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Thomas Paine and Natural Rights: A Reconsideration*

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Thomas Paine based the case for American independence on natural rights and since the American Revolution countless reformers—abolitionists, feminists, populists—have looked to natural rights as a justification for their demands. In recent years, however, social scientists have discarded natural rights as illusory fictions and insisted that nature does not guarantee human rights. Yet, John Dewey held that nature often does respond to human needs and that in this respect human rights have the support of the natural world.

In *Common Sense*, *The Rights of Man*, and in other books and pamphlets, Thomas Paine made a classic statement of the popular 18th-century natural-rights philosophy in its most democratic form. In a state of nature antedating civil society, according to Paine, every person is “a Sovereign, in his own natural right,” and thus his own lawgiver.¹ He possesses intellectual rights: freedom of thought, conscience, and speech. He also possessed physical rights: the freedom to do whatever he pleases so long as he does not infringe upon the rights of others. But equality of rights, Paine acknowledged, is not matched by equality of powers. Some people are stronger than others and better able to exercise their rights in a state of nature. And even the strongest are not always able to do as they please, for their natural powers fall somewhat short of their natural wants. Because of these natural limitations on the powers of individuals, therefore, and because, in addition, people have a natural propensity for social life, the first settlers in any region quickly abandon the state of nature and form themselves into a society for mutual assistance and protection.

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Paine had the highest regard for the social state. Only once removed from the state of nature, he said, it retained most of the liberty belonging to man's natural state and it required people to limit their freedom of action only to the extent needed for voluntary cooperation. But Paine admitted that the social state faced the same problems that the natural state did and that it was beset by uncertainties. Though each person was a sovereign in his own right in the social state, some people were better able to enforce their basic rights than others because of their superior strength. And even a person who was strong lacked the power all by himself to safeguard his natural rights effectively in his relations to other people. Further collective action, in short, was essential if people were to feel completely secure in the possession of their natural rights. To achieve greater personal security, therefore, people in a social state decide to exercise their natural right to self-government. They voluntarily enter into a contract, organize a government, and entrust that government with the power (formerly held by each individual himself) to enforce justice and protect the rights of everyone. In forming a political community, people agree to give up some rights in order to have other rights better safeguarded. But the individual, Paine insisted, gains rather than loses by the transaction. He exchanges natural rights involving the freedom to do as he pleases, which he is unable to enforce by himself, for civil rights backed by the public force. He is more secure now, both in person and property, than he was in the natural and social states; and he retains his natural right to freedom of thought, conscience, and speech even after the creation of government. And the government under which he lives is based on a social contract and rests on the consent of the governed. Paine did not deny that most governments in his day were founded on force and conquest rather than on social contracts. But he insisted that the earliest governments in history were based on social contracts and thus in accord with natural law and justice; and he was anxious for modern governments to be similarly based.

In *Common Sense* (1776), Paine used the natural-rights social-contract philosophy to justify the American Revolution; and Thomas Jefferson, who shared Paine's outlook, wrote this philosophy into the Declaration of Independence. In *The Rights of Man* (1791-1792), Paine also used the natural-rights philosophy to defend the French Revolution after Edmund Burke blasted it (and the natural-rights philosophy on which it was based) in *Reflections on the French Revolution*. But because of the greater violence and more basic challenge to the established order involved in the French Revolution and because Paine accompanied his defense of France with a vigorous assault on the British system of government, he provoked tremendous opposition from conservatives both in England and in the United States. After publication of *Rights of Man*, a storm of critical books, articles, and pamphlets descended on Paine and he was charged with everything ranging from ignorance, mendacity, and vulgarity on the one hand to recklessness, demagoguery, and downright anarchism on the other. Even people who sympathized in part with his views were offended by his loud strictures on the British form of government. But critics of "this American rifle-man," as one British writer called him, mainly followed Burke: they emphasized the natural inequalities of men and the need for various orders and degrees in society; pointed out that systems of government, like languages, were products of natural growth, not of abstract principles; and defended the British Constitution, with its hereditary monarchy and nobility and established church, as having produced

“a Happy state of Law and Liberty” for the British people. As to freedom, most of Paine’s critics thought that his paeans to popular liberty opened the watergates to corruption, license, disorder, and anarchy. Paine’s preference, exclaimed one critic, was for “*Mob Government*,” which “leaves people *free* to do all the mischief they please, and only restrains them from doing good.—It sets the passions and vices of mankind at liberty, and controls only their virtues.” Even John Quincy Adams, who shared Paine’s belief in natural rights (though not his enthusiasm for the French Revolution), warned that his passion for abstract freedom led him to overlook the important part that established institutions played in safeguarding liberty. Yet, until Paine published *Age of Reason*, with its harsh criticisms of orthodox Christianity, in 1794, and made a vituperative attack on George Washington in 1796, he remained generally popular in the United States and his statement of natural rights continued to be influential with many Americans.²

During the period of the American Revolution, the natural-rights philosophy was firmly enshrined in the American democratic faith and its catchwords—individual freedom, inalienable rights, consent of the governed—became common currency among Americans in the years that followed. After Paine’s death in 1809, however, the idea of natural rights began to come under sharp attack from Southern apologists for slavery like John C. Calhoun. Calhoun borrowed from Burke in making his case against natural rights, but he also attempted to define liberty within the American constitutional framework in such a way as to exclude the black man. But abolitionists like Frederick Douglass continued to invoke the doctrine of natural rights in their crusade against chattel slavery. During the Civil War Abraham Lincoln, though departing to some extent from orthodox natural-rights doctrine, singled out government by consent and universal freedom as the heart of the American experiment in politics. After the war, however, natural rights received another vigorous assault at the hands of social Darwinists like William Graham Sumner. Natural-rights views of freedom, Sumner conceded, may have been enormously useful in the struggle to throw off the restraints and restrictions of medieval feudalism; in the modern world, however, their usefulness had long since passed and they could no longer be regarded as anything but sentimental myths. It was necessary now, he said, to take a more realistic view of the human condition and face the hard facts of life: that nature was harsh and demanding, not benign; that inequality, not equality, was man’s natural birthright; that human rights were achieved by civilization, not bestowed by nature; and that liberty was won only by a toilsome struggle involving knowledge, discipline, and responsible action on the part of individuals. The historical view of the origin of human rights which Sumner took came generally to prevail among social thinkers in America in the 20th century and increasingly the state of nature, social contract, and natural rights were written off as illusory fictions. At the same time, there was a tendency among social historians to dismiss natural rights as mere rationalizations or ideological covers for the needs and aspirations of the rising commercial classes in Western Europe in the 17th and 18th centuries.³ People like Paine, under this view, were spokesmen for the middle classes in their revolt against the landed aristocracy and when they talked about freedom as a natural right they were thinking primarily of opportunities for profitable enterprise on the part of bankers, businessmen, and traders. But natural rights meant much more to Paine than economic enterprise. In *Agrarian Justice* (1795-1796), his last pamphlet, he took a quasi-socialist view of property and espoused social

programs for the working classes and the poor that were marked departures from the spirit of John Locke's possessive individualism. He would have had no sympathy with the utilization of natural rights by American conservatives in the Gilded Age to support corporate privilege.

Despite 20th-century criticisms of social-contract theory, the fact had to be faced that the American Revolution had been fought in the name of natural rights and the American Constitution and Bill of Rights shaped in part by the belief in liberty as an inalienable right. It was also a fact that throughout American history minority groups, seeking to expand their opportunities within the American system, had regularly appealed to the natural-rights philosophy of the Declaration of Independence to justify their stand: abolitionists, feminists, Populists, trade-unionists, democratic socialists. Even radicals (though not of course serious Marxists) appealed to natural rights. In the 1960's, the Black Panthers included phrases from the Declaration of Independence in the preamble to the constitution of their organization and historian Staughton Lynd traced his radical philosophy to the natural-rights sentiments of revolutionists like Paine and abolitionists like William Lloyd Garrison.⁴ Were all of these reformers victims of a "delusion and superstition," as Sumner characterized natural rights? And was the American republic itself founded on what he called an "exploded myth"? American historians found the question difficult to answer. Carl Becker said that the question of the truth of the natural-rights philosophy, which he found historically superficial and psychologically naive, was meaningless; the historian was concerned only with the fact that it had inspired American patriots in their struggle for independence. Clinton Rossiter took a somewhat similar line. Conceding that the natural-rights philosophy overlooked such realities as groups, classes, and power elites, Rossiter stressed the fact that for American revolutionists natural-rights doctrine was an earnest faith, not an ordered theory, and that as such it was one of the most noble and influential of all political philosophies in human history. Charles Beard took the view that rights rested at bottom on morals rather than on anything physical nature guarantees human beings and that natural-rights concepts could best be understood by transposing them into moral rights. Anybody could assert or claim a moral right, he went on to say, and whenever enough people joined in upholding the assertion or claim and thus won respect for it from society and government, that right became an actuality. But since all rights rested on the moral standards of the community and nation, he added, concepts of rights changed as the habits, sentiments, and practices of the community changed.⁵

That human rights embodied in the habits, beliefs, and practices of a community are the product of gradual development over a long period of time is undeniable. But it is also true that the development of rights depends heavily on the creative efforts of individuals like Paine who discover new possibilities for human relationships, take the trouble to assert claims (to use Beard's language), and work hard to win support for them from other people. It seems true, further, that there must be some kind of transcendent standards, like natural rights, by which to judge prevailing norms in a community and justify the individual who departs from accepted use and wont and engages in promising innovative action. The "individual" apart from his society is doubtless an abstraction, even a fiction; but so is "society" considered apart from the individuals composing it. The natural-rights theory may have slighted the social nature of human rights, but it was correct in calling attention to the importance of some degree of individual autonomy

to the growth of civilization. Natural rights from this point of view are those enabling individuals to develop their natural vitalities (which emerge independently of political society) freely and fruitfully. To thwart or distort an individual's natural growth along unique lines is, on this theory, contrary to nature. A child, for example, born with extraordinary musical gifts into a family that was implacably hostile to musical endeavor in a community rigidly insistent on absolute obedience to parental commands would surely have a "natural right," it would seem, to seek ways of expressing his musical talents in defiance of parental and community authority. In this sense, the individual who searches for appropriate outlets in his environment for his natural energies may be said to be exercising his natural right to freedom.

John Dewey thought there was some validity in the contention of natural-rights advocates that the individual possessed freedom prior to the establishment of social and political organization. "A certain natural freedom is possessed by men," he said. "That is to say, in some respects, harmony exists between a man's energies and his surroundings such that the latter support and execute his purposes. In so far he is free; without such a basic natural support, conscious contrivance of legislation, administration, and deliberate human institution of social arrangement cannot take place. In this sense natural freedom is prior to political freedom and is its condition." But this kind of freedom, Dewey hastened to add, depended on accident. The natural environment might or might not be compatible with an individual's energies at any given moment and unless people agreed to work together in regularizing their relations with nature they would be entirely at the mercy of their surroundings. In arriving at conscious agreements to "supplement and in some degree supplant freedom of action which is the gift of nature," individuals have to make some concessions. "They must consent to curtailment of some natural liberties in order that any of them may be rendered secure and enduring. They must, in short, enter into organization with other human beings."⁶ Paine would not have dissented from this view of the matter. He was fascinated by the problem of devising social and political arrangements by which people regularized their relations with each other and with nature. He insisted only that they fulfill, not stifle, the individual's natural right to free expression. He would have liked Richard Taylor's way of putting it in *Freedom, Anarchy, and the Law* (1973): freedom is a gift of nature, that is, an individual is by nature his own sovereign power and governs his conduct to some extent by his will; the ultimate justification for government is the expansion and enhancement of this freedom; and when people voluntarily submit to the authority of the state, they do so in the belief that their "freedom or sovereignty is not thereby cancelled or compromised, but strengthened."⁷

For a time, when Paine was in Europe in the years following the achievement of American independence, he was disturbed by reports (from Jeffersonians) that attachment to the principles of the American Revolution was declining in the new nation. But on his return to America in 1802, he was reassured to learn that, with his friend Jefferson as president, "a spark from the altar of *Seventy-six*, unextinguished and unextinguishable through the long night of error, is again lighting up, in every part of the Union, the genuine name of rational liberty."⁸ Still, what if America should fail? What if she eventually went the way of all other nations? Only once did Paine contemplate such a possibility and he found it too melancholy a thought to hold for long. "When we contemplate the fall of empires and the extinction of nations of the ancient world," he mused, "we see but little to excite our regret than

the mouldering ruins of pompous palaces, magnificent monuments, lofty pyramids, and walls and towers of the most costly workmanship." But with America it was different. If America should fail, he said, "the subject for contemplative sorrow will be infinitely greater than crumbling brass or marble can inspire. It will not then be said, here stood a temple of vast antiquity—here rose a Babel of invisible height, or there a palace of sumptuous extravagance; but here, ah painful thought! the noblest work of human wisdom, the grandest scene of human glory, the fair cause of freedom rose and fell!"⁹ But Paine was convinced that America and the cause of freedom would never fail.

Notes

⁰From Paul F. Boller, *Freedom and Fate in American Thought*, Dallas, Texas: S.M.U. Press, in press.

¹Paine to Thomas Jefferson (1789), in Philip Foner, editor, *The Complete Writings of Thomas Paine*, New York: Citadel, 1945, Volume 2, p. 1298.

²Charles Hawtrey, *Various Opinions of the Philosophical Reformers Considered*, London: 1792, p. 80.

³William Graham Sumner, *Earth Hunger and Other Essays*, New Haven: Yale, 1913, pp. 79-83.

⁴Stewart H. Benedict, editor, *Blacklash: Black Protest in Our Time*, New York: 1970, pp. 287-290; Staughton Lynd, *The Intellectual Origins of American Radicalism*, New York: Pantheon, 1968.

⁵Carl Becker, *The Declaration of Independence*, New York: Vintage, 1922, pp. 277-279; Clinton Rossiter, *Seedtime of the Republic*, New York: Harcourt, Brace, 1953, pp. 437-449; Charles Beard, *The Republic*, New York: Viking, 1943, pp. 38-40.

⁶John Dewey, *Human Nature and Conduct*, New York: Modern Library, 1922, pp. 306-307.

⁷Richard Taylor, *Freedom, Anarchy, and the Law*, Englewood Cliffs, New Jersey: Prentice-Hall, 1973, p. 118.

⁸"To the Citizens of the United States," *National Intelligencer*, November 15, 1802; *Writings*, *op. cit.*, p. 910.

⁹To Kitty Nicholson Few, London, January 6, 1789, *ibid.*, p. 1276.