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# Rediscovering Thomas Paine

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REVIEW ESSAY:

REDISCOVERING THOMAS PAINE

R. B. BERNSTEIN\*

Princes and kings decay and die  
And, instant rise again:  
But this is not the case, trust me  
With men like THOMAS PAINE.

To tyrants and the tyrant crew,  
Indeed, he was the bane:  
He writ, and gave them all their due,  
And signed it—THOMAS PAINE.

Oh! how we loved to see him write  
And curb the race of Cain!

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This essay is dedicated to the memory of Philip S. Foner, whose two-volume edition of Paine's writings is a foundation of modern Paine scholarship, and to E. P. Thompson, whom Paine would have recognized as a kindred spirit.

They hope and wish that Thomas P——  
 May never rise again.

What idle hopes!—yes—such a man  
 May yet appear again.—  
 When they are dead, they die for aye:  
 Not so with THOMAS PAINE.<sup>1</sup>

—Philip Freneau

## I. INTRODUCTION: WHO WAS THOMAS PAINE?

In January 1776, a new bestseller exploded on the American scene. *Common Sense* sold over one hundred thousand copies, and reached far many more Americans, who read it aloud and furiously debated it in taverns, literary reading clubs, and the columns of colonial newspapers. Delivering a shattering blow to the intellectual and political context within which the colonists of British North America had conducted their decade-long argument with the British Parliament and the British Crown, *Common Sense* redirected the course of American history and politics. No longer was the dispute between the colonists and the mother country a closely-reasoned debate about the scope and meaning of the unwritten English constitution; rather, *Common Sense* reconfigured it as a struggle by a people to become an independent nation by throwing off a lawless mother country's tyranny—a tyranny rooted in monarchy—which was nothing more than an attempt to give brute force a legitimacy to which it had no right.<sup>2</sup> *Common Sense* also took a vital step beyond advocating revolution in the service of independence; it also helped to establish the foundations of American national identity by presenting America to its own people and to the world as a refuge of liberty and a beacon of hope for suffering humanity.

As *Common Sense* spread throughout British North America, and as Tory propagandists feverishly penned responses, Americans tried to figure

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1. PHILIP FRENEAU, STANZAS, AT THE DECEASE OF THOMAS PAINE (n.d.), reprinted in 1 THE COMPLETE WRITINGS OF THOMAS PAINE xlv n.26 (Philip S. Foner ed., 1945) [hereinafter COMPLETE WRITINGS].

This Review Essay cites all quotations from Paine's writings to Eric Foner's new edition of Paine's writings for the Library of America, THOMAS PAINE, COLLECTED WRITINGS (Eric Foner ed., 1995) [hereinafter LIBRARY OF AMERICA]. For anything not in Eric Foner's edition, the Review Essay cites to COMPLETE WRITINGS. It also provides parallel cites, where appropriate, to the other major editions of Paine's writings.

2. See *infra* part VI (explaining the relationship between *Common Sense* and the constitutional argument at the core of the American Revolution before the appearance of Paine's pamphlet).

out who had written it. Gossip attributed the pamphlet to one or another notable American politician, including John Adams (who admired its arguments for independence but detested its prescription for American government), Benjamin Rush (who afterward claimed to have suggested the title), Benjamin Franklin, and Thomas Jefferson. However, each such guess soon fizzled out. Publication of the third edition disclosed the writer's true identity: *Common Sense* was the work of Thomas Paine, a 38-year-old journalist who had arrived in Philadelphia from England just two years earlier, in 1774. Though it was but the first of a series of remarkable essays, pamphlets, and books with which Paine turned the Western world upside down, *Common Sense* remains the achievement for which Paine is best known.

To this day, Americans congratulate themselves for remaining loyal to the banner of independence and liberty that Paine hoisted more than two centuries ago. Their views of the man who raised that banner, however, are complex and contradictory if, indeed, they remember him at all. Who was Thomas Paine?

Born in obscurity in a small town in England, a member of the generation that included George Washington and John Adams, Paine died all but spurned by his adopted country, in the year that Abraham Lincoln and Charles Darwin were born. For sheer drama and vividness, Paine's life is unparalleled. Tracing an arc across the history of two continents, he played a leading role in democratic revolutions in America and France, and sought, without success, to foment still another in Great Britain. Although his many writings against political, economic, and religious tyranny gave hope to people all over the world, they also earned him unremitting censure as a human volcano of demagogic spleen and a monster of malign destructiveness. Nor did his death bring a clear verdict on his place in history or political thought. Rather, he continues to be celebrated, reviled, and ignored.

Paine's disciples have celebrated him as a courageous torchbearer of human liberty; a great thinker who sought to liberate the human race from all forms of ignorance, prejudice, superstition, and tyranny; and a foresighted visionary whose predictions and proposals—ranging from the creation of an American democratic republic spanning the continent, to his devising of a system of old-age pensions, to his proposing a world government that would prevent war—were years or even generations ahead of his time. Because of the devotion of generations of his admirers, Paine's major writings have never gone out of print, and he finds new readers in every land and every generation.

Paine's detractors have reviled him as a drunken, atheistic libertine who hungered to tear down civilization, culture, and good order out of bitter envy, malignant hatred, and egocentric ignorance. Though based on his actual personal flaws, such calumnies were part of a deliberate effort, during his lifetime, orchestrated and subvented by the British

government to discredit his ideas by besmirching the character of those ideas' most effective advocate. After Paine's death, his critics continued to smear his reputation, falsify his biography, caricature his views on religion,<sup>3</sup> and magnify his vices. Fearing the power of Paine's ideas and words, they still thought it their most effective tactic to disparage the messenger.

In recent years, rather than venerating or reviling Paine, most have ignored him; conventional wisdom pigeonholes him as the coiner of a few good phrases that have declined into clichés, while neglecting his central concerns and slighting his life's work.<sup>4</sup> This fate would have hurt Paine the most because, like so many authors throughout history, Paine would not have cared about what we call negative publicity as long as his name was spelled correctly.

Paradoxically, in the two other nations where Paine was a pivotal figure, his fate is at once harsher and kinder than it has been in the United States. In Britain, the Labour Party has claimed Paine as an intellectual forbear (two of its leaders, Michael Foot and Tony Benn, are prominent members of the Thomas Paine Society), and the British right still denounces him as a libertine and a traitor. Similarly, in France, Paine is at the core of the still-lively controversy over the effects of and justification for the French Revolution. In death as in life, some historians of the French Revolution praise him as a visionary unjustly swept aside by the forces of inflexible Jacobin radicalism; yet others scorn him as an idealistic but hapless man in the middle.

That Paine is still a source of contention in the land of his birth is something he would have welcomed. That he is still a focus of dispute in the country whose revolution he hoped to foster (a revolution which nearly claimed him as one of its victims) also would have pleased him. That he languishes neglected in the nation he chose as his second home—the

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3. The most famous slur on Paine is Theodore Roosevelt's dismissal of him as "a filthy little atheist." See THEODORE ROOSEVELT, *GOUVERNEUR MORRIS* 289 (Boston, Houghton, Mifflin & Co. 1898). Note, however, that Roosevelt's calumny appears in his biography of Gouverneur Morris, a longtime adversary of Paine whose machinations as American Minister to France during the French Revolution may well have put Paine in peril of his life.

4. For example, as the Princeton historian Sean Wilentz has noted, President Ronald Reagan, from 1981 to 1984, began to invoke isolated lines and phrases from Paine's *Common Sense* to give supply-side economics a bold and somehow nonpolitical pedigree. Sean Wilentz, *The Air Around Tom Paine*, *THE NEW REPUBLIC*, Apr. 24, 1995, at 34-41 (especially 34).

As a further example, consider New York attorney Philip K. Howard's deliberate invocation of Paine's most famous pamphlet as a model for his recent polemic on the manifold failures of American law. PHILIP K. HOWARD, *THE DEATH OF COMMON SENSE: HOW LAW IS SUFFOCATING AMERICA* (1994).

democratic republic whose independence, liberty, and prosperity he worked so hard to bring about—would be for him a bitter irony.

During the bicentennials of the American Revolution, the United States Constitution, and the French Revolution, Paine was conspicuous principally by his absence; and this general disregard continues to this day. Though scholars have published articles or monographs on Paine seeking to salvage him from oblivion,<sup>5</sup> they either have aimed their works at other scholars or have failed to reach an audience beyond the academic community. Politicians and polemicists regularly quote Paine, claiming him as one of their own; but they usually invoke him only by pulling a phrase (most often, “these are the times that try men’s souls,”) out of context for present-minded, utilitarian purposes. Such partial and manipulative quotations offer no sense of Paine and distort him into a convenient, palatable symbol. Paine is too important, however, both as a key historical figure and as a leading philosopher and expounder of democratic thought, to merit this offhand treatment.

Despite the traducing and eclipse of Paine’s reputation, his ideas have never lost their power or appeal; indeed, recent events have only increased their pertinence. We live in a world that Paine’s ideas helped to build. Foreshadowing the writings of the leaders of Eastern Europe’s democratic revolutions of 1989,<sup>6</sup> and of such Soviet dissidents as the late Andrei Sakharov<sup>7</sup> and Andrei Amalrik,<sup>8</sup> Thomas Paine insisted that:

- human beings can and should govern themselves, rather than submitting to self-appointed aristocracies;
- politics is a simple but noble subject open to reflection and action by any intelligent person, not an abstruse collection of esoteric mysteries fit only for manipulation by an elite;

5. See discussion *infra* parts III, V.

6. See, e.g., VACLAV HAVEL, *DISTURBING THE PEACE* (Paul Wilson trans., Faber & Faber 1990) (1986); VACLAV HAVEL, *OPEN LETTERS: SELECTED WRITINGS 1965-1990* (Paul Wilson ed., Vintage Books 1992) (1991).

7. See, e.g., ANDREI SAKHAROV, *MEMOIRS* (Richard Lourie trans., Alfred A. Knopf, Inc. 1990) (1990); ANDREI SAKHAROV, *MOSCOW AND BEYOND 1986-1989* (Antonina Bouis trans., Alfred A. Knopf, Inc. 1990) (1990); ANDREI SAKHAROV, *MY COUNTRY AND THE WORLD* (Guy V. Daniels trans., Vintage Books 1975) (1975); ANDREI SAKHAROV, *SAKHAROV SPEAKS* (Harrison E. Salisbury ed., Vintage Books 1974) (1974).

8. See, e.g., ANDREI AMALRIK, *WILL THE SOVIET UNION SURVIVE UNTIL 1984* (expanded ed., Harper & Row 1980) (1970).

- society should be open to and foster the efforts of honest and industrious persons to better themselves; and
- religion should be accessible to contemplation and examination by all, who thus would be free for themselves to decide what faith and mode of worship to pursue rather than being cloaked in mystery, administered in secrecy, and manipulated to justify tyranny over the human mind.

While most historians have considered him as a figure more gifted for pulling things down than for building things up, Thomas Paine deserves to be taken seriously as a constructive constitutional and political thinker. His eloquent critiques of society, politics, and government also contain implicit or explicit visions of what a just political, social, and constitutional order should be. Though the time has long been ripe to rediscover Paine's life and thought, the nearly simultaneous appearance of an array of books, biographies, editions of his writings, and monographs analyzing his thought furnishes a new opportunity to answer the question, "Who was Thomas Paine?"<sup>9</sup> In an era when historians reinterpret and even redesign the sweep of American history, acknowledging that advances in historical scholarship and changing perspectives of historical inquiry require reinterpretation of what we thought we knew about the past,<sup>10</sup> it is only fitting that Paine's ideas and achievements should receive new attention.

This Review Essay surveys the remarkable modern renaissance of Paine scholarship, which for the first time takes Paine seriously both as a major intellectual figure of the Age of Democratic Revolution<sup>11</sup> and as a leading democratic thinker and writer. Part II outlines Paine's life and work to orient readers for the discussion of the publications assessed in the balance of this Review Essay. Part III sketches Paine's fortunes as a historical subject in the nineteenth and twentieth centuries, pausing at the threshold of the renaissance of Paine scholarship in the 1970s. Part IV

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9. See Wilentz, *supra* note 4, at 34 ("Now a mini-Paine revival has been launched, in ways that defy any simple explanation of the vagaries of American historical reputations."). Wilentz correctly argues that "liberal and leftist scholars" and "right-wingers" have very different reasons for extolling Paine, and also notes the historiographical challenge that Paine poses for American historians. *Id.*

10. See, e.g., ALAN BRINKLEY, *THE UNFINISHED NATION: A CONCISE HISTORY OF THE AMERICAN PEOPLE* (1993); Richard B. Bernstein, *Perspective: The Challenge of Redesigning American History*, SOC. SCI. REC., Fall 1994, at 41, 41-43; Wilentz, *supra* note 4, at 34-35.

11. See WILLIAM W. FREEHLING, *THE REINTEGRATION OF AMERICAN HISTORY* (1994).

assays the modern editions of Paine's writings, focusing on Eric Foner's edition of Paine's *Collected Writings* for the Library of America.<sup>12</sup> Part V examines the major new studies of Paine's life and thought, focusing on biographies by Jack Fruchtman, Jr.<sup>13</sup> and John Keane<sup>14</sup> (the first comprehensive lives of Paine in two decades) and monographs by Fruchtman,<sup>15</sup> Mark Philp,<sup>16</sup> Gregory Claeys,<sup>17</sup> and A. J. Ayer.<sup>18</sup> Part VI, building on the earlier parts of this Review Essay, outlines a nuanced interpretation of Paine's thought and achievements that restores the constructive side of his thought. Finally, the Essay concludes by recapitulating the ways that Paine's ideas have continuing relevance to our time.

## II. A USEFUL LIFE IN BRIEF<sup>19</sup>

Thomas Paine spent nearly half his life in obscurity, fighting for little more than a way to make a living and build a family. He was born on January 29, 1737 in the small English market town of Thetford, in Norfolk. His father, Joseph Pain,<sup>20</sup> was a Quaker farmer and staymaker

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12. LIBRARY OF AMERICA, *supra* note 1. Part IV also considers COMPLETE WRITINGS: THOMAS PAINE, RIGHTS OF MAN, COMMON SENSE, AND OTHER POLITICAL WRITINGS (Mark Philp ed., World's Classics 1995) [hereinafter WORLD'S CLASSICS]; THOMAS PAINE: POLITICAL WRITINGS (Bruce Kuklick ed., 1989); and THE THOMAS PAINE READER (Michael Foot & Isaac Kramnick eds., 1987) [hereinafter PAINE READER].

Separate editions of Paine's works noted here include THOMAS PAINE, COMMON SENSE (Barnes & Noble 1995) (1776); THOMAS PAINE, COMMON SENSE (Isaac Kramnick ed., Penguin Books 1976) (1776); THOMAS PAINE, RIGHTS OF MAN (Prometheus Books 1987) (1791-1792); THOMAS PAINE, RIGHTS OF MAN (Gregory Claeys ed., Hackett Publishing Co. 1992) (1791-1792); THOMAS PAINE, THE CRISIS PAPERS (Charles J. Norman ed., NCUP, Inc. 1990) (1776-1783) [hereinafter CRISIS].

13. JACK FRUCHTMAN, JR., THOMAS PAINE: APOSTLE OF FREEDOM (1994).

14. JOHN KEANE, TOM PAINE: A POLITICAL LIFE (1995).

15. JACK FRUCHTMAN, JR., THOMAS PAINE AND THE RELIGION OF NATURE (1993).

16. MARK PHILP, PAINE (1989).

17. GREGORY CLAEYS, THOMAS PAINE: SOCIAL AND POLITICAL THOUGHT (1989).

18. A. J. AYER, THOMAS PAINE (Macmillan 1988) (1988).

19. This part is based on previous sources cited, *supra* notes 12-18. See also the useful chronologies in LIBRARY OF AMERICA, *supra* note 1, at 833-53; WORLD'S CLASSICS, *supra* note 12, at xxxi-xxxiii; CLAEYS, *supra* note 17, at xiii-xiv; and FRUCHTMAN, *supra* note 13, at 527-35.

20. The family spelled their name as "Pain" and Thomas did not change the spelling until he arrived in America in 1774. FRUCHTMAN, *supra* note 13, at 19; DAVID F. HAWKE, PAINE 8 (1974).



(a skilled tradesman who made inserts of metal or whalebone for women's corsets); his mother, Frances Cocke Pain, was the daughter of a local Anglican attorney. Paine's Quaker background placed him in the tradition of the Protestant Dissenters who were outspoken critics of British society and institutions. The young Paine was largely self-taught; and while his admirers collect evidence and local tradition to establish his constant hunger for knowledge, his detractors charge that he showed little promise of future genius.

Apprenticed to his father's business at the age of thirteen, Paine twice ran away to go to sea as a crewman on a privateer. Having succeeded the second time in 1756, he found the life of a sailor not to his liking and returned to Thetford. Once he completed his apprenticeship, Paine was not a success as a staymaker and he faced bankruptcy at least once. Paine married his first wife, Mary Lambert Paine, in 1759; however, she died after a year of marriage. Although early biographers reported that she died in childbirth, there is no evidence to confirm or refute this claim.

Abandoning staymaking, Paine began a new career in the early 1760s as a royal exciseman, an unpopular, low-paid official who collected taxes on imported goods and combated smuggling. Because the job was so thankless, many excisemen, including Paine, found shortcuts around their onerous duties. For example, instead of inspecting the inventory of every merchant on his circuit, an exciseman would conduct either cursory inspections or none at all and then would claim falsely to have completed his assigned investigations. Unfortunately, in 1765 Paine's supervisors found him out and dismissed him from the service "for having stamp[ed] his whole ride."<sup>21</sup> Paine won reinstatement only by filing a humble petition confessing his past misdeeds and promising to do better.

In the late 1760s and early 1770s, in addition to his customs responsibilities, Paine taught English, dabbled in politics, and attended lectures at the Royal Society. It was at these lectures that Paine reawakened his interest in science and met the noted American printer and scientist Benjamin Franklin. In 1771, having relocated to the small town of Lewes, a center of radical political activity, he married again and briefly assisted his new wife, Elizabeth Ollive Paine, in running a small tobacco and grocery shop that she had inherited from her father. Unfortunately, neither Paine nor his wife had mastered running a business, and the shop quickly foundered, forcing them to sell all they owned to survive. In 1772, having again rejoined the customs service, Paine wrote his first notable pamphlet, a plea to Parliament to improve the conditions

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21. ALFRED O. ALDRIDGE, *MAN OF REASON: THE LIFE OF THOMAS PAINE* 17 (1959) (emphasis omitted) (original source omitted).

of employment of excise officers,<sup>22</sup> and his colleagues repeatedly asked him to prepare petitions to Parliament for their relief. Having been dismissed from the service for a second time in 1774, largely because of this pamphlet, Paine sold his belongings and separated from his wife. Securing assistance and letters of introduction from Benjamin Franklin,<sup>23</sup> whom he admired greatly as a scientist and a philosopher, Paine left London for Philadelphia. After a harrowing voyage during which five passengers died and were buried at sea, Paine arrived in Philadelphia so ill that he had to be carried off the ship.

Once he recovered his health in early 1775, Paine visited Franklin's son, William Franklin (then the royal governor of Pennsylvania) and Franklin's son-in-law, Richard Bache. Upon receiving Franklin's letters of introduction, they secured jobs for Paine as a tutor to the sons of notable Philadelphians. A few weeks later, the Philadelphia printer Robert Aitken hired Paine as editor of the *Pennsylvania Magazine, or American Museum*. There, Paine discovered his calling as a writer and editor, and soon made the fledgling periodical a success. Although scholars today dispute which of dozens of pieces in Philadelphia newspapers and magazines came from his pen, focusing their dispute on articles in the *Pennsylvania Magazine* extolling the equality of the sexes and denouncing slavery,<sup>24</sup> they agree that, in the years before the Revolution, Paine had

22. THOMAS PAINE, *THE CASE OF THE OFFICERS OF EXCISE* (1772), reprinted in *2 COMPLETE WRITINGS*, *supra* note 1, at 3-15, and in *PAINE READER*, *supra* note 12, at 39-51.

23. The bearer Mr. Thomas Paine is very well recommended to me as an ingenious worthy young man. He goes to Pennsylvania with a view of settling there. I request you give to him your best advice and countenance, as he is quite a stranger there. If you can put him in a way of obtaining employment as a clerk, or assistant tutor in a school, or assistant surveyor, of all which I think him very capable, so that he may procure a subsistence at least, till he can make acquaintance and obtain a knowledge of the country, you will do well, and much oblige your affectionate father.

Letter from Benjamin Franklin to Richard Bache (Sept. 30, 1774), in ALDRIDGE, *supra* note 21, at 29, in AYER, *supra* note 18, at 7, in FRUCHTMAN, *supra* note 13, at 38-39, in HAWKE, *supra* note 20, at 20, and in KEANE, *supra* note 14, at 84.

24. The writings in question are *JUSTICE AND HUMANITY* (Thomas Paine), *AFRICAN SLAVERY IN AMERICA* (1775), reprinted in *2 COMPLETE WRITINGS*, *supra* note 1, at 15-19, and in *PAINE READER*, *supra* note 12, at 52-56; and *An Occasional Letter on the Female Sex* (1775), reprinted in *2 COMPLETE WRITINGS*, *supra* note 1, at 34-38.

On these and other vexing questions of Paine's authorship, compare *1-2 COMPLETE WRITINGS*, *supra* note 1, with ALFRED O. ALDRIDGE, *THOMAS PAINE'S AMERICAN IDEOLOGY* (1984). John Keane provides what he calls a definitive bibliography of Paine's writings. KEANE, *supra* note 14, at 537-618. For another bibliography of

already begun to perfect his vigorous, direct, and eloquent writing style and his taste for cutting-edge, radical political argument.

Though he wrote several articles and poems in 1775 extolling the American cause and denouncing British tyranny,<sup>25</sup> Paine differed little from dozens of other enterprising writers operating on the fringes of American politics. But, in January 1776, Paine first achieved literary and political greatness when he published *Common Sense*.<sup>26</sup> This remarkable pamphlet not only was the first and most eloquent appeal for American independence—it also transformed the quarrel between the colonists and the mother country, helped to fashion American public opinion and national identity, and was instrumental in developing the democratic political language that was one of Paine's greatest achievements. *Common Sense* rapidly became one of the most notable best-sellers in the history of publishing; the 120,000 copies it sold in its first three months<sup>27</sup> approximate sales in modern terms of ten to twelve million copies. Paine made no money from this extraordinary publishing success, however, for he had paid the costs of publication himself and donated the pamphlet's copyright to the revolutionary cause. *Common Sense* nonetheless was a pivotal event for Paine as well as for America; it provided him with a favorite pen-name, made him a major advocate of independence and the American cause, and drew him into the orbit of such American leaders as George Washington, John Adams, and Thomas Jefferson.<sup>28</sup> In addition, it became, for the rest of his life, a talisman that he invoked whenever others questioned his credibility or significance.<sup>29</sup>

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Paine's writings, see FRUCHTMAN, *supra* note 13, at 501-10.

25. See *Liberty Tree* (Thomas Paine) (1775), reprinted in 2 COMPLETE WRITINGS, *supra* note 1, at 1091-92, and in PAINE READER, *supra* note 12, at 63-64.

26. COMMON SENSE (Thomas Paine) (1776), reprinted in LIBRARY OF AMERICA, *supra* note 1, at 1-59, in 1 COMPLETE WRITINGS, *supra* note 2, at 3-46, in PAINE READER, *supra* note 12, at 65-115, and in WORLD'S CLASSICS, *supra* note 12, at 1-59. On this pamphlet's place in the Americans' political and constitutional argument with Great Britain, and its transformative effect on that argument, see *infra* parts V, VI.

27. See FRUCHTMAN, *supra* note 13, at 77; KEANE, *supra* note 14, at 111.

28. Some of Paine's ardent admirers, not content with the extraordinary significance of *Common Sense*, have sought to claim a far more central role for him in the Revolution. See JOSEPH LEWIS, THOMAS PAINE, AUTHOR OF THE DECLARATION OF INDEPENDENCE (1947) (claiming to identify Paine rather than Jefferson as the author of the Declaration of Independence); see also KEANE, *supra* note 14, at 560 n.70.

29. See THOMAS PAINE, CONSTITUTIONAL REFORM (1805), reprinted in 2 COMPLETE WRITINGS, *supra* note 1, at 992-1007, and in PAINE READER, *supra* note 12, at 525-36 (reminding Paine's Philadelphia readers of "all my political writings, during the Revolutionary War. . .").

Once the Revolution began in earnest, Paine secured an appointment as an aide-de-camp, with the rank of brigade major, to General Nathanael Greene and retreated with the Continental Army to its winter base in Brunswick, New Jersey. In December 1776, alarmed by American defeats and determined to bolster the cause of independence, Paine wrote and published the first of his notable *Crisis* essays,<sup>30</sup> which built upon the foundation of *Common Sense*. Indeed, the opening of *The American Crisis*, No. 1 is the most quoted passage that Paine ever wrote:

These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands it *now*, deserves the love and thanks of man and woman. Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph.<sup>31</sup>

Refuting British arguments for American surrender, rallying the Americans' morale, and exhorting the Revolutionaries to continue the war, Paine carefully timed his *Crisis* essays and other polemics for maximum political effect. The *Crisis* series proved as popular and successful as *Common Sense*; although yet again, Paine neither received nor sought to collect a penny from any of the essays. Both for the disinterestedness of the author and the intrinsic excellence of the essays, Paine's *Crisis* series provided ample reason for George Washington and other leaders to esteem him and value his writings as essential to the maintenance of the American cause.

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30. The *Crisis* essays have often been reprinted and are generally regarded as among Paine's most important works. See, e.g., COMMON SENSE (Thomas Paine), THE AMERICAN CRISIS I-XIII (1776-1783), reprinted in 1 COMPLETE WRITINGS, *supra* note 1, at 47-239, and in CRISIS, *supra* note 12. The conventional text, however, which presents thirteen *Crisis* essays and three supplementary or "supernumerary" *Crisis* essays, is flawed; based on an unauthorized 1797 edition of Paine's writings by James Carey, the conventional text condenses and combines several newspaper pieces that Paine published on American affairs, though not as formal contributions to the *Crisis* series. The conventional text also omits two essays since identified by Alfred O. Aldridge as part of the *Crisis* series. ALDRIDGE, *supra* note 24, at 240-53. Based on Aldridge's work, Eric Foner's LIBRARY OF AMERICA edition has clarified the publishing history of these essays, sorting out which are contributions to THE AMERICAN CRISIS and which have been melded into that series by later editors. See LIBRARY OF AMERICA, *supra* note 1, at 91-176, 181-210, 220-52, 287-308, 325-58, 854-58.

31. COMMON SENSE (Thomas Paine), THE AMERICAN CRISIS I (1776), reprinted in LIBRARY OF AMERICA, *supra* note 1, at 91-99, in 1 COMPLETE WRITINGS, *supra* note 1, at 50-57, in PAINE READER, *supra* note 12, at 116-23, and in WORLD'S CLASSICS, *supra* note 12, at 63-71.

In April 1777, Paine became secretary to the Continental Congress's Committee on Foreign Affairs, a title that he later shortened, misleadingly, to Secretary for Foreign Affairs.<sup>32</sup> As he labored constantly for the Revolution, and urged the creation of a truly national form of government for the fledgling United States,<sup>33</sup> Paine let himself be drawn into the factional infighting of the Continental Congress. In this setting, Paine's lack of practical political skills soon became evident to his friends and enemies alike.

The catalyst for Paine's political troubles was his decision to thrust himself into the controversy over Silas Deane, whom Congress had sent as one of several American envoys to France.<sup>34</sup> Before the formal French-American alliance of 1778, France had made many contributions to the American cause through covert negotiations and back-door channels organized by the noted writer Caron de Beaumarchais. Deane claimed that these contributions were loans rather than gifts and that he was thus entitled to a five percent commission from Congress. Another American envoy, Arthur Lee of Virginia, bitterly disputed Deane's claims, and Paine took Lee's side. Battling what he denounced as Deane's corruption and alarmed that other American officials seemed to be seeking ways to profit from the war with Britain, Paine took the fight to the public press under his customary pen name of "Common Sense" and, to support his case, leaked confidential information from the files of the Continental Congress pertaining to the French alliance.<sup>35</sup> By thus injecting himself into the Deane affair, Paine also plunged into the heart of sectional rivalry and factional infighting within Congress. As with so many other issues of the 1770s and 1780s, the factions within Congress lost no time in aligning

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32. See KEANE, *supra* note 14, at 156. *But see* FRUCHTMAN, *supra* note 13, at 95-96 (stating that Paine would elevate his position, "styling himself . . . the Foreign Affairs Minister of the United States.")

33. FRUCHTMAN, *supra* note 13, at 94 (citing COMMON SENSE (Thomas Paine), THE AMERICAN CRISIS II (1777), reprinted in LIBRARY OF AMERICA, *supra* note 1, at 100-15 (especially 101), and in 1 COMPLETE WRITINGS, *supra* note 1, at 58-72 (especially 59-60)).

34. On the Deane affair, see EDMUND C. BURNETT, THE CONTINENTAL CONGRESS 360-69 (1941); CALVIN JILLSON & RICK K. WILSON, CONGRESSIONAL DYNAMICS: STRUCTURE, COORDINATION, AND CHOICE IN THE FIRST AMERICAN CONGRESS, 1774-1789, at 180, 211, 324-29 (1994); RICHARD B. MORRIS, THE PEACEMAKERS: THE GREAT POWERS AND AMERICAN INDEPENDENCE 8-13 (1965); JACK N. RAKOVE, THE BEGINNINGS OF NATIONAL POLITICS: AN INTERPRETIVE HISTORY OF THE CONTINENTAL CONGRESS 249-55, 259-64 (1979). On Paine's role, see ERIC FONER, TOM PAINE AND REVOLUTIONARY AMERICA 158-61 (1976); FRUCHTMAN, *supra* note 13, at 110-23; HAWKE, *supra* note 20, at 81-84, 94; and KEANE, *supra* note 14, at 170-84.

35. See Paine's writings on the Deane affair listed in FRUCHTMAN, *supra* note 13, at 503-04.

themselves on opposite sides of the Deane controversy. Paine, however, paid no attention to these partisan divisions; rather, his passionate commitment to the cause of American independence, so admirable in other contexts, spurred him to denounce factional infighting, which thereby rendered him politically tone-deaf. As a result, his indiscretions in the Deane affair played into his enemies' hands. In 1779 Paine's critics in Congress launched an inquiry into his conduct of his office, aiming to force his dismissal. Though Congress at least partly exonerated him and refused to dismiss him, Paine angrily resigned his office.

For the rest of the Revolution, Paine divided his time among writing occasional pamphlets, traveling, and petitioning various authorities for financial support. After he filed a memorial with the Pennsylvania legislature detailing his services to the Revolution, he was named clerk of that body in 1779. He left that post in November 1780 when a new American envoy to France, Colonel John Laurens, persuaded Paine to act as his secretary; the Laurens-Paine mission successfully negotiated massive loans to the American Congress. Returning to the United States in 1781, Paine again sought financial support, enlisting Washington's sponsorship. Congress briefly and grudgingly paid him a small pension which was supplemented by a modest pension voted by Pennsylvania in 1784; New York State granted him another pension and a farm. Throughout this period, he continued to write *Crisis* essays analyzing the events of the war and other pamphlets calling for American unity and governmental reform. The most notable of these was *Public Good*,<sup>36</sup> which Paine published in 1780, perhaps the single bleakest year of the War for Independence. In this essay, Paine argued with passion and conviction for the strengthening of the general government so that the loose confederation of states could become truly one nation. In particular, he urged that Virginia cede to the Confederation its claims to western lands, the settlement of which, Paine argued, would help to provide revenue for the United States.

In the years following the Revolution and the winning of independence, Paine continued to write essays and pamphlets pleading for a strong national government,<sup>37</sup> and he returned to his early interest in science and technology, laboring over such projects as an improved form of gunpowder, a smokeless candle, and (most important of all) his

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36. PUBLIC GOOD (Thomas Paine) (1780), reprinted in LIBRARY OF AMERICA, *supra* note 1, at 253-86, and in 2 COMPLETE WRITINGS, *supra* note 1, at 303-33. An excerpt of this essay can be found in PAINE READER, *supra* note 12, at 138-46.

37. See, e.g., COMMON SENSE (Thomas Paine), SIX LETTERS TO RHODE ISLAND (1782-1783), reprinted in 2 COMPLETE WRITINGS, *supra* note 1, at 333-66. An excerpt can also be found in PAINE READER, *supra* note 12, at 139-46 (arguing that Rhode Island should ratify proposed amendments to the Articles of Confederation giving the Confederation government the power to levy a five-percent tax on imported goods).

innovative design for a single-arch iron bridge. In 1787, tiring of American indifference to his bridge project, Paine decided to visit Europe. Armed with still more letters of introduction from Benjamin Franklin, he made a brief visit to Paris where he was hailed as a hero, and then returned to Britain to visit his aged mother and to promote his plans for his iron bridge. During his two years in Britain, he met with and befriended many leading Whig politicians, including Edmund Burke, who hailed Paine as "the great American."<sup>38</sup>

In September 1789, Paine returned to France, eager to observe first-hand the evolving French Revolution. He again was welcomed as a hero, and the Marquis de Lafayette, whom Paine had known from their shared experiences in the American Revolution, presented him with the key to the Bastille for ultimate transmission to President Washington. Returning to Britain in 1790, Paine began to lay the groundwork for a pamphlet on the promise of the French Revolution—only to have to reconfigure his project into a response to Burke's slashing attack, *Reflections on the Revolution in France*.<sup>39</sup> Paine swiftly recast his work-in-progress as *Rights of Man*, which he published early in 1791.<sup>40</sup> This first part of *Rights of Man* was but one of hundreds of books and pamphlets responding to Burke's polemic; nevertheless, it swiftly won preeminence due to its plain eloquence and runaway sales. Constitutional liberals in Britain who for years had struggled without success for parliamentary reform adopted the new pamphlet and formed political societies to spread its message. In early 1792, Paine completed and published *Rights of Man, Part the Second*.<sup>41</sup> Its prescriptions for sweeping constitutional reform, including the abolition of the British monarchy and the establishment of a republican form of government, made it a bestseller. However, government authorities, both angered and

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38. CLAEYS, *supra* note 17, at 26. Burke's great forensic duel with Paine came two years later. See *infra* notes 94-95 and accompanying text.

39. CONOR C. O'BRIEN, *Introduction* to EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE 9-76 (Conor C. O'Brien ed., Penguin Books 1968) (1790); O'Brien summarized and condensed relevant sections of this essay in CONOR C. O'BRIEN, THE GREAT MELODY: A THEMATIC BIOGRAPHY AND COMMENTED ANTHOLOGY OF EDMUND BURKE (1992).

40. THOMAS PAINE, RIGHTS OF MAN (1791), reprinted in LIBRARY OF AMERICA, *supra* note 1, at 433-540, in 1 COMPLETE WRITINGS, *supra* note 1, at 243-344, and in WORLD'S CLASSICS, *supra* note 12, at 83-197. An excerpt can also be found in PAINE READER, *supra* note 12, at 201-62.

41. THOMAS PAINE, RIGHTS OF MAN, PART THE SECOND, COMBINING THEORY AND PRACTICE (1792), reprinted in LIBRARY OF AMERICA, *supra* note 1, at 541-661, in 1 COMPLETE WRITINGS, *supra* note 1, at 345-56, and in WORLD'S CLASSICS, *supra* note 12, at 199-331. An excerpt can also be found in PAINE READER, *supra* note 12, at 263-364.

frightened by its success, targeted Paine for prosecution for seditious libel. Paine managed to postpone his trial until December, thereby paradoxically liberating himself to continue writing and publishing, for the government, having launched official proceedings, was powerless to act against him outside the limits of those proceedings.

Late that fall, Paine discovered that he had been elected an honorary citizen of the French republic and decided to return to France. Paine's decision was fortunate, as he missed by minutes being seized by authorities seeking to enforce an arrest warrant. Undeterred, the government carried out his trial and convicted him *in absentia* for seditious libel. Seditious libel trials were not about truth or falsity, but about the tendency of the publication to damage the authority of the regime; within this context, as an old saw put it, the truer the publication, the greater the libel.<sup>42</sup> In the years following Paine's departure from Britain, the government brought its full weight to bear to break up the "constitutional societies" that had organized around Paine's *Rights of Man* and the ideas he advocated, including abolition of the monarchy and the writing of a new democratic constitution for Great Britain.<sup>43</sup>

When Paine arrived in France, he discovered that four *départments* had elected him to represent them in the Convention, the revolutionary body that had succeeded the National Assembly as the central organ of the revolutionary government.<sup>44</sup> As a member of the Convention, despite his inability to speak French, he devoted himself to the effort to write a republican constitution for France and to educate both his colleagues and the French citizenry about what he called the "first principles of government."<sup>45</sup> He met with mixed success, however. Distrusted both

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42. On seditious libel, see generally LEONARD W. LEVY, *EMERGENCE OF A FREE PRESS* (1985) (presenting a historical analysis of Anglo-American law of free speech and press in the decades leading up to, and the first decade or so after, the adoption of the free speech and press clauses of the First Amendment).

43. See generally ALBERT GOODWIN, *THE FRIENDS OF LIBERTY: THE ENGLISH DEMOCRATIC MOVEMENT IN THE AGE OF THE FRENCH REVOLUTION* (1979); E.P. THOMPSON, *THE MAKING OF THE ENGLISH WORKING CLASS* (rev. ed. 1980).

44. On the Convention, see generally *DICTIONARY OF THE FRENCH REVOLUTION* (François Furet & Mona Ozouf eds. & Arthur Goldhammer trans., 1988); WILLIAM DOYLE, *THE OXFORD HISTORY OF THE FRENCH REVOLUTION 189-420* (1989).

45. See, e.g., THOMAS PAINE, *AN ESSAY FOR THE USE OF NEW REPUBLICANS IN THEIR OPPOSITION TO MONARCHY* (1792), reprinted in *2 COMPLETE WRITINGS*, *supra* note 1, at 541-47; and in *PAINE READER*, *supra* note 12, at 387-93; THOMAS PAINE, *DISSERTATIONS ON THE FIRST PRINCIPLES OF GOVERNMENT* (1795) [hereinafter *DISSERTATIONS*], reprinted in *2 COMPLETE WRITINGS*, *supra* note 1, at 570-88, in *PAINE READER*, *supra* note 12, at 452-70, and in *WORLD'S CLASSICS*, *supra* note 12, at 385-408.



by the Convention's conservative members and by radical Jacobin<sup>46</sup> delegates, he allied himself with the moderate Girondin<sup>47</sup> circle. But a series of political crises weakened the Girondists' power and legitimacy, and thus threatened Paine.

The most important of these crises was the issue of what to do about the deposed King Louis XVI. The Convention decided to put Louis on trial. This trial was a pivotal stage not only for the Revolution but for Paine's part in it; though he supported the trial of the king and voted to convict him, he rejected his colleagues' demand for the death penalty. Instead, Paine urged repeatedly that Louis be sentenced to exile in America—first during the trial, then in the debate on the sentence once the Convention found Louis guilty, and finally in a plea for clemency once the sentence had been determined. Paine grounded his plea to spare Louis's life on grounds of expediency and of principle: expediency because Louis had been instrumental to the success of the American Revolution and his execution would damage the Revolution's popularity in America and French-American relations; and principle because Paine denounced capital punishment as barbarous and inhuman. Each time the Convention rejected Paine's arguments, and Louis XVI went to the guillotine. These struggles within the Convention over the former king's fate carried with them undercurrents ominous for Paine; in spurning his pleas for clemency and exile, radical Jacobin members leveled increasingly harsh attacks against him.

Paine's courageous position on the appropriate sentence for Louis XVI, and on other issues pitting the Jacobins against the Girondists, undermined his own standing in France. Once the Jacobins overwhelmed the Girondists, discarded the constitution that Paine and his Girondin associates had framed for the new republic, and assumed control of the Revolution, Paine found himself in danger of losing his own life. As he fretted over his fate (and, according to some authorities, began the habitual excessive drinking that was to blight his last years), Paine worked to complete the first part of *The Age of Reason*, an attack on the superstitions of revealed religion and the ways that tyrants used religion to justify their claims to power.

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46. The Jacobin faction was the most radical group in the French political spectrum, favoring the elimination of all vestiges of monarchy and aristocracy by whatever means necessary. See DOYLE, *supra* note 44.

47. The Girondin faction—also known as the Girondists—were moderate revolutionaries who favored either a constitutional monarchy or a constitutional republic. See DOYLE, *supra* note 44.

On December 27, 1793, hours after Paine completed *The Age of Reason, Part One*,<sup>48</sup> French officials arrested and jailed him in the Luxembourg prison. While he was imprisoned, the connivance of an old political adversary, American Minister Gouverneur Morris, left Paine abandoned by his adopted country. A conservative Federalist, Morris had never cared for Paine, either personally or politically, as evidenced by his assistance in devising the Continental Congress's 1779 bid to investigate Paine. Moreover, Morris was equally hostile to the French Revolution, having taken part in an attempt to spirit Louis XVI and his family out of France. Thus, he had no sympathy for anyone who chose to ally himself with the French Revolution, especially not for Paine. While assuring the Washington administration that he was doing everything he could for Paine, Morris simultaneously denied Paine's claim to be an American citizen and disclaimed American interest in Paine's fate. Morris's stance gave the Jacobin leaders the impression that Paine was fair game for whatever they chose to do with him.

Paine spent nearly a year incarcerated in the Luxembourg Prison, beset by serious though intermittent illness and never knowing when he might again be sentenced to death. Paine later claimed that, at the height of the Terror,<sup>49</sup> he was indeed marked for execution along with nearly two hundred other prisoners. However, his jailers marked his *open* door, which when closed hid the damning mark from the executioners' view.<sup>50</sup> As he waited, fending off illness and brooding over his fate, he worked intermittently on *The Age of Reason, Part Two*, a scathing item-by-item analysis of the Bible.

On November 4, 1794, due to the efforts of Morris's successor, the Francophile Republican James Monroe, the French released Paine from prison. Thereafter, though the Convention<sup>51</sup> welcomed him back to its ranks, Paine played little direct role in French politics due both to the precarious state of his health and the suspicion that some of his colleagues

48. THOMAS PAINE, *THE AGE OF REASON* (1794), reprinted in *LIBRARY OF AMERICA*, *supra* note 1, at 665-730, in *1 COMPLETE WRITINGS*, *supra* note 1, at 463-514, and in *PAINE READER* *supra* note 12, at 399-451.

49. The Terror was the period (1793-1794) during which the extreme Jacobins, led by Maximilien de Robespierre, assumed control of the French government and purged their political rivals and any other men and women who seemed to stand in their way. See DOYLE, *supra* note 44.

50. Paine gave his own account in the third of the seven newspaper essays he published during the first year after his arrival in the United States. See THOMAS PAINE, *TO THE CITIZENS OF THE UNITED STATES* (1802-1803), reprinted in *2 COMPLETE WRITINGS*, *supra* note 1 at 908-57 (especially 920-21). An excerpt can also be found in *PAINE READER*, *supra* note 12, at 503-17 (especially 514-15).

51. See *supra* note 44.

still directed against him. Paine spent much of his time finishing the second part of *The Age of Reason*<sup>52</sup> and composing *Agrarian Justice*,<sup>53</sup> his great statement on property, poverty, and the need for radical reform of the English political, social, and economic system. He also penned pamphlets urging constitutional reform in France, including universal manhood suffrage.<sup>54</sup>

In 1796, Paine's resentment of his imprisonment and of the apparent indifference of President Washington to his fate unfortunately boiled over. Despite Monroe's attempts to dissuade him, Paine published his *Letter to George Washington*, an anguished and bitter public attack on the character and conduct of the President for what Paine saw as Washington's betrayal of an old friend and comrade-in-arms.<sup>55</sup> The pamphlet backfired, however, as Federalists hostile to Paine's support for the French Revolution and the deism of his *Age of Reason* used the *Letter to George Washington* both to demolish Paine's American reputation and to destroy their Republican adversaries by skillful use of the principle of guilt by association.

Paine remained in France, first courted and then denigrated by Napoleon, until 1802 when he finally returned to America. Even this last journey in Paine's long, weary life of travel was complicated, time and time again, by political problems in France and the United States. President Thomas Jefferson offered to send an American ship to bring him home; however, political and logistical complications undermined the gesture forcing Paine to book passage as a private citizen. After arriving in Baltimore in 1802, Paine made his way to the nation's capital.

By this point, Paine was a shambling wreck; he suffered from a variety of illnesses and apparently now had a fixed habit of seeking refuge from pain and physical weakness in strong drink.<sup>56</sup> Unfortunately for him, his enemies found his physical condition yet another easy target.

52. THOMAS PAINE, *THE AGE OF REASON, PART THE SECOND* (1795), reprinted in LIBRARY OF AMERICA, *supra* note 1, at 731-830, and in 1 COMPLETE WRITINGS, *supra* note 1, at 514-604.

53. THOMAS PAINE, *AGRARIAN JUSTICE* (1795), reprinted in LIBRARY OF AMERICA, *supra* note 1, at 396-413, in 1 COMPLETE WRITINGS, *supra* note 1, at 605-23, in PAINE READER, *supra* note 12, at 471-89, and in WORLD CLASSICS, *supra* note 12, at 409-33.

54. See, e.g., DISSERTATIONS, *supra* note 45.

55. The text of this pamphlet appears in 2 COMPLETE WRITINGS, *supra* note 1, at 690-723. An excerpt can also be found in PAINE READER, *supra* note 12, at 490-502. Oddly enough, it does not appear in LIBRARY OF AMERICA. See discussion *infra* pp. 902-03 & n.12.

56. See KEANE, *supra* note 14, at 412-14 (discussing Paine's illnesses in prison). On Paine's illnesses after his return to America, see *id.* at 492-93, 514, 517-18, and 531-34.

They gleefully mocked the looks of a man who, they said, bore the evidence of his sins and excesses for all to see.

One of the most remarkable pen-portraits of Paine comes from this period. In November 1802, the young inventor and industrialist Eli Whitney had a startling experience—he shared a table at a Washington, D.C. tavern with the aged Thomas Paine:

You have doubtless heard of the arrival of the notorious Tom Paine in this country—Being informed, previous to my arrival here, that he was in this neighborhood I had some curiosity to see him—I stoped [sic] at the public house where I am now writing to spend one day (it being in a central situation & convenient to the Public Offices where I have to do business)—I walked out for an hour & return'd to dinner—on entering the room—to my great surprise I found that T. Paine was there & a lodger in the house & in less than five minutes we were seated opposite each other at table—<sup>57</sup>

Whitney, who at 37 years of age had already invented the cotton gin which revolutionized Southern agriculture and laid the foundations for American industry by devising the system of mass-production, was in Washington, D.C. to pursue his continuing negotiations with the War Department. Yet he spared time from his lobbying to write a letter to his friend Josiah Stebbins, describing his encounter with the old revolutionary. Whitney's letter, not previously used by Paine scholars,<sup>58</sup> presents a memorable though jaundiced likeness of Paine as he was after returning to his adopted land.

Despite his Massachusetts Federalist roots, Whitney was willing to do business with Jefferson's Administration, but he could not suppress his instinct for respectability which rose up in revolt against Paine: "I was not disappointed in my expectation of his appearance—I found him the same filthy old sot that he has ever been represented—"<sup>59</sup> He then gave some particulars of Paine's appearance and demeanor:

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57. Letter from Eli Whitney to Josiah Stebbins (Nov. 9, 1802), in JEANETTE MIRSKY & ALLAN NEVINS, *THE WORLD OF ELI WHITNEY* 1 (1952). The original letter is in the Eli Whitney Papers deposited by Whitney's descendants at Yale University Library.

58. This letter is not quoted or cited in any of the leading works on Paine under review, or in any of the major biographies preceding the Paine renaissance.

59. Letter from Eli Whitney to Josiah Stebbins (Nov. 9, 1802), in MIRSKY & NEVINS, *supra* note 57, at 1.

I should judge from his appearance that he is nearly 70 years of age . . . . He is about five feet 10 inches high—his hair three-fourths white—black eyes—a large bulbous nose—a large mouth drawn down at the corners with flabby lips—with more than half decayed, horrid looking teeth—his complexion of a brick colour—his face & nose covered with carbunkles & spots of a darker hue than the general color of his skin—his dress rather mean & his whole appearance very slovenly—his hands so convulsed that while his expansive lips almost encompassed a wine glass, he could hardly get the contents of it into his head without spilling it . . . . In short he is a mere loathsome carcase, which has withstood the ravages & rackings of brutal intemperance for an uncommon length of time & from which (were it exposed on the barren heath of Africa) the Hyena & Jackals would turn away with disgust.<sup>60</sup>

The disapproving Whitney also noted Paine's boast "that he had dined with Mr. Jefferson yesterday & the day before & I make no doubt he is a 'bosome friend' of the President."<sup>61</sup> He concluded with a flourish of contempt:

Tho' some of the democrats will swallow common carrion with a good rellish, I think most of them will loath the putrid rattle snake which has died from the venom of his own bite . . . . I have consumed more time in this horrid subject than it deserves & will leave it—<sup>62</sup>

Paine had hoped to be of use to his old ally President Jefferson,<sup>63</sup> but as Whitney's caustic letter suggests, Paine's deistic writings had made him too controversial a figure to be associated openly with Jefferson's Administration—a political truth he was slow to acknowledge but quick to

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60. *Id.* at 229. Paine actually was 65 when Whitney saw him. Mirsky and Nevins report their belief that based on Whitney's description, Paine suffered from Parkinson's disease. *Id.* at 280.

61. *Id.* at 229.

62. *Id.*

63. For example, in 1802 Paine urged Jefferson to negotiate for the purchase of the Louisiana Territory, citing his knowledge that Napoleon I was disposed to abandon his American holdings and the French desperately needed the money that such a sale would bring. Jefferson vaguely assured Paine the negotiations he urged were already in motion. HAWKE, *supra* note 20, at 361-62, 369-70.

resent. He contented himself with writing pamphlets and newspaper articles on issues of the day<sup>64</sup> and trying one last time to secure public and private support for his beloved plan for a single-arch iron bridge.<sup>65</sup>

One private fact almost, but not quite, compensated for Paine's public marginalization. To his relief, Paine found that, for the first time in his life, he had no financial worries. His friends had managed his assets so that he could live quietly on a modest annuity. Thus, Paine, suffering increasingly from his eroding health, settled on his small farm in New Rochelle, New York, but he spent much of his time in New York City.

Political and religious controversy flared around Paine intermittently in his last years. In 1806, Federalist opponents in New York denied him access to the polls claiming that he was not a citizen eligible to vote and otherwise continued to humiliate and harass him. One night, as he sat in the study of his New Rochelle cottage, an unidentified person fired a shot at Paine but missed; this continuing harassment and derision induced the old man to quit his farm for modest lodgings in New York City's Greenwich Village. Beginning in 1807, Paine's health and intellectual powers began to decline, both exacerbated by and leading to his heavy drinking and neglect of his person. As his death approached, he suffered increasing harassment by religious zealots who beseeched, pleaded, and even demanded that he recant his religious views. Paine always refused to recant, usually politely. At times, goaded beyond endurance by his adversaries' assumption that he was an atheist and by their relentless importunities, he found within himself flickering sparks of his old polemical vigor.

After a last, painful bout of illness, Thomas Paine died on June 8, 1809. His funeral was attended by a few friends, by two blacks who had traveled twenty-five miles on foot to pay their respects to a leading antislavery advocate, and by Willett Hicks, an Irish Quaker preacher and watchmaker. Denied interment in a Quaker cemetery (apparently because the Quakers feared that his monument would become a place of pilgrimage, thus denying a central tenet of the Quaker faith), he was buried in an orchard on his farm. In 1819, ten years after Paine's death, the English radical William Cobbett disinterred Paine's casket hoping to rebury it in Thetford to provide a symbol for those who shared Paine's hopes for democratic revolution in Great Britain. The British government, however, refused to permit so potentially inflammatory a gesture, and

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64. See, e.g., THOMAS PAINE, *CONSTITUTIONAL REFORM* (1805), reprinted in 2 *COMPLETE WRITINGS*, *supra* note 1, at 992-1007, and in *PAINE READER*, *supra* note 12, at 525-36.

65. See THOMAS PAINE, *ON THE CONSTRUCTION OF IRON BRIDGES* (1803), reprinted in *LIBRARY OF AMERICA*, *supra* note 1, at 422-28, in 2 *COMPLETE WRITINGS*, *supra* note 1 at 1051-59, and in *PAINE READER*, *supra* note 12, at 518-24.

Paine's remains somehow disappeared, their fate unknown to this day. A children's nursery rhyme sums up this sad story:

Poor Tom Paine! there he lies:  
 Nobody laughs and nobody cries.  
 Where he has gone or how he fares  
 Nobody knows and nobody cares.<sup>66</sup>

### III. WHAT HISTORY HAS MADE OF PAINE

For much of his life and for nearly a century after his death, Paine was his own major advocate and defender. By contrast, most of those who wrote about Paine did so to destroy him. The two principal early biographers were the Tory George Chalmers<sup>67</sup> and the American hack James Cheetham.<sup>68</sup> Chalmers, who wrote under the pen-name "Francis Oldys, A.M.," was subvented by the British government; Cheetham, a New York journalist (and a member of the Republican faction led by DeWitt Clinton) was at first a friend and ally, but turned against Paine after several furious contests with him in the early 1800s. Both Chalmers and Cheetham mingled the scanty verifiable facts of Paine's early life with vituperative caricatures of his vices. Their shared goal was to taint Paine's ideas by suggesting that no good ideas could ever come from so corrupt and degraded a source. Chalmers and Cheetham thus laid the foundations for more than two centuries of anti-Paine propaganda. By contrast, the few favorable accounts, by Thomas Clio Rickman<sup>69</sup> and others,<sup>70</sup> had little popularity and contained scarcely more reliable information about Paine than did the Chalmers and Cheetham biographies.

Throughout the nineteenth century, Paine's reputation dropped like a stone, because most of his admirers and adherents found themselves

66. FRUCHTMAN, *supra* note 13, at 441.

67. FRANCIS OLDYS, *THE LIFE OF THOMAS PAINE* (London, John Stockdale 1791). There are many later editions under varying titles.

68. JAMES CHEETHAM, *THE LIFE OF THOMAS PAINE* (New York, Southwick & Pelsue 1809).

69. THOMAS C. RICKMAN, *THE LIFE OF THOMAS PAINE* (London, Thomas Clio Rickman 1819).

70. *E.g.*, RICHARD CARLILE, *LIFE OF THOMAS PAINE* (3d ed. n.d.) (biography by radical British printer often prosecuted for publishing Paine's writings in Britain). For a thorough listing of contemporary literature spawned by the controversies in which Paine engaged, see CLAEYS, *supra* note 17, at 221-33.

outside the political, cultural, and intellectual mainstream.<sup>71</sup> In 1892, Moncure D. Conway, a preacher and antislavery reformer, challenged the conventional wisdom about Paine's life and thought.<sup>72</sup> In the process, Conway inaugurated the modern era of Paine studies. Though at times too fiercely defensive of Paine's character, Conway's biography of Paine and his comprehensive edition of Paine's writings became landmarks still regarded as authoritative more than a century after their first appearance.<sup>73</sup> Conway's devoted labors tied in neatly with the trends of historical scholarship of the era in which a gentleman scholar chose a distinguished historical figure for his subject and produced a multivolume edition of writings accompanied by a biography. Conway's works on Paine took their place alongside such projects as Henry Cabot Lodge's biography and edition of Alexander Hamilton,<sup>74</sup> and Gaillard Hunt's biography and edition of James Madison.<sup>75</sup> Even so, through the end of the nineteenth and the first decades of the twentieth century, though Paine occasionally had walk-on roles in the works of such historians as H.N. Brailsford<sup>76</sup> and Vernon Louis Parrington,<sup>77</sup> and despite the essays of

71. MICHAEL KAMMEN, *A SEASON OF YOUTH: THE AMERICAN REVOLUTION AND THE HISTORICAL IMAGINATION* 286-87 n.17 (1978) (summarizing late nineteenth-century's low historical opinion of Paine). Paine's defenders invoke Andrew Jackson and Abraham Lincoln as distinguished admirers, and in 1877 Walt Whitman delivered a speech in Paine's honor to mark the anniversary of his birth. See CLAEYS, *supra* note 17, at 19 (discussing Lincoln and Whitman), 36-37 (discussing Jackson). For the entire text of Whitman's speech, see Walt Whitman, *Speech in Memory of Thomas Paine* (Jan. 28, 1877), *SPECIMEN DAYS AND COLLECT* (1882), *reprinted in THE VIKING PORTABLE LIBRARY: WALT WHITMAN* (Mark Van Doren ed., rev. by Malcolm Cowley, Viking Press 1974) (1945).

72. See, e.g., KAMMEN, *supra* note 71, at 286-87 n.17 (summarizing Conway's reaction against his time's low opinion of Paine).

73. 1-4 *THE WRITINGS OF THOMAS PAINE* (Moncure D. Conway, ed., photo. reprint 1967) (1894-1896). At least one other "complete" or "collected" edition of Paine's writings appeared in the early twentieth century. In 1925, William M. Van der Weyde published a nine-volume edition for the Thomas Paine National Historical Association. 1-9 *THE LIFE AND WORKS OF THOMAS PAINE* (William M. Van der Weyde ed., 1925).

74. See HENRY C. LODGE, *ALEXANDER HAMILTON* (New York, Haskell House 1898); *THE WORKS OF ALEXANDER HAMILTON* (Henry C. Lodge ed., 1904).

75. See 1-9 *THE WORKS OF JAMES MADISON* (Gaillard Hunt ed., 1899-1904); *GAILLARD HUNT, THE LIFE OF JAMES MADISON* (1902).

76. See H.N. BRAILSFORD, *SHELLY, GODWIN AND THEIR CIRCLE* 56-77 (1913) (identifying Paine as a leading member of the circle of English radicals who supported and defended the aspirations of the French Revolution in the 1790s).

77. See VERNON L. PARRINGTON, *MAIN CURRENTS IN AMERICAN THOUGHT: THE COLONIAL MIND, 1620-1800*, at 333-47 (1927) (categorizing Paine as a member of the "French group" of democratic writers in the early Republic).



literary scholar Harry Hayden Clarke,<sup>78</sup> Paine scholarship was a marginal enterprise.

In the 1930s American popular culture rediscovered Paine. Along with such figures as Paul Revere, Paine benefitted from the reorientation of popular interest in the past away from leading figures and toward exemplars of the common man.<sup>79</sup> This gap between scholarly neglect and cultural popularity could not last as the question soon became who would bridge the gap and how. Frank Smith's eloquent and perceptive biography appeared in 1938;<sup>80</sup> though it was little noticed and lacked the documentation that would have confirmed its scholarly stature and command of the primary sources, it pointed the way to a new flowering of Paine scholarship.

In 1943, Howard Fast's historical novel *Citizen Tom Paine*<sup>81</sup> became an immediate national bestseller.<sup>82</sup> Perhaps the single most popular book on Paine ever written, it also became the basis for Fast's one-man play, which has had periodic revivals. Fast's resurrection of Paine had drawbacks, however. Seeking to recover Paine as a hero of the American left, Fast inadvertently revived or perpetuated the hoary clichés of the caricature of Paine's life, i.e., Paine's supposed personal uncleanness, his drunkenness, and his atheism. Though *Citizen Tom Paine* is exciting, often inspiring reading, it is hardly a sound basis for understanding who

78. See Harry H. Clark, *Toward a Reinterpretation of Thomas Paine*, 5 AM. LITERATURE 133, 133-45 (1933); Harry H. Clark, *Thomas Paine's Theories of Rhetoric*, 28 TRANSACTIONS OF THE WISC. ACAD. OF SCI., ARTS & LETTERS 307, 307-39 (1933); Harry H. Clark, *An Historical Interpretation of Thomas Paine's Religion*, 9 U. CAL. CHRON. 56-87 (1933); Harry H. Clark, *Thomas Paine's Relations to Voltaire and Rousseau*, 9 REVUE ANGLO-AMERICAINE 305, 305-18, 393-405 (1932). Clark also prepared a useful anthology of Paine's writings. See THOMAS PAINE, REPRESENTATIVE SELECTIONS (Harry H. Clark ed., 1944).

79. MICHAEL KAMMEN, MYSTIC CHORDS OF MEMORY: THE TRANSFORMATION OF TRADITION IN AMERICAN CULTURE 504 (1991).

80. FRANK SMITH, THOMAS PAINE: LIBERATOR (1938) (a fine biography of Paine, although marred by lack of notes, bibliography, and index).

81. HOWARD FAST, CITIZEN TOM PAINE (1943) [hereinafter CITIZEN TOM PAINE]; see also THE SELECTED WORK OF TOM PAINE (Howard Fast ed., 1945) [hereinafter SELECTED WORK]. An illustration of how far Fast's work permeated the conventional wisdom on Paine is that the Modern Library published an omnibus volume grouping CITIZEN TOM PAINE with selections from Paine's writings. HOWARD FAST, THE SELECTED WORK OF TOM PAINE AND CITIZEN TOM PAINE (1945).

82. Fast wrote a series of successful historical novels about the American Revolution and other eras of American history, always stressing the contributions of ordinary men and women, and celebrating the common people. See KAMMEN, *supra* note 71, at 229-32 (discussing Fast's novels on the Revolution, though—ironically—failing to mention CITIZEN TOM PAINE).

Paine was, what he did, or what he thought and wrote. Moreover, though Fast also published a one-volume selection from Paine's writings, he designed his compilation (as he intended his biographical novel) to present a Paine for Fast's own time, deleting material and arguments that he deemed dated.<sup>83</sup> Paine scholarship still awaited its modern foundation.

In 1945, the radical scholar Philip S. Foner<sup>84</sup> provided that foundation when he published his two-volume collection *The Complete Writings of Thomas Paine*.<sup>85</sup> Though Foner did not in fact reprint all of Paine's writings, and included some whose attributions have come under question, and though the work is arguably arranged in a confusing manner, the *Complete Writings* collected more of Paine's writings in readily-accessible form than had ever been collected before. Moreover, Foner's admirable introduction provides one of the finest concise accounts of Paine's life and thought. Thus, virtually every major study of Paine's life, thought, and works rightly uses Foner's two volumes even in preference to Moncure Conway's pioneering edition. Ironically, however, though Foner's edition promised to reactivate scholarly interest in Paine, *Citizen Tom Paine* overshadowed its appearance in the public mind.

There matters rested until 1959, when A. Owen Aldridge, an American literary scholar at the University of Delaware, published *Man of Reason: The Life of Thomas Paine*.<sup>86</sup> Aldridge's biography immediately took its place alongside Conway's as the most thorough, reliable and authoritative account of Paine's life up to that time. Building on his 1959 biography in his 1984 study *Thomas Paine's American Ideology*,<sup>87</sup> Aldridge has performed valuable detective work in Paine bibliography that casts doubt on some conventional attributions, identifies as Paine's several important publications previously classified as anonymous,<sup>88</sup> and presents a synthesis of Paine's evolving thought, accompanied by a comprehensive, reliable survey of Paine's published and unpublished writings.

83. See generally SELECTED WORK, *supra* note 81. For a discussion of the relationship between this volume and CITIZEN TOM PAINE, see *supra* note 81.

84. LAWRENCE VAN GELDER, *Philip S. Foner*, N.Y. TIMES, Dec. 15, 1994, (Obituary), at B4.

85. COMPLETE WRITINGS, *supra* note 1.

86. ALDRIDGE, *supra* note 21.

87. ALDRIDGE, *supra* note 24.

88. The most important of these is FOUR LETTERS ON INTERESTING SUBJECTS (1776), reprinted in 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA, 1760-1805, at 368-89 (Charles S. Hyneman & Donald S. Lutz eds., 1983) (n.d.). For a discussion of its place in Paine's life and thought, see ALDRIDGE, *supra* note 24, at 217-37; FRUCHTMAN, *supra* note 13, at 86-88. This pamphlet does not appear in any compilation of Paine's writings published to date.

The bicentennial of the American Revolution brought with it a resurgence in scholarly interest in Thomas Paine, including new, scholarly editions of Paine's principal writings and major biographical and monographic studies of Paine's life, works, and thought. This renaissance of Paine scholarship continued into the 1980s and received new impetus from the bicentennial of the French Revolution in 1989.

The leading contributors to this renaissance were two American historians, David Freeman Hawke<sup>89</sup> and Eric S. Foner.<sup>90</sup> In 1974, Hawke published *Paine*, which most American scholars have embraced as the definitive biography.<sup>91</sup> In addition to his evenhanded treatment of Paine's life and thought, Hawke offered emendations to Philip Foner's edition.<sup>92</sup> And in 1976, Eric Foner published *Tom Paine and Revolutionary America*. His brilliant study situated Paine in the political and social contexts of the American Revolution and broke new ground in the investigation of American radical thought and action. Though a few other biographies of Paine appeared in the 1970s,<sup>93</sup> none of them joined

89. Hawke has published widely on the Revolutionary era, including biographies and political and social histories. *See, e.g.*, DAVID F. HAWKE, *BENJAMIN RUSH: REVOLUTIONARY GADFLY* (1971); DAVID HAWKE, *THE COLONIAL EXPERIENCE* (1966); DAVID F. HAWKE, *EVERYDAY LIFE IN EARLY AMERICA* (1988); DAVID HAWKE, *IN THE MIDST OF A REVOLUTION* (1961); DAVID F. HAWKE, *NUTS AND BOLTS OF THE PAST: A HISTORY OF AMERICAN TECHNOLOGY, 1776-1860* (1988); DAVID HAWKE, *A TRANSACTION OF FREE MEN: THE BIRTH AND COURSE OF THE DECLARATION OF INDEPENDENCE* (1964).

90. Eric Foner, DeWitt Clinton Professor of American History at Columbia University, has published several pathbreaking studies of nineteenth-century American history. *See, e.g.*, ERIC FONER, *FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* (rev. ed. 1995) (1970); ERIC FONER, *NOTHING BUT FREEDOM: EMANCIPATION AND ITS LEGACY* (1983); ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877* (1988). Eric Foner is a nephew of Philip S. Foner.

91. A curious split between British and American scholars continues to this day, with British scholars invoking Aldridge or ignoring Hawke. *See, e.g.*, CLAEYS, *supra* note 17, at 235 (omitting Hawke's biography from an otherwise comprehensive bibliography); AYER, *supra* note 18, at ix (praising Aldridge). American scholars prefer Hawke. *See, e.g.*, FONER, *supra* note 34, at 272 n.3 (citing Hawke as best one-volume biographer). It is not clear why such a division should exist, though some British scholars have denounced Hawke's study as jaundiced and unfair. *See, e.g.*, KEANE, *supra* note 14, at xvii.

92. *See, e.g.*, HAWKE, *supra* note 20, at 404 (general criticism), 411, 425, 433, 452 (citing specific examples of misdating, mistranscribing, and other errors).

93. *See, e.g.*, SAMUEL EDWARDS (Noel B. Gerson), *REBEL! A BIOGRAPHY OF TOM PAINE* (1974); DAVID POWELL, *TOM PAINE: THE GREATEST EXILE* (1985); AUDREY WILLIAMSON, *THOMAS PAINE: HIS LIFE, WORK, AND TIMES* (1973).

the first rank occupied by Conway, Philip Foner, Aldridge, Hawke, and Eric Foner.

The great challenge to Paine scholarship is to take account, with balance and proportion, of the several stages of Paine's life. American scholars tend to emphasize Paine's contributions to the American Revolution; in this sphere, Eric Foner set the standard in his superb *Tom Paine and Revolutionary America*. By contrast, British scholars naturally focus their attention on Paine's polemical duel with Edmund Burke and his part in the confused and tumultuous events of the 1790s in Britain. In addition to the monographs by Ayer and Claeys discussed in Part V, the leading studies of this type are E. P. Thompson's groundbreaking *The Making of the English Working Class*<sup>94</sup> and Albert P. Goodwin's excellent study *The Friends of Liberty: The English Democratic Movement in the Age of the French Revolution*.<sup>95</sup> Surprisingly little has appeared on Paine's role in the French Revolution, and readers must resort to the standard biographies for detailed accounts of this part of Paine's life and of his unhappy retirement in America.

#### IV. PRESENTING PAINE'S WORDS

As noted in Part III, Paine has had to be his own principal defender. For example, when hearing of Paine's death, his friend, the noted Jeffersonian polemicist Joel Barlow observed that "[h]is own writings are his best life . . . ."<sup>96</sup> Thus, assessing the configuration of modern Paine scholarship must begin with a consideration of the state of that monument.

Many of Thomas Paine's individual works, including *Common Sense*, *The American Crisis*, *Rights of Man*, and *The Age of Reason*,<sup>97</sup> have been in print almost continuously since their first appearances. Most of them now appear in editions executed to the highest standards of historical and documentary-editing scholarship. However, these separate editions do not afford readers the opportunity either to explore the evolution of Paine's thought or to trace the connections between the seemingly disparate and unrelated projects that Paine pursued.

As noted in Part III above, the last edition of Paine's writings with claims to comprehensiveness, Philip S. Foner's *The Complete Writings of*

94. See THOMPSON, *supra* note 43.

95. See GOODWIN, *supra* note 43.

96. Letter from Joel Barlow to James Cheetham (August 11, 1809) reprinted in HAWKE, *supra* note 20, at 407. Ironically, though Barlow's letter praised Paine and sought to dissuade Cheetham from writing Paine's life, Cheetham published one of the first and most effective demolitions of Paine's life, work, and thought. See CHEETHAM, *supra* note 68.

97. See sources cited *supra* note 12.

*Thomas Paine*,<sup>98</sup> appeared in 1945. Unfortunately, the *Complete Writings* is out of print today.<sup>99</sup> Moreover, Philip Foner's title was a misnomer, though an inadvertent one; later scholars have identified writings from Paine's pen that do not appear in these volumes and Foner included some pieces that he conceded were of uncertain authorship but appeared in magazines that Paine edited. Further, Philip Foner's editing, though generally admirable, was vulnerable to challenge<sup>100</sup> as he apparently misdated some letters, misidentified some addressees, broke others up to give the appearance of separate documents, and did not probe beneath the surface of the "tidied-up" versions of the *Crisis* letters published in 1797 by James Carey without Paine's approval and used by all later editors of Paine's writings, including Moncure Conway.<sup>101</sup> Finally, the confusing organization of Philip Foner's edition makes the compilation difficult to use and obscures the chronological development of Paine's thinking on a variety of issues because he grouped the "major writings" in the first volume and the remaining pieces by subject in the second volume.<sup>102</sup> Still, as noted earlier, Philip Foner's edition continues to be a major benchmark for Paine scholars on both sides of the Atlantic.

A further problem confronting any edition of Paine's writings is determining just what Paine wrote. As noted earlier and as developed more fully below, uncertainty clouds even so central a work in Paine's career as the *Crisis* essays.<sup>103</sup> Moreover, historians have not yet reached a consensus on the findings and arguments of A. Owen Aldridge's 1984 review of the Paine canon; Aldridge's identification of the 1776 *Four*

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98. See *supra* note 1.

99. The assertion in the text is based on repeated checks of BOOKS IN PRINT, both in its published and on-line versions. See, e.g., 1 BOOKS IN PRINT at 1284 (46th ed. 1994). However, the first volume of Foner's edition has been reissued several times. See THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE (Philip S. Foner ed., 2d paperback prtg. 1974).

100. See HAWKE, *supra* note 20, at 406.

101. On this point, see LIBRARY OF AMERICA, *supra* note 1, at 854-55. As noted *supra*, note 30, Eric Foner has restored the *American Crisis* series to the form it had when Paine wrote and published the essays. If for no other reason, his edition should be a place of first resort for Paine scholars, at least until a comprehensive multivolume edition conforming to the standards of documentary-editing scholarship appears.

102. Philip Foner's inclusion of a chronological table of writings in 1 COMPLETE WRITINGS, *supra* note 1, at xlvii-lix, only partly remedies the problems posed by the organizational plan of COMPLETE WRITINGS. The speculation suggests itself that this plan was occasioned, perhaps, by the publisher's desire to issue the first volume separately in paperback for a general audience.

103. See *supra* note 30.

*Letters on Interesting Subjects* as written by Paine would, if sustained, force a reexamination of Paine's evolving ideas about American constitutionalism, but editors still have not subsumed this pamphlet into the Paine canon.

In the past eight years, three new anthologies of Paine's major writings have appeared. The first, and still perhaps the best for classroom use, is *The Thomas Paine Reader*, edited for the Penguin Classics series by Michael Foot and Isaac Kramnick. Given Paine's roots in both segments of the Anglo-American world, the transatlantic alliance of Foot, the former Leader of the British Labour Party, and Kramnick,<sup>104</sup> a professor of political science at Cornell University, is especially appropriate. *The Thomas Paine Reader* presents authoritative texts of a wide range of Paine's major and minor works, either complete or only slightly abridged (though the reader must look carefully to identify which of Paine's writings are abridged in this compilation). The only drawbacks of this volume are sins of omission; it lacks an index and detailed annotation, a failing not entirely cured by useful headnotes to each document.

In 1995, the British scholar Mark Philp, who in 1989 published a first-rate brief study of Paine for Oxford University Press's *Past Masters* series,<sup>105</sup> prepared for Oxford's *World's Classics* series a fine compilation of six of Paine's most important political works,<sup>106</sup> including complete texts of *Common Sense*, *Rights of Man*, and *Agrarian Justice*; two of Paine's *Crisis* essays; and his *Dissertation on First Principles of Government*.<sup>107</sup> Extensively annotated and well-indexed, Philp's compilation is valuable mostly as a resource for studying Paine's evolving

104. See, e.g., ISAAC KRAMNICK, *BOLINGBROKE AND HIS CIRCLE: THE POLITICS OF NOSTALGIA IN THE AGE OF WALPOLE* (1968); ISAAC KRAMNICK, *THE RAGE OF EDMUND BURKE: PORTRAIT OF AN AMBIVALENT CONSERVATIVE* (1977); ISAAC KRAMNICK, *REPUBLICANISM AND BOURGEOIS RADICALISM* (1990).

105. PHILP, *supra* note 16, and *infra* notes 121-22 and accompanying text.

106. See *WORLD'S CLASSICS*, *supra* note 12.

107. Philp also includes a letter from Paine to Thomas Jefferson, transcribed from the manuscript held by the Library of Congress, but without indicating its date either in the text or in his supporting annotation; its placement in his chronologically-arranged edition suggests that it was written some time between 1787 and 1789. See Letter from Thomas Paine to Thomas Jefferson (n.d.), in *WORLD'S CLASSICS*, *supra* note 12, at 81-82. The reader must search the introduction closely to find the letter dated sometime in February 1788. See *id.* at xviii. Eric Foner includes the letter in *LIBRARY OF AMERICA*, *supra* note 1; following the judgment of the editors of the *Papers of Thomas Jefferson* (as Philp probably does), he dates this letter as possibly being sent sometime in February 1788. See Letter from Thomas Paine to Thomas Jefferson (n.d.), in *LIBRARY OF AMERICA*, *supra* note 1, at 368-69 (text), 858 (note on text and source) (Foner dates this letter as "February ? 1788").

political thought, though Philp's perceptive introduction takes account of Paine's religious thought and multifaceted career.

The most important new edition of Paine's writings, and the one awaited with greatest eagerness by Paine scholars, is that prepared by Eric Foner for the distinguished *Library of America* series. As one of the leading American historians of his generation<sup>108</sup> and the author of the leading study of Paine during the American Revolution,<sup>109</sup> Eric Foner is the most qualified scholar to undertake an edition of Paine, and he has executed his task with admirable skill. The editorial policy of the *Library of America* series excludes introductions by the editors;<sup>110</sup> Foner thus lets Paine speak for himself, although he does provide a superb and comprehensive chronology of Paine's life and publications, detailed notes on the texts, and publishing histories of each selection. In particular, Foner provides a careful elucidation of the publishing history of Paine's *American Crisis* essays. As noted earlier, previous editors followed the lead of James Carey, who lumped together disparate essays to create synthetic *Crisis* essays to fill gaps in Paine's numbering of the original series.<sup>111</sup>

And yet so remarkable an achievement as the *Library of America* edition of Paine's *Collected Writings* is, unfortunately it fails to fulfill its own promise of completeness. Indeed, Eric Foner's compilation includes little that did not appear in the first volume of Philip Foner's *Complete Writings*, now half a century old and readily available in reprint form as *The Life and Major Writings of Thomas Paine*—though Eric Foner's edition must be preferred on grounds of editorial accuracy. Moreover, when a compilation titled *Collected Writings* turns out to be in fact a "Selected Writings," a reader or reviewer familiar with Paine's writings feels a natural temptation to second-guess the editor's judgment. In this case, for example, Eric Foner's decision to omit Paine's 1796 *Letter to George Washington* makes little or no sense because this pamphlet is a

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108. See *supra* note 90.

109. See generally FONER, *supra* note 34.

110. For example, when Bernard Bailyn prepared his two-volume selection of documents from the ratification controversy, *DEBATE ON THE CONSTITUTION* (Bernard Bailyn ed., 1993), he published a separate essay interpreting those materials—first as chapter 10 of his collected essays, *BERNARD BAILYN, FACES OF REVOLUTION: PERSONALITIES AND THEMES IN THE STRUGGLE FOR AMERICAN INDEPENDENCE 225-78* (1992) [hereinafter *FACES OF REVOLUTION*], and then as a new postscript to his classic study of the political thought of the American Revolution, *BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 321-79* (enlarged ed. 1992).

111. See *supra* note 30 and accompanying text.

vital document both for understanding Paine's problematic reputation and for plumbing the depths of his capacity for bitter invective.<sup>112</sup>

Finally, though Eric Foner's *Library of America* edition of Paine's selected major works is easily the best available and its flaws are entirely matters of omission, the existence of so good an edition of Paine's selected writings prompts a natural question: Why does Paine, one of the most important polemicists in the history of the English language and the first great democratic political writer,<sup>113</sup> lack a comprehensive edition of his writings and letters? The model for such an edition of Paine exists in the modern scholarly editions of such important historical figures and writers as Thomas Jefferson, Henry David Thoreau, and Marcus Garvey. Such editions both embody and stimulate remarkable advances in our historical and literary understanding.<sup>114</sup> By drawing on half a century of Paine scholarship, including his own pathbreaking contributions, Eric Foner's *Library of America* edition of Paine only dramatizes the need to do for Paine what devoted historical editors have done for so many leading American statesmen and writers. Moreover, as noted earlier, such an edition of necessity would establish an authoritative canon of Paine's writings and provide an essential foundation for Paine scholarship.

In sum, Paine's self-created monument is in an uncertain state. Although his principal works are as readily available today as even he would have wanted, they are like an island chain that turns out to be the tops of a submerged line of mountains. For us to have a true grasp of Paine's work, we must look forward to the promised eight-volume edition of Paine's writings—including his correspondence—being prepared by Gregory Claeys and Mark Philp for publication in 1998.<sup>115</sup> The Claeys-Philp edition promises to trace and present the entire surviving documentary record of Thomas Paine's tumultuous life and challenging thought in a worthy contribution to the "documentary editing revolution."<sup>116</sup>

112. See Gordon S. Wood, *Disturbing the Peace*, N.Y. REV. BOOKS, June 8, 1995, at 19-22 (describing LIBRARY OF AMERICA edition's omissions). Wood notes not only the omission of Paine's 1796 *Letter to George Washington* but also that of Paine's 1782 *Letter to the Abbé Raynal on the Affairs of North America*, reprinted in 2 COMPLETE WRITINGS, *supra* note 1, at 211-63. An excerpt of the *Letter to Abbé Raynal* can be found in PAINE READER, *supra* note 12, at 147-66.

113. See *infra* part VI.

114. See FREEHLING, *supra* note 11, at 3-11, 275-76 (examining the "editorial revolution" that Freehling identifies as the major contribution of modern historiography).

115. I am indebted to Professor Stephen L. Schechter of Russell Sage College for the information presented here.

116. See FREEHLING, *supra* note 11.



## V. EXPLORING PAINE'S LIFE, TIMES AND THOUGHT

Just as in life Thomas Paine challenged virtually every element of the conventional wisdom of his day, in death he continues to challenge the conventional wisdom of those seeking to understand his time. In the past half-century, historians and scholars of political thought have revolutionized our understanding of the Age of Enlightenment<sup>117</sup> and of what the Princeton historian R. R. Palmer has dubbed the *Age of Democratic Revolution*.<sup>118</sup> Thomas Paine has become a focal-point for these enterprises, and a formidable test confronting such leading historical interpretations as the republican synthesis.<sup>119</sup> Moreover, in large part because controversy has always swirled around the details and meaning of Paine's life, the challenge of writing his biography extends beyond the ordinary dimensions of the biographer's task.

### A. Monographic and Analytical Studies

From the late 1980s to the present, four notable monographs dealing with various aspects of Paine's thought have appeared. The best and most comprehensive of these studies is Gregory Claeys's 1989 study *Thomas Paine: Social and Political Thought*.<sup>120</sup> Claeys has provided an admirable perspective on the kaleidoscopic variety of Paine's life and thought, and has traced the subtle coherences that unify his various projects and interests. Mark Philp's *Paine*, a volume in Oxford University Press's *Past Masters* series, is far shorter than Claeys's study,

117. See, e.g., HENRY STEELE COMMAGER, *THE EMPIRE OF REASON: HOW EUROPE IMAGINED AND AMERICA REALIZED THE ENLIGHTENMENT* (1977); PETER GAY, *THE ENLIGHTENMENT: AN INTERPRETATION: THE RISE OF MODERN PAGANISM* (1967); PETER GAY, *THE ENLIGHTENMENT: AN INTERPRETATION: THE SCIENCE OF FREEDOM* (1969).

118. See R. R. PALMER, *THE AGE OF DEMOCRATIC REVOLUTION: A POLITICAL HISTORY OF EUROPE AND AMERICA, 1760-1800: THE CHALLENGE* (1959); R. R. PALMER, *THE AGE OF DEMOCRATIC REVOLUTION: A POLITICAL HISTORY OF EUROPE AND AMERICA, 1760-1800: THE STRUGGLE* (1964).

119. The leading historiographical article, which apparently coined the phrase "republican synthesis," is Robert E. Shalhope, *Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography*, 29 *WILLIAM & MARY Q.* 49 (1972). See also Robert E. Shalhope, *Republicanism and Early American Historiography*, 39 *WILLIAM & MARY Q.* 334 (1982); Robert E. Shalhope, *Republicanism, Liberalism, and Democracy: Political Culture in the New Nation*, 102 *PROC. AM. ANTIQUARIAN SOC'Y* 99 (1992).

120. CLAEYS, *supra* note 17.

yet almost as successful and useful in analyzing Paine's thought.<sup>121</sup> Claeys's book has a slight edge over Philp's because its greater length permits Claeys to present a wider range of evidence and a greater depth of analysis. Claeys and Philp draw on their expertise in the currents of British radical thought in the late eighteenth and early nineteenth centuries to enrich their splendid explorations of Paine;<sup>122</sup> and yet, although both scholars naturally gravitate to the British and French phases of Paine's career, they give full weight to its American opening and closing chapters. Both Claeys's and Philp's studies are eminently satisfactory introductions to Paine's eventful life and complex, evolving thought.

The monograph published in 1988 by the late British philosopher Sir A. J. Ayer<sup>123</sup> is a graceful and lucid survey of Paine's thought, but paradoxically it suffers from its tone of evenhanded calm and geniality. The agreeable quality of Ayer's writing obscures the vigorous passion and bitter controversy that swirled around Paine and often pervaded his own work.

Especially considering the centrality of Paine's actual and supposed religious views to his evolving historical reputation, it is surprising that we have had to wait until 1993 for a major monograph analyzing Paine's religious thought. With *Thomas Paine and the Religion of Nature*, Jack Fruchtman, Jr., a professor of political science at Towson State University in Maryland, admirably fills this gap in our understanding.<sup>124</sup> Fruchtman not only presents a clear and convincing analysis of Paine's ideas about the existence of God, deism, revealed religion, and the (supposed) authority of the Bible;<sup>125</sup> he also persuasively establishes

121. PHILP, *supra* note 16.

122. See, e.g., GREGORY CLAEYS, *CITIZENS AND SAINTS: POLITICS AND ANTI-POLITICS IN EARLY BRITISH SOCIALISM* (1989); MARK PHILP, *GODWIN'S POLITICAL JUSTICE* (1986).

123. AYER, *supra* note 18.

124. See FRUCHTMAN, *supra* note 15.

125. See *id.* Unfortunately, a new study by Christopher Hill on the significance of the Bible in seventeenth-century English thought was not available to Fruchtman when he wrote *Religion of Nature*. Hill's work demonstrates that, due in large part to the various English translations of the Bible published in the late sixteenth and early seventeenth centuries, the Bible pervaded the political controversies of the English Civil War of 1649-1660, the tumult of the Commonwealth and Protectorate, the Restoration era, and the Glorious Revolution of 1688-1689. Hill suggests that the vigorous efforts of English men and women to claim Biblical warrant for their views of religion and the proper ordering of the political realm helped to undermine the unquestioned or assumed authority of the Bible, revealed religion, organized religion, and government. Thomas Paine was a natural heir of these thoughts and actions, as Paine assaulted what he deemed the illegitimate authority of the monarchic English constitution and the illegitimate authority of organized religious denominations such as the Church of England and the

Paine's self-image as a secular prophet carrying out a mission both in his political radicalism and his religious radicalism akin to those of the Biblical prophets Elijah and Isaiah. Finally, he demonstrates for Paine as well as for other men and women of his era that close linkages exist between religion and politics and between the ends of just government and the ends of sincere religious faith.

### B. *Biographies*

The modern profusion of scholarship analyzing discrete areas of Paine's thought, or conducting close-focus investigations of landmarks of his life and career, point out the need for a thorough, scholarly examination of his life. Such a biography would draw on this new scholarship to provide a nuanced, full-length portrait of Paine; moreover, it would assess each of the many phases of his life and work and trace the links between them. Two new biographies of Paine—by Jack Fruchtman, Jr.,<sup>126</sup> and John Keane<sup>127</sup>—have appeared within six months of each other, the first major scholarly biographies in twenty years. Though each biography advances our understanding of Paine and his times, each has flaws that undercut its claim to definitiveness. Paine still awaits his modern definitive biographer.

Fruchtman's *Thomas Paine: Apostle of Freedom* is the simpler and more direct of these new biographies. Fruchtman came to the task of a full-length life directly from his enlightening monograph on Paine's religious thought and writings. Writing in unvarnished prose, Fruchtman seeks to present a straightforward account of Paine's life and thought. He moves with apparent ease through the complexities and confusions of Paine's life, holding in balance the primary sources and the often-conflicting mass of historical scholarship focusing on Paine and on the events in which he took part. In many ways, Fruchtman's unassuming, direct approach to the biographer's task is refreshing and enlightening.

And yet Fruchtman's biography, usually so engaging, ultimately does not fulfill its promise because at times he lets avoidable errors or confusions creep into his prose. His treatment of crucial issues of the American Revolution stumbles now and again. For example, consider the following explanation of virtual representation:

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Roman Catholic Church. See CHRISTOPHER HILL, *THE ENGLISH BIBLE AND THE SEVENTEENTH-CENTURY REVOLUTION* (1993).

126. FRUCHTMAN, *supra* note 13.

127. KEANE, *supra* note 14.

Virtual representation meant participation that did not necessarily include direct involvement. According to the crown, it did not matter whether every eligible person was permitted to vote in a particular election. What mattered was that some people of all social standings must be able to vote. This meant that even though Americans did not have an opportunity to send representatives to Parliament, there were people in England just like them who did. As a result, Americans were virtually, if not directly, represented.<sup>128</sup>

This explanation is erroneous for several reasons. First, the doctrine of virtual representation was not merely an argument propounded by the Crown; it was at the heart of constitutional discourse in Great Britain argued by members of the House of Commons and the House of Lords and by private pamphleteers of all social classes and most points of view. Second, under the doctrine of virtual representation, members of Parliament were to consider themselves, and were to be considered by all subjects whether they took part in elections or not, as representing the full range of interests in the British Empire.<sup>129</sup>

Similarly, Fruchtman's grasp of Revolutionary politics is occasionally shaky. For example:

[T]he Americans thought of themselves as English first and American merely as a circumstance of residence. For most of them, separation from the empire was unthinkable. . . . They believed, as their English cousins did, that life was in fact hierarchical by rank and position and that some people were dependent on others because that was the way it had always been. So the Second Continental Congress drafted and then dispatched to George III the Olive Branch Petition outlining the Americans' desire for reconciliation.<sup>130</sup>

This explanation disregards both the constitutional context of the Olive Branch Petition of 1775 and that Petition's political purpose. First, after nearly a decade of unavailing disputation with the British Parliament, the only source of redress available to the Americans was King George III—who, as the “patriot king” at the core of the unwritten British

128. FRUCHTMAN, *supra* note 13, at 40.

129. See generally JOHN P. REID, *THE CONCEPT OF REPRESENTATION IN THE AGE OF THE AMERICAN REVOLUTION* (1989).

130. FRUCHTMAN, *supra* note 13, at 59.

constitution, was obligated to consider impartially the interests of all his subjects and act for the good of the whole realm.<sup>131</sup> Second, in 1775 the Second Continental Congress was deeply divided over the next step the Americans had to take in their controversy with the mother country; the Olive Branch Petition was a sop offered by the radical delegates in Congress to the moderates and conservatives.<sup>132</sup>

Fruchtman's biography is also plagued by a confusion over just why he accepts some works as having come from Paine's pen while rejecting others. Though he often invokes A. Owen Aldridge's pioneering research into Paine's bibliography, he often does so without explaining Aldridge's reasoning or indicating why he found that reasoning persuasive. Just as often, he hints that he diverges from Aldridge's conclusions but without explaining his reasons—or Aldridge's.<sup>133</sup> As noted earlier, though we know the roster of Paine's major works, the full extent of his writings remains a focus of scholarly dispute—due in part to the lack of a comprehensive multivolume edition done to the exacting standards of modern documentary editing. Fruchtman's tendency to touch on these issues but not grapple with them is thus particularly frustrating.

Finally, Fruchtman's biography raises another problem for the reader and Paine scholar. Though Fruchtman criticizes previous scholars for tending to fasten onto a particular facet of Paine's thought as a skeleton key to unlock the whole,<sup>134</sup> ironically he too succumbs to the same temptation. Not surprisingly, he invokes as his skeleton key Paine's religious ideas. Though Paine closely read and studied the Bible all his life, and though he pondered the mysteries of religious faith and the dangers of that faith's corruption by organized religion, he also found room in his thought for a secular dimension—one that was guarded against the corrupting influences of religion and that had no room for pieties, conventional or otherwise. Unfortunately, Fruchtman's biography scants this dimension of Paine's thought.

John Keane's *Tom Paine: A Political Life*<sup>135</sup> is more elaborate, and more stylistically sophisticated and elegant than Fruchtman's biography

131. On the concept of the "patriot king," see RALPH KETCHAM, *PRESIDENTS ABOVE PARTY: THE FIRST AMERICAN PRESIDENCY, 1789-1829*, at 57-66 (1984).

132. On the political context of the Second Continental Congress, see RICHARD B. BERNSTEIN WITH KYM S. RICE, *ARE WE TO BE A NATION? THE MAKING OF THE CONSTITUTION 19-20* (1987) and sources cited therein.

133. See FRUCHTMAN, *supra* note 13, at 43-44 (authorship controversy), 450 n.8, 451 nn.24 & 26, 452 nn.33 & 38 (discussing works purported to be authored by Paine while noting Aldridge's doubt of the authorship), 501-12 (chronology of Paine's works, indicating which authorships have been challenged).

134. *See id.* at 3.

135. KEANE, *supra* note 14.

(which Keane dismisses in a lofty parenthetical aside).<sup>136</sup> Keane, professor of politics at the University of Westminster and director of the Center for the Study of Democracy, has published several general studies of modern political thought and civil society,<sup>137</sup> and was instrumental in securing translation and publication of the leading Czech dissident anthology *The Power of the Powerless*.<sup>138</sup>

Most previous biographers of Paine, daunted by the lack of evidence for the years between Paine's birth in 1737 and his departure for America in 1774, skip past the first half of his life in no more than twenty or thirty pages.<sup>139</sup> By contrast, Keane has set out to provide the most detailed account possible of Paine's birth and early years.<sup>140</sup> For the most part, he follows the strategy pursued by S. Schoenbaum, the leading modern biographer of William Shakespeare, who chose to recount the history of the context in which Shakespeare was born and grew to adulthood on the theory that the reader could discern the story of the life at the core of the detailed account of that context.<sup>141</sup> Keane's account of this period also differs substantively from that provided by Fruchtman in that Keane probes the deep social and political cleavages beneath the seemingly placid surface of Georgian England. Like many previous Paine scholars, Keane insists—and rightly so—that Paine's early years helped to shape the rest of his life and thought; moreover, Keane shows admirable industry in identifying traces and hints of Paine's activities in England.

Like Fruchtman, however, when Keane turns to America he is less satisfying. Unlike Fruchtman, Keane does not even mention the notable and disputed pamphlet *Four Letters on Interesting Subjects*; however, like Fruchtman, Keane occasionally stumbles in his analysis of Paine's progress through the thorny woods of American politics during the Revolution by relying on older sources. Furthermore, Keane, too, slights the complex relationship between Thomas Paine's writings and the British constitutional context against which he reacted with such vigor. Reading Paine's writings by reference to this context makes clear that, for example, rather than a reflexive negation of the British constitutional context for the American struggle against British tyranny, *Common Sense*

136. *Id.* at xix.

137. *See, e.g.*, JOHN KEANE, *DEMOCRACY AND CIVIL SOCIETY* (1988).

138. VĀCLAV HAVEL et al., *THE POWER OF THE POWERLESS* (John Keane ed., Palach Press 1985) (1985).

139. *See, e.g.*, ALDRIDGE, *supra* note 21, at 22-23, 28-29; FRUCHTMAN, *supra* note 13, at 15-42; HAWKE, *supra* note 20, at 7-21.

140. *See* KEANE, *supra* note 14, at 3-79.

141. *See* S. SCHOENBAUM, *WILLIAM SHAKESPEARE: A COMPACT DOCUMENTARY LIFE* (1987).

is actually a vehicle of transition *from* that constitutional controversy between the colonists and the mother country.<sup>142</sup>

Second, despite their claims to even-handedness and dispassion, both Fruchtman's and Keane's biographies often verge on the panegyric. Keane declares Paine to be "the greatest political figure of his generation"—an astonishing generalization considering the remarkable galaxy of political talent in the Revolutionary generation of Americans, though somewhat more understandable when juxtaposing Paine with the political thinkers and leaders of Britain and France. Moreover, though both biographers claim to see Paine clearly, they take his part in virtually every controversy in which he engaged even though Paine often let his own self-confidence overcome his judgment.

Finally, neither of these ambitious lives meets the goal of a balanced synthesis of the kaleidoscopic variety of Paine's life and thought. To be sure, Paine had his hand in so many ventures, undertook so many projects, and plunged into so many controversies that perhaps no scholar, however able, wide-ranging, and dispassionate, could make all the pieces fit. Nonetheless, nearly two centuries after his death, Paine still needs a biography that combines scholarly detachment with academic depth, breadth, and rigor.

## VI. THE DEFINING THEMES OF THOMAS PAINE

Thomas Paine has been, and continues to be, virtually all things to all people; champions, critics, biographers, historians, and political theorists all wrestle to establish their claims to deliver authoritative interpretations of him and his legacy. The results can be at best confusing, and often pose unresolvable contradictions. For example, some scholars describe Paine as a thinker firmly embedded in the currents of American republican thought and thus incapable of grasping the idea of social, economic, and intellectual competition as a hallmark of an evolving liberal society.<sup>143</sup> Other scholars insist that Paine was rooted with equal solidity in the emerging doctrines of liberalism, yet curiously inattentive to the threat posed by concentrations of economic power.<sup>144</sup> Still others, with far more enthusiasm than scholarship, inflate Paine's considerable roster of achievements by giving him sole or principal credit for the work of

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142. See *infra* part VI.

143. See Wilentz, *supra* note 4.

144. See, e.g., PAINE READER, *supra* note 12, at 22-28 (Foot & Kramnick criticize Paine for not recognizing threats to liberty and equality).

others—for example, for proposing the Louisiana Purchase,<sup>145</sup> for his prescience in devising social security systems, and even for writing the Declaration of Independence.<sup>146</sup>

The never-ending contest to lionize Paine beyond his deserts ironically has its roots in Paine's own efforts to present himself as a wide-ranging public intellectual to whom no field of knowledge or human endeavor was closed or alien. To be sure, Paine's confident assertions of his own originality, brilliance, and versatility are sometimes hard to take. His claims that he was a thoroughly original thinker often do not pan out; likewise, his indignant insistence that he independently developed ideas that most scholars associate with Locke, Hume, or Jefferson did not persuade his contemporaries and should not persuade us. Occasionally, his claims for himself and his works overstepped the bounds of plausibility and good taste, as in a 1791 conversation later reported by a French friend, Étienne Dumont:

[Paine] fancied that his book upon the Rights of Man ought to be substituted for every other book in the world; and he told us as roundly that, if it were in his power to annihilate every library in existence, he would do so without hesitation in order to eradicate the errors they contained and commence with Rights of Man a new era of ideas and principles. He knew all his own writings by heart, but he knew nothing else.<sup>147</sup>

Still, in turning away from the excessive claims that Paine made for himself and that his adoring admirers continue to make for him, we can go too far in debunking Paine. Whether implied or explicit, criticisms of Paine's would-be universality disregard the presence of this tendency in virtually every leading figure in the American Enlightenment.<sup>148</sup> Thus, Paine dabbled in science and technology, seeking to perfect a smokeless candle, a new form of gunpowder, and (his most famous, and most successful, nonpolitical project) a single-arch iron bridge—but other members of the Revolutionary generation toiled in the same or adjoining

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145. See, e.g., KEANE, *supra* note 14, at 473-74, 482, 490; HAWKE, *supra* note 20, at 362, 366-67, 369.

146. See, e.g., LEWIS, *supra* note 28, at 306.

147. ETIENNE DUMONT, RECOLLECTIONS OF MIRABEAU, AND OF THE FIRST TWO LEGISLATIVE ASSEMBLIES OF FRANCE 271 (1832), reprinted in KEANE, *supra* note 14, at 311.

148. See BERNSTEIN WITH RICE, *supra* note 132, at 111-48; COMMAGER, *supra* note 117.



vineyards.<sup>149</sup> For instance, Benjamin Franklin was known best as a scientist before he became a revolutionary;<sup>150</sup> George Washington struggled to devise a new plow and closely studied agricultural sciences;<sup>151</sup> and Thomas Jefferson was a noted encourager of scientific and technological progress who also sought to augment scientific knowledge on his own.<sup>152</sup> Further, Paine was a self-taught theologian—but, far from being an eccentricity unique to Paine, this pursuit was common among the intellectuals of the European and American Enlightenment. Again, in his retirement Jefferson set up shop as a Biblical scholar to purge the New Testament of priestly interpolations,<sup>153</sup> and regularly exchanged thoughts on the matter with John Adams, who (despite his frequent rages against Paine) came close at times to echoing Paine's most furious protests against priestcraft and organized religion.<sup>154</sup>

Another danger that those who seek to invoke Paine risk is to rip him from his intellectual, political, and chronological context. Thus, for example, left-wing devotees cite Paine as a proto-socialist while palliating his admiration of the Wedgwoods, Robert Morris, and other emerging leaders of the industrial revolution and the market economy.<sup>155</sup>

149. See generally I. BERNARD COHEN, *SCIENCE AND THE FOUNDING FATHERS* (1995); BROOKE HINDLE, *THE PURSUIT OF SCIENCE IN REVOLUTIONARY AMERICA, 1735-1789* (1956).

150. See I. BERNARD COHEN, *BENJAMIN FRANKLIN'S SCIENCE* (1990) (presenting a scholarly analysis of Franklin's scientific and technological work and substantiating Franklin as a leading scientist of the Age of Enlightenment).

151. See HINDLE, *supra* note 149, at 361; ROBERT F. JONES, *GEORGE WASHINGTON* 33-34, 78 (rev. ed. 1986) (discussing Washington's abiding interest in agriculture).

152. See SILVIO A. BEDINI, *THOMAS JEFFERSON: STATESMAN OF SCIENCE* (1990); JOHN C. GREENE, *AMERICAN SCIENCE IN THE AGE OF JEFFERSON* (1984); EDWIN T. MARTIN, *THOMAS JEFFERSON: SCIENTIST* (Collier Books 1961) (1952).

153. See *JEFFERSON'S EXTRACT FROM THE GOSPELS* (Dickinson W. Adams & Ruth W. Lester eds., 1983) (presenting and discussing Jefferson's attempt to compile *The Life and Morals of Jesus of Nazareth* by sifting legitimate accounts of Jesus's life and teachings from the chaff of the Gospels); CHARLES B. SANFORD, *THE RELIGIOUS LIFE OF THOMAS JEFFERSON* (1984) (presenting a general account of Jefferson's evolving thought on religious matters). The Adams-Lester volume is the second in Series Two of *THE PAPERS OF THOMAS JEFFERSON* (Charles T. Cullen ed.) (n.d.).

154. Letter from John Adams to Thomas Jefferson (Apr. 19, 1817), in 2 *THE ADAMS-JEFFERSON LETTERS* 508-10 (Lester J. Cappon ed., 1959) ("[T]wenty times, in the course of my late Reading, have I been upon the point of breaking out, 'This would be the best of all possible Worlds, if there were no religion it.!!! But in this exclamatif[on] I should have been . . . fanatical.") (second alteration in original).

155. See, e.g., Michael Foot & Isaac Kramnick, *Introduction to PAINE READER*, *supra* note 12, at 22-28.

Similarly, such right-wing politicians as former President Reagan, who praise Paine for his harsh critiques of government, brush aside with blithe unconcern his equally harsh criticisms of the Bible and organized religion in *The Age of Reason* and his demands for such government initiatives as old-age pensions and poor relief.<sup>156</sup>

The quest for a “usable Paine” is only an extreme example of the hunt for a “usable past” that characterizes Americans’ political and cultural uses of the past.<sup>157</sup> Gordon S. Wood, a distinguished historian of the American Revolution, has warned against such invocations of the past with special reference to original intent, but his warnings serve a more general purpose as well:

When confronted with [Federalists’ and Anti-Federalists’] contrasting meanings of the Constitution, historians, it seems to me, are not supposed to decide which was more “correct” or more “true.” Our task is rather to explain the reasons for these contrasting meanings and why each side should have given to the Constitution the meaning it did. There was not in 1787-1788—and today there is still not—one “correct” or “true” meaning of the Constitution. The Constitution means whatever we want it to mean. Of course, we cannot attribute any meaning we want and expect to get away with it. We have to convince others of our “true” interpretation, and if we can convince enough people that that is the “true” meaning, then so it becomes. That is how the culture changes. It may be a necessary fiction for lawyers and jurists to believe in a “correct” or “true” interpretation of the Constitution in order to carry on their business, but we historians have different obligations and aims.<sup>158</sup>

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156. See, e.g., Wilentz, *supra* note 4.

157. See generally HENRY STEELE COMMAGER, *THE SEARCH FOR A USABLE PAST AND OTHER ESSAYS* 3-27 (1967) (pioneering discussion of the concept of the “usable past” in American culture); KAMMEN, *supra* note 71 (discussing the shifting place of historical memory in American cultural history); DAVID LOWENTHAL, *THE PAST IS A FOREIGN COUNTRY* (1985) (same in both American and European history). For two especially apt discussions of specific figures from the American past, see MERRILL D. PETERSON, *THE JEFFERSON IMAGE IN THE AMERICAN MIND* (1960) and MERRILL D. PETERSON, *LINCOLN IN AMERICAN MEMORY* (1994).

158. Gordon S. Wood, *Ideology and the Origins of Liberal America*, 44 *WILLIAM & MARY Q.* 628, 632-33 (1987).

Those who seek to enlist Thomas Paine under their presentist banners should keep in mind that Paine was a man of his own time whose thought took forms and encompassed ideas that modern ideologues and polemicists would regard as, at best, oddly juxtaposed and, at worst, as antithetical as matter and antimatter.

Perhaps the most durable obstacle to a measured evaluation of Paine's historical and enduring significance is the extraordinary body of assertions, half-truths, and myths focusing on character flaws and personality defects that swiftly grew up around Paine. It is only a slight exaggeration to say that what most Americans think they know about Paine—that he was a frequent drunk, a "filthy little atheist" (in the words of Theodore Roosevelt),<sup>159</sup> and an embittered enemy to anything constructive and traditional—is wrong. Even were they all true, however, the quality of a historical actor's personality and the nature and extent of his defects and failings as a human being should not obscure the significance or quality of his political thought, writing, and actions—just as the mildness and innocence of a historical actor's personality should not excuse his advocacy of tyranny or his willingness to countenance or even to encourage persecution.<sup>160</sup>

Thomas Paine was many things, but three major themes—his help in inventing the democratic revolution, his invention of democratic political language, and his embodiment of the prototype of the political dissenter—bind his life together and define the enduring relevance of his life's work.

#### A. *Inventor of the Democratic Revolution*

Paine's most important legacy was his contribution to the invention of the democratic revolution as a means of political and social change. Paine legitimized the idea that the people could rise up in revolt against inherited forms of government and established authority, and that they could establish new government better devised to secure their safety and happiness. His example, and his writings and arguments made it possible for oppressed peoples around the world to believe that they too could overthrow their oppressors. He made it possible for people to believe that no longer should they hold themselves hostage to ancient dogmas, encrusted traditions, and tyrannical assumptions simply because things had always been that way. These points are second nature to us—but that they have achieved the status of what Justice Oliver Wendell Holmes, Jr. called

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159. See ROOSEVELT, *supra* note 3.

160. See, e.g., RICHARD MARIUS, THOMAS MORE (1984) (scholarly, even-handed account of Thomas More takes issue with the conventional interpretation of More's life and thought as a saintly defender of religious liberty and individual conscience).

"can't-helps"<sup>161</sup> is due, in large measure, to the life and work of Thomas Paine.

The idea of the democratic revolution is inextricably linked to the life and work of Thomas Paine, as evidenced by Paine's own, oft-quoted remark, "A Share in two revolutions is living to some purpose."<sup>162</sup> And yet, for all his hard work and brilliant writing, Paine could not reconcile a paradox inherent in the nature of democratic revolution. A democratic revolution has two components of equal importance, one destructive and the other constructive. First, of course, comes the overthrow of the existing order. The visual icons of this stage—familiar scenes of crowds toppling statues or waving flags or storming the Bastille—symbolize revolution in the popular mind. But these symbols obscure the constructive challenge that revolution poses: What kind of government, politics, and society should supplant the old order?

The struggle to meet the constructive challenge posed by the democratic revolution produced the great success of the American Revolution and the great tragedy of the French Revolution. It poses the enduring challenge still facing the Eastern European Revolutions of 1989 and the Russian Revolution of 1991. And, finally, it illuminates a central paradox of Thomas Paine's life.

Paine had an extraordinary capacity to learn and to respond to changing conditions. He had the ability to learn how to make a constructive revolution—to revise, improve, supplement, and even reformulate his ideas in response to changing political conditions, whether they were acted on or not. These aspects of Paine's thought are of special relevance today. The central problem of American public life is the reconciliation of two points about government and politics. Though they may not necessarily be hard to understand, they are hard work. Paine believed that ordinary citizens can and will shoulder the burdens of self-government thereby vindicating his faith in them. Today, most Americans are willing to shoulder the task of governing ourselves, but they must also recognize what Paine recognized: that governing ourselves is not easy; that there are no guarantees.

Even so, Paine lacked the political talent to secure a hearing for those ideas, to work with colleagues who should have been on his side, and to

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161. Letter from Oliver Wendell Holmes, Jr. to Harold J. Laski (Jan. 11, 1929), in *THE ESSENTIAL HOLMES* 107 (Richard A. Posner ed., 1992). "Can't helps," Holmes explained, are things that he says are true because he "can't help believing" them. *Id.*

162. Letter from Thomas Paine to George Washington (Oct. 16, 1789), in *LIBRARY OF AMERICA*, *supra* note 1, at 370, and in *KEANE*, *supra* note 14, at 283 (though Keane does not cite a source for Paine's letter). This letter does not appear in *COMPLETE WRITINGS*, *supra* note 1, *PAINE READER*, *supra* note 12, or *WORLD'S CLASSICS*, *supra* note 12.

Even so, Paine lacked the political talent to secure a hearing for those ideas, to work with colleagues who should have been on his side, and to suppress his own sense of self-importance. Telling the story of Thomas Paine thus provides a unique opportunity to tell a valuable cautionary story about the possibilities and limitations of democratic revolution, especially about the difficulty of the transition from the first, destructive stage to the second, constructive stage. In each of the democratic revolutions in which he was involved, Paine experienced a partial or total failure.

## 1. Revolutionary America

Paine's character flaws limited his intellectual and political contributions, considerable though they were, to the American Revolution. He was so angered by British tyranny and by British arguments that the policies he opposed were justified by the English constitution that he rejected whatever persuasive guidance the English constitution might provide for Americans seeking to devise new constitutional frameworks to replace the colonial system they had toppled. Indeed, John Adams wrote his notable pamphlet, *Thoughts on Government*, which profoundly influenced the American states' experiments in constitution-making, precisely to counter what he deemed the pernicious influence of Paine's prescription for government in *Common Sense*.<sup>163</sup> Moreover, Paine's sense of his own importance (inflated by the spectacular success of *Common Sense* and by his generous donation of the royalties earned by the pamphlet to Congress) and his lack of practical political skills made him a quarrelsome and truculent colleague, and an easy target for political adversaries possessing greater political skills than he did. The Deane affair of 1778-1779 dramatically demonstrated Paine's failure to grasp, and his indifference to, political realities within the Continental Congress and the larger sphere of American public life.

## 2. Great Britain

Paine's endeavor to foment a democratic revolution in Great Britain was doomed from the start—albeit through no fault of his own. The

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163. Richard B. Bernstein, *John Adams's Thoughts on Government, 1776*, in *ROOTS OF THE REPUBLIC: AMERICAN FOUNDING DOCUMENTS INTERPRETED* 118, 119-37 (especially 124) (Stephen L. Schechter et al. eds., 1990); see also CLAEYS, *supra* note 17, at 52-53, 61 n.32; HAWKE, *supra* note 20, at 48-51. Adams's own flaws likewise limited his ability to acknowledge the extraordinary achievement of *Common Sense*. See HAWKE, *supra* note 20, at 51 (“[Adams] refused, then or ever, to accept a greater achievement—that *Common Sense* had elevated a family quarrel, a ‘kind of lawsuit,’ into ‘the cause of all mankind’”).

British government would not permit in Britain the conditions of liberty of the press that fostered Paine's ideas and arguments in America, and used the full weight of its authority to choke off the democratic revolutionary movement and drive Paine into exile.

### 3. France

In the case of the French Revolution, Paine's failure was the result of a combination of larger political conditions, over which he had no control, and his own failings and idealism. Unable to speak French, Paine was all but cut off from direct contact with the people whose cause he had hoped to aid. He sided with moderate revolutionaries, the Girondins, whose cause was already faltering under polemical and other assaults by the radical Jacobin faction. His humanity, his sense of indebtedness to Louis XVI for the king's aid to the American Revolution, and his concern about "the tumultuous misconduct with which the internal affairs of the present Revolution are conducted,"<sup>164</sup> played into the Jacobins' hands. As previously noted, soon after they seized power in late 1793, the Jacobins lost no time in arresting and jailing Paine.

Paine's critics cite his experiences in France as proof of his political naivety—a fatal flaw, they maintain, for anyone claiming to be a pioneering political thinker. After all, they continue, it was impossible to conduct a democratic revolution in France that would emulate the success and stability of the American Revolution. Further, they contend his hostility to religion and authority inevitably led to the excesses of the French Revolution. Indeed, by this argument, he not only should not have complained of his treatment; his ideas were in large part the reason for his own fate. Paine never accepted this argument. He retained undiluted his confidence in the ability of common people to understand politics and to apply this understanding to govern themselves.

### 4. Jeffersonian America

Finally, Paine's unhappy last years in the United States—a nation that one might think fulfilled every one of Paine's confident prophecies about an independent America—evidenced a man so bound up with the crises of the past that he could not function in the present. Paine's bitter attacks on Tories and on those who would oppose American independence—enemies who had faded into oblivion or political irrelevance—bore little relevance to an America in its third decade of independence. His every appeal to the glorious days of the Revolution and his services to America had little

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164. Letter from Thomas Paine to George J. Danton (May 6, 1793), in 2 COMPLETE WRITINGS, *supra* note 1, at 1335-38 (quoted at 1335).

significance for a rising generation of Americans who had never known anything but an independent United States. Nor could Paine perceive the changed climate of American public and religious life in the early nineteenth century. His deist views, propounded in *The Age of Reason*, fit badly with the growing religiosity of the American people during the Second Great Awakening, and his 1796 attack on George Washington, no matter how justified it appeared in his own eyes, seemed to scandalized Americans to be an embittered and incomprehensible swipe at the greatest American who ever lived.

Despite his failings, misfortunes, and shoddy treatment at his contemporaries' hands, Paine never lost faith in his ideas' validity or power. Not only did he retain his belief in the idea of the democratic revolution—his faith, particularly as it pertained to the American Revolution, endowed him with extraordinary prescience about the future course of American history, and about what the Americans should do to preserve the fruits of their revolution. From his first Revolutionary writings to the last years of his life, Paine tried to instruct the American people—to urge them to create a unified nation with a vigorous national government at its core; to purge from the national soul the curse of chattel slavery which otherwise would destroy the fledgling republic's worthiness to be the haven of human liberty; and to acquire the Louisiana Territory so that the United States could at the same time profit from French improvidence and anchor itself as an expanding commonwealth of liberty. That Paine's contemporaries chose to ignore many of his most foresighted suggestions, or that they arrived at the same ideas by an independent course does not diminish his extraordinary insight into the promise of America. Rather, it is testimony to Paine's freedom from parochial interests and local attachments—qualities rare among the Revolutionary generation of Americans.

Moreover, because Paine was a key inventor and proponent of the democratic revolution as a means of political and social change, the substance of his ideas and arguments, and his example as a common man who was both willing and able to help lead a democratic revolution, make him vitally pertinent to the modern age of democratic revolution—more so now than, perhaps, he has been at any time since his death. As Michael Foot notes:

[Paine] said, "Here, as long as people are denied elementary rights, then the first thing we've got to do is to see whether those elementary rights can be established." And that's why he retains his relevance today so much—because there are so many parts of the world where those elementary rights are not established . . . [I]t was the revolutionary background of his own time that enabled him to say things that were looking to

retains a kind of relevance, on left and right if you like, more than most of the others in that field.<sup>165</sup>

### B. *Inventor of Democratic Political Language*

Paine advanced the theory and practice of the democratic revolution not by leading soldiers into battle, nor by delivering fiery speeches to emotional crowds, but by pushing a pen across a page. He is often hailed as a great political writer, but he was something far more important—he was the first great *democratic* political writer. Just as significant as any substantive argument Paine made was the way he made that argument.

Paine revolutionized the language of politics. He transformed it from a medium restricted to the intellectual elite—and thus to the social and political elite—to a means that any intelligent person could use. First, Paine deliberately captured the vigor and rhythms of popular speech, using vivid similes and metaphors within the experience of any thinking person. Second, throughout his writing Paine drew on the one book that practically every potential reader knew firsthand: the King James Bible. Having studied the Bible with great care during his childhood and youth, Paine had committed much of it to memory. Like Abraham Lincoln, Paine deftly used Biblical rhythms and metaphors with telling political and rhetorical effect.<sup>166</sup> Third, Paine purged political language of both its reflexive invocation of classical models, precedents, and language, and of its equally instinctive resort to legal and constitutional authority thus setting a precedent for the remarkable democratization of political language in nineteenth century America.<sup>167</sup> Where Burke scattered allusions and invocations of authority throughout his writings against the French Revolution as a farmer would sow wheat, Paine not only abjured such habits but mocked them:

165. Filmed Interview with Rt. Hon. Michael Foot, M.P. (retired), (June 29, 1992) (this interview was filmed in London, England with Ron Blumer for the Thomas Paine Film Project (transcript on file with the *New York Law School Law Review*) [hereinafter Foot Interview]).

166. On the influence of the Bible on Paine's writing, see FRUCHTMAN, *supra* note 15, at 4. On Lincoln's use of the Bible, see GARRY WILLS, *LINCOLN AT GETTYSBURG: THE WORDS THAT RESHAPED AMERICA 186-89* (1992), and GARRY WILLS, *UNDER GOD: RELIGION AND AMERICAN POLITICS 207-21* (1990). On the centrality of the Bible to an earlier century of English political thought and action, see generally HILL, *supra* note 125 and the discussion *supra* note 125.

167. See generally KENNETH CMEL, *DEMOCRATIC ELOQUENCE: THE FIGHT OVER POPULAR SPEECH IN NINETEENTH-CENTURY AMERICA* (1990).



Principles must stand on their own merits, and if they are good they certainly will. To put them under the shelter of other men's authority, as Mr. Burke has done, serves to bring them into suspicion. Mr. Burke is not very fond of dividing his honors, but in this case he is artfully dividing the disgrace.<sup>168</sup>

In the process, he converted politics from the closed sphere of a social and political elite to the rightful, common concern of all men and women.

We see Paine's democratization of political language most clearly when we look at how the publication of *Common Sense* transformed the nature of the argument over the American Revolution, both in the general sphere of political argument and in the particular points at issue in the argument between the colonists and the mother country.<sup>169</sup>

### 1. The General Sphere of Political Argument

Before *Common Sense*, the language of politics was the province of educated gentlemen. Everything about that language was designed to admit to the conversation only those men who had the education and skills of reasoning to understand and take part in it—and that meant only gentlemen with the proper breeding and connections. Michael Foot comments, "Now, that was what raised Paine's fury more than any other single thing—in my opinion. And he said, 'No, no, politics is something that everybody can understand. They're simple questions.'"<sup>170</sup> The late E. P. Thompson, the eminent historian of the English working class, agreed: "The very idea of an ordinary person presuming to take opinions in high political questions was ludicrous and ruled him out of court straight away. And Paine wasn't about to be ruled out of court. . . ."<sup>171</sup>

Paine changed all of that with one pamphlet (though signs of it appear in his writings preceding *Common Sense*). By discussing issues of high politics in direct popular speech, by using homely analogies and clear metaphors, Paine put politics—the play of ideas and issues—directly into

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168. THOMAS PAINE, *RIGHTS OF MAN, PART THE SECOND* (1792), reprinted in *LIBRARY OF AMERICA*, *supra* note 1, at 543 (with "honors" spelled as "honours"), in 1 *COMPLETE WRITINGS*, *supra* note 1, at 349, and in *WORLD'S CLASSICS*, *supra* note 12, at 204 (with "honors" spelled as "honours").

169. See *FACES OF REVOLUTION*, *supra* note 110, at 67-74.

170. Foot Interview, *supra* note 165.

171. Filmed Interview with E.P. Thompson, (June 30, 1992) (this interview was filmed in Wick Episcopi, Cotswolds with Ron Blumer for the Thomas Paine Film Project (transcript on file with the *New York Law School Law Review*)) [hereinafter Thompson Interview].

the hands of his readers, of whatever social or educational background. By writing about politics in a way that people could understand, he made the vital point that people could take part in governing their society—that they need not, and should not, defer to those who held power. As Tony Benn argues:

There are three ways in which the governors can control the governed or approach the governed. One is by mystifying everything. 'If you knew what we knew, you wouldn't ask such a silly question.' And that mystification is very popular today. We're a highly technical society. If you haven't got a Ph.D. in economics, you can't ask why you're unemployed. The second way is oversimplifying it. That's the way of the demagogue . . . . But the real way to do it is to clarify. And what Tom Paine did was to clarify the issues. He explained them. He was a teacher. He wasn't just an economic teacher who said it and did nothing about it. He was a teacher who also expressed solidarity with the American revolutionaries, the French revolutionaries, the British working class, and the Irish and so on. So he clarified and by clarifying he illuminated and gave people confidence in themselves. And that's what's so frightening about it, because any government wants people to be subservient, to take what they hear . . . . And to clarify the choices so that people feel that they understand what the real essence of the choice is and then take it for themselves—that's what makes it frightening.<sup>172</sup>

## 2. The Argument Between the Colonists and the Mother Country

Before *Common Sense*, the American colonists' quarrel with Great Britain was a tough-minded, focused dispute over the nature and meaning of the English constitution, and over the rights and responsibilities of the colonists of British North America in the British constitutional system. The quarrel was carried out in the formal language of legal and constitutional disputation, and almost entirely by lawyers and politicians speaking for their constituents. Even when disputants addressed their

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172. Filmed Interview with Rt. Hon. Tony Benn, M.P., (June 30, 1992) (this interview was filmed in London, England with Ron Blumer for the Thomas Paine Film Project (transcript on file with the *New York Law School Law Review*)) [hereinafter Benn Interview].

arguments to the people, they preserved the terminology and style of argument that they used with one another.<sup>173</sup>

The constitutional argument imposed substantive as well as rhetorical limits on the Americans. Even after the battles of Lexington, Concord, and Bunker Hill few Americans openly talked about independence, for a variety of reasons. The first was heritage and pride. For generations, the colonists had boasted that they were free people under the protection of the freest form of government on earth, the unwritten English constitution—the matrix within which, as we have seen, the American argument with Britain had unfolded for more than a decade. Though Americans had concluded that Britain was betraying its constitutional principles, they could not find either the means to persuade the British on this point or a way out of the argument; the English constitution had become a trap.<sup>174</sup> Second, practicalities put a brake on American thinking about independence—no colonies in history had won independence from their mother country, and Britain was the greatest military and naval power the world had yet seen. Finally, self-interest among the colonies' governing elite deterred the colonies from independence, because these Americans deemed British tyranny a lesser evil than the chance of a democratic upheaval in America. Thus, as Paine reasoned and wrote, Americans asked one another whether they could risk a revolution, whether it was justified, and whether it was legitimate.

Paine changed all that in a matter of weeks. *Common Sense* rejected the entire idea of using the English constitution as the context for determining the fate of America. Like any good advocate, Paine identified his goal and wrote with it always in view, choosing a starting point and structuring his argument so that his readers would reach the goal he had in mind. Rather than rehearsing the tired choreography of the Americans' constitutional dispute with Britain, therefore, Paine began *Common Sense* with a memorable attack on kings. Two reasons underlay his choice of monarchy as his first target. First, the Crown was the last remaining emotional and political link between the Americans and the mother country; sever that link, and Americans would be ready for independence. Second, in the Americans' understanding of the English constitution, the Crown was that constitution's focus; puncture the Crown's claims to

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173. See generally JOHN P. REID, *CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION* (1993) (detailing the anatomization of the arguments between the colonists and the mother country).

174. See John P. Reid, *Another Origin of Judicial Review: The Constitutional Crisis of 1776 and the Need for a Dernier Judge*, 64 N.Y.U. L. REV. 963, 963-89 (1989) (analyzing the problems posed for the Americans' constitutional argument with Britain because of the lack of a mutually acceptable final authority who could deliver an authoritative decision of the issues); REID, *supra* note 173, at 1-4.

constitutional legitimacy and the English constitution's legitimacy would collapse, in turn leaving Americans no choice but independence. Thus, Paine bashed away at monarchy's pretensions and corruption. For example, he denounced the monarchic custom of rewarding supporters of the King's government with offices, titles, and preferments:

That the crown is the overbearing part in the English constitution needs not be mentioned, and that it derives its whole consequence merely from being the giver of places and pensions is self-evident, wherefore, though we have been wise enough to shut and lock a door against absolute monarchy, we at the same time have been foolish enough to place the crown in possession of the key.<sup>175</sup>

Note, however, that Paine did not simply flail away at a constitutional context that he deemed tired and overtaken by events; rather, Paine attacked from a position of strength and with shrewd precision, knowing his target—the constitutional ideology of Anglo-Americans—well enough to know precisely where the killing blow must fall.

Having disintegrated the monarchic linchpin of the English constitution, Paine then took independence—an idea previously unmentionable in the argument with Britain—and built a whole new context for the argument on that basis. Paine's structuring and phrasing of his argument helped to support his later position that any people, not just one (like the British) with a tradition and heritage of constitutional liberty (real or pretended) could debate and decide how they were to govern themselves and act on their choice.

Note, further, that Paine did not simply spurn the British constitution and start from scratch. Instead, he used the force of its principles against itself, drawing freely on such ancient rhetorical devices as the juxtaposition of Anglo-Saxon liberty against Norman tyranny. As noted earlier, therefore, *Common Sense* bears a more complex relationship to the decade-long argument between the Americans and the British than previously recognized. Like the Declaration of Independence,<sup>176</sup> which

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175. THOMAS PAINE, *COMMON SENSE* (1776), reprinted in 1 *COMPLETE WRITINGS*, *supra* note 1, at 8, in *LIBRARY OF AMERICA*, *supra* note 1, at 11, in *WORLD'S CLASSICS*, *supra* note 12, at 10, and in *PAINE READER*, *supra* note 12, at 71.

176. On the Declaration, see the challenging essay by John P. Reid, *The Irrelevance of the Declaration*, in *LAW IN THE AMERICAN REVOLUTION AND THE REVOLUTION IN THE LAW* 46-89 (Hendrik Hartog ed., 1981) (criticizing scholarly overemphasis of the Declaration's preamble and pointing out the significance of the body of the Declaration as a final American riposte to British constitutional arguments).

Thomas Jefferson drafted and the Second Continental Congress promulgated six months after the first appearance of *Common Sense*, Paine's pamphlet is Janus-faced—it looks backward, delivering a Parthian shot to close the constitutional argument with Britain, and forward to the promise and challenge of American independence, envisioning the new constitutional principles and arrangements that free Americans would devise to replace their former forms of government.

Paine used the same plain style of writing about politics for the rest of his life—whether celebrating the American Revolution, or defending the French Revolution, or calling for a British revolution, or launching an attack on organized religion's tyranny over the human mind, or expounding the excellences of his design for an iron bridge. E. P. Thompson noted that, like *Common Sense*, *Rights of Man* also rejected:

the discourse of the eighteenth century [that] was framed entirely within constitutional premises . . . . [Paine] argued his case purely in terms of rational need and a rational advantage for society and dismissed contemptuously . . . privilege of all kinds in a way which not only seemed blasphemous but was, in the sense that it actually was illegal.<sup>177</sup>

Yet again, however, in writing *Rights of Man*, Paine drew on his knowledge of the British constitution to calibrate his arguments against that body of ideas and principles for maximum destructive effect.

### C. Dissenter

At bottom, Paine was the prototypical dissenter—and this characteristic molded all his other political endeavors and achievements. He defined his political and intellectual identity in opposition to the prevailing political, social, and religious order and made it his goal to articulate a case against that prevailing order that also embodied his vision of an alternative, better order. He reputedly encapsulated this vision in the remark, "Where liberty is not, there is my country."

Paine did not start his career with the goal of becoming a dissident. After all, becoming a dissident is not usually a career objective. Rather, it is something that one is impelled to do by inner intellectual honesty, profound revulsion against existing injustices, and an almost visceral compulsion to oppose truth over error, liberty to tyranny, freedom of thought to prescribed canons, heterodoxy to orthodoxy. These themes are constants throughout Paine's writings, animating not only his vigorous,

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177. Thompson Interview, *supra* note 171.

eloquent, and at times ferocious denunciations of existing society but also his evolving vision of what a just and equitable political and social order would look like.

Tony Benn summarized the essential lesson that he derived from long study of Paine's questioning of authority:

If you meet a powerful person, ask [him or her] five questions: What power have you got? Where did you get it from? In whose interest do you exercise it? To whom are you accountable? And how can we get rid of you? Now that last question . . . is the democratic question. And Paine asked it of kings and emperors and rulers. And of course they didn't like it.<sup>178</sup>

Ruminating on the various reasons for Paine's fate at the hands of his detractors, Benn continued:

I've always thought democracy was the really controversial thing . . . . [W]hen you challenge power, then they turn on you and they crucify you and they destroy you and they harass you and Paine was a victim of that. And that's why he's so important today when power is so widely abused . . . .<sup>179</sup>

Political dissent achieves intellectual greatness and political effectiveness when it goes beyond mere denunciation to offer a constructive prescription for government, politics, and society.<sup>180</sup> Paine's great writings of political dissent meet that test. He even included in his most self-conscious work of political demolition—*Common Sense*—his prescription for the forms of government that Americans should adopt, at state and national levels, to replace the authority of Great Britain. In *Public Good*, he pleaded for American constitutional reform. His classic defense of the French Revolution, *Rights of Man*, and his last major pamphlet, *Agrarian Justice*, also included his prescription for democratic government that should follow democratic revolution as well as his indictment of the corrupted British constitution that made such reforms necessary. And his great attack on "revealed religion"—*The Age of Reason*—taught the kind of religion that Paine believed truly embodied sincere religious belief. E. P. Thompson noted that Paine had a secular as well as a religious reason for writing this explosive book:

178. Benn Interview, *supra* note 172.

179. *Id.*

180. *See supra* note 4.

Paine's claim for human rights . . . was also for the demystification of government. And that's one reason that he wrote the *Age of Reason*: For Paine and for others of his generation, priestcraft and kingcraft went together. The priestcraft was seen as a means of upholding the mysteries which were upholding monarchy as well, and so he thought the attainment of human rights required the demystification of the vocabulary and the institutions of the *ancien régime*—the Old Regime—in England.<sup>181</sup>

As much as the power of his dissent from the existing order, his pursuit of that evolving vision of what government, politics, and society should be embodies the essence of his role as a dissident.

Dissidents are often stigmatized as difficult and obnoxious, and their opponents seize upon whatever real or perceived defects they might have in order to destroy the value of their arguments. So it was with Paine—except that one of the most effective weapons his opponents turned against him came from his own pen. Besides his opposition to political tyranny and superstition, Paine was a dissident against the tyranny and superstition that, he maintained, were inevitable consequences of organized religion. A deeply religious man and one of the first and foremost Deists, he launched, in his book *The Age of Reason*, a ferocious assault on the conventional view that the Bible was the revealed and unerring word of God. Paine's aim was to liberate human beings' minds from the tyranny of organized religion, but *The Age of Reason* was literally a Godsend to his foes who used it (then and ever afterward) to make the case that he was an immoral atheist who wanted to destroy all religion and all sincerely religious people.<sup>182</sup> Paine thus illustrates George Bernard Shaw's sardonic observation that, because reasonable people accept the world as it is and unreasonable people do not, all change therefore depends on unreasonable people.

## VII. CONCLUSION—THE MARK OF PAINE

In Paine's own time, even his adversaries conceded his importance. For example, John Adams admired Paine's native genius and appreciated his gifts as a political pamphleteer—yet, Paine's evolving ideas about

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181. Thompson Interview, *supra* note 171.

182. Although he denounced the blasphemy prosecutions of Paine and his supporters, the constitutional historian Leonard W. Levy also dismissed Paine's religious iconoclasm as intellectually derivative, sneering, and shot through with tasteless, heavy-handed humor. LEONARD W. LEVY, *BLASPHEMY: VERBAL OFFENSE AGAINST THE SACRED, FROM MOSES TO SALMAN RUSHDIE* 330-38 (1993).

government, politics, and society filled Adams with increasing alarm and disgust. In 1805, embittered by his own eclipse in the public mind, he lashed out at Paine. Adams began a letter to his friend Benjamin Waterhouse by rejecting Paine's term for the age of the democratic revolution as the Age of Reason:

I am willing you should call this the Age of Frivolity as you do, and would not object if you had named it the Age of Folly, Vice, Frenzy, Brutality, Daemons, Buonaparte, Tom Paine, or the Age of the Burning Brand from the Bottomless Pit, or anything but the Age of Reason.<sup>183</sup>

Having warmed up his anger and invective, Adams turned the full battery of his scorn on Paine:

I know not whether any Man in the World has had more influence on its inhabitants or affairs for the last thirty years than Tom Paine. There can be no severer Satyr on the Age. For such a mongrel between Pigg and Puppy, begotten by a wild Boar on a Bitch Wolf, never before in any Age of the World was suffered by the Poltroonery of mankind, to run through such a career of mischief. Call it then the Age of Paine.<sup>184</sup>

Though we may well live in another Age of Paine,<sup>185</sup> few besides Paine's admirers would concede the point. Michael Foot sums up the paradoxical forces that have shaped the legacy of Thomas Paine:

In all history there is no more curious story than that of Paine's blaze to fame, his pitiable fall, and then the slow but assured recovery of his reputation. Strangely, that recovery itself is due to the persistent potency of his pen. It is Paine's own writings that have made his name survive while the forgotten historians were busy expurgating it from the records. Almost every

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183. Letter from John Adams to Benjamin Waterhouse (Oct. 29, 1805), in HAWKE, *supra* note 20, at 7. Scholars usually cite Adams's comment as a tribute to Paine, though they acknowledge that Adams was more sardonic than admiring.

184. *Id.*

185. *See supra* notes 6-10 and accompanying text.



democratic state's moral writer has found his way back to the source books.<sup>186</sup>

Although Paine was one of the great figures in the history of the modern world, today he is obscured from view—by the vilification of his critics and by the prevailing ignorance of his thought and work. And yet, Thomas Paine's legacy still is directly relevant to the challenges facing peoples all over the world who seek to secure or to recover liberty and self-government for themselves and their posterity. At the moment when any people take government and their destiny as a free people into their own hands, they confront the enduring democratic challenge. Paine gave his contemporaries the courage to meet that challenge. In many ways, he also gave them the intellectual tools to do that—one of the most powerful being the democratization of political language. Paine provided us with the intellectual equipment to assume and exercise the responsibilities of self-government and the emotional equipment—the sense of self-confidence—to enable us to seize the opportunity presented by that revolutionary moment.

We began with a paradox that Thomas Paine, whose life and work have helped to shape and continue to shape the modern world, has never received his full due as a leading thinker or historical actor until our own time. We conclude with another paradox—this one being the work of one of Paine's contemporaries and supporters. In 1798, the British government, jittery at the prospect that the revolutionary French authorities might assist the people of Ireland to win their independence,<sup>187</sup> jailed the radical Irish patriot Arthur O'Connell. On his way to prison, O'Connell distributed a handbill that contained a poem seemingly denouncing Paine and praising monarchy:

The pomp of courts and pride of kings,  
I prize above all earthly things;  
I love my country; the king,  
Above all men his praises I sing:  
The royal banners are displayed,  
And may success the standard aid.

I fain would banish far from hence,  
The Rights of Man and Common Sense;  
Confusion to his odious reign,  
That foe to princes, Thomas Paine!

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186. Foot Interview, *supra* note 165.

187. See generally THOMAS PAKENHEIM, *THE YEAR OF LIBERTY: THE HISTORY OF THE GREAT IRISH REBELLION OF 1798* (1969).

Defeat and ruin seize the cause  
Of France, its liberties, and laws!<sup>188</sup>

The trick of O'Connell's poem is that it has another reading, one yielding a meaning diametrically opposed to its ostensible one. If the reader reads the first line of the first stanza, then the first line of the second stanza, and continues to alternate lines, the poem's message turns out to be a hymn of praise to Thomas Paine and a defiant rejection of "[t]he pomp of courts and pride of kings."<sup>189</sup>

As Paine knew and taught, there is no royal or aristocratic road to wisdom. The only keys to knowledge are the will and the wit to acquire it: "Ignorance is of a peculiar nature; once dispelled, it is impossible to re-establish it. It is not originally a thing of itself, but is only the absence of knowledge; and though man may be *kept* ignorant, he cannot be *made* ignorant."<sup>190</sup>

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188. FRUCHTMAN, *supra* note 13, at 10-11.

189. *Id.* at 11. As rearranged, the poem reads as follows (with slight emendation of punctuation to focus the meaning):

The pomp of courts and pride of kings,  
I fain would banish far from hence;  
I prize above all earthly things[]  
The Rights of Man and Common Sense;  
I love my country; the king,  
Confusion to his odious reign[.]

Above all men his praises I sing:  
that foe to princes, Thomas Paine!  
The royal banners are displayed,  
Defeat and ruin seize the cause[.]  
And may success the standard aid[]  
Of France, its liberties and laws!

190. THOMAS PAINE, RIGHTS OF MAN, PART THE FIRST (1791), *reprinted in* LIBRARY OF AMERICA, *supra* note 1, at 513, 1 COMPLETE WRITINGS, *supra* note 1, at 320, *in* PAINE READER, *supra* note 12, at 244, *and in* WORLD'S CLASSICS, *supra* note 2, at 204.

