

Paine: rebellious Staymaker; unkempt; who feels that he, a single Needleman, did, by his *Common Sense* Pamphlet, free America;—that he can and will free all this World; perhaps even the other.[Thomas Carlyle]⁶³⁰

CHAPTER 12

THOMAS PAINE: ARCHITECT OF COOPERATIVE INDIVIDUALISM

Thomas Paine was, if measured by his personal character and habits, a seemingly ordinary person. Yet, he lived an extraordinary life during extraordinary times. History records his involvement in two great social and political upheavals, remarkable for someone of such limited education and accomplishment in matters practical. Arising from obscurity, without position or means, he became one of history's most consistent champions of justice. Despite the fame he acquired and the wealth he refused, his contemporaries among the *founding fathers* and even the revolutionaries in France never really accepted him as an equal. He remained an outsider, a voice in the wilderness, whose socio-political philosophy and policy recommendations were shunned by those who measured him an intellectual inferior. Over the course of three decades, he nonetheless came to very many important insights into the sources of injustice and the path toward more just societies.

Although his adult life began without direction, his arrival in North America on the eve of uprising by the Colonials against British rule provided an avenue for radical expression that soon captured his full energy and attention. As editor of the *Pennsylvania Magazine*, Paine's commentary openly attacked the British constitution of government as a system of socio-political arrangements and institutions that sanctioned and protected privilege. He also warned against the imposition of a state religion in the colonies; and, courageously, he added his voice to those who sought to end the enslavement of Africans and indigenous peoples. The publication of *Common Sense* in 1775 then catapulted him into the vanguard of those espousing not a return to the conditions of salutary neglect but the creation of a constitutional-republic and representative form of democracy.

The principles advanced in *Common Sense* and his later writings went far beyond what all but the most enlightened of his contemporaries were willing to acknowledge as constituting the basis for creating a truly just society. Although the clamor for independence ran deep among some Colonials, those with vast titleholdings and the material wealth derived therefrom also sought to preserve their positions of privilege enjoyed under British rule. As historian Bernard Bailyn observes, Paine's calls for a widespread franchise, for an equality of civil and natural rights and for a truly representative form of government challenged the conservative minority who had always held power in the colonies:

Common Sense had scarcely been published when it came under strong attack, not only by loyalists but by some of the most ardent patriots who feared the tendencies of Paine's constitutional ideas as much as they approved his plea for independence.⁶³¹

After the appearance of *Common Sense*, Paine's subsequent writings found a wide audience, although many of his convictions were shared by only a small minority among the Colonial leaders. He excited the

average Colonial with his condemnation of monarchy and the promise he saw in representative government. And, as the reality of independence appeared on the horizon, he urged his countrymen to demand not just *political liberty* but the means of *prosperity* as well. Although in *Common Sense* he advocated open and free trade with Europe, he was at this juncture able to argue—on principle—the case for a very nationalistic policy with respect to continued British access to fisheries off the coast of New England, writing:

There are but two natural sources of wealth—the Earth and the Ocean,—and to lose the right to either is, in our situation, to put up the other for sale.⁶³²

The blind spot in Paine's thinking here is that the government of any people has a greater and more legitimate claim on the earth's bounty than any other people. The right is an equal right of access held by all. One might argue that people living in the immediate vicinity are more dependent on local resources than others in distant lands; however, this observation only imposes an obligation on all parties to find the means of equitably sharing access. In the final quarter of the eighteenth century, however, coming to such an agreement was not very likely. The Colonials fighting against the British were engaged in a struggle over who would control the most productive portion of North America.

By March of 1781, Paine was in Paris negotiating for additional funds and supplies on behalf of the Continental Congress. His mission largely accomplished, Paine returned (unceremoniously) to North America, arriving in Philadelphia late in August. Ignored by the Continental Congress and essentially without employment, "*there no longer seemed to be a place for him in the nation's affairs.*"⁶³³ At the urging of George Washington, the financier Robert Morris approached Paine to prepare a summary of the primary challenges facing the new nation and its government. Samuel Edwards points out that this pamphlet also challenged and angered states rights advocates by consistently putting

national interests above that of the individual states and by taking the position that all land outside existing state boundaries fell under the jurisdiction of the federal government.

Paine's friends also secured for him a secret position as the government's first paid propagandist. With a degree of financial security in front of him, Paine began to fulfill his new responsibilities. A pamphlet on taxation appeared in March of 1782 followed in April with a strong call for unity:

The division of the empire into states is for our own convenience, but abroad this distinction ceases. The affairs of each state are local. They can go no further than to itself. And were the whole worth of even the richest of them expended in revenue, it would not be sufficient to support sovereignty against a foreign attack. In short, we have no other national sovereignty than as United States.⁶³⁴

In his last *Crisis Paper*—a brief open letter to all Colonial Americans—Paine makes very much the same point but in a way more directed to appeal to the heart than to self-interest:

[I]t is only by acting in union that the usurpations of foreign nations on the freedom of trade can be counteracted, and security extended to the commerce of America. And when we view a flag...our national honor must unite with our interest to prevent injury to the one, or insult to the other.⁶³⁵

Unfortunately, this strong statement on behalf of a national government alienated those in the Continental Congress who, more than anything else, feared that very result. Although he was awarded a large estate by the New York legislature and a cash gift by Pennsylvania, he was offered no position in the new national government. Paine continued to be an outsider employed when needed by those who held power. Even so, Paine had much to say and knew the power of the written word. His next cause became the Bank of North America,

coming to its defense at the beginning of 1786. He also began work on the design of his iron bridge. By May of 1787, Paine was ready with a model of his bridge, and he boarded a ship for France. Thus, when the time came for consolidating the struggle for independence into the formation of a new nation, Paine was not available to be called upon or publicly share his views. Perhaps this accounts for the rather low opinion of Paine expressed by British historian Ernest Barker (writing in the 1940s):

[W]e must not exaggerate the importance of his *Common Sense*,...or of the thirteen numbers of his *American Crisis* ...There were profounder minds and firmer pens, steeped in a far more durable ink, to argue the American cause.⁶³⁶

Barker points to revolutionary leaders like James Wilson and Daniel Dulany, men educated in Britain, as decidedly more important as revolutionary theorists. Thomas Jefferson, John Adams and James Otis—though educated in the colonies—are described as having the type of highly schooled legal minds needed to adapt the British form of government to the very unique circumstances of New World. One understands that by comparison, Paine is dismissed by Barker as having a second rate mind.

What makes Thomas Paine stand out, I submit, even among these architects of constitutional, republican government, is his recognition that moral principles are universal and independent of time and place. Paine's contribution is, therefore, not so much tied to his role as a *founding father* but as a propagandist who developed into a socio-political philosopher, and who materially advanced the basis for dialogue within the growing transnational community. In this context, his most important theoretical and practical contributions remain known to and understood by only a relatively few. That was certainly true during his lifetime as is even more true today.

Among those who have challenged Paine's principles, John Adams stands out among Paine's contemporaries as his most vocal and noteworthy critic. At the root of their disagreement was the strongly-held conviction by Adams that a strong, central government provided the only sure means of securing and protecting individual liberty. Paine, on the other hand, described national government as a potential instrument of tyranny to be kept as weak as possible. Despite these fears, however, Paine also realized that the new nation faced powerful external enemies. He therefore sided with those who argued that the national government possess adequate means with which to provide for the defense of the nation. The irony of circumstance, the paradox in which principle was put at great risk, was recognized and accepted by Paine because of his great faith in the collective wisdom of his fellow citizens and in the democratic process.

John Adams came to believe that only a few possessed sufficient wisdom and experience to govern. Paine not only believed in the collective wisdom of the nation but reflected on the inherent goodness of individuals and their demonstrated ability to govern themselves. Adams, in an effort to counter what he viewed as a dangerous doctrine, responded to Paine's *Common Sense* with an open letter he published as *Thoughts on Government*, in which he argued the case for a strong executive and a separation of powers tied to his vision of a meritocracy:

As good government is an empire of laws, how shall your laws be made? In a large society, inhabiting an extensive country, it is impossible that the whole should assemble to make laws. The first necessary step, then, is to depute power from the many to a few of the most wise and good. ...

That it may be the interest of this assembly to do strict justice at all times, it should be an equal representation, or, in other words, equal interests among the people should have equal interests in it. ...

[J]udges...should be always men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds

should not be distracted with jarring interests; they should not be dependent upon any man, or body of men. To these ends, they should hold estates for life in their offices; ...⁶³⁷

I must admit that I have never been sympathetic to the idea that any elected or appointed official should have an "estate for life" under any circumstances. An educated citizenry produces many talented and ethical individuals who ought to be encouraged to serve and the opportunities to serve at the highest levels be open to as many individuals as possible. For this reason I am among those who support the idea of *term limits*. At the same time, the frequency of elections as practiced in the United States seems unnecessary disruptive. Now is not the time to present specific ideas for improvement, however. Suffice it to say that while Paine's objectives are the correct ones, his chosen method for achieving them is subject to considerable debate based on over two centuries of not particularly enlightened—and often outrageously corrupt—governance under the existing structure.

History discloses that relations between the individual and the State moved with deliberate speed in a direction that satisfies neither Adams nor Paine. There are few instances either in history or in the world today where liberty has been secured, where the degree of democracy is appropriately representative, or where merit is the primary qualification for ascendancy to positions of public authority. What I ask the reader to consider, however, is that had Paine's policy agenda found a more receptive audience and widespread adoption, our circumstances today might be rather different and improved. To the extent Paine can be credited with being a catalyst for social change, his influence remained at the fringe and was carried forward primarily by individuals who shared his convictions that justice demanded the full separation of Church and State. During Paine's last years, his defense of Deism brought on personal attacks by Whigs and the Protestant clergy, who damned him as an atheist. A small number of Democratic-Republicans,

who looked upon Paine as the one founding father who represented the interests of the common citizen, continued to celebrate his birthday each year. A new edition of *The Age of Reason* was also published by Thomas Williams; for this act of religious subversion, Williams he was charged with blasphemy and brought to trial in Boston. On the whole, however, Paine's full contribution to the advance of socio-political philosophy was ignored and his writings forgotten.

The ideals espoused by Paine were far more individualistic and grounded far too deeply in principles that threatened entrenched power to have found widespread support during his own age. His writings made direct and uncompromising attacks on the usurpations of power by both the State and by institutionalized religion. The proposals he made seemed, even to Adams, to promise chaos in a world already turned upside down. The leadership elite in North America was, as described by Ferdinand Lundberg, comprised of "*extreme conservatives, aristocrats and abnormally property-minded*"⁶³⁸ individuals whose collective interests stood in direct opposition to the doctrine of cooperative individualism presented by Paine. Equality of opportunity was from the start subverted by circumstances where "[a] few prominent families, possessed of wealth and distinctions, monopolized offices and power in every colony"^(cxxxix) and continued to do so after independence. The frontier provided a reprieve, a safety valve, but not an institutional framework upon which a just society could be built and sustained. This relationship between the beginnings of European-American civilization and its current circumstances is succinctly captured by historian Benjamin Barber:

Open spaces, empty jobs, and unmade fortunes are the conditions that made inequality tolerable to the least advantaged in America's compromised republic; with hope gone, the compromise is itself compromised, and inequality becomes a permanent, oppressive, intolerable burden.⁶⁴⁰

Paine sufficiently grasped history to recognize that the struggle of the Colonials to gain independence from British domination presented a crucial window of opportunity to apply the principles of cooperative individualism to socio-political arrangements and institutions that would, without an immediate effort, soon close. In *Common Sense*, he challenged Colonial Americans to make the most of their circumstance:

The present time, likewise, is that peculiar time which never happens to a nation but once, viz., the time of forming itself into a government. Most nations have let slip the opportunity, and by that means have been compelled to receive laws from their conquerors, instead of making laws for themselves.⁶⁴¹

When the Colonials gathered in Philadelphia declared their independence from Britain, they were propelled into circumstances for which they were poorly prepared. Early on, Paine added his voice to those who called for union of the colonies, taking advantage of the common foe to achieve the union before “[t]he vast variety of interests, occasioned by an increase of trade and population, would create confusion” from which “[c]olony would be against Colony”⁶⁴² and the promise of a people united by a cohesive system of governance missed. Then, as early as 1780 in his writing, Paine agitated for a constitutional convention; and, in the years immediately following formation of the union, he was convinced that a new era had dawned in which “*the principle of its government, which is that of the equal Rights of Man, is making a rapid progress in the world.*”⁶⁴³ At the time, the progress Paine referred to was limited to events occurring in France. Of the rest of Europe, he declared: “*What are the present governments of Europe but a scene of iniquity and oppression.*” And, was it not evident to all that Britain had become “*a market where every man has his price, and where corruption is common traffic, at the expense of a deluded people.*”⁶⁴⁴ Thus, to Paine, the differences between the forms of government created in the sovereign United States of America and those of the Old World were

differences in kind and not simply of degree. He puts this in terms of principle versus form:

Forms grow out of principles, and operate to continue the principles they grow from. It is impossible to practice a bad form on any thing but a bad principle. It cannot be grafted on a good one; and wherever the forms in any government are bad, it is a certain indication that the principles are bad also.⁶⁴⁵

From Europe, he championed the United States as beacon lights of moral principle at work. America's diversity—its pluralism—was a strength thought in all other societies to be a serious weakness. The Colonials, of course, benefited immensely by the long period of salutary neglect as well as their nearly universal access to the bounties of the natural environment. These circumstances "*produced among them a state of society [in which]...man becomes what he ought. He sees his species, not with the inhuman ideas of a natural enemy, but as kindred; and the example shows to the artificial world, that man must go back to nature for information.*"⁶⁴⁶ Paine, the socio-political philosopher, probed deeply into human behavior and the structure of group dynamics, examining what have been referred to generally as *natural laws* that both advance and thwart our struggle for survival. His scientific mind pursued knowledge openly, combining observation with speculative thought. Although Paine rejects orthodoxy in matters of religion, he sees within the order attached to the physical universe an intellect at work far greater than our own. He is drawn to science as the methodology by which we are challenged to discover the path to harmonious living—within the constraints of the physical universe, to be sure — with one another in society:

The Almighty lecturer, by displaying the principles of science in the structure of the universe, has invited man to study and to imitation. ...⁶⁴⁷

It is the structure of the universe that has taught this knowledge to man. That structure is an ever-existing exhibition of every principle upon which every part of mathematical science is founded.⁶⁴⁸

God has provided us with the ability to reason; thus, says, Paine, “[i]t is only by the exercise of reason, that man can discover God.”⁶⁴⁹ The atheist finds the same degree of comfort in a reliance on Nature as the Deist Paine attributes to God as “a first cause, the cause of all things.”⁶⁵⁰ In either case, reason is the means by which the individual achieves maximum advantage in combining intuitive thought with observation and experimentation:

Before anything can be reasoned upon to a conclusion, certain facts, principles, or data, to reason from, must be established, admitted, or denied.⁶⁵¹

What Paine understands is the importance of both the *a priori* and *a posteriori* means of acquiring knowledge. Where socio-political arrangements and institutions are concerned, however, truth does not necessarily lead to right action. This requires dedication and, often, a willingness to sacrifice oneself for important principles. From the time he arrived in British America, Thomas Paine lived his life in this manner. Samuel Edwards writes of Paine that “ [a]lthough Paine considered himself a fireside thinker he not only demanded that others man the barricades without hesitation, but was willing to do so himself, as he had proved when he had joined the Pennsylvania militia in the early days of the American Revolution.”⁶⁵²

Paine was premature in writing that his own era would “merit to be called the Age of Reason.”⁶⁵³ He was nonetheless correct when he wrote that “such is the irresistible nature of truth, that all it asks, and all it wants, is the liberty of appearing.”⁶⁵⁴ Under considerable pressure from entrenched power, Paine and others who constituted the still small community of transnationals forged ahead with their activism and

their quest for truth. As a student of human behavior and as someone intimately involved in the struggle for individual liberty, Paine chose to be overly optimistic and placed far too much faith in the dictum that right action would follow on the heels of discovery:

Ignorance is of a peculiar nature; once dispelled, it is impossible to re-establish it. It is not originally a thing of itself, but is only the absence of knowledge; and though man may be kept ignorant, he cannot be made ignorant.

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.⁶⁵⁵

Paine is making both an intellectual and a moral judgment. He presumes that although we are not instinctively moral, we can be nurtured by truth to act in morally-acceptable ways. Human behavior, then, is susceptible to incremental change directed by an acquired appreciation of "*true interest, provided it be presented clearly to their understanding, and that in a manner not to create suspicion by anything like self-design, nor offend by assuming too much.*"⁶⁵⁶ Our inclination is toward goodness, and nurturing is the common denominator directing full actualization of this quality.

Although Paine held an appreciation for history, he did not trouble himself with describing in any detail the passing of previous ages. Others had already done so in great detail and with a sufficiently objective eye. Existing knowledge of antiquity revealed a pattern of socio-political development associated with all groups. The earliest form of hierarchical structure Paine attributed to superstition and, secondly, to the quest for power. Sure that his age was of a different kind, he declared that civilization had reached a new stage in which the objective of government was becoming "*the common interests of society, and the common rights of man.*" To put this into an historical perspective, he goes on to say: "*The first was a government of priestcraft,*

the second of conquerors, and the third of reason."⁶⁵⁷ There is no question that throughout most of history, priestcrafts and conquerors have ruled; and, out of this unholy alliance arose the evils of aristocracy and monarchy. The combined effect was to immeasurably retard the development of civilization. Tribal societies might—by conquest and absorption—evolve into nation-states or empires; but, the civilization formed in conjunction with this expansion "*operated two ways: to make one part of society more affluent, and the other more wretched, than would have been the lot of either in a natural state.*"⁶⁵⁸ In the state of existence that precedes the formation of hierarchical government, Paine observes, "*man...is naturally the friend of man,*"⁶⁵⁹ so that our instinctive and dominant behavioral characteristic is cooperation. Competition, on the other hand, absent just law justly enforced, erupts into conflict as an accepted behavior nurtured by ritual, celebration and tradition. The lesson of history is clear:

There is a natural aptness in man, and more so in society, because it embraces a greater variety of abilities and resources, to accommodate itself to whatever situation it is in. The instant formal government is abolished, society begins to act. A general association takes place, and common interest produces common security.⁶⁶⁰

Paine understands and accepts that, once civilized, man cannot return to life as in a state of nature. Rather, he suggests that the cooperative instinct remains so strong that only the imposition of corrupt government dampens its positive influence; in the end, "*man is so naturally a creature of society, that it is almost impossible to put him out of it.*"⁶⁶¹ Paine goes on to observe: "*If we consider what the principles are that first condense men into society, and what motives regulate their mutual intercourse afterward, we shall find, by the time we arrive at what is called government, that nearly the whole of the business is performed by the natural operation of the parts upon each other.*"⁶⁶² Government is needed because our cooperative instinct is imperfect. There is a real

conflict between what individuals perceive as self-interest and their real interest, between the pursuit of immediate gratification and damage to our longer-term survival. The legitimate and proper function of government is (as Locke concluded) to prevent or punish criminal licenses and to regulate economic licenses. Paine adds that “[s]ociety 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.”⁶⁶³ We should not, then, be surprised when Paine concludes that “Government, even in its best state, is but a necessary evil; in its worst state an intolerable one.”⁶⁶⁴

THE RIGHTS OF MAN

Thomas Paine was drawn to those who cared about ideas, and he entered these discussions armed with thoughtful insights of his own. In the middle of the eighteenth century, the basis for radical political thinking came most directly from the writings of John Locke. Paine certainly engaged many of his fellow countrymen in debate over Locke’s principles and put forward his own arguments to demonstrate that Locke had not followed his own logic to its full and appropriate conclusions. Later came Paine’s introduction to the writings of Adam Smith and the French Physiocrats. That government was a necessary evil he did not dispute. Government had to be sufficiently strong to prevent individuals from acts of criminal or economic license, but not so strong as to violate individual liberty. Only when proper principles are applied to the formation of positive law is government in a position to carry out its proper responsibilities. Well into *Rights Of Man*, he writes:

Government is nothing more than a national association; and the object of this association is the good of all, as well individually as collectively. Every man wishes to

pursue his occupation, and enjoy the fruits of his labors, and the produce of his property, in peace and safety, and with the least possible expense. When these things are accomplished, all the objects for which government ought to be established are answered.⁶⁶⁵

Paine's first principle is equality, by which he means that "*men are all of one degree and consequently that all men are born equal, and with equal natural rights, in the same manner as if posterity had been continued by creation instead of generation.*"⁶⁶⁶ He is guided by a strong moral sense of right and wrong, and the philosophy of *cooperative individualism* he espouses is based on moral law and a doctrine of human rights:

The duty of man...is plain and simple, and consists but of two points. His duty to God, which every man must feel; and with respect to his neighbor, to do as he would be done by. ...⁶⁶⁷

Mankind are not universally agreed in their determination of right and wrong; but there are certain actions which the consent of all nations and individuals hath branded with the unchangeable name of meanness. In the list of human vices we find some of such a refined constitution, they cannot be carried into practice without seducing some virtue to their assistance; but meanness hath neither alliance nor apology.⁶⁶⁸

Only just laws will command broad adherence. For those who misperceive their real interest and resort to acts of license, society must empower government to impose remedies. Our moral sense, reasons Paine, directs us to recognize the appropriate limits to freedom of action. That countless individuals exceed the boundaries of liberty, thereby exercising license at the expense of others, is sufficient reason why "*it ought not to be left to the choice of detached individuals whether they will do justice or not.*"⁶⁶⁹ Positive law, enforced by government, is just the extent to which the civil rights guaranteed and protected fully

encompass the individual's natural rights. "Every civil right has for its foundation some natural right pre-existing in the individual," Paine tells us, observing further that the power of the individual to enjoy these rights "is not, in all cases, sufficiently competent."⁶⁷⁰ By this he means that an imbalance in power between those who would violate the liberty of others and their intended victims directs government to prevent or punish the perpetrators in the name of justice and in defense of society.

Paine's doctrine of natural rights is, of course, a synthesis, although a synthesis that represents a radical departure from earlier and more conservative pronouncements of rights. His sincerity need not be doubted, although one must grant that his purpose in writing was to excite debate and to provoke action against socio-political arrangements and institutions he unhesitatingly condemned:

When we survey the wretched condition of man under the monarchical and hereditary systems of government, dragged from his home by one power, or driven by another, and impoverished by taxes more than by enemies, it becomes evident that those systems are bad, and that a general revolution in the principle and construction of governments is necessary.⁶⁷¹

Reason dictates that the right to change one's form of government is among the collective rights of individuals in society. For, "[m]an 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."⁶⁷² Paine does not, on the other hand, attempt to assign a hierarchy to our natural rights; nor is his list long. He is concerned with fundamental relationships. "Man has no property in man; neither has any generation a property in the generation which are to follow,"⁶⁷³ he states as a basic principle. As the struggle to survive requires that the individual have access to land (and other natural opportunities), Paine calls for "[e]quality of natural Property," meaning that "[e]very individual in the

*world is born therein with legitimate claims on a certain kind of property, or its equivalent.*⁶⁷⁴ More specifically, he declares:

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.⁶⁷⁵

It is a position not to be controverted 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.⁶⁷⁶

Then, there are the intellectual rights (i.e., Paine's "*rights of the mind*") that simply acknowledge the fact that we possess the capacity for rational thought. Of these, Paine singles out the rights to free speech and to one's spirituality.

RIGHTS OF THE NATION AGAINST GOVERNMENT

Government is nothing more than the agency of society created to "[act] on the principles of society."⁶⁷⁷ Real power is held by the collective citizenry, who—as the nation—possess "*the right of forming or reforming, generating and regenerating constitutions and governments,*" while the "*operation of government is restricted to the making and the administering of laws.*"⁶⁷⁸ The legitimate expectation of the individual in society is "*to pursue his occupation, and enjoy the fruits of his labors, and the produce of his property, in peace and safety.*"⁶⁷⁹ With this in mind, Paine asserts that "*a government which cannot preserve the peace is no government at all.*"⁶⁸⁰

The challenge for the citizens of any society, it seems, is to somehow provide government with sufficient power to protect the maximum

extent of freedom consistent with individual liberty, such power checked in ways that minimize the inevitable tendency toward corruption and usurpation of ever more power. In the ideal circumstance, where the spirit of cooperation is spread throughout a citizenry "*the less occasion has it for government, because the more does it regulate its own affairs, and govern itself.*"⁶⁸¹ However, Paine acknowledges the necessity for a measured degree of coercive power to be exercised in defense of liberty. Along with this need is also the parallel cost of paying for the services performed:

[W]ere the impulses of conscience clear, uniform and irresistibly obeyed, man would need no other lawgiver; but that not being the case, he finds it necessary to surrender up a part of his property to furnish means for the protection of the rest.⁶⁸²

The political economist in Paine would appreciate the observation that aggregate production of wealth is certainly benefited by a peaceful and orderly society. Confident that the wealth produced by their labor will be neither confiscated by those in government nor by others, the productivity of the individual cannot but be enhanced.

To protect against the usurpation of power and the violation of natural rights, "*a nation has at all times an inherent indefeasible right to abolish any form of government it finds inconvenient, and establish such as accords with its interests, disposition, and happiness.*"⁶⁸³ Attached to this right is what Paine declares as the true exercise of sovereignty. Tyranny might reign, as it had for so very long in the Old World, but eventually the mass of people will no longer tolerate oppression:

[T]he strength of government does not consist in any thing within itself, but in the attachment of a nation, and the interest which the people feel in supporting it. When this is lost, government is but a child in power; and though...it may harass individuals for a while, it but facilitates its own fall.⁶⁸⁴

Rebellion, however, is not an end but only a means. The culmination of the full process of reform is the adoption of a written constitution, with which all other positive law must be consistent. When these conditions have been met (and Paine believed they had been substantially met within and among the new United States of America), then “*every difficulty retires, and all the parts are brought into cordial unison. ...[T]he poor are not oppressed, the rich are not privileged. Industry is not mortified by the splendid extravagance of a court... Their taxes are few, because their government is just.*”⁶⁸⁵ As Paine’s experiences in France would show, however, the adoption of a written constitution means little if the fundamental principles upon which the words are based do not reach deep into the heart of a society.

After the reign of terror passed and his subsequent release from prison, Paine continued to cling to his view that only a written constitution blocks the otherwise inevitable drift into despotism. In his *Dissertation on First Principles of Government*, Paine offered his interpretation of why events in France had gone so far astray from the ideals of the revolution:

Had a Constitution been established two years ago (as ought to have been done), the violences that have since desolated France and injured the character of the revolution, would, in my opinion, have been prevented. The nation would then have had a bond of union, and every individual would have known the line of conduct he was to follow. But, instead of this, a revolutionary government, a thing without either principle or authority, was substituted in its place; virtue or crime depended upon accident; and that which was patriotism one day, became treason the next. All these things have followed from the want of a Constitution; for it is the nature and intention of a Constitution to prevent governing by party, by establishing a common principle that shall limit and control the power and impulse of party...⁶⁸⁶

What is, perhaps, understandable was that Paine retained an unshaken confidence in the constitution adopted by the United States.

He found, upon his return to North America in the early years of the nineteenth century, a leadership absorbed by disagreement and self-interest, accompanied by the rise of organized opposing parties. Moreover, in the words of Moncure Conway, there was in the United States "*a lingering dislike and distrust of the common people.*"⁶⁸⁷ Paine was far more democratic in his principles than most of those who came to power in the United States after independence. Many were happy that Paine decided to leave for Europe in 1787. He returned in 1802—ill, bitter, nearly forgotten by former comrades in arms and hated by others for his attacks on organized religion. In the town where he took up residence, Paine had his citizenship challenged at the voting booth. He took the opportunity to reflect on the state of the nation, writing to then Vice-President, George Clinton:

As it is a new generation that has risen up since the declaration of independence, they know nothing of what the political state of the country was at the time the pamphlet 'Common Sense' appeared; and besides this there are but few of the old standers left...⁶⁸⁸

Indeed, events within the young United States had moved beyond questions of how the governments should or should not be formed. A written constitution was set in place, and people were going about the business of securing a livelihood. Another of Paine's biographers, Samuel Edwards, observes that "[t]he principles that Thomas Paine held dear were no longer argued about; they had been incorporated into the American system and were taken for granted."⁶⁸⁹ To a degree, this was true. Paine was becoming increasingly concerned that even if, in fact, his principles had been incorporated into the American system they were far from secure. In a series of letters published in the Republican newspaper, the Washington *Intelligencer*, he struck out at Federalist rhetoric and charged them with pursuing "*government as a profitable monopoly, and the people as hereditary property.*"⁶⁹⁰ A curious thing then

occurred. Jefferson's election to the Presidency and the nation's accompanying resurgent democratic spirit removed whatever doubts Paine might have harbored in the power of the Constitution to positively direct the actions of individuals even under circumstances of party stress. To the French he had written "[t]he American Constitutions were to liberty, what a grammar is to language: they define its parts of speech, and practically construct them into syntax."⁶⁹¹ Again, the collective wisdom of the nation had come through to purge from power those who were determined to violate the spirit of the Constitution.

Citizen involvement, so vital to Paine's hopes for the future, is encouraged by provisions in the state and federal constitutions that allow for amendment when circumstances and the nation's support warrant change. Principle, not expediency, had to serve as the nation's guide when considering any such amendment. Of these principles, one that stands out as fundamental to the formation of just government is that of the origin of power:

A constitution is not a thing in name only, but in fact. It has not an ideal, but a real existence; and wherever it cannot be produced in a visible form, there is none. A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. The constitution of a country is not the act of its government, but of the people constituting a government.⁶⁹²

The laws which are enacted by governments, control men only as individuals, but the nation, through its constitution, controls the whole government, and has a natural ability so to do. The final controlling power, therefore, and the original constituting power, are one and the same power.⁶⁹³

In the struggle to secure and protect the rights of individuals as members of society, Paine argues this might not be achieved even with a written constitution but certainly cannot be achieved without one. He goes further. Only a representative form of government, with "*a large and equal representation*"⁶⁹⁴ provided, prevents the corruption of

government in the service of vested interest. While the result of this type of representative government is the enactment of positive law consistent with moral principles, the justification for representative government is found in principles discovered by scientific method:

The representative system takes society and civilization for its basis; nature, reason, and experience for its guide...[and] is calculated to produce the wisest laws, by collecting wisdom where it can be found.⁶⁹⁵

While championing the cause of representative government, Paine is quick to acknowledge the general lack of experience, with its peculiarities. He reminds the nation that the “[s]imple democracy...of the ancients”⁶⁹⁶ degenerated under numerous internal and external pressures and urges patience on the part of generations who must struggle to perfect the new system of representative democracy, constructed (he is confident) on sound principles but largely untested by the complexities attached to a pluralistic society:

The case is, that mankind (from the long tyranny of assumed power) have had so few opportunities of making the necessary trials on modes and principles of government, in order to discover the best, that government is but not beginning to be known, and experience is yet wanting to determine many particulars.⁶⁹⁷

More than anything else, education is necessary to bring about perfection in government. By this he means far more than the formal schooling all citizens should have access to. The value of this type of education is, he writes, “like a small capital, to put [a person] in the way of beginning learning for himself afterwards.”⁶⁹⁸ Mastering the arts of reading and writing, of language and its use, is not learning in the sense felt most important by Paine; rather, learning consists “in the knowledge of things to which language gives names.”⁶⁹⁹ One’s moral sense of right and wrong, reason and powers of observation combine in the

acquisition of knowledge. Paine's own intellect drew him to conclusions that shook the foundations of conventional wisdom and vested interest. Although he defended the rights of individuals to practice their own customs without interference, his position was not a defense of what today is thought of as cultural relativism. Neither tradition, nor even unanimous consent, could convert the exercise of license into the realm of liberty. A nation might foolishly sanction license falsely under the guise of liberty, but this to Paine was an aberration in need of correction:

The error of those who reason by precedents drawn from antiquity, respecting the rights of man, is that they do not go far enough into antiquity. They do not go the whole way. They stop in some of the intermediate stages of an hundred or a thousand years, and produce what was then done as a rule for the present day. This is no authority at all.

If we travel still further into antiquity, we shall find a directly contrary opinion and practise prevailing; and, if antiquity is to be the authority, a thousand such authorities may be produced, successively contradicting each other; but if we proceed on, we shall at last come out right; we shall come to the time when man came from the hand of his Maker. What was he then? Man. Man was his high and only title, and a higher cannot be given him.

We have now arrived at the origin of man, and at the origin of his rights. As to the manner in which the world has been governed from that day to this, it is no further any concern of ours than to make a proper use of the errors or the improvements which the history of it presents. Those who lived a hundred or a thousand years ago, were then moderns as we are now. They had their ancients, and those ancients had others, and we also shall be ancients in our turn.⁷⁰⁰

Paine takes us back to the age of tribal and communitarian organization, before settlement and the appearance of the unholy alliance between the warrior-chieftains and the priesthood, before the

adoption of hierarchical socio-political arrangements and institutions, to a time when just relations prevailed.

PRESERVING NATURAL RIGHTS UNDER POSITIVE LAW

As a good and objective scientist, Paine made sure to distinguish between the use of *natural law* and *natural rights* as descriptive terms. His distinctions were nonetheless more subtle than what is warranted by the confusion then (and now) prevalent with respect to their usage. Contained within his definition of the “*immutable laws of nature*”⁷⁰¹ were not merely the laws governing the physical universe but “*the great laws of society*”⁷⁰² as well. His reasoning is based, at least in part, on his acceptance of the ultimate creator; if only we would learn to live in harmony with natural law, the result would be (as God designed) peaceful co-existence in an atmosphere of plenty:

All the great laws of society are laws of nature. Those of trade and commerce, whether with respect to the intercourse of individuals, or of nations, are laws of mutual and reciprocal interest.⁷⁰³

Paine is certainly correct that we possess a considerable and instinctive desire to be cooperative with one another in the production and exchange of goods and services. He adds that we do so because cooperation is in our self-interest. He attributes conflict almost wholly to factors separate from individual character and the ability to exercise free will. “*Man is not the enemy of man,*” he writes, “*but through the medium of a false system of government.*”⁷⁰⁴ Remove the institutional impediments to moral duty and moral action will naturally follow. Remove monarchy and aristocracy and state religion—each, agents of

tyranny—and replace them with institutions based on principles of natural law and cooperation will flourish:

[G]overnment in a well constituted republic...requires no belief from man beyond what his reason can give. He sees the rationale of the whole system, its origin and its operation; and as it is best supported when best understood, the human faculties act with boldness, and acquire, under this form of government, a gigantic manliness.⁷⁰⁵

Once representative democracy has been perfected, Paine has an unending faith in its citizens—functioning as the nation—to decide wisely and justly on all matters of importance. His benchmarks for judging where a society is on the path to perfection are concrete and useful:

When it shall be said in any country in the world, “My poor are happy; neither ignorance nor distress is to be found among them; my jails are empty of prisoners, my streets of beggars; the aged are not in want, the taxes are not oppressive; the rational world is my friend, because I am a friend of its happiness”:—when these things can be said, then may that country boast of its constitution and its government.⁷⁰⁶

Thus, a government free of corruption and operating in the true interests of the nation is also in conformity with natural law by virtue of the protection provided for the natural rights of all its citizens. This satisfies Paine, the moral philosopher; as scientist, he is more cautious and proposes a system of checks and balances to forestall any temptations individuals might have to usurp power from the nation for themselves. One such safeguard is to require that all laws have scheduled dates of expiration.

Even more deeply felt than his adherence to set principles is Paine’s belief in the ultimate wisdom of the nation. He is willing to risk the possibility of temporary departures in positive law from moral law—

and thereby jeopardize the protection of natural rights—in order to protect what he feels is the greatest of those rights:

That which may be thought right and found convenient in one age, may be thought wrong and found inconvenient in another. In such cases, who is to decide, the living, or the dead?⁷⁰⁷

Every age and generation must be as free to act for itself, in all cases, as the ages and generations which preceded it. The vanity and presumption of governing beyond the grave, is the most ridiculous and insolent of all tyrannies.⁷⁰⁸

Only by affirmative and decisive action on the part of the nation will expiring laws become renewed. Laws that do not live up in their administration to their promise will, therefore, be cast aside. Of this, Paine is quite confident. “*It is always the interest of a far greater number of people in a nation to have things right,*” he declares, “*than to let them remain wrong; and when public matters are open to debate, and the public judgment free, it will not decide wrong, unless it decides too hastily.*”⁷⁰⁹ He might have added, of course, that it is always in the interest of those who enjoy privilege and power to prevent public debate on such matters, to do all they can to ensure that other causes are attributed to problems created by their possession of legal privileges.

Beyond his absolute faith in representative democracy, Paine withdraws from offering a detailed plan for departments or attaching limits on the responsibilities the nation might legitimately expect government to perform. This, I believe, is what he meant in writing: “*I am not contending for nor against any form of government, nor for nor against any party...*” remaining consistent with his trust in the collective wisdom of all citizens, he continues, “*[t]hat which a whole nation chooses to do, it has a right to do.*”⁷¹⁰ He is far more concerned that the nation’s laws protect natural rights and foster cooperation. Only by means of representative government can this be achieved.

The Earth As Our Common Birthright

Paine's hatred of monarchy and aristocracy comes not only from the experience of living under the rule of kings and their courts but from his moral sense that a great evil is perpetrated when the right of all persons to equal access of what nature has provided is denied. He is strongly communitarian (rather than libertarian) in his views on individual claims to property rights in nature and influenced far more by Rousseau than by Locke or Smith. His attack is at the most basic of privileges claimed by the few at the expense of all others:

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.⁷¹¹

The dominant characteristic of civilization, tracing our history as far back into antiquity as is possible, is the use of institutional power to deny to those who labor on the land the fruits of their labor. Here, Paine directs his attack on both the Aristocracy and the Church:

It is difficult to discover what is meant by the landed interest, if it does not mean a combination of aristocratical land-holders, opposing their own pecuniary interest to that of the farmer, and every branch of trade, commerce, and manufacture.⁷¹²

The aristocracy are not the farmers who work the land, and raise the produce, but are the mere consumers of the rent; and when compared with the active world, are the drones, a seraglio of males, who neither collect the honey nor form the hive, but exist only for lazy enjoyment. ...⁷¹³

When land is held on tithe, it is in the condition of an estate held between two parties; the one receiving one-tenth, and the other nine-tenths of the produce: and, consequently, on principles of equity, if the estate can be improved, and made to produce by that improvement double or treble what it did before, or in any other

ratio, the expense of such improvement ought to be borne in like proportion between the parties who are to share the produce.

But this is not the case in tithes; the farmer bears the whole expense, and the titheholder takes a tenth of the improvement, in addition to the original tenth, and by this means gets the value of two-tenths instead of one. That is another case that calls for a constitution.⁷¹⁴

With respect to titleholdings granted to individuals, Paine declares these to be an unnatural form of property (i.e., an economic license). Justice demands, therefore, that as compensation for this privilege, “[e]very proprietor...of cultivated lands, owes to the community a ground-rent...for the land which he holds.”⁷¹⁵ The absence of such provisions in the laws of civilizations ancient and modern allowed the powerful to monopolize lands with the best natural fertility or the most profitable locations for commerce. Paine makes the connection between the dismantling of communitarian control generally practiced by tribal societies with the transition to private titleholdings accompanying permanent settlement and horticulture. The ability to confiscate as *rent* portions of what those who labor produce is the power inherent in titleholdings. As population increases and the demand for land grows, the power of the titleholder over the propertyless grows and grows:

Nothing could be more unjust than agrarian law in a country improved by cultivation; for 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. 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 had originally no owner.

[T]he land monopoly that began with [cultivation] has produced the greatest evil. It has dispossessed more than half the inhabitants of every nation of their natural inheritance, without providing for them, as ought to have been done, an

indemnification for that loss, and has thereby created a species of poverty and wretchedness that did not exist before.⁷¹⁶

Poverty is the one common denominator to all nations, caused by “preventing [the] principles [of civilization]”⁷¹⁷ from freely operating. Corrupt government unmercifully takes from the poor, protecting the privileges of the rich, so that “*the poor in all countries are become an hereditary race, and it is next to impossible for them to get out of that state of themselves.*”⁷¹⁸ North America, to repeat an earlier observation, might provide a safety valve to relieve the pressures on the Old World’s privileged institutions, but for how long? Jacob Bronowski’s description of the continuous *ascent of man* depends upon socio-political arrangements and institutions that are just, that secure and protect liberty and that promote equality of opportunity. To this end, criminal licenses must be prevented and economic licenses must yield just compensation to the nation:

It is not charity but a right, not bounty but justice, that I am pleading for. The present state of civilization is as odious as it is unjust. It is absolutely the opposite of what it should be, 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. Though I care as little about riches as any man, I am a friend to riches because they are capable of good. ...⁷¹⁹

Mankind being originally equals in the order of creation, the equality could only be destroyed by some subsequent circumstance: the distinctions of rich and poor may in a great measure be accounted for, and that without having recourse to the harsh ill-sounding names of oppression and avarice. Oppression is often the consequence, but seldom or never the means of riches; and tho’ avarice will preserve a man from being necessitously poor, it generally makes him too timorous to be wealthy.⁷²⁰

Paine looks at the world and cannot believe the Creator could have put into place the means by which all could be provided for (i.e., natural

law) without simultaneously granting to each person an equal claim as one's natural right. In the *Rights Of Man*, Paine summarizes what reason tells him are the fundamental requirements for the just society:

First, That every civil right grows out of a natural right; or, in other words, is a natural right exchanged.

Secondly, That civil power, properly considered as such, is made up of the aggregate of that class of the natural rights of man, which becomes defective in the individual in point of power, and answers not his purpose, but when collected to a focus, becomes competent to the purpose of every one.

Thirdly, That the power produced from the aggregate of natural rights, imperfect in power in the individual, cannot be applied to invade the natural rights which are retained in the individual, and in which the power to execute is as perfect as the right itself.⁷²¹

And yet, Paine could see that much of the gains achieved by his Colonial American friends falling victim to vested interest. In 1805, and nearing the end of his years, Paine took the time to provide the people of Pennsylvania with the benefit of his thinking as they contemplated amending their state constitution. "To know if any theory or position be true or rational in practise," he wrote, "the method is to carry it to its greatest extent; if it be not true upon the whole, or be absurd, it is so in all its parts, however small."⁷²² Paine was greatly disturbed at the now independent Americans of European heritage had "descended to the base imitation of inferior things" so clearly the instruments of "tyranny and antiquated absurdities"⁷²³ imposed on the majority in the Old World. Paine's influence had largely passed; yet, he continued to be a voice of reason and the conscience of the revolutionary generation. In *Liberating the Early American Dream*, Alfred F. Anderson, co-director of the Tom Paine Institute, hints at the window of opportunity missed when Paine diverted his attentions from the philosophical and political to the practical, which took him back to the European theatre at a time

crucial to establishing a foundation of cooperative individualism in North America:

How different the history of the world might have been...if Tom Paine had remained to see the American revolution through its nonviolent phase as he so faithfully had through its violent one.⁷²⁴

One can only speculate what influence Paine might have had as a journalist using his pen to press the Constitutional Convention delegates to not settle for half measures. Would, for example, the great landowners consent to payment of a ground-rent to the national government in acknowledgement of the privilege attached to their titleholdings? Dr. John Witherspoon had made just such a suggestion during the debate over the Articles of Confederation, observing that "*the value of lands and houses was the best estimate of the wealth of a nation.*"⁷²⁵ Article 8, as subsequently adopted, reads as follows:

All charges of war, and all other expenses that shall be incurred for the common defence or general warfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land, and the buildings and improvements thereon, shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint.

This same revenue scheme was put forward in 1781 by Pelatiah Webster, who simultaneously called for a convention to draft a new constitution. Charles Pinckney would, at the convention, declare that "[t]he land interest...is the governing power of America."⁷²⁶ The society which Paine hoped would lead humankind into a new era of liberty and prosperity was, as here noted by Alexander Hamilton, still suffering

from the legacy of institutionalized privilege that the framers could not bring themselves to end:

The difference of property is already great among us. Commerce and industry will still increase the disparity. Your government must meet this state of things, or combinations will, in process of time, undermine your system.⁷²⁷

In the end, the written constitution Paine so wanted failed to protect for future generations their birthright of equal access to nature. Pelatiah Webster had also proposed a plan for the orderly sale of public lands that would have required settlement and improvement within two years, or title would revert to the government. Instead, the promise of great profits from land speculation subverted the efforts of those whose motives were guided by principle. Paine's philosophy of cooperative individualism was destined to languish during a century-long era of unbridled individualism. Monopoly license and widespread corruption of public institutions would nurture a small elite class of agrarian and industrial-landlords destined to control much of the land, the commerce and the finance of the United States following the *War Between the States*. In the process, the degree of liberty protected by representative government and the Constitution suffered dearly. The window of opportunity created by the successful Colonial struggle for independence from Britain had closed. Paine had been through much in his life; he had discovered a good deal; but, like so many others, his warnings for the future were ignored. Only in recent years have his writings been rediscovered for their unique contribution to the world of ideas. Here, in just a few paragraphs he rests his guiding hand:

Inequality of rights has been the cause of all the disturbances, insurrections and civil wars that ever happened in any country, in any age of mankind. It was the cause of the American Revolution, when the English Parliament sat itself up to *bind America in all cases whatsoever*, and to reduce her to unconditional submission. ...

The fundamental principle in representative government is that *the majority governs*; and as it will be always happening that a man may be in the minority on one question, and in the majority on another, he obeys by the same principle that he rules. But when there are two houses of unequal numbers, and the smaller number negating the greater, it is the minority that governs, which is contrary to the principle.⁷²⁸

Paine was referring to the state of affairs in the Commonwealth of Pennsylvania in 1800. His observations have relevance for us in the United States today and around the globe where “inequality of rights” and “minority government” combine to diminish the liberty that is the natural right of all people, everywhere.