

For the Living: Thomas Paine's Generational Democracy

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This article shows that Thomas Paine's political theory defends what I call generational democracy. Paine takes human mortality as a starting point to flesh out a conception of democracy that affirms the agency of the living. Generational democracy empowers the living to act as constitutional authors. The self-ennobling dimension of constitutional authorship and democratic socialization ensures a people capable of improving constitutions in ways that enhance democratic agency. The strengthening of democratic agency is also central to Paine's right to welfare, which redresses legacies of economic injustice by creating substantial equality between generations. Welfare rights enhance the agency of the living by providing for economic opportunity and by securing agency in the face of impending death. Generational democracy achieves intergenerational justice and care for the future precisely because it focuses on enhancing the democratic agency of the living generation.

Keywords *Paine; democracy; generations; mortality; right to welfare*

References to generations abound in democratic politics. Examples include "Generation O" being credited in part with the election of President Barack Obama, debates about whether democracy is strengthened or weakened by the actions of specific generations, as well as repeated appeals to the responsibility of a given generation to achieve specific political objectives.¹

The author wishes to thank James Bourke, Michael Evans, Teena Gabrielson, Nikolas Kompridis, Char Miller, Melissa Schwartzberg, Stephen Seagrave, and John Seery for their comments on prior versions of this argument. He is grateful to the anonymous reviewers as well as to Cyrus Ernesto Zirakzadeh and Roger Karapin for their helpful suggestions.

1. Damien Cave, "Generation O Gets Its Hopes Up," *New York Times*, November 9, 2008. Leonard Steinhorn believes those in the Baby Boomer Generation, not the World War II Generation, deserve to be held up as exemplary democrats; see *The Greater Generation: In Defense of the Baby Boom Legacy* (New York: Thomas Dunne Books, 2006). The Port Huron Statement famously appealed to generational responsibility; see Tom Hayden, *The Port Huron Statement: The Visionary Call of the 1960s Revolution* (New York: Thunder's Mouth Press, 2005). George W. Bush invoked generational responsibility regarding the September 11, 2001, terrorist attacks: "Our nation, this generation, will lift the dark threat of violence from our people and our future"; "Transcript of President Bush's Address to a Joint Session of Congress on

The pervasiveness of such generational discourse is perplexing. After all, modern democratic politics is not framed in generational terms: electorally based changes in political leadership and public policy occur at intervals far speedier than “generational” timelines. Similarly, normative conceptions of democracy do not assume a generationally circumscribed temporality.² Meanwhile, the philosophical literature most interested in thinking about generations – the intergenerational justice literature – tends to pay less attention to democratic politics.³

While a genealogical study could help make sense of how and why different generational discourses⁴ are being employed in relation to democracy, I instead turn to Thomas Paine to develop the normative appeal of a generational understanding of democracy. As one of the inaugural modern theorists of democracy – albeit a frequently neglected one – Paine critically relies on a generational, temporal horizon in his conceptualization of democracy.⁵ As I show in this article, Paine in fact theorizes what I call generational democracy: namely, a theory of democracy centered on the equal agency of each living generation. The resulting conception of democracy offers a sophisticated

Thursday Night, September 20, 2001,” September 21, 2001, <http://archives.cnn.com/2001/US/09/20/gen.bush.transcript/>. At his second inauguration, President Barack Obama defined “our generation’s task – to make these words, these rights, these values of life and liberty and the pursuit of happiness real for every American”; “Inaugural Address by President Barack Obama,” January 21, 2013, <https://www.whitehouse.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama>.

2. Even those theorizing democratic temporality do not cast democracy in generational terms. Cf. William E. Connolly, *Neuropolitics: Thinking, Culture, Speed* (Minneapolis: University of Minnesota Press, 2002); William E. Scheuerman, *Liberal Democracy and the Social Acceleration of Time* (Baltimore, Md.: Johns Hopkins University Press, 2004); Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: University of Chicago Press, 2006); Sheldon Wolin, “Agitated Times,” *Parallax* 11 (2005): 2–11.

3. John Rawls may be influential here: he argues that intergenerational justice as “a just savings principle cannot literally be adopted democratically,” which is why the original position performs the task of creating justice between all generations; see his *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 288. For a notable exception, see Janna Thompson, *Intergenerational Justice: Rights and Responsibilities in an Intergenerational Polity* (New York: Routledge, 2009).

4. For a genealogy of this concept in Western culture, see Ohad Parnes, Ulrike Vedder, and Stefan Willer, *Das Konzept Der Generation: Eine Wissenschafts- und Kulturgeschichte* (Frankfurt am Main: Suhrkamp, 2008). For helpful conceptual distinctions, see Peter Laslett, “The Conversation Between the Generations,” in *Philosophy, Politics and Society*, ed. Peter Laslett and James Fishkin (New Haven, Conn.: Yale University Press, 1979), 36–56.

5. Following Paine’s own understanding, I treat the terms “democracy,” “representative government,” and “republic” as synonyms throughout. Only representative democracy can deliver the public good: “Athens, by representation, would have outrivalled her own democracy.” Thomas Paine, “Rights of Man: Part the Second. Combining Principle and Practice,” in *Rights of Man, Common Sense, and Other Political Writings*, ed. Mark Philp (Oxford, U.K.: Oxford University Press, 1998), 233; see also 227–33. Urbinati praises Paine’s call for *representative* democracy as “subversive” whereas Sheldon Wolin considers it a “theoretical moment of surrender.” See Urbinati, *Representative Democracy*, 3; Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought*, expanded ed. (Princeton, N.J.: Princeton University Press, 2004), 599.

approach to continuity and discontinuity within democracy. It also embodies a uniquely democratic constitutionalism. Finally, generational democracy entails a right to welfare that makes democratic agency a material reality at the individual level.

This article will show that Paine's theory of democracy proceeds from a recognition and affirmation of human mortality. The living generation should have democratic agency precisely because humans are mortal. Efforts to impose intergenerational obligations, on the other hand, pretend that our mortality is immaterial and reflect strategies of existential consolation. Such a disavowal of the *mortal* human condition harms future generations by stifling their democratic agency. Paine's defense of the living's agency does not, however, mean that he equates agency with sovereignty; instead, material context always delimits democratic agency, namely the ability of each generation to secure its own well-being. Intriguingly, Paine's generational democracy makes possible intergenerational continuity and care precisely because of its commitment to enhancing the agency of the living. To foster the agency of the living generation simultaneously benefits future generations, as will be explained below.

Paine's democratic constitutionalism affirms and facilitates each generation's agency. In particular, each generation should have the ability to rewrite its constitution. However, constitutional and legal continuity are possible because generational agency can also manifest itself as *tacit* or express consent. Similarly, Paine endorses constitutional precommitment, which he takes to be beneficial for ordinary legislation. Only the democratic founding itself is irrevocable; other than that, precommitment is always subject to the living generation's consent. Paine has faith that the living generation will improve rather than undermine the constitution's democratizing precommitment because of the self-ennobling dimension of constitutional authorship and because democratic socialization will produce a more democratic people over time.

A right to welfare,⁶ which impels a multigenerational pursuit of economic justice, joins democratic constitutionalism as a key ingredient in enabling the agency of the living, as I will develop in the final section of my argument. Paine insists that democracy will fail without a right to welfare; widespread poverty can only provide the social conditions for non-democratic regimes. In establishing a right to welfare, democracy creates substantial equality between pre- and post-civilization generations. The welfare state recognizes that the transition to

6. Some may be surprised by my use of the expression "right to welfare." While the welfare state today entails benefits that Paine did not anticipate, he does provide it with a theoretical foundation, as he justifies welfare as a natural right. Indeed, I agree with John Seaman that to not credit Paine for advocating a *right to welfare* amounts to a misreading, albeit a common one. John W. Seaman, "Thomas Paine: Ransom, Civil Peace, and the Natural Right to Welfare," *Political Theory* 16 (February 1988): 120–42, at 120–23.

civilization dispossessed the poor of their collective property in land. Substantial equality of generations in this context does not involve a return to the state of nature – impossible due to our mortality – but instead requires compensation in the form of welfare payments. These welfare payments not only redress prior and ongoing injustice; they, critically, give democratic agency a material reality in the lives of ordinary individuals. Consequently, generational democracy ensures that each individual has a sense of economic possibility at the beginning of his or her life; retirement payments maintain individuals' agency and dignity in the face of impending death.

In demonstrating the theoretical sophistication of Paine's generational democracy, this article highlights why contemporary democratic theory needs to pay more attention to Paine. Generational democracy bears important insights about democratic equality, agency, temporality and the right to welfare. This article furthermore contributes to the literature on Paine by explaining the consistency of his political theory in a different fashion – not as others have done by focusing on his commitment to liberalism, republicanism, or a creative/dysfunctional combination of the two, but by showing that generational democracy, grounded in human mortality, unites Paine's political thought.⁷

In the first section of this article, I briefly review Thomas Jefferson's theory of generational sovereignty in order to indicate the originality and superiority of Paine's approach, which is frequently conflated with Jefferson's. The second section considers how Paine relies on mortality to defend the agency of the living generation. In the third section I argue that such an understanding of the rights of living generations facilitates a constitutionalism that enhances the democratic agency of the living. This prepares my argument in the final section, which shows that Paine's concept of generational rights informs the defense of welfare rights. Importantly, generational democracy here acquires salience in the lives of individuals due to Paine's materially grounded notion of democratic agency. In the conclusion, I sketch some of the productive potential of generational democracy for challenges we face today.

7. J.G.A. Pocock notes that Paine "remains difficult to fit into any category"; see his *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge, U.K.: Cambridge University Press, 1985), 276. For Paine as a liberal, see Isaac Kramnick, *Republicanism and Bourgeois Radicalism. Political Ideology in Late Eighteenth-Century England and America* (Ithaca, N.Y.: Cornell University Press, 1990). Gary Kates argues that *Rights of Man* is self-contradictory because the first part is liberal, whereas the second part champions democratic republicanism; see his "From Liberalism to Radicalism: Tom Paine's Rights of Man," *Journal of the History of Ideas* 50 (December 1989): 571. Andreas Kalyvas and Ira Katznelson productively resist the attempt to classify Paine as *either* liberal *or* republican, or to account for a blending of these orientations in terms of intellectual development or failure; see their "The Republic of the Moderns: Paine's and Madison's Novel Liberalism," *Polity* 38 (October 2006): 454, 475.

Distinctions Matter: Jefferson and Paine on Living Generations

Famously, both Thomas Jefferson and Thomas Paine have asserted that “[t]he earth belongs always to the living generation.”⁸ Jefferson’s formulation is the more widely discussed.⁹ Indeed, some turn to Jefferson to explain an idea they attribute to both Paine and Jefferson.¹⁰ Even when the two are discussed side by side, there is a tendency to treat their articulations of generational rights as a comfortably coherent “Paine-Jefferson formula,” which results in Paine being dismissed for ideas instead held by Jefferson.¹¹ Alternatively, Paine is written off as merely being conventional on the subject, unlike Jefferson.¹² The Paine literature, conversely, does not offer a full appreciation of the idea of generational rights. Some of the major works discuss Paine’s idea in passing – mostly to explain the disagreement with Edmund Burke, but not as an avenue into Paine’s overall political theory.¹³ Even here there is a sense that Paine defended “Jefferson’s principle that the earth belonged to the living”¹⁴ – a principle, ironically, that Jefferson articulated only privately but Paine asserted publicly.¹⁵ In contrast, this article develops Paine’s

8. Thomas Jefferson, “Thomas Jefferson to James Madison, September 6, 1789,” in *The Papers of Thomas Jefferson: Vol. 15, 27 March 1787 to November 1789*, ed. Julian P. Boyd and William H. Gaines, Jr. (Princeton: Princeton University Press, 1958), 396.

9. Herbert E. Sloan, “The Earth Belongs in Usufruct to the Living,” in *Jeffersonian Legacies*, ed. Peter S. Onuf (Charlottesville: University of Virginia Press, 1993), 281–315; Herbert E. Sloan, *Principle and Interest: Thomas Jefferson and the Problem of Debt* (New York: Oxford University Press, 1995); Judith N. Shklar, *Redeeming American Political Thought*, ed. Stanley Hoffmann and Dennis F. Thompson (Chicago: University of Chicago Press, 1998), 171–86; Daniel Scott Smith, “Population and Political Ethics: Thomas Jefferson’s Demography of Generations,” *The William and Mary Quarterly*, 3rd ser., 56 (July 1999): 591–612; Terence Ball, “The Earth Belongs to the Living: Thomas Jefferson and the Problem of Intergenerational Relations,” *Environmental Politics* 9 (Summer 1999): 61–77; Peter S. Onuf, “Every Generation Is an ‘Independent Nation’: Colonization, Miscegenation, and the Fate of Jefferson’s Children,” *The William and Mary Quarterly*, 3rd ser., 57 (January 2000): 153–70; Kenneth B. Peter, “Jefferson and the Independence of Generations,” *Environmental Ethics* 24 (2002): 371–87; Peter F. Cannavò, “To the Thousandth Generation: Timelessness, Jeffersonian Republicanism and Environmentalism,” *Environmental Politics* 19 (May 2010): 356–73.

10. Jed Rubenfeld, *Freedom and Time: A Theory of Constitutional Self-Government* (New Haven, Conn.: Yale University Press, 2001), 18–26.

11. Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995), 162.

12. Sloan, *Principle and Interest*, 241 (see note 9 above).

13. Jack Fruchtman, Jr., *Thomas Paine and the Religion of Nature* (Baltimore: Johns Hopkins University Press, 1993), 69–73; Jack Fruchtman, Jr., *The Political Philosophy of Thomas Paine* (Baltimore, Md.: Johns Hopkins University Press, 2009), 78–79 and 84–89; Gregory Claeys, *Thomas Paine: Social and Political Thought* (Boston: Unwin Hyman, 1989), 72–74.

14. Fruchtman, *Political Philosophy*, 84 (see the previous note).

15. Gordon S. Wood argues that the two thinkers are so alike in their radicalism that the key difference between them is whether they published their ideas – a claim that reduces Paine’s originality to a lack of inhibition; see his “The Radicalism of Thomas Jefferson and Thomas Paine Considered,” in *Paine and Jefferson in the Age of Revolutions*, ed. Simon P. Newman and Peter S. Onuf (Charlottesville: University of Virginia Press, 2013), 22.

distinct approach to the rights of the living generation, demonstrating why it is not merely incorrect to conflate Paine with Jefferson, but that in doing so we miss out on an important approach to generational rights. Paine's approach cannot simply be rejected, to borrow Hannah Arendt's words on Jefferson's version, as "too fantastic ... to be taken seriously."¹⁶

Since one goal of this article is to show the distinctness and superiority of Paine's argument vis-à-vis Jefferson, it is important to begin with a brief sketch of Jefferson's formulation of the rights of the living in his letter to James Madison. Jefferson explains that he investigates "[w]hether one generation of men has a right to bind another"; he follows this with a claim that he "suppose[s] to be self-evident, 'that the earth belongs in usufruct to the living'; that the dead have neither powers nor rights over it."¹⁷ I wish to highlight three central elements of Jefferson's theory of generational rights.

First, private inheritance of land provides the starting point for Jefferson's consideration of generational rights. In fact, Jefferson follows the just-quoted statement about the rights of the living generation with a discussion of rules of inheritance for land. Jefferson clarifies that the living have an obligation not to pass on debt to their heirs: "Then no man can, by *natural right*, oblige the lands he occupied, or the persons who succeed him in that occupation, to the payment [sic] of debts contracted by him. For if he could, he might, during his own life, eat up the usufruct of the lands for several generations to come, and then the lands would belong to the dead, and not the living, which would be the reverse of our principle."¹⁸ Passing on debt from one generation to the next means that the dead had lived at the expense of future generations.

Jefferson believes that he can extrapolate from the example of personal property and debt to a principle governing society at large.¹⁹ While Jefferson's example of debt attached to landed property is helpful in explaining how some obligations created by prior generations could be dangerous to the living, there are problems with his focus on debt. Importantly, Jefferson's analogy to private debt means that public debt becomes the central problem of economic injustice that generational rights help to identify. However, the political argument then rests on a problematic assumption, namely that ordinary individuals own land. It is, to be sure, a problem to grapple with debt attached to inherited property – but it is an

16. Still, Arendt praises Jefferson and Paine for seeking to ensure the freedom of acting for all generations. Hannah Arendt, *On Revolution* (London: Penguin Books, 1990), 234. For a critique of Jefferson's proposal as cause of anarchy and economic collapse, see James Madison, "Madison's Rebuttal to 'the Earth Belongs to the Living' Precept, 4 February 1790," in *The Papers of James Madison, Vol. 13, 20 January 1790 to 31 March 1791*, ed. Charles F. Hobson and Robert A. Rutland (Charlottesville: University of Virginia Press, 1981), 19–20.

17. Jefferson, "Thomas Jefferson to James Madison," 392 (see note 8 above).

18. *Ibid.*, 393.

19. *Ibid.*

entirely different problem to be inheriting no property. Jefferson's argument about the rights of generations proceeds from compromised ownership, not from lack of ownership. He thus fails to address inherited poverty as part of his generational argument – a problem that Paine's theory remedies, as I will explain later on.

Second, Jefferson's argument on generational rights centrally relies on a statistical delineation of generations. Drawing on Buffon's mortality tables, Jefferson initially offers 34 years as the time span in which a generation may legitimately claim ownership of the earth.²⁰ However, a focus on debt leads him to revise that number – which itself includes some rounding – and simultaneously allows him to move to the legitimacy of public decision making by defining the maximum length of public debt: "Then 19. [sic] years is the term beyond which neither the representatives of a nation, nor even the whole nation itself assembled, can validly extend a debt."²¹ In other words, the statistical definition of generations is critical for turning a principle governing the private transmission of wealth into a political principle. Public debt must be retired within the 19 years that a particular generation may legitimately rule. Debts need to be erased by the end of a political generation's "lifespan."

Third, much as each generation must begin with a clean fiscal slate, Jefferson argues that a *tabula rasa* must also apply to constitutions at the same 19-year intervals. Having affirmed the pacifying implications of the 19-year limit for public debts, Jefferson states, again in a private letter to Madison, that: "[o]n similar ground it may be proved that no society can make a perpetual constitution, or even a perpetual law. ... Every constitution then, and every law, naturally expires at the end of 19 years."²² Once he has arrived at this position, he then defends it without further recourse to analogical reasoning; instead, he defends this kind of constitutionalism based on the grounds that it democratizes. For example, he argues that a constitutional *tabula rasa* every 19 years is more effective than the possibility of legislative repeal at overcoming distortions of democracy due to factional entrenchment.²³

Paine's theory of generational rights differs from Jefferson's in a number of ways, as will become more clear below. While Jefferson moves from economic to political arguments, Paine proceeds from political to economic arguments. The inverse order may not be significant in itself – after all, both aim to affirm the democratizing benefits of generational rights. However, Paine sees the existential threat within politics: the dead might threaten the living's existence even when the binding obligations do not concern public debt – the dead might undermine democratic agency itself. Only after Paine has developed this political understanding of mortality and its importance for democratic agency does he consider economic dimensions of his principle. When he does so, Paine, unlike Jefferson,

20. *Ibid.*

21. *Ibid.*, 394.

22. *Ibid.*, 395–96.

23. *Ibid.*, 396.

identifies inherited *poverty* – resulting from being dispossessed of collective property rights – as an existential threat to democratic agency and therefore a violation of the rights of the living generation. Furthermore, Paine argues that the rights of the living are protected and enhanced by democratic, constitutional precommitment and a right to welfare. Paine's argument is therefore not only distinct from Jefferson's – more importantly, it is superior.

Democracy for the Living

Thomas Paine develops his argument on generational democracy as a critique of Edmund Burke's attack on the French Revolution. As Paine presents it, Burke held up England as exemplary because with the outcome of the 1688 Revolution the English people submitted "our *heirs*, and our *posterity*, to [William and Mary], their *heirs* and *posterity*, to the end of time."²⁴ Hereditary monarchy is offensive enough to Paine, given that it originates with "the principal ruffian of some restless gang" and that it "giv[es] mankind an *ass for a lion*."²⁵ However, in Paine's eyes, Burke makes his defense of the indefensible even worse by claiming a perpetual surrender of the people's rights, which is "monstrous" – "for his arguments are, that the persons, or the generation of persons, in whom [rights] did exist, are dead, and with them the right is dead also."²⁶ Paine disputes that one generation could enter into a lasting obligation for all future generations: "There never did, there never will, and there 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 and controuling posterity to the 'end of time.'²⁷ Resisting, to borrow Anne Norton's term, "temporal imperialism,"²⁸ Paine asserts a right to generational self-government based on the principle that all generations are equal to one another: "Every age and generation must be as free to act for itself, *in all cases*, as the ages

24. Thomas Paine, "Rights of Man: Being an Answer to Mr Burke's Attack on the French Revolution," in *Rights of Man*, 91, quoting Burke (see note 5 above). It is beyond the scope of this article to consider whether Paine's critique is fair. For more on this, see Fruchtman, *Political Philosophy*, 77–93 (see note 13 above); Steven Blakemore, *Intertextual War: Edmund Burke and the French Revolution in the Writings of Mary Wollstonecraft, Thomas Paine, and James Mackintosh* (Cranbury, N.J.: Associated University Presses, 1997), 96–123.

25. Thomas Paine, "Common Sense," in *Rights of Man*, 15 (see note 5 above). For more on Paine's critique of monarchy see Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge, U.K.: Cambridge University Press, 2004), 383–90.

26. Paine, "Rights of Man," 90 (see note 5 above).

27. *Ibid.*, 91.

28. However, Anne Norton argues that future generations are able to conquer the (ancestral) conquerors by resignifying their inheritance. In particular, while founding generations make decisions that constrain future generations, these future generations have the ability to redefine the meaning of this founding. Indeed, future generations have the ability to significantly reinterpret (and thus change) the constitution created by the founders. See her *Republic of Signs: Liberal Theory and American Popular Culture* (Chicago: University of Chicago Press, 1993), 124–25.

and generations which preceded it. The vanity and presumption of governing beyond the grave, is the most ridiculous and insolent of all tyrannies."²⁹

The last quote indicates that Paine's equality of generations entails an existential dimension, both for those whose rights are being protected and for those who would seem tempted to violate them. In the former case, survival is at stake, in the latter a kind of existential consolation of living on after death – not excessive living (and its debts, as Jefferson would have it), but the desire to conquer death, accounts for why the dead may become a threat to the living. Paine repudiates such a strategy of existential consolation because it harms future generations:

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 with him, and having no longer any participation in the concerns of this world, he has no longer any authority in directing who shall be its governors, or how its government shall be organized, or how administered.³⁰

The living must not be governed by the dead, because only the living are "competent" to respond to a changing world. The dead should be content to be dead; respectively, the living should be content with governing only their own lives – not the lives of those who outlive them. Death marks the end of an individual's or a generation's powers. When humans try to govern the future, they pretend that they will not be dead in that future. They deny their future inexistence, and thus their future insignificance: "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 themselves to live for ever, as to make their authority live for ever."³¹ A legitimate existential claim (survival) thus trumps an illegitimate one (immortality), because one is within human powers, within limitations, whereas the other is not. However, "whatever appertains to the nature of man, cannot be annihilated by man. It is the nature of man to die, and he will continue to die as long as he continues to be born."³² Our expectations for political community must correspond to human nature, that is, to our mortality. Indeed, precisely because we are mortal, politics must be for the living.³³

29. Paine, "Rights of Man," 91–92 (see note 5 above).

30. *Ibid.*, 92.

31. *Ibid.*, 95.

32. *Ibid.*, 94.

33. It may be "remarkable that Paine writes this as a reason for optimism; it frees up political agency. The same sentence could just as easily be read as a note of [existential] crisis." Michael Warner, "Irving's Posterity," *English Literary History* 67 (Fall 2000): 773–99 at 779. On mortality as a productive starting point for political theory, see John E. Seery, *Political Theory for Mortals: Shades of Justice, Images of Death* (Ithaca, N.Y.: Cornell University Press, 1996). For more on how strategies of existential consolation can undermine

A contrast to Jefferson emerges here, which will have important consequences in both the constitutional and economic contexts that I discuss in ensuing sections. In particular, Paine reacts to a desire for existential consolation, which he thinks leads to legislative overreach. Laws “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 they *cannot* have.”³⁴ Therefore, only laws pretending to immortality are null and void. On the other hand, laws that do not make this claim may – under conditions I address below – legitimately endure past their creators’ deaths.

While Paine rejects the immortality of human laws, he draws on another form of immortality – divinity – to make his case for the rights of the living generation: “The illuminating and divine principle of the equal rights of man, (for it has its origin from the Maker of man) relates, not only to the living individuals, but to generations of men succeeding each other. Every generation is equal in rights to the generations which preceded it, by the same rule that every individual is born equal in rights with his contemporary.”³⁵ Paine thus complements the equality of individuals with the equality of generations and postulates a divine origin for both. God, after all, would relate to each generation in the same fashion. Indeed, it is as if these generations are in no way connected to one another:

All men are born equal, and with equal natural right, in the same manner as if posterity had been continued by *creation* instead of *generation*; the latter being only the mode by which the former is carried forward; and consequently, every child born into the world must be considered as deriving its existence from God. The world is as new to him as it was to the first man that existed, and his natural right in it is of the same kind.³⁶

While sexual reproduction may explain how human life “is carried forward,” such generation is not how human beings come to have rights. Reproduction is merely a biological process, and thus, rights are not inherited – which only emphasizes the distance between Paine and Burke.³⁷ For Paine, each individual has a second kind of birth, which coincides with the biological one. Namely, at the moment of birth, God creates each individual as a bearer of rights. As a result, all generations are on an even footing politically; they share the same relation to time. They are communities of mortals, who are constituted as such by an immortal being via their dual birth.

democracy, see Mario Feit, *Democratic Anxieties. Same-Sex Marriage, Death, and Citizenship* (Lanham, Md.: Lexington Books, 2011).

34. Paine, “Rights of Man,” 94–95 (see note 5 above).

35. *Ibid.*, 117.

36. *Ibid.*

37. Edmund Burke, *Reflections on the Revolution in France* (Indianapolis, Ind.: Hackett Publishing, 1987), 28.

Paine realizes that distinct political generations are not observable phenomena, unlike what he refers to as “natural” generations, namely different generations of a family tree: “A nation, though continually existing, is continually in a state of renewal and succession. It is never stationary.”³⁸ This constant turnover complicates the sense that any particular generation should rule. In *Dissertation on First Principles of Government*, Paine attempts to get around the potential problem of overlapping generations’ clashing claims to authority by parceling out distinct political generations, measured by whether the majority of the adult population belongs to one age cohort or another. Similar to Jefferson, political generations would thus be based on a statistical measure – between 14 and 21 years for Paine – which itself takes note of the legal definition of maturity.³⁹ While it would solve the problem of rival claims to authority, the statistical definition of generations creates a different problem: it would divide the adult population into two groups – those who self-govern, and those who are past their 14 to 21 years of generational self-rule. Paine’s political theory clearly militates against such a disenfranchisement of older adults: “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, and he that has not a vote in the election of representatives, is in this case.”⁴⁰ The age-based definition of political generations would thus inadvertently create what generational rights were supposed to prevent: “slavery.”⁴¹ As Paine does not define the political authority of generations by reference to the 14 to 21 year span in either part of *Rights of Man*, and as the idea itself would have troubling consequences, I suggest that it should not inform an interpretation of Paine’s overall concept of generational democracy. Paine would be better served by allowing for the *imprecision* that the concept of generations necessarily entails.⁴² Importantly, it is more consistent with his overall argument to simply refer to all living adults as a political generation, especially as he generally invokes a contrast between the living and the dead.⁴³

That the rights of the *living* generation – and not some *statistically* defined generation – are at stake is evident in Paine’s critique of Burke’s defense of precedent:

38. Thomas Paine, “Dissertation on First Principles of Government,” in *Rights of Man*, 392 (see note 5 above).

39. *Ibid.*, 392.

40. *Ibid.*, 398.

41. Paine, “Rights of Man,” 92 (see note 5 above). Paine’s use of the term “slavery” does not ring as hollow as others’ because he also opposed colonial slavery and the slave trade. See *The Complete Writings of Thomas Paine*, ed. Philip S. Foner, vol. 2 (New York: The Citadel Press, 1945), 15–22.

42. Smith points out that Jefferson’s demographic calculations are flawed because they rely on mortality instead of fertility. Smith, “Population and Political Ethics,” 607–8 and 595 (see note 9 above).

43. It could be argued that an age-cohort-based definition of generations acknowledges potential distributive conflicts among the living (e.g., young adults versus senior citizens). However, the above-endorsed definition can forestall such age-based conflicts: First, generational democracy inculcates a strong sense of obligation toward the living, regardless of age. Second, as I show later, Paine expressly defines specific welfare rights for young and old alike.

"The circumstances of the world are continually changing, and the opinions of men change also; and as government is for the living, and not for the dead, it is the living only that has any right in it. 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?"⁴⁴ It is nonsensical that the dead could anticipate all future conditions. Precedent is thus useless and potentially dangerous from Paine's perspective. The living must respond to the world they encounter – and not seek to emulate or adapt models from the past, unless we prefer "darkness attempting to illuminate light."⁴⁵ To Paine a deadly force stifles Burke's argument as he is "referring to musty records and mouldy parchments to prove that the rights of the living are lost How dry, *baren*, and obscure, is the source from which Mr Burke labours!"⁴⁶ Instead of fostering life-giving principles, Burke only leaves you with an empty heart and a deadened present. Allegiance to a dead past prevents the judging of contemporary events by the means of reason. Indeed, reason requires adapting to a world in motion, since reason itself is something that you need to "keep pace with."⁴⁷

The very same logic that disqualifies precedent as political principle also explains why the right of the living generation to govern itself should not be misconstrued as – pace Jefferson – the *sovereignty* of the living. Instead, Paine's generational democracy defends the *agency* of the living because how the living govern themselves would be a *function of their time*:

Time, and change of circumstances and opinions, have the same progressive effect in rendering modes of Government obsolete, as they have upon customs and manners. – Agriculture, commerce, manufactures, and the tranquil arts, by which the prosperity of Nations is best promoted, require a different system of Government, and a different species of knowledge to direct its operations, than what might have been required in the former condition of the world.⁴⁸

The living should exercise a judgment commensurate with the exigencies and conditions of their time. The right of the living to govern themselves thus does not entail an attempt to act as if the present generation would face the same choices or could pursue the exact same options as prior generations. Generational democracy, in other words, assumes a *substantive* equality between generations – not a factual equality of being able to make the exact same choices. I will return to this idea of substantive equality in my discussion of constitutionalism and the right to welfare.

44. Paine, "Rights of Man," 95 (see note 5 above).

45. *Ibid.*

46. *Ibid.*, 95–96, emphasis added.

47. *Ibid.*, 98. Precedent also involves arbitrary cherry-picking; see 116.

48. *Ibid.*, 196.

In defending the agency of the living vis-à-vis the dead, Paine does not sacrifice the well-being of future generations. Paine does not engage in misguided presentism – where the interests of the living would not just trump those of the dead but also those of future generations. True, Paine does not present the living generation “as stewards, as trustees,” which Terence Ball would regard as essential for any care for the future.⁴⁹ Moreover, some of Paine’s statements may be read as the living not owing any consideration to future generations:

Those who have quitted the world, and those who are not yet arrived at 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 of two non-entities, the one out of existence, and the other not in, and who never can meet in this world, the one should controul the other to the end of time?⁵⁰

However, when read carefully, Paine rejects any obligations between generations not out of indifference to future generations, but because he worries about the living’s likely paternalism vis-à-vis future generations. Given the abstractness of their “relationship” – distant future generations are but hypothetical – the living’s attempt to act on behalf of future generations would be more akin to “control,” that is, more about the living’s own needs or desires – including, as noted before, existential consolation. In short, Paine protects future generations from the living by refusing a “steward” or “trustee” model.

While I have shown that Paine cautions the living not to harm future generations – including by pretending to act as “stewards” or “trustees” – he nevertheless expects that the living would act in ways that benefit future generations. However, when the living benefit future generations, they do not do so out of any duty to the latter, but because in enhancing their own agency the living also benefit future generations. To wit, Paine presents the American and French Revolutions as examples of actions by the living to benefit themselves *and thereby* future generations. Future generations will be grateful for the deeds of their ancestors, precisely because these revolutionary ancestors did not display Burkean solicitude toward the past: “A thousand years hence, those who shall live in America or in France, will look back with contemplative pride on the origin of their governments, and say, *This was the work of our glorious ancestors!*”⁵¹ Indeed, in *Common Sense*, Paine makes the case that the American Revolution was

49. Ball, “The Earth Belongs to the Living,” 74 (see note 9 above).

50. Paine, “Rights of Man,” 93 (see note 5 above).

51. *Ibid.*, 168. Therefore, I disagree with Mark Neocleous’s contention that Paine’s privileging of the living leaves the dead ready for appropriation by conservatives. See his *The Monstrous and the Dead: Burke, Marx, Fascism* (Cardiff, U.K.: University of Wales Press, 2005), 31.

undertaken not just with an eye to the present but also on behalf of posterity.⁵² In other words, Paine fully expects that the American and French Revolutions, which he defends in terms of generational rights, will result in a form of government and society that is characterized by a high degree of permanence because they benefit revolutionary and future generations alike.

The Living Generation and Democratic Constitutionalism

A common charge against Paine – Stephen Holmes comes to mind⁵³ – is that he makes ordinary constitutionalism impossible, and thus makes democracy more tenuous. In particular, it is claimed that Paine naively rules out the democracy-enabling precommitment that we expect from constitutionalism because of a misguided presentism in the wake of his claim that the living should rule; moreover, Paine would undermine the continuity of law. I argue against this interpretation by showing how Paine *simultaneously* defends generational democracy and constitutional precommitment. Paine distinguishes constitutional reform from ordinary legislation in order to draw on the benefits of constitutional precommitment – although ultimately any constitutional precommitment needs to be authorized by the living generation. Importantly, Paine believes that the original, revolutionary constitution is only a first step; only its commitment to democracy as such should be irrevocable. Succeeding generations are better equipped to give shape to democracy and to democratic constitutionalism because they are no longer socialized by an anti-democratic regime (as the original founders would have been) and because of the gradual improvement in a people's character due to generational democracy.

Paine believes that legitimate law rests on the consent of the living. Such a position entails a problematic possibility. Paine could be understood to say that we are constantly surrounded by illegitimate laws simply because they were not passed by contemporaneous legislatures. Ironically, Paine would in effect end up proliferating illegitimacies through the way in which he attempts to define legitimacy. However, Paine does not fall into this trap, because he takes non-repeal as a sign of *tacit* generational consent: "It requires but a very small glance of thought to perceive, that altho' laws made in one generation often continue in force through succeeding generations, yet that 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."⁵⁴ Generational democracy does not – pace Jefferson – necessitate a

52. Paine, "Common Sense," 20 (see note 25 above).

53. Holmes, *Passions and Constraint*, 140, 161–63 (see note 11 above).

54. Paine, "Rights of Man," 94 (see note 5 above).

constitutional tabula rasa at fixed intervals, nor does it follow that any and all received law is inherently illegitimate. Legal continuity is possible. What matters to Paine is that the reach of any law into the future is not a function of what its creators are entitled to. Instead, the endurance of laws over time depends on and reflects future generations' – even tacit – renewal of their consent to these very laws. Discontinuity is not the only way in which democracy can be expressed.

The possibility of intergenerational legal continuity, however, would not assuage Holmes, who believes that Paine (like Jefferson) does away with the distinction between constitutional and ordinary law. Paine putatively replicates British constitutionalism according to which “all power lay with the present generation (of parliamentarians)” to change both laws and constitution as they see fit; such an “anticonstitutionalism” dissolves constitutional constraints.⁵⁵ However, Paine *does* call for a distinction between constitutional and ordinary law, and he believes that constitutional precommitment benefits ordinary legislation. To begin with, Paine defines “a constitution as a thing *antecedent* to a government” – including the legislature – that defines “the principles on which it shall act, and by which it shall be bound.”⁵⁶ Paine argues that the French National Assembly is tasked with creating a constitution that constrains future legislatures. Whereas the National Assembly has the power to write a constitution, future legislative assemblies would merely have legislative powers within the parameters set by the antecedent constitution. To assign constitutional powers to future assemblies would be to invite abuses of power and authority. Accordingly, Paine attacks Burke and British constitutionalism; that Parliament may change constitutional provisions means that “there is no constitution in England.”⁵⁷ Contrary to what Holmes claims, Paine believes that constitutional precommitment is critical.

In defending constitutional precommitment, Paine thus maintains an agentic as well as a temporal gap between constitution- and law-making. It is not to the regular legislature but “to a nation that the right of forming or reforming, generating or regenerating constitutions and governments belong.”⁵⁸ Paine specifies that the nation would exercise this right of constitutional reform “by a general convention elected for [this] purpose.”⁵⁹ Accordingly, Paine praises the 1776 Pennsylvania Constitution, which provides the constraints associated with constitutionalism as well as popularly elected constitutional conventions at seven-year intervals that would be charged with revising the existing constitution.⁶⁰ The seven-year cycle for constitutional reform creates a temporal gap between constitution- and law-making because law-makers

55. Holmes, *Passions and Constraint*, 144 (see note 11 above).

56. Paine, “Rights of Man,” 122 (see note 5 above).

57. *Ibid.*, 124.

58. Paine, “Rights of Man: Part the Second,” 206 (see note 5 above).

59. Paine, “Rights of Man,” 124 (see note 5 above).

60. Paine, “Rights of Man: Part the Second,” 240 (see note 5 above).

are constrained by prior acts of a separate constitutional convention. At the same time, the temporal gap embodied in the seven-year constitutional reform cycle allows for a relatively contemporaneous constitution because the living generation has a chance to revise the constitution with some frequency. Importantly, Paine crafts a democratic constitutionalism that is *by and for* the living generation, albeit with a slight time delay. This time delay – entirely internal to the period in which the living generation rules – maintains the benefits of constitutional precommitment while ensuring that the living, not the dead, are in charge.

Although Paine affirms the equal right of each generation to revisit constitutional provisions, he does single out some constitutional precommitments that are beyond review. In particular, as noted before, Paine believes that the American and French Revolutions created democratic governments that would still exist a thousand years into the future. Unlike Bernard Vincent, I do not regard the irrevocability of the democratic revolution as hypocritical,⁶¹ because Paine is consistent in denying legitimacy to pre- or non-democratic political formations. Democracy for the living, to be sure, entails the opportunity to revisit – as well as to affirm anew – a multitude of constitutional provisions. However, for Paine this does not extend to the question of democracy itself. That our ancestors wedded us permanently to democracy does not violate the equality of generations; instead, it enhances our democratic agency. This argument will reappear in the final section, where it renders economic redistribution an irrevocable constitutional principle.

Consistent with the idea that the living generation is best equipped to render correct judgment about what is commensurate with its time, Paine argues in favor of each generation's ability to initiate constitutional change. He does so because he expects that future generations will in fact be more thoroughly attuned to the kind of constitution that most enhances democratic agency. Indeed, the American and French founders are to be surpassed by future constitutional authors: "The best constitution that could now be devised, consistent with the condition of the present moment, may be far short of that excellence which a few years may afford."⁶² As Robin West explains, Paine is reluctant to enshrine revolutionary constitutions because "they also came at an historical moment that retained the 'barbarism' of earlier, pre-democratic, and pre-constitutional understandings of political life. To freeze constitutionalism, he feared, would freeze these barbaric understandings."⁶³ Paine here goes beyond Jeremy Waldron's critique of Holmes's case for precommitment. Waldron argues that Holmes's analogy to Ulysses mistakenly assumes that a wholly rational constitutional founding constrains wholly irrational future actors, when in fact reasonable disagreement may exist

61. Bernard Vincent, *The Transatlantic Republican: Thomas Paine and the Age of Revolutions* (Amsterdam: Rodopi, 2005), 26.

62. Paine, "Rights of Man: Part the Second," 261 (see note 5 above).

63. Robin West, "Tom Paine's Constitution," *Virginia Law Review* 89 (October 2003): 1413–61, at 1440.

about what constitutes *democratizing* precommitment in the first place.⁶⁴ However, for Paine the problem is not simply that reasonable disagreement may exist; it is that a new democracy has not left the pre-democratic past sufficiently behind. Constitutions that result from democratic revolutions are at best a first step. Successive generations will greatly improve these constitutions.

The idea that future generations will improve the democratizing function of respective constitutions certainly reflects a degree of optimism on Paine's part, both with respect to the people and to the processes of representative democracy. West proposes that each generation's ability to rewrite the constitution generates the kinds of citizens that warrant Paine's faith in democracy. After all, citizens would be encouraged to reflect on constitutional questions, since they are empowered to revisit constitutional decisions more frequently.⁶⁵ The opportunity of constitutional authorship would thus contribute to each generation developing and strengthening their mutual, democratic obligations: "The right which I enjoy becomes my duty to guarantee it to another, and he to me."⁶⁶ That each generation is empowered to reform the constitution has two benefits: the constitution itself may improve, but perhaps even more importantly, each generation deepens its commitment to democratic principles.

The self-ennobling potential of constitutional authorship, however, only partially accounts for Paine's faith in a democratic people. Crucially, Paine offers a dynamic understanding of popular character: he develops a structural argument that explains both why democracy cannot simply count on a pre-existing "good" people, and, conversely, how the goodness of the people can be generated over time. In particular, Paine explains that the type of political regime has a strong socializing effect on popular attitudes and behavior: First, monarchy and aristocracy corrupt society due to arbitrary social distinctions. "It is by distortedly exalting some men, that others are distortedly debased, till the whole is out of nature."⁶⁷ Second, non-democratic government breeds poverty and crime, as it wastes taxes on kings and their entourage. Instead, a proper government would educate the young and prevent poverty in old age.⁶⁸ Not only would such a state forestall brutalization at the hands of inherited poverty, it would furthermore ensure a more educated population.⁶⁹ Finally, pre-democratic, sovereign spectacles of punishment teach ordinary persons how to be callous and cruel – if and when one acquires power.⁷⁰ Any revolutionary excesses are thus the consequence of the

64. Jeremy Waldron, "Precommitment and Disagreement," in *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander (Cambridge, U.K.: Cambridge University Press, 1998), 283–84.

65. West, "Tom Paine's Constitution," 1445–47 (see note 63 above).

66. Paine, "Dissertation," 398 (see note 38 above).

67. Paine, "Rights of Man," 109 (see note 5 above).

68. Paine, "Rights of Man: Part the Second," 271 (see note 5 above).

69. *Ibid.*, 294.

70. Paine, "Rights of Man," 108 (see note 5 above).

previous regime's socialization; it is this socialization that itself becomes a target for reform.⁷¹ For Paine it makes sense that traces of non-democratic and otherwise unjust socialization remain present in newly democratic societies, and that they would only diminish across succeeding generations based on concerted efforts. A properly democratic form of government would attend to fostering democratic socialization, which would generate a popular character warranting Paine's optimism.

The Right to Welfare: Material Agency for the Living

In this section, I establish the significance of the concept of generational democracy within Paine's justification of welfare rights in *Agrarian Justice*. While Paine also argues for the right to welfare in the second part of *Rights of Man*,⁷² I focus on *Agrarian Justice* for two reasons. First, it contains a tightly argued case for a right to welfare that "is not adapted for any particular country alone: the principle on which it is based is general."⁷³ Importantly, whereas the second part of *Rights of Man* tends to focus on remedying the specific economic injustice caused by (the British) monarchy, *Agrarian Justice* presents the problem of economic injustice in even more profound terms: property *as such* is the cause of economic injustice, not simply the economic and social distortions wrought by a corrupt political regime. Second, *Agrarian Justice* presents a more challenging text for the argument that Paine's theory of generational democracy entails a commitment to a right to welfare. Unlike either part of *Rights of Man*, *Agrarian Justice* does not explicitly invoke the principle of generational rights. In fact, *Agrarian Justice* at best mentions "generation" in a conventional sense, namely, as a temporal marker. When Paine insists that his reform project needs to be carried out over "successive generations"⁷⁴ and that it "will furnish the rising generation with means to prevent their becoming poor,"⁷⁵ he does not yet make any claims about the right to welfare flowing from generational democracy. To put this differently, at first blush *Agrarian Justice* could be read as a text that ignores the concept of generational democracy articulated in *Rights of Man*. To show that Paine nevertheless *implicitly* applies and expands the concept of generational rights in *Agrarian Justice* thus proves that generational democracy holds together different parts of Paine's political theory.

In *Agrarian Justice*, Paine is adamant that "it is a right and not a charity that I am pleading for."⁷⁶ Paine concedes that the right to welfare is unfamiliar, though this

71. *Ibid.*, 108, 110.

72. Paine, "Rights of Man: Part the Second," 296 (see note 5 above).

73. Thomas Paine, "Agrarian Justice," in *Rights of Man*, 411 (see note 5 above).

74. *Ibid.*, 420.

75. *Ibid.*, 425.

76. *Ibid.*, 419.

only means that we have yet to overcome the intellectual, ethical, and political legacies of pre-democratic forms of government: "But it is that kind of right, which, being neglected at first, could not be brought forward afterwards, till heaven had opened the way by a revolution in the system of government. Let us then do honour to revolutions by justice, and give currency to their principles by blessings."⁷⁷ That is, the democratic political revolution leads to a social revolution: "A revolution in the state of civilization, is the necessary companion of revolutions in the system of government. ... Despotic government supports itself by abject civilization, in which debasement of the human mind, and wretchedness in the mass of the people, are the chief criterians."⁷⁸ Importantly, Paine argues that the social revolution must accompany the political revolution, or else democracy will be undermined by a social structure that – due to mass poverty – can only sustain undemocratic forms of government. Democracy can succeed only after a change in "civilization," namely, the creation of a welfare system. This welfare system creates both inter- and intragenerational equality: intergenerational, insofar as pre- and post-civilization will be equal, and intragenerational, because democracy-undermining economic inequality among the living will diminish.

Agrarian Justice's defense of the right to welfare proceeds from a critique of civilization. Paine regards civilization as an ambivalent achievement: "The life of an Indian is a continual holiday, compared with the poor of Europe; and, on the other hand, it appears to be abject when compared to the rich. Civilization, therefore, or that which is so called, has operated, two ways, to make one part of society more affluent, and the other part more wretched, than would have been the lot of either in a natural state."⁷⁹ While civilization has improved life for many, others are worse off than if they had remained in the state of nature: "Poverty, therefore, is a thing created by that which is called civilized life. It exists not in the natural state."⁸⁰

Paine explains that civilization caused poverty when it created individual property in land. A conceptual and practical shift regarding property rights causes poverty; the poor "have been thrown out of their natural inheritance by the introduction of the system of landed property."⁸¹ In particular, the poor have been deprived of their collective ownership rights regarding earth: "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

77. *Ibid.*

78. *Ibid.*, 429–30.

79. *Ibid.*, 416.

80. *Ibid.*

81. *Ibid.*, 419.

productions, vegetable and animal."⁸² For Paine, unlike John Locke, this collective ownership of the earth never ended, even as humanity made the transition from collective to individual land ownership with the invention of agriculture.⁸³ That we have ignored this collective property right springs from a conceptual confusion because civilization mistakenly believes that producing agricultural goods with a particular piece of land establishes exclusive ownership over the land itself.

Paine acknowledges that this Lockean misconception regarding the origins of property in land is not entirely arbitrary: "it is impossible to separate the improvement made by cultivation, from the earth itself, upon which that improvement is made."⁸⁴ Indeed, cultivation's addition of value far outstripped the value of the then-uncultivated land, such that it is easy enough to confuse the property in the improvement with the property in the land itself.⁸⁵ However, for Paine the value differential itself does not alter the character of the land, nor does it extinguish any rights: "But they are, nevertheless, distinct species of rights, and will continue to be so as long as the earth endures."⁸⁶ The common property in land is thus as interminable as the right of any generation to govern itself. It does not expire, nor could any particular generation will it away.

While Paine clearly wants to abolish poverty, doing so is not as simple as abolishing the private property in land that causes it. Paine here acknowledges that past generations made a *permanent* – even if inadvertent – "choice" for all future generations: "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."⁸⁷ Importantly, Paine invokes human mortality to explain why we departed from and can never go back to the state of nature, with its exclusive adherence to collective property rights in land. He argues that hunter-based societies require ten times more land to sustain human populations. Population growth necessitated the transition to an agrarian way of life. Therefore, we must not attempt to undo the negatives of civilization with a sweeping, revolutionary gesture – a return to the state of nature and its respect for collective ownership of the earth – because ninety percent of the population would be without the means of survival.⁸⁸ One possible avenue for achieving economic justice is thus foreclosed because it would cause even greater injustice, namely near-extinction level death tolls, with ninety percent of the population starving. Our mortality places limits on the choices a living

82. *Ibid.*, 417.

83. *Ibid.*, 418.

84. *Ibid.*, 417.

85. *Ibid.*, 418.

86. *Ibid.*

87. *Ibid.*, 416–17.

88. *Ibid.*, 417.

generation can make. Once again, Paine resists casting generational democracy as an exercise of sovereignty.

Instead, generational democracy's pursuit of economic justice proceeds from a recognition of civilization's ambivalent legacy: "To preserve the benefits of what is called civilized life, and to remedy, at the same time, the evil it has produced, ought to be considered as one of the first objects of reformed legislation."⁸⁹ Generational democracy indicates the ability to selectively embrace, modify, or overcome past generations' legacies in a fashion that enhances the agency of the living generation. The rights of the latter, in this context, require a concerted effort to gradually transform those elements that illegitimately constrain the present: "But the fault can be made to reform itself by successive generations."⁹⁰ Paine's welfare proposal thus constitutes a multi-generational effort to overcome economic injustice. Indeed, Paine develops a right to welfare that *precommits* us to economic redistribution.⁹¹

Paine's defense of economic redistribution relies on generational democracy's principle of substantive equality. In particular, Paine affirms that each generation should effectively enjoy the same advantages as the generations who existed prior to the invention of civilization: "Taking then the matter up on this ground, the first principle of civilization ought to have been, and ought still to be, that the condition of every person born into the world, after a state of civilization commences, ought not to be worse than if he had been born before that period."⁹² Much as different generations have an equal right to govern themselves, all of them have an equal right "not to be worse than if he had been born before" civilization was created by distant ancestral generations. The argument for reforming civilization thus relies on the same logic as Paine's critique of Burke. Abolishing poverty would produce substantive equality of generations, that is, would create a condition where the dead no longer rule beyond the grave.

89. *Ibid.*, 416.

90. *Ibid.*, 420.

91. Therefore "it could be up to the courts to force a democratic assembly to raise taxes for redistribution." Karen M. Ford, "Can a Democracy Bind Itself in Perpetuity? Paine, the Bank Crisis, and the Concept of Economic Freedom," *Proceedings of the American Philosophical Society* 142 (December 1998): 574. Bruce Ackerman and Anne Alstott, too, defend a constitutional guarantee for their stakeholding proposal, which is inspired by Paine, in *The Stakeholder Society* (New Haven, Conn.: Yale University Press, 1999), 110 and 3. They differ from Paine in assigning blame to individuals who "fail the test of freedom" by "blowing" their stakes; *ibid.*, 196. "Paine was never tempted to blame the poor themselves for the general condition of poverty – unlike economic liberals, then and now." Anthony Arblaster, "Thomas Paine: At the Limits of Bourgeois Radicalism," in *Socialism and the Limits of Liberalism*, ed. Peter Osborne (London: Verso, 1991), 68. Nevertheless, Paine does not challenge a market-based economy; Adrian Little, "The Politics of Compensation: Tom Paine's Agrarian Justice and Liberal Egalitarianism," *Contemporary Politics* 5 (1999): 72.

92. Paine, "Agrarian Justice," 417 (see note 73 above).

Accordingly, Paine pursues restoring the property rights that have been dispossessed and forgotten, yet without sacrificing the social benefits of conventional, private property: "Whilst, 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."⁹³ That is, Paine believes that a significant number of the population – more than half – have been robbed of their "natural inheritance" by a system that exclusively protects the kind of property that was created by civilization, because no "indemnification for that loss" had been paid.⁹⁴ Therefore, Paine seeks "indemnification" for these collective ownership rights. Welfare rights compensate individuals for a prior and ongoing loss in property rights, and are funded by collecting rent from those who have unjustly treated land as their exclusive property: "Every proprietor therefore of cultivated land, owes to the community a *ground-rent*; for I know no better term to express the idea by, for the land which he holds: and it is from this ground rent that the fund proposed in this plan is to issue."⁹⁵ Paine does not seek to abolish individual land ownership in the familiar sense. Doing so would of course jeopardize the improvement that individuals make in cultivating land they thus "own." Instead, Paine characterizes "ownership" of land as a form of renting.

Our mortality, as I showed earlier, plays a critical role in Paine's development of the concept of generational democracy. Paine's specific proposal to collect rent from "life-proprietors" is yet another instance where he makes productive use of human mortality for enhancing democratic agency. What some today polemically call the "death tax" – an estate tax – allows for the kind of redistribution that Paine considers crucial to restoring the natural rights of the dispossessed without infringing on the property of those who added value to the land with their labor.⁹⁶ Paine endorses the "death tax," since death allows for a balancing of rights,

because it will be the least troublesome and the most effectual, and also because the subtraction will be made at a time that best admits it, which is, at the moment that property is passing by the death of one person to the possession of another. In this case, the bequether gives nothing; the receiver pays nothing. The only matter to him is, that the monopoly of natural inheritance, to which there never was a right, begins to cease in his person.

93. *Ibid.*, 419.

94. *Ibid.*

95. *Ibid.*, 417–18. Contrary to Paine, Jacqueline Stevens argues that "private land rights are inconsistent with the norms of citizenship for mortals"; she furthermore believes that an estate tax is an insufficient mechanism of redistribution. Jacqueline Stevens, *States without Nations: Citizenship for Mortals* (New York: Columbia University Press, 2010), 208, 110, 135.

96. The term "death tax" was explicitly coined to popularize the repeal of the estate tax. Joshua Green, "Meet Mr. Death," *The American Prospect* 12 (May 2001): 12.

A generous man would not wish it to continue, and a just man will rejoice to see it abolished.⁹⁷

Paine's call for an estate tax is thus both practical and principled. It is far easier to disentangle what naturally belongs to the community from what belongs to an individual at the moment of death because no one will feel a loss of something they believe to be theirs.⁹⁸ In fact, Paine claims that heirs will not be paying any taxes because they receive all that is due to them. Their inheritance is fully intact. The only deduction from the estate is the rent the life-proprietor owed the community. Much as any political generation should be content to have its authority delimited by death, so should "life-proprietors" appreciate that their claim ends when they cease to exist. Only unjust individuals would attempt to own the communal share of property beyond the grave – most likely in an effort to purchase their own existential consolation at others' survival needs. Thus, the practical dimension of when and how redistribution occurs is a result of Paine's principles, namely that the living should govern themselves. This principle also accounts for what is to be done with the recouped funds: enhance the agency of the living by way of payments to young adults, as well as by retirement payments.

The payments to young adults are very clearly designed to enhance the agency of the living generation: "not a man or woman born in the republic, but shall inherit some means of beginning the world."⁹⁹ Paine proposes that every individual – note the gender neutrality of this proposal¹⁰⁰ – be given \$15 at the age of 21.¹⁰¹ This payment has three effects: First, by compensating individuals for the loss of their communal property, it affirms that no generation shall be worse off than before the creation of property. Second, furnishing individuals with the ability to start their economic livelihood increases national wealth, because these individuals will engage in productive activity (his example is starting a small farm). Third, the startup payment for young adults reduces social costs

97. Paine, "Agrarian Justice," 421 (see note 73 above).

98. Paine also argues that property will be more secure when property owners contribute to the well-being of the poor; *ibid.*, 429. Seaman thus ascertains "an essentially Hobbesian foundation" of Paine's welfare state – it redistributes "ransom." See his "Ransom, Civil Peace," 135–36 (see note 6 above). My interpretation is closer to Fruchtmann's: Paine infuses Lockean property rights with Rousseauian solidarity. Fruchtmann, *Political Philosophy*, 128–32 (see note 13 above).

99. Paine, "Agrarian Justice," 430 (see note 73 above).

100. For more on how Paine takes a feminist turn in his welfare rights theory, see Eileen Hunt Botting, "Thomas Paine amidst the Early Feminists," in *Selected Writings of Thomas Paine*, ed. Ian Shapiro and Jane Calvert (New Haven, Conn.: Yale University Press, 2014), 630–54.

101. Paine, "Agrarian Justice," 409 (see note 73 above). In *Rights of Man*, Paine also envisages other entitlements, such as support for new mothers, newlyweds, funeral expenses, and shelters with paid work for the urban poor. Paine, "Rights of Man: Part the Second," 298–300 (see note 5 above). That *Agrarian Justice* does not mention these payments should not be construed as Paine abandoning them, for they are consistent with his goal of enhancing individual agency.

because it prevents poverty.¹⁰² Indeed, the economic opportunities provided by this startup fund would gradually undo the situation in which “the poor, in all countries, are become an hereditary race” and are increasing in numbers with the progress of civilization.¹⁰³ This last point emphasizes why democratic agency is at stake and why this is part of Paine’s idea of generational democracy. To have one’s life choices delimited before one is born is a fundamental violation of Paine’s conceptualization of democracy, namely that each generation should be able to govern itself. While this may appear to be only about a collective right to decision making, the call for an “inheritance” to be paid out at the age of 21 gives this an individual dimension, enabling individuals to make meaningful decisions about their respective lives.

It may be more difficult to see how the right to retirement payments fits with Paine’s conception of generational democracy, especially if a society were already set up in ways that prevent poverty. *Agrarian Justice*’s title page is useful here because it states that payments to those over age 50 are designed “to enable them to live in Old Age without Wretchedness, and go decently out of the World.”¹⁰⁴ Paine here invokes the notion of dignified death, which to him requires ensuring a basic minimum for the ageing. The frailty of our bodies means that starting at about 50 “the bodily powers for laborious life are on the decline” which would result in declining incomes.¹⁰⁵ Annual payments would mitigate the income effects of aging. Once individuals reach 60, they should receive a higher, guaranteed pension because “it is painful to see old age working itself to death, in what are called civilized countries, for daily bread.”¹⁰⁶ Individuals should live their last years in dignity, not in despair. Guaranteed retirement payments are thus about more than the means of survival. Paine wishes to ensure that all citizens may live their lives to the fullest until the last possible moment. A democratic political community must maintain its commitment to individual agency precisely at that time when our mortality makes itself felt. Indeed, Paine’s concept of generational democracy commits him to the idea that the living must have agency – not simply vis-à-vis the dead, but even in the face of their own physical decline and impending death.

Maintaining a distinction between life and death is in fact central to both forms of welfare: “The present state of what is called civilization is as odious as it is unjust. It is the reverse of what it ought to 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

102. Paine, “Agrarian Justice,” 426 (see note 73 above).

103. *Ibid.*, 426–27.

104. *Ibid.*, 409.

105. Paine, “Rights of Man: Part the Second,” 294 (see note 5 above).

106. *Ibid.*, 295.

chained together."¹⁰⁷ Much as generational rights are about the living ruling themselves – instead of being ruled by the dead, with all the life-draining implications – this welfare proposal is about the living ruling themselves and of recognizing that “to be alive” means more than bare existence. The image of being chained to the dead is no mere rhetorical flourish. It points to the agency that is crucial to being alive. While being in chains exemplifies unfreedom, Paine evokes an even worse kind of unfreedom when he imagines the poor as chained to the dead. Poverty blurs the distinction between life and death because it prevents the poor from being fully alive, from being fully free. In robbing the poor of any meaningful agency, poverty turns the poor into the quasi-dead: their movements are not simply restricted, but restricted by those who no longer move. While we cannot overcome biological death, Paine believes that his welfare proposal can prevent our turning life into a quasi-death. Generational democracy’s right to welfare ensures that the living are fully alive during their mortal existence.

Although generational democracy affirms the rights of the living, it should be clear from my discussion that this does not give the living the freedom to abolish the welfare state. First, Paine’s conception of revolution is entirely modern in that he equates it to a permanent and profound transformation. Paine made this point with respect to political revolutions, namely the American and French Revolutions. Given his insistence in *Agrarian Justice* that the ensuing democracies cannot succeed without a social revolution, it is fair to conclude that he considered the requisite mechanism of social transformation – the right to welfare – to be as irrevocable as the preceding political revolution. Second, Paine does not confuse the rights of the living with the sovereignty of the living. The irrevocability of central pillars of democratic transformation does not contradict his defense of generational democracy; in fact, this irrevocability strengthens the agency of the living. Third, Paine justifies his redistribution mechanism as a compensation for a violated right, namely, the right to collective ownership of the earth. Hence, as long as there is private property in land – that is, forever, because we cannot go back to collective ownership – individuals without it are owed compensation in the form of his welfare state. Finally, when Paine defends the resulting welfare policies as protecting the agency of the living, he raises the specter that any cuts to these redistributive policies would blur the distinction between being alive and being dead – something that is anathema to generational democracy.

If anything, Paine’s generational democracy would be free – likely obligated – to deepen the welfare state. For example, for Paine, a couple that pools its \$15 “inheritance” payments at age 21 would be able to achieve economic self-sufficiency by buying a cow and a few acres of land.¹⁰⁸ However, in a more

107. Paine, “Agrarian Justice,” 425 (see note 73 above).

108. *Ibid.*, 426.

advanced economy several generations later, a mere adjustment for inflation of these funds might not achieve a substantially equal agency for such a couple.¹⁰⁹ Thus, a higher level of redistribution might be called for. This would be consistent with Paine's argument that generational democracy is always about judgment commensurate to its material context. If this material context presents the danger of individuals sliding back into poverty, because existing welfare payments prove insufficient, then the welfare state needs to be strengthened. Otherwise, death intrudes on life in the shape of growing poverty; otherwise, the living are no longer substantially equal to prior generations.

Conclusion

Democracy, Thomas Paine reminds us, consists in the ability of the living generation to govern itself. This is of vital importance, given our mortality. Therefore, generational democracy emphasizes the dynamic nature of democracy, and places a strong emphasis on what enables the agency of the living. Institutionally, this calls for a constitution that welcomes revision, as well as rights to welfare that ensure that self-government is a material reality on an individual level. Both of these counter the notion that generational democracy is presentist; such a perception would be more in keeping with Jefferson's version. Indeed, generational democracy is capable of intergenerational commitments precisely because it focuses on the rights of the living. In particular, generational democracy pushes us to redress inherited injustice, especially economic dispossession and the poverty that results from it. Paine believes that generational democracy pursues justice, not out of an obligation to the past or future, but because injustice inhibits the democratic agency of the living. In securing democratic agency for themselves, the living generation thereby simultaneously advances it for future generations.

In closing, I wish to sketch two contemporary applications of Paine's generational democracy, which are meant to indicate the fecundity of his concept. First, contemporary social acceleration – the increasing pace of economy, society, and politics – is putting pressure on received constitutionalism, particularly in the case of the United States, whose constitution is so difficult to amend. Indeed, U.S. constitutional law can hardly keep up with contemporary society's rapid pace of change. This results either in constitutional provisions becoming increasingly out of

109. There are conceptually distinct ways of calculating how to adjust for inflation from the time of Paine's writing to today. Instead of pursuing these, I think Ackerman and Alstott provide a helpful suggestion for how we should think about defining substantially equivalent payments. Drawing on Paine for inspiration, they argue for an \$80,000 stake because it reflects the average cost of a four-year college education. This amount would also provide a significant economic opportunity for those not pursuing college. In other words, they consider what would be a relevant way of thinking about starting a life of economic self-sufficiency in today's society. Ackerman and Alstott, *Stakeholder*, 3, 58–9 (see note 91 above).

sync with contemporary reality, or in constitutional adaptation to social acceleration by way of judicial reinterpretation rather than democratic processes of constitutional amendment.¹¹⁰ Paine's sense that only the living can determine what constitutional precommitment best facilitates their democratic political process is therefore timely. The constitutionalism of a generationally conceived democracy would be more apt to respond to the urgent political needs resulting from social acceleration than the kind of constitutionalism that affords the founding generation a privileged position. Paine would caution that only a constitution easily revised by the living can respond to rapidly changing circumstances.

Second, Paine's generational democracy, though it does not appear to be concerned with environmental protection, may offer an insight on how to redress the sometimes slow response to the challenges of global warming – yet without compromising democratic agency, as others propose.¹¹¹ In particular, the living generation is not simply alive in the present *moment* (where economic tradeoffs may speak in favor of further pollution); the living generation, at least in parts, can expect to be alive for decades to come. The environmental appeal should thus be to whether the living generation wants to “go decently out of this World”¹¹² or whether it prefers to spend its last few years suffering the consequences of environmental disaster. In other words, the living may care for the future of the environment and thereby for future generations precisely because it is, in part, their own present. Precisely such a democracy for the living would generate care for the future.

Having fleshed out Paine's generational democracy, we should thus be more open to assessing democracy through the lens of generations. This mode of theorizing democracy commits us to strengthening democratic agency, to achieving equality among the living, to recognizing equality between generations, and to deeply embedding the pursuit of economic justice within our understanding and practice of democracy. Paine's generational democracy not only offers a sophisticated understanding of democratic temporality, but also – more importantly for someone whose theoretical writing took the form of political interventions – offers timely insights on how to adapt contemporary democracy to profound challenges.

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110. Scheuerman, *Liberal Democracy*, 71–104 (see note 2 above).

111. For example, Paine would disagree with the trustee arrangements imagined by Dennis F. Thompson, “Democracy in Time: Popular Sovereignty and Temporal Representation,” *Constellations* 12 (2005): 245–61, at 256–59.

112. Paine, “Agrarian Justice,” 409 (see note 5 above).

