legal philosophers long engaged in highly technical, intractable debates about whether they are characterised by the will they enable an individual to exercise or, alternatively, by the interests that they serve.<sup>6</sup>

Nevertheless, despite such manifold political and philosophical disagreements about the nature, character and entailments of rights, it is still possible to insist that if a normative theory is to be properly classified as rights-based, it must conform to a certain *structure*.<sup>7</sup> What, though, are the special structural conditions for a theory to count as rights-based? The most straightforward way to approach

<sup>6</sup> The classic statement of the will (or choice) theory was made by H.L.A. Hart in 'Are There Any Natural Rights?' A more recent defence can be found in Hillel Steiner, *An Essay on Rights*. Robust defences of the interest theory can be found in Neil MacCormick, *Legal Right and Social Democracy* (Oxford: Clarendon Press, 1982) and Joseph Raz, 'On the Nature of Rights', *Mind* 93 (1984): 194–214.

<sup>7</sup> For an excellent discussion of the idea of a 'rights-based' argument, to which my account here is indebted, see Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), 62–105.

this question is to contrast political theories that employ rights as their basis with others that do not. Ronald Dworkin, for instance, draws a useful distinction between theories that are rights-based and those that are *goal*-based. According to Dworkin, a '*right* is an individuated political aim' whereas 'a *goal* is a nonindividuated political aim, that is, a state of affairs whose specification does not in this way call for any particular opportunity or resource or liberty for particular individuals'.<sup>8</sup> Goal-based theories can certainly accommodate individual rights. Indeed, they can potentially accord them a central place. For example, a political theory with the normative goal of achieving economic growth might perhaps accord priority to the protection of the right to private property. Alternatively, a theory with the highest possible level of average welfare as its normative goal might think the right to a certain standard of living to be crucial. Even when prioritised, however, whenever individual rights are justified with reference to the achievement of such ends, the theory in question cannot be said to have a rights *basis*, precisely because the priority afforded to the rights derives from the goal in question and is not generative of it. This basis structures the argument and gives content to its normativity: it is only through attention to this basis or foundation that the question 'why should this right be upheld?' can be answered with reference to a particular moral theory. For goal-based theories, rights are often only contingently, and always only instrumentally, important.

We can likewise draw a distinction between theories that are rights-based and those that are *duty*-based. This distinction might initially seem a little peculiar, since legal logic is usually thought to dictate that rights and duties are correlative, such that one cannot exist without the other: for an individual to hold a right (in the full sense of a 'claim'), it implies that another individual has a certain duty of action or inaction in respect of it.<sup>9</sup> Nevertheless, duty-based moral theories are structurally different from rights-based alternatives because the former necessarily invoke some kind of teleology, the existence of which explains

<sup>8</sup> Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), 91, emphases added. For a fuller discussion, see Waldron, *The Right to Private Property*, 64–68.

<sup>9</sup> This correlativity thesis was fully developed by Wesley Newcomb Hohfeld. See Hohfeld, *Fundamental Legal Conceptions* (ed.) W. Cook (New Haven: Yale University Press, 1919). It is generally accepted as a conceptual truth about rights, but some do dissent. See David Lyons, 'The Correlativity of Rights and Duties', *Nous* 4 (1970): 45–57.

the content of the duties in question. Duty-based theories of natural rights thus implicitly or explicitly rely on some account of the demands of, say, God's law, or else – in the case of Paine's contemporary, the early feminist writer Mary Wollstonecraft – some conception of virtue.<sup>10</sup> Both of Wollstonecraft's best-known political works refer to a vindication of 'rights' in their titles yet she appears to prize a conception of virtue above all other moral values. According to her, individuals are under a duty to cultivate certain dispositions and engage in certain actions that count as virtuous and it is those duties that then consequently generate the corresponding rights. Thus, Wollstonecraft argues that women have a right to education on the grounds that 'till women are more rationally educated, the progress of human virtue and improvement in knowledge must receive continual checks'.<sup>11</sup> Virtue is here an *end* to be achieved. It is of course true that in order for individuals to be able to fulfil their moral duty of virtuous action, they must, in some sense, have a 'right' to do so. Such rights will need to be protected in order for the duties to be undertaken, or else the virtues in question are simply not attainable.<sup>12</sup> It would, however, surely be mistaken to conclude from this that Wollstonecraft's moral philosophy is rights-based in a foundational sense, despite the prominent role that rights play in her argument. Her argument is rather duty-based, because the rights *derive* from the duty that individuals have to be virtuous.

Attention to the structure of natural rights arguments can also help bring out the historical distinctness of Paine's political theory. Thinking about the historical lineage of arguments about individual rights raises tricky hermeneutical issues. We can safely reject the view – associated with linguistic contextualism – that the meanings of the beliefs expressed by individuals have a straightforward, correspondence relationship to

<sup>10</sup> See Mary Wollstonecraft, 'A Vindication of the Rights of Woman' in Sylvana Tomaselli (ed.), *Mary Wollstonecraft: A Vindication of the Rights of Men and a Vindication of the Rights of Women and Hints* (Cambridge: Cambridge University Press, 1995). For an emphasis on this duty-based aspect of her thought, see Virginia Sapiro, *A Vindication of Political Virtue: The Political Theory of Mary Wollstonecraft* (Chicago: University of Chicago Press, 1992).

<sup>11</sup> Wollstonecraft, 'Vindication of the Rights of Woman', 111.

<sup>12</sup> For discussion, see Lena Halldenius, 'The Primacy of Right: On the Triad of Liberty, Equality, and Virtue in Wollstonecraft's Political Thought', *British Journal for the History of Philosophy* 15 (2007): 75–99.

the language used to articulate them. We can therefore, with perfect historical legitimacy, describe the thought of historical figures using language with which they might not themselves have been familiar.<sup>13</sup> But this view might seem to imply that the history of rights is an extremely long one, since it would predate the deployment of the language used to represent the concept. Leif Wenar embraces this possibility and even suggests that a plausible identification of the existence of rights depends merely on there being evidence of norms of, or active reflection about, permissible actions within a community. This view then implies that anthropological study could reveal the ideational existence of rights to be as old as the most primitive form of human social organisation.<sup>14</sup> Intellectual historians have nevertheless tended to deny the presence of what we recognise as specifically modern, individualised rights in the writings of ancient political thinkers. The origin of the modern idea of natural rights – that which stipulates that individuals hold rights by virtue of their humanity, as justified by a postulated law of nature – remains a matter of scholarly debate, though despite their disagreements, scholars like Richard Tuck and Brian Tierney locate its inception at points during the twelfth century.<sup>15</sup>

The seventeenth century is customarily regarded as a time of flourishing for natural rights arguments, most prominently in the political thought of Grotius, Pufendorf, Hobbes and Locke. By the late eighteenth century, however, the invocation of natural rights as politically authoritative had become much less commonplace, its force undermined by rival intellectual currents. These included, in Britain, the rise of the historical sociology associated with the Scottish Enlightenment and the corresponding proto-utilitarianism that its advocates tended to endorse. Attention to the historical development and utility of various aspects of conventional morality pointed to its relativity and thus undermined the postulated universality upon which the existence of natural rights relied. Though the extent of this eclipse

<sup>13</sup> See M. Bevir, *The Logic of the History of Ideas* (Cambridge: Cambridge University Press, 1999), 31–52, for a philosophical demolition of linguistic contextualism.

<sup>14</sup> Leif Wenar, 'Rights' in E.N. Zalta (ed.), *Stanford Encyclopaedia of Philosophy* (2011).

<sup>15</sup> Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), 13; Brian Tierney, *The Idea of Natural Rights* (Atlanta: Scholars Press for Emory University, 1997), especially 43–54.

of natural rights arguments may have been exaggerated somewhat, it is certainly the case that they were subject to a spectacular revival in 1790s Britain, a phenomenon undoubtedly related to the French Revolution. The 'Declaration of the Rights of Man and the Citizen' captured the core ideals of that event and identified a number of absolute entitlements that individuals were said to hold simply by virtue of their sheer humanity. Paine became the leading British champion of this document and defender of its principles.

The distinct place that Paine occupies within the lineage of natural rights theories is not reducible, however, to his political role in revitalising the tradition in the 1790s, but lies rather in the philosophical content of his writing. Paine offers a rights-based liberalism that differs from that of other writers in the natural rights tradition. A rights-based liberal theory is a distinctly modern entity and marks a break from earlier thought. We can see this through consideration of some of the canonical theorists of rights in the early modern period. The liberal political identity of Paine's writing clearly distinguishes him from that of figures like Grotius and Hobbes. Indeed, it is important to stress that although natural rights theories are in some definitive sense individualistic, they need not be liberal in any substantive sense. It is possible to ascribe natural rights to individuals without this implying a liberal political morality characterised by commitments to values of freedom and equality. Hobbes and Grotius are both advocates of natural rights arguments, yet happily defend theories that cannot be accurately described as liberal. For Hobbes, the natural rights that are held by persons are not moral claims held on others, but rather behavioural facts about individuals. The 'right' of individual self-preservation, for example, so central to his political theory as a whole, is not the sort of right that generates duties that must be observed by others: it is rather a liberty or privilege generated by an *absence* of such duties.<sup>16</sup> Hobbes's defence of absolute sovereignty evidently does not leave much, if any, space for liberal rights. Grotius likewise offers a theory that is grounded in natural rights, yet it cannot accurately be regarded as part of the modern liberal tradition either. His illiberal credentials are revealed most plainly – leaving aside his early but subsequently repudiated endorsement of Aristotle's thesis about natural inequality – by his

<sup>16</sup> T. Hobbes, *Leviathan* (ed.) Richard Tuck (Cambridge: Cambridge University Press, 1991), 91.

claim that the rights that he ascribes to individuals are capable of legitimate alienation by their holder: for Grotius, 'it is lawful for any Man to engage himself as a Slave to whom he pleases'.<sup>17</sup>

So, natural rights theories are not necessarily liberal. Nor are they necessarily rights-based. This claim demands special attention, since it seemingly invites a clash with everyday language. Its truth can be appreciated immediately through consideration of Pufendorf, who offers a natural rights theory that is at once *neither* liberal *nor* rights-based.<sup>18</sup> A much more relevant and instructive example is, however, the writing of Locke, because it ostensibly resembles Paine's, though the apparent similarities can be shown to be superficial in ways that reveal the character of each. Locke's *Two Treatises of Government* has often been thought to represent one of the earliest expressions of what we recognise now to be the political theory of liberalism.<sup>19</sup> It is not difficult to appreciate the grounds for this understanding. In that text, Locke defends fundamental individual moral rights and freedoms that are held against other individuals and the state. He also advertises his core, foundational commitment to basic human moral equality. However, as a number of scholars have persuasively pointed out in recent years, while it makes sense to observe (what later became) some liberal tropes in Locke's writing, and thus to perhaps view him as a kind of progenitor of that tradition, it does not follow that his political theory can be convincingly classified as liberal in a substantive sense.<sup>20</sup> This becomes most glaringly evident when his theological

<sup>17</sup> Hugo Grotius, *The Rights of War and Peace* (ed.) R. Tuck (Indianapolis: Liberty Fund, 2005), I: III: VIII, 261.

<sup>18</sup> S. Pufendorf, *On the Duty of Man and the Citizen* (ed.) James Tully (Cambridge: Cambridge University Press, 1991). Pufendorf's political theory is duty-based rather than rights-based. For him, God is the origin of natural law and this entails a catalogue of duties owed by the individual to the Deity, to oneself and to others (36–37). The 'fundamental natural law' is that 'every man ought to do as much as he can to cultivate and preserve sociality', so that conflict and war can be avoided (35). His illiberal viewpoints, which derive from these duties, are manifold and include, for example, the belief that 'individuals are obliged to enter into marriage when a suitable opportunity occurs' (120–121).

<sup>19</sup> This once dominant view has given way to more nuanced understandings. It was most iconoclastically articulated by Leo Strauss in *Natural Right and History* (Chicago: University of Chicago Press, 1953) and C.B. Macpherson in *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962).

<sup>20</sup> See, most influentially, John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government'*

commitments are appreciated, because they play such a vital and permeative part in the philosophical arguments he advances. The form of Christianity to which Locke subscribes is such that atheists and Roman Catholics are not considered part of the same political universe as Protestants and are accordingly denied what modern liberals would regard as basic human rights.<sup>21</sup> But it is much more than these normative conclusions of Locke's that show his theory to be wholly distinct from Paine's. Indeed, what marks Paine's liberalism out from the embryonic version of the doctrine articulated by Locke is the very foundations upon which it rests. The difference is not one of theology *per se*: as I will later point out, Paine does have religious commitments that are connected to his political viewpoints. What instead separates these two thinkers is the manner in which Locke's theological beliefs structure his political philosophy.

As noted, according to Locke, individuals have a number of fundamental inviolable rights, including the right to own private property. This particular right is actually generated by a normatively prior *duty*: for Locke, individuals have a duty to acquire private property, because doing so fulfils the moral obligation they have to God as their creator. He makes it very clear that God has 'commanded' individuals to labour.<sup>22</sup> As consultation of *Two Treatises* and his other writings shows, this is far from the only example of such an obligation. Individuals have, for Locke, a whole collection of duties that they owe to God, including the duty to work hard, to procreate, to be charitable and to not 'quit one's station wilfully' by ending one's own life.<sup>23</sup> Several of these duties are rooted in what Locke describes as the 'Fundamental Law of Nature and Government': the law that states that individuals have a duty to preserve their lives.<sup>24</sup>

(Cambridge: Cambridge University Press, 1969); James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980); Jeremy Waldron, *God, Locke and Equality: Christian Foundations in John Locke's Political Philosophy* (Cambridge: Cambridge University Press, 2002).

<sup>21</sup> But for a slightly different, more tolerant vision of Locke, see Waldron, *God, Locke and Equality*, 217–243.

<sup>22</sup> J. Locke, *Two Treatises of Government* (ed.) Peter Laslett (Cambridge: Cambridge University Press, 1988), II: §32, 291.

<sup>23</sup> *Ibid.*, II: §6, 271. For discussion, see Robert Lamb, 'Locke on Ownership, Imperfect Duties and the "Art of Governing"', *British Journal of Politics and International Relations* 12 (2010): 126–141.

<sup>24</sup> Locke, *Two Treatises*, II: §159, 375.



In spite of its defence of inviolable rights that often appear to have a liberal form, Locke's is ultimately a *duty-based* natural rights theory. As I have suggested, the definitive aspect of rights-based theories is that within them rights are fundamental, in that they are neither derived from nor instrumental to the promotion of other ends. The adoption of such a structure makes Paine's political theory historically distinct and is strikingly indicative of its modernity: like the idea of human rights that came to dominate democratic political life during the late twentieth century, Paine's vision of rights is not one that depends upon prior goals, ends or obligations. When Paine comes to consider the nature of duties, it is clear that his understanding of them is stark and related purely to the rights that generate them. 'The duty of man', he suggests, is not a wilderness of turnpike gates, through which he is to pass by tickets from one to the other. It is plain and simple, and consists but of two points. His duty to God, which every man must feel; and with respect to his neighbour, to do as he would be done by.<sup>25</sup>

As will become clear later on, the duty to God to which he refers does not involve any thickly moralised law of nature or teleology, nor does it even involve any particular form of worship. It is because Paine regards duties to be 'plain and simple' that he, in *Rights of Man*, rejects the idea that a 'Declaration of Duties' would ever be necessary within a political community. For him 'a Declaration of Rights is, by reciprocity, a Declaration of Duties also',<sup>26</sup> because, as he explains elsewhere, 'when we speak of right, we ought always to unite with it the idea of duties; rights become duties by reciprocity'.<sup>27</sup> Rights and duties are correlates for Paine and, crucially, it is the latter that derive from the former rather than the other way around. For Paine, like Nozick, individuals have rights and there are things no person or group may do to them without violating their rights.

## Rights, equality and women

Paine's distinctness in the natural rights tradition comes from the fact that his political theory is a species of modern, rights-based liberalism. The whole of this book is intended to be a vindication of that claim, but

<sup>25</sup> Paine, 'ROM', CW I, 275. <sup>26</sup> *Ibid.*, 316.

<sup>27</sup> Paine, 'DFPG', CW II, 579–580.

it is worth spending some time unpacking further what his commitment to rights is based on. If he does not offer a Lockean duty-based teleology, where does Paine think that our rights come from? This question has been posed regularly to proponents of rights arguments since the eighteenth century by sceptics of various stripes, from Jeremy Bentham's utilitarian dismissal of the entire concept as 'nonsense upon stilts' to Alasdair MacIntyre's withering equation of belief in their existence with that of 'unicorns and witches'.<sup>28</sup> The outright rejection of rights-based claims as dubiously mystical or completely baseless has itself an impressive historical lineage. And yet the commitment to the idea of human rights is far more prevalent and influential in the twenty-first century than in the 1790s. In this regard, it is interesting to note how contemporary political philosophers defend their commitments to the idea of individual rights. It is usually the case that when liberal political philosophers explain or justify their commitment to individual rights, they do so with reference to the idea of *equality*: the argument that they generally posit is that individuals hold rights in virtue of their equal moral standing.<sup>29</sup> Human equality is generally treated as having an axiomatic status within their political theories.

When Paine addresses the basis for those rights he ascribes to individuals, he likewise invokes a fundamental egalitarianism. His egalitarian sentiments are traceable throughout his writings, from his very earliest contributions to American political debate to the theological dissertations that dominated the final years of his life. In the first few pages of *Common Sense*, he unequivocally asserts that 'mankind' are 'originally equals in the order of creation'.<sup>30</sup> Almost twenty years later, in his first comprehensive work devoted to religious matters, *The Age of Reason*, he declares, 'I believe in the equality of man.'<sup>31</sup> It is upon this foundational egalitarianism that he grounds his ascription of individual rights. Amongst all of his writings, Paine's linkage of human moral equality and the existence of individual rights is most starkly affirmed in *Rights of Man*. Here, he outlines his belief in 'the unity of

<sup>28</sup> Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Routledge, 1989), 70.

<sup>29</sup> For canonical examples, see John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999); Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000); Waldron, *God, Locke, and Equality*.

<sup>30</sup> Paine, 'CS', CWI, 9. <sup>31</sup> Paine, 'AOR', CWI, 464.

man', which, he goes on to explain, means that 'men are all of *one degree*, and consequently that all men are born equal, and with equal natural right'.<sup>32</sup> As with contemporary liberal thinkers – like Rawls, Dworkin and Waldron – the concept of human moral equality here acts as a normative axiom for Paine, one that 'consequently' generates a catalogue of individual moral rights, which, in turn, entail corresponding duties that must be observed by both individual agents and political authorities.

One issue raised by Paine's language here that needs to be tackled concerns the moral status of women: are they part of the universe of moral equals and bearers of the rights Paine identifies? The pertinence of this question and the potential implications of its answer are far-reaching. At the time he was writing, the dominant view of women in Britain – to put it very mildly – was that even if they were equal to men in a moral sense, this certainly did not imply any equality of political rights or status. As feminist theorists have pointed out, a simultaneous affirmation of moral equality and political inequality is visible in a number of early modern writings, including Locke's *Two Treatises*. As Susan Moller Okin shows, in her seminal historical account of the status of women in western thought, even though the aim of *Two Treatises* is a rejection of Sir Robert Filmer's patriarchal absolutism and corresponding naturalised hierarchy, Locke still sanctioned inequality in familial relations, justifying subservience of women to men, on the grounds that the latter are indisputably 'the abler and the stronger'.<sup>33</sup> The upshot of Locke's writing, for Okin, is that 'the exclusion of women from political rights is implicitly justified by the assumption that, as head of the family, the father alone can represent its interests in the wider society'.<sup>34</sup> In late eighteenth-century Britain, there was certainly no popular movement campaigning for women to have equal political status. Furthermore, even though Wollstonecraft might have staked out the intellectual ground for that cause with her claim that women had an abundance of capacities that were as yet unrealised and would necessarily continue to be thwarted by inequality, she never explicitly advocated equality of political rights between men and women.

<sup>32</sup> Paine, 'ROM', CW I, 274.

<sup>33</sup> Susan Moller Okin, *Women in Western Political Thought* (Princeton: Princeton University Press, 1979), 200.

<sup>34</sup> *Ibid.*, 200–201.

In accordance with the dominant discourse of the 1790s and the French Revolution, Paine refers consistently to the rights of *man*. The question is then whether, in doing so, his theory excludes women from equal status and thus *denies* them eligibility for political rights. We might think that his political theorising does involve such exclusion since he on occasions makes plain his belief in the divine origin of sexual difference. In *Common Sense*, for example, immediately following his assertion of a baseline egalitarianism that destroys any purported distinction in status between ‘king’ on the one hand and ‘subject’ on the other, he goes on to state that ‘male and female are the distinctions of nature’.<sup>35</sup> Furthermore, in *Rights of Man* he refers to the ‘Mosaic account of the Creation’ in order to again deny any natural inequality between humans, but in doing so claims that therein ‘the distinction of the sexes is pointed out, but no other distinction is even implied’.<sup>36</sup> In *Agrarian Justice*, he claims that ‘it is wrong to say God made *rich* and *poor*; He made only *male* and *female*’.<sup>37</sup> In each of these cases, Paine rejects a suggested instance of basic, natural difference between persons – subject from monarch, or poor person from rich – and actually juxtaposes them to what he *does* seem to regard as such a difference: that which exists between the sexes.

It could perhaps thus be argued that when Paine talks of the ‘rights of man’, it is in fact only *man* that he has in mind and that it is a mistake to think of the entitlements he goes on to identify as belonging to all individuals. This reading would pose clear difficulties for my general argument that his thought represents one of the earliest examples of rights-based modern liberalism. There is, after all, little that is either modern or liberal about the denial of equal political status to women. There are nevertheless some good reasons to resist the notion that Paine’s theory must be read to exclude women from the realm of political equality or individual rights. For one thing, there is the fact that he does not at any point make such exclusion explicit: he *never* suggests that any of the rights that he recognises and defends are to be held only by men. It is, of course, perfectly true that absence of evidence here does not provide evidence of absence. We cannot straightforwardly infer a commitment to women as rights-holders from a lack of explicit repudiation of that view. Indeed, one sceptical response to any

<sup>35</sup> Paine, ‘CS’, CWI, 9.      <sup>36</sup> Paine, ‘ROM’, CWI, 274.

<sup>37</sup> Paine, ‘AJ’, CWI, 609.

focus on what Paine does not say would presumably be that he would simply not have had to be so explicit when communicating with his intended audience. It could be argued that attention to the historical context within which he wrote makes it indisputable that he would not have been expected to *explicitly* deny women political rights at all, in order to make clear that this was his meaning: on this sceptical understanding, Paine's silence on the issue would itself be considered clinching proof of his endorsement of the status quo of inequality of rights based on sex.

It does not take much thought to see where such reasoning goes awry. The sceptical argument outlined plainly cannot do all the work required of it to reach so strong a conclusion. We cannot plausibly ascribe certain beliefs to an individual based on the dominance of those beliefs in the culture within which that person was writing. To do so is to deny the possibility of agency against the background of the intellectual tradition – or supposed paradigm, for that is what it would amount to – within which an individual is situated. Not only this, such an ascription would invite a whole bunch of unanswerable questions about the very nature of the tradition or paradigm, such as, given its preclusion of agency, how it accounts for any diachronic change, that is, how it could ever explain the emergence of the idea of sexual equality in the first place.<sup>38</sup> It is simply not possible to maintain that Paine *must have* been committed to the exclusion of women from the realm of political rights because he failed to explicitly include them in his writing. We cannot conclude that unconventional thoughts are, in principle, unthinkable for historical actors. The strongest variant of this argument that can be plausibly sustained is that such beliefs would be unusual given the historical context and that it is therefore perhaps unlikely that Paine held the view that women could have equal rights to men. This variant of the objection of an ascription of sexual equality should be taken seriously. It is very easy to exaggerate its force, though, since we know that the inclusion of women into what was dominantly regarded as a political universe fit solely for men was not only a thinkable idea, but was also an expressed idea. In 1785 – and so before Paine wrote *Rights of Man* – William Paley acknowledged that the implication of a natural right to representation was that it would apply

<sup>38</sup> For a pithy rejection of 'the idea of traditions as limiting frameworks' that are capable of thwarting agency, see Bevir, *The Logic of the History of Ideas*, 197–199.

as much to women as to men.<sup>39</sup> And the possibility of female suffrage was also taken seriously – and eventually endorsed – by Paine’s contemporary Jeremy Bentham.<sup>40</sup> There is ultimately no option other than to turn to the evidence of Paine’s expressed beliefs – and their apparent implications – rather than rule out the possibility of him holding certain ones, on the grounds that there existed at his time of writing some undefined set of structural limitations to his thought.

So, what evidence is there that Paine’s theory does include women, apart from the fact he does not explicitly exclude them? There is, most strikingly, the important fact that he does not draw any political conclusions from the aforementioned sexual differences that he observes. It is one thing to posit a classificatory difference between individual human beings based on characteristics ascribed to a sex and quite another to suggest that this difference has inequalitarian political implications when it comes to the distribution of rights. Not only does Paine not appear to identify such implications, he often does the complete opposite. For example, immediately following the aforementioned identification of that divinely ordained difference between men and women in *Agrarian Justice*, he notes that God ‘gave *them* the earth for their inheritance’. This obviously implies – given his theory of what the natural inheritance of the earth means, which is discussed fully in [Chapter 4](#) – that Paine regards women as property holders. Any doubts about this sentiment are obliterated later in the same text, when he amplifies this claim, arguing that no ‘man *or woman* born in the Republic’ should be excluded from their economic rights.<sup>41</sup> Most often, when Paine deploys the term ‘man’ he does so interchangeably with ‘mankind’ as a conventional shorthand to signify the human species, rather than in such a way as to indicate a restriction of rights to only one sex. He neither explicitly states nor implies that rights are to be restricted to the male sex, instead consistently emphasising humanity as a whole.<sup>42</sup> There is likely to be no absolute, trumping evidence

<sup>39</sup> William Paley, *The Principles of Moral and Political Philosophy* (ed.) D.L. Le Mahieu (Indianapolis: Liberty Fund, 2002) 344.

<sup>40</sup> For a discussion of Bentham’s evolving views on women and their significance, see Miriam Williford, ‘Bentham on the Rights of Women’, *Journal of the History of Ideas* 36 (1975): 167–176.

<sup>41</sup> Paine, ‘AJ’, CW I, 622, emphasis added.

<sup>42</sup> See J. Fruchtman, Jr., *Thomas Paine and the Religion of Nature* (Baltimore: The Johns Hopkins University Press, 1993), 188–189, n. 22. It may even be the case that Paine composed an essay entitled ‘An Occasional Letter on the Female Sex’

that can settle the matter either way with regard to the inclusion or exclusion of women in Paine's attribution of equal rights, but the beliefs he does express lean more decisively towards the former. This conclusion may be difficult to stomach for the more contextually minded scholar, but from what I can ascertain, any scepticism about it must rely on either contestable speculation or a discredited and mystical quasi-structuralist vision of how individuals come to hold and express the ideas they have. Throughout my analysis, I will therefore proceed on the basis that women are included equally in Paine's moral and political universe.

### The consent of 'the living'

The most detailed account of Paine's moral universe appears in *Rights of Man*, written in response to Edmund Burke's *Reflections on the Revolution in France*. It is through his critique of the conservatism defended in Burke's text that Paine outlines many of the key components of his rights-based, liberal alternative. The grounds of intellectual dispute between these two figures are at once basic and complex and concern the nature and content of individual rights, as well as the moral status of history and tradition and the terms and conditions of political legitimacy. Burke's lengthy, detailed and relentlessly dramatic critique of the French Revolution – and the implications of its principles – was itself a response to another work, the veteran dissenter Richard Price's *A Discourse on the Love of Our Country*. Price's *Discourse* celebrated the anniversary of the Glorious Revolution of 1688 and the parliamentary authority in England that event was thought to have secured. In his text, Price maintained that the 1688 revolution had in fact established important and inviolable rights for the people of Britain: these included 'the right to chuse our own governors; to cashier them for misconduct; and to frame a government for ourselves'.<sup>43</sup> This constitutional

in 1775, which displays a commitment to sexual equality and bemoans the fact that 'over three-quarters of the globe nature has placed [women] between contempt and misery' (CW II, 37). Though his authorship of this essay is uncertain, Philip S. Foner was sufficiently impressed by its conformities to Paine's general style to include it in his edition of collected works.

<sup>43</sup> Richard Price, 'A Discourse on the Love of Our Country' in D.O. Thomas (ed.), *Price: Political Writings* (Cambridge: Cambridge University Press, 1991), 190.

settlement had, he proposed, set significant limits on the sovereignty of any reigning British monarch.

Burke's *Reflections* offers a number of intricate arguments, spilling over an array of themes, but his rejection of Price's thesis has a twofold essence. First, he asserts the historical inaccuracy of Price's claims: for Burke, the 1688 revolution did not establish any such principles of limited sovereignty and 'the statute called the *Declaration of Right*' provides evidence of this.<sup>44</sup> In fact, Burke goes further, declaring that 'so far is it from being true, that we acquired a right by the Revolution to elect our kings, that if we had possessed it before, the English nation did at that time most solemnly renounce and abdicate it, for themselves and for all their posterity for ever'.<sup>45</sup> For him, the correct interpretation of the events of 1688 is that any rights that were held by the nation beforehand were surrendered with the Revolutionary settlement. In addition to this historical, factual claim, Burke advances a second more important argument to refute Price. This argument is that the sovereignty of British governments is something *inherited* through time, transmitted through a discernible, national political tradition. In one crucial passage of *Reflections*, he argues that

from the Magna Charta to the Declaration of Right, it has been the uniform policy of our constitution to claim and assert our liberties, as an *entailed inheritance* derived to us from our forefathers, and to be transmitted to our posterity; as an estate specially belonging to the people of our kingdom without any reference whatever to any other more general or prior right. By this means our constitution preserves a unity in so great a diversity of its parts. We have an inherited crown; an inherited peerage; and an house of commons and a people inheriting privileges, franchises, and liberties, from a long line of ancestors.<sup>46</sup>

There is, for Burke, a form of political authority that is particular to Britain: a constitution with a crown and peerage determined by familial transfer, a transmission that is accorded legitimacy as part of a general

<sup>44</sup> E. Burke, 'Reflections on the Revolution in France' in I. Hampsher-Monk (ed.) *Burke: Revolutionary Writings* (Cambridge: Cambridge University Press, 2014), 17. Of the 'Declaration of Right', Burke's contention is that 'in that wise, sober, and considerate declaration, drawn up by great lawyers and great statesmen, and not by warm and inexperienced enthusiasts, not one word is said, nor one suggestion made, of a general right "to choose our own *governors*; to cashier them for misconduct; and to *form* a government for *ourselves*"' (17–18).

<sup>45</sup> *Ibid.*, 21. <sup>46</sup> *Ibid.*, 34.



account of political right based on inherited tradition, which has an authority grounded in the cumulative wisdom of society over time. Price's notion that governors could in any sense be 'chosen' obviously conflicts with the idea of hereditary sovereignty, which Burke claims requires no reference to 'any other more general or prior right' for its authority.

In *Rights of Man*, Paine rails against what he regards as the 'horrid principles'<sup>47</sup> of hereditary sovereignty defended within Burke's 'spouting rant of high-toned declamation'<sup>48</sup> and in doing so defines his own moral and political universe. What is most significant about Paine's critique is that – unlike many of his reformist British contemporaries, who sought to vindicate Price's arguments about the truly radical meaning of the events of 1688 – he is really concerned only with the second part of Burke's argument. Paine has very limited interest in the question of whether or not the Glorious Revolution actually, as a matter of historical fact, did establish individual rights to be held against the monarch. His argument is directed against Burke's general case for conservatism rather than his interpretation of historical events. Indeed, Paine actually acknowledges the possibility that the Revolution might indeed have *failed* to establish the individual rights identified by Price and instead sought to bind subsequent generations to the authority Burke identifies. The key point is, for Paine, that regardless of the way in which the parliament opted to act for the good of its constituents, it could have no right to act in any way that would subsequently bind future generations to its decisions. He claims that 'the English parliament of 1688 did a certain thing which for themselves and their constituents they had a right to do ... but in addition to this right, which they possessed by delegation, they set up another right by assumption, that of binding and controlling posterity to the end of time'.<sup>49</sup> He then restates the point in more general terms:

There never did, nor never can exist a parliament, or any description of men, or any generation of men, in any country, possessed of the right or the power of binding or controlling posterity to the 'end of time', or of commanding forever how the world shall be governed, or who shall govern it; and therefore all such clauses, acts, or declarations, by which the makers of

<sup>47</sup> Paine, 'ROM', CW I, 250.      <sup>48</sup> *Ibid.*, 259.

<sup>49</sup> *Ibid.*, 251, emphasis suppressed. As Paine later puts it, 'A cannot make a will to take from B his property, and give it to C' (*Ibid.*, 325).

them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void. Every generation must be as free to act for itself, *in all cases*, as the ages and generations which preceded it.<sup>50</sup>

Thus, for Paine the actual principles enshrined by the Glorious Revolution are of limited moral significance in that they have no authority beyond the lifetime of the parliament that validated them. Furthermore, the attempt by *any* parliament to establish the perpetuity of its laws and values in such a way would render its legitimacy ‘null and void’.

So how can a parliament ever come to have legitimate political authority, such that individual citizens are bound to its laws? Paine’s answer to this question is to claim that ‘it requires but a very small glance of thought to perceive that although laws made in one generation often continue in force through succeeding generations, yet they continue to derive their force from the *consent of the living*’.<sup>51</sup> He is absolutely unequivocal on this point: the authority of government, the grounds of political obligation and corresponding test of legitimate authority lie in the ‘consent of the living’. Before discussing the role of consent in detail, it is necessary to consider what this statement means for Paine’s understanding of the moral universe. This is because one implication of such a stated condition of political legitimacy is that only ‘living’ individuals have moral status. He elaborates on this in the following passage:

Every generation is and must be competent to all the purposes which its occasions require. It is the *living* and *not the dead* that are to be accommodated. When man ceases to be, his power and his wants cease

<sup>50</sup> *Ibid.*, 251.

<sup>51</sup> *Ibid.*, 254. He continues, ‘It requires but a very small glance of thought to perceive that although laws made in one generation often continue in force through succeeding generations, yet they continue to derive their force from the consent of the living. A law not repealed continues in force, not because it *cannot* be repealed, but because it *is not* repealed; and the non-repealing passes for consent.’ He continues, ‘Mr. Burke’s clauses have not even this qualification in their favor. They become null by attempting to become immortal. The nature of them precludes consent. They destroy the right which they *might* have by grounding it on a right which they *cannot* have. Immortal power is not a human right, and therefore cannot be a right of parliament. The parliament of 1688 might as well have passed an act to have authorized itself to live forever, as to make their authority live forever.’

with him; and having no longer any participation in the concerns of this world, he has longer any authority in directing who shall be its governors, or how its government shall be organized, or how administered.<sup>52</sup>

According to Paine, Burke's argument for hereditary government implies that the dead govern over the living and this is illegitimate because it is only to the living that rights are available. The dead should be thought to have no 'authority', have no 'power' or 'wants' and, as a consequence, no rights. It is important to stress that it does not follow from Paine's ascription of powerlessness to the dead that a lack of power necessarily implies a lack of rights. His understanding of the political status of children demonstrates this. He makes it quite clear that the moral universe does include children, arguing that 'the rights of minors are as sacred as the rights of the aged' and that these rights 'are to be preserved inviolate for the inheritance of the minors when they shall come of age'.<sup>53</sup> It is the dead that are singled out for exclusion from the moral universe.

Throughout *Rights of Man*, Paine insists on this principle that politics is a domain only for the living, at one point declaring that:

I am contending for the right of the *living*, and against their being willed away, and controlled and contracted for, by the manuscript-assumed authority of the dead; and Mr. Burke is contending for the authority of the dead over the rights and freedom of the living.<sup>54</sup>

When an individual dies, he or she ceases to be part of the moral universe and, because of this, his or her opinion will be of no relevance and their consent is not necessary for the legitimacy of government. It is for this reason that political constitutions or agreements have no guaranteed longevity. Paine further juxtaposes Burke's reliance on 'musty records and mouldy parchments' with the Marquis de la Fayette, whose thought addresses 'the *living* world'.<sup>55</sup> The moral universe he outlines in *Rights of Man* consists of living human beings, who are – by virtue of simply being alive – eligible for natural rights, rights that are held by all equally. 'Every generation is equal in rights to the generations which preceded it', Paine contends, 'by the same rule that every individual is born equal in rights with his contemporary'.<sup>56</sup> His identification of

<sup>52</sup> *Ibid.*, 251, emphases added.

<sup>53</sup> Paine, 'DFPG', CW II, 574. Until minors come of age, 'their rights are under the sacred guardianship of the aged'.

<sup>54</sup> Paine, 'ROM', CW I, 252. <sup>55</sup> *Ibid.*, 255, emphasis added.

<sup>56</sup> *Ibid.*, 274.

living individuals as the only possible bearers of rights might be thought unremarkable, perhaps even somewhat self-evident. The idea that non-living persons could be bearers of rights might seem very odd and mystical in comparison. But it is actually far from uncommon for societies to ascribe rights to the dead. Commonly observed posthumous rights include the power to transfer our property to a person of our choice through a final will and testament as well as the power to restrict the ways in which our body is used by others after we die. Paine's view would appear to deny the possibility of these and any posthumous rights: for him, as soon as we die, we seem to become completely irrelevant in a political, and seemingly even a moral, sense.

The nature of Paine's universe of rights-holders, thus defined, raises interesting moral issues. For instance, if *only* those individuals who are currently alive have moral status, then it might seem that there is no need for living individuals to show any concern for those as-yet-unborn people, human beings who are not *yet* part of the universe of rights-holders. There would seem to be nothing *prima facie* morally wrong, for example, with any depletion of the world's natural resources, since the living do not have moral duties to future generations, who have no rights. According to such a view, living individuals do not have any moral obligation to protect the natural environment because it also is not part of the moral universe. Any moral significance the environment has would therefore be purely instrumental, related only to the protection of the rights of the living and fulfilment of their needs. This instrumental significance could of course be quite substantial for the living, such that protection of the environment is taken very seriously. But this does not actually guarantee much in the way of an obligation to sustain the natural environment. This is because it is surely inevitable that situations will arise where specific actions could be undertaken that provide real short-term benefits (for the living) but that will also cause long-term harms (for the as-yet-unborn). Clearly if living persons have no moral obligations towards future generations, because they are not part of the rights-holding universe, there is no reason to prevent a society from opting to increase its own utility at the considerable expense of the as-yet-unborn.

During one discussion of rights, Paine does appear to hint at a *lack* of intergenerational moral obligations, which would appear to sanction the exploitation of natural resources for short-term gain at the expense of long-term depletion. His suggestion is that

Those who have quitted the world, and those who are not yet arrived in it, are as remote from each other as the utmost stretch of mortal imagination can conceive: *what possible obligation then can exist between them*, what rule or principle can be laid down, that two nonentities, the one out of existence, and the other not in, and who never can meet in this world, that the one should control the other to the end of time?<sup>57</sup>

Paine does not, in this passage, explicitly deny the existence of inter-generational moral obligations: his immediate concern here is rather the denial of rights to the dead. In spite of this, his description of those not 'living' as 'non-entities' and his implicit affirmation of the location of moral duties amongst those who are able to 'meet in this world' does hint at such a view, as does his question of 'what possible obligation' could exist between 'remote' generations. Such a statement would seem to mean that the living owe no moral obligations to future generations, who hold no political rights.<sup>58</sup>

This is arguably not the right way to understand Paine's position though and a different interpretation of its entailments – one more faithful to the general thrust of his political theory as a whole – is easily available. His writings beyond *Rights of Man* show that he is perfectly aware of the fact that future generations do not simply appear when present generations disappear. He knows that there is no neat, regular replacement of members of the human race as and when they die off. The assumption that such a neat replacement is possible would seem necessary to prop up the view that there is any stability in the distinction between the living and unborn future people, when it comes to interaction with and use of the natural environment. Any acknowledgement that generations bleed into each other undermines the notion that those human beings living *at one particular moment* constitute an identifiable and morally significant group. In his *Dissertation on First Principles of Government*, Paine observes that 'a nation, though continually existing, is continually in a state of renewal and succession. It is

<sup>57</sup> *Ibid.*, 252, emphasis added.

<sup>58</sup> This is the conclusion reached by Terence Ball, one of the few scholars who emphasises this issue in Paine's writing. Ball contrasts Paine's position with that of Thomas Jefferson, who explicitly identifies obligations of stewardship for future generations when he writes that 'the earth belongs *in usufruct* to the living'. Terence Ball, "The Earth Belongs to the Living": Thomas Jefferson and the Problem of Intergenerational Relations', *Environmental Politics* 9 (2000): 61–77, 74.

never stationary. Every day produces new births, carries minors forward to maturity, and old persons from the stage'.<sup>59</sup> He then goes on to offer a clear definition of what he means by a 'generation':

As a natural term, its meaning is sufficiently clear. The father, the son, the grandson, are so many distinct generations. But when we speak of a generation as describing the persons in whom legal authority resides, as distinct from another generation of the same description who are to succeed them, it comprehends all those who are above the age of twenty-one years, at the time we count from; and a generation of this kind will continue in authority between fourteen and twenty-one years, that is until the number of minors who shall have arrived at age, shall be greater than the number of persons remaining of the former stock.<sup>60</sup>

So, Paine is clearly aware of the overlap between present and future peoples, such that communities are *never* composed of one pure generational group. According to his estimate, even a majority of any generationally linked group is likely to be in evidence for as little as fourteen years and no more than twenty-one. And he is committed to the view that individuals come to bear rights *as soon as* they enter the world, which is something he notes happens *every single day*. As we have seen, for him the rights of minors are inviolable and their interests must be taken into account even when they are not yet part of the generation of majority age that comprises a particular legal authority.

Further analysis of Paine's arguments shows that it is a mistake to think that he denies the existence of moral obligations to future generations. This is not only because of his recognition of the fact of the temporal instability of generations. Paine is also adamant that future people have, despite their current non-existence, rights that are *equal* to those individuals who are currently 'living'. He claims that 'the rights of men in society are neither devisable, nor transferable, nor annihilable, but are descendible only; and it is not in the power of any generation to intercept finally and cut off the descent'.<sup>61</sup> No generation can therefore legitimately restrict the rights of future people because '*every* generation must be as free to act for itself, *in all cases*, as the generations which preceded it'.<sup>62</sup> Since each generation must be 'as free' as any that have gone before, all members of an existing generation *do* have moral duties that correlate to the rights of future ones. The conduct of the

<sup>59</sup> Paine, 'DFPG', CW II, 575.

<sup>60</sup> *Ibid.*, 575–576.

<sup>61</sup> Paine, 'ROM', CW I, 325.

<sup>62</sup> Paine, 'DFPG', CW II, 576.

'living' is thus bound because they must ensure that the 'freedom' of future generations is not threatened: as Paine puts it, 'the illuminating and divine principle of the *equal* rights of man . . . relates not only to the living individuals but to generations of men succeeding each other'.<sup>63</sup>

The rights and freedoms of every generation are thus sacred and must be protected, such that substantial moral obligations are owed to future people. The exact nature of these rights and freedoms is at this stage somewhat undeveloped but it will gain more flesh as we unpack Paine's political ideas further. It will become clear that the human rights that Paine identifies include more than just liberty in political and constitutional matters, but extend also to certain universal economic entitlements. But we do not have to pre-empt our discussion of economic rights in order to appreciate that protecting the rights of future people involves certain actions (or inactions) on the part of the currently living as a matter of duty. Indeed, since Paine thinks that the living are obliged to maintain the *equal* rights and freedoms of future people, we might conclude that this involves preserving a world in which their exercise is enabled. If this is granted, then it would seem to follow from Paine's logic that a number of practices be curtailed: those actions that not only provide short-term benefits to the living but also cause long-term environmental harms that consequently render the exercise of freedoms unduly costly. Paine's view about the equal rights of future generations thus appears capable of lending support to any number of ecological concerns about the threats posed by human behaviour that is demonstrably deleterious of the natural environment.<sup>64</sup>

This interpretation of Paine would mean that he would have a robust and distinct response to any nihilistic attitude towards the issue of environmental protection. For instance, the question Wilfred Beckerman poses is, 'Suppose that, as a result of using up all the world's resources, human life did come to an end. So what? What is so desirable about an indefinite continuation of the human species, religious

<sup>63</sup> Paine, 'ROM', CW I, 274.

<sup>64</sup> Ball observes this possibility in Paine's thought, but sees it as logically inconsistent with his emphasis on the rights of 'the living' ('Thomas Jefferson and the Problem of Intergenerational Relations', 75, n. 10). Ball's reading can be avoided once it is recognised that Paine's construal of the non-living takes in only the dead and *not* future people, who are actually considered part of the moral universe, with their rights and freedoms protected in a manner akin to those of minors.

convictions apart?’<sup>65</sup> We can see that, according to Paine’s moral logic, it would not be a teleological conviction or a worship of the human species itself that justifies the protection of the natural environment and preservation of the well-being of future generations. We do not have duties to keep human life going for some perfectionist end – as might be the case for Locke, for whom the preservation of mankind is the crowning feature of natural law. It is rather because individuals have equal rights that we have moral duties to forthcoming generations. This means that even were human beings to be replaced simply *when they die off*, such that generations were stable, monolithic entities, there would still be the duty to preserve the planet in such a way as to protect future freedoms. Were procreation to be abandoned altogether, the human race could perhaps legitimately die off without concern, but it is clear that Paine is aware that this is extremely unlikely. In *Dissertation on First Principles of Government*, he writes,

A single reflection will teach us, that our ancestors, like ourselves, were but tenants for life in the great freehold of rights. The fee-absolute was not in them; it is not in us; it belongs to the whole family of man, through all ages. If we think otherwise than this, we think either as slaves or as tyrants. As slaves, if we think that any former generation had a right to bind us; as tyrants, if we think that we have authority to bind the generations that are to follow.<sup>66</sup>

This passage demonstrates Paine’s unequivocal commitment to inter-generational moral obligations: *perfect* obligations, matters of justice that involve ‘the whole family of man, through all ages’. Here, he explicitly rejects the salience of the term ‘fee-absolute’, which refers to absolute ownership (of the earth, in this case) and correspondingly endorses the concept of the ‘fee-simple’, which means instead *temporary* tenancy. For Paine, individual rights do not extend to free actions that will violate the rights of another, regardless of whether they are yet born. For him, ‘the rights of man are the rights of all generations of men, and cannot be monopolized by any’,<sup>67</sup> a theme that will be explored again later in the context of his accounts of property and welfare.

<sup>65</sup> Wilfred Beckerman, ‘The Myth of Finite Resources’, cited in Brian Barry, ‘Justice Between Generations’, *Liberty and Justice: Essays in Political Theory 2* (Oxford: Clarendon Press, 1991), 242.

<sup>66</sup> Paine, ‘DFPG’, CW II, 575. <sup>67</sup> Paine, ‘ROM II’, CW I, 396.



Having addressed the composition of Paine's moral universe – the tricky concept of 'the living' and its ramifications – we can now properly address the idea of consent in his political theory. 'Who', he asks, 'authorized, or who could authorize the parliament of 1688 to control and take away the freedom of posterity, and limit and confine their right of acting in certain cases for ever, who were not in existence to give or withhold their consent?'<sup>68</sup> It is clear that Paine thinks the hereditary form of political authority championed by Burke must be rejected out of hand, because it 'operates to preclude the consent of the succeeding generations; and the preclusion of consent is despotism'.<sup>69</sup> Consent must therefore be a condition of legitimacy that a political authority must satisfy in order to generate obligations for its citizens. The insistence that the legitimacy of government depends on instances of individual consent does not at first glance appear particularly remarkable. Indeed, so phrased, it does not seem so very different from the claim advanced by Locke in *Two Treatises* that 'Consent . . . makes any one a Member of any Commonwealth'.<sup>70</sup> The way in which Paine understands consent as a condition of government legitimacy is, however, actually quite different from Locke's and his account of political obligation emerges, upon careful analysis, as potentially unique within the history of western thought.

We can identify a number of possible grounds for the legitimacy of political authority, reasons why individuals should obey the state and its laws. One of the most influential is the argument developed by David Hume, which is often referred to as the *benefit* theory. This argument presents political obligation as an essentially rational choice for actors based on the advantages gained from the existence of government. According to Hume, an individual can be thought obliged to respect a political authority and thus obey its laws, because doing so has a number of benefits for that person, which are empirically observable over time. These benefits include, for example, the likelihood of personal security and the existence of a standard of justice in a community. As with all accounts of the grounds for political obligation, Hume's implies a corresponding position with regard to its limits: despite any demonstrable advantages gained by the existence of political authority, there could presumably always be potential for a scenario where civil

<sup>68</sup> Paine, 'ROM', CW I, 252. <sup>69</sup> *Ibid.*, 323.

<sup>70</sup> Locke, *Two Treatises*, II: §122, 349.

disobedience becomes justifiable, circumstances where a particular government acts consistently *against* the interests of its members.

Any consent-based account of political authority and obligation will obviously have to be distinguishable from the benefit-based alternative. Indeed, Hume developed his benefit theory of political obligation in opposition to rival accounts that invoked the idea of a social contract and any supposed expression of consent they depend on. He rejects the idea that individuals could plausibly be obliged to a government that their ancestors consented to, on the basis that those alive now could not have given them the authorisation to do so. Since Paine uses virtually this same argument to reject Burke's case for hereditary government, but wishes to retain the claim that consent is a necessary condition for political obligation, further explanation is warranted here. What does Paine mean by identifying consent as a ground for political obligation, if he does not appeal to the Burkean notion of an established historical contract with intergenerational authority? To answer this question, we need to show how ostensibly consent-based accounts of political obligation can collapse into variants of the benefit theory.

Discussions of political obligation commonly draw a distinction between different forms of consent. This distinction is between accounts of political obligation that invoke the *express* consent of individuals to an authority and those that instead recognise the possibility of *tacit* consent. Both accounts obviously agree that consent generates political obligations, but they diverge on what is thought to count as consent. The concept of tacit consent is usually introduced because of what are supposed to be the fundamental deficiencies of the express-centred alternative. The contention that the legitimacy of political authority requires the express consent of citizens looks hopelessly impractical and insufficiently robust for explaining political obligation as we understand it. It is difficult to imagine how, in practical terms, any government could ever claim that there has been an explicit expression of consent by each citizen. What, the sceptic asks, would such an expression look like and how could it be confirmed? The conclusion that no compelling answer can be given to these questions – prompted by the view that framing, and receiving universal approval for, some kind of all-encompassing plebiscite within a community would be practically impossible – lends a tacit construal of consent real attractiveness, because it seeks to maintain the centrality of the concept of

authorisation from the citizenry while seemingly abandoning the thorny issue of requiring its explicit expression.

As A. John Simmons points out, tacit consent is defined by its *mode* of expression, not its *lack* of it.<sup>71</sup> In other words, there is generally thought to be some kind of appropriate action (or, perhaps more likely, some specified *inaction*) through which tacit consent can be signified, recognised and therefore verified. For example, if a person is informed in, say, a board meeting that he must register his opposition to a proposal by uttering a certain phrase, his silence can count as an expression of consent. So the distinction between tacit and express consent is potentially misleading, as both do involve expressions. What unites tacit and express conceptions of consent in an important way is the idea of intentionality, of individual purposiveness in action (or inaction). This feature also explains its substantial moral attractiveness. Individuals need to be *aware* of what they are doing when they consent to something because it is this awareness that lends their actions an authoritative force.<sup>72</sup> What distinguishes the two different forms of consent is merely the means through which this intentionality can be signified and verified.

Some theories of political obligation that deploy the language of consent to make their case nevertheless jettison the intentional aspect that the concept has to trade on and, unsurprisingly, suffer in terms of their plausibility and attractiveness as a result. For example, both Locke and Rousseau identify residency in a specified geographical territory as a signifier of consent to the relevant political authority.<sup>73</sup> Locke even instances the act of travelling on a highway within the geographical confines of a particular territory as constituting that

<sup>71</sup> A. John Simmons, *Moral Principles and Political Obligation* (Princeton: Princeton University Press, 1979), 83–84.

<sup>72</sup> There is a prominent view – expressed in Roman Law as *Volenti non fit injuria* and also visible in Aristotle's *Nicomachean Ethics* – that whereupon a person indicates his consent to a certain action (or inaction) of another, he cannot claim to have been wronged by it. For a critical discussion of this view, see Joel Feinberg, *The Moral Limits of the Criminal Law, Volume I: Harm to Others* (Oxford: Oxford University Press, 1984), 115–117.

<sup>73</sup> For Rousseau, 'once the State is instituted, consent consists in residence; to dwell in the territory is to submit to the sovereignty' ('The Social Contract' in V. Gourevitch (ed.), *Rousseau: The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press, 1997) IV: 2, 123–124).

person's tacit consent to be obliged to the laws of the land.<sup>74</sup> While it is not necessarily unjustifiable for a political authority to compel such an individual to obey its laws (and suffer an appropriate penalty if she does not), it does not follow that the simple act of travel implies that she *knowingly* consents to such laws. It stretches credulity to claim that mere residency could ever qualify as an instance of even tacit consent. Such a view suggests that individuals can come to have obligations to a political authority simply by being born in a particular territory and that this event – merely *being born* – somehow constitutes an instance of consent. A focus on this apparent absurdity was in fact the nub of Hume's criticism of the idea of an original contract: as he points out, the notion that individuals owe obligations to the state because residency within its territorial confines implies consent, is analogous to the view that someone owes allegiance to the captain of a ship even 'though he was carried on board while asleep and must leap into the ocean and perish the moment he leaves her'.<sup>75</sup>

Conceptions of tacit consent that invoke residency as an exemplary instance of it look unconvincing because the aforementioned morally relevant, intentional aspect is violated. They tend to provide uninteresting theories of political obligation because their advocates usually need to provide auxiliary arguments to buttress their case and such arguments tend to boil down to an account of good government, which, crucially, then end up looking indistinguishable from the Humean benefit theory. For example, although Rousseau's view is that 'residency implies consent' after 'the State is instituted', this claim does not really do any justificatory work in his explanation of political obligation, the grounds for which lie rather in the existence and promotion of the 'general will' of a community. Paine's theory of political obligation, by contrast, retains consent at its core and does not ever collapse into the benefit theory. At no point does he appeal to

<sup>74</sup> 'Every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his *tacit Consent*, and is as far forth obliged to Obedience to the Laws of that Government, during such Enjoyment, as any one under it; whether this his Possession be of Land, to him and his Heirs for ever, or a Lodging only for a Week; or whether it be barely travelling freely on the Highway; and in Effect, it reaches as far as the very being of any one within the Territories of that Government' (Locke, *Two Treatises*, II: §119, 348).

<sup>75</sup> D. Hume, 'Of the Original Contract' in E.F. Miller (ed.), *David Hume: Essays Moral, Political, and Literary* (Indianapolis: Liberty Fund, 1985), 475.

residency, or any *passive* equivalent, as an example of consent. Indeed, he consistently emphasises the need for individuals to convey their authorisation of government, which is why he is able to challenge the legitimacy of any constitutional settlement agreed upon in 1688. Hereditary government is rendered illegitimate for Paine, by definition, because consent is a necessary condition of legitimate political authority and institutions such as monarchy preclude its possibility.

Paine's position – that consent is a necessary condition of political obligation – has an important and radical implication, one that reflects the libertarian tendencies of his thought: his logic implies that individuals can legitimately *withdraw* their consent. If obligations to a particular government rest on the conferral of consent, then it must follow that any individual can withhold or withdraw it at any point deemed convenient. How might a person do this? Different possibilities would seem to be available. If a sufficient number of like-minded persons withdraw consent simultaneously then they would presumably be able to establish a new political community that better serves their interests or reflects their values. But what happens if just one individual withdraws her consent? The only plausible answer would seem to be that the person in question would no longer be considered part of the political community and have either to find another that she could be part of, or else be stateless. The political authority from which she has withdrawn will continue to exist for as long as it is comprised of members who continue to give their consent to be governed by it. Despite its potential costs or dangers for the person that exercises it, the right to withdraw consent is a necessarily core part of Paine's political theory: no individual can owe obligations to a political authority through compulsion and mechanisms must exist to allow people to withdraw from its juridical framework straightforwardly and then face any consequent costs.

## Rights and the social contract

For Locke, consent is a necessary but *not* sufficient condition of political obligation: although consent generates the obligations individuals have to political authorities, it cannot provide legitimacy to *any* authority of an agent's choosing.<sup>76</sup> It is not possible, according to Locke, to

<sup>76</sup> For a fuller discussion of Locke's position, see Simmons, *Moral Principles and Political Obligation*, 83–95.

legitimately consent to slavery or, by extension, to a political authority that requires it of an individual. His claim is that protection of the 'Lives, Liberties, and Estates of the People' is something upon which the legitimacy of government depends at all times.<sup>77</sup> At the same time, one cannot be bound to obey a government, in Locke's eyes, unless there is evidence of consent: 'no one can be put out of this Estate, and subjected to the Political Power of another, without his own *Consent*'.<sup>78</sup> As suggested, the problem with Locke's theory is his passive and non-intentional – rather than merely tacit – construal of consent. His unconvincing treatment of consent then leaves his theory of political obligation indistinct from the benefit theory, insofar as it puts the justificatory weight on the rationality of it, on the advantages for the binding force of government and law.

Paine's account resembles Locke's insofar as consent is also *not* a sufficient condition of political legitimacy. Although Paine thinks that government requires authorisation from its citizens to avoid the charge of despotism, it can likewise have universal consent and yet still be deemed despotic and therefore illegitimate. This is because another necessary condition for legitimate political authority is that the government act in a certain, specified manner. According to Paine, for political authority to be legitimate, it must also be *a guarantor of individual rights*. Mere consent to a government that fails to recognise and protect individual rights is not in itself enough to generate political obligation. Both conditions – consent and rights-protection – must be in evidence for the individual to have a legitimate reason to yield to a political authority. The remainder of this chapter will sketch out these inalienable political rights that Paine thinks individuals hold against each other and the state, the protection of which is a condition of political legitimacy. I will then turn to the distinction he draws between 'natural' and 'civil' rights, and locate him within the social contract tradition of political theorising, before discussing how the commitments to rights-protection and consent cohere in his overall argument.

The liberal credentials of Paine's political thought are never clearer than during his discussion of the French 'Declaration of the Rights of Man and the Citizen' in *Rights of Man*. He reproduces that document in full, arguing that it is 'the first three articles' that 'comprehend in general terms the whole of a Declaration of Rights: all the succeeding

<sup>77</sup> Locke, *Two Treatises*, II: §222, 412.      <sup>78</sup> *Ibid.*, II: §95, 330.

articles either originate from them, or follow as elucidations'.<sup>79</sup> These three articles state that:

1. *Men are born, and always continue, free, and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.*
2. *The end of all political associations, is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.*
3. *The nation is essentially the source of all sovereignty; nor can any INDIVIDUAL, or ANY BODY OF MEN, be entitled to any authority which is not expressly derived from it.*<sup>80</sup>

Paine observes that the fourth, fifth and sixth articles 'define more particularly what is only generally expressed' in these first three. They are very important because they specify the liberties to which individuals are entitled. The liberties identified in the 'Declaration' can be distinguished by their concerns for freedom of action and freedom of thought. In terms of freedom of action, the fourth article identifies the right that 'consists in the power of doing whatever does not injure another', the only limit to a person's action being 'those which are necessary to secure every *other* man the free exercise of the same rights'.<sup>81</sup>

This right to complete freedom of non-injurious action resembles the so-called 'harm principle' developed later by John Stuart Mill, as does the fifth article, which goes on to state explicitly that 'the law ought to prohibit only actions hurtful to society'.<sup>82</sup> Whereas Mill's utilitarian thought contains a quite detailed account of the nature of human well-being and also concrete examples of what constitutes harm, there is no such equivalent in Paine's writing. All he says on this issue is that each person has the 'right of acting as an individual for his own comfort and happiness' as long as no injury is caused to another by such actions.<sup>83</sup> Perhaps, then, an individual sustains an injury through the actions of another when her own 'comfort and happiness' is threatened or diminished. This is still a bit vague. What is needed is an idea about what counts as a diminution of comfort and happiness. One possible way of thinking of the right to non-injurious action is just to regard it as a basic

<sup>79</sup> Paine, 'ROM', CW I, 315.

<sup>80</sup> *Ibid.*, 314.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*, 275–276.

right to bodily integrity: we each have the right to act in any way we please, to pursue our ‘comfort and happiness’ provided that our actions do not threaten the bodies of others. This still leaves open the question of why we should be ascribed such rights to preserve bodily integrity – and, correspondingly, when a violation of them should be considered harmful – but this issue will be dealt with in the [next section](#), when we address the reasons Paine has to value freedom in the first place.

Perhaps an even more important specification of the French Declaration is, for Paine, the right to complete freedom of thought and religious belief. The tenth article of that document stipulates that ‘no man ought to be molested on account of his opinions, not even on account of his *religious* opinions, provided his avowal of them does not disturb the public order established by law’.<sup>84</sup> The eleventh article then makes plain that individuals also have the right to *express* these opinions in an ‘unrestrained’ manner.<sup>85</sup> Paine actually worries that the ‘Declaration’ might not ‘sufficiently’ guarantee ‘the right it is intended to accord’ by making religious thought ‘a subject of human laws’.<sup>86</sup> The right to freedom of religious belief is, for him, so fundamental that it must be recognised as beyond the purview of government. He thus lauds the French adoption of a ‘universal right of conscience’ held by individuals and their corresponding decision to have ‘abolished or renounced *toleration*’.<sup>87</sup>

Paine’s rejection of toleration is grounded on his belief that such a policy fails to treat individuals as moral equals. For him,

toleration is not the *opposite* of intolerance, but is the *counterfeit* of it. Both are despotisms. The one assumes to itself the right of withholding liberty of conscience, and the other of granting it. The one is the pope, armed with fire and faggot, and the other is the pope selling or granting indulgences. The former is church and state, and the latter is church and traffic’<sup>88</sup>

So, although toleration and intolerance are oppositional in terms of the treatment that they validate towards individuals, they nevertheless share a certain *structure*, which Paine views as problematic. If a government is intolerant of religion, then the individual right to liberty of conscience is obviously violated. However, Paine’s argument is that if a

<sup>84</sup> [Ibid.](#), 315.

<sup>85</sup> [Ibid.](#)

<sup>86</sup> [Ibid.](#), 316.

<sup>87</sup> [Ibid.](#), 291. See also, 274–277.

<sup>88</sup> [Ibid.](#), 291.



government avows to be tolerant of religion, it also violates this right because it assumes a kind of authority that it simply does not have and could never legitimately claim.<sup>89</sup> In instances of toleration, government merely *permits* an individual to hold a belief rather than recognising the holding of it as an inviolable right, grounded in her moral equality. The idea of toleration presumes that governments have the normative power to permit religion and, by implication, to *prohibit* it, when in actuality what liberalism demands is *equality of treatment* for each individual person's belief. As he puts it elsewhere, 'religion is a private affair between every man and his Maker' and its practice must be protected for all.<sup>90</sup>

Individual freedom of conscience is a right that must be distributed equally and toleration fails this test of equality. This attitude points further to the modern nature of Paine's liberalism. His rejection of toleration signals a shift away from the Lockean attitude to the relationship between believer and government. Locke's commitment to toleration, though often presented as liberal, by virtue of its utilisation of the idea of individual rights, effectively legitimises a state religion, through its casting of other systems of belief (such as Roman Catholicism) as beyond the pale. The vision of the state held by Paine – that rejects toleration in favour of equal rights for individuals to hold whatever religious beliefs they like and to express them how they please – is in contrast evidently a non-perfectionist one, which does not privilege any single vision of the good life. Translated into the language of contemporary liberalism, Paine's state is one that does not endorse any 'comprehensive doctrine', but is instead neutral between competing conceptions of the good.<sup>91</sup>

The entitlements that Paine endorses in the French Declaration are recognisable as basic liberal rights: those 'intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the rights of others'.<sup>92</sup> He refers to these entitlements as 'natural' rights, which he

<sup>89</sup> A similar argument against the concept of toleration is advanced by Kant in 'An Answer to the Question: What is Enlightenment?' in H.S. Reiss (ed.), *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991).

<sup>90</sup> Paine, 'Prosecution of "The Age of Reason"', CW II, 743.

<sup>91</sup> See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

<sup>92</sup> Paine, 'ROM', CW I, 275–276.

asserts are held by individuals in a state before or without government. Natural rights are 'those which appertain to man in right of his existence'.<sup>93</sup> Throughout his political writings, Paine insists on a strict separation between 'society' on the one hand and 'government' on the other. In *Common Sense*, he argues that 'society is produced by our wants and government by our wickedness; the former promotes our happiness *positively* by uniting our affections, the latter *negatively* by restraining our vices'.<sup>94</sup> This sentiment indicates that the moral individualism at the centre of his political theory is not antithetical to ideas of community and social cooperation. Indeed, in his vision individuals are depicted as naturally social creatures, who will engage with each other out of bonds of affection and mutual reliance. Paine thinks 'a thousand motives will excite' individuals towards social union, including the facts that 'the strength of one man is so unequal to his wants, and his mind so unfitted for perpetual solitude', such that that he is 'soon obliged to seek assistance and relief of another, who in his turn requires the same'.<sup>95</sup> On account of these many 'positive' reasons why individuals are drawn to sociability, he thinks it is the case that 'society in every state is a blessing'.<sup>96</sup>

He expresses equivalent views in *Rights of Man, Part Two*, where he proposes that 'mutual dependence and reciprocal interest' produce 'that great chain of connection' that holds society together.<sup>97</sup> 'All the great laws of society', he contends, 'are laws of nature'.<sup>98</sup> There is a certain sort of purity to the intercourse that takes place in natural society, before any formal government is established, which is something he is keen to celebrate. Paine's views about the naturalness of society contrast violently with his opinion of government. In *Common Sense*, he excoriates government, asserting that 'even in its best state, [it] is but a necessary evil; in its worst state an intolerable one'.<sup>99</sup> In *Rights of Man, Part Two*, he claims that 'the more perfect civilization is, the less occasion it has for government, because the more does it regulate its own affairs, and govern itself'.<sup>100</sup> He thus compares the bloated government of Britain and the unnecessary (and inequalitarian) tax burden that it imposes on its citizens with the lean, energetic alternative found in America. Unlike the new world, the old nations

<sup>93</sup> *Ibid.*, 275.    <sup>94</sup> Paine, 'CS', CW I, 4.    <sup>95</sup> *Ibid.*, 5.    <sup>96</sup> *Ibid.*, 4.

<sup>97</sup> Paine, 'ROM II', CW I, 357.

<sup>98</sup> *Ibid.*, 359.

<sup>99</sup> Paine, 'CS', CW I, 4.

<sup>100</sup> Paine, 'ROM II', CW I, 358–359.

such as Britain are characterised by ‘the greedy hand of government thrusting itself into every corner’ as ‘invention is continually exercised, to furnish new pretenses for revenue and taxation’.<sup>101</sup>

Paine’s critical remarks about government prompt an obvious question: why is its existence ‘necessary’, given its problems and the benefits individuals already receive through their mutually advantageous interactions in society? Why is government necessary to restrain ‘our vices’ at all? In *Common Sense* his answer is somewhat underdeveloped, but comes down basically to his observation that ‘nothing but Heaven is impregnable to vice’.<sup>102</sup> His claim is that individuals will ‘relax in their duty and attachment to each other; and this remissness will in turn point out the necessity of establishing some form of government to supply the defect of moral virtue’.<sup>103</sup> Government emerges then because the nature of human character makes society an imperfect form of organisation that it is not immune to vice. He expands upon this in *Rights of Man*, where he explains that ‘man did not enter into society to become *worse* than he was before, nor to have fewer rights than he had before, but to have those rights better secured’.<sup>104</sup> Security of rights, it seems, is the motive that individuals have to move from mere society to government. Paine argues that

in a state of nature all men are equal in rights, but they are not equal in power; the weak cannot protect himself against the strong. This being the case, the institution of civil society is for the purpose of making an equalization of powers that shall be parallel to, and a guarantee of the equality of rights.<sup>105</sup>

The terminology used here is different from before, with the ‘state of nature’ now being used to describe ‘society’ and, a little confusingly, ‘civil society’ being used to describe ‘government’. The argument, however, remains the same and here – in explicitly couching the move from a state of nature to civil society in terms of mutual advantage – it reveals Paine to be part of the social contract tradition. Yet his is clearly not a Hobbesian contract. For Hobbes, without the social contract, individuals do have rights, but these rights are entitlements to the use of mere *physical* powers. Rights have, for him, actually the status of mere Hohfeldian privileges: they are the liberties to act due to the absence of

<sup>101</sup> *Ibid.*, 355.      <sup>102</sup> Paine, ‘CS’, CW I, 5.      <sup>103</sup> *Ibid.*      <sup>104</sup> *Ibid.*, 275.

<sup>105</sup> Paine, ‘DFPG’, CW II, 583.

any grounds to forbear from such action.<sup>106</sup> As it is the Hobbesian social contract that actually *establishes* morality, there is a fundamental difference between the types of rights and duties individuals have before and after the establishment of government.<sup>107</sup>

For Paine, by contrast, the social contract is certainly about security, but not in the Hobbesian sense. This is because the rights he identifies as existing in nature are moral rights. Paine's approach is closer to that of Locke, for whom the status of pre-governmental individual rights is entirely different. For Locke, the law of nature 'governs' the state of nature and individuals have rights and duties that derive from this authoritative moral source.<sup>108</sup> The social contract is therefore, for him, necessary not to *create* morality but rather to consolidate its position: government is required to iron out the difficulties posed by certain moral strictures, which need an arbiter to ensure their correct observance. The conclusion that Locke reaches after discussion of life without political authority is that '*Civil Government* is the proper Remedy for the Inconveniences of the State of Nature'.<sup>109</sup>

What effect does the establishment of government then have on the rights that individuals hold? This question is pertinent because of a distinction Paine draws between 'natural' and 'civil' rights. He describes civil rights as 'those which appertain to man in right of his being a member of society',<sup>110</sup> adding that 'every civil right has for its foundation some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent'.<sup>111</sup> There is not, then, a great difference in kind between

<sup>106</sup> For Hohfeld, while claim rights correlate to duties, privileges correlate to 'no-rights' (which are the opposite of rights). See *Fundamental Legal Conceptions*, 36.

<sup>107</sup> Hobbes, *Leviathan*, 39. <sup>108</sup> Locke, *Two Treatises*, II: §4–7, 269–272.

<sup>109</sup> *Ibid.*, II: §13, 275–276. See also *Two Treatises*, II: §19–21, 280–282. One apparent difference between Locke and Paine on the issue of the social contract concerns punishment. Paine suggests that individuals have a right to 'judge in their own cause' but surrender this right to a magistrate, because the power to invoke it becomes redundant once civil society has been generated. According to him, 'every man takes the arm of the law for his protection, as more effectual than his own; and therefore, every man has an equal right in the formation of the government and of the laws by which he is to be governed and judged' ('DFPG', CW II, 583–584). For Locke, the situation is quite different, chiefly because the right to punish in the state of nature is not actually a right at all, but rather a duty. Individuals are under an obligation to punish transgressors of the law of nature rather than merely an entitlement to do so.

<sup>110</sup> Paine, 'ROM', CW I, 276. <sup>111</sup> *Ibid.*

natural and civil rights: one is not of greater moral significance than the other. The difference is instead cashed out in terms of their enforcement, such that civil rights are most accurately understood as natural rights that come to fall under the domain of the state after it is established. As Paine puts it, the individual ‘throws’ some of their natural rights ‘into common stock’.<sup>112</sup>

Only *some* natural rights become civil rights, since a number are retained. Paine explains that ‘those in which the power to execute is as perfect in the individual as the right itself’ survive, and those ‘which are not retained are all those in which ... the power to execute them is defective’.<sup>113</sup> The example that Paine gives of a natural right that does not survive the move to political society is that held by an individual to punish anyone who violates a right. He suggests that each individual possesses a natural right to ‘judge in his own cause’, but that upon the establishment of government this entitlement is then deposited ‘in the common stock of society’.<sup>114</sup> When an individual’s right is violated, a civil right to punish enforced by the state replaces the previously existing natural variant.

Paine’s account of the emergence of government from a state of natural society is thus one in which individuals retain almost all of their initial rights. He uses it to undermine Burke at an empirical, historical level, suggesting that ‘it is extremely easy to distinguish the governments which have arisen out of society, or out of the social compact, from those which have not’.<sup>115</sup> He contrasts the social contract – which is based on ‘the common interests of society, and the common rights of man’<sup>116</sup> – with the other methods through which government can arise, which he identifies dismissively as ‘power’ and ‘superstition’. In Paine’s view, Burke’s *Reflections* implies a vision of the social contract that is illegitimately hierarchical, as it is established between the governors on the one hand and the governed on the other. Burke’s vision is not only unpalatable to Paine, it also makes little sense. This is because any contract to establish political society must be agreed upon *prior to* the creation of government, when there were no governors as such. He claims that it ‘must’ be the case that

*the individuals themselves, each in his own personal and sovereign right, entered into a compact with each other to produce a government: and this is*

<sup>112</sup> *Ibid.*    <sup>113</sup> *Ibid.*    <sup>114</sup> *Ibid.*    <sup>115</sup> *Ibid.*, 277.    <sup>116</sup> *Ibid.*

the only mode in which governments have a right to be established; and the only principle on which they have a right to exist.<sup>117</sup>

A social contract comprised of individual holders of equal rights is, then, *'the only mode* in which governments have ... a right to exist'. One of the ways in which the legitimacy of governments can be gauged is an assessment of their conformity with this principle. This again makes the meaning of the events of 1688 entirely irrelevant to the question of political legitimacy in 1790s Britain, because any agreement that took place did so between monarch and parliament, rather than between all individuals acting in concert as equal citizens. Paine thus reports happily that 'all the constitutions of America are declared to be established on the authority of the people',<sup>118</sup> whereas when we look at the other side of the Atlantic 'we find that the government of England was originally a tyranny, founded on invasion'.<sup>119</sup> The implication of all of this is an expansion of Paine's theory of political obligation, his account of legitimate authority. His remarks on the French Declaration and unequivocal insistence that individuals retain their rights following the establishment of political society through a social contract provides a second necessary condition for governmental legitimacy: not only must a political authority have the consent of its citizens in order to compel obedience to its laws, it must also recognise and guarantee the protection of their fundamental rights.

### The value of freedom

The fact that both the consent of citizens and the protection of individual rights are necessary conditions for the legitimacy of government raises an important question for Paine's political theory: namely, why does he value consent in the first place? The reason that this question arises is that the normative weight or significance of an individual indication of consent is, as mentioned, usually thought to lie in the *particularity* of the choice she makes. When a person signals her consent, she is consciously waiving a right to enforce a certain duty of non-interference held by the person or corporation being consented to. This is the crucial, intentional aspect of consent discussed earlier. But if it is individual choice that is thought to be morally valuable, then why

<sup>117</sup> *Ibid.*, 278.      <sup>118</sup> Paine, 'ROM II', CWI, 381.      <sup>119</sup> *Ibid.*, 382.

are some choices then rendered impermissible? Why would it not be legitimate for a person to choose to relinquish all of her rights? We know this is not permissible in Paine's theory, because of his identification of rights protection as another necessary condition of governmental legitimacy. No individual can legitimately consent to a political authority that will deny (or to another individual that will violate) any of his rights, some of which we have already detailed. It would not be deemed legitimate for an individual to consent to a surrender of her right to freedom of religious belief: no government can violate this right even if a citizen consents to it. Nor would it be legally allowed for a person to consent to have his right to bodily integrity infringed, such that he becomes a victim of physical harm through the actions of another or the state.

Given Paine's unambiguous position on the inalienability of rights, it would seem that the two necessary conditions for political obligation and legitimacy stand in real tension, such that one is capable of undermining the other. We can see how unfettered consent might undermine the protection of liberal rights and how the inviolability of such rights necessarily limits the scope of consent, denying it its trumping force. How can we make sense of this conundrum? On what grounds can Paine say that the scope of consent is restricted by the existence of inalienable rights? One potential response would be to say that to consent to slavery, and therefore to the corresponding forfeiture of all subsequent freedoms to choose one's actions, would be deleterious of a person's well-being. This view has an obvious attractiveness, since it taps into the reasons that we value consent in the first place: it represents our choices, which can be thought to reflect our own, subjective ideas of personal fulfilment. Nevertheless, even in an extreme case such as slavery, the reference to such a notion of well-being – no matter how intuitively attractive – necessarily implies a rejection of the trumping force of an individual's consent, a *rejection* of the value of choice itself at the expense of an external, imported value foisted upon that person in the name of her own good. Such an attempted solution would be saying that consent is valuable only when it is given under circumstances that Paine himself thinks promote individual well-being. This position must then imply some notion of paternalism as well as a rejection of any meaningful commitment to the importance of individual, intentional choice. It might even be thought to render his account of political obligation indistinct from the Humean benefit theory,

because the two would emerge as different only insofar that Paine specifies the particular benefits involved, in this case the protection of the rights he ascribes to individuals. The result would be that consent is reduced to a secondary, almost decorative position in his account of political obligation, a fate that it already has in the theories of Locke and Rousseau.

However, this solution, which achieves theoretical coherence at the expense of a complete diminution of the role of consent in Paine's argument, can and should be resisted. It can be avoided by viewing the apparent tension between consent and a paternalistic or perfectionist conception of well-being – between individual freedom to choose and what Paine regards as inalienable entitlements – as revelatory of how he conceives the character of rights themselves. I earlier alluded briefly to the debates between legal theorists about whether the purpose of rights is to enable the exercise of a person's will or to promote her interests. This distinction might seem at first a somewhat minor matter but the difference between these two understandings is hugely significant and a great deal hinges on which of them is affirmed. Adherence to the will theory implies that rights-bearers must be capable of exercising choice, because such an exercise is thought to be the very purpose of rights. This means that certain entities, like children, the mentally incapacitated and non-human animals, do not qualify as possible holders of rights. As we have seen, some of Paine's political arguments do point towards a potential affiliation with the will theory, most notably his denial of rights to the dead and corresponding emphasis on the importance of 'the living'.

That said, as we have seen, his moral universe also includes minors and *future* people, who clearly cannot qualify as bearers of rights according to the will theory because they are currently incapable of exercising choice. Furthermore, on one occasion, Paine even appears to suggest that non-human animals are bearers of rights. Such a prospect might look unlikely given the humanness of the political universe he defends in *Rights of Man*, in which he asks 'Does Mr. Burke mean to deny that *man* has any rights? If he does, then he must mean that there are no such things as rights any where, and that he has none himself: for who is there in the world but man?'<sup>120</sup> Throughout his critique of Burke, the political world he describes is a resolutely human one.

<sup>120</sup> Paine, 'ROM', CW I, 273.



Nevertheless, in *The Age of Reason*, he asserts quite firmly that ‘everything of cruelty to animals is a violation of moral duty’.<sup>121</sup> Humans have an obligation to forbear from cruel behaviour towards animals and, as noted, Paine is aware that jurisprudential logic dictates that rights and duties are correlative. The existence of duties implies the existence of rights and if non-human animals are regarded as having the latter – even if they are fewer in number, smaller in significance than those held by humans and recognised, for the most part, by proxy – then an ascription of the will theory to Paine is unsustainable.

In *Rights of Man, Part Two*, Paine announces that man ‘acquires a knowledge of his rights by attending justly to his interests’.<sup>122</sup> I now want to suggest that an ascription of the interest theory of rights to Paine can assuage the worry that there is a contradiction between his two necessary conditions for political obligation and legitimacy. In basic terms, my argument is that if we accept that the purpose of rights is to serve interests, then it follows that consent cannot have a trumping moral force under *all* circumstances without undermining the reason why it has *any* force in the first place. The result is that consent does not always have normative priority, but nor is its importance secondary in Paine’s theory of political obligation. To explain this, it is necessary to consider the concept of freedom and its value. The importance of freedom for Paine should be clear at this stage. Indeed, a commitment to freedom is vital to both consent and rights protection: the choice that consent reflects is an exercise of personal freedom and the rights that Paine thinks must at all times be guaranteed are themselves rights to certain freedoms.

Freedom is often thought to be important because it allows individuals to act upon their interests. It is this view that grounds the interest theory of rights: it is not the freedom to exercise choice *per se* that rights exist to protect, but rather the interests served by that exercise. And this belief, in turn, enables the view expressed by Neil MacCormick – one of the most dogged advocates of the interest theory – that our interest in freedom implies that we can never waive our right not to be enslaved.<sup>123</sup> To waive such a right would be to undermine the very purpose of holding rights and, for MacCormick and others, the

<sup>121</sup> Paine, ‘AOR’, CW I, 512. <sup>122</sup> Paine, ‘ROM II’, CW I, 398.

<sup>123</sup> Neil MacCormick, ‘Rights in Legislation’ in P. Hacker and J. Raz (eds.), *Law, Morality and Society: Essays in Honour of H.L.A. Hart* (Oxford: Oxford University Press, 1977), 197.

inability of the will theory to account for this is a fatal weakness. Paine's apparent endorsement of the interest theory – indicated by his regard for the moral status of children, future people and non-human animals – would explain his belief that the protection of (rights to) certain fundamental freedoms must trump expressions of consent in circumstances where the two values clash.

If Paine thinks our rights are grounded ultimately in our interests, then the right to express our consent must presumably be likewise: we must have an interest in being free to choose to authorise a particular government before we come to owe political obligations to it. So, although Paine's theory rules out the legitimacy of freely consenting to a rights-violating political system, it actually does so with reference to our interest in freedom, the same interest that is initially generative of the moral force of consent. But what does it mean to say that an individual has an interest in *freedom*? What sort of interest is this? Few political philosophers regard freedom as intrinsically valuable. Even John Stuart Mill, perhaps the staunchest defender of freedom in modern liberal political thought, connects its protection explicitly to a developmental account of individual well-being, to 'utility in the largest sense'.<sup>124</sup> Freedom is, for Mill, of instrumental importance, prized because of its role in facilitating human happiness, and intellectual and moral improvement.

Several philosophers have argued that there can be no successful account of the intrinsic value of freedom. They maintain that no such commitment is definitive of liberal political theories, which are instead best understood as appealing purely to the instrumental value of *particular* freedoms. Dworkin, for example, argues that reference to any general *right to freedom* stems from a peculiar and misleading *façon de parler*: for him, liberals are not interested in freedom as such, but rather specific freedoms and, furthermore, each specific freedom is justifiable with reference to more fundamental goods that do not themselves involve freedom. So, for example, in order to explain why the prohibition of free speech is more significant than a prohibition against driving a car down a specific street, the overall calculable amount of freedom to be lost is irrelevant to the consideration.<sup>125</sup> This is because freedom for

<sup>124</sup> J.S. Mill, 'On Liberty' in S. Collini (ed.), *John Stuart Mill: On Liberty and other writings* (Cambridge: Cambridge University Press, 1989), 14.

<sup>125</sup> Dworkin, *Taking Rights Seriously*, 269.

Dworkin is not something of general value; it is not a commodity measurable in units. It would, according to him, be ‘bizarre’ to think otherwise.<sup>126</sup> Instead, when we justify our basic liberties, we do so with reference to the instrumental value that each of them has for the attainment of a specific end or upholding of a particular value. In the case of the right to free speech, for example, we might speak of the value of individual dignity as the relevant end and therefore consider freedom only a means to protect it.<sup>127</sup>

Although the view expressed by Dworkin is shared by many political philosophers, it has been rejected – or at least augmented – convincingly in recent years. As the penetrating and pioneering analysis of Ian Carter demonstrates, the fact that we value freedom for the ends that it allows us to pursue does *not* entail that this is the only kind of value that it has. As he shows, in addition to being of instrumental importance, freedom also has what he terms ‘non-specific’ value: his contention is that ‘we attach value to freedom not only because of the specific things it allows us to do, but also because of the mere fact of our having freedom’.<sup>128</sup> Carter argues that we know freedom has such non-specific value because we can make sense of the fact that it is rational for people to prefer more rather than less freedom. The reason for this rational preference is crucially not explicable with reference to any of the specific ends that an individual might intend to pursue using that freedom, but rather by the inescapable fact that human life is uncertain and involves judgements and predictions that are fallible. For Carter, ‘our ignorance about the future gives value to specific freedoms in the present that otherwise would not have value’.<sup>129</sup> We do not always know what we want, or what will be of value to us in terms of the ends we wish to pursue, so it is rational – *ceteris paribus* – to prefer to have more freedom than less.

To further unpack the truth of this claim, Carter offers an analogy with the value of money. It would, he observes, be quite strange to think of money as having intrinsic value, because it is really only valuable instrumentally, in terms of what it can enable us to do. Banknotes are simply pieces of paper with faces and numbers on them, valuable only insofar as – thanks to collective intentionality – individuals

<sup>126</sup> *Ibid.*, 270.      <sup>127</sup> *Ibid.*, 272–278.

<sup>128</sup> Ian Carter, *A Measure of Freedom* (Oxford: Oxford University Press, 1999), 34.

<sup>129</sup> *Ibid.*

will allow us to exchange them for things that we wish to own and so forth. However, at the same time, because of the uncertainty about the future that defines human existence, it is generally thought to be rational to prefer more money to less.<sup>130</sup> It has value that cannot be reduced to specific ends. So it is with freedom. We are aware that the exercise of particular freedoms is necessary for the pursuit and achievement of specific ends and is valuable instrumentally to whatever those ends are. However, because we lack perfect knowledge about how our future choices will unfold and how much value the exercise of specific freedoms will reveal, our present freedom – that freedom we have *before* we commit to certain ends – is non-specifically valuable and so the amount we have of it matters.

Carter's insights about the non-specific value that freedom holds can explain why it is that Paine regards the right to consent as a fundamental entitlement held by individuals on the one hand, but an insufficient condition of political obligation on the other, one that is ultimately trumped by other individual rights in such a way as to preclude the legitimacy of consensual enslavement. The argument proceeds like this. The choices that individuals make in exercising their freedoms have value insofar as the ends pursued serve their interests. The authorising of government through consent is one of these interests. Consent to enslavement or to the surrender of any of the fundamental rights held by individuals is impermissible ultimately because it is against their wider or longer-term interests. However, and extremely importantly, this account of wider or longer-term interests need *not* imply any paternalism or any perfectionist notion of well-being, features that are in any case absent from Paine's writings. It instead makes perfect sense to say that individuals have a substantial interest in having a significant amount of freedom on account of its non-specific value and that this then rules out the legitimacy of granting consent to any political authority that threatens it. The right to bodily integrity thus emerges as inviolable not because Paine thinks that there is something particular we ought to do with our bodies to promote our well-being, but rather because there is non-specific value in the freedom we have to decide how we wish to act, without fear of physical interference. We can thus view the French Declaration and the rights that it identifies as committed to guaranteeing a certain *level* of freedom for individuals and not merely a collection of

<sup>130</sup> *Ibid.*, 36.

individual liberties reducible to the ends they facilitate. Once this is appreciated, it becomes clear that the two necessary conditions of legitimate government that we have identified – consent and rights-protection – are linked because they both depend on the value of freedom, to which, as shown, Paine attaches tremendous importance.

A final point that should be noted is the connection between this understanding of the value of freedom and the state neutrality that Paine thinks individual rights demand. His belief is that a legitimate political authority can never endorse a particular set of religious beliefs or comprehensive doctrine about the nature of the good life. Individuals must always have the right to have their beliefs respected and the state can neither privilege nor claim the power to tolerate a particular viewpoint. This acknowledgement of the legitimacy of pluralism within a political society fits neatly with Paine's failure to identify any perfectionist understanding of the purpose of freedom. At no point does he cast freedom as being important for personal, moral or mental development in the way that Mill does. Instead, what I have argued to be his adherence to the idea of non-specifically valuable freedom suggests that his liberal neutrality stems from the belief that individuals have an interest in pursuing their own conception of the good, wherever it may take them, exercising their freedom in the way they please and in the name of whatever end they seek, provided it does not conflict with the equal rights of any other.

## Conclusion

The purpose of this chapter has been to identify the foundations of Paine's liberalism: my aim has been to show that his political theory is rights-based in a meaningful sense, to indicate what this means and then detail what he views as the basic liberal entitlements that are held by individuals and which cannot be violated nor alienated. Paine is clear that individuals have rights as a consequence, and in recognition, of their moral equality. When individuals enter into a social contract, they emerge from a state of nature into political society with their rights intact, transferring only that of punishment to the magistrate and retaining the rest as 'civil rights' to be held against every other person and the state.

As for the content of the civil rights themselves, we have established that they include the following:

1. the right to express (and withdraw) consent: every individual has the right to signal her consent to government, whose legitimacy and authority vanish without it.

Paine, unlike other thinkers who invoke the idea of consent as a necessary condition for political obligation, does not cite residency (or anything similarly passive) as a possible instance of it. It would seem instead that individuals must have the opportunity to express their consent, which, as we will see in [Chapter 3](#), can be gauged by the existence of specific, public political mechanisms.

2. the right to freedom of non-injurious action/bodily integrity: individuals have an interest in personal freedom and they must be allowed to act in any manner they please, provided they do not violate the rights of any other.

Unlike Mill, Paine does not provide any detailed examples to flesh out what might be considered the kind of harmful conduct that a political authority could legitimately restrict and prohibit. Nevertheless, the meaning is in part self-evident, because at the very least Paine rules out actions that interfere with another in such a way as to render it physically impossible to exercise their rights. There is, at the very least, a significant right of bodily integrity held by individuals, which is grounded in the non-specific value of freedom.

3. the right to intellectual and religious freedom: individuals must be allowed to hold whatever beliefs they wish about the nature of religion and the good life and there must be complete freedom to express those beliefs.

Individuals should never have their religious beliefs merely ‘tolerated’ because toleration presumes an *unequal* power relationship and attributes a power to governments that they do not actually have. Paine does not express a view about whether we could ever consider the expression of such religious beliefs as harmful, such that they could ever be prohibited, but his insistence that government has no legitimate power in this arena suggests that they could not be considered such.

4. the right that any individual who violates the fundamental rights of another be punished: this is initially a natural right, but becomes a civil right upon the establishment of society.

One of the justifications for – and main purposes of – political authority is, for Paine, the protection of rights and punishment is a vital part of this.

In the [previous chapter](#), I suggested that the liberal tradition – though extremely diverse – is characterised by commitments to the foundational values of freedom and equality. Analysis of Paine’s account of political obligation reveals not only the presence, but the prominence of both these concepts. Individuals are, for him, moral equals and the political upshot of this status is a state that it is neutral between competing conceptions of the good. It is also one that guarantees its citizens a number of rights, the purpose of which is to exercise freedoms, which are, in turn, valuable not for any perfectionist or teleological end, but rather because they enable the pursuit of whatever individuals judge to be worthwhile lives.

### 3 *Rights of democratic inclusion and the virtues of citizenship*

Thus far, we have established Paine's commitment to certain fundamental liberal rights for individuals, basic entitlements that must be always be respected and guaranteed by government. The purpose of government – the reason that it comes into existence – is, for Paine, to protect these inviolable human rights. It is therefore unsurprising that the protection of such rights is, as shown, a necessary condition of any legitimate government. Yet it is not a sufficient condition of political obligation because individuals are bound only to recognise the legitimacy of a *particular* government should they have authorised it through their consent. But does Paine have anything more to say about government, apart from the fact that its legitimacy depends on the satisfaction of these two demands? Do further necessary conditions exist that a government must meet, in order to be considered just? Are there, for example, certain institutional features that a government (once authorised through consent) must have, or is it enough for it to ensure that individual rights are upheld, and that any violations be dealt with through an appropriately organised penal system? It is to these and related questions that I turn in this chapter, as I explore Paine's vision of the just political system and the rights of democratic inclusion that it generates.

In *Common Sense*, Paine describes government as 'the badge of lost innocence'.<sup>1</sup> As we established in the [last chapter](#), his view is that the state functions to promote our happiness in a chiefly *negative* sense 'by restraining our vices'.<sup>2</sup> In spite of this sentiment – and his suspicion of the bloated political authorities he identifies as a regrettable but definitive feature of old world nations like Britain – he has a great deal to say about the character of government. In several of his texts, most notably *Rights of Man, Part Two*, he advances normative arguments about the nature and purpose of governmental institutions. As we will

<sup>1</sup> Paine, 'CS', CWI, 4.      <sup>2</sup> [Ibid.](#)



see, his conclusion is that in order to be legitimate, governments need to be *democratic*, *representative* and *republican*. In addition to explaining these views, I will argue that Paine thinks a properly just political community is one where civic institutions enable the virtues of citizenship within it.

I begin by addressing Paine's views about the form that legitimate government must take: it must be a democracy. After observing the reasons that Paine gives for affirming democracy over rival forms of government, I examine his distinctly modern fusion of that concept with the idea of representation. I explain why he regards representative democracy as embodying the egalitarian values required for a liberal polity, showing how he might respond to the case put against it by Rousseau. I argue that certain elements of Paine's writing on what constitutes a flourishing democracy suggest that we can ascribe to him a variant of the 'principle of publicity' that has been invoked by some canonical liberal theorists. The function of Paine's particular version of the publicity principle is to insist that civic institutions be designed so as to ensure comprehensive political participation on the part of citizens. I then link Paine's account of the character of ideal civic institutions to his consent-based account of political obligation. In the final part of this chapter, I consider two crucial but oft-overlooked aspects of Paine's thought: first, the conceptual relationship between individual rights and civic virtues within it; and second, the relationship between his account of the function of just political institutions and his conception of human nature. I argue that there are reasons to think Paine committed to the idea of a 'democratic mind', the belief that individuals go through some kind of ideational transformation as they are included in the democratic process, one that implies that the effects of a properly liberal revolution cannot really be undone and that the display of civic virtues required of citizens becomes habitual for them through political socialisation.

## **Representative democracy: forms of government and individual rights**

The obvious place to begin a discussion of Paine's account of democratic government is to ask why he thinks he needs one in the first place. After all, he has already specified two important necessary conditions for legitimate government: rights-protection and consent. We might

wonder why it matters which *form* a ‘necessary evil’ like government takes if it meets these two key tests of legitimacy. Paine’s response to such a view is unequivocal:

It may be said as an excuse for bad forms, that they are nothing more than forms; but this is a mistake. Forms grow out of principles, and operate to continue the principles they grow from. It is impossible to practise a bad form on any thing but a bad principle . . . wherever the forms in any government are bad, it is a certain indication that the principles are bad also.<sup>3</sup>

The full significance of this passage will become clear towards the end of this chapter, but at its most basic it reveals Paine’s belief that there is an inextricable link between the ‘form’ that government takes and the ‘principles’ upon which it is based, most obviously because the former is generated by the latter. In every political community, the institutional design of government will reflect and instantiate certain norms and it is important that these be the right ones. We should already have some idea of what this means for Paine, since his foundational commitments to the values of equality and liberty have been established, commitments that would seem to have some fairly uncontroversial entailments. It would not, for example, seem possible – given the views delineated thus far – for governmental institutions to be designed in such a way as to threaten the basic liberal rights of citizens or render their exercise difficult or unduly costly. It seems reasonable to expect that Paine will favour a form of government that not only protects but actually enables the exercise of rights.

In his discussion of the possible forms that government can take, Paine invokes the three types identified by Aristotle: monarchy, aristocracy and democracy. The grounds upon which Paine rejects the first two of these three forms of government are familiar ones. As his critique of Burke indicates, he regards all hereditary forms of government as despotic. According to Paine, ‘all hereditary government is *in its nature* tyranny’.<sup>4</sup> One of the most basic reasons for this is that such forms of government necessarily do not require consent and they therefore violate a fundamental human right. As noted, Paine’s position is that one cannot meaningfully consent to hereditary rule without relinquishing her rights to certain freedoms and it is the value of such freedoms that give consent its moral force in the first place. Considered as a

<sup>3</sup> Paine, ‘ROM’, CWI, 297.

<sup>4</sup> Paine, ‘ROM II’, CWI, 364, emphasis added.

form of government, in *Rights of Man, Part Two*, monarchy is defined by its concentration of 'arbitrary power in an individual person', a person who is required only to attend to the interests of 'himself, and not the *res-publica* [public good]'.<sup>5</sup> The source of power in a monarchy is the mere whim of one individual, a person who is able to use the law to restrict the freedom of any one of his subjects at any time, with no regard for that person's consent, or his expressed interests or desires. Aristocracy has the same fatal problems for Paine, since it too is defined by a commitment to the principle of hereditary rule.

So, proceeding from Aristotle's three forms of government, if monarchy and aristocracy are ruled out because of their hereditary nature, it would seem that this leaves only democracy for Paine to endorse. But Paine's commitment to democracy, though explicit, is not to its pure, *direct* Athenian form. In the late eighteenth century, the idea of democracy suffered a poor reputation: it was regarded even by many radical thinkers as an essentially dangerous idea, one to be associated with mob rule and the 'swinish multitude' of which Burke is fearful.<sup>6</sup> This worry is visible even in the new world that Paine lauded. For example, prominent American 'Founding Father' James Madison professes a steadfast commitment to the sovereignty of 'the people' but, at the same time, believes that there need be an appropriate distance between them and the individual elite involved in the process of political decision-making. As John Keane observes, for figures like Madison 'democracy meant a form of small-scale government by a majority of uncouth commoners, a species of class rule in which the interests of the many and "the confusion of the multitude" swallowed up the higher concerns of the few'.<sup>7</sup> Keane identifies slight echoes of this sentiment in the concerns that Paine expresses in *Common Sense* about the dangers of 'populist tyranny'.<sup>8</sup> In the passage to which Keane refers, Paine pleads the case for a constitution to be established immediately for an independent America, 'in a cool deliberate manner, while we have it in

<sup>5</sup> Paine, 'ROM', CW I, 369.

<sup>6</sup> E. Burke, 'Reflections on the Revolution in France' in I. Hampsher-Monk (ed.), *Burke: Revolutionary Writings* (Cambridge: Cambridge University Press, 2014), 81.

<sup>7</sup> John Keane, *The Life and Death of Democracy* (London: Simon & Schuster, 2009), 276.

<sup>8</sup> Paine, 'CS', CW I, 29; Keane, *The Life and Death of Democracy*, 276.

our power' rather than risk the emergence of a populist demagogue as has happened elsewhere in the past.<sup>9</sup>

There is no explicit anti-democratic fear of the mob in Paine's American writings and he is certainly keen to reject the Burkean version of such a position in his 1790s essays. The main reasons he provides to reject direct democracy relate to its unsuitability for modernity. His claim is that as populations have grown, 'the simple democratical form [of government] became unwieldy and impracticable'<sup>10</sup> and so the Athenian model simply could never be replicated in a sustainable way for modern political societies. Despite the unfeasibility of pure, direct democracy, Paine thinks that modernity can still preserve its fundamental *spirit* within institutions that are geared for more populous societies. How is this possible? The answer, for Paine, comes from the concept of *representation*: his suggestion is that in 'retaining . . . democracy as the ground, and rejecting the corrupt systems of monarchy and aristocracy, the representative system naturally presents itself' as the right form of political organisation.<sup>11</sup> Government must, he claims, take a representative form in order for it to live up to democratic ideals. This is precisely what he thinks has already happened in the new world: his view is that 'what Athens was in miniature, America will be in magnitude'.<sup>12</sup>

Paine is thus adamant that the representative system captures the moral essence of democracy. While this sentiment might appear somewhat commonplace in liberal modernity, it is actually fairly novel and peculiar within his immediate historical context. Representation and democracy have fundamentally different conceptual histories. They are, as Nadia Urbinati points out, rooted in 'two distinct and in certain respects alternative political traditions': democracy is 'a Greek word with no Latin equivalent' that 'stands for direct rule . . . by the people', whereas representation is 'a Latin word with no Greek equivalent', which 'entails a delegated action on the part of some on behalf of someone else'.<sup>13</sup> So understood, it is plain that the two concepts – though often conjoined in modernity – stand in real tension with, if not in complete opposition to, each other. This is because there would

<sup>9</sup> Paine, 'CS', CW I, 29–30. <sup>10</sup> Paine, 'ROM II', CW I, 369.

<sup>11</sup> *Ibid.*, 371. <sup>12</sup> *Ibid.*, 371–372.

<sup>13</sup> Nadia Urbinati, 'Representative Democracy and Its Critics' in S. Alonso, J. Keane and W. Merkel (eds.), *The Future of Representative Democracy* (Cambridge: Cambridge University Press, 2011), 23.

seem to be something fundamentally undemocratic about the idea of representation, about someone acting *on behalf* of someone else in the political arena. While democracy is understood to mean in some sense ‘rule by the people’, representation would seem to potentially imply the antithesis of this principle. This is because political representation necessarily involves the transfer of political authority *away from the people*, inevitably to a (relatively) small number of elite representatives. A system of government that is built on the inclusion of all voices in the deliberative process is markedly different from one that is defined instead by its concentration of political power in the hands of an elite group of individuals.

There are long-standing theoretical debates about the nature of political representation, and the positions adopted within them betray different commitments as to its supposed function or purpose within a society. It is customarily accepted that the appropriate role of representatives within a polity is to reflect the interests of those whom they are supposed to represent, but there are nevertheless divergent understandings of what this entails. The two best-known theories of representation have traditionally been dubbed the ‘trustee’ and ‘delegate’ models. The trustee model construes the interests of the represented to be essentially indivisible from those of the representative. Advocates of this model conceive one person’s interests as fundamentally indistinguishable from those of the political community as a whole, regardless of a particular individual’s expressed views. The genuine interests of such a community are thus thought to be unitary rather than pluralistic and the task of the representative is to interpret this unified interest.<sup>14</sup> The implication of the trustee model of representation is that the determination of what is to count as an interest to be represented is

<sup>14</sup> The trustee model of representation is often associated with Burke, who argued – upon election to parliament from his Bristol constituency – that ‘Parliament is not a *congress* of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a *deliberative* assembly of one nation, with one interest, that of the whole . . . You choose a member, indeed; but when you have chosen him he is not a member of Bristol, but he is a member of *Parliament*’. E. Burke, ‘Speech to the Electors of Bristol’, *The Works of Edmund Burke*, Volume 3 (London: F. & C. Rivington, 1801 [1774]), 20. It also receives a qualified endorsement in J.S. Mill’s ‘Considerations on Representative Government’ in J.M. Robson (ed.), *Collected Works of John Stuart Mill*, Vol. XIX: *Essays on Politics and Society* (Toronto, University of Toronto Press, 1977).

something that depends entirely on the judgement of the representative. The alternative, delegate model construes representation in a contrastingly pluralistic sense, as the expressed preferences of the particular individuals to be represented: the conduct of the representative is therefore supposed to reflect such expressed preferences rather than any broader or personal understanding of the social good. Whichever of these models of representation is favoured, there would seem in both to be a kind of elitist potential in their logics that looks antithetical to the spirit of democracy. This seems obviously true of the trustee model because it ignores any views expressed by those defined as the represented. But it is so also of the delegate alternative, since it involves granting interpretive authority to the representative when it comes to defining the interests of the represented individuals, even if those interests are conceived of in particular terms as distinct from any holistic notion of the community.

Paine nevertheless insists that the representative system he endorses *is* fundamentally democratic in its nature: in his view, it retains ‘democracy as the ground’ even if it cannot be in the simple, direct form. The invention of representative democracy in the ancient world would have, he believes, actually spared humanity from the numerous tyrannical regimes that emerged subsequently. Although ‘representation was a thing unknown in the ancient democracies’, had it been so as populations expanded, ‘there is no reason to believe that those forms of government, now called monarchical and aristocratical, would ever have taken place’.<sup>15</sup> While Paine does mention the ‘*inconvenience* of the simple democracy’ for the modern world, in comparison to the system of representation, it is perhaps a mistake to read his argument as one concerned purely with the practical aspects of governance.<sup>16</sup> This is because his writing also contains substantive, principled arguments in favour of representative democracy, which are again rooted in his commitments to human moral equality and the legitimate pluralism entailed by liberal rights.

<sup>15</sup> Paine, ‘ROM II’, CWI, 369. ‘Simple democracy was no other than the common hall of the ancients. It signifies the *form*, as well as the public principle of the government. As these democracies increased in population, and the territory extended, the simple democratical form became unwieldy and impracticable; and as the system of representation was not known, the consequence was, they either degenerated convulsively into monarchies, or became absorbed into such as then existed.’

<sup>16</sup> *Ibid.*, 372, emphasis added.

When it comes to offering a justification for his favoured system of government, his argument is that ‘by ingrafting representation upon democracy, we arrive at a system of government *capable of embracing and confederating all the various interests* and every extent of territory and population’.<sup>17</sup> Phrased in this way, the implication is, of course, that direct democracy is *incapable* of embracing and confederating the variety of interests that characterises a modern political community. And this might at first appear nothing more than a pragmatic argument about the form of government necessary for political communities of a certain size. However, if we take seriously his mention of the various interests within a society, then a crucial, transformative difference is made to what otherwise looks a straightforward nod to the mere efficacy of representation. This difference is enabled through acknowledgement of the fact that there is no necessary conceptual connection between the growth in population of a society and a growth in the *variety* of interests of that population. It is possible to imagine a large political community that is, as a matter of fact, monolithic or homogeneous in terms of the interests of its members.

The necessarily contingent relationship between the size of a population and its diversity of interests opens up the possibility for a different interpretive emphasis on Paine’s argument. This is because his concern about the varied interests within a community suggests that he regards pluralism to be a feature one should expect to find in any modern political society. The analysis of Paine’s basic rights contained in the [previous chapter](#) should actually make this take on his argument unsurprising and lends further support to it. The ‘intellectual rights’ that Paine ascribes to individuals – and thinks that governments are bound to guarantee – are there precisely in order to protect an equal entitlement to freedom of thought for individuals. Individuals must, he contends, be allowed ‘the unrestrained communication of thought and opinions’ to reflect their different beliefs.<sup>18</sup> He clearly expects there to be diversity of beliefs in *every* modern society and regards such pluralism as entirely legitimate, since were it not there would presumably be no need to emphasise a right to free thought and expression. Paine’s liberal rights reveal his commitment to the protection of legitimate pluralism and it should not be a surprise that his preferred system of

<sup>17</sup> *Ibid.*, 371, emphasis added.      <sup>18</sup> Paine, ‘ROM’, CWI, 315.

government is one that is then ‘capable of embracing and confederating all the various interests’ in a society. Focus on the fact of population growth makes his case for representative democracy seem like an open-ended consequentialism, whereas his concern with ‘convenience’ can be viewed a principled, substantive one, and a logical extension from his moral commitment to equality of basic rights and the legitimate pluralism this generates. So, when Paine lauds the representative system for its ability to ‘combin[e] and consolidate[e] all the parts of a country together, *however great the extent*’, he is perhaps not referring to geographical territory, but instead to the moral fragmentation of political community and its need for consolidation.<sup>19</sup> On this reading, it is not simply the increased size of a community itself that matters; its diverse composition requires institutional structures to provide it with the broad civic unity necessary for it to be sustainable.

This interpretation of Paine’s logic still leaves an important question unanswered: *how* is representative democracy to achieve this goal of embracing and confederating interests, of consolidating a community fragmented by its plurality of beliefs? Paine’s account of the rightness of representative government appears to come back again to the idea of human moral equality. It is, he thinks, the egalitarianism inherent in democracy that is upheld through a system of representation. In *Rights of Man, Part Two*, he asserts that ‘the order of government must necessarily follow the order of nature’.<sup>20</sup> Crucially, for Paine, the order of nature is not hierarchical, as implied in the Burkean vision. Nature does not point to any inherent or basic inequalities between one set of individuals who inherit peerages and others who comprise a less worthy ‘swinish multitude’. Individuals are instead equals in terms of their basic worth and their human rights reflect this status. Paine regards this as self-evident in the natural state but suggests that it is subsequently forgotten in political society, especially because differences such as those between ‘rich’ and ‘poor’ emerge, distinctions that are mere social constructions. It is with respect to this central concept of equality that the representative system of government ensures the survival of the fundamental spirit of democracy.

This claim – that representative democracy is an egalitarian form of government – needs a bit of unpacking. After all, given its aforementioned

<sup>19</sup> Paine, ‘To Mr. Secretary Dundas’, CW II, 449, emphasis added.

<sup>20</sup> Paine, ‘ROM II’, CW I, 367.



elitist implications, it might well be wondered exactly how representation could be thought friendly to equality. The suggestion that the Athenian model of direct democracy embodies a substantive egalitarianism is intuitively plausible. In such a system, rule by *the people* means the inclusion of the *whole* of the citizenry in a democratic assembly, with each person's voice being heard in the political arena. It is therefore possible to see how each person's interests are thoroughly embedded in the collective decision-making process of a community. With representation, however, those stated interests either are assumed not to be relevant (in the trustee model) or are else mediated through the interpretation of another and then subsequently aggregated with those of other individuals (in the delegate model). A system of representation can of course embody a certain notion of procedural equality through such an aggregation of interests, but it seems difficult to equate this to the equal right to *participate* in the democratic arena through one's own, individual voice.

A concern with equality is central to Rousseau's rejection of the idea of representation. For him, the purpose of the social contract is to establish civic equality, which then implies that 'all have an equal right in making the law'.<sup>21</sup> According to Rousseau, representation undermines the principle of civic equality because the ceding of authority to an elite group entails an exclusion of individuals from politics and the legislative process. The elitism that is characteristic of representation is thought to render equality of status impossible within a society. Some of Paine's sentiments occasionally appear vulnerable to the Rousseauvian suspicion that representation entails elitism. For example, in his 1792 letter to Henry Dundas, Paine argues that one of the primary advantages of the representative system (over the hereditary alternative) is that it acts by 'admitting of none but men properly qualified into the government, or dismissing them if they prove to be otherwise'.<sup>22</sup> Any notion that some individuals possess qualifications useful to government while others do not certainly smacks of the sort of elitism and anti-egalitarianism that Rousseau's critique exposes.

<sup>21</sup> For an illuminating analysis of Rousseau's views on this issue and of the egalitarian nature of his argument, see Robin Douglass, 'Rousseau's Critique of Representative Sovereignty', *American Journal of Political Science* 57 (3) (2013): 735–747.

<sup>22</sup> Paine, 'To Dundas', CW II, 449.

Paine employs an ostensibly similar logic in his case against Burke and hereditary government. Burke's point about the cumulative wisdom that comes from hereditary political traditions and institutions has a somewhat consequentialist structure: part of his argument is that a political culture develops through continuity and steady change, in ways that reflect the well-being of a society, and thus its institutions cannot be simply dismantled wholesale or even made subject to external critique. Paine mischievously ignores the nature of Burke's case to instead observe that while wisdom is indeed a requirement of good government, it is not the sort of thing that can be inherited. In doing so, he suggests that having a hereditary monarch or aristocracy makes as much sense as having a hereditary poet laureate – in other words it makes *no* sense, it is 'ridiculous'.<sup>23</sup> The identification of this absurdity does, however, have a potentially egalitarian logic similar to that expressed in his letter to Dundas. Paine's argument would seem to be that the unwelcome consequence of hereditary government is that positions of power are not distributed according to talent and, crucially, a possible extension of this claim could be that there are some individuals who are simply *unfit* to be in such positions. This conclusion would surely be an obvious violation of the claim that moral equality requires that no individual be excluded from the making of laws (as it seeks to exclude the talentless), which is the crux of Rousseau's critique of representative democracy.

The viewpoints expressed by Paine in these particular cases are, however, ripe for exaggeration and misinterpretation. For one thing, the claim that it is good for a government to have talented individuals occupying positions of power does *not* imply the view that such positions ought *necessarily* to be distributed according to talent. Nor does it imply there is any fixed distinction between individuals as to whether they possess such talent, a view which is absent from Paine's thought. His objection to hereditary government – and corresponding endorsement of the representative system – is best read, in these cases, as concerned with the inability to *remove* those persons who are judged, on the basis of their performance in the role, to lack the specific talent to represent. The guarantee that such individuals can be removed when appropriate is the advantage of representative over hereditary systems. This is quite explicit in the letter to Dundas, where Paine underlines the

<sup>23</sup> Paine, 'ROM', CW I, 289.

need for individuals to be ‘dismissed’ from governmental positions, should they prove inadequate as representatives. At no point does he affirm the notion that a certain part of society are fundamentally *unfit* to govern and everything he writes about the truth of human moral equality tells against that interpretation.

In *Rights of Man, Part Two*, Paine is insistent that government is ‘the property . . . of the whole community’, where ‘every citizen is a member of the sovereignty’, and also that it must therefore operate ‘to embrace the whole of a nation’.<sup>24</sup> Such views make it quite plain that he does not regard representative democracy as entailing any egalitarian exclusion of individuals from the political process. Any lingering doubts about this issue of exclusion are obliterated in a key passage of the same text in which he argues that:

In the representative system, the reason for everything must publicly appear. Every man is a proprietor in government and considers it a necessary part of his business to understand . . . he does not adopt the slavish custom of following what in other governments are called LEADERS.<sup>25</sup>

The first aspect of this telling excerpt – which will be pivotal to the argument throughout this chapter – that needs to be highlighted is Paine’s claim that ‘every man is a *proprietor* in government’: here again he stresses that representative government maintains the egalitarian promise of democracy, that each person not only has a voice and a stake in the decision-making process of a polity, but is also a ‘proprietor’, someone with a right of co-ownership over it. He expresses similar views in *Dissertation on First Principles of Government*, where he insists that ‘every man has an equal right in the formation of the government and of the laws by which he is to be governed and judged’.<sup>26</sup> Such strikingly Rousseauvian beliefs show that Paine regards his defence of representative democracy to be fundamentally egalitarian.

In Rousseau’s vision of direct democracy, each individual has an equal vote on the laws of a community. His majoritarian logic is such that the result of the vote is then revealed to be – and becomes classifiable as – the ‘general will’ of the community, the measure of political

<sup>24</sup> *Ibid.*, 341. <sup>25</sup> Paine, ‘ROM II’, CW I, 375.

<sup>26</sup> Paine, ‘DFPG’, CW II, 583–584.

legitimacy.<sup>27</sup> In this scenario, individuals evidently do not have an equal right that the laws they wish to be enacted actually *become* enacted. They rather have the right to express their views on a particular candidate for a law. After they have done so, if their views then turn out to be shared by only a minority of the community, they should, according to Rousseau, realise that they were mistaken in their understanding of the (majority) general will in the first place, because it departs from what are revealed to have been their own private wills.<sup>28</sup> But despite Rousseau's claim that representative democracy fails to live up to the demands of civic equality, his own schema is itself arguably best understood as a form of procedural, rather than substantive, egalitarianism. Individuals are equally involved in the political process, but they do not each get their own wishes equally upheld. There is an obvious inequality of outcome here as far as wish fulfilment is concerned. Only by ascribing a kind of false consciousness to the minority in question through the general/private will distinction could we ever think otherwise.

The voting procedure favoured by Rousseau is procedurally egalitarian insofar as each individual in the assembly casts a vote that is weighted equally. Paine is likewise committed to this majoritarian principle, but with regard to casting a vote to elect representatives rather than directly for the establishment of laws. The method through which Paine thinks individual representatives should be chosen is popular elections. For him, the right to vote in such elections is held universally by individuals: it is a civil right, as fundamental as freedom of thought, and nobody can be excluded from it. Viewed in the context of the late eighteenth century, this position – that the right to vote cannot be conditional on any factor beyond a person's very

<sup>27</sup> J.-J. Rousseau, 'The Social Contract' in V. Gourevitch (ed.), *Rousseau: The Social Contract and Other Later political writings* (Cambridge: Cambridge University Press, 1997), IV: 2, 124.

<sup>28</sup> 'the vote of the majority always obligates the rest; this is a consequence of the contract itself . . . When a law is proposed in the People's assembly, what they are being asked is not exactly whether they approve the proposal or reject it, but whether it does or does not conform to the general will which is theirs; everyone states his opinion about this by casting his ballot, and the tally of the votes yields the declaration of the general will. Therefore when the opinion contrary to my own prevails, it proves nothing more than that I made a mistake and that what I took to be the general will was not' (*Ibid.*).

humanity – is an extremely radical one. In *Dissertation on First Principles of Government*, Paine's claim is that:

Every man has a right to one vote, and no more, in the choice of representatives. The rich have no more right to exclude the poor from the right of voting, or of electing and being elected, than the poor have to exclude the rich.<sup>29</sup>

The right to vote for representatives is something that individuals must always hold unconditionally and it is therefore 'sometimes ridiculous, and always unjust, to make property the criterion of the right of voting'.<sup>30</sup> Even if it is only the ownership of a small amount that is specified, the existence of such a criterion ignores the 'many ways property may be acquired without merit, and lost without a crime', such that 'wealth is no proof of moral character; nor poverty of the want of it'.<sup>31</sup> Nor does Paine believe that individuals can be legitimately excluded from the franchise on account of their lack of education or intelligence, unlike subsequent liberals such as Mill. Although Mill also rejects property ownership as a legitimate condition of enfranchisement, he does maintain that individuals should satisfy certain levels of aptitude in literacy and numeracy in order to qualify for it.<sup>32</sup> It is also worth stressing that in the earlier passage, Paine advocates not only universal inclusion, but *equality* of voting rights. There is no attempt to argue, as Mill does, that certain

<sup>29</sup> Paine, 'DFPG', CWII, 577–578. To assume such a right is 'to assume a right to commit robbery' (578). Paine appears to defend rights to democratic representation that are equal and *universal*, yet he refers to the rights of 'men' and does not mention women explicitly. As I noted earlier, my analysis proceeds on the presumption – justified through abductive reasoning – that he regards women as bearers of the same rights as men.

<sup>30</sup> *Ibid.*, 578. 'If property is to be made the criterion, it is a total departure from every moral principle of liberty, because it is attaching rights to mere matter, and making man the agent of that matter' (583).

<sup>31</sup> *Ibid.*, 579.

<sup>32</sup> Mill's view is that while 'property is a kind of test' of a person's fitness or capacities, 'the criterion is imperfect' since 'accident has so much more to do than merit with enabling men to rise in the world' ('Considerations on Representative Government', 474). However, he also thinks it 'wholly inadmissible that any person should participate in the suffrage, without being able to read, write, and, I will add, perform the common operations of arithmetic' ('Considerations on Representative Government', 470).

individuals should be able to cast multiple votes to reflect their moral or intellectual superiority.<sup>33</sup>

The right to vote is such a vital part of democratic inclusion for Paine that the legitimacy of a body of elected representatives is dependent on its continued protection. In fact, for him any attempt to deny the franchise to any citizen activates a latent right of rebellion. His suggestion is that 'it is possible to exclude men from the right of voting, but it is impossible to exclude them from the right of rebelling against that exclusion; and when all other rights are taken away, the right of rebellion is made perfect'.<sup>34</sup> In general, violent rebellion is something that Paine rejects and he even expresses some suspicion about the idea of civil disobedience. In *Rights of Man, Part Two*, he writes that he has 'always held it an opinion . . . that it is better to obey a bad law, making use at the same time of every argument to show its errors and procure its repeal, than forcibly to violate it'.<sup>35</sup> Evidently, however, exclusion from the democratic process presents clear grounds for civil disobedience. The unconditional nature of voting rights also seemingly extends to convicted, incarcerated prisoners. He provocatively claims that the right to vote could legitimately be removed 'to inflict it as a punishment for a certain time', but only to those individuals who have *denied* the vote to others. This would appear to imply that, for him, convicted prisoners can retain their right to democratic inclusion but formerly despotic monarchs and government ministers can legitimately have theirs suspended for a suitable time, as retribution for their crimes of inequalitarian and undemocratic exclusion.

Paine describes the right to vote as 'the primary right by which other rights are protected' and suggests further that 'to take away this right is to reduce a man to a state of slavery, for slavery consists in being subject to the will of another'.<sup>36</sup> This important definition of slavery as being subject to the will of another is revealing in the context of his theory of democracy. For one thing, it would seem to imply a rejection of the aforementioned trustee model of representation. This is because the trustee-based understanding of the concept pays no attention to

<sup>33</sup> He asserts 'though every one ought to have a voice – that every one should have an *equal* voice is a totally different proposition' and that 'two or more votes might be allowed to every person who exercises any . . . superior functions' (Mill, 'Considerations on Representative Government', 473, 475).

<sup>34</sup> Paine, 'DFPG', CW II, 580. <sup>35</sup> Paine, 'ROM II', CW I, 351.

<sup>36</sup> Paine, 'DFPG', CW II, 579.

the *individual will* but rather subsumes it into a general account of community interests that can be identified as separate from (and potentially in opposition to) any preference expressed by the represented. Defining slavery as being subject to the will of another would seem to preclude this model of representation. It also correspondingly affirms the alternative (anti-elitist) belief that an elected individual retains a *constant* obligation to reflect individual interests as expressed by *the represented* and is bound not to reflect purely his own will during political deliberations.

### The publicity principle and civic virtues

Recall the passage cited earlier in which Paine claims that ‘in the representative system, *the reason for everything must publicly appear*. Every man is a proprietor in government and considers it a necessary part of his business to understand’.<sup>37</sup> What I now wish to suggest is that – in addition to its egalitarian element – this passage reveals his commitment to a variant of the *publicity principle* occasionally visible in the liberal tradition, particularly in the writings of Kant and Rawls.<sup>38</sup> For Kant, the principle is a hypothetical test of the rightness of a political action, which turns on whether the reasons for that action would be publicly acceptable if known.<sup>39</sup> For Rawls, the principle helps provide stability for his contractarian account of justice: it insists that there be public awareness of both the principles of justice themselves and the reasons for their adoption.<sup>40</sup> For Paine, it means something different. What publicity means for him is that the health of a political society depends upon the public display of civic virtues on the part of individual citizens within a community. He envisages a public sphere in which individuals confront and engage with political issues as empowered equal citizens. As I will argue, the identification of this principle connects and explains various aspects of Paine’s democratic thought. It

<sup>37</sup> Paine, ‘ROM II’, CW I, 375, emphasis added.

<sup>38</sup> For discussion, see David Luban, ‘The Publicity Principle’ in R.E. Goodin (ed.), *The Theory of Institutional Design* (Cambridge: Cambridge University Press, 1996), 154–198. Jeremy Waldron argues that it is also discernible in the thought of Hobbes (Waldron, ‘Hobbes and the Principle of Publicity’, *Pacific Philosophical Quarterly* 82 (2001): 447–474).

<sup>39</sup> I. Kant, ‘Perpetual Peace: A Philosophical Sketch’ in H.S. Reiss (ed.), *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991), 125–130.

<sup>40</sup> J. Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999), 154–158.

makes sense of several of his views on the design of government and of how he thinks citizens ought to engage in public political conduct. It implies Paine's commitment to a participatory vision of representative democracy, one that offers some response to Rousseau's worries about that system's inability to preserve equality of status amongst citizens. This is because it would seem to show that Paine envisions a political society comprised of a fully engaged citizenry, individuals who recognise government as 'a *necessary* part' of their lives, appreciate that it is their 'business to understand' it and understand that this entails the cultivation and practice of civic virtue.<sup>41</sup> Equality of status is thus achieved in a representative democracy through mechanisms of public inclusion.

At the most basic level, the democratic and public participation Paine foresees involves the election of representatives. In *The Social Contract*, Rousseau declares that although 'the English people thinks it is free', they are 'greatly mistaken' and are in fact 'free only during the election of Members of Parliament'.<sup>42</sup> At the heart of his critique of representation is the view that – regardless of their frequency – elections are insufficient for maintaining civic equality of and meaningful freedom for all citizens, because they exclude citizens from political processes. Far from regarding it as enslavement, Paine's view is that 'representative government *is freedom*'.<sup>43</sup> This is because he does not recognise any meaningful gap between representatives and represented. The possibility of such a gap is in his thought thwarted by various factors, one of which is his rejection of any stable distinction between elected representatives and the public that they serve. Thus, he argues that elections be regular, frequent and designed expressly to refresh the composition of the legislature, in order to ensure that the representative body remains 'a state of *constant renovation*'.<sup>44</sup> To this end, his view is that parliament should be divided by lot into 'two or three parts' with one third of the members changing every single year.<sup>45</sup>

Paine's opposition to political elites is clear and consistent. As early as *Common Sense* he is adamant that there must be 'a large and equal representation', because the concentration of power in only 'a small

<sup>41</sup> Paine, 'ROM II', CW I, 375.

<sup>42</sup> Rousseau, 'The Social Contract', III: 15, 114.

<sup>43</sup> Paine, 'ROM II', CW I, 390. <sup>44</sup> *Ibid.*, emphasis added. <sup>45</sup> *Ibid.*, 390.



number' of elected individuals is 'dangerous'.<sup>46</sup> According to him, the power of representation should not be invested for long 'in the hands of any number of individuals' regardless of any 'inconveniences that may be supposed to accompany frequent changes'.<sup>47</sup> It is more important to disperse power amongst the citizenry on a regular basis, even if this practice is somehow inefficient. He maintains that under no circumstances should any one individual be given 'extraordinary power',<sup>48</sup> suggests that the executive should ultimately be subordinate to the legislature<sup>49</sup> and cautions that 'public money ought to be touched with the most scrupulous consciousness of honour'.<sup>50</sup> And, as we have seen, his view is that the representative system is defined by its refusal to 'adopt the slavish custom of following what in other governments are called LEADERS', an opinion that plainly shows his distaste for political elites.<sup>51</sup> The regular rotation of a large parliamentary membership indicates that he expects all citizens to be prepared to undertake the role of representative as and when circumstances permit. Such willingness would be a matter of civic virtue. The election of representatives is thus not the fleeting moment of freedom before enslavement that Rousseau thinks it is, because individual citizens are expected to be involved in political affairs rather than defer to the leadership of others.

It is possible to imagine an idealised political system characterised by liberal rights, which would require representative democracy to do nothing more than efficiently delegate decisions to a minority of individuals in order to enable everyone else to get on with their private lives. Such a system would appear to be the antithesis of Paine's vision of democracy, which is of a polity that places significant civic demands on its members, and, in doing so, protects equality of status for citizens. For Paine, one vehicle for civic discussion in the public arena – through which individuals can make government a 'necessary part of [their] business to understand' – is the free press. As early as 1775, he observes that 'there is nothing which obtains so general an influence over the manners and morals of a people as the Press; from *that*, as from a fountain, the streams of vice and virtue are poured forth over a country'.<sup>52</sup> For him, the press operates to allow individuals to express their

<sup>46</sup> Paine, 'CS', CW I, 37. <sup>47</sup> Paine, 'DFPG', CW II, 587. <sup>48</sup> *Ibid.*

<sup>49</sup> Paine, 'ROM II', CW I, 394. <sup>50</sup> *Ibid.*, 421. <sup>51</sup> *Ibid.*, 375.

<sup>52</sup> Paine, 'The Magazine in America', CW II, 1110.

views reasonably and robustly, with the aim of uncovering political truth through honest and forthright discussion and, crucially, do so in a public space, where they can be assessed and potentially challenged by others.

Paine was himself an avid participant in civic discussion and used the press to air his views publicly. Indeed, his commitment to a deliberative kind of representative democracy is easily discernible in his own political conduct and the manner in which he himself engaged in the activity of civic debate. One notable feature of Paine's political ideas is that they were written in a manner designed to provoke: they were communicated through pamphlets written in a self-consciously democratic language, something that played an enormous part in securing their popularity and influence. They were composed in such a way as to include the whole of the demos, bringing its citizens into political matters from which he felt they had been unjustly excluded. The way in which he put forward his views exemplifies the sort of public discourse that he regarded to be necessary for the health of a proper democracy. Not only did he strive for inclusivity with his writings, he condemned those who did not. In addition to his substantive rejections of Burke's arguments, Paine's critique of *Reflections* was also formal and directed against what he viewed as an exercise in theatricality, designed to exclude elements of the citizenry through literary deception. For Paine, Burke's text is nothing more than a 'dramatic performance', characterised by the twisting and omission of key facts and truths in order to create a 'stage effect'.<sup>53</sup>

His own commitment to the virtues of public deliberation emerges in the combative, plain-speaking style of pamphlets like *Common Sense* and *Rights of Man*. But it can also be witnessed in his early journalism, and perhaps most tellingly in his writing about 'the affair of Silas Deane', which precipitated his resignation from the American Congress in 1779. Silas Deane had been tasked with the job of undertaking important and delicate diplomatic negotiations with France on behalf of America: the latter sought to acquire armaments and strategic support from the former, for the war of independence being fought against the British. Deane was suspected of defrauding the American government (along with a French ally) through the embezzlement of funds intended to secure the deal. Through his position as Secretary of the Committee of Foreign

<sup>53</sup> Paine, 'ROM', CW I, 268. He complains that Burke's text leaves 'music in the ear, and nothing in the heart' (255).

Affairs in the Continental Congress, Paine obtained confidential information that in his mind demonstrated the guilt of Deane. Even though it soon cost Paine his official position, he placed the information in the public domain. He then published a series of letters in the *Pennsylvania Packet* that were addressed to Deane and others, but which also spoke directly to the public about the nature of the scandal. In these writings, he defends his actions and outlines the reasoning behind them, claiming, 'I desire the public to understand that this is not a personal dispute between Mr. Deane and me, but is a matter of business in which they are more interested than they seemed at first to be apprised of.'<sup>54</sup>

The identification of political *business* that the public need be aware of befits perfectly Paine's emphasis on publicity within a democracy. He amplifies this view further in a subsequent letter about the Deane affair. With reference to the public as his audience, he writes that 'it is their cause, *not mine*, that I am and have all this while been pleading; and as I ought not to suppose any unwillingness in the public to be informed of matters which is their interest to know, so I ought not to suppose it necessary in me to apologize to them for doing an act of *duty and justice*'.<sup>55</sup> He is unambiguous here that his civic duty is to intervene publicly in order to ensure that political corruption is exposed and his vehicle for undertaking this obligation is the press, through which he means to inform the citizenry of an injustice. The free press – and the transparency of communication that it enables – involves and informs citizens of political matters. It enriches the public sphere.

An emphasis on the value of publicity in Paine's thought explains other aspects of his beliefs about the nature of a properly just democracy. The general view he expresses that 'the reason for everything must publicly appear' takes on specific form through his insistence that a political community requires a codified constitution. He makes much of this issue in *Rights of Man*, chiding Burke for being unable to identify a British constitution because – unlike in France or America – no such thing exists.<sup>56</sup> Burke never actually acknowledged Paine's

<sup>54</sup> Paine, 'To the Public on Mr. Deane's Affair', CW II, 111.

<sup>55</sup> Paine, 'To the Public on Robert Morris's Address', CW II, 135, second emphasis added.

<sup>56</sup> 'Can then Mr. Burke produce the English constitution? If he cannot, we may fairly conclude, that though it has been so much talked about, no such thing as a constitution exists, or ever did exist, and consequently that the people have yet a constitution to form' (Paine, 'ROM', CW I, 279).

address to him in his subsequent writings in the 1790s, but there is an implicit response to this issue contained in *Reflections*. The Burkean response to Paine's claim that 1790s Britain lacks a constitution – and actually needs one in order to be legitimate – would be to reject it outright, and not simply because of the existence of authoritative political documents like the Magna Carta. A full extension of Burke's logic would insist that a political constitution is something that can be understood through appreciation of the institutions, civic traditions and practices that weld a particular society together. On this understanding, the political constructs of a society simply *are* its constitution, regardless of whether the principles that underpin them happen to be codified. The attractiveness of this response stems from what we know about the importance of history in establishing political traditions, which of course Burke sees as having been ignored by the radical upheaval of the French Revolution. At first glance, Paine's position might seem simplistic, naïve or myopic by comparison.

However, an appreciation of the significance of the publicity principle can actually undermine such criticisms of Paine's position. The importance of the public appearance of political matters helps explain his insistence on the necessity of a codified constitution and shows that his view does not imply any failure to appreciate the Burkean argument about the moral significance of tradition. Paine's claim is thus *not* that a community lacks a discernible political identity if it does not have a codified constitution, even if this is how the argument might look when read baldly, removed from the context of his wider political thought. The logic of his argument is rather that any political community without such a constitution lacks legitimacy because its members are actively *prevented* from full and proper knowledge of, and involvement in, its civic life: in such societies, the citizen is actually stopped from fully 'making it his business to understand' the nature of the polity to which he belongs. The function of a constitution is, for Paine, to provide citizens with the fundamental principles and identity of the political community of which they are members, in an easily accessible and, crucially, inclusive manner. A codified constitution thus creates an essential route into civic conversation; it is a mechanism through which individuals can enter into political discourse. As Paine puts it, a constitution

is the body of elements, *to which you can refer*, and *quote article by article*; and which contains the principles on which the government shall be

established, the manner in which it shall be organized, the powers it shall have, the mode of elections, the duration of parliaments, or by what other name such bodies may be called; the powers which the executive part of the government shall have; and, in fine, every thing that relates to the complete organization of a civil government, and the principles on which it shall act, and by which it shall be bound.<sup>57</sup>

Due attention to the value of democratic publicity reveals a new significance to Paine's arguments here, where he envisages the individual citizen actively using – by *referring* to or *quoting* from – the constitution of her community. Constitutions function by empowering citizens: they display the equal status of citizens and their individual rights *publicly* and embolden them to invoke their principles whenever they need or wish to. They enable individuals to see and know both what rights they hold and, by implication, what duties they owe to others. Their existence is necessary for the democratic prosperity of a political community. It is for these reasons that Paine asserts that a proper constitution 'has not an ideal, but a real existence' and must be accessible to each citizen at all times, rather than hidden from view.<sup>58</sup>

It would then seem that Paine's conception is of a liberal polity whose citizens actively engage in the democratic process, such that there is no meaningful gap between the representative and the represented and where each individual has equal access to the language of civic discussion and power to deploy it as she wishes. It is through such devices as regular elections, a free press and a codified constitution that Paine believes civic equality is guaranteed. This concern with publicity then forms the basis of a potential response to Rousseau's critique of representative government, one that will be particularly attractive to those unconvinced by his idea of a general will. The logic of Paine's position can be put in the following provocative terms: since equality of outcome is not possible once a majoritarian principle is adopted for the establishment of laws, what is needed is a robust procedural equality and this can be achieved much more thoroughly through deliberative and representative apparatuses and mechanisms than via a direct form of democracy in which the minority views of individuals are discarded and discredited as products of false consciousness. This logic might not convince those sympathetic to Rousseau's challenge, but it does at least offer a serious response to it. Equality is, after all, a contested concept

<sup>57</sup> *Ibid.*, 278, emphases added. <sup>58</sup> *Ibid.*, 278.

and it is not obvious that Rousseau's version is necessarily faithful to its spirit.

Not all of Paine's thoughts on representative democracy and the institutional design of government are pitched at the same normative level. The features of government that we have dealt with thus far in this chapter are, for him, matters of justice and legitimacy. In other words, no polity can fail to adopt them without violating the rights of individuals. Universal voting is clearly one such institutional feature that cannot legitimately be abandoned, as is the adoption of a constitution. Paine does, however, also identify and endorse other aspects of government that are to be desired, but are merely recommendations rather than requirements. These recommendations take the form of consequentialist, empirical claims about how a government can most efficiently serve its purposes and the interests of the citizenry as a whole. The existence of this category of recommended, but not required, features of government is confirmed in *Dissertation on First Principles of Government*, where Paine writes,

Next to matters of *principle*, are matters of *opinion*, and it is necessary to distinguish between the two. Whether the rights of men shall be equal is not a matter of opinion but of right . . . Society is the guardian but not the giver . . . But as to the organical part, or the manner in which the several parts of government shall be arranged and composed, it is altogether *matter of opinion*. It is necessary that all the parts be conformable with the *principle of equal rights*; and so long as this principle be religiously adhered to, no very material error can take place neither can any error continue long, in that part that falls within the province of opinion.<sup>59</sup>

Despite his confidence in this passage that 'no very material error' will befall a polity that is designed in a manner 'conformable with the principle of equal rights', his writing is nonetheless filled with a variety of recommendations for the design of democratic institutions.

The speculative nature of some of Paine's recommendations is evident from his occasional vacillation on some questions, like whether or not a polity is better off adopting unicameral or bicameral government. In *Rights of Man, Part Two*, his attitude to the issue is one of ambivalence, partly because he thinks that there has not yet been sufficient opportunity for the recently established representative democracies – in

<sup>59</sup> Paine, 'DFPG', CW II, 584, emphases added.

America and France – to experiment with different institutional designs and thus determine the optimal arrangement.<sup>60</sup> However, only three years later, in *Dissertation on First Principles of Government*, he becomes persuaded by the merits of a bicameral system, asserting his belief that ‘when the whole legislature is crowded into one body it is in an individual in mass’ and that such potential uniformity in place of diversity is unwelcome.<sup>61</sup> He concludes that this is ‘the worst’ option and that ‘it would be better to divide the representation by lot into two parts, and let them revise and correct each other’ through a deliberative process.<sup>62</sup> Paine is insistent that ‘representative government is not necessarily confined to any one particular form’<sup>63</sup> and he is clearly open to alternative approaches to its design. The attempt to glean a coherent theory of politics from his writing thus need not worry too much about those instances in which his mind changes on these issues.

### Consent revisited

By placing such emphasis on the *public* and *egalitarian* nature of the representative democracy that Paine is committed to, we can now briefly revisit the role of consent in his account of political obligation. We saw that Paine thinks political communities come about through a social contract and so through individual expressions of consent, which becomes a necessary condition for the legitimacy of a political authority: individuals come to owe obligations of obedience to the laws enacted by particular governments for as long as they have consented to their rule. We also observed that he does not equate the conferral of consent to mere residency within a particular territory and so his theory would seem to avoid the weaknesses of the Lockean version discussed earlier. And we established that this position implies a direct corollary: individuals also have the right to withdraw their consent should they wish to and leave the political community of which they were part.

Consent might appear, however, to be a potentially easy benchmark for governments to meet, should the costs of such withdrawals be unappetisingly high for otherwise dissatisfied citizens. It is not difficult to imagine a circumstance in which an individual may wish to register her rejection of obligations of obedience without necessarily wishing to

<sup>60</sup> Paine, ‘ROM II’, CW I, 389.

<sup>61</sup> Paine, ‘DFPG’, CW II, 585.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

withdraw from society entirely and so either bear the costs of emigration or face the risk of being stateless. Such withdrawal from a political community seems a rather drastic option to leave individuals with. It is therefore worth asking whether Paine conceives any other way that consent to political authority might be gauged in a society, apart from through the non-withdrawal of its members. This leads to a tricky issue though, since it is hard to see how any political authority could confidently claim to have received the express consent of all that are conventionally thought bound to its laws. In *Rights of Man*, Paine addresses the issue of the verification of consent directly. His claim is that ‘a law not repealed continues in force, not because it *cannot* be repealed, but because it *is not* repealed; and the non-repealing passes for consent’.<sup>64</sup> This statement reveals what can count as consent for Paine in addition to its explicit withdrawal through emigration: the ‘non-repealing’ of laws implies that they have been consented to, and therefore authorised by the relevant citizenry, who are thus obliged to obey them. At first glance, something might seem amiss here. Indeed, such a statement looks strange if considered alone. The reason for this strangeness is that the pivotal, intentional aspect of consent discussed earlier seems now suddenly to be up for grabs. This is because Paine’s depiction of consent here could be thought suggestive of the passive *inactivity* of individuals in a political community, which may be indicative of nothing but their mere *failure* to signal disapproval or rejection of a past law. It would therefore imply that the failure of a citizenry to do *anything* at all with regard to a particular law somehow reveals their tacit consent to it. The way in which such a failure can be construed as non-intentional is obvious: the non-repealing of a law might at no point involve conscious individual assent. Individuals may not be sufficiently involved in or informed about political processes. They may simply not have the opportunity to repeal such laws.

When put so starkly, it is unclear how the non-repeal of a law could be construed as compelling evidence of consent to it. The position of consent in Paine’s argument, which initially looked so radical, is now a little uncertain. It could even be argued that his substantive political theory does not look very different from Burke’s, insofar as *Reflections* offers an account of legitimate authority that is rooted in the wisdom of institutions that have enjoyed demonstrable survival, and

<sup>64</sup> Paine, ‘ROM’, CW I, 254, emphases added.



therefore – on this understanding – authorisation, over generations. Locating the legitimacy of political obligation in the failure of a society to repeal a law has potentially conservative implications, since it appears to license the conclusion that the laws and political institutions within a society exist as a manifestation of human will and are *therefore* just. This conclusion would clearly be at odds with the overarching liberal beliefs that I have ascribed to Paine so far, particularly his view that each generation must be as free as those that have existed before.

It is, however, possible to avoid this conservative reading of Paine's position, wherein it becomes virtually indistinguishable from that occupied by Burke. The conservative interpretation loses all plausibility because of Paine's account of representative democracy and its emphases on the values of publicity and civic inclusion. The very presence of representative democracy can be understood as sufficient to assure and verify the continuing consent of all the people within a political community. This is because it is for Paine a system of government that is designed to overcome any purported gap between lawmakers and other citizens. As observed, it does this through the existence of a codified constitution, regular elections with universal voting rights and no stable, elitist distinction between representative and represented individuals. All of these features enable a public sphere that comprises a fully involved and informed citizenry. The just political system that Paine outlines is one constituted by active deliberation and comprehensive civic engagement, where there exists every opportunity to repeal or revise laws that are no longer thought useful. Government, to recall, must be 'the property ... of the whole community' for Paine, and he thinks that this moral principle entails an active citizenry. His vision is one in which political interest and action bleed into various aspects of each individual's life and is not confined to a separate and distinct sphere for deliberation and decisions made by an elite group of representatives.<sup>65</sup>

What this then means is that we can make perfect sense of Paine's claim that 'non-repealing passes for consent' when it comes to the legitimacy of established laws. It need not be read as implying passivity on the part of citizens, but rather their *activity* and participation in the political life of their community. It can be understood as effectively retaining the necessary intentional aspect of consent because it requires

<sup>65</sup> *Ibid.*, 341.

the exertion of agency from individual citizens in the process of maintaining or rejecting the laws of the past. For Paine, individuals express their consent to government through their democratic involvement in the political process, through their participation in elections and in civic discussion in general. His account of democratic government undermines any worries that consent might only have a decorative, rhetorical role in his political theory and that its construal is in any way Burkean.

It might be worried that such civic engagement represents too unrealistic a demand to place on citizens in order to establish their consent. But this objection misses the main force and purpose of Paine's commitment to democratic inclusion and its place in his political theory. The role of the publicity principle is to provide channels through which individuals can express their dissenting views, displaying any political disenchantment or discontent that they have. The lack of such expressions of discontent can then be interpreted as signals of consent. The important part of Paine's democratic theory is that individuals be guaranteed opportunities to participate in the political life of a community, so that on those occasions when they are dissatisfied with democratic outcomes and decisions, they are not left solely with the option of withdrawing their consent and a potentially costly emigration or terrifying statelessness. Paine's vision also provides individuals the ground to claim exclusion from their democratic rights if the public political mechanisms and fora are not steadfastly protected and continually utilised. It might be the case that the particular devices for the participation of the citizenry in the democratic life of a community are merely some examples of how it could be realised. Perhaps there are more effective ways of living up to it as an ideal. But what is important is that all those devices that Paine emphasises reveal his commitment to the value of publicity, which in turn provides a way of advertising and verifying the consent of each individual member of political society and thus protecting their rights of democratic inclusion.

### **Republicanism, civic duties and the democratic mind**

My classification of Paine's political thought as liberal can be taken both historically and philosophically: it means both to affiliate him with that intellectual tradition and to insist that such a label is the most accurate descriptor of his systematised normative theory. Such a

classification does *not* mean that he cannot or should not be thought of as having contributed to other intellectual currents. In recent years, a number of scholars have done much to draw attention to the historical and philosophical importance of republicanism as an intellectual tradition as well as a substantive political theory. Scholarly discussions consistently juxtapose republicanism to liberalism, such that the two are presented as intellectual and political rivals.<sup>66</sup> Indeed, it is not much of an exaggeration to say that the dominant historical story told is one of a republican understanding of politics being usurped by a liberal alternative during the eighteenth century.<sup>67</sup> Paine has been characterised as a republican thinker.<sup>68</sup> It is thus necessary to determine how accurate this characterisation is and whether it poses any threat to my liberal reading. I wish to argue that it poses no threat and that his republican tenets can be subsumed within his liberalism.

Despite its prominence in contemporary scholarship in the history of political thought, the term 'republican' is not particularly easy to define. Paine is careful to insist that a republic is *not* a type of government to be considered alongside monarchy, aristocracy and democracy: according to him, republicanism is not 'any *particular form* of government'.<sup>69</sup> He thinks 'republican' refers instead to the *end* or purpose that government should serve. A republican polity is one that instantiates certain principles. Paine's view is that the end or principle in question for a republican polity is the '*res-publica*, the public affairs, or the public good'.<sup>70</sup> 'Republican government' is, he claims, nothing 'other than government established and conducted for the interest of the public, as well individually as collectively'.<sup>71</sup> This stipulation then enables him to argue that several of the components of 'the government of England' are, in the late eighteenth century, in fact already

<sup>66</sup> See P. Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), for a comprehensive attempt to demonstrate the normative distinctness of the republican theory of politics from the liberal alternative.

<sup>67</sup> See, for example, Q. Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998); J.G.A. Pocock, *Virtue, Commerce, and History* (Cambridge: Cambridge University Press, 1985), 37–50.

<sup>68</sup> See, for example, Richard Whatmore, "A Gigantic Manliness": Paine's Republicanism in the 1790s' in S. Collini, R. Whatmore and B. Young (eds.), *Economy, Polity and Society: British Intellectual History, 1750–1950* (Cambridge: Cambridge University Press, 2000), 135–157.

<sup>69</sup> Paine, 'ROM II', CW I, 369. <sup>70</sup> *Ibid.* <sup>71</sup> *Ibid.*, 370.

republican, in spite of the existence of a hereditary monarch. Thus, he contends that ‘the office of constable . . . departments of magistrate, quarter-session, and general assize, including the trial by jury, is republican government’.<sup>72</sup>

J.G.A. Pocock draws a distinction – though not, he claims, a ‘hard and fast’ one – between two rival ‘conceptual premises’, which he thinks characterise liberalism on the one hand and republicanism on the other.<sup>73</sup> He distinguishes ‘between a *right* to which one may lay claim (perhaps because it is inherent in one’s nature) and a *virtue* which one must find in oneself and express in actions undertaken with one’s equals’.<sup>74</sup> Liberal political theories are, for Pocock, committed to the concept of ‘right’ whereas republican theories are committed to the alternative premise of ‘virtue’. For him, the two conceptual premises are ‘not incompatible but [are] irreducible’.<sup>75</sup> They are presumably compatible insofar as a liberal thinker or argument might defend the primacy of right while also attaching value to the concept of virtue, whereas a republican thinker or argument might conceivably do the reverse. But they are irreducible because the conceptual premise in each case has a kind of trumping force, such that republicans will never allow right to undermine virtue and liberals will never permit the opposite. The irreducibility of these two core values provides the basis for disputes between advocates of the two theories. Thus, advocates of republicanism tend to identify the normative priority accorded to civic virtue as the feature that makes it superior to liberalism.<sup>76</sup>

The claims I have put forward so far in this chapter suggest that Paine values both rights and virtue. We knew already that he believes that individuals hold a number of inviolable rights, but my suggestion here has been that he also identifies civic duties incumbent on individuals,

<sup>72</sup> Paine, ‘ROM’, CW I, 326, emphasis added.

<sup>73</sup> J.G.A. Pocock, ‘Afterword’, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 2003 [1975]), 560–561.

<sup>74</sup> *Ibid.*, 561, emphases added. The terminology Pocock uses to distinguish between the liberal ‘language of jurisprudence’ and the republican ‘narratives of ancient civic action’ is surprisingly unsubtle, insofar as he equates it with the distinction made by Isaiah Berlin between positive and negative liberty (*Machiavellian Moment*, 561).

<sup>75</sup> *Ibid.*, 561. For further elaboration of his view on this, see also Pocock, *Virtue, Commerce, and History*.

<sup>76</sup> Scholars also emphasise the different conceptualisations of freedom in the two traditions. See Pettit, *Republicanism*; Skinner, *Liberty before Liberalism*.

participatory responsibilities that they are bound to uphold within a democratic community. These duties are clear from Paine's normative account of legitimate government and the comprehensive involvement of citizens that he thinks that account entails: they are obliged to make government their 'business' and be fully engaged in civic affairs, participating in government as voters and representatives and in the public sphere through a free press. A virtuous citizen is, on this account, one who is politically active.

Of the two concepts it would appear that it is the idea of individual rights and not civic virtue that has normative primacy in Paine's thought. In fact, as we established in the [previous chapter](#), he actually rejects the concept of self-justifiable duties – the notion that there are duties that do not derive their existence from prior rights – outright. Paine is, to recall, emphatic in his view that any 'declaration of duties' is unnecessary because the existence of such obligations follows logically from a declaration of rights. This rejection of the idea of self-justifiable duties raises something of an interpretive puzzle. The civic duties of democratic participation that we have identified do not appear to be straightforward correlates to any rights. And yet they are surely necessary to sustain Paine's broad claim that representative democracy is meaningfully egalitarian. What then are we to make of the relationship between individual rights and civic duties and is there a way for the two to co-exist in Paine's political philosophy whilst retaining his rejection of self-justifiable duties?

One way to make sense of this relationship between the two concepts is to think of the civic duties identified by Paine as *imperfect* in nature: that is to say, to regard them as duties that do not correlate to rights and that are not legally enforceable. Thinking of them in this way would solve the apparent problem of their observance being fundamental for the health of a democracy while also being neither self-justifiable duties nor correlates to inviolable human rights. The concept of imperfect duties is obviously a little peculiar here, because rights are usually thought to correlate to duties by legal definition, such that one cannot exist without the other. If I have a right to freedom of religion, every other agent has a duty to forbear from interference with my exercise of it. That logic further suggests that if I have a duty to participate in the democratic life of my community – by making it my business to understand political issues and engage in deliberation about them – it should then follow that every other agent has a right to expect this of me. There

can be no such right of expectation on the part of other citizens if the various duties of democratic participation are imperfect in nature.

Imperfect duties are a frequent, perhaps even definitive, characteristic of liberal theories, because they point to a certain gap between the demands made by politics on the one hand and by morality on the other. Liberal political theories are able to make sense of a 'right to do wrong' or, put differently, moral duties that can be legitimately shirked, in a way that others cannot.<sup>77</sup> A paradigmatic example of an imperfect duty is charity. We are generally thought to owe duties of charity under circumstances in which individuals are needy and we are immediately able to assist them without undue cost to ourselves. Yet liberal political theories tend also to grant individuals the right to *withhold* their charity without suffering legal sanction; any sanction received will, at most, be moral opprobrium. Duties of charity are, in this sense, contrastable with duties of justice, which individuals cannot legally avoid. So, in order to make sense of (1) Paine's dismissal of the concept of a duty that does not stem from a prior right and (2) his identification of civic duties necessary to sustain the democratic health of a polity, inference to the best explanation leads us to the following conclusion: that the obligations that Paine thinks citizens have are in fact *imperfect* ones. The tension between (1) and (2) dissolves on this account. Individuals have substantive duties to display civic virtue, but they are not enforceable and therefore not correlative to rights.

While this conclusion solves the problem of comfortably reconciling any tension between the concepts of right and virtue in Paine's thought, it does in turn raise another issue that warrants our attention. If the duties that individuals have to display civic virtues are merely imperfect ones, it then obviously follows from this that – as in the example of charity – citizens can avoid them without them suffering any penalty. It might then subsequently be asked: what is the function of such duties? This is an important question. According to the reading I have canvassed, the expectation that individual citizens will fully engage in the political life of a representative democracy plays two roles in Paine's normative account of the character of government. First, it responds to Rousseau's egalitarian critique of representative (and corresponding

<sup>77</sup> See Jeremy Waldron, 'A Right to Do Wrong' in J. Waldron (ed.), *Liberal Rights: Collected Papers, 1981–1991* (Cambridge: Cambridge University Press, 1993), 63–87.

defence of direct) democracy. Paine's implicit rebuttal is that his theory is genuinely egalitarian because it opens the political arena up and enables all to partake in it through a variety of representative institutions that together comprise a publicity principle. Second, it provides a way for citizens to express their disquiet with political developments and thus explain (when no such disquiet is in evidence) why the 'non-repealing' of a law is an intentional phenomenon and thus qualifies as consent. The failure of a political community to repeal a law looks compelling as an instance of consent only if we accept that there will be the comprehensive involvement of citizens in and beyond democratic institutions, with individuals regularly engaged in forthright discussion of the sort Paine himself displays.

One possible reason not to worry about this issue of the enforcement of civic duties can be gleaned from the theory of human nature that runs throughout Paine's writings and, in particular, his commitment to what can be termed the *democratic mind*. At the beginning of this chapter, I cited Paine's claim that 'forms grow out of principles, and operate to continue the principles they grow from'.<sup>78</sup> This view that forms 'operate' in society to sustain principles – and the way in which they do so – can be connected to his belief in the initial plasticity but (potential) subsequent fixity of the human mind. His writings show that he considers human nature, and the resultant behavioural tendencies it begets, to be malleable and different depending on surrounding contexts. More specifically, Paine's view seems to be that the minds of individuals respond to, and can be completely transformed by, the character of the political institutions that surround them. Thus, along with his focus on illegitimate political hierarchy and the violation of an individual's right to consent to government, another striking feature of Paine's critique of hereditary systems is their tendency to corrupt the human mind. His argument is not only that members of the aristocracy are beneficiaries of unfair advantages and arbitrary power, but also that they lack the moral character to govern appropriately. Individuals who have benefited from the hereditary system suffer, he contends, from 'an unusual unfitness', because 'their ideas of distributive justice are corrupted at the very source' through their involvement in the tradition of primogeniture.<sup>79</sup> Aristocracy has 'an injurious effect on

<sup>78</sup> Paine, 'ROM', CWI, 297.

<sup>79</sup> *Ibid.*, 289, emphasis suppressed.

the moral and physical character of man' and 'debilitates the human faculties'.<sup>80</sup>

This view – that the existence of hereditary institutions distorts the beliefs of individuals in an almost ideological manner – has, for Paine, an explicit corollary: that the effect of political institutions that are representative and democratic will be a transformation of human nature for the better and in such a way that subsequent regression into despotism is rendered impossible. He claims that 'ignorance is of a peculiar nature; once dispelled, it is impossible to re-establish ... though man may be *kept* ignorant, he cannot be *made* ignorant'.<sup>81</sup> There is therefore no danger of a newly established democracy ever lapsing back into hereditary rule, provided that its institutions are properly organised, which means according to the principles of representative government that he outlines. He continues in this vein, arguing that 'the mind, in discovering truth, acts in the same manner as it acts through the eye in discovering objects; when once any object has been seen, it is impossible to put the mind back to the same condition it was in before it saw it'.<sup>82</sup> This view would then appear to suggest that once individuals have lived in democratic societies, they will undergo a kind of psychological shift. Once individuals are exposed to democratic institutions and the principles that they represent, Paine expects their minds and behavioural tendencies to change. An effect of this change may indeed be that individuals are willing to undertake political duties and cultivate their civic virtues voluntarily, with no need for any compulsion or threat of legal sanction. If Paine does expect individuals living in a representative democracy to tend towards the voluntary fulfilment of participatory obligations and the corresponding cultivation of civic virtue, it looks much less surprising that he would not wish to insist upon this as a matter of legal rights and duties. His understanding of human nature and commitment to the democratic mind would thus explain the imperfect status of civic duties.

Attention to this view of human nature helps explain other aspects of his democratic thought. Paine argues that 'in all matters of opinion, the social compact ... requires that the majority of opinions become the rule for the whole', a rule that is 'perfectly conformable to the principle

<sup>80</sup> Paine, 'DFPG', CW II, 582.

<sup>81</sup> Paine, 'ROM', CW I, 320.

<sup>82</sup> Paine, 'ROM II', CW I, 320.



of equal rights; for, in the first place, every man has a right to give an opinion, but no man has a right that his opinion should govern the rest'.<sup>83</sup> This position inevitably raises the issue of minority rights: how will a political community be able to ensure that the majoritarian logic of representative democracy protects the equal status of individuals who are regularly found to have unpopular views, and, as a result, become confronted regularly with laws to which they are steadfastly opposed? The equal rights of individuals within minorities will obviously always be protected – because this is a condition of legitimate government – but a potential consequence of majoritarianism is that some may come to regard themselves as excluded or alienated from the political process. Paine does not think this a likely problem. His view is that on those occasions that experience reveals a minority view to be correct, it will be subsequently adopted by the majority 'and the error will reform itself by the tranquil operation of freedom of opinion and equality of rights'.<sup>84</sup> This is completely different from Rousseau's majoritarianism. Instead of positing a distinction between general and private wills in order to solve the problem of minority views, Paine's contention is that the right kind of political institutions will enable any erroneous policies to be revealed and reformed as necessary through democratic discussion.

How do individuals come to discover truth and, if necessary, overcome their ignorance? Paine's answer is that such improvement accompanies political revolution. His suggestion is that 'if universal peace, civilization, and commerce, are ever to be the happy lot of man, it cannot be accomplished but by a revolution in the system of governments'.<sup>85</sup> Although Paine does not offer anything like a blueprint for revolution or a theory of historical change, he does identify a number of factors that enabled such revolutions to happen in America and France. In the case of the latter, he ridicules the notion that it simply 'burst forth like a creation from a chaos', an opinion he ascribes to Burke.<sup>86</sup> He claims instead that the events of 1789 and afterwards represent 'no more than the consequence of a mental revolution previously existing in France'<sup>87</sup> and cites a background of intellectual development during the eighteenth century as creating the conditions necessary for a revolution to occur: at that time, 'a spirit of political inquiry began to

<sup>83</sup> Paine, 'DFPG', CW II, 584–585.

<sup>84</sup> *Ibid.*, 585.

<sup>85</sup> Paine, 'ROM II', CW I, 355.

<sup>86</sup> Paine, 'ROM', CW I, 298.

<sup>87</sup> *Ibid.*

diffuse itself through the nation'.<sup>88</sup> Although he does not offer a comprehensive explanation of the French Revolution, he does point to the important role of philosophers, like Montesquieu, Voltaire and Rousseau, who were able to further intellectual enquiry, both in spite and *because* of their despotic surroundings.<sup>89</sup> There is, in Paine's view, some link between the French Revolution and the earlier American one. As news of the events in America spread across the Atlantic through various published sources, his argument is that the possibility of a radical political transformation in Europe then became gradually recognised. Nevertheless, he is careful to emphasise in his explanation that it was the 'principles' that were 'produced' in America that helped prompt the Revolution in France, rather than merely knowledge of the feasibility of such an action.<sup>90</sup>

Paine regards the American Revolution as a unique, yet instructive case. In America, he sees 'the only spot in the political world, where the principles of universal reformation could begin' and that 'an assemblage of circumstances conspired, not only to give birth, but to add gigantic maturity to its principles'.<sup>91</sup> He explains the particularity of the American situation with reference to its accordance with nature. The people who first settled there were diverse in terms of their European nationalities and religions, but nonetheless met 'not as enemies, but as brothers'.<sup>92</sup> The reason for such peace amongst such a diverse people is the sheer size and unspoiled nature of America, features that for him vitiate any human tendencies to quarrel. Instead, 'the scene which that country presents to the eye of a spectator, has something in it which generates and encourages great ideas' and 'in such a situation man becomes what he ought'.<sup>93</sup> Most interestingly, the moral truth that individuals came to recognise in America is that of human equality. In Paine's view, individuals were moved to realise the artifice of the hierarchy that exists in the old world, which then leads inexorably to the conclusion that human equality is the genuine, fundamental moral axiom and, because of this, that individual rights must be the starting point for any regulative rules for a political community. Crucially, this return to natural principles is not a phenomenon to be appreciated solely in the example of American settlers. Although the specific circumstances of America may have been unique, the lesson

<sup>88</sup> *Ibid.*, 299.      <sup>89</sup> *Ibid.*      <sup>90</sup> *Ibid.*, 300.

<sup>91</sup> Paine, 'ROM II', CW I, 354.      <sup>92</sup> *Ibid.*      <sup>93</sup> *Ibid.*

for humanity is clear: for Paine ‘the [American] example shows to the artificial world, that man must go back to nature for information’.<sup>94</sup>

## Conclusion

We now have a fuller picture of Paine’s political theory, having established the centrality of representative democracy in it. In order for a government to be just or legitimate, it must do more than merely be authorised through the consent of its citizens and act as a protector of their rights. It must instead have a definite shape and design. One implication of Paine’s account of legitimate government, as outlined in this chapter, is that any interpretation of his thought as purely libertarian in character looks almost impossible to maintain. This is because libertarianism is open-ended with regard to the character and structure of government, which is to be determined by consensual agreement amongst individual rights-bearers. What this then entails is that libertarian government can, in principle, take almost *any* form so long as it conforms to individual consent. This is evidently not Paine’s view. According to him, legitimate government must take the form of a representative democracy and must have an array of features that are not subject to negotiation, such as equal voting rights, regular elections and a constitution visible to and comprehensible by all.

Representative democracy is, for Paine, a concept that perfectly embodies the egalitarianism that just government must have but that unjust variants – such as monarchy and aristocracy – violate. He argues that only representative democracy can adequately reflect the diversity of interests within a sizeable, modern population and treat citizens as moral equals, individuals capable of looking each other in the eye and engaging in political conversation without deference. One of the ways in which it does this is through the guarantee of equal voting rights: every individual must be involved in the democratic process, regardless of whether they own property or satisfy any test of intelligence or aptitude. However, though necessary to maintain meaningful civic equality, Paine appears to recognise that such voting rights are not sufficient. Thus, in addition to an open and transparent legislature, he is committed to the value of publicity, the need for individuals to be brought into civic activity in a public manner through various channels.

<sup>94</sup> Ibid.

Paine's theory of human nature – his belief that individuals are formed and altered by the political institutions that surround him and, correspondingly, that democracy begets a virtuous ethos – shows how his liberalism is imbued with the spirit of republicanism, such that his affiliation to the two traditions does not reveal any problematic tension in his thought. This developmental account of human nature essentially secures the democratic mind: once it has emerged, it will not diminish or atrophy. Paine expects individuals to undertake the duties required of them as a matter of course, without the kind of compulsion that would undermine the normative priority of rights in his theory. Individuals therefore retain the freedom not to get involved in political life in the way he thinks they have a duty to. The appeal to both rights and virtue within his writing has traditionally confused a number of readers, including Pocock, who concludes that Paine 'remains difficult to fit into any kind of category'.<sup>95</sup> The analysis in this chapter shows classification of his thought is actually not so hard and that his overarching, modern liberalism can comfortably house a series of commitments associated with republicanism. For Paine, rights come first – as they are generated by human moral equality and are needed to protect freedom – but their existence and sustenance behoves individuals to develop a political personality that involves virtue and civic responsibility.

<sup>95</sup> Pocock, *Virtue, Commerce, and History*, 276.

## 4 | *Private property, the natural inheritance and rights to welfare*

The last two chapters have outlined the fundamentals of Paine's theory of human rights, focusing on the character of his moral universe and his commitment to a number of fundamental, inviolable equal entitlements held by individuals. We have established his commitments to a right to confer consent to government in order to incur political obligations, the right to religious and intellectual freedom and bodily integrity, the right to vote and to democratic representation, as well as a latent right to rebel against those who attempt to deny these rights. Each of these entitlements is held by every person, equally, against the world, and they generate corresponding duties to be observed by both all other agents and the state.

This chapter turns now to the question of economic rights, an area in which Paine makes a strikingly original contribution to political theorising. I will focus mainly on the theory of property ownership he offers in his 1796 essay, *Agrarian Justice*. Most consideration of this work has been of its status as an historical landmark in thinking about social justice. Historians have been occupied largely either with gauging the radicalism of Paine's redistributive agenda or with assessing how his thought bridges the concerns of late eighteenth-century republicanism with nineteenth-century socialism.<sup>1</sup> My interest here is instead primarily in his theoretical justification of private property itself and how it departs from those of other canonical modern thinkers. As I will demonstrate, in *Agrarian Justice* Paine offers an account of property rights that fuses his moral commitments to the values of liberty and

<sup>1</sup> For discussions of the former, see Gertrude Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (London: Faber and Faber, 1984) and Gareth Stedman Jones, *An End to Poverty? A Historical Debate* (London: Profile, 2004); and of the latter, Thomas Horne, *Property Rights and Poverty: Political Argument in Britain, 1605–1834* (Chapel Hill: University of North Carolina Press, 1990) and Gregory Claeys, 'The Origins of the Rights of Labor: Republicanism and Commerce in Britain, 1796–1805', *Journal of Modern History* 66 (1994): 249–290.

equality. His stated objective is both to make a redistributive case and ‘advocate the right . . . of all those who have been thrown out of their natural inheritance by the system of landed property’ and, at the same time, to ‘defend the right of the possessor [of property] to the part which is his’.<sup>2</sup> This ambitious attempt to simultaneously explain both rights of exclusive ownership and a significant redistribution of resources might seem at first incoherent. However, as I will argue, Paine’s egalitarian case for redistribution is intimately bound up with his libertarian defence of private ownership; in fact, the former might even be thought to stem from the latter. Again, attention to the intricacies of Paine’s argument undermines the notion that his political theory is in any way schizophrenic and shows that his libertarian and egalitarian commitments sit comfortably together.

I begin by discussing the moral problem that Paine believes is caused by poverty: how a certain species of poverty is unique to modernity, how it is caused by a lack of property ownership and why it can be described as an injustice. I then move on to consider why Paine rejects a return to a pre-proprietary state and examine his justification of private property rights: the conditions necessary for an agent to justly acquire (and then exclusively own) holdings, from what he claims was an initial community of equally owned goods. I show that Paine confronts this problem of the move from common to private ownership – prominent within early modern natural rights theories – through a variation of Locke’s well-known and influential labour-based account of legitimate acquisition. My suggestion is that, despite the numerous similarities between the accounts offered by Locke and Paine, there are nevertheless importantly fundamental and revealing differences between the two. After considering Paine’s theory of property ownership – and the redistribution it implies – in *Agrarian Justice*, I then complete his account of economic rights, by turning to consider the welfare entitlements that he outlines in *Rights of Man, Part Two*.

### **Property, poverty and moral equality**

Paine addresses the issue of property ownership most systematically in his 1796 pamphlet, *Agrarian Justice*. Despite being one of his most impressively argued works, it has attracted relatively little substantial

<sup>2</sup> Paine, ‘AJ’, CW I, 612.

scholarly attention, apart from as an important historical milestone in debates about social justice and arguments for what looks like an embryonic welfare state.<sup>3</sup> The pamphlet calls for the establishment of a national fund through government taxation and defends, amongst other things, what has come to be described as a ‘stakeholder’ grant: an unconditional equal endowment paid once to all individuals when they reach majority age.<sup>4</sup> Composed in France during the famine-stricken winter of 1795 and 1796, the work remained unpublished in Britain until early 1797, at which point Paine claims to have been motivated by a reading of ‘An Apology for the Bible’ written by Richard Watson, the Bishop of Llandaff, a pamphlet that had itself been written in response to his own *The Age of Reason*. The closing pages of Watson’s book contained a list of his other writings, one of which was a sermon entitled ‘The Wisdom and Goodness of God, in having made both Rich and Poor’. It was to this asserted defence of divinely sanctioned material inequality that Paine felt moved to respond.

The dissatisfaction Paine has with Watson’s support for material inequalities is best understood not as merely a theological quibble about whether God did indeed validate opulence, poverty or inequality, but rather as a concern to defend equality as a fundamental moral principle. As our discussion in the previous two chapters has shown, the common thread that runs throughout all of Paine’s political thought is a foundational commitment to ‘the equality of man’: his belief in equality acts as a moral axiom from which he derives a catalogue of individual rights and correlative duties.<sup>5</sup> This foundational egalitarian commitment is again prominent in *Agrarian Justice*, a work he dedicates to ‘the Legislature and the Executive Directory of

<sup>3</sup> For useful, though brief, discussions, see G. Claeys, *Thomas Paine: Social and Political Thought* (London: Unwin Hyman, 1989), 196–208 and M. Philp, *Paine* (Oxford: Oxford University Press, 1989), 84–93. For discussion of it within a broader context of arguments for a proto-welfare state, see Ben Jackson, ‘The Conceptual History of Social Justice’, *Political Studies Review* 3 (2005): 356–373.

<sup>4</sup> Stakeholding payments can be contrasted with unconditional basic incomes because the latter are usually presented as regular payments that take place throughout a person’s life, whereas the former are paid once with the intended effect of generating a civic-minded spirit and a sense of responsibility and reciprocity that is thought part of having a ‘stake’ in any society. For discussions, see Keith Dowding, Jurgen De Wispelaere and Stuart White (eds.), *The Ethics of Stakeholding* (Basingstoke: Palgrave Macmillan, 2003).

<sup>5</sup> Paine, ‘AOR’, CW I, 464.

the French Republic', with a warning that 'equality is often misunderstood, often misapplied, and often violated'.<sup>6</sup> The arguments herein can be considered in the French context of François-Noël Babeuf's ill-fated attempt to establish communism after the Revolution. Nevertheless, while the text is explicitly a contribution to debates prompted by Babeuf's 'conspiracy', Paine also maintains that his plan 'is not adapted for any particular country alone: the principle on which it is based is general'.<sup>7</sup> He begins the essay by declaring (contra Watson) that 'it is wrong to say God made *rich* and *poor*; He made only *male* and *female*; and He gave them the earth for their inheritance'.<sup>8</sup> Yet, as will become clear, in spite of this commitment to an egalitarian baseline, Paine provides not only a critique of material inequalities, but also an account of the legitimate acquisition of the exclusive property rights that cause – and perhaps even perpetuate – those inequalities.

As other commentators have observed, *Agrarian Justice* consolidates a shift in Paine's economic thought and, in particular, how he conceptualised what he had regarded earlier as the progressive nature of 'civilisation' and the commercial economy that characterised it.<sup>9</sup> Though his early writings reveal an almost unqualified enthusiasm for commerce, this attitude had softened a little by the early 1790s such that he simultaneously praises and criticises the economic implications of modernity. In 1792, in *Rights of Man, Part Two*, he retains his commitment to the benefits of 'civilised life', which entailed 'felicity and affluence' and still considers the 'uncivilised' alternative to be marked by 'hardship and want'.<sup>10</sup> In making such claims, he echoes a sentiment commonplace in seventeenth- and eighteenth-century political thought, one that facilitated cross-cultural economic comparisons. In *Two Treatises*, Locke had declared that 'a King of a large and fruitful Territory' in uncivilised North America 'feeds, lodges, and is clad worse than a day Labourer in England'.<sup>11</sup> Adam Smith made a similar suggestion in *The Wealth of Nations*, using the example of an African king to argue that 'the lowest and most despised member of civilized society' experienced 'superior affluence and abundance' over 'the most

<sup>6</sup> Paine, 'AJ', CW I, 606.      <sup>7</sup> *Ibid.*      <sup>8</sup> *Ibid.*, 609.

<sup>9</sup> See, for example, G. Claeys, *The French Revolution Debate in Britain: The Origins of Modern Politics* (Basingstoke: Palgrave Macmillan, 2007), 38–41.

<sup>10</sup> Paine, 'ROM II', CW I, 398.

<sup>11</sup> J. Locke, *Two Treatises of Government* (ed.) Peter Laslett (Cambridge: Cambridge University Press, 1988), II: §41, 297.



respected and active savage'.<sup>12</sup> By 1792, though, Paine's view on this matter is very different from both Locke and Smith.<sup>13</sup> Alongside his commendation of the great advances made by developed societies and recognition of the want associated with the savage, undeveloped alternatives, he maintains that it 'is nevertheless true that a great portion of mankind, in what are called civilized countries, are in a state of poverty and wretchedness far below the condition of an Indian'.<sup>14</sup> *Agrarian Justice* continues to explore this theme, with Paine further detailing the spectacular material inequalities that have accompanied the otherwise morally and economically progressive emergence of modernity.<sup>15</sup> For him, 'on one side, the spectator is dazzled by splendid appearances; on the other, he is shocked by extremes of wretchedness; both of which it has erected. The most affluent and the most miserable of the human race are to be found in the countries that are called civilized'.<sup>16</sup>

Against the material inequality of modernity, Paine juxtaposes the more primitive societies in North America, which are unblemished by the same degree of human destitution. His conclusion is that a certain kind of poverty is simply unique to modernity and does not exist in the natural state.<sup>17</sup> So, in contrast to Locke and Smith, he suggests that 'The life of an Indian is a continual holiday, compared with the poor of Europe'.<sup>18</sup> Paine singles out the emergence of private property as the chief cause of the kind of poverty only found in commercial modernity.

<sup>12</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (eds.) R. Campbell and A. Skinner (Indianapolis: Liberty Fund, 1981), bk. 1, ch. 1, 16; Smith, *Lectures on Jurisprudence* (eds.) R.L. Meek, D.D. Raphael and P.G. Stein (Indianapolis: Liberty Fund, 1978), 208. Paine was, by the 1790s, familiar with Smith's *Wealth of Nations*.

<sup>13</sup> For a discussion of Paine in the context of Smith's thought, see Stedman Jones, *An End to Poverty?*, 16–63.

<sup>14</sup> Paine, 'ROM II', CW I, 398. He is adamant that this is not due to any 'natural defect in the principles of civilization, but in preventing those principles having a universal operation' (398).

<sup>15</sup> Thus, he argues that 'To preserve the benefits of what is called civilized life, and to remedy at the same time the evil which it has produced, ought to be considered as one of the first objects of reformed legislation' (Paine, 'AJ', CW I, 609).

<sup>16</sup> *Ibid.*, 610.

<sup>17</sup> 'To understand what the state of society ought to be, it is necessary to have some idea of the natural and primitive state of man; such as it is at this day among the Indians of North America. There is not, in that state, any of those spectacles of human misery which poverty and want present to our eyes, in all the towns and streets of Europe' (*Ibid.*).

<sup>18</sup> *Ibid.*

He describes as ‘the greatest evil’ the ‘landed monopoly’ that has ‘dispossessed more than half the inhabitants of every nation of their natural inheritance’ and ‘created a species of poverty and wretchedness that did not exist before’.<sup>19</sup> He argues further that

The present state of civilization is as odious as it is unjust ... and it is necessary that a revolution should be made in it. The contrast of affluence and wretchedness continually meeting and offending the eye, is like dead and living bodies chained together.<sup>20</sup>

This passage clearly shows that Paine views the poverty and inequality of modernity as fundamentally ‘unjust’; in fact, so much so that it requires a ‘revolution’ of some sort. Since this species of poverty and wretchedness is directly linked to the existence of civilisation rather than the natural state, it raises an important moral question about the legitimacy of private ownership and the ‘landed monopoly’ it has enabled.

### **A return to the natural state?**

Paine is, then, unambiguous in his view that civilisation has created a new species of poverty as well as increased affluence and that this new poverty is a real moral problem. Property ownership therefore looks in need of some justification. But before turning to his account of legitimate acquisition and ownership, there is an even more basic question to address. If poverty is such an important moral issue and there was no such poverty in the natural state, should we not try and return to that state? Paine’s answer to this question is interesting. As we know, his account of the move from the state of nature to political society in *Rights of Man* is broadly Lockean in character: in the natural state individuals have natural (moral) rights but then contract into civil society, throwing such rights into a ‘common stock’.<sup>21</sup> Upon entrance into civil society, individuals surrender their right to punish – which becomes a ‘civil’ right to an impartial arbiter – but retain all other moral entitlements. For Locke, the question of a return to the state of nature never really arises because the move from the state of nature to society was both a moral and a rational one. The same applies to the

<sup>19</sup> *Ibid.*, 612.    <sup>20</sup> *Ibid.*, 617.    <sup>21</sup> Paine, ‘ROM’, CW I, 276.

establishment of individual property rights: for Locke, ‘the Condition of Humane Life, which requires Labour and Materials to work on, necessarily introduces private possessions’.<sup>22</sup>

In his *Discourse on the Origin of Inequality*, Rousseau provides an account of the move away from the natural state that is quite different from Locke’s, one in which property ownership also plays a crucial part. Rousseau’s narrative links the emergence of private ownership rights explicitly to a corresponding emergence of significant inequalities. Indeed, for him, the appropriation of property is presented as an act of blatant trickery. His notorious claim is that ‘the first man who, having enclosed a piece of ground, to whom it occurred to say *this is mine*, and found people sufficiently simple to believe him, was the true founder of civil society’.<sup>23</sup> It is not merely the case that Rousseau regards the initial appropriation of property as a contingent rather than necessary event – for him it has had seriously deleterious consequences. He is adamant that had the institution of private property rights been avoided, this could have actually spared the human race innumerable ‘crimes, wars, murders’, asking ‘how many miseries and horrors Mankind would have been spared by him who, pulling up the stakes or filling in the ditch, had cried out to his kind: Beware of listening to this impostor; You are lost if you forget that the fruits are everyone’s and the Earth no one’s’.<sup>24</sup> The nature of this apparently critical attitude towards the appropriation of property and the inequalities it entails would appear to raise clear moral problems and raise the question of a potential return to the natural state. However, in spite of the disdain for property that Rousseau expresses – and the romantic attachment he has for ‘natural man’ – he rejects outright the possibility that there can be any return to nature. He scorns the idea that ‘Societies be destroyed, thine and mine annihilated and men return to live in forests with the Bears’.<sup>25</sup> For Rousseau, the emergence of civil society from a natural state constitutes a fundamental shift in human nature, from which there simply can be no return.

<sup>22</sup> Locke, *Two Treatises*, II: §35, 292, emphasis added and suppressed.

<sup>23</sup> Jean-Jacques Rousseau, ‘Discourse on the Origin and Foundations of Inequality Among Men’ in V. Gourevitch (ed.) *Rousseau: The Discourses and Other Early Political Writings* (Cambridge: Cambridge University Press, 1997), 161.

<sup>24</sup> *Ibid.* <sup>25</sup> *Ibid.*, 203.

The relevance of this to our discussion is that Paine, like Rousseau, views a return to the natural state as simply impossible, but offers a quite different reason for this conclusion. Paine's suggestion is that

it is always possible to go from the natural to the civilized state, but it is never possible to go from the civilized to the natural state. The reason is that man in a natural state, subsisting by hunting, requires ten times the quantity of land to range over to procure himself sustenance, than would support him in a civilized state, where the earth is cultivated'.<sup>26</sup>

He then adds, crucially, that 'there is a necessity of preserving things in that [cultivated] state; because without it there cannot be sustenance for more, perhaps, than a tenth part of its inhabitants'.<sup>27</sup> From this he argues that 'the thing, therefore, to be done is to remedy the evils and preserve the benefits that have arisen to society by passing from the natural state to that which is called the civilized state'.<sup>28</sup> What does this argument actually amount to? Why does Paine insist it is impossible to return to the state of nature? One seemingly plausible interpretation is a utilitarian one. Along these lines, regardless of the existence of widespread, spectacular poverty, civilisation has improved its aggregate or overall utility to such a huge extent that it would be morally wrong to abandon such advantages. This would seem to comprise a consequentialist argument in favour of civilisation based on a principle of utility or efficiency – civilisation can attend the needs of more people more *effectively* than the natural alternative. Civilisation can accommodate more in the way of resource provisions and therefore there is a moral and rational basis for its emergence and maintenance regardless of the social costs incurred by having a minority of people severely impoverished.

Upon first examination, this interpretation of the logic of Paine's argument does seem attractive. His focus on the remediation of the evils of civilisation whilst maintaining its benefits seems to be a sort of consequentialist compromise, intent on achieving the greatest possible amount of happiness or well-being. Nevertheless, we have established that Paine is not at root a utilitarian or consequentialist thinker and this reading of his case for maintaining civilisation – rather than returning to a state of nature – must be approached with some caution. This is because there exists another plausible reading that fits far better with his political theory as a whole. This alternative reading suggests that

<sup>26</sup> Paine, 'AJ', CWI, 610.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

Paine's argument for maintaining civilisation, whilst also remedying the problems of poverty that have accompanied it, is not motivated by considerations of utility or efficiency but is rather rights-based. As we have seen, Paine's political writing details a catalogue of inviolable rights held by individuals. Furthermore, Paine is explicit that they apply to the 'living' (and to those who shall be 'living' in the future); this is a definition of the moral universe constructed in opposition to that of Burke, whose defence of a principle of inherited sovereignty is in turn represented as a plea to recognise the rights of the dead.<sup>29</sup> It is thus surely implicit that individuals must have, first and foremost, an inviolable right *to life* or to self-preservation – or, put less vaguely, a right to the resources necessary to sustain the life they have.<sup>30</sup> This would seem to be a prerequisite for all other rights: there would be no point in holding a right to vote, rebel or whatever if an agent did not have some right to exist in the first place.

Once this right to life is admitted and emphasised, it is possible to advance an alternative to the utilitarian reading of Paine's account of the move from the state of nature to civil society. The crucial part of his argument for holding onto civilisation is that we *cannot* return to the natural state: it is something that he declares would be 'impossible'. However, this claim is *not* the Rousseauvian idea that it is physically (or perhaps, more accurately, psychologically) impossible to return to the woods. Rather, the reason for the impossibility of such a return is that the world has, since the move to civilisation, become far more 'populous' according to Paine and thus *now* a return to the natural state could not provide 'sustenance' for more than one-tenth of existing individuals. In other words, the problem is not that we are *physically* unable to abolish ownership and return to a pre-proprietary natural state, or that we cannot conceive of a world without private property, but rather that we are *morally* unable to do so. This is because such a move would, for Paine, threaten the existence of individuals by not being able to provide the resources to sustain them, individuals who, by virtue of existing, have natural inalienable rights. On this

<sup>29</sup> Paine, 'ROM', CW I, 252.

<sup>30</sup> Though modern philosophers would doubtless regard the notion of such a right as overly vague in its formulation, a commitment to the moral duty to preserve human life is a staple of early modern and modern accounts of rights, from (at least) its well-known incarnation in the thought of Thomas Aquinas to (at least) as far as Locke.

understanding it is not that hunting requires more land than agriculture and therefore the latter is to be *preferred*, but instead that agriculture has, as a matter of fact, supplanted hunting and that there is no way back, except through such a way that would sacrifice fundamental individual rights to life. It is the existence or survival of individuals to which each has an equal right that is the cornerstone of Paine's political thought. Civilisation may have brought a great many benefits for individuals, but this does not seem, technically at least, why Paine wants to maintain it. It is instead because of the (as we will see, contingent but not arbitrary) fact that its emergence has created more moral agents who have rights simply by virtue of their existence. Any move away from civilisation would, he believes, entail the perishing of these agents and would therefore be wrong. It is thus possible to conclude that his case is not based on any principle of efficiency, or any other consequentialism, but rather on rights.

### **From common to private ownership**

So, to recap: the establishment of private property ownership (as part of the emergence of a commercial economy) has created a morally problematic species of poverty that was absent from pre-proprietary existence, but any proposed abolition of such ownership cannot take place without entailing the perishing of living (rights-bearing) individuals. I turn now to consider how Paine justifies property ownership and how it can be thought intrinsically legitimate – that is to say, beyond the fact that removing it would sacrifice individual lives. While our moral inability to return to the natural state provides a general justification for the existence of property ownership as an institution, it does not provide any account of how particular rights belonging to specific individuals can be reliably identified. In other words, the fact that we know that private property rights are legitimate tells us absolutely nothing about who can hold them, under which circumstances and how they are acquired in the first place.

Paine's account of private property rights proceeds from an assumption that is central to natural law theories: that there originally existed a divinely ordained community of goods, within which no individuals held exclusive rights of ownership. 'It is a position not to be controverted', he suggests,

that the earth, in its natural, uncultivated state was, and ever would have continued to be, *the common property of the human race*. In that state every man would have been born to property. He would have been a joint life proprietor with the rest in the property of the soil, and in all its natural productions, vegetable and animal.<sup>31</sup>

This seems, then, an assertion of a state of original communism, an initial situation in which individuals hold equal rights over the earth's resources. There appears to be no other way of interpreting the notion that the earth is 'the common property of the human race' or the idea that individuals were initially its 'joint proprietors'.

However, if this is the case, then another obvious question is raised: how did property rights emerge in the first place and how could they ever be legitimate rather than a violation of individual rights over the 'common'? How could any person legitimately claim ownership of a particular portion of land when the earth is a property jointly held by all? This question becomes particularly pointed when it is appreciated that the emergence of private property was a wholly contingent event, without any divine validation. For Paine,

There could be no such thing as landed property originally. Man did not make the earth, and, though he had a natural right to *occupy* it, he had no right to *locate as his property* in perpetuity any part of it; neither did the Creator of the earth open a land-office, from whence the first title-deeds should issue.<sup>32</sup>

It is then clear that although individuals had the right to occupy and to use land for their own purposes, such as subsistence, they did not have any divinely ordained right to appropriate it as private property. And as the earlier quotation indicated, he further argues that 'the earth, in its natural, uncultivated state was, *and ever would have continued to be*, the common property of the human race'.<sup>33</sup> So Paine is explicit not only that God intended the earth to be 'the common property of the human race', but also that were it not for cultivation it 'ever would have continued to be' so. If there was the possibility that the earth *could have* remained uncultivated, any cultivation that does subsequently take place must be viewed as a contingent occurrence and thus not necessarily in accordance with any divine will.

<sup>31</sup> Paine, 'AJ', CW I, 611.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, emphasis altered.

In addressing the obvious question of ‘Whence then, arose the idea of landed property?’ Paine invokes a conventional ‘four-stage’ historical narrative by way of explanation. According to this stadial narrative – popular within explanatory accounts of political economy associated with the Scottish Enlightenment<sup>34</sup> – in the first two stages of human existence, property ‘could not exist’.<sup>35</sup> In such times, ‘the use of a well in the dry country of Arabia’ was a commonly held right and no individual could have exclusive ownership of it. Private property, understood as exclusively held ownership rights over non-subsistence resources, only came into being through the ‘cultivation’ of the earth during the third, agricultural, stage of history. Then,

When cultivation began the idea of landed property began with it, from the impossibility of separating the improvement made by cultivation from the earth itself, upon which that improvement was made ... [T]he value of the improvement so far exceeded the value of the natural earth, at that time, as to absorb it; till, in the end, the common right of all became confounded into the cultivated right of the individual.<sup>36</sup>

Thus, for Paine, although individuals initially commonly owned the earth’s natural resources, this altered fundamentally through cultivation and, furthermore, it was this *act* of cultivation that established individual property rights. After this act has taken place, ‘the common right of all became confounded into the cultivated right of the individual’.

In terms of an explanatory historical-sociological analysis of political economy, Paine’s description of the emergence of private property ownership might seem unremarkable and was certainly not unconventional. Yet there is one highly significant departure from the explanatory emphasis of the four-stage account in Paine’s theory. This is his claim that individuals have fundamental natural rights. The moral

<sup>34</sup> This ‘four-stage’ account of economic history was a staple of the political thought of the Scottish Enlightenment and featured prominently in Smith’s *Wealth of Nations*. The four stages cited by Smith were that of ‘hunter’, ‘shepherd’, ‘agriculture’ and ‘commerce’. For discussion, see Christopher J. Berry, *Social Theory of the Scottish Enlightenment* (Edinburgh: Edinburgh University Press, 1997), 93–99; and, beyond the case of the Scots, Istvan Hont, ‘The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the “Four-Stages Theory”’ in A. Pagden (ed.), *The Languages of Political Theory in Early-Modern Europe* (Cambridge: Cambridge University Press, 1987).

<sup>35</sup> Paine, ‘AJ’, CW I, 611. <sup>36</sup> *Ibid.*, 611–612.



perspective suggested by his invocation of the original communal ownership rights obviously makes very little sense alongside any historicised, sociological account of economic development because the latter relativises the universal morality purported by the former. The argument so far appears to be that common rights became individual rights simply because it is 'impossible' to separate the improvement made by cultivation from the object improved. But how can an individual be seriously said to be a 'joint life proprietor' and thus hold an initial right to the earth, if it can subsequently be overridden simply through the cultivations of another? And if individuals have such common rights, how can private property ownership *ever* be just?

As it stands, Paine's account of private property looks extremely problematic, as there is as yet no real understanding of the moral status of cultivation. Thus far, it seems to have been a completely contingent event, something that has simply happened by a chance act of appropriation. Furthermore, it is something that seems to have been morally *wrong*, something that violated individual rights, or else there would presumably be no need to provide compensation for those wronged, which is what Paine claims should now happen: there must be 'an indemnification for [the] loss' of the natural inheritance.<sup>37</sup> But if cultivation was wrong in the sense that it violated a right, and individuals now have a right to compensatory justice (through an 'indemnification') for the rights violation they have experienced, then: (1) should there not be a wholesale redistribution of resources along the egalitarian lines suggested by original communism?; and (2) should there not also be a corresponding punishment for those who have cultivated, since those actions appear to constitute a theft of another's natural inheritance? Paine's answer to these questions is unambiguous. Those who have cultivated should definitely not be punished and there should not be an egalitarian redistribution of appropriated resources. Indeed, he actually argues that cultivation establishes *legitimate* property rights for the cultivator: his suggestion is that 'though every man, as an inhabitant of the earth, is a joint proprietor of it in its natural state, it does not follow that he is a joint proprietor of cultivated earth'.<sup>38</sup> This sentiment clearly requires some explanation. Why does joint ownership of cultivated land not follow from joint ownership of uncultivated land?

<sup>37</sup> *Ibid.*, 612.      <sup>38</sup> *Ibid.*

A variety of answers to this question have been put forward by early modern and modern theorists, three of which will be explored in turn below.<sup>39</sup> The first is a consent-based theory that regards property rights as justly arising as the result of conventional agreements. The second is a 'first occupancy' justification based on an interpretation of the original community of goods as a situation of 'negative communism'. The third is the labour theory of legitimate acquisition defended by Locke. My aims here are to demonstrate that none of these three, rival theoretical approaches adequately captures the precise nature of Paine's argument and to outline his own distinct account of property rights, which both legitimises libertarian rights of private ownership and demands a form of egalitarian redistribution from the state.

One possible solution to the problem of legitimate private property acquisition within original communism is offered by Pufendorf. This solution concerns the ability of individuals to establish property rights through the *consent* – either express or tacit – of others. Like Paine, Pufendorf starts from a situation of divinely willed original communism: he suggests that 'in the beginning' all the property of the earth was 'made available by God to all men indifferently, so that [it] did not belong to one more than to another'.<sup>40</sup> God's 'proviso' to this original communism was 'that men should make such arrangements about them as seemed to be required by the condition of the human race and by the need to preserve peace, tranquillity and good order'.<sup>41</sup> So, 'to avoid conflict ... property in things or ownership was introduced by the will of God, with consent among men right from the beginning and with at least a tacit agreement'.<sup>42</sup> For Pufendorf, then, property is something that emerges through actual agreements amongst individuals that are both necessary and desirable. It would therefore make little sense to view such appropriation of property as violating any rights: its existence becomes rather a prerequisite of the exercise of other rights.

Consent would seem capable of closing the gap in Paine's account of the emergence of property. Perhaps what would be otherwise illegitimate acquisitions became legitimate because of the change in

<sup>39</sup> In doing so, I follow the structure of Waldron's discussion of natural law theories of property in *The Right to Private Property* (Oxford: Clarendon Press, 1988), 149–157.

<sup>40</sup> S. Pufendorf, *On the Duty of Man and the Citizen* (ed.) J. Tully (Cambridge: Cambridge University Press, 1991), 84.

<sup>41</sup> *Ibid.* <sup>42</sup> *Ibid.*, 84–85.

circumstances they brought about. Maybe the fact that a return to a pre-proprietary natural state has morally unacceptable implications opens up a space for tacit or express consent as a mechanism through which ownership rights can be justified. Despite its apparent plausibility, however, there are good reasons to discount the possibility that consent justifies property for Paine. Although, as shown already, the idea of consent has a pivotal role in Paine's political theory, particularly his account of political obligation, it does so in such a way as to undermine rather than underpin a defence of private ownership rights. For Paine, because consent is a necessary condition of legitimate government, established constitutional arrangements cannot bind future generations: to invoke the authority of constitutional precedent is to violate individual rights to signify consent.<sup>43</sup> Given this view, which makes it illegitimate to bind emerging and future generations to the decisions made by their ancestors without their involvement, it seems unlikely that he would defend the legitimacy of property arrangements with reference to instances of consent. The way in which consent functions in Paine's account of sovereignty suggests that it would not matter if individuals sought peace by establishing a convention approving of private property ownership. Indeed, it instead suggests that *every* generation would have the right to think property ownership anew.<sup>44</sup>

A second possible explanation of the emergence of justly owned private property involves an alternative way of conceiving of the rights held in the initial situation of communal ownership. By hinting at a rights violation, the discussion so far has traded on the assumption that the community of goods bequeathed by God is a positive one. But what if it makes more sense to view it as a 'negative' alternative? The difference between positive and negative forms of original communism comes down to the types of rights each involves. Private property rights over things like land are usually assumed to be full claim-rights that generate corresponding duties in other agents to ensure their recognition and forbearance from any actions inimical to their standing. Thus,

if agent X has a 'claim right' (of ownership) over property Y, then agent A must forbear from doing action B where action B interferes with X's ownership of Y

<sup>43</sup> Paine, 'ROM', CW I, especially 249–252.

<sup>44</sup> 'Every generation must be as free to act for itself, *in all cases*, as the ages and generations which preceded it' (*Ibid.*, 251, emphasis added).

In this case, then, if X can establish a claim right of a certain portion of uncultivated earth, then A must forbear from establishing a tobacco plantation on it. If original communism is construed in *positive* terms, then individuals do have such claim-rights over natural resources and Paine's account of the emergence of private ownership involves a blatant violation of them.

What if, however, original communism be understood in a 'negative' rather than positive sense? This would involve a complete absence of 'claim-rights' and instead only equally held 'privilege' rights over the earth's resources. In terms of jurisprudential logic, all that privileges grant their holder is the lack of a duty to forbear from a certain action. Crucially, unlike with a claim-right, the correlative of a privilege is not a duty to forbear from interference but a 'no-right', which in this context ends up as just another privilege. So, in a situation of original communism in which individuals hold equal privileges with regard to natural resources, each person would be in the same position: each would have no duty not to act in a certain manner. According to this understanding of the original community of goods, where property is owned in only a negative sense, there are no initial exclusive ownership rights and, because of this, nor are there duties of forbearance from the use of commonly held resources.

Grotius uses this negative understanding of original communism to explain how private ownership rights can be justly acquired, leading to legitimate inequalities in holdings. In doing so, he invokes the analogy made by Cicero with the rights of individuals to seats at a public theatre. According to the Ciceronean line, no person has the right to any particular theatre seat, but each is at liberty (so has a privilege) to occupy any one that is vacant, from which he cannot be legitimately ejected. At the same time, no person who fails to occupy a seat has grounds for complaint once there are none left.<sup>45</sup> The same logic is said to apply to the legitimate acquisition of property. Initially, for Grotius, nothing is actually owned and there exist no obligations to forbear from the use of the world's resources. At the same time, however, individuals are under no obligations to *forbear from* appropriation, whilst they are under obligations to forbear from interference in another individual's *act of* appropriation. The acquisition of property

<sup>45</sup> H. Grotius, *The Rights of War and Peace* (ed.) R. Tuck (Indianapolis: Liberty Fund, 2005), II: II: II, 420–421.

through first occupancy thus establishes legitimate and exclusive ownership rights.

If Paine's account of property is read along such lines, then the emergence of private property is obviously legitimate because the original ownership rights he identifies are not inviolable claim-rights but merely privileges. In this way, although Paine suggests the world was originally 'the common property of the human race', this would not entail that it is commonly owned, but rather that it was commonly *unowned*: there are therefore no duties incumbent upon individuals to refrain from establishing claim-rights through cultivation. So, on the negative communist reading, the emergence of private ownership has *not* been a violation of individual rights. Nevertheless, while this negative reading would immediately solve the apparent contradiction between original communism and private property, it actually also fails to provide an adequate characterisation of Paine's theory. This is because his argument is clearly that individuals have more than mere privilege rights over the earth as a whole. He is unequivocal in his belief that 'all individuals have legitimate *birthrights* in a certain species of property' and that the property-less have been robbed of their 'natural inheritance'.<sup>46</sup> Surely the only way that this can be true – that individuals can be said to have been robbed of their rights – is if individuals have inviolable *claim*-rights over natural resources in the first place, rather than merely privileges. If there are original existing claim-rights held by all individuals, it is not a situation of negative communism and the Grotian analogy of theatre seat allocation is not capable of capturing Paine's theory of property.

One of the most perennially influential justifications of property rights is contained in Locke's *Two Treatises*. From the same initial premise of original communism, he argues that rights of private ownership emerge when an agent applies her labour to a natural resource.<sup>47</sup> For him, 'Every Man has a *Property* in his own *Person*' and what follows from this is that any natural resource an agent 'hath mixed his *Labour* with, and joyned to it something that is his own', becomes the exclusive private property of that particular agent.<sup>48</sup> Thus, the hunter can be said to own the deer he has killed, even though the creature was initially 'the common right of every one', because he

<sup>46</sup> Paine, 'AJ', CW I, 607.

<sup>47</sup> Locke, *Two Treatises*, II: §25, 286.

<sup>48</sup> *Ibid.*, II: §27, 287–288.

'hath bestowed his labour upon it'.<sup>49</sup> This account of legitimate acquisition based on 'labour-mixing' invites a number of problems, perhaps the most obvious of which is pursued by Robert Nozick, who asks 'why does mixing one's labour with something make one the owner of it?' 'Why', he continues, 'isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't?'<sup>50</sup> What Nozick is driving at here is the requirement for Lockean theories of just acquisition to explain what exactly is so *special* (morally speaking) about labour as an activity and why it generates exclusive property rights. Why does individual industry, initiative or the like, matter for property ownership? Though this might be a question worth asking for Nozick, it is one that Locke can answer unequivocally. Labour is morally significant, for Locke, because it is the subject of divine will: 'God, when he gave the World in common to all Mankind, *commanded* Man also to labour, and the penury of his condition required it of him'.<sup>51</sup> He argues that although God 'hath given the World to Men in common', he also gave them 'reason to make use of it to the best advantage of Life, and convenience'.<sup>52</sup> Indeed, natural resources have been 'given to Men for the Support and Comfort of their being' and 'there must of necessity be a means *to appropriate* them . . . before they can be of use'. As a number of scholars have pointed out, the command to labour is intimately connected to the duty individuals owe to God to maintain their lives: his declaration is that 'Every one . . . is *bound to preserve himself*, and not to quit his Station wilfully'.<sup>53</sup> This duty to

<sup>49</sup> *Ibid.*, II: §30, 289. Such an argument is distinct from the example of theatre seats used by Grotius, which links property ownership merely to *first occupancy* because the only action the theatre-goer had to engage in is sitting down before somebody else. By contrast, for Locke, the deer belongs to the Indian that killed it rather than, say, his neighbour who managed to sprint more quickly towards it after it died. The act of killing would trump any first occupancy because of the moral relevance of the labour such an act involves.

<sup>50</sup> R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books), 174–175. As he memorably puts it, 'If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?'

<sup>51</sup> Locke, *Two Treatises*, II: §32, 291, emphasis added.

<sup>52</sup> Locke *Two Treatises* II: §26, 286.

<sup>53</sup> *Ibid.*, II: §6, 271. For discussions that stress the relevance of this, see Waldron, *The Right to Private Property*, 145–147, and A.J. Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), 243–252. See also J. Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980), 131.

preserve life plays a key justificatory role in Locke's argument and gives the activity of labour real moral force.

The assumption that labour carries moral force sufficient to explain the legitimacy of initial acquisition from a situation of original communism certainly seems promising for making sense of Paine's arguments. It would show why the act of cultivation establishes rights for the cultivator at the expense of and to be held against all others. There is, however, a clear divergence from Locke's version that requires further explanation. Most obviously, although Paine's natural rights framework contains an oft-downplayed but important theological element that we will come to consider later, a divine command to labour is neither expressed nor implied in *Agrarian Justice* or elsewhere. For him, as emphasised, individual property rights are not part of God's plan for the world but rather an entirely contingent event, one that need not have happened and one that generates the moral problem of poverty: 'neither did the Creator of the earth open a land-office, from whence the first title-deeds should issue'.<sup>54</sup> Furthermore, while I suggested earlier that Paine's political theory contains a commitment to a moral right to life and thus self-preservation, this should not be conflated with any Lockean *duty* of self-preservation, which is absent from his writing. The ascription of a labour theory of just acquisition to Paine remains plausible, but the lack of divine sanction for it means there is still the lack of any real argument for the rightness of property ownership. If God did not command us to labour, what are the grounds for its moral significance?

### Labour, value and creation

So Locke has a clear response to Nozick's question about what is so special about the activity of labour-mixing: it is part of the human duty that individuals owe to God. But Nozick offers his own (non-theological) solution to the problem. He speculates that perhaps 'labouring on something improves it and makes it more valuable; and anyone is entitled to own a thing whose value he has created'.<sup>55</sup> Crucially, there are two quite different, possible interpretations of this value-based argument that Nozick gestures towards. The argument could be (1) that since labour creates *value* it generates rights for the

<sup>54</sup> 'AJ', CW I, 611. <sup>55</sup> Nozick, *Anarchy, State, and Utopia*, 175.

individuals who undertake it or, alternatively, it could be (2) that labour *creates* value and therefore generates rights. The vital difference between these ostensibly identical but radically divergent arguments is signalled by the word emphasis in each. The first argument treats the value itself as the important aspect in the activity of labour and the second argument instead treats the creative process as the important aspect of it. The first, value-based, version places moral relevance on some particular value that labour has or a teleological end that it satisfies and, by extension, it is entirely with reference to this value that property rights are justified. This value-based version of the argument states that labour is (for whatever reason) a virtuous or morally praiseworthy action, one capable of establishing rights. The second, creation-based, version, by contrast, is uninterested in the ‘value’ created by the labour as such, but instead claims that since whatever has been created was not in existence until it was created, it must belong solely to the creator: after all, who else could plausibly claim a right to it or complain that their rights had been infringed by its creation? This distinction can be used to distinguish Paine’s theory in *Agrarian Justice* from Locke’s in the *Two Treatises*.

Locke does stress the value of labour. In the ‘Second Treatise’, he claims that

‘tis *Labour* indeed that *puts the difference of value* on every thing; and let any one consider, what the difference is between an Acre of Land planted with Tobacco, or Sugar, sown with Wheat or Barley; and an Acre of the same Land lying in common, without any Husbandry upon it, and he will find, that the improvement of *labour* makes the far greater part of *the value*. I think it will be but a very modest Computation to say, that of the *Products* of the Earth useful to the Life of Man 9/10 are the *effects of labour*: nay, if we will rightly estimate things as they come to our use, and cast up the several Expences about them, what in them, what in them is purely owing to *Nature*, and what to *labour*, we shall find, that in most of them 99/100 are wholly to be put on the account of *labour*.<sup>56</sup>

He elsewhere offers the same estimation in slightly modified form<sup>57</sup> and also illustrates the value labour adds to natural resources with various examples. Without labour, he tells us, individuals would be stuck with

<sup>56</sup> Locke, *Two Treatises*, II: §40, 296.      <sup>57</sup> *Ibid.*, II: §37, 294.



‘Acorns, Water, and Leaves’ rather than with ‘Bread, Wine and Cloth’.<sup>58</sup> Such an argument would seem to indicate that labour is morally praiseworthy because it improves the value of a natural resource to a highly significant degree. It is not absolutely clear how (or whether) this labour theory of value fits exactly with the aforementioned obligation to preserve human life. Locke does seem to imply that the value created by labour plays some role in the justification of individual ownership: in fact, he introduces his remarks on value in the context of an explanation of why it is not ‘so strange’ that the activity of labour trumps initial use-rights that individuals have in an original community of goods.<sup>59</sup> It might not be too difficult to incorporate this value-based justification into his theological framework. Perhaps an individual is entitled to an object with which they mix their labour because it adds value to God’s creation. On this understanding, labour is morally right not only because it ensures the preservation (or ‘support’) of human agents, but rather also because it serves a teleological purpose in improving the human situation significantly.<sup>60</sup>

An adherence to a species of the value–creation argument seems immediately recognisable in Paine’s theory and therefore able to explain the apparent difficulty faced when moving from a situation of original communism to one of private property. As noted earlier, Paine’s seemingly problematic contention is that ‘in the end, the common right of all became confounded into the cultivated right of the individual’ because ‘the value of the improvement so far exceeded the value of the natural earth’. One way of explaining the legitimacy of this move from common to private rights would be through reference to the huge value created by the labour involved in cultivation. On this view, individuals begin in a state of original communism but can establish

<sup>58</sup> *Ibid.*, II: §42, 297.

<sup>59</sup> *Ibid.*, II: §40, 296. This use-right is outlined at the start of the chapter on property: ‘whether we consider natural Reason, which tells us, that Men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and such other things, as Nature affords for their Subsistence’ (II: §25). This passage is occasionally invoked to demonstrate Locke’s commitment to a universal right to individual subsistence, but such a claim wrenches the passage from its textual context, which is a presentation of an original (pre-proprietary) community of goods.

<sup>60</sup> For an excellent analysis of the role of labour in Locke’s argument ‘as a kind of purposive activity aimed at satisfying needs or supplying the conveniences of life’, see Simmons, *The Lockean Theory of Rights*, 264–277, 273.

legitimate private holdings through labour, provided that the labour exerted increases the value of the natural resource. The question is, however, which of the two value-based arguments identified earlier he uses: that which places weight on the *value* or on the *creation*.

Paine endorses the activity of labour, praising ‘cultivation’ as ‘at least one of the greatest natural improvements ever made by human invention’.<sup>61</sup> He further speculates as to the value it has added to the natural world, concluding – in exact concurrence with Locke – that ‘it has given to created earth a tenfold value’.<sup>62</sup> But it is not Locke’s argument about *value*, but rather the alternative argument about *creation* that he ultimately endorses. Thus, Paine contends that

the additional value made by cultivation, after the system was admitted, became the property of those who did it, or who inherited it from them, or who purchased it. *It originally had no owner*. While, therefore, I advocate the right, and interest myself in the hard case of all those who have been thrown out of their natural inheritance by the introduction of the system of landed property, I equally defend the right of the possessor to the part which is his.<sup>63</sup>

This, then, is why ‘nothing could be more unjust than [communistic] agrarian law in a country improved by cultivation’: because it would violate the legitimate entitlements acquired through labour. But the reason that this labour generates rights is *not* the fact that it creates ‘value’ for the world or maximises utility or fulfils a divine plan, but rather because it happened to be created by one individual and could therefore belong to no other: thus ‘it originally had no owner’. Another pertinent question asked by Nozick about labour theories of legitimate acquisition is ‘Why should one’s entitlements extend to the whole object rather than just to the *added value* one’s labour has produced?’<sup>64</sup> To this, Locke has no real answer other, perhaps, than to fall back onto the idea of an individual physically ‘mixing’ their labour with an object and therefore establishing ownership rights over it. Paine has a contrastingly unambiguous response: an individual’s entitlement over an object simply does *not* extend beyond the ‘added value’ one’s labour has created. As his justification of property ownership relies on the importance of the fact that value has been created rather than on the

<sup>61</sup> Paine, ‘AJ’, CWI I, 612.

<sup>62</sup> *Ibid.* Like Locke, Paine makes the claim on two different occasions in the text.

<sup>63</sup> *Ibid.*, 612, emphasis added. <sup>64</sup> Nozick, *Anarchy, State, and Utopia*, 175.

moral value of the creation itself, ownership simply cannot extend beyond what an individual has added to the natural world.

This justification enables Paine to, in turn, delineate the boundaries of different types of ownership through a distinction between two different types of property, one of which always remains jointly owned even after cultivation and the emergence of private ownership: the two types of property are ‘firstly, natural property, or that which comes to us from the Creator of the universe – such as the earth, air, water’, and ‘secondly, artificial or acquired property – the invention of men’.<sup>65</sup> The value added to a piece of property through labour is thus ‘artificial’ property, whereas the original land (or, more precisely, the *value* of the original land) is the ‘natural’ kind. When it comes to ‘artificial’ property, Paine argues that

Equality is impossible; for to distribute it equally it would be necessary that all should have contributed in the same proportion, which can never be the case; and this being the case, every individual would hold on to his own property, as his right share.<sup>66</sup>

This passage might at first be taken to imply that ‘artificial’ property rights are to be linked somehow directly to ‘contribution’ and that any differences in contribution will generate legitimate inequalities of outcome amongst individual agents. This then again raises the issue of the moral status of labour itself. It might cause us to wonder whether Paine believes that property should be distributed *according to labour*. My interpretation thus far has rejected this view, because it has placed moral relevance on the creation of value through labour rather than on the labour exerted in a particular instance of creation.

The distinction between these two different locations of moral relevance can be fleshed out practically. Consider, for example, a particularly inept labourer, who consistently failed to cultivate natural property. According to my reading, Paine’s view is that it would not matter how much labour was applied by an individual if the activity is deemed to be unsuccessful: such a labourer would have no claim to own artificial property following a *failed* attempt at cultivation, regardless of the amount of labour expended. It is the creation rather than the labour that generates rights. It is fairly evident from a consideration of the logic of his argument in this text and elsewhere that Paine does not

<sup>65</sup> Paine, ‘AJ’, CW I, 606.

<sup>66</sup> *Ibid.*

think that the property should be distributed according to the amount of labour a person exerts. This is because although successful labour establishes initial ownership rights over the value it creates, there are numerous other ways in which an individual can subsequently come to hold a legitimate entitlement over a piece of artificial property. In his *Dissertation on First Principles of Government*, he states his position quite clearly:

That property will ever be unequal is certain. Industry, superiority of talents, dexterity of management, extreme frugality, fortunate opportunities, or the opposite, or the mean of those things, will ever produce that effect.<sup>67</sup>

This passage indicates that there are a number of (non-labour based) methods that enable individuals to own artificial property *after* an initial acquisition through labour has taken place. These methods range from contrived thriftiness to plain good luck. The reason that such seemingly random factors can provide a basis for private property rights comes down to the nature of the rights themselves. It is not effort or industry that determines the distribution of property rights: an agent does not cease to be a proprietor when one chooses to stop working on the land she has cultivated. It is instead the case that property rights entail full ownership powers (of transfer and bequest) over particular holdings. Thus, Paine makes it clear in *Agrarian Justice* that he is keen to defend the rights not only of the creator of the added value on a piece of property, but also of those 'who inherited it from them, or who purchased it'.<sup>68</sup> The rights that the individual has over legitimately owned resources extends beyond that of use and the exclusion of others from using, to include the power to transfer the owned resources to other individuals, who then come to hold the same extensive rights and powers. To put it in Nozickean terms, Paine's is an 'unpatterned' account of ownership, one that eschews any commitment to distribution 'according to X' whether the X in question means labour or any other specific action undertaken or quality displayed by particular individuals.<sup>69</sup>

Having examined Paine's defence of private property and the corresponding inequalities it creates, we can now turn to consider how his theory actually contains within its logic the case for a potentially

<sup>67</sup> Paine, 'DFPG', CW II, 580.      <sup>68</sup> Paine, 'AJ', CW I, 612.

<sup>69</sup> Nozick, *Anarchy, State, and Utopia*, 150–164.

radical redistribution of resources, one that reveals again his fundamentally egalitarian commitments. Since acts of labour only establish rights to the value added to a piece of property, even after the establishment of legitimate rights of private ownership of ‘artificial’ property, individuals retain equal, joint ownership of ‘natural’ property, or the original value of the natural world. Paine’s claim that there is always equal ownership of natural property – taken together with the fact that it is physically impossible to separate the original from added value because of the nature of ownership – allows him to make the case for a redistribution of resources, a redistribution that will, he believes, address the modern problem of severe poverty discussed earlier. But how is such a redistribution to take place and what does the natural inheritance actually amount to for individuals? Paine insists that the right to natural inheritance harks back to the egalitarian underpinnings of the original community of goods:

in that [original] state, every person would have been born to property; and that the system of landed property, by its inseparable connection with cultivation, and with what is called civilized life, has absorbed the property of all those whom it dispossessed, without providing, as ought to have been done, an indemnification for that loss.<sup>70</sup>

What this passage indicates is that the natural inheritance is not recoverable in its pure form, because of the nature of private ownership. There has been an ‘absorption’ of natural property into artificial property and the implication is that, at some practical level, this cannot be undone. The injustice itself can, however, be rectified and thus it is a form of compensation or ‘indemnification’ that Paine defends, which is what he means by ‘the equivalent’ of the original right to natural property.

One way to interpret this compensation is as a ‘civil’ right, the social translation of a natural right, one that has the same moral status. Thus although each individual has an equal aboriginal natural right to natural property, because they enter a world already carved up, this becomes an equivalent civil right. This translation allows Paine to transform a right to land or natural resources into a right to a certain monetary entitlement. As it is not possible to perform a physical separation of value in a particular property holding, Paine argues that

<sup>70</sup> Paine, ‘AJ’, CW I, 613.

each cultivator/owner ‘owes to the community a *ground-rent* (for I know of no better term to express the idea) for the land which he holds’.<sup>71</sup> This ground-rent is to be extracted through state taxation – ‘by subtracting from property a portion equal in value to the natural inheritance it has absorbed’ – and redistributed in an egalitarian manner.<sup>72</sup>

A ‘national fund’ is established through such taxation and is to have two specific redistributive functions. The first is to provide a single, universal and unconditional payment of fifteen pounds sterling: this will be distributed ‘to every person, when arrived at the age of twenty-one years’.<sup>73</sup> The payment is *unconditional* in that there is nothing any person must do either before or after she gets it. Paine thinks this amount will give individuals the opportunity for prosperity and the chance to purchase land for themselves.<sup>74</sup> The payment is *equal* and *universal* in application and not to be means-tested: it is to ‘be made to every person, rich or poor’<sup>75</sup> and ‘such persons as do not choose to receive it can throw it into the common fund’.<sup>76</sup> This equality and universality is presumed to ‘prevent invidious distinctions’ and also justified by the fact that the payments are ‘in lieu of the natural inheritance, which, as a right, belongs to every man, over and above the property he may have created, or inherited from those who did’.<sup>77</sup> Therefore, should a particular individual happen to have acquired property rights through the (successful) application of labour, this does not undermine their claim. Proprietors are thereby not excluded from this redistribution of resources. The fund is

<sup>71</sup> *Ibid.*, 611.    <sup>72</sup> *Ibid.*, 613.    <sup>73</sup> *Ibid.*, 612–613.

<sup>74</sup> Paine speculates that the payment will encourage industriousness and have wider benefits for society: ‘It would multiply also the national resources; for property, like vegetation, increases by offsets. When a young couple begin the world, the difference is exceedingly great whether they begin with nothing or with fifteen pounds apiece. With this aid they could buy a cow, and implements to cultivate a few acres of land; and instead of becoming burdens on society, which is always the case where children are produced faster than they can be fed, would be put in the way of becoming useful and profitable citizens’ (*Ibid.*, 618).

<sup>75</sup> *Ibid.*, 613.

<sup>76</sup> *Ibid.* In fact, when Paine comes to make his calculations, it becomes clear that he is actually relying on a significant number of already affluent individuals refusing their natural inheritance (616–617).

<sup>77</sup> *Ibid.*, 613.

to be collected through taxation and shall proceed 'by subtracting from property a portion equal in value to the natural inheritance it has absorbed'.<sup>78</sup> This subtraction is to take place upon the death of the property owner not only for reasons of convenience, but also so that neither the 'bequeather' nor the 'recipient' is formally dispossessed of a holding.

The second function of the fund is to generate an annual income for those thought to be in need of it. The basis of need seems to be the inability to work, a condition Paine identifies in the aged. His plan to combat this is to distribute 'the sum of ten pounds per annum, during life, to every person now living, of the age of fifty years, and to all others as they arrive at that age'.<sup>79</sup> Paine observes that in addition to the aged, 'there are, in every country, a number of blind and lame persons totally incapable of earning a livelihood'.<sup>80</sup> He calculates that most of the individuals in this category shall be over fifty and thus covered by the pension scheme, and also insists that those under fifty in such a condition will also be incorporated into the system.<sup>81</sup> He concludes that

The plan here proposed will reach the whole. It will immediately relieve and take out of view three classes of wretchedness – the blind, the lame, and the aged poor; and it will furnish the rising generation with means to prevent their becoming poor; and it will do this without deranging or interfering with any national measures.<sup>82</sup>

On the whole, Paine thinks the scheme will achieve its objectives of providing assistance to the needy whilst also providing future opportunities for prosperity for rising generations in order to prevent them from ever *becoming* needy.

As with the earlier discussion of the obligations we owe to future generations, so also here joint ownership involves more than merely the individuals who existed at the time of original communism: rather, Paine's argument is that the original part of the world *remains* jointly owned by all individuals, regardless of temporal boundaries. It is an *equal* right held by every member of the moral universe: his claim is that 'Every individual in the world is born therein with legitimate claims on a certain kind of property, *or its equivalent*'.<sup>83</sup> This helps buttress the conclusion reached earlier about the implications of Paine's view of

<sup>78</sup> *Ibid.*    <sup>79</sup> *Ibid.*    <sup>80</sup> *Ibid.*, 617.    <sup>81</sup> *Ibid.*    <sup>82</sup> *Ibid.*, 618.

<sup>83</sup> *Ibid.*, 606–607, emphasis added.

rights for the protection of the natural environment. If each generation is to be guaranteed its natural inheritance of (the equivalent of) an equal share of the natural earth, it surely follows that such value need be protected and that the living have obligations of stewardship towards it. The depletion (or failure to sustain) of the natural environment such that its value diminishes looks to be an obvious violation of rights. Paine's rights-based account of initial acquisition thus sits alongside another understanding of ownership that involves duties to future generations. We have thus established that although the right to own private property has for him a robust, seemingly libertarian justification, bound up in the nature of this justification is a requirement for substantial redistribution in the name of equality for present and future peoples.<sup>84</sup>

### **A third type of property and the limits of state taxation**

So far Paine's differentiation of natural from artificial property and the basis on which a legitimate right can be held over each seems fairly straightforward. God bequeathed the world to all individuals equally and because of this, a prospective property owner could have legitimate ownership over artificial property by virtue of her cultivation while also possessing an illegitimately high portion of natural property. If this is the case, the value of the natural property should be extracted from the proprietor through taxation, after which all individuals in a political community receive an equal share through a single endowment payment. This all seems perfectly plausible in an agrarian economy, in which land is widely available. But what does it entail in a commercial economy, where the medium of exchange is money? This question is important as it is land and not money that Paine credits God with bequeathing equally to the human race.

This issue seems especially urgent, since Paine fully admits that his taxation scheme will seek to redistribute not only the value of land, but also 'personal property' such as money. Apparently aware of the trickiness of this issue, he argues that the inclusion of money into

<sup>84</sup> This is again quite different from Locke, for whom the initial labourer acquires full ownership of the holding (including the portion of the natural world), which is retained subject to provisos of spoilage and desperate need. Locke, *Two Treatises*, II: §38, 296; I: §42, 170.



redistributive calculations is in fact justified by a 'different principle' from that of 'natural inheritance'.<sup>85</sup> He argues that

Personal property is the *effect of society*: and it is as impossible for an individual to acquire personal property without the aid of society, as it is for him to make land originally. Separate an individual from society, and give him an island or a continent to possess, and he cannot acquire personal property. He cannot be rich. So inseparably are the means connected with the end, in all cases, that where the former do not exist the latter cannot be obtained. All accumulation, therefore, of personal property, beyond what a man's own 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 from whence the whole came'.<sup>86</sup>

This analysis – that sees 'personal property' as the 'effect of society' – fits with Paine's suggestion in *Rights of Man, Part Two*, that 'no one man is capable, without the aid of society, of supplying his own wants'.<sup>87</sup> The argument seems to be that because the acquisition of money – or perhaps the legal apparatus necessary to sustain its ownership after acquisition – requires the existence of society, justice demands that such personal property be taxed in addition to the value of the original natural inheritance that is already eligible for redistribution because it is equally owned.

Gregory Claeys refers to this as the 'social debt' principle and describes it as Paine's 'second rationale for divided improvements on land' (the first being the argument from natural inheritance), one that essentially contends that 'the rich as stewards of God's bequest always owed part of their wealth to society'.<sup>88</sup> This social debt principle provides, Claeys suggests, 'evidence of Paine's insecurity about his interpretation of divine intention'.<sup>89</sup> It is, he continues, a 'secular argument intended to augment the inadequacies of the theological account' of original communism.<sup>90</sup> That Paine would have had real worries about the theological nature of his assertion of original communism is, Claeys believes, further demonstrated by the ridicule to which the account of creation contained in the Book of Genesis is subject in *The Age of Reason*.<sup>91</sup> This alleged tension across Paine's texts and arguments is actually illusory, or at least exaggerated. There

<sup>85</sup> Paine, 'AJ', CW I, 620. <sup>86</sup> *Ibid.* <sup>87</sup> Paine, 'ROM II', CW I, 357.

<sup>88</sup> Claeys, *Thomas Paine*, 202, 197. <sup>89</sup> *Ibid.*, 202. <sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*, 203–206.

is no doubt that Paine's mockery of the traditional Biblical account of creation does not sit well with any attempt to invoke God in an argument about original property rights. But it is nevertheless very difficult to find anything in *The Age of Reason* that stands in logical contradiction to, or rules out any assumption of, divinely ordained original communism. As will be discussed later, *The Age of Reason*, though passionately critical of revealed religion, nevertheless does show a commitment from Paine to the idea of God as 'first cause' of the earth and much can be derived from that open-ended principle.<sup>92</sup> Claeys argues that 'no matter how much faith Paine placed in Providence, and in the intention of the Deity to provide for mankind, we cannot reason specifically from this that "Providence" offered mankind the earth in common at the Creation and, more importantly, in perpetuity'.<sup>93</sup> It might be true that *we* cannot (or, more accurately, *would not*) plausibly reason in such a way, but it does not follow that Paine did not do so. If Paine can move from the claim that all individuals are equal to the conclusion that they have a set of fundamental inviolable rights, then there does not seem any reason why he cannot likewise move from the claim that God intended to provide for mankind to the conclusion that he gave the earth to them in common. It is a mistake to rule out the possible coherence of a thinker's argument simply because it does not look particularly convincing to the modern eye.

The social debt argument used to justify the taxation of money seems to have a somewhat Hobbesian logic that appeals to individual interests: because the security that property requires in order to exist is traceable to the existence of political society, individual property owners owe society something to maintain its existence. Although Paine does describe his social debt argument about personal property as justified by a 'different principle' from that of natural inheritance, too much stock can be placed in this difference. This is because Paine's appeal to the idea of social debt makes most sense not as a different principle for the redistribution of property at all, but rather as signalling a different, third type of property eligible for distribution. We can appreciate this by considering what Paine regards as the scope of legitimate state taxation. Claeys argues that the 'notion of such a social

<sup>92</sup> Claeys acknowledges this element of Paine's deism, but claims that it is simply indicative of theoretical inconsistency (*Ibid.*, 204–205).

<sup>93</sup> *Ibid.*, 204.

debt . . . permitted *all* property, and not only the land, to be taxed or otherwise distributed for the common good'.<sup>94</sup> But this actually cannot be quite right as Paine is explicit in his assertion that *not* all property is eligible for taxation. Though he seems to be heading in that direction at the start of the lengthy passage cited above, the last four lines show him swerve completely away from such an argument. His concluding contention is that '*all* accumulation . . . of personal property, *beyond what a man's own 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 from whence the whole came'.<sup>95</sup> So, all property, *except* that produced by that individual's labour (by the agent's 'own hands') is eligible for taxation. The implication of this is surely that artificial property, which *is* the product of individual labour, is exclusively owned by the labourer and nobody else (including the government) can have a claim on it. It is therefore 'only a part of' accumulated property that is within the realm of state redistribution.<sup>96</sup>

If this is accepted, it then follows that the function of the social debt principle is actually to introduce another type of property in addition to the two – natural and artificial – already identified by Paine. An example will help to illustrate the distinctness of the three types. Consider an individual who has cultivated some land and has thus appropriated a portion of natural property and whose labour has therefore generated additional value (artificial property), to which that agent now has exclusive rights. For as long as society is filled with this first-generation group of cultivators who have created artificial property by utilising and improving natural property, there will remain only two types of

<sup>94</sup> *Ibid.*, 202. <sup>95</sup> Paine, 'AJ', CW I, 620, emphasis added.

<sup>96</sup> It might be thought that there is a tension between Paine's fundamental commitment to consent as the basis for legitimate government and his commitment to private property rights that are inviolable to taxation: exercises of the former might seem entirely capable of undermining the latter. This tension evaporates once it is acknowledged that a commitment to the trumping force of consent seems in some sense fundamental to *all* libertarian political theories. Thus, as Nozick suggests in his sketch of a libertarian 'utopia', 'in a free society people may contract into various restrictions which the government may not legitimately impose upon them' (*Anarchy, State, and Utopia*, 320). So, for example, even in a perfectly libertarian society with inviolable ownership rights over 'created artificial property', the proprietors would surely be able to consent to a transfer of property in order to engage in projects intended to benefit whichever community they considered themselves a part of and such projects could conceivably range from building monuments to providing aid to the destitute.

property. But, as noted above, Paine's account of property rights incorporates the power to bequeath and when an individual cultivator dies, a third type of property is then created through instances of bequest. This is because the recipient of the bequest can potentially be the possessor (though not necessarily the legitimate *owner*) of three types of property rather than two. First, the agent in question definitely possesses a portion of 'natural' property along with everyone else because of the principle of equal inheritance. Second, the person might also possess 'artificial' property *of their own*, should they choose to use the natural property in question to create additional value. But third, they could also possess, through bequest, the artificial value created *by the testator* and not the subsequent possessor. So, rather than just two types of property, there are really three to be distinguished within Paine's account: (1) natural property, (2) *created* artificial property and (3) *inherited* artificial property.

According to Paine's theory, natural property is owned not by the individual cultivator but rather owned equally and universally and is therefore to be redistributed along such lines by the state through taxation. Created artificial property, by contrast, is owned by whoever creates it through labour and this ownership is exempt from state taxation and includes the power to bequeath. However, what Paine also seems to be arguing – through his 'social debt' principle – is that ownership rights over *inherited* artificial property are in fact not absolutely inviolable and can be made subject to taxation. Thus, his insistence is that government may tax any property 'beyond what a man's *own* hands produce' rather than beyond that which has been *produced*: the emphasis is on the individual that produced the added value, not the fact that added value has been produced. The ability of the government to tax such property would seem to be somewhat problematic since it would seem to contradict the desire expressed by Paine to defend the ownership rights not only of the creator of added value but also of 'who inherited it from them, or who purchased it'.<sup>97</sup> But the moral distinction Paine appears to make between created artificial property and inherited artificial property need not contradict his earlier expressed desire to offer a corresponding defence of bequest. Indeed, it only represents a contradiction if Paine's defence of inheritance rights is of

<sup>97</sup> Paine, 'AJ', CWI, 612.

absolute rights: that is to say, rights over the whole of the inherited artificial property.

Paine's suggestion is notably not that the state confiscates and redistributes all inherited artificial property, but rather the far weaker claim that all inherited artificial property should be eligible for taxation, which will see some of it removed for purposes of redistribution. The argument would seem to be that the ownership of inherited artificial property should be both defended and at the same time rendered violable to taxation. Such an argument befits the specific justification that he gives about social debt: that without society, an individual would not be able to have personal property in the first place. It also fits in with his general suspicion of inheritance as a political principle and his specific remarks about the grounds upon which accumulation might be limited in *Rights of Man, Part Two*. His contention in this text is that while 'it would be impolitic to set bounds to property acquired by industry' the 'accumulation of it by bequest' ought to be limited.<sup>98</sup> Inheritances should be taxed, but on different grounds from private holdings acquired directly through labour. What this all means, then, is that there are two different justifications for redistribution present in *Agrarian Justice*, but this is because there are two different types of artificial property that are eligible for redistribution in a commercial economy.

## Welfare and distributive justice

We can see already that, as an account of distributive justice, Paine's theory of property ownership clearly does not generate anything like the libertarianism that comes with exclusive, Nozickian ownership rights.<sup>99</sup> Natural property must be redistributed equally through the national fund and artificial property – after the first generation of cultivators – is subject to taxation because property is a *social* product. Paine's political theory looks even less libertarian and more egalitarian in its nature when it is acknowledged that the measures proposed in *Agrarian Justice* do not actually exhaust his commitment to the redistribution of resources within society. Indeed, he outlines a further

<sup>98</sup> Paine, 'ROM II', CW I, 434.

<sup>99</sup> For Nozick, individual property rights are completely inviolable and compulsory taxation is akin to theft.

collection of rights to welfare provisions in his earlier work, *Rights of Man, Part Two*. This work retains the libertarian suspicion of the feudal mentality he associates with the corruption of old world governments and the taxation required to sustain them. He complains of ‘the greedy hand of government thrusting itself into every corner’ as ‘invention is continually exercised, to furnish new pretenses for revenue and taxation’.<sup>100</sup> The ‘burden of public taxes will lessen’, he claims, after there has been a revolution in the system of governments, such that there will be no further need to pursue the costly wars that cause the need for such a high revenue.<sup>101</sup> It should be stressed that Paine’s objection here is not a classical libertarian one against the very principle of taxation, but rather: (1) a rejection of the purpose for which the unnecessary government revenue is utilised, which he claims is the pursuit of war; and (2) a criticism of the targeted, disproportionately affected victims of the taxation itself, whom he claims are the labouring poor.<sup>102</sup> Indeed, he observes the injustice of the move away from land taxes to consumption taxes, ‘the consequence of which has been a constant increase in the number and wretchedness of the poor, and in the amount of the poor-rates’.<sup>103</sup>

One of Paine’s characteristically egalitarian concerns is with the parts of society that he thinks are most likely to face disadvantage during their lives: those who look most likely to be a victim of inequality even when resources are redistributed along the lines already discussed. In *Rights of Man, Part Two*, his focus is on the disadvantages posed by age – as experienced by both the young and the elderly – and those that are related to some kind of physical disability.<sup>104</sup> Attention to both groups reveals Paine’s commitment to individual *need* as a morally relevant value for the distribution of resources. He claims that one-fifth of British citizens require some kind of state support as a result of falling into one of two groups: he identifies 140,000 of the ‘aged poor’ as one, and the other are the 252,000 families (comprised of five people) that are ‘rendered poor from the expense of children and the weight of taxes’.<sup>105</sup> His suggestion is that poor-rates be abolished and in their place, the state should provide ‘four pounds a year for every child under fourteen years of age; enjoining the parents of such children

<sup>100</sup> Paine, ‘ROM II’, CW I, 355.

<sup>101</sup> *Ibid.*, 400.

<sup>102</sup> *Ibid.*, 399–400.

<sup>103</sup> *Ibid.*, 411.

<sup>104</sup> *Ibid.*, 405, 424–425.

<sup>105</sup> *Ibid.*, 424–425.

to send them to school, to learn reading, writing, and common arithmetic'.<sup>106</sup> Meanwhile, as far as the aged are concerned, he thinks each person over fifty should receive six pounds per annum and each person over sixty should receive ten pounds per annum. The amount thus tracks what Paine estimates will be an increase in need for people as they get older and require more resources to reach an acceptable level of welfare. He insists that such a provision should be viewed 'not as a matter of grace and favor, but of right'<sup>107</sup> since the amount represents no more than what they are entitled to through the interest of a lifetime's tax payments, which will have been made to support the previous generations of young and aged. Again, despite the individualistic moral premises that Paine invokes, we find a vision of politics that stresses the bonds that unite the whole of a community across time.

Paine puts forward other welfare rights that he thinks are both morally required and economically viable without any increase in tax revenue. His argument is that all the proposals he makes can be paid for with the money saved by the abolition of poor-rates in corrupt old world nations. Money is to be allocated to pay for the education of children to ensure that the poor do not go without it.<sup>108</sup> He argues that twenty shillings should be given upon the birth of a child by any mother that demands it and likewise to any married couple, as well as a small amount to cover the funeral expenses of those who die when geographically separated from their friends and without anyone to cover the costs.<sup>109</sup> He also calls for a government-owned workhouse scheme (in London and Westminster), where individuals suffering temporary distresses can work and get shelter when they need, half the costs of which would end up being covered by their labour.<sup>110</sup> Paine's final substantive proposal is a regime of progressive taxation, such that the rate increases along with the size of the estate in question. Such a tax, he claims, will be directed towards genuine 'luxuries' and he justifies it on two different egalitarian grounds: first, an account of the fair treatment of individuals ('the justice of rendering taxes more equal than they are') and, second, a consequentialist rejection of inequality, motivated by a desire for the extirpation of 'the overgrown influence arising from the unnatural law of primogeniture'.<sup>111</sup>

<sup>106</sup> *Ibid.*, 425.

<sup>110</sup> *Ibid.*, 430.

<sup>107</sup> *Ibid.*, 427.

<sup>111</sup> *Ibid.*, 437.

<sup>108</sup> *Ibid.*, 428.

<sup>109</sup> *Ibid.*, 429.

In addition to the plight of the individuals most likely to be needy in a society (the young and the old), Paine defends the equal rights of the labouring poor in *Rights of Man, Part Two*. Specifically, he argues that the regulations that exist to limit ‘workmen’s wages’ should be abolished, such that they are as ‘free to make their own bargains as the law makers are to let their farms and houses’.<sup>112</sup> Workers should be given the equal right to negotiate freely with their employers. His defence of this freedom speaks to another issue raised by *Agrarian Justice*: whether or not it contains a commitment to a just wage for labour. I have already argued that it is not *labour* as such that is of moral significance when determining the legitimate ownership of artificial property. Labour is rather of relevance to property ownership only *insofar as it is creative of value*. So what happens, in a commercial economy, when one individual is employed by another to labour on a portion of acquired property? Would Paine, for example, defend the right of the labourer to a specific reimbursement from his employer in lieu of what is created in the labour process? Does he, in other words, define and defend some sort of absolute wage right? Some commentators have argued that he does. Claeys, for instance, suggests that ‘a claim of justice for wage-labour’ is visible in *Agrarian Justice*.<sup>113</sup> Paine does raise the issue of wages in the context of a discussion of personal property, by which he means, as established earlier, inherited artificial property. The concern he expresses is that ‘the accumulation of personal property is, in many instances, the effect of paying too little for the labour that produced it’.<sup>114</sup> The fact that Paine recognises that ‘too little’ can be paid for labour might be understood to imply that there is a minimum threshold for reimbursement, which would, in effect, be a wage right. He goes on to say that

It is, perhaps, impossible to proportion exactly the price of labour to the profits it produces; and it will also be said, as an apology for the injustice, that were a workman to receive an increase of wages daily he would not save it against old age, nor be much better for it in the interim. Make, then, society the treasurer to guard it for him in a common fund; for it is no reason that, because he might not make a good use of it for himself, another should take it.<sup>115</sup>

There are a few different ideas present in this passage. One of them is certainly that picked up on by Claeys: that Paine thinks that paying ‘too

<sup>112</sup> Paine, ‘ROM II’, CW I.

<sup>114</sup> Paine, ‘AJ’, CW I, 335.

<sup>113</sup> Claeys, *Thomas Paine*, 202.

<sup>115</sup> *Ibid.*



little for labour' is an 'injustice'. Nevertheless, this idea jars with another expressed here, that it is 'impossible' to identify the exact relationship between labour and profit and thus impossible to establish how much value the labour has actually created. How do we make sense of this tension? One way to resolve it would simply be to insist that the claim that it is possible to pay too little for labour does not necessarily imply there is a *particular* level of wages that must be regarded as just. It arguably makes more sense to think that the injustice lies instead in what Paine complains about in *Rights of Man, Part Two*, which is the fact that there exists a law that the wages of workers are restricted by legal limitations. It is theoretically consistent to maintain that while the legal limitations exist, so does an injustice because it makes it more likely that workers will be unable to receive the proper market rate for their contributions. This in turn fits with his belief that it is 'impossible' to trace the relationship between labour and profit.

Taken together, the proposals contained in *Agrarian Justice* and *Rights of Man, Part Two*, comprise a human right to welfare.<sup>116</sup> They each express Paine's belief in human equality and his insistence that this not be undermined by material poverty or by the physical frailties that accompany youth and old age. The package of rights to welfare provisions outlined by Paine and the principles that underpin them are similar to those found in some modern liberal egalitarian accounts of distributive justice, including, as Mark Philp points out, those defended in Rawls's *A Theory of Justice*.<sup>117</sup> Central to Rawls's theory are his 'two principles of justice': that 'each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all' and that 'social and economic inequalities are to be arranged so that they are (a) 'to the greatest benefit of the least advantaged', and (b) 'attached to offices and positions open to all under conditions of fair equality of opportunity.'<sup>118</sup> The first principle of equal basic liberties seems clearly enshrined throughout Paine's political theory. The second part of Rawls's second principle – the 'difference principle' – states that in order for an unequal distribution to be just, those with the least

<sup>116</sup> This observation is also made by John W. Seaman, 'Thomas Paine: Ransom, Civil Peace and the Natural Right to Welfare', *Political Theory* 16 (1988): 120–142.

<sup>117</sup> Philp, *Paine*, 90.

<sup>118</sup> J. Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999), 266.

resources must be better off than they would under alternative schemes, such as strictly egalitarian, or utility-maximising, arrangements of primary goods. A commitment to this sentiment seems evident, if rather underdeveloped, in Paine's writing. He maintains, in somewhat Rawlsian tone, that 'I care not how affluent some may be, provided that none be miserable in consequence of it'.<sup>119</sup> Philp suggests that this sentence might mean that Paine's theory actually 'falls short of the difference principle' in terms of providing an egalitarian account of distributive justice.<sup>120</sup> This might not be the case, though, since the central thrust of Rawls's argument is that the *difference* between rich and poor is of no particular moral significance. For Rawls, the measure of a just distribution is that the poorest are better off than they would under any other distribution. Paine shares with Rawls the core belief that the *level* of wealth accrued by some affluent individuals or groups is not a moral priority, but he does clearly register concern about the levels of inequality in society as well. We can appreciate this by simply recalling his evocative vision of the 'contrast of affluence and wretchedness continually meeting and offending the eye ... like dead and living bodies chained together'. What is certainly important for Paine is that the poorest individuals are not in a state of misery, but receive the full extent of their entitlement, based on their moral equality.

The other half of Rawls's second principle, the requirement that 'fair equality of opportunity' obtains, is also at the heart of Paine's account of intergenerational justice. And, especially in his later work, Rawls amplified his belief that this principle implied the limitation of the accumulation of property through bequest.<sup>121</sup> There are nevertheless important differences between Paine and Rawls, in addition to the divergences of their specific normative claims and the almost 200 years that separates the publications of their works. The most fundamental difference between the two concerns the type of theory they advance. Paine's theory of distributive justice is a resolutely *proprietary* one: that is to say, he begins from the assumption that individuals are

<sup>119</sup> Paine, 'AJ', CW I, 617.      <sup>120</sup> Philp, *Paine*, 91.

<sup>121</sup> For Rawls's later position on economic justice, see his *Justice as Fairness: A Restatement* (Cambridge, MA: Belknap Press, 2001) and, for discussion, see Martin O'Neill, 'Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice and Property-Owning Democracy' in O'Neill and T. Williamson (eds.), *Property-Owning Democracy: Rawls and Beyond* (Oxford: Wiley-Blackwell, 2012), 75–100.

equal owners of a certain species of property. His view is that each person enters the world with an inviolable claim-right over a portion of the value of the earth. Rawls's theory does not assume that property ownership is a fundamental human right or even necessary as a social institution. Considering the choice between a 'private-property system' on the one hand and an antithetical form of 'socialism' on the other, he offers the following conclusion: 'which of these systems and the many intermediate forms most fully answers to the requirements of justice cannot . . . be determined in advance . . . the theory of justice does not include such matters.'<sup>122</sup> For Paine, by contrast, property ownership is a matter of human rights.

## Conclusion

Paine's complex theory of property ownership and corresponding vision of distributive justice is undoubtedly rights-based and thus fits with his political philosophy as a whole. For him, the modernity of the late eighteenth century is scarred by poverty, with individuals living in conditions of brutal indigence. The reason that this is a pivotal moral and political issue is that those individuals who endure such an impoverished situation have had their fundamental rights violated. These are property and welfare rights that individuals hold simply by virtue of their humanity, their membership of the moral universe. Paine suggests every individual has an equal entitlement to property: indeed, each actually *had* an equal right to in earlier historical epochs, before private ownership emerged. The fact that artificial property can be created then gave rise to a new problem, since a sizeable minority used their labour to establish exclusive rights through cultivation of the earth, and have essentially carved up the modern world leaving a large number of dispossessed and impoverished people. One obvious solution to this would simply be to return to a pre-proprietary state of equality. However, Paine explains that such a move would be impossible, not because there is anything morally special about modernity *per se*, but rather because such large-scale economic revolution would entail mass perishment, thereby violating the fundamental right to life held by individuals.

The justification of the right to private ownership offered by Paine departs from the natural law theories of Grotius and Pufendorf and

<sup>122</sup> Rawls, *A Theory of Justice*, 242.

also differs significantly from that of Locke. For Paine, individuals can acquire legitimate entitlements over holdings through the application of labour on an unowned object. Though this might at first glance appear to repeat Locke's labour theory, there are two very important ways in which the two accounts diverge, making Paine's version unique within the history of modern political thought. Firstly, Locke's justification for acquisition has a very specific theological underpinning: individuals have a duty to labour and establish private property because of a primary duty to ensure their self-preservation. Although it likewise accords a central place to labour, Paine's theory contains no such justification and individuals are under no such duty. The second difference concerns the nature of the acquisition itself. For Locke, when an agent mixes their labour with an unowned natural resource, they acquire a private property right over the whole object, subject to various provisos, a move that is an inadequately defended staple of libertarian political thought. For Paine, labour does not generate an exclusive right for the agent over the initial resource and the entitlement acquired through labour extends only to the 'added value' created through the labour and not the resource itself.

As the resource is commonly owned, its value *prior to* cultivation can be redistributed. The force of Paine's egalitarianism is here again striking. His redistributive scheme is not directed primarily at the improvement of the 'welfare' of individuals, though this would surely be one of its major effects. It is rather aimed at the restoration of equal rights to 'natural' property (as opposed to 'artificial' property or that created by humans through labour). Thus, the method of indemnifying the injustice caused by the emergence of private property is that the state supplies a one-off unconditional payment to each person once they reach the age of twenty-one. As shown in *Rights of Man, Part Two*, Paine also argues that one of the equal moral rights of individuals is to additional resources when in situations of need. His suggested provision is an extensive pension scheme for those over a certain age or those who are younger and disabled in some way. Recall the apparently contradictory public legacy of Paine's political theory that I have already talked about, how it is viewed as libertarian on the one hand and egalitarian, social democratic on the other. Analysis of Paine's theory of property – with its unified concern with the libertarian right of private ownership and an egalitarian commitment to redistribution – shows that we can reject any notion

of fundamental incoherence between the concerns that animate his libertarian and egalitarian political agendas. There are instead grounds to endorse a reading of his political thought that views it as synthesising the foundational liberal values of individual freedom and human moral equality.

## 5 | *Cosmopolitanism and the rights of nations*

Our consideration of Paine's theory of human rights has focused so far on the legal and political relationships that exist either between individual citizens and the governmental authority that legitimately exercises power on them or between citizens themselves. What has been hitherto left out of the reconstruction of Paine's political philosophy and what must now be tackled in depth is how his account of rights functions at the international level, a sphere in which there can be any number of states. We need to address questions such as whether the entitlements that Paine recognises must be understood as universal human rights to be respected across all political communities and, if they must, what ramifications does this then have for national sovereignty? Do nations have rights and, if so, what could they be and what might they entail? And how does Paine conceive of a nation in the first place? Does his political theory involve or imply an account of international relations?

The tension between commitments to a cosmopolitan vision of global justice and to the rights of individual communities – whether characterised as nations, states or peoples – to autonomy and self-determination is keenly felt by liberal political theorists. This is because a possible entailment of any unqualified respect for the latter is that the former can be wholly undermined: the concept of self-determination would seem to imply the rights of a community to establish its own legal and political norms and such norms need not themselves be liberal. This possibility then raises the question of whether liberals should respect the rights of illiberal communities and whether such rights extend to some principle of non-interference. Paine has, for reasons that will become clear later, traditionally been read as a cosmopolitan thinker, who holds an internationalist attitude to moral and political norms. Nevertheless, I argue in this chapter that in addition to the cosmopolitanism evident in his political theory – which emerges prominently in his defences of both the American and French Revolutions – close inspection of his writing also reveals a clear

commitment to national sovereignty. If taken seriously, this commitment then presents a real tension between the moral universalism implied by rights of individuals on the one hand and the political particularism implied by rights of nations on the other. My suggestion is that this tension is resolvable in Paine's thought by viewing national sovereignty as being conditional on the protection of individual rights and the adoption of a liberal constitution. In the second part of the chapter, I consider the tricky questions raised by this resolution: namely, how Paine conceives the relationship between liberal and non-liberal nations and whether his thought can be said to reveal any commitment to a principle of just intervention and, if so, of what sort.

While my main objectives herein are to provide a more complete, detailed picture of Paine's international political theory than has hitherto been offered and to show how it fits with his commitment to the inviolability of individual rights, I also wish to situate him within the cosmopolitan tradition. In reconstructing his account of just international relations, I aim to reveal its distinctness and try to do this through comparison with the international political theories of Kant and, to a lesser degree, Rawls. Furthermore, I will also suggest that Paine's historical distinctness actually has resonance for contemporary liberalism insofar as his argument depends neither on an assumption of the impossibility of a world state nor about the legitimacy of established political borders in his account of the international sphere.

Before proceeding any further, it is necessary to clarify what I take the term 'cosmopolitanism' to denote. For the purposes of this discussion – and keeping in line with my earlier construal of liberalism – cosmopolitanism is best appreciated as an intellectual tradition that is constituted by a family of related strands of thought rather than any singularly discernible political theory. This view of cosmopolitanism as an intellectual tradition comprised of arguments with family resemblances implies that we must be cautious about ascribing it any ahistorical, essential characteristics and also of treating any particular contemporary or influential theory as a privileged version against which historical writings must somehow measure up.<sup>1</sup> Some kind of

<sup>1</sup> So, for example, the eight 'paramount' principles identified by David Held as characteristic of cosmopolitanism cannot be regarded as in any way definitive of the tradition. Held, 'Principles of Cosmopolitan Order' in G. Brock and H. Brighouse (eds.), *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005), 10–27.

individuated definition is clearly required though, if only one of a rough nature. The feature of cosmopolitan moral and political theories that is usually thought definitive is a commitment to the *global* reach of normative values: that is to say, if there is any core cosmopolitan belief it is that there are certain matters of moral and political right that transcend any geographical borders and therefore trump the sovereignty of otherwise legitimate nation-states. Some care must be taken even here. As Jeremy Waldron points out, it is possible to conceive of cosmopolitanism in almost value-neutral terms, with Kant's realm of 'cosmopolitan right' referring merely to what we would now regard as the arena of international law, without also implying any one particular thesis about how that arena should be organised. On this understanding, a cosmopolitan theory is simply one that addresses that international arena and implies nothing of the particular thesis advanced about it. It is still the case though – as Waldron also acknowledges – that the term does seem to have value-laden substance, by the very fact that it identifies such a global political arena in the first place, since its existence or relevance could presumably be rejected outright by non- or anti-cosmopolitans.<sup>2</sup>

Other aspects of cosmopolitanism should be highlighted for the purposes of the following discussion. It is, for instance, necessary to emphasise that cosmopolitans need not be committed to the view that *all* moral or political issues must be understood in universalistic terms. Cosmopolitans thus need not decry the legitimacy, or regret the existence, of established nation-states, nor need they suggest that there are political issues that should not be handled purely at a localised or national level. So understood, a cosmopolitan perspective does not undermine local sovereignty *except* over certain specific issues that are classified as universalistic. The point is that a commitment to global standards of justice need not entail any radically internationalised understanding of political institutions nor need it imply any substantive idea of world citizenship, though both developments might well be pursued or welcomed by some cosmopolitans.<sup>3</sup> The importance of

<sup>2</sup> See J. Waldron, 'What is Cosmopolitanism?', *Journal of Political Philosophy* 8 (1999): 227–243.

<sup>3</sup> Such issues provide much of the ground for internal disagreement amongst cosmopolitan theorists and another distinction can be drawn between moral cosmopolitanism and institutional cosmopolitanism, and those who endorse the former need not endorse the latter. See Charles Beitz, 'Cosmopolitan Liberalism



this aspect of the tradition will become clear towards the end of the chapter, where I suggest that Paine is most accurately described as a *liberal* cosmopolitan.

### 'Citizen of the world': Paine's cosmopolitanism

In January 1793, Paine made an intervention in the political debate taking place in Revolutionary France about whether or not to execute the recently deposed monarch, Louis XVI.<sup>4</sup> Paine advanced a case in opposition to the proposed execution, arguing that Louis should instead be banished and that 'enlightened politicians and lovers of humanity' should support the abolition of capital punishment.<sup>5</sup> When his opinions on the fate of the king were read out to the National Convention – they had to be translated because he did not speak French – it was suggested that they were politically irrelevant. For the leading Jacobin figure Jean-Paul Marat, this was because Paine was a Quaker and thus predisposed towards clemency, but for others it was because he was essentially an outsider, despite the fact that he had by this time become an officially recognised 'Citizen of the Republic'.<sup>6</sup> Paine had already anticipated such complaints and his response was to assert that although he had not in fact been a citizen of France at the time of Louis' flight from, or return to, Paris, he was still a 'citizen of the world' and that therefore his opinions on the matter were of as much weight and relevance as those of anybody else.<sup>7</sup>

Although this self-description – 'citizen of the world' – has an ancient lineage that can be traced as far back as Diogenes and through the Stoic and Ciceronean traditions, it has arguably come to be associated more with Paine than with any other modern political thinker.<sup>8</sup> This is

and the States System' in C. Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives* (London: Routledge, 1994), 123–136.

<sup>4</sup> Although there was almost no opposition to finding Louis guilty of the various charges made against him, the decision to execute him proved far more controversial. Of the 721 deputies that comprised the National Convention, almost forty per cent (288) voted against the death penalty.

<sup>5</sup> Paine, 'Reasons for Preserving the Life of Louis Capet', CW II, 555.

<sup>6</sup> *Ibid.*, 557–558. <sup>7</sup> *Ibid.*, 552.

<sup>8</sup> For a discussion of the historical roots of cosmopolitan thought, see Derek Heater, *World Citizenship and Government: Cosmopolitan Ideas in the History of Western Thought* (New York: St Martin's, 1996).

perhaps unsurprising given the cosmopolitan sentiments that litter his writings, which often appear to epitomise the rootlessness of much Enlightenment thought. He frequently and exuberantly expresses his belief in the universal validity (and falsity) of moral and political claims and, correspondingly, the view that their evaluation can never be confined to one particular national, historical or cultural context. Such a stance is clearly visible in his early, polemical interventions in the years surrounding the American Revolution. In the seventh of his articles on *The American Crisis*, which was addressed to ‘the people of England’ and marshalled an economic and political case for a swift end to the Revolutionary War, he is careful to stress that his arguments should not be traced to any narrow American ‘interest’ he might be thought to hold. His contrary insistence is that ‘my attachment is to all the world, and not to any particular part, and if what I advance is right’ then it is of ‘no matter where or who it comes from’.<sup>9</sup>

This viewpoint might be construed as the *negative* formulation of cosmopolitanism articulated by Diogenes, who in declaring his status as ‘citizen of the world’ intended to *deny* that he had any particular obligations to Sinope rather than to affirm any positive universal obligations. However, in addition to this negative conceptualisation of the cosmopolitan standpoint, Paine’s American writings also reveal his commitment to its positive corollary, the view that there are important evaluative questions that are necessarily of global concern. This is plainest in *Common Sense*, when he asserts that ‘the cause of America is in great measure *the cause of all mankind*’.<sup>10</sup> He explains further that ‘many circumstances hath, and will arise, which are not local, but universal, and through which the principles of all Lovers of Mankind are affected’ and that the American Revolution is one such circumstance.<sup>11</sup> The success of America in the Revolutionary War is a matter of concern to all mankind: it is a matter of global justice. The reason for this is that, for Paine, the principles at stake in the Revolution are representative of moral and political progress and the British treatment of America should be understood not as a merely localised colonial dispute but rather as a ‘war against the natural rights of mankind’.<sup>12</sup> As he subsequently described it, ‘The independence of America, considered merely as a

<sup>9</sup> Paine, ‘The American Crisis VII’, CW I, 146.

<sup>10</sup> Paine, ‘CS’, CW I, 3, emphasis added. <sup>11</sup> *Ibid.*, 3. <sup>12</sup> *Ibid.*

separation from England, would have been a matter but of little importance, had it not been accompanied by a revolution in the principles and practise of governments. She made a stand, not for herself only, but for the world'.<sup>13</sup> His view is that the success and survival of the form of government established in America – one in which 'the law is king' rather than the inverted form of that maxim – is something that the entire world has an interest in.<sup>14</sup>

The same cosmopolitan beliefs also appear in Paine's European political writings of the 1790s, through his defence of the principles enshrined by the French Revolution. In *Rights of Man, Part Two*, in particular, he again outlines his personal cosmopolitan moral commitments through his ambition to 'view things as they are, without regard to place or person' and his announcement that 'my country is the world and my religion is to do good'.<sup>15</sup> In his 'Address to the People of France', written upon his election to the National Assembly, rather than merely declare particular loyalty to the nation he was now formally a member of, he instead emphasises his global affiliation, asserting that, as in the case of America, 'the cause of France is the cause of *all* mankind'.<sup>16</sup> 'It is', he continued, 'to the peculiar honor of France, that she now raises the standard of liberty for *all* nations; and in fighting her own battles, contends for the rights of *all* mankind'.<sup>17</sup> The French Revolution, like the American, is regarded by Paine as part of a global movement towards 'universal civilisation'<sup>18</sup> and cannot thus be viewed as merely an issue of local importance. The fact that the Revolution had, for him, now recognised liberal standards of justice – and provided their crucial codification in a constitution – meant that any of her future conflicts with rival, 'despotic' nations would be fought

<sup>13</sup> Paine, 'ROM II', CW I, 354.      <sup>14</sup> Paine, 'CS', CW I, 29.

<sup>15</sup> Paine, 'ROM II', CW I, 414. On the appointment of Pitt to Prime Minister, Paine writes 'though it was a matter of no concern to me as a citizen of America, I felt it as a man' ('ROM II', 443). Paine's political foes made much capital out of his personal commitment to cosmopolitanism and apparent rootless identity by portraying it as necessarily antithetical to ties of loyalty, community and patriotism and linking it to unflattering accounts of his personal life. For analysis of such representations, see Corinna Wagner, 'Loyalist Propaganda and the Scandalous Life of Thomas Paine', *British Journal for Eighteenth Century Studies* 28 (2005): 97–115.

<sup>16</sup> Paine, 'Address to the People of France', CW II, 538, emphasis added.

<sup>17</sup> *Ibid.*, 539.      <sup>18</sup> See, for example, Paine 'ROM II', 355, 398–399.

in the name of ‘the great Republic of Man’ rather than according to any narrow national interest.<sup>19</sup>

The universality of normative truths is a consistent theme in Paine’s account of natural and civil rights. As we have seen, in texts such as *Rights of Man* and *Dissertation on First Principles of Government* he defends a catalogue of fundamental, inviolable and inalienable entitlements – such as rights to freedom of thought, speech, worship and to democratic representation – that are held by all individuals, alongside a latent right to rebel against any government that seeks to deny such rights. We also saw that the economic rights he ascribes to individuals are likewise presented in universalistic terms. Thus, in *Agrarian Justice* he put forward the view that because the earth was initially bequeathed by God as ‘the *common property of the human race*’, it is the case that ‘every person born into the world’ has the right to a means of subsistence.<sup>20</sup> Although his proposal is for a ‘national fund’ to be created in order to secure such rights through redistributive taxation, he is insistent that his plan is ‘not adapted for any particular country alone’ and that ‘the principle on which it is based is general’. Paine presents individual rights consistently as entitlements held by *all*, regardless of geographical location or national context: ‘Time’, he suggests, ‘with respect to principles, is an eternal NOW: it has no operation upon them: it changes nothing of their nature and qualities’.<sup>21</sup> For Paine, individual rights *precede* any membership in a national community. As he put it in a 1789 letter to Thomas Jefferson: ‘Suppose 20 persons, strangers to each other, to meet in a country not before inhabited. Each would be a Sovereign in his own natural right’.<sup>22</sup> Individuals do not acquire their rights from their membership in nations any more than they do from a government.

### The rights of a ‘nation’

Given the views observed thus far – the universalistic understanding of the principles represented by the American and French Revolutions and of the fundamental rights that all individuals hold, both prior and subsequent to any membership in particular political communities – it

<sup>19</sup> Paine, ‘Address to the People of France’, CW II, 538.

<sup>20</sup> Paine, ‘AJ’, CW I, 610–611, second emphasis added, 606.

<sup>21</sup> Paine, ‘Dissertation on First Principles of Government’, CW II, 574.

<sup>22</sup> Paine, ‘Letter to Jefferson’, CW II, 1298.

is not at all surprising that interpreters have tended to present Paine's thought in straightforwardly cosmopolitan terms. Ian Dyck, for example, draws a clear contrast between Paine's universalism and the particularism of Burke. According to Dyck, whereas Burke conceptualises the 'nation' as a sort of 'moral essence' to be celebrated and protected, Paine is an unequivocal 'internationalist', one that is openly dismissive of 'local and national attachments'.<sup>23</sup> Gregory Claeys offers a similar reading: when assessing the importance of Paine's thought as a whole, Claeys concludes that its legacy is to be found in the way in which he 'transformed the narrow vision of the "liberties of Englishmen [but not Frenchmen]" . . . and the natural rights of Christians [but not infidels], into a cosmopolitan vision' of politics.<sup>24</sup> Claeys regards the articulation of a genuinely comprehensive cosmopolitanism as something that marks Paine as unique within modern political thought.<sup>25</sup> Thomas Walker expands on this, fleshing out the significance of this reading even further to argue that it is Paine and not Kant that should be viewed as 'the first to offer an integrated, modern, cosmopolitan vision of international relations', one that posits a 'defiance of strict national attachments and a commitment to world citizenship'.<sup>26</sup>

In their keenness to stress his cosmopolitan credentials, however, these scholars have arguably overlooked, or at least understated, a significant aspect of Paine's thought: his account of the moral relevance of nationhood and the potential political implications that follow from it. The preceding description of his cosmopolitanism would seem to suggest that there is no room for such an account and it is on this basis that Walker draws an ostensibly plausible contrast between the ways in which Paine and Kant each conceptualise the nation within their writings.<sup>27</sup> Kant's thought is customarily presented as the modern

<sup>23</sup> Ian Dyck, 'Local Attachments, National Identities and World Citizenship in the Thought of Thomas Paine', *History Workshop Journal* 35 (1993): 117–135, 125.

<sup>24</sup> G. Claeys, *Thomas Paine: Social and Political Thought* (London: Unwin Hyman, 1989), 216.

<sup>25</sup> See also David Fitzsimmons, 'Tom Paine's New World Order: Idealistic Internationalism in the Ideology of Early American Foreign Relations', *Diplomatic History* 19 (1995): 569–582.

<sup>26</sup> Thomas C. Walker, 'The Forgotten Prophet: Tom Paine's Cosmopolitanism and International Relations', *International Studies Quarterly* 44 (2000): 51–72, 52. See also Walker, 'Two Faces of Liberalism: Kant, Paine and the Question of Intervention', *International Studies Quarterly* 52 (2008): 449–468.

<sup>27</sup> Walker, 'The Forgotten Prophet', 68.

exemplar of cosmopolitanism and the original source for contemporary democratic peace theory. For Kant, consideration of human history reveals the prospect of future cosmopolitan peace: he observes that individual nations have been continuously altering their relationships in such a way as to gradually recoil from armed conflict and the corresponding problems it entails, generating instead the 'hope' that eventually 'after many revolutions . . . the highest purpose of nature, a universal *cosmopolitan existence*, will at last be realised as the matrix within which all the original capacities of the human race may develop'.<sup>28</sup> In spite of this cosmopolitan position, Kant actually rejects the idea of world citizenship and offers instead a defence of the autonomy of individual states within an international 'federation of peoples'.<sup>29</sup> He is explicit that such a federation 'would not be the same thing as an international state' and that no state can acquire the right to interfere in the affairs of another.<sup>30</sup> Such external intervention even at the time of civil war would constitute 'a violation of the rights of an independent people'.<sup>31</sup>

The form of cosmopolitanism defended by Kant is thus one that recognises the fundamental sanctity of localised sovereignty. Walker thinks Paine's version is significantly more far-reaching and argues that it incorporates a vision of 'world citizenship' and a commitment to a 'new democratic world founded on international brotherhood'.<sup>32</sup> However, it is actually not clear that Paine and Kant do diverge on the question of world citizenship, at least insofar as the legitimacy of national boundaries is concerned. Indeed, despite the previous discussion of Paine's cosmopolitan sentiments – his dismissal of narrow political attachments and corresponding insistence on the universality of matters of moral principle – he does offer a defence of *national* sovereignty.

<sup>28</sup> I. Kant, 'Idea for a Universal History with a Cosmopolitan Purpose' in H.S. Reiss (ed.), *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991), 51. His language is more connotative of expectation rather than hope when discussing cosmopolitan peace in 'Perpetual Peace: A Philosophical Sketch', wherein he refers to the 'guarantee' of it by 'no less an authority than the great artist *Nature* herself' (Reiss (ed.), *Kant: Political Writings*, 108).

<sup>29</sup> *Ibid.*, 'Perpetual Peace', 102.

<sup>30</sup> *Ibid.* This duty of non-interference holds except in circumstances of verifiable 'anarchy', the situation in which a state 'split into two parts, each of which set itself up as a separate state and claimed authority for the whole' (*Ibid.*, 96).

<sup>31</sup> *Ibid.*, 96. <sup>32</sup> Walker, 'Two Faces of Liberalism', 457.

*Rights of Man*, for instance, contains arguments that would seem to undermine any ideal of world citizenship and the global governance that might be expected to follow it. It might at first seem quite strange to find any recognition of the sanctity of national political communities in this text, since its main target is Burke's *Reflections*. Implicit in Burke's account of politics is the idea that the legitimacy of political institutions is something assessable only within the internal logics of particular *national* traditions: the British political culture that he seeks to vindicate is delineated by national boundaries. As noted, one of his claims in that text is, contra Richard Price, that the English Glorious Revolution of 1688 did not actually establish any inalienable rights for Britons to select (or remove) a particular sovereign, but rather merely represented 'a small and temporary deviation from the *strict national order* of a regular hereditary succession'.<sup>33</sup> The installation of William of Orange should thus be regarded as a 'law made in a special case',<sup>34</sup> one that can be subsumed within a distinct, authoritative national constitutional tradition, a tradition that involves a number of legitimately hereditary political institutions.

As we have seen, according to Paine, Burke's case for inherited sovereignty essentially assumes an authority that does not exist: being bound by tradition is equivalent to granting the 'dead' authority over the living because it violates the individual right to confer consent to political authority.<sup>35</sup> However, during his defence of this inviolable right of consent for individuals – which undermines the possibility of permanent legitimacy for constitutional settlements – Paine also claims that the English parliament of 1688 did act legitimately *for themselves*: he insists that 'they had a right' to establish a constitution by virtue of representative 'delegation', even if the legitimacy of that constitution could not be perpetual.<sup>36</sup> His argument is that the parliament was able to act on behalf of the political community because (and only for as long as) it had the consent of its members. This then raises an important

<sup>33</sup> Burke, 'Reflections on the Revolution in France', emphasis added. <sup>34</sup> *Ibid.*

<sup>35</sup> 'There never did, nor never can exist a parliament, or any description of men, or any generation of men, in any country, possessed of the right or the power of binding or controlling posterity to the "end of time," or of commanding forever how the world shall be governed, or who shall govern it; and therefore all such clauses, acts, or declarations, by which the makers of them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void' (Paine, 'ROM', CWI, 251).

<sup>36</sup> *Ibid.*, 251.

question about the composition of a viable political community. That is to say, there is the need to clarify the exact *scope* of the right to give consent. It is necessary to establish exactly which individuals constitute the community of political rights-holders in the first place. Interestingly, Paine's view on this matter in *Rights of Man* appears to be that the right to consent to and thus legitimise a political authority is actually located within *nations*. He seems to suggest that individual members of a national political community can comprise a unique network of rights and obligations and that will necessarily exclude non-members and correspondingly limit the scope of citizenship.

The apparent sympathy Paine has towards this view shows itself at one point during his attack on Burke. It is rarely acknowledged that when Paine criticises Burke, he does so not only for the content of his attack on the French Revolution, but also for actually launching it in the first place. *Reflections* is lambasted by Paine not merely as a work replete with 'flagrant misrepresentations' and 'outrageous abuse', but is also cast tellingly as an illegitimate political intervention.<sup>37</sup> According to Paine,

Neither the people of France nor the national assembly were troubling themselves about the affairs of England or the English parliament; and why Mr. Burke should commence an unprovoked attack upon them, both in parliament and in public, is a conduct that cannot be pardoned on the score of manners, nor justified on that of policy.<sup>38</sup>

The problem identified in this passage is not that Burke's criticisms misfire but rather that the act of criticism itself – the 'unprovoked attack' – is unjustified and 'cannot be pardoned'. The explanation for this towards which Paine gestures is that it is not the business of Britons to animadvert on the internal affairs of the French. The implication is that there are certain political matters of purely national concern, a norm respected by 'the people of France' but violated by Burke. Furthermore, given what the French had actually done in terms of overhauling their entire political and cultural life, these matters would seem to be quite extensive in their scope.

To ascribe such censorious views to Paine might seem, at first blush, quite unjustified. It might be tempting instead to regard this particular criticism of Burke as a (typically) theatrical piece of rhetoric rather than to view it as theoretically substantive. But other key passages in *Rights*

<sup>37</sup> *Ibid.*, 245.      <sup>38</sup> *Ibid.*, 249.



of *Man* show that there are grounds to take Paine's sentiment quite seriously and not reduce its significance to mere performative polemic. There are in fact several instances where Paine appears to place real moral weight on the idea of the nation as a source of sovereignty. During his discussion of the English parliament of 1688, Paine admits that while that body lacked the power to bind future generations, it nevertheless acted legitimately for its own time and the stark and arresting reason he provides in support of this view is 'that *which a whole nation chooses to do*, it has a right to do'.<sup>39</sup> When he then comes to further justify this claim, he does so on the grounds that 'that which may be thought rich and found convenient in one age may be thought wrong and found inconvenient in another'.<sup>40</sup> Nations, it would seem, have the right to do whatever they choose to be 'convenient' for their particular historical circumstances.

It is also the case – although his interpreters have almost universally ignored it – that Paine's discussions of the concept of sovereignty are couched in terms that are often emphatically nationalistic. This is especially apparent during his discussion of the French 'Declaration of the Rights of Man and the Citizen' and his identification of its first three articles as an encapsulation of the 'basis of liberty'.<sup>41</sup> The third article of the 'Declaration' is of particular interest here because it stipulates that it is 'the *nation*' that 'is the source of *all* sovereignty' and that no 'individual or ... body of men [are] entitled to any authority which is not expressly derived from it'.<sup>42</sup> It is hard to imagine the expression of a viewpoint less suited to a cosmopolitan political theory and yet he reiterates it again elsewhere in the work, when he comes to consider the very definition of sovereignty:

What is government more than the management of the affairs of a nation? ... Sovereignty, as a matter of right, appertains to the nation only, and not to any individual.<sup>43</sup>

<sup>39</sup> *Ibid.*, 251, emphasis added.      <sup>40</sup> *Ibid.*, 254.      <sup>41</sup> *Ibid.*, 316.

<sup>42</sup> *Ibid.*, 314. See also 294, 342.

<sup>43</sup> *Ibid.*, 341. The view expressed here by Paine seems strikingly similar to that offered by Sieyès in his essay 'What is the Third Estate?', regarded as one of the theoretical justifications of the French Revolution. According to Sieyès, 'the nation exists prior to everything; it is the origin of everything ... It is the law itself' (Sieyès, 'What is the Third Estate?' in M. Sonenscher (ed.), *Sieyès: Political Writings* (Indianapolis: Hackett, 2003), 136).

This passage is part of Paine's denial of the possibility of legitimate monarchical sovereignty and the rejection of 'the romantic and barbarous distinction of [making] men into kings and subjects' that he thinks it entails.<sup>44</sup> But what is important in this appeal to the rightful power of the collective citizenry at the expense of a single monarch is the implicitly *national* conception of sovereignty. It is here the collective defined as a 'nation' that Paine thinks has the 'inherent, indefeasible right' to establish or abolish government on the basis of its own convenience and according to its own consent. So understood, it is hard to distinguish this right of governance without external interference from a quite robust right of national self-determination. If a nation has the right to construct a particular form of government according to what it, as a whole, judges convenient, this not only excludes the tyranny of a single monarch, it also surely implies a category of people that can be rightly classified as non-nationals. Furthermore, and crucially, because non-nationals are not party to this political community and the right of self-determination it has, they will necessarily owe duties of non-interference towards its exercise by the nation in question. The existence of such duties of non-interference is then capable of explaining why Paine views Burke's criticisms of political developments in France as inappropriate.

It is important to emphasise that Paine's ascription of sovereignty to nations and his apparently corresponding endorsement of rights to national self-determination are not confined to his writings on the French Revolution. Indeed, despite his claims about the universalistic nature of the American Revolution noted earlier, underlying the prominent egalitarian, republican and commercial themes of *Common Sense* is undoubtedly an argument about the right of self-determination for a political community. Paine identifies a plethora of reasons that America will flourish by unfastening itself from British colonial rule, but what his various claims comprise is ultimately a case for national independence, the right of a specifically identified people to sovereignty, autonomy and the lack of external interference that this entails. He thus frequently abstracts from the American case to make generalised claims, such as that 'no nation in a state of foreign dependence, limited in its commerce, and cramped and fettered in its legislative powers, can ever arrive at any material eminence'.<sup>45</sup> His various

<sup>44</sup> *Ibid.*, 341.

<sup>45</sup> Paine, 'CS', CW I, 41.

criticisms of British colonial rule rest on the contention that 'a government of our own is our natural right'.<sup>46</sup> It appears then not only that both American and French Revolutions represent the 'cause of all mankind', but also that part of that cause is the protection of the natural right to national self-determination.

### The limits of national rights

The presence of a commitment to national sovereignty is obviously problematic for the dominant reading of Paine as an exponent of a radical cosmopolitanism that affords no legitimacy to local attachments. If nations are to be regarded as distinct sovereign entities, each of which has the right to determine the forms of government most convenient to them, then this is clearly suggestive of a commitment to autonomy when it comes to their relationships with others: the duty of non-interference is correlative to the right to self-determination. This makes the aforementioned, alleged distinction between Paine's cosmopolitanism and that of Kant look decidedly shaky, since both theorists can be seen to conceive legitimate political membership in national terms.<sup>47</sup> The ascription of any normative political commitment to world citizenship to Paine likewise appears somewhat doubtful in light of his remarks about national sovereignty.

As explicated thus far, the national right to self-determination raises a number of pertinent questions about the overall coherence of Paine's liberal theory of rights. How do rights of national sovereignty fit with the other, universalistic, cosmopolitan claims discussed earlier? What status, for example, do his claims about individual rights like freedom of speech and religion have within a nation? If a nation chooses to, can it legitimately establish a political system that denies such individual rights? How can we best make sense of this apparent tension between the universal and the particular that exists within Paine's writing? It seems that the only way to answer these questions and reconcile Paine's defence of the rights of nations with his overarching cosmopolitanism is to subsume the former *within* the overall framework of universalistic liberal egalitarianism that runs throughout his writings. Doing so

<sup>46</sup> *Ibid.*, 29.

<sup>47</sup> In 'Perpetual Peace: A Philosophical Sketch' in H.S. Reiss (ed.), *Kant: Political Writings* (Cambridge: Cambridge University Press, 1991), Kant uses the terms 'nations', 'states' and 'peoples' interchangeably.

would understand the relationship between his cosmopolitanism and nationhood in the following terms: the right of nations to do anything at all – including organising their political affairs and determining their destiny through the consent of their members – is always *conditional* on the recognition and protection of fundamental *individual* rights. This would mean that nations do have substantial rights of sovereignty but they cannot trump the rights of individuals: indeed, it is only when nations act to protect such individual rights that duties of non-interference on non-nationals are generated. Conceived in this way, there is no contradiction between Paine's underlying cosmopolitan commitment to a universal set of liberal rights and his defence of the rights of nations to self-determination.<sup>48</sup>

Is this interpretation, which ascribes coherence to Paine's theory of individual and national rights, justifiable for any reason other than it irons out a glaring theoretical tension? Further consideration of *Rights of Man* suggests that it is. Recall that Paine reserves particular commendation for the first three articles of the French 'Declaration of the Rights of Man and the Citizen': his claim is that 'the three first articles are the basis of liberty, as well individual as national; nor can any country be called free whose government does not take its beginning from the principles they contain'.<sup>49</sup> As noted above, the third article identifies the nation as the source of sovereignty. The first article asserts meanwhile that 'men are born, and always continue, free, and equal in respect of their rights' and the second states, even more importantly, that 'the end of all political associations, is, the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression'.<sup>50</sup> So both the first and second articles unambiguously defend the rights of individuals. It would seem that for these first three articles in the 'Declaration' to fully cohere, the first two must be understood as having some kind of normative priority over the third: the 'preservation' of the freedom, equality and rights of individuals must, under certain relevant circumstances, trump the rights

<sup>48</sup> Mark Philp also concludes that for Paine 'the nation's right to self-government is *derived* from its constituent individuals' rights' (Philp, *Paine* (Oxford: Oxford University Press, 1989), 61, emphasis added). For a discussion of how Paine's internationalism might fit with a reading of him as a fundamentally American political theorist, see J. Fruchtman, Jr., *The Political Philosophy of Thomas Paine* (Baltimore: The Johns Hopkins University Press, 2009), 157–165.

<sup>49</sup> Paine, 'ROM', CW I, 316. <sup>50</sup> *Ibid.*, 314.

of nations to organise their political life however they please. It would make no sense for the third article to have priority, as there would always be the possibility that the first two could be legitimately violated. It is not difficult to envisage a situation in which the three articles could not be simultaneously upheld in accordance with Paine's commitments. One example would be where an individual's right to freedom of belief and religious worship, defended so unequivocally throughout his writings, is not recognised or is violated by a particular nation. When taken together, the first three articles of the French Declaration look incoherent unless the protection of the individual has normative priority over that of the nation, and only the minimal presumption of authorial coherence is necessary to endorse such an interpretation.

For Paine, the right of nations to organise their internal affairs in a certain way is regulated by the universal rights of individuals. With this in mind, it is now possible to understand why he thinks that Burke is not entitled to criticise the French Revolution. It is not because the French have the right to arrange their political affairs without interference *because they are a nation*. It is rather the significantly qualified version of that proposition: that the French have the right to arrange their political affairs without interferences *because they are a nation, for as long as the organisational principles in question are ones that safeguard individual rights*. In other words, a nation has a right to autonomy and self-determination *provided that* it adheres to a certain set of liberal values, the protection of the fundamental rights of individuals. This reading also befits the way in which Paine conceptualises a nation. At no point in his writings does he refer to any kind of organic vision of the nation or one that views it as some kind of natural or fixed entity. Nor does he tie his conception of a political community to any account of shared identity, culture or history. Paine instead defines a nation in resolutely individualist, voluntaristic terms as a collective that is united by economic and political interests, but little more. On one of the few occasions he addresses the topic, he observes that

A nation is composed of distinct, unconnected individuals, following various trades, employments and pursuits; continually meeting, crossing, uniting, opposing and separating from each other, as accident, interest and circumstance shall direct.<sup>51</sup>

<sup>51</sup> Paine, 'Dissertations on Government; The Affairs of the Bank; and Paper Money', CW II, 371.

The idea that a nation is an entity made up of ‘unconnected’ individuals whose relationships begin, end and are motivated by their separate interests is a world away from any organic or identity-based understanding. The precise boundaries and borders of particular nations would thus seem to be a matter of contingency, historical accident and collectively intentional judgements about expediency.

Such an ultimately individualistic understanding of the nation also fits with Paine’s emphasis on the power of consent for establishing political legitimacy. The implication of making consent a necessary condition of legitimate government is obviously that it can be withdrawn without penalty. If a citizen no longer wishes to participate in the political life of the community and wishes to leave it, there is every reason to regard the logic of Paine’s argument as friendly to such a desire. If consent is to be a meaningful concept in his argument then it must be capable of being withheld. Any moral commitment to the expression of consent implies a commitment to its non-expression or withdrawal, which, in turn, makes the composition of particular nations look malleable, with individuals able to move freely and legitimately between nations. Paine does not spend much time discussing the concept of immigration, but when he does, the attitude he takes lends further credence to the individualistic and voluntaristic account of the nation. He, for example, celebrates the fact that, unlike the nations of the old world, ‘France and America bid all comers welcome, and initiate them into all the rights of citizenship’ in a fully egalitarian manner.<sup>52</sup> Such liberal nations are committed to the free movement of individuals.

At the same time, however, Paine’s aforementioned commitment to national sovereignty suggests that the contingency and malleability of borders does not imply their arbitrariness. Nations do have rights, even though their composition may change frequently and significantly. In this sense, Paine’s international political theory mirrors that advanced by Rawls. In *The Law of Peoples*, Rawls argues that while ‘a society’s boundaries may appear’ to be ‘historically arbitrary’, it would be a mistake to think they ‘cannot be justified’.<sup>53</sup> For Rawls, however, the justificatory weight appears to be borne, at some level, by his

<sup>52</sup> Paine, ‘ROM’, CWI, 293, n. 15.

<sup>53</sup> J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 38–39.

observation of the ‘absence of a world-state’ and his corresponding view that ‘to fix on [a nation’s] arbitrariness is to fix on the wrong thing’ when considering the legitimacy of established political borders.<sup>54</sup> For Paine, by contrast, the justification for borders comes from the way in which consent functions in his argument. Not only is consent a necessary condition of the legitimacy of government, it is also able to determine the scope of political authority, and the boundaries of the nation are therefore determined by its exercise by individuals. It is thus not, as it is for Rawls, the *impossibility* of a world state that ultimately confers legitimacy on national boundaries or governments.

What this argument also importantly entails is that while the claim that Paine is an unqualified supporter of world citizenship looks unsustainable, his approach to international relations does not actually deny its possible legitimacy or possibility. Indeed, the logic of his consent-based argument suggests that a world state could presumably acquire legitimacy, provided there existed universal, global consent to its establishment. The individual right to consent that is pivotal in Paine’s political theory enables the possibility of global governance while simultaneously withholding its actual endorsement. It is hard, however, to accept that a world state could ever be a rational choice for individuals within a Paineite theory. Even if it were thought that individual rights could be afforded adequate protection within a regime of global government, the value of one specific right would be fatally undermined: the right to withdraw consent. This is because the consequence of exercising this right in a scenario in which there is only one single political community for the whole world would be statelessness for the departing individual, a situation that would surely imperil their human rights. It seems far more likely that rational individuals holding the kinds of rights that Paine identifies would prefer something akin to the utopian framework sketched by Nozick, where there exist various communities, each of which caters for different individual preferences and ways of life, with unrestricted movement between them available to all.<sup>55</sup>

<sup>54</sup> *Ibid.*, 39.

<sup>55</sup> R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 297–334. The significant Paineite departure from the Nozickean utopia is that all political communities would be bound to protect *all* individual rights: not just the basic entitlements acknowledged by libertarians, but also the rights to democratic inclusion and the economic entitlements that we have identified.

## The question of liberal intervention

If rights of self-determination are indeed conditional upon the adoption of a liberal constitution and the protection of individual rights, national sovereignty will then be obviously restricted to liberal societies. This then raises a crucial question about the relationship between liberal and non-liberal nations: if non-liberal nations lack any right of self-determination and liberal nations correspondingly have no duty of non-interference in their affairs, might this actually facilitate legitimate intervention by force? On Paine's view, do liberal nations ever have the right to interfere in the affairs of non-liberal ones, either as a pre-emptive action or even as a revolutionary one designed to export the liberal values to which he was so committed? As mentioned, Kant explicitly disavows such intervention: for him, the realm of cosmopolitan right offers individual states protection from the danger of external interference, regardless of whether their internal constitution be liberal or not. State sovereignty cannot be threatened because each has a 'moral personality' that must be respected.<sup>56</sup> For Paine, however, the question clearly does arise, because such rights of national sovereignty are restricted to liberal nations.

Paine's thoughts on war are scattered across his writings and letters and are occupied with several conflicts involving various nations under different sets of circumstances.<sup>57</sup> He is undoubtedly committed to international peace as a normative ideal and advocates forms of international co-operation in the name of reducing conflict, including a confederation between major countries that would enable 'a limitation to, and a general dismantling of, all the navies in Europe'.<sup>58</sup> In addition to the strictly normative arguments he advances, Paine's writing also reveals a commitment to empirical claims akin to those found in modern democratic peace theory: for him, the prevalence of war is a phenomenon necessarily attributable to 'the system of old governments' and is encouraged by the burgeoning national debt of such

<sup>56</sup> Kant, 'Perpetual Peace', 94.

<sup>57</sup> It is also important to acknowledge that many of Paine's arguments about war are grounded in economic rather than moral claims. In particular, his essay on 'The Decline and Fall of the English System of Finance' (CW II, 651–74) paints, with undisguised glee, an apocalyptic vision of England's penurious future, one that he argues has been caused by a soaring national debt established to fund a series of misguided wars during the eighteenth century.

<sup>58</sup> Paine, 'ROM II', CW I, 448, 419.



nations, which can be contrasted to the peaceable liberal, commercial republics that he expects to follow the American and French examples.<sup>59</sup> For Paine, such nations will in future have no need to pursue war as a means of satisfying their interests. In *Rights of Man, Part Two*, his claim is that 'if commerce were permitted to act to the universal extent it is capable of, it would extirpate the system of war, and produce a revolution in the uncivilized state of governments', which would seem to suggest a disposition towards non-military means to facilitate 'revolution' in illiberal nations.<sup>60</sup> His view is that the spread of international trade between republics will remove the motivations for military conflict.

In spite of his rejection of war as something tied to unenlightened nations marked by political corruption, it would be a mistake to think that Paine opposes military violence on all occasions and his thought is not accurately describable as pacifist. His American pamphlets are undoubtedly directed towards a victorious war effort against British forces and herein he consistently rejects the claim that any compromise should be made with the colonial forces in order to reduce bloodshed.<sup>61</sup> Towards the beginning of his 1775 essay 'Thoughts on Defensive War' (which he signed 'A Lover of Peace'), he declares that although he 'would gladly agree with all the world to lay aside the use of arms', the American Revolutionary cause is such that he is prepared to 'take up [his] musket' if required.<sup>62</sup> Yet even within these more militaristic writings, Paine is keen to cast the American war effort not as aggression as such, but rather only as a defence against external invasion. In doing so, he claims that while under such circumstances individuals have a 'duty to defend and preserve themselves', it remains the case that 'in

<sup>59</sup> Paine, 'ROM', CW I, 343. A republic, for Paine, is 'a Government by Representation; a Government founded upon the principles of the "Declaration of Rights"' ('To the Abbé Sieyès', CW II, 520). Elsewhere, he adds 'Republican government is no other than government established and conducted for the interest of the public' (Paine, 'ROM II', CW I, 370).

<sup>60</sup> Paine, 'ROM II', CW I, 400.

<sup>61</sup> It is also in one of his essays on 'The American Crisis' that he makes rare comments on the idea of a just war, suggesting that 'It is the object only of war that makes it honourable. And if there was ever a *just* war since the world began, it is this in which America is now engaged' (Paine, 'The American Crisis V', CW I, 120).

<sup>62</sup> Paine, 'Thoughts on Defensive War', CW II, 53.

every other light, and from *every other cause* . . . war is inglorious and detestable'.<sup>63</sup>

Despite a commitment to peace as an end and a tendency to reject violence as a means, Paine does occasionally appear to reveal his sympathy with arguments for liberal intervention. Indeed, if his support for the American military can be understood as in some sense defensive, the support he expresses for the French Republic in the 1790s can look quite different. Thus, at the beginning of *Rights of Man, Part Two*, Paine backs a potential French military campaign against Prussia and Austria aimed at vanquishing what he sees as 'German despotism'.<sup>64</sup> Even more intriguingly, at one point he makes an offer of a 'small patriotic donation' towards a proposed French aggression against England in 1798.<sup>65</sup> In his attempt to differentiate what he describes as Paine's 'revolutionary liberalism' from Kant's 'evolutionary' alternative, Walker makes much of these two examples. Walker argues further that Paine 'was a strong advocate of military intervention to spread democracy' and that his enthusiasm for such intervention reveals a 'messianic zeal bent on transforming the world into democracies' that has characterised many subsequent real-world attempts to accomplish such a goal.<sup>66</sup>

Upon close inspection, however, Walker's identification of an aggressive militarism in Paine's thought – one that is aimed at exporting the values of liberalism or democracy – looks problematic. This becomes clear when it is appreciated that the two suggestions for intervention that Walker instances are both actually conceived and characterised by Paine as *defensive* rather than offensive military campaigns. The case of 'German despotism' to which he adverts refers to a circumstance of French panic about the 'Declaration of Pillnitz', which – some months prior to Paine's comments – had unified various

<sup>63</sup> Paine, 'The American Crisis VII', CW I, 145, emphasis added.

<sup>64</sup> Paine, 'ROM II', CW I, 348.

<sup>65</sup> Paine, 'To the Council of Five Hundred', CW II, 1403. For discussion, see Walker, 'Two Faces of Liberalism', 461–463.

<sup>66</sup> Walker also claims 'implicit in Paine's ideas on intervention is an inferiority of the target nation' ('Two Faces of Liberalism', 461). This is in one sense true, but seems also misleading: the nations that Paine mentions are monarchical and thus classified as inequalitarian 'despotisms', which clearly renders them inferior on his conceptual schema. But it does not follow from this that the *inhabitants* of those nations are in any way inferior and such a viewpoint would not sit coherently with his consistent liberal commitment to human moral equality.

European monarchs in support of the recently deposed Louis XVI and posed a very real threat to the newly established republic. Given this immediate political context of Germanic, monarchical aggression, it seems highly likely that when Paine writes that ‘when France shall be surrounded with revolutions, she will be in peace and safety’<sup>67</sup> he believes the republic to be in real danger *at that moment* and that he supports the proposed pre-emptive attack on Austria in order to secure its survival.<sup>68</sup> It is certainly a stretch to depict it as representative of a clarion call to export the values of liberalism as a generalised goal to be pursued at all costs. It looks instead like another endorsement of defensive war, albeit one that is motivated by a speculative and contestable empirical claim about the likelihood of an invasion of republican France by its despotic enemies.

The second case, of the ‘descent upon England’, is perhaps even more straightforwardly not intended to be part of a comprehensive case for liberal intervention. It is true that in the letter in which Paine makes the offer of a financial donation to the 1798 military campaign to be led by Bonaparte, he suggests that the people of England ‘deserve to be free’, a phrase that might appear to lend support to interventionism.<sup>69</sup> Nevertheless, Paine’s suggestion in that same letter is that ‘there will be no lasting peace for France, nor for the world, until the tyranny and corruption of the English government be abolished’.<sup>70</sup> The fact that he evidently regards France as *not being at peace* reveals that he also conceives the campaign as an essentially defensive one. Even if this statement still seems capable of being read in support of intervention for the achievement of a liberal end – in this case, peace – his letter ‘To the People of England on the Invasion of England’, in which he outlines the case for the conflict in far more detail, surely shows otherwise. Here, his claim is that ‘all France is alive to chastise the English government for *recommencing* the war, and all Europe stands still to behold it’.<sup>71</sup> Yet again Paine’s interest is, in fact, in the need to fight a defensive war against an enemy intent on aggression, an enemy that can be charged

<sup>67</sup> Paine, ‘ROM II’, CW I, 348.

<sup>68</sup> Paine’s brief note of approval of the plan for war against Germany was included in the introduction to *Rights of Man, Part Two*, which was inscribed to M. De Lafayette, the effective commander of the French army at that time.

<sup>69</sup> Paine, ‘To the Council of the Five Hundred’, CW II, 1403. <sup>70</sup> *Ibid.*

<sup>71</sup> Paine, ‘To the People of England on the Invasion of England’, CW II, 680, emphasis added.

with 'recommencing' conflict between the two nations, rather than in revolutionising the British polity through violent means. Walker's suggestion is that the two incidents cited reveal Paine's desire 'to foster or force democratic governance the world around', but while the former verb can be ascribed to him without controversy, the latter looks quite inappropriate after proper scrutiny of the relevant evidence.<sup>72</sup>

Although there is little to indicate any robust defence of the principle of liberal intervention in his writing, it is still possible to conceptually differentiate Paine's account of international relations from that of Kant. The main difference comes down to the fact that Kant regards nations as holding duties of non-interference against each other simply by virtue of their very existence. They have the right to organise their internal affairs in whatever manner regardless of the fact that nature has provided the conditions of possibility for perpetual peace and irrespective of the duty individuals have to promote it.<sup>73</sup> As shown, Paine's contrasting contention is that nations only hold duties of non-interference against those that protect liberal rights and so the question remains about what liberal nations might do in the absence of those duties. Although I have argued for the absence of any generalised principle of intervention within Paine's theory that could justify any crusading 'revolutionary liberalism' that seeks to establish values by force, there is still available conceptual space to be filled out here. If Paine thinks that non-liberal nations do not have rights to non-interference, it may yet be wondered under what circumstances interference or even intervention might be legitimate.

There is no necessary contradiction between being cosmopolitan about the evaluation of norms while also rejecting political or military intervention to ensure their enforcement. It might indeed be argued that such a stance – one that posits an important division between the realms of politics and morality – is characteristic of the liberal tradition of which Paine is part. The question of legitimate political intervention is thus entirely separate from that of moral judgement, and so, merely because non-liberal nations lack rights of non-interference, it does not

<sup>72</sup> Walker, 'Two Faces of Liberalism', 461. Mark Philp therefore seems right to conclude that Paine 'was never comfortable with the use of violence for revolutionary ends' (*Paine*, 82).

<sup>73</sup> 'Nature guarantees perpetual peace by the actual mechanism of human inclinations . . . It makes it our duty to work our way towards this goal, which is more than an empty chimera' (Kant, 'Perpetual Peace', 114).

follow that their liberal counterparts have the right to meddle in their affairs whenever they please. That said, the general spirit of Paine's thought – his commitment to the universality and inviolability of individual rights – invites some speculation about how that remaining conceptual space might be filled out. In terms of his general beliefs, there would seem affinity with the liberal cosmopolitan position put forward in Rawls's *The Law of Peoples*. On Rawls's ideal schema, liberal 'peoples' have no general right to interfere in the affairs of non-liberal peoples, whether it is with the intention of exporting values or not.<sup>74</sup> Both liberal and non-liberal peoples can, however, acquire rights to interfere with the actions of what Rawls terms 'outlaw states'. This is not because such outlaw states reject liberalism as a political doctrine, but because of the 'grave violations of human rights' that characterise them.<sup>75</sup> In such scenarios, liberal and non-liberal peoples acquire the right to prevent these violations.<sup>76</sup> Such an attitude would clearly chime with much of what Paine writes on the fundamental nature of individual rights. It would also cohere with the absence in his thought of both the (unconditional) national right to non-interference championed by Kant and the absence of any commitment to international revolution through military means. At the same time, however, Rawls's refusal to think of economic justice in global terms would likely sit uncomfortably with Paine.<sup>77</sup>

<sup>74</sup> Rawls uses the term 'peoples' rather than 'states'. This is because he understands the meaning of a state as including 'powers of sovereignty' and a 'certain autonomy . . . in dealing with its own people' (*The Law of Peoples*, 26). For him, 'peoples' have a 'moral character' and because of this any international law between them will 'deny to states the traditional rights to war and to unrestricted internal autonomy' (27). The 'outlaw states' he refers to are classified as *states* precisely because they claim such unrestricted internal autonomy. Rawls understands human rights as 'a special class of urgent rights' (79, see 65 for some of these rights).

<sup>75</sup> Rawls, *The Law of Peoples*, 81.

<sup>76</sup> For Rawls's account of human rights, see *The Law of Peoples*, 65–67, 78–81.

<sup>77</sup> As observed in the [previous chapter](#), although Paine's theory of distributive justice outlined in *Agrarian Justice* is developed with the existence of the nation-state in mind, its principles are to be applied to *all* political communities. For Rawls's rejection of a cosmopolitan view of distributive justice, see *The Law of Peoples*, 105–120. For useful discussions of Rawls's rejection of cosmopolitanism, see Leif Wenar, 'Why Rawls Is Not a Cosmopolitan Egalitarian' in R. Martin and D. Reidy (eds.), *Rawls's 'The Law of Peoples': A Realistic Utopia?* (Oxford: Blackwell, 2006), 95–113; and Simon Caney, 'Cosmopolitanism and the Law of Peoples', *The Journal of Political Philosophy* 10 (2002): 95–123.

Although Paine views peace as a normative ideal and points towards possible instances of international collaboration in his political writings, at no point there does he advocate or countenance global governance. World citizenship remains a moral rather than political ideal for him. Nevertheless, as I have pointed out, not only is consent a measure of the legitimacy of government, it also defines the scope of political authority and it therefore appears inevitable that national boundaries will be shaped and determined by its expression and withdrawal by individuals. Therefore, although the case – advanced by Walker and others – that Paine advocates world citizenship as a normative, political ideal is unconvincing, it is nonetheless important to emphasise that his conception of international relations does not actually deny its possibility because of the logic of his consent-based argument. In short, consent functions to enable the possibility of forms of global governance while it simultaneously ensures that any firm endorsement of a world state is withheld, something possibly linked to the aforementioned reasons that Paineite individuals would most likely have to eschew a single, universal political authority. At the beginning of this chapter, I suggested that Paine's theory is best described as a species of *liberal* cosmopolitanism. The reason that Paine is a liberal cosmopolitan (and the reason that he is not a cosmopolitan liberal) is that individual freedom – in particular, the freedom for individuals to choose what kind of life is best for them – is paramount and that its exercise creates a kind of discretionary space for difference between political communities and cultures, as long as such a space is protective of the fundamental human rights he identifies.

## Conclusion

The aim of this chapter has been to offer a more complete and more complicated picture of Paine's cosmopolitan international political theory than has hitherto been put forward, while also arguing for its overall coherence. I have tried to show that his thought contains a robust conception of national sovereignty, one that undermines both the claim that he advocates a radical form of world citizenship and global governance and the alternative argument that he rejects the possibility of legitimate national political communities, in which there can exist networks of rights and obligations that exclude

non-members. He does neither and he clearly believes that nations can come to hold meaningful rights of self-determination that correlate to duties of non-interference on the part of others. For Paine, being a 'citizen of the world' does not necessarily imply world (political) citizenship. However, unsurprisingly given the liberal nature of his political theory as a whole, national sovereignty and self-determination remain both defined and limited by exercises of individual consent and the rights of nations are always conditional on the constitutional protection of fundamental individual rights. Furthermore, the possibility for global political institutions is never ruled out and, indeed, is also made possible by the key role he gives consent. So, in spite of his commitment to nationhood, he remains a cosmopolitan.

Within the cosmopolitan tradition, Paine departs from Kant in his refusal to defend the inviolable rights of all nations regardless of their internal constitutions. Although, as I have argued, there is insufficient evidence to suggest that Paine's theory supports an idealised revolutionary liberalism that implies military aggression to reform non-liberal regimes, the absence of rights for non-liberal nations taken together with his unflinching commitment to the rights of individuals is suggestive of at least a Rawlsian commitment to liberal intervention in certain emergency cases. However, for Paine, unlike Rawls, nations can only be legitimised in the first place through the consent of their members, and because of this – and in spite of the sovereignty they acquire – their borders are consequently open to revision and they have no authority in virtue of their historical establishment. This combination of a radical understanding of nationhood and a commitment to the trumping force of individual consent represents a form of liberalism that genuinely makes good on its individualistic and egalitarian premises. It neither invokes Kant's claim about the inviolability of states nor Rawls's rejection of any globalised understanding of justice, both of which sit somewhat oddly amongst their other liberal commitments. For Paine, the prospects for cosmopolitan government depend on the will and judgements of individuals and the requirements of justice understood as the protection of human rights, an approach that is arguably more faithful to foundational liberal values. In an oft-cited encounter with Paine, Benjamin Franklin is said to have declared that 'Where liberty dwells, that is my country'. The pithy quip

attributed to Paine in response is ‘Where liberty is *not*, that is mine’.<sup>78</sup> Even though this exchange is probably apocryphal, the earlier discussion indicates that Paine would be perfectly happy to affirm the sentiment that some individual rights are not capable of being bordered and that their protection is politically sacred.

<sup>78</sup> J. Keane, *Tom Paine: A Political Life* (London: Bloomsbury, 1995), xiii.



## 6 | *Religion, creation and liberalism*

As I have suggested already, my casting of Paine as a liberal thinker comprises both a claim about the historical tradition within which he should be located and one about the identity of his normative political theory. If liberalism is construed broadly – as an intellectual tradition that is defined by the moral sanctity of the individual and by the conceptual centrality of equality and freedom – then it has evolved significantly since its early modern incarnations. The most dramatic shift over time has undoubtedly been its explicit secularisation: liberalism is now understood generally to eschew any appeal to the concept of religious truth and, in turn, is defined by its insistence that the state express neutrality about the competing conceptions of the good life held by individuals within a pluralistic society. Paine’s liberal credentials are, as we have seen, impeccably secular in a *normative* sense. He is resolute in his commitment to the view that political authorities have no business whatsoever restricting the freedom of individuals to hold whichever beliefs they choose to, religious or otherwise. The exercise of such a freedom is, for him, an inalienable, fundamental right. Nevertheless, although Paine is a secular liberal in terms of his normative political theory, he does have substantive religious commitments of his own.

As I suggested in [Chapter 1](#), unless there is meaningful evidence to suggest otherwise, it is proper to presume that the beliefs expressed by individuals are coherent in at least some minimal sense: the nature of a person’s beliefs is such that they form an interconnected web. What this means is that Paine’s religious views have thus far been an elephantine presence in our hermeneutical room, looming a little threateningly over much of the discussion so far. This is because the interconnectedness of beliefs suggests that a satisfactory appreciation of Paine’s political theory might not be graspable without attention to foundational theological commitments. We have seen that many of Paine’s political writings make direct, unequivocal references to the existence of God

as the creator of the universe. In *Common Sense*, Paine frequently refers to 'God' or the 'Almighty', whose wishes he speculates about. Here he suggests that 'it is the will of the Almighty that there should be a diversity of religious opinions among us'<sup>1</sup> and also that 'good and bad' are 'distinctions from heaven'.<sup>2</sup> The fact of religious pluralism and the most basic of moral distinctions are thus, for him, explicable through reference to a Deity. We saw that in *Agrarian Justice* Paine makes explicit reference to what he regards as God's will. It is 'wrong', he argues, 'to say God made *rich* and *poor*; He made only *male* and *female*; and He gave them the earth for their inheritance'.<sup>3</sup> And in *Rights of Man*, he claims that 'every child born into the world must be considered as deriving its existence from God'.<sup>4</sup> Such references plainly make it impossible to deny that God has a very important place in Paine's political writing. The interesting questions about Paine's religious thought do not therefore concern whether or not he was a religious believer, but rather what the precise nature of the beliefs are and in what ways they inform his liberal egalitarian political theory.

Paine's writings on religion have been for the most part ignored by his interpreters.<sup>5</sup> The reasons for the neglect of his theological dissertations are not hard to comprehend: composed mostly towards the end of his life, his works on the subject of religion are invariably tetchy in tone and unsystematic in organisation. They also contain little in the way of explicitly political argument and many of his contentions hinge on scriptural refutation, something made all the stranger given Paine's claim not to have a Bible to hand during much of their composition. Attention to his theological tracts is, however, necessary to acquire a properly holistic understanding of his thought and to see how his religious commitments fit with his liberal secularism. In exploring Paine's theology, I attend to four tasks in this chapter. First, I provide an exposition of Paine's core religious beliefs, something that involves consideration of his reasons for rejecting Christianity and atheism and

<sup>1</sup> Paine, 'CS', CW I, 37.      <sup>2</sup> *Ibid.*, 9.      <sup>3</sup> Paine, 'AJ', CW I, 609.

<sup>4</sup> Paine, 'ROM', CW I, 274.

<sup>5</sup> There are brief discussions of Paine's religion in: G. Claeys, *Thomas Paine: Social and Political Thought* (London: Unwin Hyman, 1989), 177–193, though over half of it is concerned with the reception of *The Age of Reason* rather than the nature of his beliefs; and M. Philp, *Paine* (Oxford: Oxford University Press, 1989), 94–114. For more on the reception of the essay, see F.K. Prochaska, 'Thomas Paine's *The Age of Reason* Revisited', *Journal of the History of Ideas* 33 (1972): 561–576.

for his endorsement of Deism. Second, I probe the nature of the connection between his Deism and his axiomatic liberal commitment to human moral equality. Third, I show that although his belief in God undoubtedly grounds his commitment to fundamental egalitarianism, his religious views do not seem to actually make any thick, teleological imprint upon his account of political morality. Fourth, I argue that Paine's attempt to vindicate the existence of a Deity is more accurately construed as a species of phenomenological justification – an account of religious truth based on one's experience of the world – than the form of deductive reasoning it has usually been taken to be.

### Paine against atheism and Christianity

As noted, very little attention has been paid to Paine's religious writings, either as an object of study in itself or for the purposes of acquiring a fuller understanding of his political thought as a whole. This inattention might have something to do with his enduring reputation as an irreligious or anti-religious thinker.<sup>6</sup> So, the basic observation to start with is that Paine is anything but an atheist. Indeed, in his rarely discussed essay 'The Existence of God', he identifies atheism – along with fanaticism – as one of the two natural enemies of what he calls 'true' religion.<sup>7</sup> His claim in this work is that atheism has arisen as an understandable but erroneous – and ultimately dangerous – response to the intolerant, irrational systems of religion that have prospered for so long, its influence increased by the persecution of non-believers.<sup>8</sup>

More famous than Paine's rejection of atheism is his comprehensive critique of Christianity. His best-known treatise on theology, *The Age*

<sup>6</sup> Paine's legacy has, to some degree, been shaped by Theodore Roosevelt's dismissal of him as a 'filthy little atheist', an assessment that might still even have purchase in the popular imagination. As Claeys observes, Roosevelt 'meant literally dirty, in light of Paine's later reputation for self-neglect' (*Thomas Paine*, 177). For an illuminating analysis of how rumours about Paine's personal hygiene were used as a political weapon against him, see Corinna Wagner, *Pathological Bodies: Medicine and Political Culture* (Los Angeles: University of California Press, 2013), 129–164.

<sup>7</sup> Paine, 'The Existence of God', *CWII*, 749. 'The atheist who affects to reason, and the fanatic who rejects reason, plunge themselves alike into inextricable difficulties . . . the one is a half-rational of whom there is some hope, the other a visionary to whom we must be charitable' (753).

<sup>8</sup> *Ibid.*, 754.

of *Reason*, is an attempted refutation of the idea of revealed religion as understood in the Christian religion and rejection of the notion of scriptural authority. There and elsewhere, he subjects both Old and New Testaments of the Bible to meticulous, forensic critical scrutiny. His case against the Bible is not analogous to the one he offers in *Rights of Man*, which rejects out of hand the idea that past texts can have any claim to normative authority. In *The Age of Reason*, he admits that were the Bible actually the revealed word of God it would then have clear moral authority, but maintains that it does *not* have such status. It is instead nothing more than the product of the imaginations of various human beings, who have shown themselves – through the content of such texts – thoroughly bereft of knowledge of God's nature and intentions and about morality in general. In order to demonstrate the Bible's inauthenticity, Paine points to its historical inaccuracy in a number of instances, citing a series of anachronisms and inconsistencies in its account of the periods it is supposed to represent. He claims that the 'mosaic' account of creation contained in Genesis is clearly the work of not one, but two authors and cites several examples of contradictory style and substance.<sup>9</sup>

On top of his denials of its historical accuracy, he also rejects the compatibility of the content of the Bible with what he regards as a properly reasoned understanding of the world: he dismisses outright all ideas of 'mystery, miracle, and prophecy'<sup>10</sup> and mocks the concept of the 'Immaculate Conception'.<sup>11</sup> Paine reserves particular vitriol for the attempt of New Testament writers to misrepresent and misinterpret certain events, so that they chime with the alleged 'prophecies' of the Old Testament.<sup>12</sup> He does express admiration for the messages contained in the Book of Job, but apart from that he criticises the content of the Bible relentlessly, not least for being excessively 'gloomy'.<sup>13</sup> Paine has no time for the Ten Commandments because they 'carry no internal evidence of divinity', though they might be thought to house 'some good moral precepts'.<sup>14</sup> The conclusion he reaches is that his own 'belief in the perfection of the Deity will not permit me to believe that a book so manifestly obscure, disorderly, and contradictory can be His

<sup>9</sup> Paine, 'Prosecution of *The Age of Reason*', CW II, 729–732.

<sup>10</sup> Paine, 'AOR', CW I, 505. <sup>11</sup> Paine, 'AOR II', CW I, 574.

<sup>12</sup> See Paine, 'AOR II', CW II, 577–584 in particular. <sup>13</sup> *Ibid.*, 591.

<sup>14</sup> Paine, 'AOR', CW I, 466.

work'.<sup>15</sup> For Paine, Christianity must be rejected because of its invocation of mystical ideas of miracles and prophecies that stretch the credulity of reasoning individuals as well as its reliance on historically dubious scriptural authority.

This critique of the Christian faith raises the question of Paine's own religious views. When addressing Paine's religious commitments, some commentators, such as Moncure Conway, have emphasised the relevance of his upbringing – via his father – in the Quaker tradition, and have focused far less on the influence of the association with Methodism he had through his mother.<sup>16</sup> It is not difficult to see why he is so often presented as sympathetic to the Quaker movement, given his tendency to praise the virtues of that group. As he notes in his essay on 'Worship and Church Bells', the Quakers

have no priests. They assemble quietly in their places of meeting, and do not disturb their neighbours with shows and noise and bells. Religion does not unite itself to show and noise. True religion is without either. Where there is both there is no religion.<sup>17</sup>

He subsequently praises the Quakers for 'their care of the poor' and their commitment to 'the education of their children'.<sup>18</sup> Furthermore, as shown in [Chapter 5](#), he also regards universal peace to be an important normative ideal, though a more thoroughgoing rejection of violence than Paine is willing to countenance is a definitive characteristic of the Quaker movement. In his final will and testament, he expressed his preference to be buried on Quaker ground.<sup>19</sup>

<sup>15</sup> Paine, 'Prosecution of *The Age of Reason*', CW II, 737. His critique does not only apply to Christianity, and he also ridicules the notion that the Koran was written in heaven (Paine, 'AOR', CW I, 466).

<sup>16</sup> M. Conway, *The Life of Thomas Paine* (London: Knickerbocker Press, 1892). John Keane offers a nuanced and revealing account of Paine's religious background (*Tom Paine: A Political Life* (London: Bloomsbury), 15–25), wherein he rejects Conway's exclusively Quaker emphasis as 'at best a distorted half-picture' (Keane, *Tom Paine*, 18).

<sup>17</sup> Paine, 'Worship and Church Bells', CW II, 758. <sup>18</sup> *Ibid.*, 759.

<sup>19</sup> 'I know not if the Society of the people called Quakers, admit a person to be buried in their burying ground, who does not belong to their Society, but if they do, or will admit me, I would prefer being buried there; my father belonged to that profession, and I was partly brought up in it' (Paine, 'The Will of Thomas Paine', CW II, 1500).

Nevertheless, despite some clear overlap in the content of their beliefs, Paine cannot really be considered a true Quaker. Though he spoke of them warmly, he never cast himself explicitly as one of them, and in any case would often stray from their core convictions, and not just through his failure to commit to unequivocal pacifism. For example, in his writing on Christianity, Paine went so far as to deny the divinity of Jesus. Although he does concede that Jesus is someone who preached ‘most excellent morality, and the equality of men’, he maintains that this is the most that can be said of him and that he should not be thought to have possessed any divine nature.<sup>20</sup> So, despite the important Quaker influence on Paine’s religious beliefs, his thought is better characterised in the terms in which he himself advertises them, as a species of Deism.

Paine claims that ‘in Deism our reason and our belief become happily united’<sup>21</sup> and, more imperiously, that ‘Deism is the only profession of religion that admits of worshipping and reverencing God in purity, and the only one on which the thoughtful mind can repose with undisturbed tranquillity’.<sup>22</sup> At certain times, Paine’s Deism appears to lack distinctness as a religious position: he notes at one point that *all* (presumably monotheistic) religions are deisms in the sense that they share ‘the belief of a God’.<sup>23</sup> But one issue where he thinks that Deism offers the right answer while Christianity goes astray is the nature and character of God. He asserts that, unlike with Deism, ‘God is almost forgotten in the Christian religion’.<sup>24</sup> He complains about the dangerously misguided vision of God that is put forward by the Bible, objecting to the *character* that He is given in those texts, particularly in the Old Testament, where the depiction is of a cruel, vengeful and vicious figure that

<sup>20</sup> Paine, ‘AOR’, CW II, 469.

<sup>21</sup> Paine, ‘Of the Religion of Deism Compared with the Christian Religion, and the Superiority of the Former over the Latter’, CW II, 797.

<sup>22</sup> Paine, ‘To Mr. Moore, of New York, Commonly Called Bishop Moore’, CW II, 811.

<sup>23</sup> Paine, ‘Of the Religion of Deism Compared with the Christian Religion, and the Superiority of the Former over the Latter’, CW II, 796. As scholars have pointed out, Deism is somewhat loose in terms of what it implies substantively beyond a commitment to ‘the sufficiency of natural religion and the superfluosity of revealed religion’, and is therefore a ‘label of convenience for the historian of ideas rather than a precise term of analysis’ (Peter Byrne, *Natural Religion and the Nature of Religion: The Legacy of Deism* (Routledge: London, 1989), xiii).

<sup>24</sup> Paine, ‘To Mr. Moore, of New York, Commonly Called Bishop Moore’, CW II, 811.

possesses none of the characteristics that Paine is prepared to associate with a Deity. Whereas ‘Deism teaches us that God is a God of truth and justice’, the Bible ‘does not’.<sup>25</sup> Although Paine does not provide an exhaustive account of the virtues we would expect to ascribe to a Deity, there are some qualities that he does emphasise: truthfulness, honesty, mercifulness, justice and generosity are amongst those that he attributes to God, in juxtaposition to the version he finds in Christianity.<sup>26</sup>

## God, creation and equality

At the heart of Paine’s Deism lies his commitment to human moral equality. In his short essay, ‘Worship and Church Bells’ – written in 1797, in opposition to a proposed restoration of certain aspects of Catholicism in France – Paine makes it clear that his critique of Christianity is in part an egalitarian one. The Christian religion fails to treat individuals as equals in a structural sense and this then has further, practical manifestations for inequality in society. According to Paine, Christianity has ‘made [religion] into a trade’ characterised by ‘ceremonies performed by priests’.<sup>27</sup> Organised churches are cast as ‘human inventions set up to enslave and terrify mankind’.<sup>28</sup> The very existence of priests is inequalitarian because it breaks the direct link between ‘every man and his Maker’, removing this core ‘intellectual part of religion’ and positing an artificial hierarchy in its place.<sup>29</sup> A further consequence of this structural, organisational inequality that defines Christianity is that there is the misattribution of material resources: for him, ‘it is a want of feeling to talk of priests and bells while so many infants are perishing in the hospitals, and aged and infirm poor in the streets, from the want of necessities’.<sup>30</sup> Instead of paying to construct or maintain opulent buildings and rather than fund a professionalised priesthood, it would be more faithful to God’s design of the world that ‘churches be sold, and the money arising therefrom be invested as a fund for the education of children of poor parents of every

<sup>25</sup> Paine, ‘Biblical Blasphemy’, CW II, 825.

<sup>26</sup> See Paine, ‘Predestination: Remarks on Romans, IX, 18–21’, CW II, 895, 896; ‘Examination of the Prophecies’, CW II, 882.

<sup>27</sup> Paine, ‘Worship and Church Bells’, CW II, 757.

<sup>28</sup> Paine, ‘AOR’, CW I, 464.

<sup>29</sup> Paine, ‘Worship and Church Bells’, CW II, 757.      <sup>30</sup> *Ibid.*, 758.

profession, and, if more than sufficient for this purpose, that the surplus be appropriated for the aged poor'.<sup>31</sup> In addition to all its intellectual and moral defects, Paine thinks that Christianity fails politically by perpetuating inequality.

The commitment to human moral equality that runs throughout Paine's writings is a definitive feature of modern liberalism: it is the thought that each individual is of fundamentally equal moral significance and so is the concept that grounds the idea of human rights. One of the striking features of contemporary liberal thought is its self-consciously anti-metaphysical character. Since at least its normative rehabilitation in the writings of Rawls and his followers, liberals tend to delineate and defend their individualistic accounts of political morality without explicit recourse to controversial claims about questions of nature, being or universal truth. They do nevertheless appeal to some fundamental moral principles. And it seems undeniable that the foundational concept that liberals most often invoke to justify their normative political theories is basic human moral equality. Baseline egalitarianism – the belief that each individual must be viewed to have basic equal worth – has the 'status of an axiom' for contemporary defenders of liberalism.<sup>32</sup>

Such an axiomatic commitment to equality is discernible in the historical ancestry of liberal thought. There is, however, a stark difference between the moral egalitarianism articulated by early modern thinkers like Locke on the one hand and that of contemporary liberals like Rawls and Dworkin on the other. The difference has been explored fruitfully by Waldron, who notes that although contemporary liberal philosophers exert a great deal of intellectual energy in discussions about the entailments of a commitment to equality, they very rarely tackle the more basic issue of what it is that renders human beings moral equals in the first place.<sup>33</sup> As he points out, the reluctance to

<sup>31</sup> Ibid., 760.

<sup>32</sup> Brian Barry, 'A Commitment to Impartiality: Some Comments on the Comments', *Political Studies* 44 (1996): 328–342, 330.

<sup>33</sup> See J. Waldron, *God, Locke and Equality: Christian Foundations in John Locke's Political Philosophy* (Cambridge: Cambridge University Press, 2002). Though interesting and relevant, Waldron spends the bulk of his time articulating the problem rather than canvassing possible solutions, with the exception of his broader, speculative claim that equality might need a religious, and specifically Christian, foundation. Since Waldron's study, there have been further attempts to address the question of what (if anything) grounds basic



address this issue no doubt stems from the aforementioned suspicion of metaphysical claims and from the related embarrassment over the particularly theological origins of the idea of equality. Locke shows no shyness about the foundations of his political theory: his is a thoroughly religious understanding of human moral equality. Individuals are, for him, *created equal by God* and this assertion is exactly the sort of controversial metaphysical claim that contemporary liberals eschew.

As I have sought to demonstrate throughout my analysis, equality is the pivotal concept in Paine's political theory: human rights exist *by virtue of* the equal moral status of the individuals who hold them. And yet he spends little time furnishing this egalitarian commitment with any substantial philosophical justification. On one of the few occasions in which he does tackle the tricky business of justifying equal rights, he seems unable to do so. In his *Dissertation on First Principles of Government*, he actually appears to attempt the derivation of a principle of equal rights, from the apparent *inability* to demonstrate its foundation, when he writes,

As, therefore, it is *impossible* to discover any origin of rights otherwise than in the origin of man, it consequently follows, that rights appertain to man in right of his existence only, and must, therefore, be equal to every man.<sup>34</sup>

This position is analogous to that often adopted by modern liberals, insofar as it presents human equality as a kind of default moral position. Paine's claim would seem here to be that because the source of rights cannot be meaningfully identified as having come into existence at any point other than at the 'origin' of existence, it must therefore be the *fact* of existence that generates rights. This is certainly not, in itself, much of an argument.

The morally significant feature that each individual shares is, for Paine, that they were created by God. In *Rights of Man*, Paine claims that because 'man is all of *one degree*', it follows 'consequently that all men are born equal and with equal natural rights'.<sup>35</sup> Immediately following this, he then asserts explicitly that the egalitarian 'unity of man' is one maintained through 'creation instead of

equality. See, for instance, Ian Carter, 'Respect and the Basis of Equality', *Ethics* 121 (2011): 538–571, and Christopher Nathan, 'Need There Be a Defence of Equality?', *Res Publica* 17 (2011): 211–225.

<sup>34</sup> Paine, 'DFPG', CW II, 583, emphasis added. <sup>35</sup> Paine, 'ROM', CW I, 274.

generation'.<sup>36</sup> In other words, individuals do not acquire their moral status as a bequest from previous generations, but rather from the fact that they were *created* as equals. This statement about the relationship between divine creation and the truth of equality is not unique in his writing. Elsewhere in *Rights of Man*, Paine unequivocally maintains that 'the illuminating and divine principles of the equal rights of man . . . has its origin from the Maker of man'<sup>37</sup> and also that 'every child born into the world must be considered as deriving its existence from God'.<sup>38</sup> Such sentiments are also prominent in his other political writings. When he discusses the concept of political equality in *Common Sense*, his assertion is that 'mankind' are 'originally equals in the order of creation'.<sup>39</sup> During his defence of the equal right to natural property in *Agrarian Justice*, a key part of his argument therein rests on the belief that such property was not manufactured by humans but instead 'comes from the Creator of the Universe': in this case, creative equality implies not only political equality but some form of material equality.<sup>40</sup>

Paine, like Locke, thus invokes a divinely creative understanding of human equality, one that regards individuals as equals because they have been created so by God. This would also appear to distance Paine from modern, secular liberalism: even if the normative conclusions he advances fit that description, the ultimate foundation for its core premise looks explicitly metaphysical in character. That said, the differences between Paine and Locke are really more instructive and revealing than this foundational similarity, when it comes to understanding their conceptions of the relationship between politics and morality. For one thing, as noted, Paine has no morally instructive account of natural law and he rejects the idea of normatively prior duties as well as the teleology that would entail. The types of behaviours that Locke identifies as 'commanded' by God, such as industry, procreation and whatever is necessary to preserve human life, are simply absent from Paine's writings. Paine does not even identify one particular way in which to recognise or mark the existence of God. In fact, despite his multiple, vituperative criticisms of Christianity, he still insists that 'if one man choose to believe the book called the Bible to be the Word of God, and another . . . thinks he ought not to believe it to be

<sup>36</sup> *Ibid.*    <sup>37</sup> *Ibid.*    <sup>38</sup> *Ibid.*    <sup>39</sup> Paine, 'CS', CW I, 9, emphasis added.

<sup>40</sup> Paine, 'AJ', CW I, 606.

the Word of God, each of them has an equal right' to do so.<sup>41</sup> Jack Fruchtman, Jr., is thus right to argue that, for Paine, God 'did not demand anything more of human beings than that they observe his magnificent creation and imitate His good works'.<sup>42</sup> And as we have seen, these demands from God do not translate into any specific obligations in the political sphere – where individuals have complete freedom of thought and non-injurious action – except through the recognition of rights.

It is important to stress that the absence of Lockean duties or divine prescriptions from Paine's writing is not an accidental omission or oversight on his part. In *The Age of Reason*, he makes his view on this matter very clear, emphasising that

We cannot *serve* God in the manner we serve those who cannot do without such service; and, therefore, the only idea we can have of serving God is that of contributing to the happiness of the living creation that God has made. This cannot be done by retiring ourselves from the society of the world and spending a recluse life in selfish devotion.<sup>43</sup>

This passage shows that there is only one substantive duty that Paine thinks individuals must observe with reference to God. It is a vague, yet demanding one, which requires that each person '[contribute] to the happiness of the living creation that God has made': it is vague insofar as no specific action or inaction is identified, but it is demanding because it requires individuals to respect each other's rights and to protect the exercise of freedoms that each right affords. Beyond this, there are no duties that individuals owe to God, in terms of a particular life plan that they should follow or in specific ways in which they should worship or recognise His existence.

## Providence and justice

The interpretation that the only directly informative role of God in Paine's political theory is to ground his axiomatic liberal commitment to moral equality has been disputed by Ian Harris, one of the few scholars to pay close attention to his religious views. Harris goes so

<sup>41</sup> Paine, 'Prosecution of "The Age of Reason"', CW II, 743–744.

<sup>42</sup> J. Fruchtman, Jr., *The Political Philosophy of Thomas Paine* (Baltimore: The Johns Hopkins University Press, 2009), 25.

<sup>43</sup> Paine, 'AOR', CW I, 506.

far as to argue that theology is the ‘single feature’ that unifies Paine’s thought, underpinning his main political arguments.<sup>44</sup> He emphasises Paine’s invocation of an authoritative idea of nature that is egalitarian rather than hierarchical and that is juxtaposed to the artificial inequalities visible in monarchical societies. Basic inequalities in political or economic status are thus dismissed on the grounds that they are antithetical to God’s intentions.<sup>45</sup> We have already seen how this is manifested in Paine’s critique of Burke and hereditary government and in his dismissal of the idea that people can be legitimately born into poverty. For Paine, because ‘every child born into the world must be considered as deriving its existence from God’, each has an equal ‘natural right . . . of the same kind’.<sup>46</sup>

However, the way in which Harris understands the relationship between theology and politics in Paine’s writing goes far beyond this emphasis on the contrast between natural egalitarianism and unnatural hierarchy. His most striking claim is that Paine’s theology generates a very specific attitude towards the concept of justice. For Harris, Paine’s theology reveals a strong commitment to the moral concept of *merit*: for him, ‘providence respected moral desert’.<sup>47</sup> Harris argues that ‘The God of Paine might be assumed to respect merit where He found it, and an order based on merit would be proper’.<sup>48</sup> God’s intentions are generative of such a normative requirement and Paine therefore ‘developed merit as a ruling principle in both political organisation and in civilisation generally’,<sup>49</sup> believing that ‘society as well as government would be reorganised to respect equality and merit’.<sup>50</sup> Harris is clear in his view that for Paine this principle of merit applies both to the distribution of offices, which would require ‘political superiors’,<sup>51</sup> and of property, the ownership of which implies ‘superiority of talents’.<sup>52</sup>

A similar species of argument has – as mentioned briefly in the [Introduction](#) – been advanced by Isaac Kramnick, who, despite his suggestion that Paine’s ‘every reflex is egalitarian’, nevertheless argues that his political theory is defined by the centrality of the view that

<sup>44</sup> Ian Harris, ‘Paine and Burke: God, Nature and Politics’ in M. Bentley (ed.), *Public and Private Doctrine: Essays in British History presented to Maurice Cowling* (Cambridge: Cambridge University Press, 1993), 34–62.

<sup>45</sup> *Ibid.*, 44, 48. <sup>46</sup> Paine, ‘ROM’, CW I, 274.

<sup>47</sup> Harris, ‘Paine and Burke’, 49. <sup>48</sup> *Ibid.*, 59. <sup>49</sup> *Ibid.* <sup>50</sup> *Ibid.*, 60.

<sup>51</sup> *Ibid.*, 59. <sup>52</sup> *Ibid.*, 60.

merit is the just distributive principle for a society, a position that then justifies radical inequalities of outcome for individuals.<sup>53</sup> For Kramnick, Paine's political theory is, like other British radicals in the 1790s, motivated solely by a concern with equality of opportunity: it is interested in the removal of what are identified as arbitrary distinctions of rank implied by hereditary institutions, and makes the case instead for a society in which the talented are the beneficiaries of inequalities, which thereby become accorded legitimacy. Harris's argument is more subtle and nuanced than Kramnick's, since it trades not on any epiphenomenal thesis about Paine's ideological aims or class position, but instead on the claim that his political beliefs are rooted ultimately in an overarching account of natural theology. His interpretation looks quite attractive upon first consideration, not least because it posits a unity across Paine's thought and helps flesh out the role that his belief in God actually plays in his politics.

Yet Harris's more sophisticated, theological version of the meritocratic interpretation of Paine's views on justice is unconvincing. This is both because it suffers from a paucity of directly supporting evidence and because it jars with so many of the other views Paine expresses in the works that we have already considered. Paine's political writing contains no call for either political offices or property to be distributed according to a principle of merit. In the case of the former, Harris rightly points out that Paine believes that representative government 'admits of none but men properly qualified into the Government, or removes them if they prove to be otherwise' and uses this sentiment as evidence to imply the endorsement of meritorious political superiors.<sup>54</sup> However, as shown in our earlier discussion of Paine's theory of representative democracy, it is clear that he envisages *all* citizens to be involved in politics and not merely a particular section of society. He does think that democratic governments will – through the process of electing representatives – tend to be comprised of individuals who are, in general, qualified for the positions they hold, in contrast to the hereditary alternatives. Nonetheless, as the very quotation that Harris instances makes plain, this is not *always* going to be the case: individuals can only be revealed as insufficiently qualified for office *after* they

<sup>53</sup> I. Kramnick, *Republicanism and Bourgeois Liberalism* (Ithaca: Cornell University Press, 1991).

<sup>54</sup> Harris, 'Paine and Burke', 59; Paine, 'Letter Addressed to the Addressers', *CW* II, 489–490.

have been elected to it and they can always be removed through the same electoral means by which they arrived. In Paine's thought, there is no notion that the roles of representatives are to be filled by a particular group of talented or meritorious individuals, and there is certainly no reason to think he regards the holding of political office as a kind of reward for a superior type of person.

Harris's thesis risks the same degree of exaggeration with regard to the distributive sphere. It is true that Paine has no objection to the existence of material inequalities and it is also true that he cites 'superiority of talents' as one of the potential causes of such legitimate inequalities. But it is not the *only* possible cause. As we have seen, he also cites phenomena like 'dexterity of management, extreme frugality, fortunate opportunities' when explaining why inequalities of ownership are seemingly inevitable.<sup>55</sup> What should immediately be obvious is that the concepts of merit and talent are necessarily antithetical to that of 'fortunate opportunities': the definitive characteristic of a fortune- or luck-based acquisition is obviously that it pays absolutely no attention to the moral capacities of individuals nor makes any effort to track responsibility for acting meritoriously. The main reason for this lies in Paine's aforementioned account of the *nature of property* itself: in his view, individuals can – through a variety of means – come to hold full ownership rights over objects that inevitably enable and protect a kind of 'unpatterned' distribution, one that depends hugely on the exercise of individual choices. There is no necessary connection, for Paine, between the legitimate ownership of property and the display of meritorious behaviour or the possession and exercise of talent. So, while it is true that Paine does regard the hereditary governments of the old world to be the enemies of merit and that this is a moral problem, it need not and *does not* follow from this that God sanctions reward as a principle of political or economic justice.

Paine certainly takes the concept of individual responsibility seriously; indeed, he expresses significant worries about its diminution in the Christian doctrine of redemption.<sup>56</sup> At no point in his thought,

<sup>55</sup> Paine, 'DFPG', CW II, 580.

<sup>56</sup> He writes 'the dogma of the redemption is the fable of priest craft invented since the time the New Testament was compiled, and the agreeable delusion of it suited with the depravity of immoral livers. When men are taught to ascribe all their crimes and vices to the temptations of the devil, and to believe that Jesus, by his death, rubs all off, and pays their passage to heaven gratis, they become as

however, does this relate to any notion of reward or punishment, or even moral judgement. If Harris were right that Paine thinks the recognition or reward of merit is in line with God's intentions, then we might expect to find clinching evidence of it in his account of the afterlife.<sup>57</sup> The evidence is, however, ambiguous at best. In his essay on the topic, he does suggest that the very good people of the world will be 'happy hereafter' and the 'very wicked will meet with some punishment', while those 'who are neither good nor bad . . . will be dropped entirely'.<sup>58</sup> But when it comes to specifying the grounds upon which such judgement about a person's goodness is made, Paine does not bring in any strong notion of moral desert and suggests instead that the 'only way in which we can serve God' (and thus be candidates for the reward of eternal happiness after death) is 'doing good, and endeavouring to make their fellow-mortals happy'.<sup>59</sup> Paine also, in the end, rejects the Christian claim that individuals will be divided by God 'into two parts, the righteous and the unrighteous, figuratively called the sheep and the goats'. The reason for this is that 'the moral world, like the physical world, is composed of numerous degrees of character' and therefore 'cannot be thus divided'.<sup>60</sup> Nothing Paine writes vindicates the claim that a divinely sanctioned principle of merit is necessary for justice or equality. We can therefore reject this vision of the relationship between his religion and his politics, which sees the latter deriving in a determinate way from the former.

## Nature and the vindication of God's existence

In Paris during the late 1790s, Paine was involved with the society called the 'Theophilanthropists', their name being 'a word compounded of three Greek words, signifying God, Love, and Man'.<sup>61</sup> As part of his letter to Thomas Erskine concerning the 'Prosecution of *The Age of Reason*', he includes an account of the various Theophilanthropist modes of worship, which are designed to be 'convenient' and comprise

careless in morals as a spendthrift would be of money were he told that his father had engaged to pay off all his scores' (Paine, 'Of the Religion of Deism Compared with the Christian Religion, and the Superiority of the Former over the Latter', CW II, 801).

<sup>57</sup> Fruchtmann, Jr., thinks that there is such evidence, though he does not cite where it can be found (*The Political Philosophy of Thomas Paine*, 22).

<sup>58</sup> Paine, 'My Private Thoughts on a Future State', CW II, 893. <sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.* <sup>61</sup> Paine, 'Prosecution of *The Age of Reason*', CW II, 745.

'festivals' of discourses and lectures on God that are not 'exclusive' in terms of their approach, in order that 'disciples of any sect' can happily partake in them.<sup>62</sup> He identifies the two sole dogmas of the society, beliefs in 'the existence of God and the immortality of the soul', and reiterates his critique of Biblical authority.<sup>63</sup> Instead of any such textual vehicles for revealed religion, Paine's contention is that 'the universe is the bible of a true Theophilanthropist'. 'It is', he claims, 'there that he reads of God' and 'there that the proofs of His existence are to be sought and to be found'.<sup>64</sup>

This statement – that the universe is where God can be *read* and where *proof* of His existence be found – might appear initially something of a throwaway remark, or a purely metaphorical notion. But I want now to suggest that attention to Paine's religious writings shows that this is more than just a figurative gesture, and that he does think it is through encounters with the universe that we come to vindicate the existence and appreciate the beneficence of a God. The extent to which this is so becomes clear when proper heed is paid to the concept of creation in his writing. Paine thinks that it is through an appreciation of the nature and scale of creation that we come to have knowledge of the existence of God and His character. For him, unlike the Bible, or any such purportedly sacred text,

it is only in the CREATION that all our ideas and conceptions of a *word of God* can unite. The creation speaketh a universal language, independently of human speech or human languages, multiplied and various as they be. It is an ever-existing original, which every man can read . . . it publishes itself from one end of the earth to the other. It preaches to all nations and to all worlds.<sup>65</sup>

The fact of creation is thus available for *all* to apprehend and is itself a form of 'revelation': for Paine, 'THE WORD OF GOD IS THE

<sup>62</sup> *Ibid.*, 747.

<sup>63</sup> *Ibid.* The simplicity of the beliefs required of true religion is a recurring theme in his writing. Elsewhere, he suggests that its creeds are 'pure, and sublimely simple' and that Deism 'believes in God, and there it rests' ('Of the Religion of Deism Compared with the Christian Religion, and the Superiority of the Former over the Latter', CW II, 802).

<sup>64</sup> Paine, 'The Existence of God', CW II, 749.

<sup>65</sup> Paine, 'AOR', CW I, 483. He continues, arguing that 'the creation we behold is the real and ever-existing word of God in which we cannot be deceived. It proclaimeth his power, it demonstrates his wisdom, it manifests his goodness and beneficence' (*Ibid.*, 502).



CREATION WE BEHOLD and it is *this word* . . . that God speaketh universally to man'.<sup>66</sup> Part of his argument about discovering creation through God is deductive and concerns the nature of reality.<sup>67</sup> He suggests that the natural position of the matter that comprises the universe is in 'a state of rest' and from this deduces that motion is not an internal 'property' of it. And yet, though 'composed of matter', the universe is nonetheless 'sustained by motion', something that thus requires an explanation that is not internal to its composition.<sup>68</sup> The conclusion Paine reaches from this is that 'motion, or change of place, is the effect of an *external cause* acting on matter'.<sup>69</sup> And this external cause must, he thinks, be God.

Arthur Aldridge claims that Paine 'considered the existence of God as a point so clear and evident in itself that it suffers by any attempt to prove it'.<sup>70</sup> This observation looks more than a little strange, given the amount of energy Paine expends trying to do just that throughout the theological dissertations that make up the majority of his final writings. But Aldridge may actually be on to something, insofar as Paine's discussions of God are – with the exception of rare invocations of the principles of natural philosophy, such as the contentions about matter and motion noted above – perhaps most accurately understood as *not* being concerned with justification of His existence, at least not through a strictly deductive argument seeking to provide a demonstrative proof. Paine's view is rather that vindication of God's existence is to be found through encounters with the natural world, the world of creation. It is from such encounters that we are led to believe in a God, a 'first cause' of ourselves and everything that surrounds us, one whose existence becomes clear and evident. Paine's belief in God stems from more than what he identifies as our inability to explain the motion of matter

<sup>66</sup> Paine, 'AOR, CW I, 482. Elsewhere, he writes, 'Do we want to know what God is? Search not the book called the Scripture, which any human hand might make, or any imposter invent; but the SCRIPTURE CALLED CREATION' ('Examination of the Prophecies', CW II, 882).

<sup>67</sup> 'If we examine [creation] through all its cases, the result will be that the existence of a SUPERIOR CAUSE, or that which man calls GOD, will be discoverable by philosophical principles' (Paine, 'The Existence of God', CW II, 751).

<sup>68</sup> Paine, 'The Existence of God', CW II, 751. <sup>69</sup> *Ibid.*, emphasis added.

<sup>70</sup> A.O. Aldridge, *Man of Reason: The Life of Thomas Paine* (London: Cresset, 1959), 229.

through reference to its internal properties: his argument is not merely that the *absence* of any other explanation of this natural fact means we need therefore to bring in the idea of a Deity. Instead, much of his writings about the nature of creation, and about the fact that it is a mechanism through which individuals come to recognise the existence and character of God, offers something that resembles a phenomenological account of religious truth.

Paine's appeal is to the *experience* of creation and not just abstract knowledge of the scientific properties of the natural world. It is thus through an experiential or phenomenological mode of argument that the existence of a Deity is defended, as our experience of the natural world demonstrates a sense of purpose and unity that cannot be attributed to the creation of human beings and instead reveals the work of a higher power. The phenomenological status of Paine's argument is not always immediately clear, since he refers frequently to the importance of 'reason' for verifying God's existence. It would, however, be a mistake to regard his conception of reason as being purely a matter of logic, divorced entirely from an experiential alternative. This becomes evident in one of his essays on the nature of Deism, where he declares that 'it is by the exercise of our reason that we are enabled to contemplate God', and then immediately expands on this statement, arguing that 'when we *see* His care and goodness extended over all His creatures, it teaches us our duty toward each other, while it calls forth our gratitude to Him'.<sup>71</sup> Reason is here clearly characterised as the ability to *see* something in the world, to witness something which *calls* to us: the argument is couched in explicitly sensual rather than logical terms, providing us with a vision and a voice.

During another critique of the New Testament, he signals the ways in which an encounter with the natural world actually reveals God's character. He writes,

Do we want to contemplate His power? We see it in the immensity of His creation. Do we want to contemplate His wisdom? We see it in the abundance with which He fills the earth. Do we want to contemplate His mercy? We see it in His not withholding that abundance, even from the unthankful. Do we want to contemplate His will, so far as it respects man?

<sup>71</sup> Paine, 'Of the Religion of Deism Compared with the Christian Religion, and the Superiority of the Former over the Latter', CW II, 797, emphasis added.

The goodness He shows towards all is a lesson for our conduct to each other.<sup>72</sup>

The act of contemplation – of the power, wisdom and mercy that nature provides – is the mechanism through which individuals grasp the existence of God and know His character. If his vindication of the existence of God and His character and virtues is taken as phenomenological, then it offers a partial response to a worry expressed by Mark Philp about the lack of theoretical sophistication that he thinks characterises Paine's religious writings. Philp suggests that Paine's 'account of the intimate connection between belief in God and the nature of our moral duties is actually very weak' because 'there is no way of deducing from the existence of God that one ought to live the kind of life which Paine aspired to lead'.<sup>73</sup> One response might be to say that Paine is not actually attempting any such *deduction* at all, but is rather making an appeal based on the inspection of one's consciousness when confronted with, and arrested by, what he views as the limitless wonder of nature. This conclusion looks even more plausible when we reiterate that Paine is not attempting to derive any specific moral duties from his account of God's intentions, beyond the protection of rights and the (subjectively interpreted) obligation to serve Him. Such a response does not, of course, actually vindicate Paine's argument, but it would show that it does not rest solely on what looks to be a straightforward deductive fallacy.

## Conclusion

The commitment to Deism articulated by Paine in his religious writings undoubtedly coheres with the theological content of his political works. For Paine, God is the first cause of the natural world. Through our experiential encounters with this world – through our contemplation and beholding of our surroundings – Paine thinks knowledge of the divine is generated. And he is quite clear about what he thinks transpires when this true source of religious understanding is ignored, because Christianity provides all necessary evidence of it. The Christian religion – despite its rootedness in some laudable moral precepts – goes astray, as do many other faiths, by

<sup>72</sup> Paine, 'Examination of the Prophecies', CW II, 882.

<sup>73</sup> Philp, *Paine*, 111. Philp is, on the whole, critical of Paine's attempt to justify his claims about religion (112–113).

positing a scripture, a work of human hands, as the source of authority for understanding the nature of God and divine truth. For Paine, it is no surprise that individuals, when faced with the impossible task of articulating God's wisdom in a supposedly sacred text, end up appealing to mystical ideas of miracles, prophecies and dreams and, when faced with the challenge of maintaining the power and authority of organised churches, invoke visions of the Deity as cruel, violent and vengeful.

What, though, of the precise relationship between Paine's Deism and his thoroughgoing liberalism? As we have established, for him a commitment to Deism begets a commitment to equality: individuals are moral equals because they have been created as such, without any natural hierarchy. It is not exactly the case that God *gives* individuals the inalienable rights they have: it is rather that the rights are implied by, or are an expression of, that equality. Individuals are created equal and rights are simply the conceptual entailment of this, necessary for political interaction with others. As suggested earlier in this chapter, there is a connection between contemporary liberalism and the rejection of any commitment to the sort of metaphysical commitments that inevitably come with an idea of religious truth. Modern liberalism is secular, not only in the normative sense of being neutral between competing conceptions of the good, but all the way down to its foundations. Its advocates would balk at any reference to God, and would instead prefer not to invoke any foundational principle to explain the egalitarian baseline from which their theorising begins, perhaps instead hoping that any assumption of basic inequality amongst individuals will raise justificatory questions that are even more difficult to answer.

Paine's normative secular liberalism is unlike that familiar to twenty-first century eyes, insofar as it is built upon religious foundations. What are we to make of this when it comes to overall consideration of his theory of human rights? Within scholarly accounts of Locke's political thought – which have inevitably had to address the issue of religious foundations – two very different approaches have been canvassed. On the one hand, Simmons concludes that 'the Lockean theory of rights may serve as a viable foundation for *ours*' because 'the logical detachability of much of Locke's theory from his theology allows it to function as a consistent development of secular moral theory'.<sup>74</sup> On the

<sup>74</sup> A.J. Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), 354, emphasis added.

other hand, Waldron has argued that not only can Locke's normative arguments not be detached from his theological foundations, but also that it is precisely those foundations that make his thought of continuing philosophical interest.<sup>75</sup> The first view is that the theology can be ignored or bracketed, such that the politics stands alone; the second is that the theology is itself politically and philosophically valuable.

When it comes to an appreciation of Paine's political thought as a whole, I think it is best to avoid both of these *culs-de-sac*. The concepts of human rights and individual equality are central to and vital for the political vocabularies and self-understandings of liberal societies. In the same way as a preoccupation with the normative bottom line of thought does undue violence to the process of philosophical understanding, a preoccupation with the metaphysical bottom line can do likewise. We are sufficiently familiar with the genealogies of our values and the contingencies of our political inheritances to take on board any theological baggage they have, without either an obsessive need to cast it aside when it appears or an equally dubious desire to ascribe argumentative authority to it. The value and interest of Paine's theory of human rights should be assessable separately from the plausibility of its ultimately theological foundations. It should be appreciated for what it is: a historically distinct and philosophically unique attempt to articulate a vision of politics that places the values of equality and freedom at its centre.

<sup>75</sup> Waldron, *God, Locke, and Equality*.



## *Conclusion*

The political idea that runs most prominently throughout Thomas Paine's thought is undoubtedly that of individual rights: fundamental, inalienable and inviolable entitlements that are held by each member of the moral universe against every other person, as well as the state governing the community of which a particular person is a member. His understanding and specification of these rights is a striking departure from the proto-liberalism of Locke in its eschewal of the notion of normatively prior duties: rather than deriving human rights from some teleological account of an end for which they should be thought instrumental to, or some thick, divinely commanded description of natural law, they stand in Paine's thought as derivations from our status as moral equals. In terms of content, the rights identified by Paine include the classic liberal freedoms of thought, expression, religious belief and bodily integrity, the protection of which is, along with the conferral of consent, a necessary condition for political obligation and the corresponding legitimacy of a government. Yet there is also much more to Paine's account of human rights than this catalogue of basic libertarian commitments. In his view, the equality of citizens demands that government take the form of a representative democracy, which provides avenues for political participation as well as universal electoral rights. Paine thinks that the reform of political institutions can have a seismic effect on the minds of individuals, creating citizens who are only too happy to undertake civic duties and make democratic deliberation a part of their everyday lives, rather than view the state with suspicious detachment and as nothing more than a guarantor of their entitlements.

In addition to his insistence that legitimate government must adopt a certain institutional form, Paine strays from libertarianism further in his discussion of economic rights. For him, private property can be legitimately acquired by anyone able to add value to unowned land through individual acts of cultivation, and the entitlement to such holdings includes all the conventional powers associated with

ownership, including transfer and bequest. However, because the legitimate holding extends only as far as this value added to land, it follows that property ownership actually becomes a universally held human right, one that should be protected through a redistributive capital grant to be guaranteed in all societies. Paine's vision of both economic and social justice is ultimately global: he is committed to a cosmopolitanism that views rights as universally held, rather than limited to certain nations or cultures. Although their composition is malleable, nations can come to have rights that generate duties of non-interference from others, but such rights are contingent on the protection of the universal entitlements that he spends so much time identifying. While he does not explicitly define it as a matter of justice, it seems that his theory also implies the protection of human rights in emergency circumstances. We have seen that attention to Paine's religious beliefs shows both that rights are grounded in his view that individuals were created equally by God and that his Deism coheres with, but does not directly generate, his accounts of political or economic justice.

One of the main aims in this study has been to put forward a novel interpretation of Paine's thought on a number of specific issues and themes that remain relevant to contemporary political philosophy, as well as offering a synthesising assessment of his overall identity as a political thinker. But another, broader objective has been the retrieval and rehabilitation of a particular way of doing political theory. As I made clear at the beginning of this study, my purpose for reading Paine and reconstructing his philosophical beliefs is *not* to find answers to our political questions, but instead to seek a kind of intellectual and ethical therapy through an interpretive dialogue with him. I have therefore sought to demonstrate that one can engage in substantive normative theorising without adopting the prescriptive tone of voice found in much contemporary political philosophy: the normative logic and implications of liberal commitments can be unpacked through historical interpretation, without the question of substantive endorsement of the emerging viewpoints ever really arising. If Waldron is right (and I think he is) that we should be far less quick to chase the normative bottom line in our discussions and focus instead on what is to be gained from the process of philosophical reflection on political matters, then the act of interpretation can be recast as a not only legitimate but potentially fruitful form of political theorising itself. The process of interpretation allows us to suspend the pontifical and

recommendatory tone that can inflect normative theory occasionally in such a way as to deny the fact that political philosophy is, at root, an activity open to all. Indeed, I have tried to vindicate the view that Paine should *not* be thought *either* a political actor *or* a political philosopher, because the two roles must be considered simultaneous, and in no way mutually exclusive. Crucially, however, the suggestion that the two are synchronous does not imply a necessary diminution of one and a privileged status for the other: it does not entail that philosophy must always be thought of as a *form* of political engagement and is therefore reducible to ideology or activism. The point is rather that the two activities are almost always entwined. So, while scholars occasionally make much of the idea that doing philosophy can be a political activity – often accompanied by fanciful notions of its efficacy – it is important to remember that this also often works the other way, such that political discussion very easily can acquire the status of philosophical argument. While Quentin Skinner is no doubt on to something when he remarks that ‘seminar rooms are really [political] battlefields’, it is worth remembering that it is no less true to say that political battlefields – particularly of the sort in which Paine was fighting – are really no different from seminar rooms, as far as the limitless possibilities for substantive philosophical argument are concerned.<sup>1</sup>

<sup>1</sup> Q. Skinner, *Visions of Politics, Volume I: Regarding Method* (Cambridge: Cambridge University Press, 2002), 7.



# *Bibliography*

## **Works by Paine**

- Paine, T., 'An Occasional Letter on the Female Sex', CW II, 1775.  
Paine, T., 'The Magazine in America', CW II, 1775.  
Paine, T., 'Thoughts on Defensive War', CW II, 1775.  
Paine, T., 'Common Sense', CW I, 1776.  
Paine, T., 'The American Crisis V', CW I, 1778.  
Paine, T., 'The American Crisis VII', CW I, 1778.  
Paine, T., 'To the Public on Mr. Deane's Affair', CW II, 1778.  
Paine, T., 'To the Public on Robert Morris's Address', CW II, 1779.  
Paine, T., 'Dissertations on Government; The Affairs of the Bank; and Paper Money', CW II, 1786.  
Paine, T., 'Letter to Jefferson', CW II, 1789.  
Paine, T., 'Rights of Man', CW I, 1791.  
Paine, T., 'To the Abbé Sieyès', CW II, 1791.  
Paine, T., 'Rights of Man, Part the Second', CW I, 1792.  
Paine, T., 'Letter Addressed to the Addressers', CW II, 1792.  
Paine, T., 'To Mr. Secretary Dundas', CW II, 1792.  
Paine, T., 'Address to the People of France', CW II, 1792.  
Paine, T., 'Reasons for Preserving the Life of Louis Capet', CW II, 1793.  
Paine, T., 'The Age of Reason', CW I, 1794.  
Paine, T., 'Dissertation on First Principles of Government', CW II, 1795.  
Paine, T., 'The Age of Reason, Part Second', CW I, 1795.  
Paine, T., 'Agrarian Justice', CW I, 1796.  
Paine, T., 'The Decline and Fall of the English System of Finance', CW II, 1796.  
Paine, T., 'Prosecution of the Age of Reason', CW II, 1797.  
Paine, T., 'Worship and Church Bells', CW II, 1797.  
Paine, T., 'To the Council of Five Hundred', CW II, 1798.  
Paine, T., 'The Existence of God', CW II, 1801.  
Paine, T., 'Biblical Blasphemy', CW II, 1804.  
Paine, T., 'To Mr. Moore, of New York, Commonly Called Bishop Moore', CW II, 1804.

- Paine, T., 'To the People of England on the Invasion of England', CW II, 1804.
- Paine, T., 'Of the Religion of Deism Compared with the Christian Religion, and the Superiority of the Former over the Latter', CW II, 1804.
- Paine, T., 'Examination of the Prophecies', CW II, 1807.
- Paine, T., 'My Private Thoughts on a Future State', CW II, 1807.
- Paine, T., 'Predestination: Remarks on Romans, IX, 18–21', CW II, 1809.
- Paine, T., 'The Will of Thomas Paine', CW II, 1809.

### Other works

- Aldridge, A.O., *Man of Reason: The Life of Thomas Paine*, London: Cresset, 1959.
- Ayer, A.J., *Thomas Paine*, London: Secker and Warburg, 1988.
- Ball, T., "The Earth Belongs to the Living": Thomas Jefferson and the Problem of Intergenerational Relations', *Environmental Politics* 9 (2000), 61–77.
- Barry, B., 'A Commitment to Impartiality: Some Comments on the Comments', *Political Studies* 44 (1996), 328–342.
- Beckerman, W., "The Myth of Finite Resources", cited in Brian Barry, "Justice between Generations", *Liberty and Justice: Essays in Political Theory* 2, Oxford: Clarendon Press, 1991.
- Beitz, C., 'Cosmopolitan Liberalism and the States System' in C. Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives*, London: Routledge, 1994, 123–136.
- Berry, C.J., *Social Theory of the Scottish Enlightenment*, Edinburgh: Edinburgh University Press, 1997.
- Bevir, M., *The Logic of the History of Ideas*, Cambridge: Cambridge University Press, 1999.
- Burke, E., 'Speech to the Electors of Bristol', *The Works of Edmund Burke*, Volume 3, London: F. & C. Rivington, 1801.
- Burke, E., 'Reflections on the Revolution in France' in I. Hampsher-Monk (ed.), *Burke: Revolutionary Writings*, Cambridge: Cambridge University Press, 2014, 3–250.
- Byrne, P., *Natural Religion and the Nature of Religion: The Legacy of Deism*, London: Routledge, 1989.
- Caney, S., 'Cosmopolitanism and the Law of Peoples', *The Journal of Political Philosophy* 10 (2002), 95–123.
- Carter, I., *A Measure of Freedom*, Oxford: Oxford University Press, 1999.
- Carter, I., 'Respect and the Basis of Equality', *Ethics* 121 (2011), 538–571.
- Claeys, G., *Thomas Paine: Social and Political Thought*, London: Unwin Hyman, 1989.

- Claeys, G., 'The Origins of the Rights of Labor: Republicanism and Commerce in Britain, 1796–1805', *Journal of Modern History* 66 (1994), 249–290.
- Claeys, G., *The French Revolution Debate in Britain: The Origins of Modern Politics*, Basingstoke: Palgrave Macmillan, 2007.
- Cohen, G.A., *Karl Marx's Theory of History: A Defence*, Oxford: Oxford University Press, 1978.
- Cohen, G.A., *Self-Ownership, Freedom and Equality*, Cambridge: Cambridge University Press, 1995.
- Collingwood, R.G., *An Autobiography*, Oxford: Clarendon Press, 1978.
- Collingwood, R.G., *The Principles of History, and Other Writings in the Philosophy of History* (eds.) W.H. Dray and W.J. van der Dussen, Oxford: Clarendon Press, 1999.
- Conway, M., *The Life of Thomas Paine*, London: Knickerbocker Press, 1892.
- Douglass, R., 'Rousseau's Critique of Representative Sovereignty', *American Journal of Political Science* 57 (2013), 735–747.
- Dowding, K., De Wispelaere, J., and White, S. (eds.), *The Ethics of Stakeholding*, Basingstoke: Palgrave Macmillan, 2003.
- Dunn, J., *The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government'*, Cambridge: Cambridge University Press, 1969.
- Dworkin, R., *Taking Rights Seriously*, London: Duckworth, 1977.
- Dworkin, R., *Sovereign Virtue: The Theory and Practice of Equality*, Cambridge, MA: Harvard University Press, 2000.
- Dyck, I., 'Local Attachments, National Identities and World Citizenship in the Thought of Thomas Paine', *History Workshop Journal* 35 (1993), 117–135.
- Feinberg, J., *The Moral Limits of the Criminal Law, Volume I: Harm to Others*, Oxford: Oxford University Press, 1984.
- Fitzsimmons, D., 'Tom Paine's New World Order: Idealistic Internationalism in the Ideology of Early American Foreign Relations', *Diplomatic History* 19 (1995), 569–582.
- Fruchtman, Jr., J., *Thomas Paine: Apostle of Freedom*, New York: Four Walls Eight Windows, 1984.
- Fruchtman, Jr., J., *Thomas Paine and the Religion of Nature*, Baltimore: The Johns Hopkins University Press, 1993.
- Fruchtman, Jr., J., *The Political Philosophy of Thomas Paine*, Baltimore: The Johns Hopkins University Press, 2009.
- Gadamer, H.-G., *Truth and Method*, London: Continuum, 1989.
- Grotius, H., *The Rights of War and Peace* (ed.) R. Tuck, Indianapolis: Liberty Fund, 2005.

- Halldenius, L., 'The Primacy of Right: On the Triad of Liberty, Equality, and Virtue in Wollstonecraft's Political Thought', *British Journal for the History of Philosophy* 15 (2007), 75–99.
- Hampton, J., *Hobbes and the Social Contract Tradition*, New York: Cambridge University Press, 1986.
- Harris, I., 'Paine and Burke: God, Nature and Politics' in M. Bentley (ed.), *Public and Private Doctrine: Essays in British History Presented to Maurice Cowling*, Cambridge: Cambridge University Press, 1993, 34–62.
- Hart, H.L.A., 'Are There Any Natural Rights?', *Philosophical Review* 64 (1955), 175–191.
- Hawke, D., *Paine*, New York: Harper and Row, 1974.
- Heater, D., *World Citizenship and Government: Cosmopolitan Ideas in the History of Western Thought*, New York: St Martin's, 1996.
- Held, D., 'Principles of Cosmopolitan Order' in G. Brock and H. Brighouse (eds.), *The Political Philosophy of Cosmopolitanism*, Cambridge: Cambridge University Press, 2005, 10–27.
- Himmelfarb, G., *The Idea of Poverty: England in the Early Industrial Age*, London: Faber and Faber, 1984.
- Hobbes, T., *Leviathan* (ed.) R. Tuck, Cambridge: Cambridge University Press, 1991.
- Hohfeld, W.N., *Fundamental Legal Conceptions* (ed.) W. Cook, New Haven: Yale University Press, 1919.
- Hont, I., 'The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the "Four-Stages Theory"' in A. Pagden (ed.), *The Languages of Political Theory in Early-Modern Europe*, Cambridge: Cambridge University Press, 1987, 253–276.
- Horne, T., *Property Rights and Poverty: Political Argument in Britain, 1605–1834*, Chapel Hill: University of North Carolina Press, 1990.
- Hume, D. 'Of the Original Contract' in E.F. Miller (ed.), *Essays Moral, Political, and Literary*, Indianapolis: Liberty Fund, 1985, 465–487.
- Jackson, B., 'The Conceptual History of Social Justice', *Political Studies Review* 3 (2005), 356–373.
- Kant, I., 'An Answer to the Question: What is Enlightenment?' in H.S. Reiss (ed.), *Kant: Political Writings*, Cambridge: Cambridge University Press, 1991, 54–60.
- Kant, I., 'Idea for a Universal History with a Cosmopolitan Purpose' in H.S. Reiss (ed.), *Kant: Political Writings*, Cambridge: Cambridge University Press, 1991, 41–53.
- Kant, I., 'Perpetual Peace: A Philosophical Sketch' in H.S. Reiss (ed.), *Kant: Political Writings*, Cambridge: Cambridge University Press, 1991, 93–130.
- Kavka, G.S., *Hobbesian Moral and Political Theory*, Princeton: Princeton University Press, 1986.

- Keane, J., *Tom Paine: A Political Life*, London: Bloomsbury, 1995.
- Keane, J., *The Life and Death of Democracy*, London: Simon & Schuster, 2009.
- Kramer, M., *John Locke and the Origins of Private Property: Philosophical Explorations*, Cambridge: Cambridge University Press, 2004.
- Kramnick, I., *Republicanism and Bourgeois Liberalism*, Ithaca: Cornell University Press, 1991.
- Lamb, R., 'Quentin Skinner's Revised Historical Contextualism: A Critique', *History of the Human Sciences* 22 (2009), 51–73.
- Lamb, R., 'Locke on Ownership, Imperfect Duties and the "Art of Governing"', *British Journal of Politics and International Relations* 12 (2010), 126–141.
- Locke, J., *Two Treatises of Government* (ed.) Peter Laslett, Cambridge: Cambridge University Press, 1988.
- Luban, D., 'The Publicity Principle' in R.E. Goodin (ed.), *The Theory of Institutional Design*, Cambridge: Cambridge University Press, 1996, 154–198.
- Lyons, D., 'The Correlativity of Rights and Duties', *Nous* 4 (1970), 45–57.
- MacCormick, N., 'Rights in Legislation' in P. Hacker and J. Raz (eds.), *Law, Morality and Society: Essays in Honour of H.L.A. Hart*, Oxford: Oxford University Press, 1977, 189–209.
- MacCormick, N., *Legal Right and Social Democracy*, Oxford: Clarendon Press, 1982.
- MacIntyre, A., *A Short History of Ethics: A History of Moral Philosophy from the Homeric Age to the Present*, London: Routledge, 1987.
- MacIntyre, A., *After Virtue: A Study in Moral Theory*, London: Routledge, 1989.
- Macpherson, C.B., *The Political Theory of Possessive Individualism*, Oxford: Oxford University Press, 1962.
- Mill, J.S., 'Considerations on Representative Government' in J.M. Robson (ed.), *Collected Works of John Stuart Mill, Volume XIX: Essays on Politics and Society, Part 2*, Toronto: University of Toronto Press, 1977, 371–577.
- Mill, J.S., 'On Liberty' in S. Collini (ed.), *John Stuart Mill: On Liberty and other writings*, Cambridge: Cambridge University Press, 1989, 1–115.
- Nathan, C., 'Need There Be a Defence of Equality?', *Res Publica* 17 (2011), 211–225.
- Nozick, R., *Anarchy, State, and Utopia*, New York: Basic Books, 1974.
- O'Neill, M., 'Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice and Property-Owning Democracy' in M. O'Neill and T. Williamson (eds.), *Property-Owning Democracy: Rawls and Beyond*, Oxford: Wiley-Blackwell, 2012, 75–100.

- Okin, S.M., *Women in Western Political Thought*, Princeton: Princeton University Press, 1979.
- Paley, W., *The Principles of Moral and Political Philosophy* (ed.) D.L. Le Mahieu, Indianapolis: Liberty Fund, 2002.
- Pettit, P., *Republicanism: A Theory of Freedom and Government*, Oxford: Oxford University Press, 1997.
- Philp, M., *Paine*, Oxford: Oxford University Press, 1989.
- Philp, M., 'Introduction' in M. Philp (ed.), *Thomas Paine: Rights of Man, Common Sense and Other Political Writings*, Oxford: Oxford University Press, 1995, vii–xxvii.
- Pocock, J.G.A., *Politics, Language, and Time: Essays on Political Thought and History*, London: Methuen, 1972.
- Pocock, J.G.A., *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century*, Cambridge: Cambridge University Press, 1985.
- Pocock, J.G.A., *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton: Princeton University Press, 2003.
- Powell, D., *Tom Paine: The Greatest Exile*, London: Croom Helm, 1984.
- Price, R., 'A Discourse on the Love of Our Country' in D.O. Thomas (ed.), *Price: Political Writings*, Cambridge: Cambridge University Press, 1991, 176–96.
- Prochaska, F.K., 'Thomas Paine's *The Age of Reason* Revisited', *Journal of the History of Ideas* 33 (1972), 561–576.
- Pufendorf, S., *On the Duty of Man and the Citizen* (ed.) J. Tully, Cambridge: Cambridge University Press, 1991.
- Rawls, J., *Political Liberalism*, New York: Columbia University Press, 1993.
- Rawls, J., *The Law of Peoples*, Cambridge, MA: Harvard University Press, 1999.
- Rawls, J., *A Theory of Justice*, Oxford: Oxford University Press, 1999.
- Rawls, J., *Justice as Fairness: A Restatement*, Cambridge, MA: Belknap Press, 2001.
- Raz, J., 'On the Nature of Rights', *Mind* 93 (1984), 194–214.
- Rousseau, J.-J., 'Discourse on the Origin and Foundations of Inequality Among Men' in V. Gourevitch (ed.), *Rousseau: The Discourses and Other Early Political Writings*, Cambridge: Cambridge University Press, 1997, 111–222.
- Rousseau, J.-J., 'The Social Contract' in V. Gourevitch (ed.), *Rousseau: The Social Contract and Other Later Political Writings*, Cambridge: Cambridge University Press, 1997, 39–153.
- Sapiro, V., *A Vindication of Political Virtue: The Political Theory of Mary Wollstonecraft*, Chicago: University of Chicago Press, 1992.
- Seaman, J.W., 'Thomas Paine: Ransom, Civil Peace and the Natural Right to Welfare', *Political Theory* 16 (1988), 120–142.

- Sieyès, E., 'What is the Third Estate?' in M. Sonenscher (ed.), *Sieyès: Political Writings*, Indianapolis: Hackett, 2003, 92–162.
- Simmons, A.J., *Moral Principles and Political Obligation*, Princeton: Princeton University Press, 1979.
- Simmons, A.J., *The Lockean Theory of Rights*, Princeton: Princeton University Press, 1992.
- Skinner, Q., 'Meaning and Understanding in the History of Ideas' in J. Tully (ed.), *Meaning and Context: Quentin Skinner and His Critics*, Cambridge: Polity Press, 1988, 29–67.
- Skinner, Q., *Liberty before Liberalism*, Cambridge: Cambridge University Press, 1998.
- Skinner, Q., *Visions of Politics, Volume I: Regarding Method*, Cambridge: Cambridge University Press, 2002.
- Slomp, G., *Thomas Hobbes and the Political Philosophy of Glory*, Basingstoke: Palgrave MacMillan, 2000.
- Smith, A., *Lectures on Jurisprudence* (eds.) R.L. Meek, D.D. Raphael and P.G. Stein, Indianapolis: Liberty Fund, 1978.
- Smith, A., *An Inquiry into the Nature and Causes of the Wealth of Nations* (eds.), R. Campbell and A. Skinner, Indianapolis: Liberty Fund, 1981.
- Stedman Jones, G., *An End to Poverty? A Historical Debate*, London: Profile, 2004.
- Steiner, H., *An Essay on Rights*, Oxford: Blackwell, 1994.
- Steiner, H., 'Moral Rights' in D. Copp (ed.), *Oxford Handbook of Ethical Theory*, Oxford: Oxford University Press, 2006, 459–474.
- Strauss, L., *Natural Right and History*, Chicago: University of Chicago Press, 1953.
- Tierney, B., *The Idea of Natural Rights*, Atlanta: Scholars Press for Emory University, 1997.
- Tuck, R., *Natural Rights Theories: Their Origin and Development*, Cambridge: Cambridge University Press, 1979.
- Tully, J., *A Discourse on Property: John Locke and His Adversaries*, Cambridge: Cambridge University Press, 1980.
- Urbinati, N., 'Representative Democracy and Its Critics' in S. Alonso, J. Keane and W. Merkel (eds.), *The Future of Representative Democracy*, Cambridge: Cambridge University Press, 2011, 23–49.
- Wagner, C., 'Loyalist Propaganda and the Scandalous Life of Thomas Paine', *British Journal for Eighteenth Century Studies* 28 (2005): 97–115.
- Wagner, C., *Pathological Bodies: Medicine and Political Culture*, Los Angeles: University of California Press, 2013.
- Waldron, J., *The Right to Private Property*, Oxford: Clarendon Press, 1988.

- Waldron, J., 'A Right to Do Wrong' in J. Waldron (ed.), *Liberal Rights: Collected Papers, 1981–1991*, Cambridge: Cambridge University Press, 1993, 63–87.
- Waldron, J., 'What Plato Would Allow' in I. Shapiro and J. W. DeCew (eds.), *Nomos XXXVIII: Theory and Practice*, New York: New York University Press, 1995, 138–178.
- Waldron, J., 'What is Cosmopolitanism?', *Journal of Political Philosophy* 8 (1999), 227–243.
- Waldron, J., 'Hobbes and the Principle of Publicity', *Pacific Philosophical Quarterly* 82 (2001), 447–474.
- Waldron, J., *God, Locke and Equality: Christian Foundations in John Locke's Political Philosophy*, Cambridge: Cambridge University Press, 2002.
- Walker, T.C., 'The Forgotten Prophet: Tom Paine's Cosmopolitanism and International Relations', *International Studies Quarterly* 44 (2000), 51–72.
- Walker, T.C., 'Two Faces of Liberalism: Kant, Paine and the Question of Intervention', *International Studies Quarterly* 52 (2008), 449–468.
- Wenar, L., 'Why Rawls is Not a Cosmopolitan Egalitarian' in R. Martin and D. Reidy (eds.), *Rawls's 'The Law of Peoples': A Realistic Utopia?*, Oxford: Blackwell, 2006, 95–113.
- Wenar, L. 'Rights' in E.N. Zalta (ed.), *The Stanford Encyclopaedia of Philosophy* (Fall, 2011), <http://plato.stanford.edu/archives/fall2011/entries/rights/>.
- Whatmore, R., '"A Gigantic Manliness": Paine's Republicanism in the 1790s' in S. Collini, R. Whatmore and B. Young (eds.), *Economy, Polity and Society: British Intellectual History, 1750–1950*, Cambridge: Cambridge University Press, 2000, 135–157.
- Williford, M., 'Bentham on the Rights of Women', *Journal of the History of Ideas* 36 (1975): 167–176.
- Wollstonecraft, M., 'A Vindication of the Rights of Woman' in Sylvana Tomaselli (ed.), *Mary Wollstonecraft: A Vindication of the Rights of Men and a Vindication of the Rights of Women and Hints*, Cambridge: Cambridge University Press, 1995, 65–294.
- Woodward, W.E., *Tom Paine: America's Grandfather*, London: Secker and Warburg, 1946.



# Index

- Africa, 114
- afterlife, 193
- Aged, 45, 137, 144, 145, 185, 186
- Aldridge, Arthur, 195
- America, 1, 2, 13, 14, 19–20, 25, 36, 60, 64, 77, 78, 92, 93, 97, 107, 108, 109, 115, 152, 156–157, 158, 164, 165, 168, 171, 172
- American independence, 20 *see also* Revolutionary War
- American Revolution, 1, 108, 156, 164, 171
- Anachronism, 8, 9–13, 19, 21, 182
- Animals, 28, 66–67, 68
- Aquinas, Thomas, 119n
- Aristocracy, 76, 77–78, 84, 101, 105, 109
- Aristotle, 21, 32, 53n, 76–77
- Atheism, 14, 34, 180, 181–185
- Austria, 172–73
  
- Babeuf, François-Noël, 114
- Ball, Terence, 47n, 49n
- Beckerman, Wilfred, 49–50
- Beliefs, as web, 20, 179
- Beliefs, nature of, 16–21
- Bentham, Jeremy, 3n, 36, 40
- Bequest, 125, 134, 139, 142, 143, 148, 188, 201
- Bevir, Mark, 3n, 18n, 20, 31n, 39n
- Bible, 113, 180, 181–85, 188, 194
- Bonaparte, Napoléon, 173
- Borders, 153, 154, 168, 169, 177, 178
- Bourgeoisie, 18, 191
- Burke, Edmund, 4, 27, 42–45, 51, 52, 63, 66, 76, 77, 78, 79n, 81, 84, 92, 93, 94, 98, 99, 100, 107, 119, 159, 161, 162, 164, 167, 190
- Burke, *Reflections on the Revolution on France*, 41–42, 63, 92, 94, 98, 161, 162
  
- Capital punishment, 155
- Carter, Ian, 69–70
- Charity, 104
- Children, 45, 66, 68, 144, 145, 183, 185 *see also* Minors
- Christian idea of redemption, 192
- Christian morality, 184–185
- Christianity, 6, 34, 159, 180, 181–185, 186, 188, 192, 193, 197
- Cicero, Marcus Tullius, 126, 155
- Civic virtue, 75, 89–97, 102–104, 106, 110 *see also* Virtue
- Civil disobedience, 52, 88
- Civil society, 61–62, 116, 117, 119
- Civilisation, 19, 114, 116, 118, 119, 120, 157, 190
- Claeys, Gregory, 2n, 139–40, 146, 159, 181n
- Claim-rights, 125–127, 149
- Coherence, authorial 20–21, 25, 66, 140, 151, 165, 166, 167, 176
- Collingwood, R.G., 10, 11, 16, 17, 19
- Commerce, 18, 107, 114, 115, 120, 138, 143, 146, 164, 171
- Comprehensive doctrine, 59, 71
- Consent, 27, 41–55, 56, 64, 65–68, 70, 71, 72, 74, 75, 76, 77, 97–100, 105, 109, 111, 124–125, 141, 161, 162, 164, 166, 168, 169, 176, 177, 200
- Consent, tacit, 52–55, 97–99
- Consent, verification of, 52–55, 97–100, 168, 176
- Consent, withdrawal of, 55, 97–98

- Consent-theory of property rights, 124–125
- Consequentialism, 82, 85, 96, 118, 120, 145
- Conservatism, 4, 27, 41, 43, 99
- Constitutions, 41–42, 45, 49, 55, 64, 77, 93–96, 99, 109, 125, 153, 157, 161, 170, 177
- Conway, Moncure, 183
- Cosmopolitanism, 152–178
- Cosmopolitanism, definition of, 153–155
- Creation of value, 129–138
- Cultivation 90, 106, 121, 122, 123, 127, 129, 131, 132, 133, 135, 138, 149, 150
- Dabos, Laurent, 7
- Dead, moral status of 44–47, 66, 119, 161, *see also* Posthumous rights
- Deane, Silas, 92–93
- Declaration of the Rights of Man and the Citizen (French), 32, 56, 163, 166
- Deism, 6, 181, 184–185, 193–199
- Democracy, 74–110, 172, 191, 200
- Democracy, direct, 78, 81, 83, 85, 105
- Democracy, representative, 75–89, 90, 91, 92, 96, 97, 99, 103, 104, 106, 107, 109, 191, 200
- Democratic mind, 75, 100–109, 110 *see also* human nature
- Democratic participation, 75, 90, 100, 103–104, 200
- Democratic peace theory, 160, 170
- Descartes, René, 12
- Desert, 190–193, *see also* merit
- Despotism, 51, 56, 58, 106, 172
- Diachronic change 39
- Difference principle, 147–148 *see also* Rawls, John
- Diogenes of Sinope, 155–156
- Disability, 144, 150
- Distributive justice, 105, 143–149, 175, *see also* Social justice
- Divinity of Jesus, 184
- Dundas, Henry, 83–84
- Duties, 29–30, 32, 34, 35, 37, 46, 47, 48, 50, 62, 67, 95, 101–105, 106, 110, 111, 113, 125, 126, 127, 138, 164, 166, 174, 177, 188, 189, 197, 200, 201
- Duties, imperfect, 103–105, 106
- Dworkin, Ronald, 29, 37, 68, 69, 186
- Dyck, Ian, 159
- Efficiency, 118, 119, 120
- Eighteenth-century, 1, 13, 18, 19, 31, 36, 37, 77, 86, 101, 107, 111, 114, 149
- Elections, 86, 90, 91, 95, 99, 100, 109
- Elitism, 83
- Emigration, 98, 100
- England, 41, 64, 101, 114, 156–157, 162, 172–173
- England, invasion of, 173–174
- Environment, 46–47, 49–50, 138
- Equality of opportunity, 147–148, 191
- Equality, as contested concept, 95–96
- Equality, basis of, 187–188
- Equality, civic, 83, 86, 90, 95, 109
- Equality, Human moral, 2, 26, 33, 36, 37, 59, 71, 80, 82, 84, 85, 110, 113–114, 148, 151, 172, 181, 185, 186, 187, 189
- Equality, of status, 83, 90, 91
- Equality, of voting rights, 87, 109
- Equality, political, 38, 188
- Equality, procedural, 83, 95
- Equality, sexual 39–41
- Erskine, Thomas, 193
- Europe, 12–13, 19, 108, 115, 157, 170, 173
- European integration, 24
- Exploitation, 25 *see also* just wage
- False consciousness, 86, 95
- Fanaticism, 181
- Fayette, Marquis de la, 45, 173
- Feminism, 3, 30, 37
- Feudalism, 18, 144
- Filmer, Robert Sir, 37
- First-occupancy, 124, 127–128 *see also* property, initial acquisition of
- Football, 15
- Four-stage theory of economic development, 122
- France, 13, 41, 92, 93, 97, 107, 108, 113, 155, 157, 162, 164, 168, 173, 185 *see also* French Revolution
- Franklin, Benjamin, 13, 177

- Freedom of action, 5, 50, 57, 58, 72  
 Freedom of expression, 58–59, 72, 81, 200  
 Freedom of speech, 68, 69, 158, 165  
 Freedom of thought, 57, 58, 86, 158  
 Freedom of worship, 72, 158, 189  
 Freedom, 2, 4–5, 22, 26, 27, 32, 33, 45, 49, 50, 51, 58, 64–71, 73, 77, 90, 91, 110, 111, 146, 151, 166, 176, 179, 189, 199  
 Freedom, value of, 64–71  
 French Revolution, 1, 13, 27, 32, 38, 41, 94, 108, 152, 157, 158, 162, 163n, 164–165, 167  
 Fruchtmann Jr., Jack, 2n, 40n, 189, 193n  
 Future generations, 43, 46–50, 66, 68, 125, 137, 138, 163  
  
 Gadamer, Hans-Georg, 24  
 General will, 54, 85, 86, 95  
 Generations, nature of, 47–48  
 Genesis, Book of, 139, 182  
 Global governance, 6, 161, 169, 176 *see also* World citizenship  
 Global justice, 20, 152, 154, 156, 177, 201  
 Glorious Revolution (1688), 41, 43, 44, 161  
 Goal-based political theories, 29  
 God, 6, 30, 33, 34–35, 38, 40, 113, 114, 121, 124, 125, 128, 129, 131, 138, 139, 140, 158, 179–199, 201  
 God's intentions, 38, 113–114, 121, 124, 125, 128, 189–193  
 Grotius, Hugo, 31, 32, 33, 126, 128, 149  
  
 Harm, 46, 49, 53, 57, 58, 65, 72  
 Harrington, James, 22  
 Harris, Ian, 189–193  
 Hart, H.L.A., 26, 28  
 Hegel, G.W.F., 12  
 Hereditary government, 43, 45, 51, 52, 55, 76–77, 83, 84, 102, 105–106, 161, 190, 191–192  
 Historical context, 8, 9–13, 14, 17, 19, 20, 24, 30–31, 39, 41, 78, 86  
 Historical understanding, 8–13, 16, 17, 19, 20, 24  
  
 Hobbes, Thomas, 4, 9, 10, 11, 23, 31, 32, 61–62  
 Hohfeld, Wesley Newcomb, 29n, 61–62  
 Human rights, 2–6, 9, 26, 34–36, 49, 74, 82, 103, 111, 149, 152, 169, 175, 176, 177, 186, 187, 198–199, 200–201  
 Hume, David, 12, 51, 52, 54, 65  
  
 Ideology, 4, 14, 17, 18–20, 23, 106, 191, 202  
 Immigration, 168 *see also* emigration  
 Individual responsibility, 192  
 Industry, 128, 134, 143, 188  
 Inequality, 32, 37–39, 86, 113, 115–116, 144–145, 148, 185, 186, 198  
 Inheritance, 40, 42, 45, 112, 114, 116, 142–143, 180, 199 *see also* Hereditary government  
 Intelligence, 87, 109  
 Intentionality, 18, 20, 53, 69  
 Intentions, authorial, 10, 16–17, *see also* Beliefs, nature of  
 Intergenerational obligations, 46–47, 49, 50, 148  
 International intervention, 153, 160, 162, 170–176, 177  
 International law, 154, 175  
 International relations, 152–153, 159, 169, 174, 176  
 Interpretation, 8–21, 23–24  
 Interpretation, as conversation, 24  
 Interpretation, as political theory, 201–202  
 Interpretation, as therapy, 23  
  
 Jefferson, Thomas, 47n, 158,  
 Just wage, 146–147, *see also* Exploitation  
  
 Kant, Immanuel, 59, 89, 153, 154, 159–160, 165, 170, 172, 174, 175, 177  
 Kant, on autonomy of states, 160, 165, 170  
 Keane, John, 17, 77, 183  
 Kramnick, Isaac, 18–19, 190–191

- Labour theory of acquisition, 112, 117, 124, 127–138, 142–143, 149–150
- Labour, 34, 128–129, 141, 142, 144–147, 149–150
- Labour-mixing, 127–129
- Law of nature, 31, 34–35, 62, *see also* natural law
- Liberal intervention, 170–176, *see also* international intervention
- Liberalism, 2–6, 32–35, 38, 59, 71, 101, 102, 110, 153, 172–175, 177, 179, 186, 188, 198, 200–201
- Libertarianism, 2–6, 25, 27, 55, 109, 112, 124, 138, 141, 143–144, 150–151, 169, 200
- Liberty of conscience, 58–59
- Liberty rights, *see* Privileges
- Liberty, *see* freedom
- Linguistic contextualism, 30–31
- Locke, John, 4, 5, 12, 23, 31, 33–35, 37, 50, 51, 53, 55–56, 59, 62, 66, 97, 112, 114–115, 116–117, 119, 124, 127–132, 138, 150, 186–187, 188–189, 198–199, 200
- Locke, *Two Treatises of Government*, 33, 34, 37, 51, 114, 127, 130
- Louis XVI, 155, 173
- Luck, 134, 192
  
- MacCormick, Neil, 67
- Machiavelli, Niccolò, 22
- MacIntyre, Alasdair, 15, 36
- Madison, James, 77
- Marat, Jean-Paul, 155
- Marx, Karl, 12
- Meaning, hermeneutic, 16–21
- Meaning, historical, 9–13
- Merit, 18, 87, 190–193, *see also* Desert
- Metaphysics, 10, 186–188, 198–199
- Methodism, 183
- Mill, John Stuart, 57, 68, 71, 72, 79n, 87–88
- Minority rights, 107
- Minors, 48, 66, *see also* children
- Miracles, 183, 198
- Modernity, 35, 78, 112, 114–116, 149
- Monarchy, 18, 55, 76–78, 101, 109
  
- Money, 69–70, 91, 138–139, 140–145, 185
- Montesquieu, Charles-Louis de  
     Secondat, Baron de La Brède et de, 108
- Moral universe, 26–27, 41–55, 66, 111, 119, 137, 149, 200
- Motivations, individual, 16, 18–19, 23
  
- Nation, voluntarist conception of a, 167–168
- National Assembly (France), 157, 162
- National debt, 170
- National fund, 113, 136, 143, 158
- National self-determination, 152, 164–167, 170, 177
- National sovereignty, 152–153, 160, 165, 168, 170, 176–177
- Nationhood, 159, 166, 177
- Nation-state, 154
- Natural inheritance, 40, 111–112, 123, 127, 132, 135–138, 139, 140 *see also* Natural property
- Natural law, 33, 50, 120, 124, 149, 188, 200
- Natural rights, 26, 30–35, 45, 59–60, 63, 112, 122, 129, 156, 159, 187 *see also* rights
- Need, 46, 104, 118, 137–138, 144–146, 150
- Negative communism, 124–127 *see also* original communism
- New Testament, 182, 192n, 196
- Normative bottom line, 23, 199, 201
- Normative theory, 201–202
- Nozick, Robert, 27, 35, 128, 129, 132, 134, 141, 143, 169
  
- Obama, Barack, 2
- Okin, Susan Moller, 37
- Old Testament, 182, 184
- Organised religion, 185
- Origin of government, *see* social contract
- Original communism, 120–129
- Ownership, 11, 50, 85, 87, 111–143, 146, 149–150, 190, 192, 200–201, *see also* Private Property

- Pacifism, 171, 184, *see also* peace
- Paine's works:
- Agrarian Justice*, 5, 38, 40, 111–143, 146, 147, 158, 175n, 180, 188
- Common Sense*, 13, 36, 38, 60, 61, 74, 77, 90, 92, 156, 164, 180, 188
- Dissertation on First Principles of Government*, 47, 50, 85, 87, 96, 97, 134, 158, 187
- Rights of Man*, 4, 13, 17, 27, 35, 36, 38, 39, 41, 43, 45, 47, 56, 61, 66, 92, 93, 98, 116, 158, 161, 162, 166, 180, 182, 187, 188
- Rights of Man, Part Two*, 5, 60, 67, 74, 77, 82, 85, 88, 96, 112, 114, 139, 143, 144, 146, 147, 150, 157, 171, 172
- The Age of Reason*, 36, 67, 113, 139, 140, 180n, 182, 183, 189, 193
- Paley, William, 39–40
- Parliament, 41, 43–44, 51, 64, 79, 90, 91, 95, 161–163
- Particularism, 153, 159
- Paternalism, 65, 70
- Peace, 107, 108, 124, 125, 160, 170, 171–174, 176, 183
- Pennsylvania Packet*, 93
- Peoples, 152, 160, 165, 175, *see also* Rawls, John
- Perennial problems, 8–13, 24
- Perfectionism, 50, 59, 66, 70, 71, 73
- Pettit, Phillip, 22
- Philosophy, nature of, 13–16
- Philp, Mark, 2n, 14, 147–148, 166n, 174n, 197
- Plato, 10, 11, 23
- Pluralism, 71, 80–82, 180
- Pocock, J.G.A., 9n, 20n, 102, 110
- Political obligation, 11, 12, 41–64, 65–68, 70, 72–75, 97–100, 111, 125, 200
- Political obligation, benefit theory of, 51–55, 56, 65
- Political philosophy, nature of, 13–16
- Poor-rates, 144–145
- Poverty, 87, 112–116, 118–120, 129, 135, 147, 149, 190
- Press, the, 91–93, 95, 103
- Price, Richard, 41–43, 161
- Primogeniture, 105, 145
- Privileges, 61–62, 126–127
- Procreation, 50, 188
- Property, artificial, 133–135, 138, 141–143, 146, 149–150
- Property, initial acquisition of, 112, 114, 116, 124, 126, 128–129, 132, 134, 138, 150
- Property, natural, 133, 135, 138, 141–143, 149–151, 200
- Property, private, 12, 29, 34, 111–143, 149–151, 200
- Property, transfer of, 46, 134, 141n, 201
- Protestantism, 34
- Providence, 140, 189–193
- Prussia, 172
- Public sphere, 89, 93, 99, 103
- Publicity principle, 75, 89–97, 99–100, 105, 109
- Pufendorf, Samuel, 31, 33, 124, 149
- Punishment, 62n, 71, 73, 88, 123, 155, 193, *see also* right, to punish
- Quakers, 155, 183–184
- Rawls, John, 37, 59n, 89, 147–149, 153, 168–169, 175, 177, 186
- Rawls, on borders, 168–169, 175n
- Rawls, on human rights, 175n
- Reagan, Ronald, 2
- Rebellion, 88, 111, 119, 158 *see also* civil disobedience
- Redistribution, of resources, 112, 123–124, 135–136, 138–141, 143, 150
- Religion, 58–59, 72, 108, 140, 157, 179–199
- Religion, phenomenology of, 181, 193–197
- Religious worship, 35, 167, 183–185, 189, 193
- Representation, 39, 75, 78–91, 97, 111, 158
- Representation, delegate model, 79–80, 83
- Representation, trustee model, 79–80, 83, 88
- Republicanism, 2n, 13, 22, 75, 100–103, 110, 111, 164, 171n

- Revolutionary War (American), 13, 92, 156  
 Rhetoric, 14, 17–18, 19, 27, 100, 162  
 Right, to bodily integrity, 58, 65, 70, 72, 111, 200  
 Right, to education, 30, 145, 185  
 Right, to freedom, 68–69  
 Rights, civil, 27, 56, 62, 63, 71, 158  
 Rights, correlativity of, 29, 67  
 Rights, economic, 40, 49, 111–151, 158, 200  
 Rights, general, 26  
 Rights, history of, 31–35  
 Rights, individual, *see Human rights*  
 Rights, intellectual, 59–60, 81  
 Rights, interest theory of, 28n, 67–68  
 Rights, of minors, 45, 48 *see also children*  
 Rights, of nations, 158–170  
 Rights, posthumous, 46 *see also bequest*  
 Rights, special, 26  
 Rights, to punish, 62n, 63, 116  
 Rights, to vote, 87–88, 99, 109  
 Rights, will theory of, 28, 66–68  
 Rights-based theories, 4, 26, 27–35  
 Rights-protection, as necessary  
     condition of political obligation, 56, 65, 67, 71, 75  
 Roman Catholicism, 34, 59, 185  
 Roman Law, 53n  
 Rousseau, Jean-Jacques, 4, 12, 23, 53, 54, 66, 75, 83, 84, 85–86, 90, 91, 95, 96, 104, 107, 108, 117, 118, 119  
  
 Scottish Enlightenment, 31, 122  
 Secularisation, 179  
 Security, 51, 57, 61, 62, 140, 166  
 Self-determination of political  
     communities, *see national self-determination*  
 Self-preservation, duty of, 50, 129, 150  
 Self-preservation, right of, 32, 119, 129  
 Simmons, A. John, 53, 198  
 Skinner, Quentin, 11n, 16, 17n, 20n, 22, 202  
 Slavery, 56, 65, 88–89  
 Smith, Adam, 114–115, 122n  
 Sociability, 60–62  
 Social contract, 55–64, 71, 83, 97  
 Social debt, 139–143  
 Social justice, 111, 113, 201, *see also*  
     Distributive justice  
 Socialism, 111, 149  
 Sovereignty, 13, 32, 42–43, 57, 77, 85, 119, 125, 163–165, *see also national sovereignty*  
 Stakeholder grant, 113  
 State neutrality, 5, 59, 71, 73, 179, 198  
 State of nature, 61–62, 71, 116–120  
 Statelessness, 55, 98, 100, 169  
 Steiner, Hillel, 26  
 Stewardship of the earth, 46–50  
  
 Talent, 84, 134, 190–192  
 Taxation, 61, 113, 136–145, 158  
 Teleology, 29, 35, 36, 50, 73, 130–131, 181, 188, 200  
 Theology, 34, 180, 181, 190–191, 198–199  
 Theophilanthropists, 193–194  
 Tierney, Brian, 31  
 Toleration, 58–59, 72  
 Tradition, as normative concept, 41–43, 84, 94  
 Tradition, intellectual, 3–4, 22–23, 39–40, 153–154  
 Tuck, Richard, 31  
  
 Unconditional basic income, 28, 113n  
 Universalism, 153, 159  
 Urbinati, Nadia, 78  
 Utilitarianism, 3n, 31, 36, 57, 118, 119  
 Utility, 31, 46, 57, 68, 118, 119, 132, 148  
  
 Value of labour, 129–138  
 Vindication of God's existence, 193–197  
 Violence, 171–172, 174n, 183, 199  
 Virtue, 3, 61, 102–103, 197, *see also civic virtue*  
 Voltaire, 108  
 Voting rights, *see Rights, to vote*  
  
 Waldron, Jeremy, 15, 16n, 23, 37, 154, 186, 199, 201  
 Walker, Thomas, 159–160, 172, 174, 176

- War, 14, 144, 156, 160, 170–172, 173, 175n
- Watson, Richard (Bishop of Llandaff), 113–114
- Welfare, 29, 50, 112, 143–151
- Welfare state, 113
- Wenar, Leif, 31
- William of Orange, 161
- Wollstonecraft, Mary, 30, 37
- Women, 30, 35–41, 87n, 114, 180
- World citizenship, 154, 159–161, 165, 169, 176

