

Thomas Paine and the Idea of Intergenerational Rights


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Thomas Paine's and Thomas Jefferson's writings on the relations between generations continue to attract much attention among political theorists and historians of political thought. They have been described as two of the most important theorists of the intergenerational characteristics of rights and of the significance of ascribing "sovereignty" to every generation. Jefferson's work has often been portrayed as shaping Paine's thinking on intergenerational obligations. This article contends that such characterizations of Paine misapprehend the development of his thought. By examining previously overlooked writings in Paine's corpus, it becomes clear that his account of intergenerational rights and obligations was substantially different from Jefferson's. The supposed parallels between their work obscure more than they illuminate. Indeed, the most interesting arguments Paine offered for reconceiving the capacities of each generation have thereby been neglected. These conceptual resources are worth returning to, especially given that Paine's and Jefferson's work on intergenerational relations is often mobilized to theorize a range of contemporary problems from constitutional interpretation to climate change.

Debates on the characteristics of intergenerational relationships are likely "as old as humankind" (Davidson 2019, 2). Nevertheless, the writings of various political theorists have been proposed as crucial in theorizing conceptions of intergenerational obligations. Terence Ball (2000, 62) has claimed that the "theme of intergenerational relations ... received its first systematic airing and elaboration" in the context of varying responses to the French Revolution. Alternatively, one of the central controversies of the American Revolution—the hereditary character of British monarchical rule over the Thirteen Colonies—is often depicted as presenting an important foundation for modern thinking on the legitimacy of hereditary obligations (e.g., Onuf 2000, 156–57; Otsuka 2003, 133–39; Ward 2021, 313–30). Indeed, the list of eighteenth-century theorists who have been portrayed as offering important accounts of intergenerational obligations is a long one, running from Burke (e.g., Baier 1981, 171–83; Castellano 2013, 15–36; Scruton 2012, 215–21) to Kant (e.g., Ball 2000, 63–64; Williamson 2015, 57–82) to Condorcet (e.g., Gosseries 2016, 99–102; Tremmel 2017, 4–17).

Political theorists continue to draw on theories of intergenerational obligations developed amidst the French

and American Revolutions to address a wide range of pressing concerns, from constitutional interpretation to climate change (e.g., Ball 2000, 61–77; Holmes 1995, 138–59; Thompson 2009, 6–7). Particular significance has been granted to Thomas Jefferson's conception of intergenerational rights as centered on the "sovereignty of the living" or "generational sovereignty" (e.g., Gosseries 2016, 98–99; Markovits 2018, 12–13; Peterson 1976, 437–47). Jefferson is often depicted as having worked out these notions in frequent discussions with Thomas Paine while both were living in revolutionary Paris in the late 1780s (e.g., Fruchtmann 2011, 84; Peterson 1976, 443; Philp 2013, 197–98; Philp 2019, 562–63). Paine is thus commonly placed alongside Jefferson as developing a similar conception of intergenerational rights (e.g., Fruchtmann 2011, 78; Holmes 1995, 138–42; Markovits 2018, 12; Philp 2019, 562–63). This supposed "Paine–Jefferson formula" (Holmes 1995, 162) on intergenerational rights, as centered around "generational sovereignty," has come to provide a key foundation for contemporary theorizing on the intergenerational characteristics of constitutional amendments, legislative entrenchment, and climate degradation (e.g., Chatziathanasiou 2017, 34; Markovits 2018, 12; Thompson 2009, 6–7). Paine's and Jefferson's thought has thereby become central to contemporary intergenerational ethical theory (e.g., Davidson 2019, 2–4; Gosseries 2008, 32; Thompson 2009, 6–7).

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This article contends that Paine's purported alignment with Jefferson is largely the result of a misapprehension of the development of Paine's thought on intergenerational rights. The first section focuses on one of Paine's (1945a, 367–414) more unfamiliar works, his *Dissertations on Government; the Affairs of the Bank; and Paper Money*, published in 1786 (henceforth referred to as *Dissertations*). Although Paine's connection between intergenerational rights and the "sovereignty" of each generation is usually ascribed to Jefferson's influence in Paris, Paine was already thinking through this connection in his *Dissertations*, which was published while he was still living in the United States. The context in which this text was composed, the Pennsylvanian Bank Crisis of 1786, which was implicated in the nascent American republic's financial woes under the Articles of Confederation, shall be explicated as particularly salient in understanding the development of Paine's thought. Paine's thinking on intergenerational rights will be shown to have different preoccupations and intentions to the theories later devised by Jefferson in Paris.

As the second section showcases, Paine conceived various limitations to intragenerational action throughout his corpus that differentiated him from Jefferson and that have often been overlooked in accounts of his theory of intergenerational rights. Chiefly, these relate to his conception of constituent power, his distinction between "acts of agency" and "laws" (Paine 1945a, 376), and his idea of a universal right to a portion of the original commons. Paine argued that although each generation must be competent to exercise its right to constitute its own form of government, certain "acts of agency" should not simply be voided by subsequent legislatures. Furthermore, the equal right to the original commons entailed, for Paine, that each person should receive a part of this natural property or its equivalent, as they would have done in the state of nature. This also functions as a constraint on each generation, because, in all cases, it must be ensured that this portion is fairly allocated.

The third and final section turns to the frequent mobilization of Paine's thought, often in conjunction with Jefferson's, in contemporary theorizing on intergenerational ethics. The supposed parallels between their accounts of the intergenerational characteristics of rights have come to be foundational for much of this literature. Drawing on the historical work of the preceding sections, I illuminate the implications of Paine's disagreements with Jefferson for theorizing that takes their ideas on the relationships between generations to be both compatible and foundational. As we shall see, the manifold differences between Paine and Jefferson suggest alternative—and often distinctive—ways to conceptualize the intergenerational characteristics of rights.

Paine and the Idea of Intergenerational Obligations

Paine is often depicted as having theorized a negative conception of intergenerational rights: that each generation must, in all cases, be free from the impositions of previous generations (e.g., Ball 2000, 72–75; Peterson 1976, 443; Philp 2013, 197–98; Philp 2019, 562–67; Philp 2021; Wilson 1988, 69–70). Considerable scholarship has been devoted to the development of this conception of intergenerational rights and Paine's associated emphasis on the "sovereignty" of each generation. Mark Philp (2019, 562) has influentially argued that Paine "first reflected on generational sovereignty in discussions with Jefferson" and his "Parisian group" between May 1787 and September 1789 and that Jefferson's and Paine's views on this idea evolved concomitantly. According to Philp, the notion "did not feature in [Paine's] American writings" (562) and was first articulated by Jefferson (1999, 592–604) in a letter to James Madison on September 6, 1789.¹ Philp (2013, 197) contends that it is "too much of a coincidence" to think that Paine could have worked out this principle all by himself in responding to Burke in his *Rights of Man* (1791–92) and that Jefferson also restricted his discussion of this concept to his correspondence with Madison. Paine is thereby depicted as conceiving his notion of generational sovereignty in close conjunction with Jefferson and at about the "same time" (197).²

However, in the *Dissertations*, one of Paine's lesser-known works, it is readily apparent that he was already grappling with how to theorize this concept by 1786. In this work, he posits that legislative acts should be temporally limited to a lifespan of 30 years, the "mean time" of one generation, because "as we are not to live forever ourselves, and other generations are to follow us, we have neither the power nor the right to govern them, or to say how they shall govern themselves" (Paine 1945a, 395). For Paine, present generations have no right to define the lives of future people: "It is the summit of human vanity, and shows a covetousness of power beyond the grave, to be dictating to the world to come" (395). It was imperative to avoid such covetousness to ensure a polity in which "the sovereign power ... remains where nature placed it—in the people" (369). This problematizes the arguments sketched earlier: If Paine was already developing his notion of generational sovereignty by 1786, it could hardly have sprung forth from discussions with Jefferson and his circle in 1789. Paine's formulation of this idea must thus be placed within a different intellectual context.

The *Dissertations*, published in Pennsylvania in February 1786, was written to build support for the re-implementation

of the charter of Robert Morris's Bank of North America, which had been repealed by the Pennsylvanian Assembly on September 13, 1785. It was hardly surprising that "anti-bank" sentiment led to legislative action (Bodenhorn 2002, 128). The Bank had steadfastly refused to accept paper money as the equivalent of specie, even though the Pennsylvanian Assembly had issued £150,000 worth of paper notes in March 1785 to assist debtors in paying their taxes (Holton 2007, 131). In addition, "mass insolvency" was so widespread in the western Pennsylvanian counties of Berks and Lancaster that enough writs were issued between 1782–92 to foreclose at least 66% of the taxable population (Bouton 2006, 233–34). What is perhaps more surprising is that Paine supported the bank, given his self-proclaimed advocacy of the "rights of all mankind" (Paine 1945b, 3). Nonetheless, a closer examination of his theoretical reasons for doing so provides interesting insights into his ideas on intergenerational rights.

In the *Dissertations*, Paine argues that the "airy bubble of paper currency" is but an "apparition" (Paine 1945a, 405).³ He quotes the perspective of a "German farmer" who "express[ed] as much in a few words as the whole subject requires; 'money is money, and paper is paper'" (404). Here, Paine is responding to the claims, made in the Pennsylvanian Assembly in March 1785, that paper money would be "beneficial to the state" and that "the credit of our paper currency will be blasted by the bank" (quoted on 387–88, n21). Paine did not dispute that the bank would "blast" the viability of paper money as a medium of exchange, but he certainly did not think that this would be detrimental to the state. As he (1995a, 364) puts it in his pamphlet *Attack on Paper Money Laws*, published on November 7, 1786, "paper money" might more accurately be termed "bills of credit," because it serves as little more than a placeholder for material wealth that has not yet been produced. For Paine, "all emissions of paper for government purposes is not making of money, but making use of credit to run into debt by. It is anticipating or forestalling the revenue of future years, and throwing the burden of redemption on future assemblies. It is like a man mortgaging his estate and leaving his successors to pay it off" (364). Thus, the issuance of paper money is not merely irresponsible but also has a direct impact on the lives of future generations. One cannot rightfully disregard the "burden of redemption" and place it on the heads of future generations to deal with. Put more eloquently, "Paper money is like dram-drinking, it relieves for a moment by deceitful sensation, but gradually ... leaves the body worse than it found it" (411).⁴ Although short-sighted measures might prove immediately beneficial, Paine posits that failing to consider the rights of future generations would ultimately leave the body politic worse off. One can see why he was willing to "sacrifice almost anything" (Holton 2007, 243) to eliminate paper money

and was even prepared to argue that "the punishment of a member who should move for such a law ought to be death" (Paine 1945a, 408). The prospect of unjustly burdening the lives of future people was deeply troubling for Paine.

In this regard, Philp's (2013, 197; 2019, 562–63) contention that Paine's and Jefferson's notions of intergenerational rights were shaped by discussions of Smith's *Wealth of Nations* is worthy of greater reflection. Smith's influence on Paine's thought is well documented (e.g., Stedman Jones 2004, 16–63; Whatmore 2000, 147–48; Winch 1995, 150–56), and Paine's (1945c, 282) admiration of the effects of universal commerce and the "talents ... [of] the author of 'On the Wealth of Nations'" in *Rights of Man* showcases his close reading of Smith. The observations on banking presented in *Wealth of Nations* were also "widely circulated" in Pennsylvania (Foner 2005, 199), due to James Wilson's (2007, 60–79) 1785 pamphlet defending the bank, which included extensive quotations from that work. Smith's contentions that monetary exchange is best implemented "upon the solid ground of gold and silver" (Smith 2014, 321) and that forcing citizens to accept paper money, which is not grounded on specie, constitutes a "violent injustice" (326) are echoed in the *Dissertations*. For example, Paine's (1945a, 405) claims that paper money should be used only "to write promissory notes and obligations of payment in specie" and to act otherwise is to "set property afloat" resonate with Smith's arguments. Opposition to "the evils of paper money" (406) was hardly a conceptual innovation on Paine's part.

Nonetheless, Paine's interweaving, in his writings on the bank crisis, of the proposition that each generation should have the power to govern themselves and the notion that the material conditions they accede to should not have been debased by those who have preceded them is compatible with his later thinking on intergenerational rights in *Rights of Man*. In that work, Paine (1945c, 325) contends that no generation can ever possess the right to act in a way that disregards the rights of posterity, because individual rights "are neither devisable, nor transferable, nor annihilable, but are descendible only; and it is not in the power of any generation to intercept finally and cut off the descent."⁵ Materially degrading the capacities of later generations can never be a valid choice in Paine's moral universe. To Paine, it is only too obvious that "A cannot make a will to take from B his property and give it to C" (325). Avoiding undue infringements on the rights of future generations is a constant and continual responsibility. Neither hereditary monarchy nor a debt-laden legislature can be rightfully instituted by any generation. To act otherwise would be to subject future generations to "arbitrary power" (319). Thus, certain actions are prohibited for each generation, specifically those that might serve to unjustly delimit the rights of future generations.⁶

Paine's defense of "that most useful and beneficial institution ... the Bank of North America" must be considered as a significant historical and theoretical root of his thinking on intergenerational rights (Paine 1995b, 361). His assertion that each generation should not have its rights unfairly inhibited by those that preceded it is plainly explicated in his indignation against the unjust debts imposed by paper money. Moreover, as he later acknowledged in a letter published in the *Pennsylvania Packet* on April 20, 1786, "man's ideas are generally produced in him by his present situation and condition" (Paine 1945e, 426). By the standards of Paine's own reasoning, it does not make much sense to remove his conception of intergenerational obligations from its historical context. Careful consideration of this context negates the notion that Paine began developing his conception of generational sovereignty amidst his involvement in Jefferson's Parisian circle. During the bank crisis, Paine conceived the scope of justifiable intragenerational action as circumscribed by the need to maintain conditions in which later generations can equally enjoy their rights. I now turn to the nature of these rights.

Paine and the Limits of Intragenerational Rights

On Paine's account, the need to uphold future generations' rights prescribes certain boundaries beyond which a generation cannot legitimately act. In this section, I explore three important aspects of the ways in which these constraints function for Paine. The first concerns the right of each generation to exercise its own constituent power and shape its political apparatus as it so wishes. The second is Paine's distinction between "acts of agency" and "laws," which he draws on to theorize the constraints facilitated by public contracts like the Bank of North America. Finally, I examine Paine's idea that all individuals retain ownership rights over a portion of the earth's resources. This idea indicates limitations on each generation's actions, because sufficient material resources must be maintained to preserve this right for future people. As we shall see, consideration of these three constraints highlights important differences between Paine's conception of intergenerational rights and that of Jefferson.

The limits within which each generation has the right to act are, according to Paine, defined by the need to uphold the natural and civil rights of individuals. Burke (2014, 60–61), in his *Reflections on the Revolution in France* (1790), had posited that "men cannot enjoy the rights of an uncivil and of a civil state together" and that all natural rights are surrendered on entry into the social contract. This was antithetical to Paine (1945c, 275), who argued that "man did not enter into society to become worse than he was before, nor to have fewer rights than he had before, but to have those rights better secured." For Paine, natural and civil rights are enjoyed simultaneously. Each citizen

"retains ... [all] natural rights ... in which the Power to execute is as perfect in the individual as the right itself," such as "intellectual rights, or rights of the mind" (276). Nonetheless, Paine also recognized that for some rights, like "security and protection," individual capacities are "not, in all cases sufficiently competent" (276). Each individual therefore "deposits" those natural rights that they lack the power to properly exercise "into the common stock of society, and takes the arm of society ... in preference ... to his own" (276). The Paineite social contract is thus justified by its claim to better protect certain natural rights.

Legitimate intragenerational action is delimited, for Paine, by the need to uphold the natural rights of future generations. Central among these is the collective retention, by every generation, of the right to exercise constituent power and exert its own mark on the political contract that binds it. By the time he came to compose *Rights of Man*, between November 1790 and February 1791, it is evident that Paine had a good grasp on the distinction between constituent and constituted power: A "constitution is a thing antecedent to 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" (Paine 1945c, 278). The right to exercise constituent power is always present, and the "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 interest, disposition, and happiness" (341). Constitutional change can hence be initiated only by the people, who are the original constituent power, and can be done so whenever deemed necessary. The illegality of the actions of Pitt's government in early 1789 in this regard was clearly set out in the second part of *Rights of Man*; as Paine (1945d, 382) puts it, the right to "add to, alter, or abridge the original articles" of the constitution belongs "only to the constituting power." For Paine, the notion that "men mean distinct and separate things when they speak of constitutions and of governments is evident; or why are these terms distinctly and separately used?" (375).

The links between Paine's account of intergenerational relationships and of constituent power are at their most transparent in his *Letter Addressed to the Addressers on the Late Proclamation*. Composed in the summer of 1792, here Paine tries to outline a feasible form of republican government for Britain. As part of this proposal, he posits that there should be a constitutional review every 21 years (Paine 1945f, 509), so that each generation can explicitly consent to the structure of their polity and exercise their own right to constituent power. Such an expression of the "original constituent power" (504), would allow "useless laws [to be] dropped and discontinued" (509), permitting each generation to adjust its polity as it might require. In his *Answer to Four*

Questions on the Legislative and Executive Powers, written at the behest of Condorcet to quieten fears over the functioning of the French legislature and also published in 1792, he even proposed that such a constitutional review should take place as frequently as every seven years, because it is “not enough to constitute a good government; it is equally indispensable to adopt such methods as may assure the permanency of a good government” (Paine 1945g, 532). For Paine, every generation must be free to exercise its right to constituent power to ensure it has a political system suited to the needs of its times. This was especially pertinent given the fact that, as Paine recognized in *Rights of Man*, “time, and change of circumstances and opinions, have ... [a] progressive effect in rendering modes of Government obsolete,” and thus “a different system of Government ... [is necessitated] than what might have been required in the former condition of the world” (Paine 1945c, 343–44). By allowing for constitutional renewal via the repeated expression of constituent power, “we benefit posterity [as] when we adopt such contrivances now ... [we] will insure their success” (Paine 1945g, 532). This was a point that, of course, harked back to Paine’s (1945b, 13) famous contention in *Common Sense* (1776) that “hereditary succession,” when “claimed as a matter of right, is an insult and an imposition on posterity.” As Paine (13) put it there, no generation could “give away the right of posterity” to shape government to meet the challenges of contemporary conditions without perpetuating “manifest injustice.” His later, perhaps more sophisticated, articulation of the notion of constituent power would come to form a key component of Paine’s conception of intergenerational rights and built on this earlier sentiment.⁷

Robert Lamb (2015, 75), in claiming that Paine advocated a “principle of publicity,” has recently sought to reduce the significance of the distinction between constituent and constituted power in Paine’s thought. He argues that Paine recognized “no meaningful gap between the representative and the represented” (95) and instead endeavored “to ensure comprehensive political participation” on the part of all citizens (75). On this account, Paine’s idea of a “fully engaged citizenry” was so comprehensive that it entailed the “rejection of any stable distinction between elected representatives and the public” (90). Sieyès’s famous distinction is thus depicted as entirely collapsed in Paine’s thought.

However, by returning to the *Dissertations*, it becomes difficult to maintain the notion that Paine did not substantively differentiate between citizens and their government. Here, Paine (1945a, 376) distinguishes “acts of agency” from “laws.” The former are acts, or contracts like the Bank of North America, into which the legislature enters on behalf of the people, acting as their “agent.” These acts bind subsequent assemblies, in contrast to laws that can be legitimately repealed, because the people

cannot simply free themselves by hiring new agents. The terms of the act remain valid for its duration (376–79). These terms should not be violated by later legislatures or otherwise amended without the consent of all the contracting parties (378–80). Indeed, it was these factors that particularly irked Paine in his response to the bank crisis. The contract for the bank had centrally involved private individuals, as creditors and stockholders, and the Pennsylvanian Assembly had unilaterally revoked the contract without their consent and in violation of the original terms of the contract (379–82). By assuming “full and complete authority over every act done by the state in a former assembly” (381), the assembly had thus acted in a manner that was “arbitrary and unjust” by single-handedly abrogating the “act of agency” that had created the bank, contrary to its original terms (Paine 1945e, 422). As Paine (1949, 311) put it in a letter composed in April 1785, if each new generation were permitted to “exercise [such] a power,” this would inevitably endanger “the rights and property of every man.”⁸ Every election would come to constitute “a new revolution” and would “suppose the public of the former year dead and a new public in its place” (Paine 1945a, 381). For Paine, “acts of agency” cannot be indiscriminately declared void by subsequent legislatures. Hence, these public measures that cannot be arbitrarily repealed or rescinded undercut the notion that Paine perceived no distinction between constituent and constituted power or thought these powers substantively identical, if the people could institute certain acts that later governments lack the power to undo. The distinction between these powers remains important in Paine’s thought, as do the limitations to intragenerational action implied by the notion that later legislatures should not unjustly void such public contracts.⁹

Indeed, Paine further developed this conceptual distinction in his *Constitutions, Governments, and Charters* of 1805. In this work, he made two moves that are of interest here. First, he noted that occasionally there will arise the need for “the exercise of a power differently constituted to that of ordinary legislation” (Paine 1945h, 991), such as sales of public lands or acts of public incorporation. Often, such acts could not be straightforwardly repealed by a newly elected legislature and thus necessitated an alternative form of political conceptualization. Therefore, Paine contended, these acts should be proposed in one legislature and, if passed, take “the form of a bill” that should “lie over to be taken up by the succeeding legislature” (991), thus ensuring another election before the bill became permanent. This would, he thought, prevent the “rapidity with which a self-interested speculation” could be enacted that would render a single legislature vulnerable to corruption by factions and interests that might seek to make permanent an oppressive or self-enriching public contract or set of land deeds (991). He referenced the then-recent controversy over the proposed incorporation of the

Merchants' Bank in New York; the legislative furor over the charter to incorporate the bank was, as one historian has put it, marked by such corruption that "every aye vote was suspect" (Bodenhorn 2017, 18). Bank operatives had offered legislators shares worth more than \$1,000 to vote in favor of or to absent themselves from the vote on the bank's charter (18).¹⁰ Paine referenced several times the scale and depth of corruption surrounding the charter—his essay was composed in New Rochelle, on New York's northern outskirts—which clearly had a significant impact on his thinking about the importance of measures to prevent the corruption of public representatives by factional interests.

It is perhaps unsurprising, then, that Paine's second move was a Madisonian one, drawing on the notion of the American republic as an extended republic (Madison 2003, 40–46) and applying it to the specific issue regarding the duration of charters and contracts. Paine contended that although the controversy over the Merchants' Bank amply demonstrated the difficulties inherent in bribing even "a small body of men," it is nevertheless "always impossible to bribe a whole nation": In an extended republic, comprising a multiplicity of factions and interests, no single set of interests could plausibly aspire to corrupt all others simultaneously and cohesively (Paine 1945h, 992; emphasis in original). Thus, for Paine, "in all legislative matters that by requiring permanency differ from acts of ordinary legislation which are alterable or repealable [*sic*] at all times, it is safest that they pass through two legislatures, and a general election intervene between," because such elections would ensure that the nation had a "veto" on these bills (992). This veto power and the commensurate unlikelihood of each and every faction in an entire nation being bribed to betray its own interests would, Paine thought, provide sufficient security against charters and bills driven by self-interested speculation.¹¹ As he put it, these measures would ensure that "the whole state will be its own council of revision" (992).

Such provisions would also, Paine claimed, have the beneficial corollary of increasing the importance of annual elections and thus sustaining the vitality of a democratic polity. This was connected to his conception of general elections as a distillation of the "mind of the public" (Paine 1945h, 992). On Paine's account, public opinion, given that it would represent a variety of different factions and interests, could serve as a useful and critical refractory gaze that would expose corrupt charters and bills. For him, it was "only by means of elections that the mind of the public can be collected to a point on any important subject"; hence, it was not only that ensuring an election before the passing of such bills would grant greater security from the rapidity of speculation but that an election would also provide the necessary opportunity for public opinion to be crystallized around such potentially crucial legislative matters (992). The extended republic of the United States

would thus be protected against speculations in its legislature while still ensuring an appropriate place for those necessary public "acts of agency."

Jefferson did not draw a similar distinction between "acts of agency" and laws in his conceptualization of the legislative relationship(s) between generations. Nor did he otherwise theorize the importance of distinguishing such "acts," or how they might wrongfully be violated. Indeed, for Jefferson, the constituent power and the constituted power should be substantively collapsed insofar as possible. It was this sentiment that led him to eventually advocate for a form of "council democracy," which would be "capable of integrating the people's constituent power into the regular working of politics" (Rubinelli 2020, 199).¹² Paine's articulation of a political vision that avoided such a merger so as to best preserve the natural rights of individuals thereby further differentiated his thought from Jefferson's. Paine's 1786 suggestion, in his *Dissertations*, that legislation should ideally be limited to the "mean time" of one generation (1945a, 395) or 30 years, as we saw earlier, was interestingly reflected in Jefferson's 1789 letter to Madison in which he proposed that "every constitution ... and every law, naturally expires at the end of 19 years" (Jefferson 1999, 596). Paine's preempting of Jefferson on this matter, nonetheless, only further indicates that the former's thought on intergenerational rights should not be assimilated to the latter's, especially given its seemingly earlier composition and distinctive contentions.

The third, and perhaps most original, factor delimiting Paine's idea of generational rights is articulated in one of his last major works, *Agrarian Justice*, composed in the winter of 1795–96 and published in 1797. This is the right of each and every generation to be better off than it would have been in the state of nature when humankind enjoyed common ownership of the earth. Paine proceeded there from a key tenet of the natural law theories of property of the previous centuries—that the earth "is the free gift of the Creator in common to the human race" (Paine 1945i, 620). Gregory Claeys (1989, 202–6; 2016, 95–101) has posited that Paine's (1945j, 463–512) ridicule of the biblical story of God's creation of the earth in his *The Age of Reason* (1794) demonstrates that he was not fully convinced by the proposition that God had created and designated the earth as the common property of humankind. Even if one accepts Paine's deistic premise of a creator, "we have no reason to presume ... that any particular disposition of property follows consequentially" (Claeys 2016, 95).

However, Paine's mocking of the historical accuracy of the account given in Genesis does not straightforwardly imply that he believed God had not fashioned the earth. Given that, in the second part of *Age of Reason* (1795), he describes his attempts to challenge the historical falsities of the bible as "a duty incumbent on every true deist" (Paine

1945k, 523), it is difficult to see why one should presume that *Age of Reason* “greatly if not fatally undermined” the theological underpinnings of all of Paine’s subsequent works (Claeys 2016, 101). Moreover, although the inconsistencies between Paine’s position in *Age of Reason* and his later argument in *Agrarian Justice* might appear obvious to scholars of his work two hundred years later, this does not mean that Paine himself necessarily recognized such inconsistencies. As Lamb (2015, 140) has rightly pointed out, there is nothing in *Age of Reason* that necessarily “rules out any assumption of divinely ordained original communism.”

Prominent natural law theorists, such as Grotius (2005, 142–43) and Pufendorf (1991, 84–85), had argued that although God had granted the earth to humanity, this era of common ownership could legitimately be brought to a conclusion by individual cultivation. Rather than expressing skepticism about their belief in divine creation, Paine, however, contends that 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*” (Paine 1945i, 611; emphasis in original). He thus posits that each individual retains a right to the commons and is due restitution for the usurpation of their common ownership rights. This is neatly encapsulated in Paine’s “first principle of civilization,” which asserts that it “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” (610). The central theme of Paine’s thinking on intergenerational rights—that it can never be justified for a generation to unjustly circumscribe the rights of succeeding generations—comes through very clearly here.¹³ Each generation should not have its rights unfairly curbed by the generations that preceded it. This includes the generations that made the decision(s) to enter into civil society and the generations that lived in the state of nature before that. For Paine, every generation has a right not to be worse off than if its members had been born before the establishment of civil society and the division of the earth into private property.

Having established that “no person ought to be in a worse condition when born under what is called a state of civilization, than he would have been had he been born in a state of nature,” Paine then asserts that “civilization ought to have made, and ought still to make, provision for that purpose,” which “can only be done by subtracting from property, a portion equal in value to the natural inheritance it has absorbed” (Paine 1945i, 613). He uses a twofold definition to establish the characteristics of this “natural inheritance.” In the inscription of *Agrarian Justice*, he claims, “There are two kinds of property. Firstly, natural property, or that which comes to us from

the Creator of the universe—such as the earth, air, water. Secondly, artificial or acquired property—the invention of men” (606). It is this “natural property” that “every individual in the world is born therein with legitimate claims on” (606–7). Even though the state of nature has long since passed, every human being retains a right to their equal share of natural property, as granted by God. Thus, it is straightforward to comprehend why Paine’s theoretical assertions in *Agrarian Justice* have frequently been taken to constitute a right to welfare (e.g., Bosc 2016, 113–23; Feit 2016, 72–80; Jackson 2005, 366). As he put it, “it is a right, and not a charity, that I am pleading for” (Paine 1945i, 612).¹⁴ Although natural law theorists had commonly acknowledged the existence of imperfect rights to charity due to God’s gift of the earth to all at the creation (e.g., Grotius 2005, 149–52; Pufendorf 1991, 69), Paine now “transmuted” this into a perfect right to welfare (Claeys 1994, 262). According to Paine (1945i, 612), an “indemnification for [the] loss” of a common right to ownership of the earth must be provided. Compensation must be allocated to each and every generation for the loss of their rightful access to the commons.

Comparisons might be drawn here to Jefferson’s notion, articulated in his 1789 letter to Madison, that each generation must ensure that it does not degrade the natural inheritance of future generations because “the earth belongs in usufruct to the living” (Jefferson 1999, 593). For Jefferson, an orientation of “stewardship” (Ball 2000, 67) toward resources and land was necessary to avoid the injustice of the next generation acceding only to the wastage of their forebears (Ball 2000, 64–70; Browers 1999, 43–57; Cannavò 2010, 356–73). Although both Paine and Jefferson thought that the earth should be preserved such that each generation can enjoy its natural rights to the earth’s resources, as derived from humankind’s common creation by God, Paine’s thinking bore a redistributive component that Jefferson’s did not. Although Jefferson was concerned with maintaining extant resources such as to preserve them for future generations, his vision was more amenable to the inheritors of a landed estate than the redistributive right to a portion of the original commons that Paine advocated. Jefferson’s thought on this point was, as commentators have suggested, perhaps reflective of his background as a wealthy “farmer and agrarian” (Ball 2000, 67), who presided over a vast estate at Monticello. By at least the mid-1790s, Paine’s advocacy for redistribution predicated on natural right thus further differentiated him from Jefferson.

These three limitations on intragenerational action are key parts of Paine’s constellation of intergenerational rights. His theorization of constituent power, the distinction between “acts of agency” and “laws,” and his contention for a right of redistribution to natural resources all

circumscribe the Paineite sphere of legitimate intragenerational action. Moreover, these aspects of his thought are, as we have seen, hardly reducible or assimilable to Jefferson's conception of intergenerational rights, particularly given that the latter had little, if anything, to say regarding the last two aspects. Conflating Paine's and Jefferson's thinking into a cohesive "formula" threatens to elide these important and distinctive parts of Paine's thought. The broader implications of foregrounding these parts of Paine's thought are taken up in the next section, given that his work continues to be frequently mobilized in contemporary debates in intergenerational ethics.

Paine and Intergenerational Ethics

One obstacle facing any account of intergenerational ethics is the so-called non-identity problem, as first outlined by Derek Parfit (1984, 351–79). According to this premise, the actions of earlier generations are themselves constitutive of later generations. For example, although building a fume-emitting factory might damage the environmental prospects of future people, they cannot be said to be worse off for it, because several of them likely would not have been born without the intermingling of people brought together by working at this factory, and the supply chain that furnishes it, and so forth (Caney 2005, 757–58). Thus, later generations cannot be said to have been "bettered" or "harmed" by previous generations, because "we benefit someone only if we cause him to be better off than he would otherwise at that time have been" (Parfit 1984, 487). Given that the very identity of later generations fundamentally depends on the actions of earlier generations, they cannot be worse off because of those actions, for without these actions they would not exist.

Various attempts have been made to illustrate how this problem can be reconciled within a theory of intergenerational rights. Most prominently, "sufficientarianism" has been advocated as a means of effectively circumventing the non-identity problem by specifying a minimum threshold below which a person cannot justly live (e.g., Huseby 2010a, 193–210; Meyer 2021; Meyer and Roser 2009, 219–48). Hence, the only criterion for the justifiability of a generation's actions is whether it causes or is likely to cause future generations to live below a certain limit. The specific identities of future people do not matter as long as they live above this threshold. Just what exactly this threshold should be is, as one might expect, an extremely contentious issue (Crisp 2003, 745–63; Huseby 2010b, 178–97; Nielsen 2019, 21–38). Paine has been depicted as the "first clear adherent of an obligation of sufficiency" (Moyn 2018, 91), and his thought has often been drawn on to theorize intergenerational rights in the context of contemporary debates on intergenerational obligations. Indeed, contemporary political theorists have often drawn on Paine's account of rights in conjunction with

Jefferson's to theorize how the "sovereignty" of each generation might best be upheld (e.g., Chatziathanasiou 2017, 34; Gosseries 2008, 32; Markovits 2018, 12).

The extensive literature on theories of legislative entrenchment has drawn heavily on Jefferson's and Paine's notions of intergenerational rights. Theorists have often contended that Jefferson and Paine offer useful intellectual resources to buttress the notion that "one legislature cannot bind a later legislature by enacting an irrepealable law" (Davidson 2019, 20) in a meaningfully democratic state. On such accounts, a "stronger anti-entrenchment position can hardly be imagined" (Roberts and Chemerinsky 2003, 1799, n93) than Jefferson's (1999, 596) proposal that "every constitution ... and every law" should expire after 19 years to ensure the sovereignty of each generation. Paine is usually presented as having offered "similar sentiments" (Liolos 2021, 336) to Jefferson on legislative entrenchment. However, as we have seen, for Paine, there were crucial "acts of agency" that should not be unjustly reneged on by subsequent legislatures (Paine 1945a, 376). As he contended during the Pennsylvanian bank crisis, a representative legislature could function as the "agent" of a democratic citizenry in finalizing public contracts, like that of the Bank of North America. On this account, the people could not simply hire a new "agent" to void such a contract, by electing a new legislature at a later date, without setting a precedent that would endanger "the rights and property of every man" (Paine 1949, 311). Moreover, in his *Constitutions, Governments, and Charters*, Paine further delineates the necessity of making conceptual space for public contracts that "by requiring permanency differ from acts of ordinary legislation" (Paine 1945h, 992; emphasis added). It is therefore difficult to see how Paine's and Jefferson's thought on legislative entrenchment can be treated as substantively identical, given Paine's delineation of such public contracts and "acts of agency" that should not be wrongfully breached.

The supposed similarities between Paine's and Jefferson's thought here are also broadly accepted in the literature on the intergenerational paradoxes of constitution-making (e.g., Chatziathanasiou 2017, 34; Gosseries 2008, 32; Tremmel 2019, 72). This literature pivots around the so-called "paradox" (Chatziathanasiou 2017, 32) that earlier generations often claim the prerogative of instituting constitutional rights precisely to enshrine the "sovereignty" of persons who do not yet exist. Constitutions are thus often characterized as "double-edged swords" (Gosseries 2008, 32) that can simultaneously secure and delimit the sovereignty of each generation. Jefferson's and Paine's purported alignment around a program of continual constitutional renewal has found favor as one possible solution to this problem, granting every generation the chance to live under constitutional provisions of its own choosing, although the "normatively demanding ... requirements" (González-Ricoy 2016, 46) that should shape such

moments of renewal have been, perhaps unsurprisingly, much debated (e.g., González-Ricoy 2016, 40–48; Gosseries 2008, 32–37; Tremmel 2019, 49–75). It is, however, difficult to see how Paine can be mobilized to support such proposals, given his demarcations between constituent and constituted powers once instituted, as well as his preservation of a sphere of public acts that could not be arbitrarily reconstituted by the constituent power whenever it so willed. Although Paine shared the sentiment that every generation should have “a realistic chance to live under constitutional provisions of their own choosing” (Tremmel 2019, 55), he contended that the purview of such provisions should be delimited in certain respects that differentiated him from Jefferson: They should not serve to eradicate the important distinction between constituted and constituent powers by assuming unadulterated “authority over every act done by the state in a former assembly” (Paine 1945a, 381), nor should they otherwise encroach on “acts of agency” entered into by prior legislatures. Paine’s notion of “acts of agency,” situated as it was during the controversy over the public contract for the bank, might also here provide useful intellectual resources for contemporary conceptions of the relationship between present and future generations in terms of a contractual arrangement.¹² Janna Thompson (2009, 51–54) has influentially argued for a “conception of an intergenerational contract,” in which individual persons are conceived as having “lifetime-transcending interests,” as offering a basis for protecting from harms such as environmental degradation and providing a normative grounding for various cultural and political institutions. Paine’s distinction between “acts of agency” and laws suggests another means of conceiving this intergenerational relationship.

The significance of preserving the material conditions necessary to meaningfully exercise intergenerational rights has also received considerable attention from contemporary political theorists. Tracey Skillington (2019, 84) posits that a key part of intergenerational environmental obligations is ensuring that the “necessary resources are available” so that “the capacity of each [generation] to exercise sovereignty” is not adversely affected. Davidson (2019, 2; emphasis in original) even regards environmental preservation as “a *particular aspect* ...of the generational sovereignty principle” without which the rights of each generation become untenable. Elizabeth Markovits (2018, 12–15) has, however, recently critiqued such theories. She contends that even if every constitution and all national debts were abolished, subsequent generations would nonetheless have to face historical legacies such as “racism, income inequality, [and] environmental damage” (15). The “fiction of generational sovereignty” proposed by those such as Jefferson is readily exposed, she claims (24), given that we cannot “escape the past” and the hold that past decisions have over successive generations (15).

Following the conventional historiography addressed in the two preceding sections, Markovits (2018, 12) considers Paine “in a similar register” to Jefferson. As we have seen, however, for Paine the question of the “historical legacies” that future generations might face because of irresponsible alterations of material conditions, such as instituting debt-laden legislatures, was a central feature of his work since at least the *Dissertations*. Such modes of intragenerational action could never be justified. Moreover, as expounded at length in *Agrarian Justice*, the right to restitution of a portion of the original commons necessitated forms of political action ensuring that this natural right could be preserved for future generations. This precluded degrading the earth in such a manner as to render the right meaningless. Preventing unjust infringements on the rights of future generations necessitated refraining from such forms of action.¹³

Across Paine’s corpus, then, there are a series of intragenerational choices and actions that should be avoided in order to better preserve the natural rights of future persons. The various ways in which Paine sought to articulate these boundaries were not derived from Jefferson’s thinking in Paris; indeed, they often aimed at alternative ends to the intergenerational rights and obligations conceived by Jefferson. Treating Paine’s thought on intergenerational relations as substantively identical to Jefferson’s obfuscates the different historical roots of Paine’s thought and the different normative ends for which he strived. Taking Paine’s thought seriously, on its own terms, will require political theorists to acknowledge these differences, perhaps by starting with the *Dissertations*.

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Notes

- 1 It should also be noted, as Philp (2021) rightly puts it, that Paine’s *Common Sense* (published in 1776) does, of course, “presume a principle of collective self-determination and the sovereignty of the people, but it does not articulate or defend it.”
- 2 For similar arguments see, e.g., Koch (1950, 82–88); Peterson (1976, 443); Markovits (2018, 12); Fruchtmann (2011, 78, 84); and Philp (2013, 197–98; 2019, 562–63; Philp 2021). Philp (2013, 197; 2019, 562–63; 2021) also posits the importance of discussions of Adam Smith’s *Wealth of Nations* within Jefferson’s Parisian circle, especially a key passage in book III, chap. 2 (Smith 2014, 384–85).
- 3 “Airy bubble” was a phrase with deeper historical meaning for Paine’s audience, harking back to the

economic crash precipitated by the infamous South Sea Bubble of 1720 (Foner 2005, 197).

- 4 “Dramshops” selling cheap spirits were a “perennial source of concern” in eighteenth-century Philadelphia (Thompson 1989, 554, n12).
- 5 For Paine, equality of rights derives from the fact that all are created as equal by God: “The divine principle of the equal rights of man ... has its origin from the Maker of man” (1945c, 274).
- 6 A variety of studies have briefly noted this connection between Paine’s articulation of generational rights in his *Dissertations* and his later exposition in *Rights of Man*. William Speck (2013, 105) acknowledges that certain passages in *Rights of Man* “echoed” earlier arguments from the *Dissertations*, and Eric Foner (2005, 199) posits that the *Dissertations* “anticipated” Paine’s dismissal of Burke’s idea that each generation was bound to the end of time by the laws promulgated in 1688. However, neither deems these resonances worthy of further investigation. Karen Ford (1998, 574) proposes that Paine “later uses this principle, that no generation can rule beyond the grave, to attack Burke’s doctrine of prescription” but goes no further in appraising the historical meaning of this link. David Wilson (1988, 69) similarly notes Paine’s thought on intergenerational relations in the *Dissertations* but does not further explore these earlier developments during the bank crisis. Alfred Aldridge and Herbert Sloan also briefly noted that Paine’s thought on intergenerational relations in the *Dissertations* preceded Jefferson’s 1789 letter (Aldridge 1984, 238, 265; Sloan 1995, 80, 239–41) but do not attempt to reassess Paine’s political thought in light of these earlier roots. Indeed, Sloan (1995, 239–40) argues that one cannot assign “priority” to either Paine or Jefferson because of the widespread proliferation of arguments concerning intergenerational relations in this period and that they both most likely arrived at their ideas independently. In contrast, as we have seen, Philp (2021) has influentially argued that Paine “worked out” his notion of generational sovereignty in conjunction “with Jefferson, in 1788–9” (see also Philp 2013; 2019). Terence Ball (2000, 73–74) offers an interesting exception in highlighting some differences between Paine and Jefferson, but he conceives these in terms of Paine’s supposed argument that the “line of obligation is discontinuous and is indeed broken between one generation and another ... [such that] the earth belongs exclusively to the living.” As we have seen, such readings run into difficulties if one considers Paine’s writings on the bank crisis or (as we shall see in the second section) his later *Agrarian Justice*, both of which demonstrate the crucial importance he attached to obligations to future generations. Sloan’s noting of differences between Paine and Jefferson similarly depicts the former as having

“nothing to say about debt” in the period in which he wrote the *Dissertations* (Sloan 1995, 80–81), thereby eliding much of Paine’s most interesting thought during the bank crisis, especially as concerns his conception of “acts of agency” (as elucidated in the next section). In addition to these historically oriented studies, Mario Feit (2016, 55–81) lucidly “develop[s] the normative appeal” of Paine’s thought on “generational democracy” but does not take into account Paine’s writings during the bank crisis or his *Dissertations* and thus does not discuss his preoccupation with “acts of agency,” or his later writings on constituent power (on which, see the second section), when noting points of difference with Jefferson. The most interesting account is provided by Robert Lamb (2015, 48–50), who argues that Paine lays out an “unequivocal commitment to intergenerational moral obligations.” Nevertheless, Lamb gives little consideration of the context in which this idea had its origins; as he puts it, his “analysis does not ... concern itself with the development of Paine’s thought over time” (4). Consequently, his work does not account for the importance of the bank crisis and Paine’s vexations against advocates of paper money for understanding the implications of Paine’s understanding of intergenerational obligations. This cannot be fully appreciated via a solely “analytical reconstruction of Paine’s political philosophy” (8).

- 7 My thanks to an anonymous reviewer for *Perspectives on Politics* for drawing my attention to this here.
- 8 Although commentators have rightly portrayed Paine as contending that “subsequent generations ... are not at liberty to invade the property rights of people secured through past agreements” (Philp 2021), this thought clearly extended to agreements such as contracts, like the Bank of North America, when private individuals were at least one or more of the contracting parties. For Paine, the rights of these individuals should not be violated by later legislatures unjustly voiding such contracts. Paine (1945c, 336–37) made a similar point, in *Rights of Man*, concerning the justness of efforts to repay private creditors of the *Ancien Régime* even after 1789, and conceptualized “the government” as “the agent” of “the Nation” in instances when such agreements are “contracted.” Indeed, in that work, Paine critiqued Burke for failing to account for the fact that “although the French nation rendered the late government insolvent, it did not permit the insolvency to act toward the creditors” contracted by that government (336).
- 9 Interestingly, Supreme Court Justice John Marshall drew a similar distinction between “contracts” and “general legislation” in *Fletcher v. Peck* (1810). As far as I am aware, Marshall did not draw on Paine’s thought in conceiving this point. My thanks to an anonymous

reviewer for *Perspectives on Politics* for drawing my attention to this connection.

- 10 It should be noted that Paine published *Constitutions, Governments, and Charters* on June 21, 1805, nearly three months after the eventual passage of the Merchants' Bank charter on March 26 that same year. For further details on how the passage of the bank's charter fit into a broader landscape of financialization and political corruption in the United States of the early 1800s, see Bodenhorn's (2017, 14–22) informative account. For a later defense of the charter by a legislator who supported it, see the (polemical) political history of New York by Jabez Hammond (1844, 219–21).
- 11 It is thus difficult to see why Paine supposedly “retreated” from his conception of “acts of agency” in *Constitutions, Governments, and Charters*, as Foner (2005, 200) has claimed.
- 12 For similar interpretations of Jefferson see e.g., Bernal (2017, 188–90); Bernick (2024, 8); Caivano (2023, 39–40).
- 13 It is thus difficult to see how Paine supposedly “did not explicitly invoke the principle of generational rights” in *Agrarian Justice*, as has previously been claimed (Feit 2016, 72).
- 14 It should be noted, because it is often overlooked in the literature (e.g., Claeys 1994, 249–90; Fleischacker 2004, 767), that Paine (1945d, 427) also advocated a right to welfare in the second part of *Rights of Man*, where he posited that provisions for the poor should be instituted “not as a matter of grace and favour, but of right.”
- 15 My thanks to an anonymous reviewer for *Perspectives on Politics* for prompting this reflection.
- 16 For a somewhat comparable argument to Paine's here, see Wolf (1995). My thanks to an anonymous reviewer for *Perspectives on Politics* for drawing my attention to this.

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