

Thomas Paine's "Agrarian Justice" and the Origins of Social Insurance  
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Go to the history section of the U.S. Social Security Administration's website and you will find an extraordinary document: Thomas Paine's "Agrarian Justice," written in 1795-6.<sup>1</sup> In barely a dozen pages, Paine proposed the first realistic plan to abolish poverty on a nationwide scale. It outlined the core economic institutions required to make this happen: a universal social insurance system comprising old-age pensions and disability support, and universal stakeholder grants for young adults, funded by a 10% inheritance tax focused on land. Paine demonstrated, with calculations based on census, living expense, and property data, that his social insurance/stakeholder plan could end most poverty in England.

"Agrarian Justice" made three gigantic contributions to political theory--and political practice. First, its institutional scheme, centered on universal social insurance, has been adopted by virtually all developed countries as the core of their social policies. The central idea behind stakeholder grants--to afford young people the capital they need to be productive enough to avoid poverty--has also been adopted by all developed economies. Under modern economic conditions, its form has been altered to provide human rather than financial capital, via universal publicly funded education, with expenditures concentrated on children more than young adults. Together these two institutions are the primary means by which states today empower their members to rise above poverty, and protect them against market risks and other misfortunes.

Second, "Agrarian Justice" is a milestone in thinking about distributive justice. For the first time, the existence of large-scale poverty was theorized as an *injustice*. Poverty was therefore neither deserved nor inevitable. It had to be abolished and prevented, not merely relieved, and the means chosen must secure the dignity of its recipients, not stigmatize them as dependent and incompetent. Moreover, Paine conceived of large-scale poverty as a *systematic* injustice. Until Paine, justice was primarily conceived in a transactional sense--in terms of duties to render particular things to particular people, and to avoid force, fraud, theft, and other wrongs in person-to-person interactions. Paine's essay made a major advance toward the modern conception of justice as a virtue of entire *systems* of property, to be assessed in terms of its consequences for everyone's interests.

Third, "Agrarian Justice" constitutes a robust defense of a market-based, private property system against communist and socialist challenges. This may seem surprising, given the vituperative accusations of "socialism!" and even "communism!" aimed at recent American health insurance reforms designed to move toward universal coverage. A pall has been cast over social insurance by the suspicion that it is a giant step down a slippery slope to totalitarianism. The actual history of social insurance tells a dramatically different story, which helpfully illuminates core features of the system we have wrought.

Thomas Paine is best known as the author of "Common Sense," the best-selling pamphlet that rallied the American colonists behind the cause of independence. He defended the French Revolution in *The Rights of Man*, responding to Edmund Burke's attack in *Reflections on the Revolution in France*. He was an elected delegate to the French National Convention. Paine addressed "Agrarian Justice" to the English and the French. To the French, he offered his

program as an alternative to Gracchus Babeuf's communist plot; to the English, as an alternative to the Poor Law. Paine's program was a "third way" to address poverty, designed to unite the ideals of liberty and equality. To understand its significance, we should examine the alternatives he opposed.

### Babeuf's Revolutionary Communism

François-Noël Babeuf was a radical political agitator during the French Revolution. He called himself "Gracchus" after the Gracchi brothers, 2nd century BCE Roman tribunes who advocated breaking up the large estates into small farms to be distributed to landless, unemployed plebians. His moniker misled some followers. In 1796, M. V. (probably Marc Vadier, one of the leaders of the Reign of Terror) wrote a letter to Babeuf questioning the feasibility and permanence of a program to redistribute land.<sup>2</sup> Babeuf replied that he aimed not to redistribute private property, but to abolish it altogether. He would have the French Republic confiscate all wealth, which would henceforth be held in common.<sup>3</sup> As he would explain in his self-defense before the High Court of Vendôme, where he was put on trial for conspiring to overthrow the French government, everyone would work at a job assigned to them and deposit their production in a common store. Money and commerce would be abolished. The state would distribute equal shares of the national product to all, taking care to ensure that the stores of less productive communes would be equalized by contributions from the more productive communes.<sup>4</sup> This is what his co-conspirator Sylvain Maréchal meant when he declared that "The earth belongs to no one . . . the fruits belong to all" in the *Manifesto of Equals*.<sup>5</sup> Fifty years before *The Communist Manifesto*, Babeuf had devised the first program of revolutionary state communism.

Babeuf's program thus went far beyond mere property redistribution. Confiscation and redistribution of certain large estates had been a staple of Northern European public policy since the Reformation, when Protestant states confiscated the holdings of the Roman Catholic Church. Revolutionary France had followed suit in 1789. Had Babeuf merely planned to redistribute confiscated land equally to smallholders, this would not have been inimical to private property or capitalism: such a policy became the cornerstone of U.S. agricultural policy under the Homestead Acts, a mere 66 years after Babeuf's conspiracy, setting the stage for America's capitalist development, as land redistribution would later serve for Japan, South Korea, and Taiwan after WWII.

What made Babeuf's program shocking was the comprehensiveness of confiscation, and the *refusal* to redistribute--his insistence on holding property in common under permanent, centralized state direction. Although the Conspiracy of Equals sometimes cast their ideal as a realization of "the great social family,"<sup>6</sup> their real model of society was the army. They took the success of France's vast Revolutionary army to prove the feasibility of comprehensive state administration of an equal provision for all.<sup>7</sup> The state would "establish a simple administration of needs, which, keeping a record of all individuals and all the things that are available to them, will distribute these available goods with the most scrupulous equality."<sup>8</sup> It would also direct production, determining what was made where and who would perform what jobs. All the able-bodied would be required to work. The unemployed crowding the cities would be sent back to the countryside to work.<sup>9</sup>

So far the plan amounted to a system of complete distributive equality: all would perform an equal share of equally burdensome work, and receive an equal share of the product. Sometimes, the Conspiracy of Equals claimed that the abolition of private property and imposition of communism would be sufficient to end the greed and ambition that motivate the quest for unequal riches and dominion over others.<sup>10</sup> Other times they recognized that the state would have to control people's thoughts and expression to extirpate the desire for superiority. They endorsed the Committee of Public Safety's suspension of the democratic Constitution of 1793 and the Terror, for virtue had to be inculcated in the people before the Constitution could be implemented.<sup>11</sup> The Equals would similarly not institute a democratic assembly immediately, but first rule autocratically to create a republic of virtue.<sup>12</sup> They were confident that the people would consent "to become as pliable wax" to have the character of equality "engraven" upon them.<sup>13</sup> The state would end paternal authority over the family by sending children to live in common and be educated in sex-segregated state boarding schools. Great cities would be broken up into villages to restore the face-to-face community under which people could no longer hide vice under anonymity, but be subject to public censure for straying from communal norms. All writing opposed to equality would be censored; the people allowed to wear only simple clothing; refinement of the arts and sciences, blamed for promoting vanity, would be banned.<sup>14</sup> "Nothing would escape the searching mind of the legislator . . . nothing should run counter to the principle of equality."<sup>15</sup>

The Conspiracy of Equals offered three arguments for their program: the social contract, desert, and a pure principle of outcome equality. The social contract argument began in orthodox fashion. In the state of nature, before humans agree to live under common laws and conventions, the earth is held in common by all. Everyone is equally entitled to take what they need from the natural bounty of the earth. People join a state under common laws to advance their happiness. This regime can be justified only by unanimous consent, which will be granted only if everyone is better off under it than in the state of nature. Since no one suffered poverty in the state of nature, no one would consent to a legal regime that produces poverty. The institution of private property does produce poverty, however. Once people can alienate their right of access to the earth, and others pass this exclusive right on to their heirs, accidents and misfortunes will force some to sell to others, property in land will be concentrated, and society will be divided into one class of land owners, and another that owns only their labor. The first, enjoying a monopoly on land, will impose draconian terms of access on the laborers, and establish a system in which they live idly off the toil of others, while the workers are impoverished, although they produce everything. Since private property is the cause of their misery, it is unjustified. The communist revolution would commit no crime in confiscating all land, since it was stolen from humanity in the first place and is now only being returned to the common use to which all have an inalienable right.<sup>16</sup>

The argument from desert denied a battery of desert-based justifications for inequality. No one inherently deserves more than anyone else, because all human beings have the same basic needs and capacities.<sup>17</sup> This justifies a "natural equal right to enjoyment of all the goods of life."<sup>18</sup> While in rare cases people become poor due to their own vices, vice itself is due to corrupt social institutions.<sup>19</sup> In any event, individual vice could never explain the *institutionalized, systematic* poverty in societies with private property, since this dooms innocent

people who own only their labor to a lifetime of desperate toil and subservience to the idle rich. Nor do the poor deserve the fact that they own only their own labor, since this is due to an accident of birth--of having parents who have no property to bequest to them.<sup>20</sup> No one can claim ownership of the land or other natural resources by desert, because no one made these things.

Couldn't a worker claim higher pay because of his superior talents and industry? If the claim is based on the burdens of exercising more intelligence and mental strain at work, it is ridiculous: intellectual work does not make one any hungrier than physical work; need alone justifies compensation. Unequal intellectual talent itself is mainly a product of an unjust distribution of educational opportunities; there is no intrinsic inequality in intelligence between rich and poor. Furthermore, desert-based claims to higher compensation based on the superiority of mental labor rest on arbitrary opinion. If you asked the manual laborers, they would say physical labor is more valuable. Finally, valuable intellectual goods always build upon the accumulated knowledge of society, which is part of the commons. Since inventions in the arts and sciences draw from the intellectual commons built by society, they should be returned to the commons for everyone's use.<sup>21</sup>

Suppose one grants all these claims. Nevertheless, if one person, through sheer hard work, produces as much as four others performing identical labor, would he not deserve four times the pay? At this point, where a claim to unequal desert is virtually impossible to deny, Babeuf resorted to a pure egalitarian claim. Such people disturb the social equilibrium in claiming more than others. "Even a man who shows that he can do the work of four, and who consequently demands the wages of four, will still be an enemy of society . . . . we should curb a man of this type and drive him out as if he had the plague."<sup>22</sup> Alternatively, society should "reduce him to a state whereby he can do the work of only one man, so that he will be able to demand the recompense of only one man."<sup>23</sup>

This is the only case I know in the history of egalitarianism in which an egalitarian embraced the nightmare Harrison Bergeron scenario, in which equality is enforced by handicapping those with higher motivation or natural endowments.<sup>24</sup> Such a policy makes no sense from a social contract perspective. No rational person would consent to a regime that barred them from exercising their superior talents. Nor would the less talented consent to such a regime, given the superior possibility of arranging social institutions so that people's exercise of productive talents and efforts redound to everyone's advantage.<sup>25</sup>

Babeuf drew his monstrous conclusion from a commitment to luck egalitarianism, the view that no one should be worse off than anyone else due to bad luck. "It is necessary to bind together everyone's lot; to render the lot of each member of the association independent of chance, and of happy or unfavorable circumstance."<sup>26</sup> To my knowledge, this is the first assertion of luck egalitarianism in the history of politics. For Babeuf, the only way to ensure that risks of bad luck were equally shared was to share all goods and labor under a central administration, and to endure a radical leveling down of talents and motivations.

Paine was appalled by Babeuf's conspiracy. Babeuf claimed to be vindicating the voice of the people of Paris who cried "Bread and the Constitution of 1793!" in opposing the post-

Thermidorian abolition of price controls on bread, and the 1795 Constitution's imposition of a property qualification on voting. Yet Babeuf's plan was not to restore the universal manhood suffrage of 1793, but to install himself and his co-conspirators as a totalitarian dictatorship.<sup>27</sup> Paine argued that what was needed was not equality alone but a form of equality consistent with liberty.

### England's Poor Law Regime

The English alternative was certainly superior to Babeuf's plan. England was unique in Europe in acknowledging poor relief as a national responsibility. It passed the first Poor Law in 1531 under Elizabeth I, which set the basic terms of poor relief until the "New" Poor Law of 1834. The Old Poor Law offered poverty *relief*--a notion that presupposed the inevitability of poverty as a condition that could be ameliorated but not avoided. Relief aimed to rescue the poor from the worst sufferings, but not to lift them much above bare subsistence. Different classes of poor were supposed to receive different kinds of aid. The unemployed able-bodied poor were to be provided with work, with children assigned to service in others' homes and adults to workhouses if local employers would not hire them. The "incompetent" poor--disabled, aged, young orphans, sick--were provided with low cash or in-kind relief. Beggars and vagrants--the "undeserving poor," who were presumed able but unwilling to work--were punished. Poor relief was as much about social control as about humanitarianism. It aimed to prevent bread riots and social disorder, replace the haphazard and morally corrupting practice of direct private almsgiving to beggars, and, through workhouses and punishment, provide moral discipline and instruction to the poor. Occasional amendments to the Poor Law attempted to heighten the stigma of dependent poverty, by requiring those on relief to wear badges (1697), or even sentencing them to two years of slave labor (1647), but these reforms did not take hold. In practice, the Poor Law tended to swing between humanitarian and punitive impulses. It also varied regionally, due to the principle of parish administration. Each parish (a unit of civil, not church government) was responsible for its own poor. Relief funds were raised from local property taxes, and local Overseers of the poor decided who was eligible for relief and what they would get.

By Paine's day the weaknesses of the Old Poor Law regime had long been evident. The enclosure movement, industrialization, and uneven economic growth had been driving workers out of their birth parishes to seek work elsewhere. Yet the 1662 Act of Settlement, which empowered parishes to evict poor people who had been born elsewhere to ensure that their birth parish bore the cost of relieving them, kept sending them back to places unable to provide them with work. These parishes, being poorer and depopulated, could not afford the rising local taxes required to supply adequate cash relief. Unpaid Overseers administered relief arbitrarily, some criticized for being too freehanded, others for despotic treatment of recipients. Workhouses, designed to enforce the principle that the able-bodied must be forced to work for relief, were costly, unprofitable, and subjected the poor to cruel conditions. Critics such as Daniel Defoe objected that they competed with independent able-bodied workers and thus drove them into unemployment and poverty, further swelling the relief rolls.<sup>28</sup> Many of the working poor were unable to earn enough to feed themselves. As the 18th century proceeded, many parishes recognized that provision of work to the able-bodied was not enough to ensure survival, and began to offer wage supplements and family allowances to the working poor ("outdoor relief").

In 1795, poor harvests and economic crisis brought on by the Napoleonic Wars led a group of parishes to regularize this practice in the Speenhamland system. Critics complained about skyrocketing taxes needed to support increasing numbers on relief, and the moral degradation of laborers reduced to dependency.<sup>29</sup>

These complaints ultimately led to the New Poor Law of 1834, which centralized administration of poor relief and attempted to make “indoor” or workhouse relief the sole form of relief available to the able-bodied poor.<sup>30</sup> The poor lost their liberty in the workhouses and were subject to harsh discipline and material conditions designed to be lower than those endured by the lowest-paid independent worker. By heightening the stigma and reducing the material benefits of relief, this welfare reform aimed to drive down the rolls and the costs by deterring all but the most desperate from asking for relief. More fundamentally, it aimed to draw a sharp moral distinction between the independent working poor and morally degraded, dependent paupers. Although intended to rescue the independent working poor from degradation, in practice it cast a pall of stigma over them, since they were only one crisis away from imprisonment in what critics called “Bastilles of the poor.”<sup>31</sup>

Although Paine wrote “Agrarian Justice” three decades before passage of the New Poor Law, the discourse of shameful welfare dependency was shaping discussions of social policy in his day. Paine aimed to craft a policy response to poverty that would overturn the moral framework of Poor Law thinking.

#### Paine’s Alternative: Universal Social Insurance

The Poor Law regime was resigned to poverty. Since it could not be prevented, it could at best be relieved, with additional measures taken to limit the numbers of poor subject to the moral degradation associated with relief measures. “Agrarian Justice” rejected these assumptions. Poverty *could* be prevented. Moreover, individuals have a *right* not merely to relief from poverty, but against being poor in the first place. States can and must prevent poverty by respecting individual *entitlements* that uphold the liberty and moral respectability of all.

Let’s begin by analyzing the possibility claim. Poor Law reasoning supposed that poverty was due to either natural causes (illness, disability, orphanage, old age) or moral vice (idleness, drunkenness, and so forth). This was not true. Big landowners were idle, and many were drunken, ill, disabled, orphaned, or old, but these conditions did not make them poor. As Paine’s contemporary Nicolas Condorcet argued, the fundamental reason why some were poor and others not was neither vice nor nature but property inequality. The *risk* of poverty lay perpetually over the heads of those who had no external property but relied on labor alone for their subsistence. Once their family’s capacity to labor gave out (or, as later observers noted, once market shocks or recessions created involuntary unemployment), they would lose their only source of income and fall into poverty. A second reason for poverty applied to the able-bodied working poor: lack of education and tools limited their capacity to earn high enough wages to escape poverty even if they were steadily employed. In short, the fundamental causes of poverty were exposure to the risk of job loss or of the capacity to work, and a lack of human and financial capital. Once the problem of poverty was conceived in those terms, the solution was

evident. To cope with the risk of earnings loss, institute an insurance scheme whereby families pool their risks of illness, disability, unemployment, death of a family wage earner, and outliving the capacity to work. To overcome the low wages of the working poor, institute a system of grants for young adults so that they could augment their productivity with further education or tools.<sup>32</sup> Condorcet had no time to show how these institutions could be implemented or made consistent with property rights. He wrote up his ideas in a few pages of his last book, while hiding from arrest ordered by the Jacobin-led Convention. Shortly after completing it, he was captured and died of mysterious causes on his first night in prison.

Paine had the same idea as Condorcet, and was also imprisoned by the Jacobins for being allied with the Girondists. By a stroke of good luck, he escaped execution due to an oversight by prison officials. Robespierre was executed shortly thereafter, the Terror ended, and Paine won his release on the strength of his claim to American citizenship. This gave him the freedom to propose the outlines of a system of social insurance, calculating costs and revenues using English data to demonstrate its feasibility. More importantly, Paine showed how poverty was *unjust* and hence why workers were *entitled* to a system that would enable them to avoid poverty.

Paine began with the premises common to all social contract arguments: that in the state of nature or anarchy, before positive laws are instituted, everyone is free and equal, no one is subject to anyone else's authority, and the earth is held in common by everyone.<sup>33</sup> They will agree to join a common legal regime only if it will promote their interests better than the state of nature. Paine followed Locke rather than Babeuf in claiming that in the state of nature, everyone has a property right in their own labor and hence in the fruits of their labor. Locke argued that individuals could acquire property in land by mixing their labor with it and thereby increasing its productivity, provided they left "enough and as good" for others. Since working 10 acres of land makes it yield at least as much as 100 acres in its natural state, in appropriating 10 acres, the landowner effectively gives back 90 acres to everyone else--far more than needed to meet the sufficiency proviso.<sup>34</sup>

Paine disputed Locke's claim that the private property regime left everyone with a higher standard of living than what people enjoyed in the state of nature. In the state of nature, no one was poor. Poverty arises only upon the institution of private property in land, which creates two unequal classes, the rich propertied class and the poor working class.<sup>35</sup> Since the poor were worse off under the current system of property laws than people were in the state of nature, they have a just complaint against those laws. Unlike Babeuf, however, Paine was no enemy of private property. On Paine's diagnosis, the problem was not the existence of private property, but the fact that the property system abrogated a rightful property claim in the state of nature. People who had mixed their labor with the land were only entitled to the *value added* by their labor to the land. The underlying value of the land in its natural state had been unjustly taken from everyone else. The solution to this problem did not require communism, as Babeuf had argued. No could we return to the state of nature, because population growth since the advent of agriculture was too high to be sustained by the hunter-gatherer lifestyle of our ancestors. Instead, to compensate everyone for their exclusion from privately appropriated land, landowners must pay a rent to society, which would be most conveniently paid in the form of an inheritance tax. This would be sufficient to fund the social insurance and stakeholder grant

system that would end poverty in most cases. Individuals would receive their rents in this form, rather than in regular cash payments over their lifetime, to satisfy the proviso that any legal regime leave *everyone* better off than in the state of nature. This requires that the property regime secure all against falling into poverty over the course of their whole lives.

Paine's more consistent version of Lockean property rights was to have a long career. Henry George used a variant of it to argue that all taxes should be abolished except a single tax on land, designed to collect unjustly appropriated ground rents owed by landowners to society.<sup>36</sup> Herbert Spencer, a leading 19th c. advocate of laissez-faire capitalism, was so moved by the argument that he concluded that the state should be the sole landowner, with individuals only allowed leaseholds.<sup>37</sup> His argument was even more radical than Paine's, in objecting not only to distributive injustice but to the injustice of feudal domination by landlords who could require subjection to despotic rule as a condition for workers' access to the land, or even expel people from inhabiting the Earth.<sup>38</sup> He also denied that the original appropriation of land had been just, because most of it had been acquired by conquest and plunder.

In *The Principles of Ethics* Spencer retreated from his radical position. Granting that the original appropriation was unjust, it was impossible to sort out who owed what to whom. One could not suppose that the landless were all victims, since the ancestors of some had once owned land unjustly and may have lost it through their own bad conduct. Moreover, the poor had already been more than compensated for any unjust appropriations by the Poor Law. Spencer sided with Locke in supposing that the value of undeveloped land was vanishingly small--too small even to support meager Poor Law distributions, much less the generous social insurance/stakeholder distributions needed to end poverty. Finally, centralized state management of land would be far less efficient than letting private owners allocate land under the free market.<sup>39</sup>

Paine rejected the terms in which Spencer cast his retreat. Spencer supposed that the question turned on what the landowners owed the landless--of what one class owed another. The Poor Laws embodied a similar conception of obligation, since revenues were drawn from a tax on land and distributed only to the landless poor. Spencer further supposed that the obligation could be a class-based one only if all the landed were wrongdoers, and all the landless victims. Paine rejected this class-based notion of obligation, and any notions of fault that might be associated with it.<sup>40</sup> "The fault is in the system" that permitted *uncompensated* private appropriation of land from the commons. It did not lie in any violence or theft that may have tainted particular acts of appropriation. Since all were denied the fruits of uninhibited access to nature in any act of appropriation, all were equally entitled to compensation. Even those who owned land were entitled to compensation for the fact that they were barred access to the natural fruits of tracts appropriated by others. Hence the social security/stakeholder system must be a *universal* entitlement owed to all, not a means-tested relief provided by a superior class to an inferior one.

By casting his system as a universal entitlement, Paine also avoided the stigma associated with poor relief. The Poor Law system went along with a paternalistic notion of noblesse oblige that cast recipients in a subordinate, demeaned position: recipients of relief were stigmatized, lost their civil liberties in the workhouses, denied the right to vote, and subject to the arbitrary



government of Overseers of the Poor. Such relief inflicted a further unjust injuries on the recipients. Spencer's compensatory conception of poor relief was little better in casting aspersions on the rich. In framing social insurance and stakeholder grants as a *property right* to which all were entitled, Paine's system avoided "invidious distinctions."<sup>41</sup> Since this property right vindicated everyone's equal right to the natural fruits of the earth, it upheld a conception of human dignity that also supported the universal franchise.

Paine's funding scheme faced the difficulty of proving that the value of privately appropriated natural resources matched the amount needed to provide all with sufficient social insurance and startup-capital to enable nearly all to avoid poverty. There is no *a priori* reason to think that these two amounts matched, and indeed Paine's calculations of each person's entitlements were perhaps too low to do the job.<sup>42</sup> If Spencer and Locke were right, the value of undeveloped land was too low to fund even means-tested poor relief, because nearly all value was the product of labor.

Paine anticipated this objection. His calculations were based on a flat 10% tax on the value of all bequests, and 20% on the value of bequests not descending to immediate family members. This was a tax on the value of personal property (mostly homes), not only on undeveloped land. Paine justified including personal property in the tax as follows:

Personal property is the effect of society; and it is as impossible for an individual to acquire personal property without the aid of society, as it is for him to make land originally. Separate an individual from society, and give him an island or a continent to possess, and he cannot acquire personal property. He cannot be rich. . . . All accumulation, therefore, of personal property, beyond what a man's own hands produce, is derived to him by living in society; and he owes on every principle of justice, of gratitude, and of civilization, a part of that accumulation back again to society from whence the whole came.

This followed the same logic as one of Babeuf's arguments against desert-based claims to inequality with respect to intellectual labor: one cannot claim to deserve all the value of one's intellectual production, since so much was based on ideas drawn from the intellectual commons supplied by society. Paine extended that argument to personal property, and with good reason. Any real-estate agent will tell you that the market price of a house depends overwhelmingly on location, not on the quality of construction. Every homeowner reaps the benefits (and pays the costs) of surrounding social, economic, and state activity, regardless of her own activities.

This argument, too, has enjoyed a remarkably long life. Elizabeth Warren, Harvard Professor of Law and 2012 candidate for U.S. Senate, recently invoked it to justify increasing taxes on the rich:

There is nobody in this country who got rich on his own. . . . You built a factory out there? Good for you. But I want to be clear: you moved your goods to market on the roads the rest of us paid for; you hired workers the rest of us paid to educate; you were safe in your factory because of police forces and fire forces that the rest of us paid for . . . . Now look, you built a factory and it turned into

something terrific, or a great idea? God bless. Keep a big hunk of it. But part of the underlying social contract is you take a hunk of that and pay forward for the next kid who comes along.<sup>43</sup>

In the hands of Paine and Warren, the argument does not aim at equality: just as Warren accepts the justice of entrepreneurs keeping “a big hunk” of the value of their factories, Paine asserted that he was “a friend to riches, because they are capable of good.”

What the argument does do is challenge a deeply entrenched desert-based conception of distributive justice: the idea that a just distribution of goods will award to each person his or her specific productive contribution to the total output. *That* idea, too, has a long history, wielded by advocates of rival systems of political economy. Herbert Spencer claimed that each individual had a right to the specific consequences of their conduct, and that compensation in accordance with freedom of contract in a competitive market did so.<sup>44</sup> Henry George argued that since labor was the sole source of value, any rents paid to landowners unjustly denied the producers (not just employees, but entrepreneurs, managers, and risk-taking capital investors) the fruits of their labor.<sup>45</sup> The 1875 platform of the German Socialist Workers’ Party (the Gotha Programme) was interpreted--most famously by Marx--as demanding that the “undiminished” proceeds of labor (the whole gross domestic product) be distributed to the workers in proportion to their labor, as would be required if each worker was to be paid their individual productive contribution to the total product.<sup>46</sup> In advancing an argument, the logic of which threatened all “productive contribution” theories of entitlement, while insisting that a just society prevent people from falling into poverty, Paine helped launch the modern idea of distributive justice.<sup>47</sup>

### The Modern Idea of Distributive Justice

Samuel Fleischacker, in his *Short History of Distributive Justice*, takes the distinctively modern idea of distributive justice to include a substantive commitment to the abolition of poverty as a matter of individual right, and argues that it arose only in the late 18th century.<sup>48</sup> While accepting his dating, I prefer to characterize the modern idea of distributive justice in more formal terms. Let’s distinguish two classes of principles of justice: local and systemic. A principle is local if it is supposed to directly govern the conduct of particular agents or organizations in appropriating and distributing goods to particular people. Systemic principles of justice set standards for the overall expected distributive consequences of systems of production and distribution that are constituted by various local principles applying to different agents. The modern idea of distributive justice judges the justice of whole systems in light of their expected overall consequences--for instance, whether they minimize poverty, or realize equality of opportunity. From a systemic perspective, local principles of justice are judged in terms of how well they, taken as a whole, satisfy system-wide goals. Local rules are subordinate to systemic principles and may be altered to satisfy the latter.

There are two types of local principle: procedural, and individually allocating. A procedural principle of justice focuses on features of the process by which an individual acquires something. “Finders, keepers” is a procedural principle of justice for appropriating (some) previously unowned things. Another procedural principle is that an exchange of goods between two individuals is just only if it is voluntary and involves no fraud. Individually allocating

principles have the form “to each, according to his P.” The two most common principles of this type are allocations according to need, and according to desert or merit.

Until the late 18th century, theorists contemplated only local principles of justice. Several developments motivated the development of systemic theories of justice. Economists developed an understanding of the economy as a system of interconnected mechanisms that led to aggregate outcomes that were not intended by any individual, but which could be predictably affected by state policies. With power comes responsibility. As economies became richer, the capacity of states to regulate distributions systemically grew, as did public demand for such policies. With economic growth spurred by the Industrial Revolution, the economy had the productive capacity to overcome mass poverty. Finally, appreciation of the ways the competitive economic system could lay waste to individuals’ best-laid plans, of how financial crises and unpredictable technological change could overwhelm the resources of the prudent and industrious, of how people’s fates were closely connected apart from any contractual agreement, such that the conduct of others could bring not just great benefits but great harms to unrelated individuals, put enormous pressure on moralized conceptions of poverty. To those cast into involuntary unemployment by recession, into bankruptcy by financial panic, into sickness and disability by pollution and industrial accidents, nothing was more obvious than that their suffering was not their fault, not anything they deserved, nor something that they could hedge against with the resources at their disposal.<sup>49</sup> The emerging market system was spectacularly productive and grew at unprecedented rates, but it also unleashed a “perennial gale of creative destruction”<sup>50</sup> against which only the state could provide adequate shelter.

Such calamities were not, in general, the product of local injustice in any particular transactions. Everyone could have dealt with one another with perfect propriety according to every local principle of justice, yet the cumulative effect of hundreds of thousands of locally just transactions could be disastrous. Paine understood this, insisting that “[t]he fault . . . is not in the present possessors . . . . The fault is in the system.”

These considerations undermine the idea that the requirements of justice could be entirely satisfied by following local standards advanced without regard to their cumulative, systemic consequences. They undermine the idea of *laissez-faire*, of *unconstrained* pure procedural justice--the thought that just outcomes are whatever outcomes are produced by voluntary market transactions in a private property system based on “natural rights,” letting the chips fall where they may.<sup>51</sup> If justice requires state action, such as social insurance, to protect individuals against the “gale of creative destruction,” then the state must be free to define *positive* (artificial, legal) property rights so as to enable such protection. A system of property rights must be justified systemically, in regard to its expected overall consequences.

Historically, theories of justice have been torn between local and systemic considerations. Locke justified natural property rights in terms of first premises of self-ownership and a labor theory of value--the right to the fruits of one’s labor. Yet he also insisted that property rights are justified by the Fundamental Law of Nature, or moral law, that requires everyone to protect and promote human life.<sup>52</sup> For Locke, this was sufficient to establish poor people’s right to charity--a *title* to be supported from the neighbors’ surplus if they had no other means of support.<sup>53</sup> But Locke’s reasoning went no further than the Poor Law; he never

supposed that property rights should be systematically designed to enable people to avoid poverty altogether. Contemporaries condemned his proposal for Poor Law reform, which included forced labor and whipping of the unemployed, for being too harsh.<sup>54</sup>

Paine, too, was torn between local and systemic considerations. He initially split the difference by dividing property rights into two types: rights to natural resources, and rights to the fruits of one's labor. The latter were deserved and so could not be revised by positive law. The former could be repackaged to serve the systemic goals of preventing poverty and insuring individuals against the risk of the loss of their earning power.

This split, while intuitive, is undermined by the logic of Paine's reply to the objection that the value of natural resources is insufficient to serve their systemic function. Society is not only the source of the value of natural resources; it also is the source of the productivity of any individual's labor. It is as impossible to isolate any individual worker's productive contribution to the total product as it is to credit particular incremental advances of a watch's hands to individual gears and springs in the watch. As the division of labor becomes more fine-grained under economic development, any given worker's productivity is more and more dependent on the cooperation of others.<sup>55</sup> Moreover, at least two great classes of others receive no market compensation for the immense contributions they make to the productivity of paid workers. Parents, mostly mothers, perform the socially indispensable unpaid work of rearing the next generation to be responsible, productive adults. The unemployed, too, contribute to the productivity of the employed. Their readiness to step in if the currently employed slack off spurs productivity, and their availability enables firms to plan for rapid expansion during booms. In any event, wages do not measure a worker's productive contributions but reflect the relative bargaining power of workers and employers, along with the laws regulating labor contracts.<sup>56</sup> Such considerations undermine the thought that market wages measure desert, in the sense of an individual's specific contribution to the whole product (the fruits of one's own labor).<sup>57</sup>

Some theories of justice today remain oddly split by the same mistaken logic. Left-libertarians, who trace their lineage through Paine,<sup>58</sup> stick to his orthodox division between natural resources and labor, the first to be divided equally, the second according to market prices. Today's luck egalitarians, who, we have seen, descend from Babeuf, reject Babeuf's anti-market, anti-desert ideal and instead divide outcomes into the products of sheer luck, which should be divided equally, and of desert or market choices, which they take to justify unequal outcomes.<sup>59</sup>

From a systemic point of view, none of this makes sense. Market wages do not measure people's just deserts. Nor can the concept of desert, in the sense of something earned (presently or prospectively) by one's productive contribution or virtuous conduct, guide a systemic theory of justice. Think of the distributive system of the whole economy as like a ladder, with each rung designating a representative position in the system of social cooperation (including both market-compensated and uncompensated positions), the height measuring the expected income for that position. The concept of desert, merit, or qualification may coherently guide individual employers' assignments of particular workers to different market-compensated rungs in the ladder. But it says nothing about how high the lowest rung should be, or what considerations should guide the distance between the top and bottom rungs, or where those occupying positions outside the market should land. Here systemic considerations reign: not those of desert or merit, but of overall efficiency, utility, and, most importantly, systemic justice.

“Agrarian Justice” forged a path to this modern, systemic understanding of justice. In it, Paine envisioned justice as requiring that the lowest rung be above poverty level. He recognized that achieving this required forging novel, positive (legal) forms of property rights--social insurance and stakeholder grants--that could not be deduced from local or “natural” principles of justice. He saw, if only partially, the limitations of market- and desert-based justifications of property rights that ignore social externalities. Most astonishingly, he stood at the cusp of a famous systemic principle of equality--a principle defining the limits of justified inequality. In the words of its most influential advocate, John Rawls, “social and economic inequalities are to be arranged so that they are . . . reasonably expected to be to everyone’s advantage.”<sup>60</sup>

Once we see the gross domestic product of society as the joint product of everyone cooperating together in a complex division of labor, the question of the just division of the pie turns on what systemic principles all, regarding themselves as free and equal, would agree to live under. This is the great question of social contract theory applied to distributive justice. As we have seen, people would reject the dreadful totalitarian vision of Babeuf. Everyone would see that it would be to each person’s advantage to have private property, broad market freedoms, freedom of occupational choice, freedom to start and run businesses, and even some distributive inequality. How much inequality? As long as greater benefits to some redound to everyone’s advantage, and specifically to the advantage of the least well-off, no one has grounds for complaint against it. So let markets run freely *within* that constraint. Note that this systemic constraint does not limit the revenues for funding poverty-prevention programs to any source defined by local standards, such as land rents. The result is a form of *constrained* pure procedural justice. Paine anticipated Rawls’s most famous conclusion: “I care not how affluent some may be, provided that none be miserable in consequence of it.” Condorcet hoped that progress would bring about this happy state, which “leaves no other inequality subsisting but what is useful to the interest of all, because it will favor civilization, instruction, and industry, without drawing after it either dependence, humiliation or poverty.”<sup>61</sup>

### Social Insurance in Practice

Paine advanced his social insurance/stakeholder grant scheme as a “third way”--*not* between capitalism and socialism, but between state communism and the class paternalism of the Poor Law. Communism promised equality at grievous cost to freedom and democracy. The Poor Law offered humanitarian charity--*also* at the cost of freedom and democracy, since the poor were denied civil liberties including the right to vote as the price of accepting aid. Paine saw that what was needed was a program that secured each individual’s personal independence and respectability in a context that would support full-fledged democracy with a universal franchise. The program also needed to be attentive to the problems posed by class inequality--in particular, the insecurity of those who had to rely on their labor to support themselves--while offering a universal solution--one that was cast in terms of the “universal rights of man and citizen,” *not* in terms of class warfare or what the rich owed to the poor. His plan could be classified as a type of “market democracy” or “property-owning democracy” in insisting on rights of private property as an expression of an individual’s personal independence and dignity.

Paine's aspiration to forge a universalistic path beyond class warfare and class paternalism was largely vindicated by the adoption of state-supported social insurance programs by virtually all developed countries starting in the 1880s. While social democratic or labor-based politics were vital causal factors behind the adoption of social insurance programs,<sup>62</sup> it was neither the case that socialists took the lead in forging these programs nor that they were adopted as ideological expressions of working-class politics. To the contrary, social insurance was advanced as an *alternative* to a workers' revolution, as proof that capitalism could offer a better deal to workers than socialism. Just short of a century after Paine warned the propertied classes that they might face communist revolution if they didn't offer workers security, Otto von Bismarck, the Chancellor of the German Empire and Prime Minister of Prussia, heeded his call. Bismarck instituted the first social insurance programs in the world--for health care (1883), workers' compensation (1884), and retirement pensions (1889).<sup>63</sup> No one could accuse Bismarck of being a socialist: he also secured passage of a notorious Anti-Socialist Law (1878-90) that prohibited the socialists from meeting or distributing their publications, and authorized police to banish socialists from particular cities. While Bismarck instituted social insurance to undermine both the appeal of socialism and its independent labor organizations,<sup>64</sup> the point was not merely strategic. Social insurance appealed to employers as it promoted a healthier workforce, enabled them to pool the risks of liability for industrial accidents, and shifted costs from poor relief funded from general taxation to workers' contributions. It is no wonder that the socialist parties of Europe were initially wary of social insurance. Their conversion to full support for universal social insurance reflected their abandonment of the Marxist ideology of class conflict and revolution, embrace of cross-class coalitions and gradualist reform, and adoption of a "national" or universal, citizenship-based rather than a working-class interest based normative perspective.<sup>65</sup> Other parties, notably the Christian Democratic parties, also came to embrace social insurance as an expression of society's obligation to secure a decent life for all.<sup>66</sup> No wonder then, that across Europe social insurance programs were typically advanced by broad-based coalitions.

The form that social insurance took in most countries diverged from Paine's vision, however.<sup>67</sup> Paine advocated low, flat pension benefits funded out of general tax revenues. This type of pension scheme is known as "Beveridge style" after William Beveridge--economist, Fabian socialist, and author of the government report that devised the foundation of Britain's post-WWII welfare state.<sup>68</sup> The other major scheme is "Bismarck style" and features benefits graduated by income, funded by graduated contributions from workers (and sometimes employers), with modest redistribution to ensure a floor on benefits to the poorest participants. Beveridge style plans have turned out to be politically weak and unstable.<sup>69</sup> Almost all countries that began with them have switched over to Bismarck style plans, which are highly popular and stable.<sup>70</sup>

Why the difference? Beveridge style plans in practice offer little to anyone other than the poor. Everyone else must pay taxes to support a plan that offers less than they could have obtained for themselves had they been free to invest their tax contribution. Because they are funded from general revenues, there is pressure to divert funds to more popular projects. Bismarck style plans serve *two* compelling interests: in addition to protecting all against the threat of poverty, they also insulate the middle class from falling too far from its accustomed standard of living. This offers insurance against the risk of market shocks to the privately

invested savings of the middle class, as well as against the risk of outliving one's savings. Such a program could only be justified if it were funded by correspondingly graded contributions linked to income. This, too, proved to be politically popular. To the extent that social insurance displaced poor relief, funding benefits from wages rather than general revenues reduced the tax burden on those who received income from other sources. Workers, too, favored this funding basis because it was more secure against diversion to other purposes than general revenues. It supported their claim to have earned their benefits through their contributions as an entitlement, and thus enabled them to claim independence, in contrast with the taint of dependency that was attached to means-tested poor relief.

In the developed countries today, social insurance and publicly-funded education (the contemporary equivalent to stakeholder grants) dwarf means-tested welfare payments as poverty-reduction programs. Some countries, including France and the Netherlands, have reduced elder poverty to negligible rates due to their social insurance systems. Even the United States, which provides lower rates of income replacement than most of its peers, has dramatically reduced elder poverty by means of Social Security and Medicare.<sup>71</sup> And universal public investment in young people is of course the key not only to preventing poverty among young adults but to securing a highly productive economy that serves everyone's interests. We may thank Paine for being the first to grasp how this could be done, and why it was just.

#### Appendix: The Curious Case of Friedrich Hayek on Social Insurance

Universal social insurance has long faced greater hostility in the United States than in Europe. The United States is the only country among its peers that fails to secure universal access to health insurance for its citizens. Millions will still lack insurance even after all the components of the 2010 Affordable Care Act are implemented. There are many reasons why U.S. public policy is more hostile to the poor, and to social insurance more generally, than its peers.<sup>72</sup> From an ideological point of view, social insurance in the U.S. has been tainted with the charge of communism, even though, as we have just seen, it arose in both theory and practice as an anti-communist defense of private property. One of the chief intellectual sources of this charge is Friedrich Hayek's *Road to Serfdom*, which was widely read as arguing that the generous welfare states of Western and Northern Europe were on a slippery slope to totalitarianism.<sup>73</sup> *Look* magazine popularized a cartoon version of *The Road to Serfdom*, which was later circulated by General Motors.<sup>74</sup> Ronald Reagan, probably inspired by Hayek's argument, made a recording opposing Medicare for the American Medical Association in 1961, claiming that Medicare would lead to the state dictating to people what jobs they must perform and where they must live and work.

A closer reading of Hayek's work reveals a more complex story. Hayek supported social insurance, even in *The Road to Serfdom*:

There is no reason why [in a wealthy society] . . . security ["the certainty of a given minimum of subsistence"] should not be guaranteed to all without endangering general freedom. . . . [Also,] the case for the state's helping to organize a comprehensive system of social insurance is very strong . . . . [T]here is no incompatibility in principle between the state's providing greater security in this way and the preservation of individual freedom.<sup>75</sup>

He made clear that *compulsory* contributions to a system of social insurance were compatible with a free society.<sup>76</sup> Hayek rejected laissez-faire capitalism and insisted that a free society was also compatible with various forms of economic regulation:

Probably nothing has done so much harm to the liberal cause as the wooden insistence of some liberals on certain rough rules of thumb, above all the principle of laissez faire. . . . No sensible person should have doubted that the crude rules in which the principles of economic policy of the 19th c. were expressed were only a beginning—that we had yet much to learn . . . .<sup>77</sup>

In his major work attacking the idea of “social justice,” Hayek was unable to identify any fundamental disagreements he had with Rawls’s *Theory of Justice*, the work that remains today as the leading intellectual support for liberal egalitarianism:

We agree on what is to me the central point.

I have no basic quarrel with an author who, before he proceeds to [the “problem of justice in connection with the deliberate design of political institutions”], acknowledges that the task of selecting specific . . . distributions of desired things as just must be ‘abandoned as mistaken in principle’ . . . Rather, the principles of justice define the crucial constraints which institutions and joint activities must satisfy . . . .<sup>78</sup>

Hayek argued against the idea that a free society was compatible with the state regulating incomes in accord with its judgments of what different individuals deserved. To put such arbitrary discretionary power in the hands of bureaucrats, to judge each individual’s moral worth and adjust their income to such local, individually allocating judgments, was fundamentally incompatible with a free society and would also destroy the productivity of a market system. Rawls agreed. His theory of justice rejects desert as a basis of distributive justice and adopts a systemic point of view. Like Hayek, he proposed a theory of *constrained* pure procedural justice. Actual distributive patterns would result from people’s free choices according to generally applicable, impersonal rules of property, contract, exchange, taxation, and so forth. In contrast with laissez-faire, local transactional rules would be designed so that their predicted overall effects would fall within the systemic constraints defined by the principles of equality of opportunity and the difference principle.<sup>79</sup> Among the general impersonal rules that enable a system of competitive market exchange to satisfy these constraints are the rules of social insurance, which specify *entitlements*--that is, property claims on streams of income or goods in kind (primarily, education and health care or health insurance)--for which all in a given country are eligible.

Hayek and Rawls also agreed on the perspective from which systemic rules should be judged. It is the general perspective of social contract theory, in which people must consider what principles they would want to live under without knowing what particular position in the economic (class) order they occupy. The standpoint of justice does not reflect the interests of any particular class, but of everyone in society:



The aim of policy in such a [just and free] society would have to be to increase equally the chances for any unknown member of society of pursuing with success his equally unknown purposes, and to restrict the use of coercion (apart from the raising of taxes) to the enforcement of such rules as will, if universally applied, tend in this sense to improve everyone's opportunities.<sup>80</sup>

So far it would seem that there could be no basis for the view that social insurance was a step on the path to totalitarianism. Any random person would certainly want security against the various risks against which social insurance offers effective protection. The market system does not offer effective, universally affordable insurance against some of the principal risks for which people want social insurance: unpredictable market shocks that leave masses of workers unemployed in particular sectors, business cycles leading to mass unemployment in recessions and mass destruction of privately invested wealth, adverse selection in insurance markets, particularly for health insurance, that leave essential health care unaffordable for vast sectors of society, and so forth. The random person can withstand the gale of creative destruction that is market society only by boarding the gigantic vessel that is social insurance. The small boats that they can craft using their own resources, or pooling their meager resources with those they can persuade to join them (a prospect that declines precipitously the more exposed they are to the gale), are not seaworthy.

What, then, was Hayek's objection to the social insurance systems then being erected in the post-WWII era? Fundamentally, it was the distinction between Beveridge style and Bismarck style social insurance.<sup>81</sup> The first assures a low, equal benefit to all; the second replaces a certain proportion of one's prior income. This distinction, Hayek claimed, corresponds to two different conceptions of security. One is "the assurance of a given minimum of sustenance for all," "which can be achieved for all and which is, therefore, no privilege." The other is "the assurance of a given standard of life, which is determined by comparing the standard enjoyed by a person or group with that of others" on the basis of some concept of desert, "which in a free society cannot be achieved for all."<sup>82</sup> The irony here is rich: Hayek explicitly favored the plan of the Fabian socialist over the plan of the German anti-socialist. How could freedom itself hang on such a distinction?

Some of his objections rest on a misapprehension of the rationale for and operations of social insurance. Hayek repeatedly returns to the idea that social insurance attempts to reward individuals according to some notion of desert or need. Desert and need, as individually allocating principles, require particularized judgments of individuals' merits and privations. This, Hayek complained, gives bureaucrats arbitrary discretionary authority over individuals' lives.<sup>83</sup> As applied to social insurance, the charge is bizarre. Social insurance is an entitlement, a kind of property right, administered by general impersonal rules that are not subject to the whims of bureaucrats. Precisely because access to social insurance is not means-tested, claimants do not have to present their neediness before the authorities to gain access to benefits. They simply present their record of prior contributions into the system, and receive their legislatively determined payment, not subject to bureaucratic discretion, in return.

Even more bizarrely, Hayek insisted that access to safety-net payments ought to be means-tested. He insisted on drawing a sharp line between benefits which individuals have earned and paid for, and benefits to which they were entitled only because of need, out of charity.<sup>84</sup> Of course, as the history of the means-tested Poor Law demonstrated, it was precisely the granting of arbitrary discretionary authority to Overseers of the Poor to judge who was needy and what they needed that led to the poor losing their liberties. Part of Paine's point, in establishing social insurance as a kind of property right, an entitlement which by its nature requires no proof of need to claim, any more than any other property right, was to secure the liberty of the poor and workers generally from bureaucratic meddling.

The point of drawing a sharp distinction between what individuals have "really paid for" and what they receive only as a matter of charity from those who are earning their way is not, then, a matter of freedom but of marking a social status difference, between the independent and the dependent. This of course is merely a return to the invidious distinctions of Poor Law thinking, which social insurance aimed to overturn. Hayek attempted to shore up the moral credentials of this distinction by pointing to the fact that Bismarck-style social insurance "redistributes" income in two ways. Most such systems incorporate horizontal (within-generation) progressivity, such that income replacement rates are higher for lower incomes and flatten out as incomes rise (with contributions to old-age pensions similarly flattening out). Much more ominous from Hayek's point of view was their pay-as-you-go structure, which incorporates vertical or cross-generational progressivity. As long as an economy is growing in per capita income, each generation can afford to pay higher retirement benefits to its parents than the previous generation could. The standard of living of the elderly is thus lifted along with everyone else in Bismarck-style systems. It is easy to see how, in societies where economic growth can be expected but subject to random shocks, any random individual would be better off under a pay-as-you-go system than providing for themselves out of their personal savings.<sup>85</sup>

Hayek was enraged by this supposed intergenerational injustice and projected this rage on to the rest of society, predicting that, as the idle elderly demand higher payments,

the physically stronger will rebel and deprive the old of both their political rights and their legal claims to be maintained . . . ultimately not morals but the fact that the young supply the police and the army will decide the issue: concentration camps for the aged unable to maintain themselves are likely to be the fate of an old generation whose income is entirely dependent on coercing the young.<sup>86</sup>

Needless to say, while demographic changes are forcing hard choices on to rich country's social security systems, concentration camps have not been one of the options contemplated. Throwing people back on the arbitrary business cycles of the market for all but their minimal safety-net requirements (as Hayek wished), into the hands of casino capitalists boasting about dumping gussied-up toxic assets on widows and orphans, has been proposed and in some cases implemented, with catastrophic results, as recent financial crises have demonstrated. If there are any lessons to draw from recent experience, it is not, as Hayek complained, that social insurance reflects the attitude of a paternalistic state that denies that individuals can be trusted to make decisions about their own future. Rather, the overwhelming popularity of social insurance, and resistance to privatization measures (as reflected in the public repudiation of President Bush's

partial privatization proposal of 2004) reflects a justified distrust by the people themselves of a privatized retirement system that fails to deliver the financial security workers collectively demand, and their preference to commission the state as their agent for this task.

It is not only the older generation that has a stake in such a system. The younger generation does, too. The elderly have *always* depended on the young for support when they became too old to work (or employers no longer wanted to hire them), and have always expected more than the minimal means of subsistence if their children could afford it. The only question is the form in which the young provide this support to their elders. Social insurance insures the young against the fecklessness and bad financial luck of their parents--a benefit private insurance never provides. Bismarck-style social insurance supplies three additional benefits to the young that they could not otherwise enjoy. First, by keeping up with rising standards and hence costs of living, it enables parents to live in independent households, so they don't have to move in with their children--the overwhelming preference of both generations in the modern day. Second, it helps liberate women from the need to drop out of the wage labor market so they can provide direct care to their parents or in-laws at home. Third, it helps spare the young from the wrenching burden of having to personally deal with the financial demands their parents would otherwise make on them, along with its accompanying resentments, humiliations, guilty feelings, needling, supplication, arguments, and retaliations. The emotional transaction costs of elder provision are infinitely lower when this is mediated by an impersonal, arms-length entitlement system.

From a social contract perspective, any random individual acquainted with the dynamics of speculative booms and busts in asset markets, radical information asymmetry, conflicts of interest between financial advisors and clients that are inherent in financial markets, and generational conflict between retirees and their children, would prefer Bismarck style social insurance for a hefty chunk of their and their parents' retirement needs.

Nor can we take seriously Hayek's moralizing distinction between what people have "really" earned and paid for through the market and what he took to be the unjust enrichment of egalitarian "re"-distribution. Hayek himself already explained why market prices do not measure anything of independent moral significance, whether desert in the sense of moral merit or in the sense of one's individual productive contribution to total social output. The market, in any event, compensates only a fraction of the socially necessary labor without which no one would be productive or even alive. There is no justification for deferring to its very partial accounting of cooperative contributions to the whole. No random individual contemplating that she may well end up in the non-market productive sector for most of her productive years, and that all depend on non-market provision for large portions of their lives at the beginning and end, would so defer.

Paine saw that the distinction between the "dependent" and the "independent" is a function of property entitlements alone and not of whether one ever lifted a finger to "earn" or "pay for" or "deserve" the property in one's possession. The idle rich are counted as independent, even if their income comes entirely from passive investments, speculation in zero-sum financial games, and inherited property. Why? Only because their property endowment empowers them to pay for the things they want, rather than to have to come begging, hat in hand,

for someone else to provide it for them. From a causal point of view, however, they are entirely dependent on the labor of others since they produce nothing themselves. Such is the inherent condition of all of humanity at all times when we are unable to labor, either from youth, age, disability, illness, or the irrational waste of involuntary unemployment, or unable to labor in the market-compensated sector, because one is fulfilling duties to care for those unable to labor at all. Hayek preferred a system in which all of the latter persons have nothing but a minimal safety net to rely on, accessible only upon a humiliating display of personal need, subject to the arbitrary discretionary authority of a moralizing, bureaucratic judge. For anything beyond this, they would have to live at the mercy of wage-earning family members or private charity. Hayek's *systemic* principles repudiate this vision. But, like so many others, he could not see past the suffocating moralism of Poor Law reasoning, and thereby confused subjection to the dominion of others with freedom.

## Notes

<sup>1</sup> <http://www.ssa.gov/history/paine4.html>.

<sup>2</sup> M. V. (prob. Marc Vadier), “Letter to Gracchus Babeuf,” in *Buonarroti’s History of Babeuf’s Conspiracy for Equality*, trans. and ed. James Bronterre O’Brien, reprint, 1796 (London: H. Hetherington, 1836), 362–3.

<sup>3</sup> Gracchus Babeuf, “Reply to M. V.,” in *Buonarroti’s History of Babeuf’s Conspiracy for Equality*, trans. and ed. James Bronterre O’Brien, reprint, 1796 (London: H. Hetherington, 1836), 365, 369.

<sup>4</sup> Gracchus Babeuf, *The Defense of Gracchus Babeuf Before the High Court of Vendôme*, ed. and trans. John Anthony Scott (Amherst: University of Massachusetts Press, 1967). See also the more detailed discussion of the plan by Babeuf’s co-conspirator Philippe Buonarroti, in *Buonarroti’s History of Babeuf’s Conspiracy for Equality*, Bronterre [pseud.] (London: H. Hetherington, 1836).

<sup>5</sup> Sylvain Maréchal, “Manifesto of the Equals,” in *Buonarroti’s History of Babeuf’s Conspiracy for Equality*, trans. and ed. James Bronterre O’Brien, reprint, 1796 (London: H. Hetherington, 1836), 314–17.

<sup>6</sup> Gracchus Babeuf, “Reply to M. V.,” 366. See also Buonarroti, *History of Babeuf’s Conspiracy*, 10.

<sup>7</sup> François-Noël Babeuf, “Babeuf’s Defense from the Trial at the Vendome, February-May, 1797,” in *Socialist Thought: A Documentary History*, ed. Albert Fried and Ronald Sanders, reprint, 1797 (New York: Columbia University Press, 1964), [Http://www.historyguide.org/intellect/defense.html](http://www.historyguide.org/intellect/defense.html).

<sup>8</sup> François-Noël Babeuf, “Babeuf’s Defense.”

<sup>9</sup> Buonarroti, *History of Babeuf’s Conspiracy*, 161.

<sup>10</sup> See, for example, Gracchus Babeuf, *Defense of Gracchus Babeuf*, 58; Buonarroti, *History of Babeuf’s Conspiracy*, 70.

<sup>11</sup> Buonarroti, *History of Babeuf’s Conspiracy*, 21, 25–6.

<sup>12</sup> Buonarroti, *History of Babeuf’s Conspiracy*, 101.

<sup>13</sup> Maréchal, “Manifesto of the Equals,” 315.

<sup>14</sup> Buonarroti, *History of Babeuf’s Conspiracy*, 161–4, 203–10.

<sup>15</sup> Buonarroti, *History of Babeuf’s Conspiracy*, 163.

<sup>16</sup> Insurrectional Committee [of the Conspiracy of Equals], “Analysis of the Doctrine of Babeuf,” in *Buonarroti’s History of Babeuf’s Conspiracy for Equality*, trans. and ed. James Bronterre O’Brien, reprint, 1796 (London: H. Hetherington, 1836), 318–26.

<sup>17</sup> Maréchal, “Manifesto of the Equals,” 317.

<sup>18</sup> Insurrectional Committee [of the Conspiracy of Equals], “Analysis of the Doctrine of Babeuf,” 318.

<sup>19</sup> Insurrectional Committee [of the Conspiracy of Equals], “Analysis of the Doctrine of Babeuf,” 324.

<sup>20</sup> Insurrectional Committee [of the Conspiracy of Equals], “Analysis of the Doctrine of Babeuf,” 322.

<sup>21</sup> Gracchus Babeuf, *Defense of Gracchus Babeuf*, 55–56.

<sup>22</sup> Gracchus Babeuf, *Defense of Gracchus Babeuf*, 56.

<sup>23</sup> François-Noël Babeuf, “Babeuf’s Defense.”

<sup>24</sup> See Kurt Vonnegut, *Short Stories by Kurt Vonnegut: Harrison Bergeron, Epicac, 2br02b, Welcome to the Monkey House, Miss Temptation, Report on the Barnhouse Effect* (Books LLC,

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<sup>25</sup> As John Rawls famously argues in *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

<sup>26</sup> François-Noël Babeuf, “Babeuf’s Defense.”

<sup>27</sup> As Buonarroti admitted, *History of Babeuf’s Conspiracy*, 101.

<sup>28</sup> Daniel Defoe, *Giving Alms No Charity, And Employing the Poor A Grievance to the Nation, Being an Essay Upon This Great Question, Whether Work-Houses, Corporations, and Houses of Correction for Employing the Poor, as Now Practis’d in England; or Parish-Stocks, as Propos’d in a Late Pamphlet, Entitled, A Bill for the Better Relief, Imployment and Settlement of the Poor, &c. Are not Mischievous to the Nation, Tending to the Destruction of Our Trade, and to Encrease the Number and Misery of the Poor. Addressed to the Parliament of England* (London: Printed, and sold by the booksellers of London and Westminster, 1704), 16–17.

<sup>29</sup> See Paul Slack, *The English Poor Law, 1531–1782* (Houndmills, Basingstoke, Hampshire: Macmillan, 1990); John Duncan Marshall, *The Old Poor Law, 1795–1834*, 2nd ed. (London: MacMillan, 1985); and Gertrude Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (New York: Alfred A. Knopf, 1984).

<sup>30</sup> In practice the rates were never high enough to build all the needed workhouses, and the law left open loopholes for outdoor relief. Himmelfarb, *Idea of Poverty*, 168.

<sup>31</sup> Himmelfarb, *Idea of Poverty*, 166, 175–6.

<sup>32</sup> See Antoine-Nicholas Condorcet, *Outlines of an Historical View of the Progress of the Human Mind* (G. Langer, 2009), 10th Epoch. The idea of unemployment insurance came after Condorcet, but its rationale follows his logic.

<sup>33</sup> In the language of contemporary economics, the commons of the earth was a not a common-property regime with access jointly administered by the community, but an open-access regime, in which anyone was free to take from the commons without asking anyone’s permission, as the open seas are common today.

<sup>34</sup> John Locke, *Second Treatise of Government* (Indianapolis: Hackett, 1980), 5.37.

<sup>35</sup> Paine and Locke conducted their empirical dispute based on the shared assumption that the American Indians were in a state of nature, lacking settled agriculture. Locke claimed that “a king of a large and fruitful territory there, feeds, lodges, and is clad worse than a day-labourer in England” (*Second Treatise*, 5.41). Paine retorted, “The life of an Indian is a continual holiday, compared with the poor of Europe.” Evidence from America could not be used to support either side, as the Indians of North America did have settled agriculture and government. Such evidence was relevant to a different question, namely whether private property in the English sense of freehold ownership was necessary to secure the high productivity of settled agriculture. The Indians recognized only usufruct (use rights), not private ownership in land (which would entail rights to sell and bequest), yet contemporary European observers were impressed by their fertile fields and superior health compared to Europeans (at least before they died from the diseases the Europeans spread to them). Charles C. Mann, *1491: New Revelations of the Americas Before Columbus* (New York: Knopf, 2005), 44–5.

<sup>36</sup> Henry George, *Progress and Poverty: An Inquiry Into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth: The Remedy*, reprint, 1879 (Garden City, N.J.: Doubleday, Page & Co., 1912), [Http://www.econlib.org/library/YPDBooks/George/grgPP.html](http://www.econlib.org/library/YPDBooks/George/grgPP.html). In recent years, Thomas Pogge has proposed a global resources tax to be devoted to the abolition of world poverty in *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), ch. 8. Bruce Ackerman and Anne Alstott have rehabilitated Paine’s idea of stakeholder grants in *The Stakeholder Society* (New Haven, Conn.:

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Yale University Press, 1999).

<sup>37</sup> Herbert Spencer, *Social Statics* (London: John Chapman, 1851), ch. 9.

<sup>38</sup> Locke had foreseen this problem and for this reason rejected the absolutist conception of private property rights to which Spencer was attracted. On Locke's view, landowners were not entitled to impose feudal subjection as a condition of access to their land: "a man can no more justly make use of another's necessity to force him to become his vassal, by with-holding that relief God requires him to afford to the wants of his brother, than he that has more strength can seize upon a weaker, master him to his obedience, and with a dagger at his throat, offer his death or slavery." *First Treatise of Government*, 4.42.

<sup>39</sup> Herbert Spencer, *Principles of Ethics* (London: Williams and Norgate, 1891), part IV, Appendix B.

<sup>40</sup> "The fault . . . is not in the present possessors. No complaint is tended, or ought to be alleged against them . . . ." *Agrarian Justice*.

<sup>41</sup> *Agrarian Justice*.

<sup>42</sup> Paine proposed £10/year for the elderly and a one-time £15 stakeholder grant for all. In terms of average earnings, £10/year in 1795 is equivalent to £11,600 in 2011, or nearly twice the official 2009 poverty line of £6188/year for a single adult without children. Calculating in terms of the retail price index, however, £10 in 1795 was equivalent to only £806.00 in 2011--well below today's poverty line. What counts as a minimally decent standard of living has certainly increased since Paine's day, so perhaps his proposals were reasonable for their time. The point remains that we cannot in general expect that the value of natural resources will always cover a society's social insurance/stakeholder needs. Purchasing power equivalents obtained from <http://www.measuringworth.com/ukcompare/>, accessed July 30, 2012. Poverty line data from "The Poverty Site," <http://www.poverty.org.uk/summary/key%20facts.shtml>, accessed July 30, 2012.

<sup>43</sup> Lucy Madison, "Elizabeth Warren: 'There is Nobody in This Country Who Got Rich on His Own'" (2011).

<sup>44</sup> Spencer, *Principles of Ethics*, Part IV, ch. 6, sec. 27.

<sup>45</sup> George, *Progress and Poverty*, Bk VII, ch. 1.

<sup>46</sup> Karl Marx, "Critique of the Gotha Programme" (1875), part I. A closer reading of the full text of the Gotha Program belies Marx's interpretation, since it also demands distribution in accordance with need, equality of distribution, free public education, and a progressive income tax. Socialist Workers' Party of Germany, "Gotha Programme" (1875). None of those demands are consistent with each individual worker retaining the full proceeds of his or her specific productive contribution to the total output. Yet socialists' complaints against capitalist exploitation of labor frequently appealed to the desert-based idea that workers were unjustly deprived of their productive contribution.

<sup>47</sup> Samuel Fleischacker credits Babeuf, not Paine, for the idea of distributive justice. See *A Short History of Distributive Justice* (Cambridge, Mass.: Harvard University Press, 2004), 76–7. Fleischacker, however, ignores "Agrarian Justice" and bases his judgment on Paine's 1792 *Rights of Man*. In the *Rights of Man*, Paine suggested that the elderly could claim a pension as a *right* from the state on the basis of their excessive prior tax payments, which otherwise could have been invested and paid interest sufficient to retire on. Thomas Paine, *Rights of Man*, reprint, 1792 (New York: Willey Book Co., 1942), 246–7. The argument depended on the contingent fact that England had taxed the people excessively to pay for "extravagance, corruption, and intrigue," including most importantly a bloated military engaged in destructive wars. *Rights of Man*, 231–3. Since these were taxes that never should have been collected in the first place, a

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rebate of excess taxes could never form the basis of a permanent system of social insurance.

<sup>48</sup> Fleischacker, *A Short History of Distributive Justice*, 4–7.

<sup>49</sup> I consider the implications of the demoralization of bankruptcy in “Ethical Assumptions of Economic Theory: Some Lessons from the History of Credit and Bankruptcy,” *Ethical Theory and Moral Practice* 7 (2004): 347–60.

<sup>50</sup> Joseph Schumpeter, *Capitalism, Socialism, and Democracy*, 3rd ed. (New York: Harper & Brothers, 1950), 84.

<sup>51</sup> From a social contract perspective, the poor would withhold their consent from a regime that forced them to pay taxes to defend a system of property rights that gratuitously thrust them into poverty.

<sup>52</sup> *Second Treatise of Government*, 5.27, 2.6.

<sup>53</sup> “As justice gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him; so charity gives every man a title to so much out of another’s plenty as will keep him from extreme want, where he has no means to subsist otherwise . . . .” *First Treatise of Government*, 4.42.

<sup>54</sup> See John Locke, “An Essay on the Poor Law,” in *Locke: Political Essays*, ed. Mark Goldie, reprint, 1697 (Cambridge: Cambridge University Press, 1997), 182–98. On the contemporary response, see Himmelfarb, *Idea of Poverty*, 25.

<sup>55</sup> My cousin illustrated this lesson in discussing how difficult it was for him to do his job as a visiting physician in Bangladesh, where literacy rates are low. Lacking literate medical assistants, there was no way to maintain a system of patient records. Hence each patient visit had to start from scratch, reconstructing the patient’s medical history from faulty and medically uninformed memories. Much of the high productivity of doctors in rich countries comes from their reliance on extensive support systems from literate staff. Such “positive externalities” of individual workers’ skills are pervasive, and the fundamental source of the higher productivity of economies characterized by a fine-grained division of labor.

<sup>56</sup> Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, 5th. ed. (London: Methuen and Co., 1904), Bk. 1, ch. 8., Library of Economics and Liberty, [Http://www.econlib.org/LIBRARY/Smith/smWN.html](http://www.econlib.org/LIBRARY/Smith/smWN.html).

<sup>57</sup> Individual workers may well have legitimate claims of desert in regard to the compensation they get from their employer. However, desert claims have local validity only and do not directly constrain state policies designed to promote systemic goals. One may deserve a wage in relation to other members of a firm, but market wages do not in general fulfill system-wide patterns of comparative desert across firms. As long as a society contains multiple independent agents who are free to make local decisions allocating the goods available to them, according to a conception of the good or organizational mission that is not necessarily shared by others, one cannot expect the allocations that result, even if they are locally governed by various notions of desert, to satisfy any system-wide conception of relative desert. The fortunes of distinct organizations, and hence of their members, will inevitably vary in ways that don’t track desert in any unified, morally relevant sense. Competitive market prices function not to reward just deserts but to signal to people where their productive efforts should be redirected. See Friedrich A. Hayek, *Law, Legislation, and Liberty* (Chicago: University of Chicago Press, 1976), vol. 2. In any event, no one can deserve to be compensated under a set of principles that will systematically leave others in poverty, when alternative principles would avoid consigning people to this fate.

<sup>58</sup> See Peter Vallentyne and Hillel Steiner, eds., *The Origins of Left-Libertarianism: An Anthology of Historical Writings* (Houndmills: Palgrave, 2004) and Peter Vallentyne and Hillel



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Steiner, eds., *Left-Libertarianism and Its Critics: The Contemporary Debate* (Houndmills: Palgrave, 2004).

<sup>59</sup> See, for example, G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906–44; Ronald Dworkin, “What is Equality? Part 2: Equality of Resources,” *Philosophy and Public Affairs* 10, no. 4 (1981): 283–345.

<sup>60</sup> John Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Harvard University Press, 1999), 53. Rawls went on to refine this “difference principle” to state that institutionalized inequalities must redound to the benefit of those occupying the least advantaged position.

<sup>61</sup> Condorcet, *Historical View of Progress*, 10th Epoch.

<sup>62</sup> Alexander Hicks, *Social Democracy and Welfare Capitalism: A Century of Income Security Politics* (Ithaca, NY: Cornell University Press, 1999).

<sup>63</sup> These programs were initially targeted to the male industrial working class; over time they developed into universal programs as Paine had originally envisioned them.

<sup>64</sup> Workers remained eligible for benefits only so long as they were continuously employed, which was a deterrent to striking. In addition, the new health insurance funds displaced workers’ independent mutual aid societies, the resources of which had also been used as strike funds. George Steinmetz, *Regulating the Social: The Welfare State and Local Politics in Imperial Germany* (Princeton, N.J.: Princeton University Press, 1993), 124–7.

<sup>65</sup> The title essay in T. H. Marshall and Tom Bottomore, eds., *Citizenship and Social Class* (London: Pluto Press, 1992) is the *locus classicus* for the “citizenship” or universalist perspective on social benefits. Sheri Berman, in *The Primacy of Politics: Social Democracy and the Making of Europe’s Twentieth Century* (New York: Cambridge University Press, 2006), narrates the critical ideological transformation of social democracy from a class-based to a nation-based ideology, with Sweden taking the lead in abandoning the last vestiges of the Marxist ideology in which the social democratic parties no longer believed. Gøsta Esping-Anderson, *The Three Worlds of Welfare Capitalism* (Princeton, N.J.: Princeton University Press, 1990) and Hicks, *Social Democracy and Welfare Capitalism* document the importance of broad party coalitions to the adoption of social insurance in Europe.

<sup>66</sup> The classic statement of a Christian perspective on the right to a decent material standard of living was Pope Leo XIII, *Rerum Novarum*, Papal Encyclical (1891), [Http://www.papalencyclicals.net/Leo13/113rerum.htm](http://www.papalencyclicals.net/Leo13/113rerum.htm).

<sup>67</sup> Paine did not anticipate health insurance (medicine couldn’t do much for people in 1795) or unemployment insurance, which were to become core components of social insurance in all advanced economies, on the same rationale that supported pensions and disability insurance.

<sup>68</sup> William Beveridge, *Social Insurance and Allied Services* (London: HMSO, 1942).

<sup>69</sup> E. P. Hennock, *The Origin of the Welfare State in England and Germany, 1850–1914: Social Policies Compared* (Cambridge and New York: Cambridge University Press, 2007).

<sup>70</sup> Karl Hinrichs and Julia Lynch, “Old-Age Pensions,” in *The Oxford Handbook of the Welfare State*, eds Christopher Pierson, et al. (Oxford: Oxford University Press, 2010).

<sup>71</sup> James W. Russell, *Double Standard: Social Policy in Europe and the United States*, 2nd ed. (Lanham, Md.: Rowman & Littlefield Publishers, 2011), 120–1.

<sup>72</sup> Important studies of this issue include Russell, *Double Standard: Social Policy in Europe and the United States* and Samuel J. Eldersveld, *Poor America: A Comparative Historical Study of Poverty in the United States and Western Europe* (Lanham, MD: Lexington Books, 2007).

<sup>73</sup> Friedrich A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944).

<sup>74</sup> Friedrich Hayek, adapted after, *The Road to Serfdom in Cartoons* (Detroit: General Motors, 1944).

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<sup>75</sup> Friedrich A. Hayek, *Road to Serfdom*, 120–1.

<sup>76</sup> Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), 286.

<sup>77</sup> Friedrich A. Hayek, *Road to Serfdom*, 17–18.

<sup>78</sup> Friedrich A. Hayek, *Law, Legislation, and Liberty*, vol. 2, xiii, 100.

<sup>79</sup> Rawls, *Theory of Justice*, 76.

<sup>80</sup> Friedrich A. Hayek, *Law, Legislation, and Liberty*, vol. 2, 114.

<sup>81</sup> See Friedrich A. Hayek, *Constitution of Liberty*, 303, where he explicitly endorses Beveridge’s plan.

<sup>82</sup> Friedrich A. Hayek, *Constitution of Liberty*, 259.

<sup>83</sup> Friedrich A. Hayek, *Constitution of Liberty*, 261.

<sup>84</sup> Friedrich A. Hayek, *Constitution of Liberty*, 293, 303.

<sup>85</sup> Let us not distract ourselves with the fallacious thought that such a system diverts money that would otherwise go to “investment” and hence higher growth. Most of what is called “investment” in private retirement accounts is simply the purchase of already existing assets and provides no new capital to business enterprises.

<sup>86</sup> Friedrich A. Hayek, *Constitution of Liberty*, 297.

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