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The Common Sense of a Wealth Tax: Thomas Paine & Taxation as Freedom from Aristocracy

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Abstract

Thomas Paine's writing helped spur the American colonies to independence and ensure that the new nation would be a republic, not a monarchy. In light of the renewed interest in wealth taxes, this article provides a close examination of Thomas Paine's wealth tax proposal in the second volume of The Rights of Man. *Unlike Paine's proposal to tax inheritances, his 1792 proposal to tax wealth on an annual basis is often overlooked. The article identifies Paine's various design specifications, provides original estimates of the impact of Paine's wealth tax proposal within his own time period and as applied to billionaires today, and discusses ambiguities in the proposal. The article then places Paine in conversation with the contemporary wealth tax policy debate and demonstrates how Paine informs both the design and evaluation of tax policy. Lastly, the article clarifies the relationship between democratic ideals and taxation, portraying tax policy as a normative expression of republican ideals.*

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Introduction

We live in a time of democratic decline and extreme wealth inequality.[1] Yet policies to address the interconnections between these issues are usually quite narrow: campaign finance reform or restrictions on lobbying.[2] Democracy requires a much more robust intervention. Returning to the work of Thomas Paine, whose writing was instrumental in the founding of the American republic and has inspired democratic reformers ever since, this article provides a close examination of Thomas Paine's often overlooked tax proposal in the second volume of *Rights of Man*.[3]

Paine's tax proposal has several striking features. First, it proposes a top marginal rate of 100%—in essence imposing a ceiling on the return on wealth. Second, the annual tax is assessed based on the "yearly value," as Paine calls it, of a taxpayer's estate, equivalent to taxing the entire rate of return to wealth. Paine understood that one of the luxuries of wealth is that it produces income without labor on the part of the taxpayer. Paine is also explicit about the corrupting influence of extreme wealth on democracy, and ties his tax proposal directly to the goal of republican government. Each of these features is elaborated in Part I of our article.

In Part II, we provide original estimates of the impact of Paine's tax proposal. We first estimate the impact of his tax on 18th Century Britain by drawing from archival sources on estate sizes at the time of his writing. We then apply his proposed tax to our contemporary age of wealth inequality. We update his tax rate tables to current US dollars and apply his proposal to the annual value of estates among the top ten billionaires in the United States. This Part also identifies ambiguities with the design of Paine's tax were it to be adopted today. Using Paine's policy goals as our guide, we also seek to resolve these uncertain design elements.

In Part III, we place Paine in conversation with the contemporary wealth tax policy debate and demonstrate how Paine both informs design choices for current tax policy and provides a framework to evaluate tax policy in terms of its implications for the health of democracy. Remarkably, Paine's 18th century tax brackets, when adjusted to 2020 dollars,

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[1] *See, e.g.,* EMMANUEL SAEZ & GABRIEL ZUCMAN, TRIUMPH OF INJUSTICE (2019*). See also*, Miriam Berger, *U.S. Listed as a 'Backsliding' Democracy for First Time in Report by European Think Tank*, WASHINGTON POST (Nov. 22, 2021), https://www.washingtonpost.com/world/2021/11/22/united-states-backsliding-democracies-list-first-time/.

[2] *See* Tabatha A. El-Haj, *Beyond Campaign Finance Reform*, 57 B.C.L. REV. 1127 (2016).

[3] For commentary on Paine's inheritance tax proposal in *Agrarian Justice* and its direct relevance to contemporary tax policy debates, *see* BRUCE ACKERMAN & ANNE ALSTOTT, THE STAKEHOLDER SOCIETY (1999); BRUCE ACKERMAN, ANNE ALSTOTT & PHILIPPE VAN PARIJ, REDESIGNING DISTRIBUTION (Erik Olin Wright ed., 2006); Eric Rakowski, *Can Wealth Taxes Be Justified*, 53 TAX L. REV. 263, 275 fn. 24 (2000). For Paine's opinions on inheritance taxes generally, s*ee also*, James Repetti, *Democracy, Taxes & Wealth*, 76 NYU L. REV. 825, 830-31 (2001). By contrast, our article is about Paine's wealth tax proposal in the second volume of *Rights of Man*—a proposal yet to be discussed in contemporary tax scholarship.

closely align with the tax brackets proposed by Senators Elizabeth Warren and Bernie Sanders. Paine's top bracket applies to estates of approximately $1 billion. Assuming a rate of return of around 5 percent, Paine's 100 percent rate on wealth's annual value is also similar to the rates commonly proposed in recent wealth tax plans, revealing a previously unacknowledged symmetry across time between contemporary tax proposals and one propounded by a leader of America's founding generation.[4] These similarities also help illustrate the ways that a wealth tax can be designed as an income tax, and vice versa.[5]

Our article concludes by clarifying the relationship between democratic ideals and tax policy, articulating tax policy as a normative expression of republican ideals. Paine encourages us to imagine how economic policy, including taxation, can and must be a bulwark for democracy.

Part I: Paine's Proposal to Tax the Yearly Value of Estates

A. Introducing Thomas Paine

Before turning to Paine's tax proposal, a brief introduction to his life is in order. Born into a middling artisan family in England, Thomas Paine emigrated to America in 1774 after a string of failed careers and a lucky introduction to Benjamin Franklin. Within two years, he became the best-read political author of his generation. His first pamphlet, *Common Sense*, calling for American independence and republican government, sold hundreds of thousands of copies in a country of 2.5 million people; his *American Crisis* series rallied support to the patriot cause during the American Revolution. Paine's writing is widely recognized as essential to independence; as John Adams wrote, "Without the pen of the author of 'Common Sense,' the sword of Washington would have been raised in vain."[6]

Paine's radicalism did not end with American independence. Traveling in Europe in the early days of the French Revolution, Paine wrote a defense of the French republic, *The Rights of Man*, that sold more than a million copies and "made Paine a figurehead for the new revolutionary movements… sweeping the Atlantic world."[7] Threatened with a seditious libel

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[4] For a detailed account of three 21st century attempts to tax wealth, *see infra* Part III: 21st Century .

[5] An income tax is generally understood as a tax on the accretion to new wealth, rather than to all wealth. *See generally* William D. Andrews, *A Consumption-Type or Cash Flow Personal Income Tax*, 87 HARV. L. REV. 1113 (1974)(providing a clear account of the meaning of an income tax by distinguishing it from a consumption tax). What our article endeavors to illustrate, through our analysis of Paine's proposal and its similarities to contemporary proposals, is the ease by which an annual tax on the returns to wealth can yield similar results to an annual tax on wealth.
See also Glogower *infra* note 39 and accompanying text.

[6] Jill Lepore, *The Sharpened Quill*, NEW YORKER (Oct. 16, 2006), https://www.newyorker.com/magazine/2006/10/16/the-sharpened-quill. Adams's assessment of Paine's role in the revolution is all the more notable given that he was often a sharp critic of Paine. *See, e.g.*, THOMAS PAINE, COMMON SENSE: AND OTHER WRITINGS (Gordon S. Wood ed., 2003); Paul Desjardins, *Thomas Paine: Father of Republics*, *in* LIFE AND WRITINGS OF THOMAS PAINE (Daniel Edwin Wheeler ed., 1908).

[7] SETH COTLAR, TOM PAINE'S AMERICA: THE RISE AND FALL OF TRANSATLANTIC RADICALISM IN THE EARLY AMERICAN REPUBLIC, 39 (2011).

charge in Britain and elected to the national assembly in France, Paine moved to Paris and became an active participant in revolutionary politics, but soon became a victim of the Revolution's increasingly irrational violence. From a French prison, Paine wrote the deist tract, *The Age of Reason*, and once released, a social welfare proposal he called *Agrarian Justice*. Returning to America in 1802, Paine was ostracized for his outspoken deism and for his public criticism of George Washington. He died in 1809.

B. Paine's Republican Ideals

Because Paine's tax proposal in the *Rights of Man* extends from his political values, this section briefly introduces Paine's republicanism as a foundation for his tax proposals. While a complete account of Paine's political philosophy is beyond our scope here, any interpretation of his tax policy proposal would be incomplete without considering how Paine saw the relationship between the economy and the polity.

Paine was, above all, a republican: an opponent of monarchy, certainly, but more fundamentally an advocate of human freedom through self-governance. In describing his most popular American pamphlet, *Common Sense*, Paine writes that

> the mere independence of America, were it to have been followed by a system of government modelled after the corrupt system of English Government, would not have interested me… It was to bring forward and establish the representative system of government… that was the leading principle with me in writing.[8]

The rejection of hereditary rule is rooted in a broader commitment to self-determination. Paine provides a succinct account of this core principle: "My motive and object in all my political works, beginning with Common Sense… have been to rescue man from tyranny and false systems and false principles of government, and enable him to be free."[9]

In seeking to rescue mankind from oppression, Paine's principal target was monarchy. The corrupt and irrational rule of kings, Paine believed, was the primary cause of poverty and inequality. Monarchs enriched themselves and their families at the expense of the common people through unjust property and inheritance laws, regressive taxes, sinecures for aristocrats, and constant war-making.[10] Paine's early work focused on dismantling the tyrannical governmental structures that he believed were the fundamental source of injustice both political and economic.

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[8] Thomas Paine, *quoted in* ERIC FONER, TOM PAINE AND REVOLUTIONARY AMERICA 75 (2005).
[9] Thomas Paine, *quoted in* ERIC FONER, TOM PAINE AND REVOLUTIONARY AMERICA 75 (2005).
[10] ERIC FONER, TOM PAINE AND REVOLUTIONARY AMERICA 93 (2005). In *Common Sense*, Paine writes: "In England a king hath little more to do than to make war and give away places; which, in plain terms, is to impoverish the nation." THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 16 (Philip S. Foner ed., 1961). In *Rights of Man*, Paine writes that the consequence of consumption taxes imposed under the Hanoverian kings was "a constant increase in the number and wretchedness of the poor." THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 411 (Philip S. Foner ed., 1961).

Paine's suspicion of government did not extend to commerce. Unlike many radicals of later generations, Paine did not imagine that markets necessarily pitted economic classes against one another.[11] Having found a political home among the small artisans of revolutionary Philadelphia, Paine saw commerce as integral to society, because trade (along with science) encouraged inter-reliance and sympathy between people. Commerce "is a pacific system," Paine believed, "operating to unite mankind by rendering nations, as well as individuals, useful to each other."[12]

Paine's advocacy for commerce did not blind him to the dangers of extreme wealth, however. His vision of peaceful and beneficial trade was focused on the small farmer or artisan, rather than the great merchants. Extreme wealth, in Paine's eyes, "diminishes the spirit" of "patriotism," because rich men were willing to protect their fortunes by submitting to tyranny.[13] What is more, he believed that oppression is "often the consequence" of wealth, even if it were "seldom or never the means of riches."[14]

Thus Paine wanted to free people from domination both political and economic, and he recognized that these two systems of oppression were interconnected. Republican government was always Paine's primary tonic for economic ills. Starting with the *Rights of Man*, Paine began to consider how government could reverse systems of economic domination that not only oppressed the poor but corrupted politics. "The freedom of elections," Paine thought, was "violated by the overbearing influence" of inherited wealth.[15] To defend against the injustices that stem from economic inequality, Paine outlined the wealth tax we describe in detail in the following pages. He also devised "an economic program as close to a welfare state as could be imagined in the eighteenth century," including public education, stipends for the support of children and the elderly, and a jobs guarantee.[16] Freedom, for Paine, meant both lifting the poor from penury and dependence, so that they could participate as citizens, and eliminating the "vicious influence of the aristocratical system" of wealth consolidation.[17]

Paine wished to overturn the systems of domination and oppression that he saw as the inevitable consequence of monarchy and aristocracy. Taxation, he believed, could reduce the concentration of wealth, and thereby help eliminate the corruption of concentrated power. With that foundation, let us examine Paine's proposed tax on the annual value of wealth.

C. The Motivating Principles behind the Paine Tax

Paine bases his proposal on two principles: one, that wealth should be taxed because wealth is the only real luxury, and two, that there is a level of wealth that is so high that it should be prohibited.

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[11] ERIC FONER, TOM PAINE AND REVOLUTIONARY AMERICA 89 (2005).
[12] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 400 (Philip S. Foner ed., 1961).
[13] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 36 (Philip S. Foner ed., 1961).
[14] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 9 (Philip S. Foner ed., 1961).
[15] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 439 (Philip S. Foner ed., 1961).
[16] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 430-31 (Philip S. Foner ed., 1961).
[17] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 441 (Philip S. Foner ed., 1961).

In his first claim, Paine quite consciously subverts the arguments of his opponents. Whenever taxes are proposed, Paine notes, the "tax-making gentlemen" in Parliament adopt the "plausible language of taxing luxuries."[18] Paine takes particular aim at the "commutation tax," an immensely unpopular increase in the window duty.[19] Window duties applied annually on building occupants based on the number of windows on their dwellings. The window tax was intended to be progressive, under the assumption that rich people had large houses with lots of windows. In practice, however, windows were not an especially good proxy for wealth. As Paine notes, the tax fell "heavy on the middle class of people."[20]

For Paine, the limitations of the tax on windows is part and parcel of a general issue with luxury taxation. It is a fool's errand, he argues, to attempt to tax the particular items that currently satisfy the whims of wealthy people, rather than the resources that allow people to fulfill their every desire. Luxuries vary by time and place, leading to irrational differences in treatment of identical products. "I know not why any plant or herb of the field should be a greater luxury in one country than in another," Paine comments. "The real luxury does not consist in the article, but in the means of procuring it." If taxes should be laid on unnecessary excess, then they should be laid on wealth, Paine argues. "The proper object of taxation," Paine concludes is the "overgrown estate," which is a "luxury at all times."[21]

How big must an estate be to qualify as "overgrown"? Paine first defines luxury-level wealth as a multiple of the annual amount required to support a family:

> Admitting that any annual sum, say for instance, one thousand pounds, is necessary or sufficient for the support of a family, consequently the second thousand is in the nature of a luxury, the third thousand still more so, and by proceeding on, we shall at last arrive at a sum that may not improperly be called *a prohibitable luxury.*[22]

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[18] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 434 (Philip S. Foner ed., 1961).
[19] The 1784 increase in the window tax under Prime Minister William Pitt the Younger was known as the commutation tax because it was a replacement (or "commutation") for duties on tea, a policy intended to prop up the struggling East India Company. Hoh-Cheung & Lorna H. Mui, *William Pitt and the Enforcement of the Commutation Act, 1784-1788*, 76 ENGLISH HIST. REV. 300, 447, 465 (1961), http://www.jstor.org/stable/558296. In treating his proposal as a replacement for the commutation tax, Paine was playing to popular sentiment. A cartoon from 1785, for instance, shows, Pitt being accosted by working class women enraged by his tax policies. "Behind Pitt is a house showing three first-floor windows, two of which are blocked up, the word 'Commutation' written across them," the British Museum notes. "From the third a woman empties a chamberpot on Pitt's head." BM Satires / Catalogue of Political and Personal Satires in the Department of Prints and Drawings in the British Museum (6794), https://www.britishmuseum.org/collection/object/P_1868-0808-5435. Commutation was not the first unpopular effort to rescue the East India Company via corporate tax breaks; a previous effort provoked the Boston Tea Party. Joseph F. Thorndike, *Four Things You Should Know about the Boston Tea Party*, TAX HIST. PROJECT (Apr. 8, 2010), http://www.taxhistory.org/thp/readings.nsf/ArtWeb/1BB0C8F894BB490B852577020083A6F6?OpenDocument.
[20] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 433 (Philip S. Foner ed., 1961). *See also* Wallace E. Oates & Robert M. Schwab, *The Window Tax: A Transparent Case of Excess Burden*, LINCOLN INST. OF LAND POL'Y (Apr. 2014), https://www.lincolninst.edu/publications/articles/window-tax.
[21] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 434 (Philip S. Foner ed., 1961).
[22] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 434 (Philip S. Foner ed., 1961).

Proceeding along these lines, an estate of twenty thousand pounds seems obviously excessive, Paine believes. Indeed, he views his conclusion as all but unassailable. If the finance experts in Parliament "can prove that an estate of twenty, thirty, or forty thousand pounds is not a luxury," Paine insists, "I will give up the argument."

Paine's definition of luxury is not exclusively about need, however. It is also defined by effort. Paine wished to shield "property acquired by industry" from high tax rates, but believed that there is a level of acquisition beyond where "industry can extend."[23] Even if one's initial acquisition is the result of hard work, the annual return on a very large estate is no longer earned by work, Paine argues.

Having defined luxury in terms of need and effort, Paine turns to the appropriate level of taxation for these estates. Ever the revolutionary, Paine proposes to eliminate entirely the luxury of extreme wealth. Where wealth has extended far beyond what is needed to support a household, and far beyond what can plausibly be ascribed to individual effort, Paine believes "there ought to be a limit to property."

His first justification for a wealth maximum is economic. Rebalancing taxes onto the wealthy would, Paine believes, "remove the burden" of taxation to "where it can best be borne."[24] In this, Paine is adopting a common principle of progressive taxation, the taxpayer's ability to pay.

But Paine also defends his proposed property limit in political terms. He believed that extreme wealth, and especially inherited extreme wealth, undermined the ability of citizens to choose their leaders. Via his tax proposal, Paine means to eliminate the appeal of primogeniture, which he describes as "one of the principal sources of corruption at elections."[25]

Primogeniture, the feudal rule of passing an entire estate to one's eldest son, ensured that large estates would not be divided at death, and thereby preserved the consolidation of wealth that undergirded the landed aristocracy.[26] For this reason, primogeniture (and the related policy of entailing estates over multiple generations) was understood in Paine's era to be incompatible with republican principles.[27] Paine himself describes primogeniture as "aristocratical."[28]

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[23] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 434 (Philip S. Foner ed., 1961).
[24] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 433 (Philip S. Foner ed., 1961).
[25] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 433 (Philip S. Foner ed., 1961).
[26] Contemporary research confirms that primogeniture made autocracies more stable. Andrej Kokkonen & Anders Sundell, *Delivering Stability—Primogeniture and Autocratic Survival in European Monarchies 1000–1800*, 108 AM. POL. SCI. REV. 2, 438, 453 (2014).
[27] Jefferson successfully eliminated the entail in Virginia. Holly Brewer, *Entailing Aristocracy in Colonial Virginia: 'Ancient Feudal Restraints' and Revolutionary Reform*, 54 WM. & MARY Q. 2, 307, 346, (1997). Historians generally see the end of entail as one of the tangible economic achievements of the American revolution. Claire Priest, *The End of Entail: Information, Institutions, and Slavery in the American Revolutionary Period*, 33 LAW & HIST. REV. 277–319 (2015).
[28] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 434 (Philip S. Foner ed., 1961).

Paine wishes to "supercede"[29] primogeniture by making it economically irrational to give your whole estate, if very large, to a single person – or, for that matter, to have a very large estate at all.

D. The Elements of the Paine Tax

Paine's tax proposal is intended to ensure that there is an amount of wealth beyond which no one can continue to accrue. He envisions a regular application of marginal rates that, at the very top, entirely taxes away the return to extreme wealth.[30]

He applies his tax to "all estates of the clear yearly value of fifty pounds, after deducting the land tax, and up."[31] His graduated tax starts at 1.25% on an estate's produce over 50 pounds and rises to 100% of the produce over 23,000 pounds. As he notes, "At the twenty-third thousand the tax becomes twenty shillings in the pound [100%], and, consequently, every thousand beyond that sum, can produce no profit." Large property owners will respond, Paine believes, by "dividing the estate."[32] Given that "the richest in every nation have poor relations," he expects the result to be greater economic equality.

Paine includes detailed tables that explain the effect of his tax on revenue in each bracket. He provides his tax table in the terms that would have made sense to his audience at the time: pounds (£), shillings (s) and pence (d). Until 1971, there were 20 shillings to the British pound and 12 pence to the shilling, for a total of 240 pence to the pound. For a modern reader, this can be less than intuitive; the following table translates his calculations into percentages.[33]

[29] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 434 (Philip S. Foner ed., 1961).
[30] Paine is not explicit on the timing of his tax but given his revenue estimates, that he uses a *per annum* measure of the return on the estates, and that he wishes the tax to reach the point of "prohibition," it is clear that the "regular" application of the tax that he envisions is annual.
[31] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 434 (Philip S. Foner ed., 1961).
[32] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 436 (Philip S. Foner ed., 1961).
[33] In most editions of the *Rights of Man*, there are several minor errors of calculation in the tax tables. For example, a tax of 3d per pound on an estate of 500 pounds per annum is often listed as seven pounds and five shillings; it should be six pounds and five shillings. The errors are present in editions as far back as 1792, including the early Jordan editions that are typically seen as authoritative and the Symonds "cheap" edition that was edited by Paine himself. For clarity, the errors are corrected in Table 1.

Table 1: Thomas Paine's Tax Proposal

			At top of bracket		
Estates producing revenue over 50£ per annum	Tax per pound	Marginal tax rate (%)	"Total tax subtracted"	"Net produce"	Average tax rate (%)
50 to 500	0s 3d	1.25	£ 6 5s	£493 15s	1.25
1000	0s 6d	2.5	£18 15s	£ 981 5s	1.88
2000	0s 9d	3.75	£ 56 5s	£ 1943 15s	2.81
3000	1s 0d	5	£ 106 5s	£ 2893 15s	3.54
4000	1s 0d	7.5	£ 181 5s	£ 3818 15s	4.53
5000	2s 0d	10	£ 281 5s	£ 4718 15s	5.63
6000	3s 0d	15	£ 431 5s	£ 5568 15s	7.19
7000	4s 0d	20	£ 631 5s	£ 6368 15s	9.02
8000	5s 0d	25	£ 881 5s	£ 7118 15s	11.02
9000	6s 0d	30	£ 1181 5s	£ 7818 15s	13.13
10000	7s 0d	35	£ 1531 5s	£ 8468 15s	15.31
11000	8s 0d	40	£ 1931 5s	£ 9068 15s	17.56
12000	9s 0d	45	£ 2381 5s	£ 9618 15s	19.84
13000	10s 0d	50	£ 2881 5s	£ 10118 15s	22.16
14000	11s 0d	55	£ 3431 5s	£ 10568 15s	24.51
15000	12s 0d	60	£ 4031 5s	£ 10968 15s	26.88
16000	13s 0d	65	£ 4681 5s	£ 11318 15s	29.26
17000	14s 0d	70	£ 5381 5s	£ 11618 15s	31.65
18000	15s 0d	75	£ 6131 5s	£ 11868 15s	34.06
19000	16s 0d	80	£ 6931 5s	£ 12068 15s	36.48
20000	17s 0d	85	£ 7781 5s	£ 12218 15s	38.91
21000	18s 0d	90	£ 8681 5s	£ 12318 15s	41.34
22000	19s 0d	95	£ 9631 5s	£ 12368 15s	43.78
23000	20s 0d	100	£ 10631 5s	£ 12368 15s	46.22

There are several features of Paine's proposal that are worthy of note, including the system of brackets, the tax base, and the estimated revenue garnered from the tax.

Paine's use of brackets and marginal rates was quite cutting edge in the 1790s.[34] E.R.A. Seligman identifies only a few minor instances of bracketed income taxes that predate the *Rights*

[34] Paine neglects to apply the bracket principle at the first step of his tax. An estate producing less than 50 pounds in revenue is excluded from the tax, but for an estate worth 50 pounds or more, the first 50 pounds of revenue is not excluded from the tax: "An estate of £50 per an. At 3d per pound pays £0 12 6", which is 144+6=150 pence, i.e., the

of Man.[35] Most tax systems of the time were full of "notches," where small changes in the taxed item resulted in immense changes in one's tax liability. Indeed, one of the reasons the window tax was so disliked is that it failed to take account of marginal effects. For a time, its rates applied to each window, but only for houses with ten or more windows – resulting, unsurprisingly, in a strong incentive to board up the 10th window.[36] Marginal taxation was so novel in 1792 that the mathematician Nicolas de Condorcet took pains to describe its operation in his essay of that year, *Sur l'impôt progressif*.[37] It is plausible, even likely, that Paine was influenced in his thinking by Condorcet, his friend and collaborator in revolutionary France.

In applying his tax to "estates," Paine appears to wish his tax to touch all forms of wealth that are not wage labor. Given that "these gentlemen law-makers and tax-makers" have limited the "poor pittance which personal labor can produce," it is only right that the ruling elite should have a limitation of their own, on "property they never acquired (nor probably any of their ancestors), and of which they have made so ill use."[38]

Nonetheless, though he intends to limit property, Paine's brackets are based on the rate of return to wealth, not a calculation of total wealth. Paine intends his tax to come into effect on estates worth over 50 pounds in annual "produce," as he refers to it. This raises an important question as to whether Paine's tax proposal is more appropriately described as an income tax or a wealth tax. To 21st Century audiences, his plan appears as an income tax in that it applies to returns to wealth, rather than the underlying corpus of the estate. However, Paine is quite explicit that wealth is his primary object of concern; those with only wage income are not subject to the tax. We are content to refer to his proposal as a tax on wealth, though we recognize that the distinction between the two tax bases can be somewhat porous. Indeed, our analysis of Paine's proposal in contrast to the Warren and Wyden proposals also further illustrates the ease by which a wealth tax can be an income tax and vice versa.[39]

3d per pound rate applied to the whole £50. Thus, while an estate of £49 pays nothing, an estate of £50 pays 12s 6d, leaving a value of £49 7s 6d. The 50th pound is taxed at 62.5%. This rate structure is similar to the commutation tax at the time, where the first nine windows did not create a tax liability, but the tax on the tenth window triggered a per window tax on all preceding nine windows.

[35] "[I]n 1742 the Elector Frederick Augustus, of Saxony, established a progressive general income tax, in six classes, with rates varying from one to eight per cent. The tax was so arranged that each increment of the income paid a separate rate according to the class to which that increment belonged." Edwin Robert Anderson Seligman, *Progressive Taxation in Theory and Practice*, 9 AM. ECON. ASS'N Q. 1, 26 (1908). Seligman also notes a few rare instances of progressive taxes in the 17th Century, including a property tax regime in Switzerland and a proposed progressive tax bracket structure in Spain.

[36] Wallace E. Oates & Robert M. Schwab, *The Window Tax: A Transparent Case of Excess Burden*, LINCOLN INST. OF LAND Pol'y (Apr. 2014), https://www.lincolninst.edu/publications/articles/window-tax.

[37] Paine and Condorcet's contemporary, Thomas Jefferson, struggled to describe the concept of marginal rates in a letter to James Madison, proposing to "tax the higher portions of property in geometrical progression as they rise." THE PAPERS OF THOMAS JEFFERSON (Julian P. Boyd et al. eds., 1950), https://press-pubs.uchicago.edu/founders/documents/v1ch15s32.html.

[38] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 440 (Philip S. Foner ed., 1961).

[39] This observation is best described by Ari Glogower, who coined the term "wealth integration techniques" for income tax features that produce wealth tax effects. He offers a typology of methods for adding wealth tax features

In using the return to wealth as a proxy for the total value of an estate, Paine is in keeping with his contemporaries. Wealth in that era, and especially real estate wealth,[40] was commonly described in terms of "thousands a year," rather than its lump sum value.[41] Calculating total wealth would have been a nearly impossible task in a society where much of real estate wealth never came onto the market; the vast wealth of the aristocracy was often entailed and therefore literally unsaleable.[42] As economist and historian Gabriel Ardant notes, "tax collection and assessment are indissolubly linked to an exchange economy."[43] The relevant measure of wealth for tax purposes was at the time its rate of return to the owner. Where British property taxes were graduated, the base was sometimes determined based on an annual rent value. The 1778 tax on inhabited houses, for example, had two rates: 6d/£ (2.5%) for houses with an annual value of below £50, and 1s/£ (5%) for houses valued over £50 per annum.[44] Describing property in terms of its annual return was not a new feature of the Paine plan.

Finally, Paine makes some estimation of the revenue from his tax. He intends the tax to replace the commutation tax, with a revenue of about £770,000 annually. Should his tax outproduce the commutation tax, he suggests his taxes be lowered "upon estates under two or three thousand a year."[45] As this amendment suggests, revenues are not the main purpose of the tax, from Paine's perspective; the "object is not so much the produce of the tax as the justice of the measure."[46] That justice comes in the form both of a fairer tax liability across economic strata, and the change in ownership and inheritance patterns Paine believes will result from his tax system.

In prioritizing behavioral change over revenues, Paine is in essence treating his tax as a Pigouvian tax. Were his tax to successfully reduce wealth concentration, it would necessarily raise less revenue – but this would, for Paine, be a sign of success, rather than failure. As such, his work prefigures not only that of later proponents of progressive taxation, but modern

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to an income tax. Ari Glogower, *A Constitutional Wealth Tax*, 118 MICH. L. REV. 717 (2020). *See also,* John Brooks, *The Definitions of Income*, 71 TAX. L. REV. 253 (2018) ("any operative definition of income is essentially a political choice, even when we claim to be using a pure definition, and any definition thus inherently incorporates normative views about, for example, justice, social policy, and economics. Ultimately, 'income' is whatever society wants it to be in order to achieve a result that the democracy believes to be appropriate and just."). The scholarly debate over what constitutes "income" is not limited to the 21st Century. *See e.g.* Boris I. Bittker, *A Comprehensive Tax Base as a Goal of Income Tax Reform*, 80 Harv. L. Rev. 925 (1967).

[40] As an example of the difference in how real and other property were described, see this dialogue from the 1763 comedy, *The Discovery* by Frances Sheridan: "Suppose the widow Knightly, with a real estate of three thousand a year, and a personal one of fifty thousand pounds, should have taken a fancy to you…" *in* John Bell, BRITISH THEATRE, VOLUME 29, 26 (1792).

[41] Early property requirements for voting also used income per year for measuring a land's value, with ownership of property producing forty shillings per year serving as the threshold for the franchise. *See* WILLIAM CHILTON, AMERICAN SUFFRAGE: FROM PROPERTY TO DEMOCRACY 7 (1960).

[42] *See* WILLIAM CORNISH ET AL., LAW AND SOCIETY IN ENGLAND: 1750-1950 130 (2019).

[43] THE FORMATION OF NATIONAL STATES IN WESTERN EUROPE 166 (Charles Tilly ed., 1975).

[44] Edwin Robert Anderson Seligman, *Progressive Taxation in Theory and Practice*, 9 AM. ECON. ASS'N Q. 1, 27 (1908).

[45] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 436 (Philip S. Foner ed., 1961).

[46] THE LIFE AND MAJOR WRITINGS OF THOMAS PAINE 436 (Philip S. Foner ed., 1961).

economic analyses suggesting that high rates of progressive taxation affect the pre-tax distribution of income.[47]

Part II: Original Estimates of the Paine Tax

A. Estimate of Paine's Tax in 18th Century Britain

A plan calculated in shillings and pence that describes wealth in terms of "thousands per year" and is motivated in part by the arcane inheritance law of primogeniture — on first read, Paine's tax plan might seem quite distant from contemporary tax issues in the United States. But a closer consideration of who Paine was intending to tax in 1792 reveals how closely connected the economic and political concerns of Paine's day are to those of our own time.

Paine's first non-zero bracket starts at £50, with a tax of 1.25%. What percentage of British households would have been liable for some amount of tax, under Paine's proposal? Data about the income and wealth distribution of 18th Century Britain are limited. Conveniently, however, Britain did implement an income tax less than a decade after Paine was writing. Prime Minister William Pitt introduced the income tax to fund Britain's war against Napoleon.[48] In 1800, 320,759[49] taxpayers, about 12% of households,[50] paid Pitt's income tax.

The incidence of the Pitt income tax provides a relatively good ballpark estimate of the breadth of the Paine wealth tax proposal. Though Pitt's lowest taxed bracket started at £60, rather than £50, this apparent difference disappears after taking account of inflation.[51] Pitt's plan also included a variety of deductions and family allowances,[52] while Paine only explicitly deducts the land tax.[53] However, if Pitt's deductions would shrink the breadth of his tax relative to Paine's, the overall base of Paine's tax is narrower; Pitt's tax applied to all kinds of income,[54] while Paine is concerned only with the revenue from "estates." That said, the vast majority of people who worked for wages or a salary did not make enough money to owe money under Pitt's

[47] Thomas Piketty, Emmanuel Saez & Stefanie Stantcheva, *Optimal Taxation of Top Labor Incomes: A Tale of Three Elasticities*, 6 AM. ECON. J.: ECON. POL'Y 1, 230, 271, (2014).
[48] *A Tax to Beat Napoleon*, HER MAJESTY'S REVENUE & CUSTOMS, https://webarchive.nationalarchives.gov.uk/ukgwa/20130127153155/http://www.hmrc.gov.uk/history/taxhis1.htm#top.
[49] This is substantially smaller than the number of taxpayers expected to pay the tax; contemporary expectations put number of liable households between 472,117 and 662,250. Whether the estimates were overly optimistic or the tax was widely evaded is a subject of debate. T.V. Jackson, *British Incomes Circa 1800*, ECON. HIST. REV., 257, 283 (1999).
[50] T.V. Jackson, *British Incomes Circa 1800*, ECON. HIST. REV., 257, 265-66 (1999).
[51] All inflation data based on the "relative income" inflation measure available at: *Five Ways to Compute the Relative Value of a U.K. Pound Amount, 1270 to Present*, https://www.measuringworth.com/calculators/ukcompare/ (last visited Feb. 7, 2022).
[52] T.V. Jackson, *British Incomes Circa 1800*, ECON. HIST. REV., 257, 259 (1999).
[53] There are indications in Paine's brief proposal that the author would have been amenable to various deductions. See, for instance, Paine's use of the phrase "clear yearly value" and concern about "support of a family." Paine does not discuss the deductibility of losses.
[54] T.V. Jackson, *British Incomes Circa 1800*, ECON. HIST. REV., 257, 258 (1999).

income tax.[55] Leaving a margin for these policy differences, we might reasonably assume that Paine's proposal would have touched 10-15% of the population.

Despite their similar bases, however, Paine proposal and Pitt's tax have extremely different revenue implications. Paine expected his tax's annual revenue to about £700,000.[56] In its first year, Pitt's tax raised nearly £6 million.[57] The difference in revenue is readily explained; Paine's tax is far lower over the vast majority of the economic spectrum. Figure 1 illustrates the difference in the targeting of the Paine and Pitt proposals.

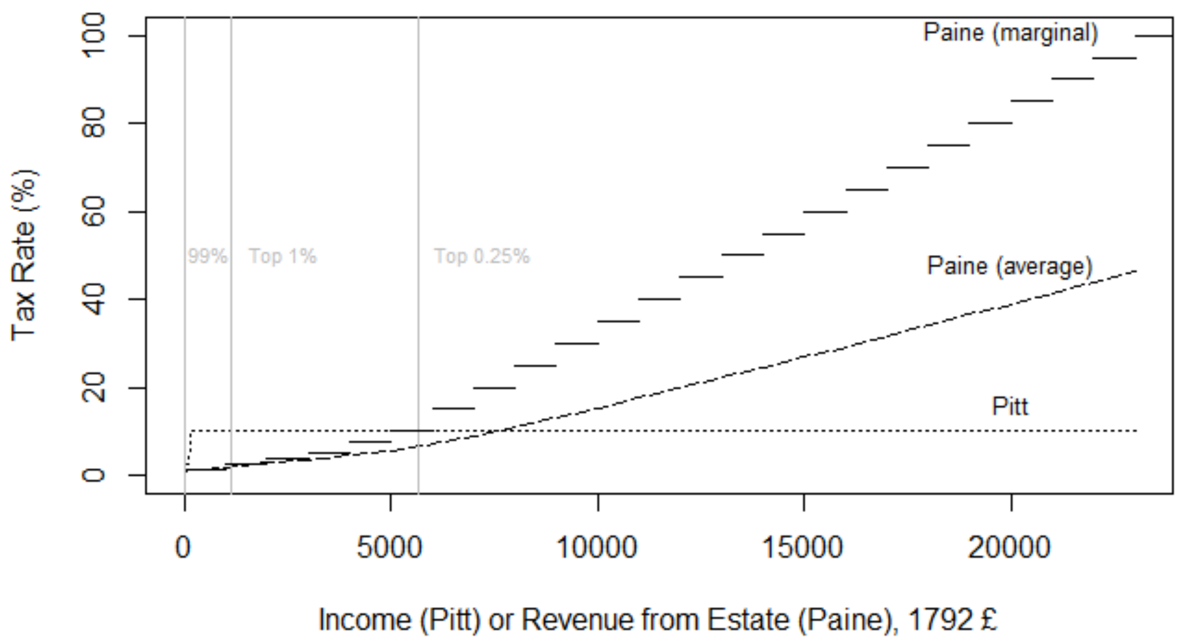

Figure 1: Tax rates under Pitt tax and Paine proposal.[58]

The Pitt tax rates rose rapidly to 10% and then applied a flat rate on all incomes over £200. Paine's proposed rates rose slowly over a much longer range; the marginal rate of Paine's

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[55] Pitt did not even consider regular laborers in his revenue estimates, though he did estimate income from "professions" at £2 million, and trade "in which artisans are engaged" at £10 million, out of a total of £125 million. S.J. Thompson, *The First Income Tax, Political Arithmetic, and the Measurement of Economic Growth*, 66 ECON. HIST. REV. 873, 880-81 (2013).

[56] Paine expects his tax to raise an amount similar to or less than the commutation tax, which he pegs at £771,657 a year. Indeed, the window tax had an average annual yield of L769,000 in the period 1788-1792. See Table 5 *in* Patrick K. O'Brien, *The Political Economy of British Taxation, 1660-1815*, ECONOMIC HIST. REV. 1, 32 (1988).

[57] *A Tax to Beat Napoleon*, HER MAJESTY'S REVENUE & CUSTOMS, https://webarchive.nationalarchives.gov.uk/ukgwa/20130127153155/http://www.hmrc.gov.uk/history/taxhis1.htm#top.

[58] Bracket thresholds for Pitt are slightly deflated to account for differences in relative income between 1792 and 1799. Estimates of the top 1% and top 0.25% of incomes from Shaviro 2021 and Delong 2003, respectively.

plan only reaches 10% at £5000, an amount one hundred times the income of the average farm laborer or artisan.[59]

Thus Paine's tax is tightly focused on the most extreme fortunes of his era. Paine's marginal rate rises over 50% only at £13,000; approximately 200 households in the entire country were this wealthy.[60] Only a few dozen estates, at most, would be subject to Paine's highest rates. Patrick Colquhoun, a Scottish statistician in the early 19th Century, attempted to calculate the average income for a wide array of social groups, from "royalty" to "vagrants." Colquhoun put the royal family's annual income at £146,000 in 1812 and that of the Prince Regent at £172,000, but the average income of the other ten "remaining princes and princesses of the blood, both lineal and collateral" at a mere £18,300 per household.[61] His wealthiest non-royal group, the 316 households headed by "temporal peers" (e.g. dukes and earls), was estimated to have an average income of only £10,000 a year. Applying Paine's unadjusted rates to these incomes would put the minor royals in the 75% marginal tax bracket, while the average duke or earl would be paying 35% on his last pound.

Applying Paine's tax rates to Colquhoun's averages is somewhat misleading, however, because of the large range of incomes within Colquhoun's social groups. A 20th Century analysis found that the four hundred "great landlords," who owned a fifth of all the land in England,[62] had an average income of £10,000 in 1790, with a range between £5,000 and £50,000;[63] the Earl of Derby's estate was worth £40,000 a year.[64] The other great class of wealth was mercantile; the "major merchants" in England had estates worth "between £200,000 and £800,000," which, at 5% annual return, would provide incomes between £10,000 and £40,000.[65] Records from Pitt's income tax provide some specific examples of those with wealth of this magnitude. Among 2,508 surviving records of the Pitt income tax,[66] seven taxpayers reported incomes over £18,000, Paine's 75% tax threshold, and two, the Duke of Devonshire and the Duke of Northumberland, had incomes over £23,000.[67] There clearly were families to whom Paine's top tax rates would have applied.

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[59] See Table 4 *in* PATRICK COLQUHOUN, A TREATISE ON THE WEALTH, POWER, AND RESOURCES, OF THE BRITISH EMPIRE (1814).
[60] GREGORY CLAEYS, THOMAS PAINE: SOCIAL AND POLITICAL THOUGHT 81 (1989).
[61] British royalty are to this day exempt from a variety of British laws, including tax laws. *Taxation*, ROYAL.UK: ROYAL FINANCES, https://www.royal.uk/royal-finances-0 (last visited Feb. 7, 2022). Paine makes no specific indication that he intends to include the royal family in his proposal. In deference to Paine's anti-monarchical and republican commitments, however, one might reasonably assume that Paine's ideal tax plan included taxes upon the royal family.
[62] GORDON S. WOOD, THE RADICALISM OF THE AMERICAN REVOLUTION 123 (2011).
[63] GORDON EDMUND MINGAY, ENGLISH LANDED SOCIETY IN THE EIGHTEENTH CENTURY 26 (2013).
[64] GORDON S. WOOD, THE RADICALISM OF THE AMERICAN REVOLUTION 112 (2011).
[65] GORDON S. WOOD, THE RADICALISM OF THE AMERICAN REVOLUTION 112 (2011).
[66] Jackson, *supra* note 49 (describing this set of records of named taxpayers and their tax payments).
[67] Contemporary accounts suggest that the Northumberland estate was almost unequalled outside of the royal family. David Cannadine, *The Landowner as a Millionaire: The Finances of the Dukes of Devonshire, c.1800-c.1926*, 25 AGRIC. HIST. REV. 77, 77-97 (1977) ("In 1819, the American Ambassador recorded that the 'four greatest incomes in the kingdom' belonged to the Duke of Northumberland, Earl Grosvenor, the Marquess of Stafford, and the Earl of Bridgewater, each of whom was reputed to possess 'one hundred thousand pounds, clear of everything.'").

For these estates, Paine's tax would have been heavy indeed. Supposing they paid the tax rather than (as Paine expected) dividing their estates, Devonshire, with an income of £50,000, and Northumberland, with an income of £60,200, would have each been left with £12,369 after tax. In other words, Devonshire's *average tax rate* would have been 75%; Northumberland's would have been 79%.

It would be difficult to overstate the cumulative effect of such a tax on the British wealth distribution over succeeding years. By way of illustration, however, we note that the titled descendants of the wealthiest aristocrats of the late 18th Century remain on Britain's "Rich List" today; the current Duke of Devonshire has a net worth of £870 million, and the Duke of Northumberland's estate was recently valued at £365 million.[68] If the distribution of wealth itself has striking staying power, surely Paine's tax proposal has contemporary relevance as well. In the following section, we consider how an updated Paine wealth tax would apply to the wealth distribution of the United States.

B. Ambiguous Design Elements of Paine's Tax

Paine did not provide statutory language for his tax proposal, nor do we have the accumulated guidance that comes with the actual enforcement of a tax over time. As such, certain aspects of Paine's proposal are inevitably unclear relative to 21st century tax policies. In this section, we discuss three of the primary ambiguities in Paine's tax design that are most consequential for tax assessment were his plan to be adopted.

First, the liability for Paine's tax proposal is entirely based on the yearly value of an estate, but it is unclear whether these values are imputed by the tax collector based on market conditions at the time, such as a five percent rate of return per year, or if there would need to be some sort of cash flow that was tracked by the taxpayer, a third party withholding agent, or the tax authority.

To illustrate the significance of this question, compare two billionaires, each with one billion dollars' worth of commercial real estate as determined by its current exchange value. Although both are owners of the same amount of land, Owner A has a 100% occupancy rate while Owner B has a 0% occupancy rate. Under Paine's proposal, would the yearly value be the same for the two landowners, as both are equivalent billionaires from a net worth standpoint, or would only the owner of the occupied land pay tax? This question also has implications for the tax treatment of property that appreciates in value. Would the new appreciation appear as part of the yearly value of the property and thus potentially be subject to a 100% marginal rate, or would the appreciation simply appear in the following tax year's yearly value, so that the yield of which would be subject to the tax?

If we assume some type of cash flow requirement, then the tax liability for the unoccupied land yielding no annual flow of "produce" would be zero. The appreciation in value would also escape tax in the year of appreciation, though the future produce would still be taxed.

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[68] Lianna Brinded, *The 14 Aristocrats Who Are Richer Than the Queen*, INSIDER (Jan. 6, 2017, 2:00 AM), https://www.insider.com/sunday-times-rich-list-2016-the-aristocrats-that-are-richer-than-the-queen-2017-1#14-the-duke-of-northumberland-1.

If we interpret Paine's proposal based on his explicitly stated goal of ending aristocracy and creating a certain tier of wealth to be a prohibitable luxury, then the two billionaires would be subject to the same amount of tax and appreciation would also count as a form of produce. In the estimates provided in Part II.C, we impute the yearly value of estates regardless of realization. This is most consistent with the stated goals of Paine's tax proposal. One aspect of Paine's objection to the large estates of his era is that they were not used productively, so it is unlikely that his proposal would give preferential tax treatment to aristocrats who choose to keep land fallow or vacant.[69]

The question of imputed annual value also has implications for determining under what conditions would the corpus of a billionaire's estate be taxed, beyond the one hundred percent tax on produce from the estate. Should annual yearly value be based on imputed rate of return regardless of cash flow, and should the actual rate of return be below the value imputed by tax authorities, then the cost of owning certain property would *exceed* its yearly value. For example, the billionaire whose entire holding of commercial real estate had no tenants and who also had no appreciation in value, would see a tax liability that reduced their net worth if returns were imputed. This would create an even stronger incentive for estates to be broken up by their own owners and is consistent with Paine's stated goals for the tax.

A second fundamental question pertains to the treatment of debt under Paine's proposal. To return to our two hypothetical billionaires, imagine that they continue to own equal plots of land, but one has borrowed against their land at its entire value so that his net worth would be zero although he still holds title to the land, while the other has no debt at all. Would this debt be factored into the "yearly value" for determining liability of the tax? One possibility is that debt would only be considered to the extent interest payments were made on the debt in a given year such that they would reduce the "yearly value" of the estate by the amount of interest paid. Paine is explicit, however, that deductions for land tax be allowed yet makes no mention of deductions for interest payments. This choice implies interest would not be deductible. The option to borrow against one's estate is also emblematic of the very luxuries provided by wealth that those without large estates do not enjoy, further implying that debt is to be disregarded for purposes of determining yearly value. If Paine's primary ambition is to tax the luxuries attendant to wealth, then allowing borrowing to reduce tax liabilities of the aristocracy would directly undermine his goals.[70] We must concede, however, that Paine simply does not address this issue explicitly and so it remains up for interpretation.[71]

The final ambiguity we discuss in this section applies to international tax planning opportunities under Paine's tax. No tax is without avoidance opportunities and Paine's proposal

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[69] *See* FONER, *supra* note 10, at 439 ([The wealth consolidation that results from primogeniture] "occasions a waste of national property. A considerable part of the land of the country is rendered unproductive, by the great extent of parks and chases which this law serves to keep up, and this at a time when the annual production of grain is not equal to the national consumption."). Adam Smith also observed this pattern as a reason to critique the economic incentives created by the entail. *See* CORNISH, *supra* note 42, at 168.

[70] This tax outcome would also reflect the commonly held belief in this era that debt was a serious moral failing. *See* BRUCE MANN, REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE (2009).

[71] It is also interesting to contrast the high level of detail in Paine's proposal for a social safety net to the relative simplicity of his tax proposal on wealth. This distinction may reflect his own personal experience, as Paine was not himself a wealthy man, and so knew far less about the capital structure of landed estates than he did about the realities of poverty.

is no exception. We note this ambiguity since cross-border tax issues are one of the most common compliance challenges raised in debates over taxing wealth.[72] Under Paine's proposal, it is unclear whether taxpayers' decision to expatriate themselves or their assets would be effective in avoiding Paine's tax. Again, looking to Paine's stated priorities in designing his tax can provide greater clarity. To the extent the produce of one's wealth is under the dominion of the taxpayer, then the taxpayer is surely enjoying the luxury of their wealth. Hence, Paine's tax should apply regardless of whether the wealth is held overseas.

C. Estimate of Paine's Tax in Contemporary U.S.

Table 2 summarizes the Paine tax brackets translated into 2020 U.S. dollars.[73] Column 1 reiterates the marginal tax rates associated with the Paine plan, from 1.25 to 100%. Column 2 updates Paine's tax brackets by converting them from 1792 pounds to 2020 dollars. Column 3 notes the amount of taxes a taxpayer would owe at the top of the bracket, and column 4 reports their remaining revenue. Column 5 provides a rough estimate of the size of estate likely to produce the relevant level of revenue, assuming a 5% rate of return.[74]

[72] *See, e.g.,* OECD, THE ROLE AND DESIGN OF NET WEALTH TAXES IN THE OECD, CHAPTER 4: NET WEALTH TAX DESIGN ISSUES (2018).

[73] We account for inflation between 1792 and 2020 using income relative to per capita GDP; this measure allows for a comparison of relative economic status or position within the income distribution. Using this measure, £1 in 1792 is equal to £1577 in 2020. *Five Ways to Compute the Relative Value of a U.K. Pound Amount, 1270 to Present*, https://www.measuringworth.com/calculators/ukcompare/ (last visited Feb. 7, 2022). We then converted to dollars at a rate of £1 = $1.37; thus £1 in 1792 is equal to $2,160.49 in 2020. An alternative approach uses personal income per capita rather than GDP per capita and produces similar results. According to Lindert *infra* note 155, income per capita in Britain in 1801 was £22.33; the Federal Reserve estimates U.S. personal income per capita in 2020 at $59,450. FED. RES. https://fred.stlouisfed.org/series/A792RC0A052NBEA. By this measure, £1 in 1792 is equal to $2662.34 in 2020, and the top bracket of the Paine plan comes into effect for revenue from wealth over $61.2 million, rather than $49.7 million. A full comparison of alternative measures of inflation available from the authors on request.

[74] Estimates by Saez and Zucman show that, from 1980 to 2016, real wealth of the top 0.1% has grown at 5.3% per year. Emmanuel Saez & Gabriel Zucman, Letter to Senator Warren (Feb. 24, 2021), https://www.warren.senate.gov/imo/media/doc/Wealth%20Tax%20Revenue%20Estimates%20by%20Saez%20and%20Zucman%20-%20Feb%2024%2020211.pdf. Batchelder also assumes a 5% rate of return for her hypothetical taxpayer. *Batchelder infra* note 103 at 82, fn.12. This is more conservative than Forbes, which estimates a 7% rate per year. Saez & Zucman, *supra* note 73. Once a rate of return is agreed upon, any amount of wealth can be re-stated in terms of its annual value.

Table 2: Paine's Wealth Tax in the 21st Century

Marginal Rate (%)	Bracket (Revenue from Wealth) (2020 $)	Tax Paid (2020 $)	Post Tax Revenue from Wealth (2020 $)	Approximate Estate Size (2020 $, in millions)
0	Up to $108,025	$0	$108,025	$2
1.25	Up to $1,080,245	$13,503	$1,066,742	$22
2.5	$2,160,490	$40,617	$2,119,873	$43
3.75	$4,320,980	$121,420	$4,199,560	$86
5	$6,481,470	$229,444	$6,252,026	$130
7.5	$8,641,960	$391,481	$8,250,479	$173
10	$10,802,450	$608,178	$10,194,272	$216
15	$12,962,940	$932,035	$12,030,905	$259
20	$15,123,430	$1,364,133	$13,759,297	$302
25	$17,283,920	$1,904,688	$15,379,232	$346
30	$19,444,410	$2,553,051	$16,891,359	$389
35	$21,604,900	$3,307,710	$18,297,190	$432
40	$23,765,390	$4,173,202	$19,592,188	$475
45	$25,925,880	$5,143,695	$20,782,185	$519
50	$28,086,370	$6,223,940	$21,862,430	$562
55	$30,246,860	$7,413,505	$22,833,355	$605
60	$32,407,350	$8,711,096	$23,696,254	$648
65	$34,567,840	$10,114,550	$24,453,290	$691
70	$36,728,330	$11,624,516	$25,103,814	$735
75	$38,888,820	$13,245,532	$25,643,288	$778
80	$41,049,310	$14,974,788	$26,074,522	$821
85	$43,209,800	$16,812,933	$26,396,867	$864
90	$45,370,290	$18,756,078	$26,614,212	$907
95	$47,530,780	$20,808,975	$26,721,805	$951
100	$49,691,270	$22,967,305	$26,723,965	$994

In contemporary dollars, the lowest taxes of the Paine plan are applied to estates producing an income above $108,025. If wealth produces a 5% annual rate of return, that estate would be worth about $2.2 million. The owner of this estate would pay a 1.25% tax on income above $108,025, for a maximum of $13,503 in tax liability in that bracket. At the other end of the spectrum, the 100% bracket applies to revenue from wealth totaling about $49.7 million, a level of income one would expect from an estate worth $994 million. Roughly speaking, then, Paine's 100% tax applies to billionaires.

The after-tax return to wealth declines substantially before the 100% bracket, of course. The last approximately $100 million in *wealth* before reaching a billion would result in an increase to after-tax *income* of only about $100,000. The last $40 million of a billionaire's *wealth* would increase their after-tax *income* by about $2,000. The maximum after-tax revenue anyone could earn from wealth under the Paine 2021 plan would be $26.7 million (Figure 2).

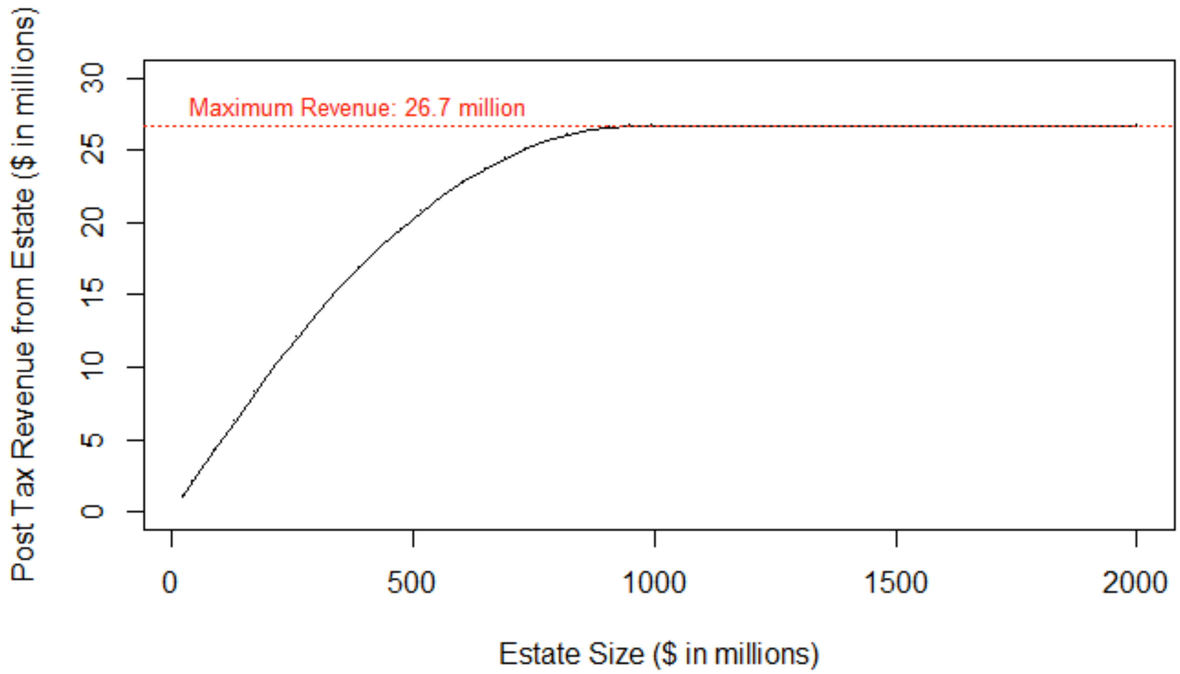

Figure 2: The Declining Returns to Wealth Under Updated Paine Tax Plan

Because the Paine tax proposal puts a cap on the returns to wealth, the average tax rate, calculated by dividing the amount paid in tax by the total size of the estate, depends upon the taxpayer's annual rate of return. From 1980 to 2016, real wealth of the top 0.1% has grown at 5.3% per year.[75] Under Paine's tax proposal, a hypothetical billionaire who experienced a 5% annual return on their estate of 2 billion dollars would have a revenue of $100 million, $73.3 million over the revenue maximum; this billionaire would therefore owe $73.3 million in taxes, an average tax rate of 3.5%, a tax rate similar to contemporary wealth tax proposals.

However, though real wealth at the top has grown *on average* at about five percent,[76] individual households experience higher or lower rates of return from year to year. For example, the ten richest billionaires in the world doubled their wealth over the first 21 months of the

[75] Emmanuel Saez & Gabriel Zucman, Letter to Senator Warren (Feb. 24, 2021), https://www.warren.senate.gov/imo/media/doc/Wealth%20Tax%20Revenue%20Estimates%20by%20Saez%20and%20Zucman%20-%20Feb%2024%2020211.pdf. Batchelder also assumes a 5% rate of return for her hypothetical taxpayer. Batchelder, *infra* note 103 at 82 fn.12. This is more conservative than Forbes, which estimates a 7% rate per year. Saez & Zucman, *supra* note 73. Once a rate of return is agreed upon, any amount of wealth can be re-stated in terms of its annual value.

[76] Saez & Zucman, *supra* note 73.

COVID-19 pandemic.[77] Under the Paine proposal, the maximum revenue cap would continue to apply; each U.S. billionaire would be able to receive up to $26,723,965 in after-tax returns. Any estate growth beyond this would be paid to the federal government in taxes, essentially setting a ceiling on current billionaires' levels of wealth.

Table 3 estimates the tax liability that would have been imposed on contemporary billionaires using our 2020 tax rate schedule.[78] U.S. billionaire estate sizes are drawn from the 2020 and 2021 Forbes World's Billionaires Lists.[79] Because we are estimating the tax liability of U.S. taxpayers, we only estimate for U.S. billionaires.[80] Our table estimates the impact on the top ten U.S. billionaires on the Forbes list in 2021.

Table 3: Paine's Tax Applied to US Billionaires in Tax Year 2021

Name	Wealth in 2020[81] (billions)	Wealth in 2021 (billions)	Tax[82] (billions)	Wealth in 2021 (post-Paine wealth tax, billions)	Average tax rate on Wealth (%)
Jeff Bezos	120.91[83]	177	56	120.94	32%
Elon Musk	26.32	151	125	26.35	83%
Bill Gates	104.86	124	19	104.89	15%
Mark Zuckerberg	58.53	97	38	58.56	40%

[77] This increase is driven to a substantial degree by Elon Musk's fortune, which was ten times larger in November 2021 than it was in March of 2020, but all of these billionaires saw double-digit annualized growth. One of the billionaires included in this statistic is not an American and therefore is excluded from the analysis that follows. Max Lawson & Didier Jacobs, *Inequality Kills: Methodology Note*, OXFAM (Jan. 2022), https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621341/tb-inequality-kills-methodology-note-170122-en.pdf?sequence=24.

[78] The annual revenue procedure issued by the IRS to adjust brackets for inflation is generally issued at the end of the year preceding the year in which tax liability is assessed. For example, Rev. Proc. 2020-45 was issued in Oct. 2020 to specify the new brackets that were to be used in tax year 2021. Hence, we use our 2020 inflation adjustments to Paine's 1792 rate schedule for determining tax liabilities imposed on 2021 estate sizes.

[79] Kerry A. Dolan, Jennifer Wang & Chase Peterson-Withorn, eds., *Forbes World's Billionaires List: The Richest in 2021*, FORBES, https://www.forbes.com/billionaires/ (last visited Jan. 27, 2021).

[80] Paine did not specify whether foreign assets would be excluded from the tax, nor whether foreign taxpayers with domestic assets would be included in the tax, so our estimates reflect our assumption that global wealth be included. Foreign citizens are excluded from our analysis of due to data limitations related to determining portion of net worth attributed to U.S. assets in the Forbes list.

[81] These figures are adjusted for inflation; all dollar figures in Table 3 are in 2021 dollars.

[82] This is the tax liability absent any behavioral changes. As noted earlier, Paine's tax is intended to provoke behavioral changes. In any case, a 100 percent compliance rate is unlikely; Saez & Zucman, *supra* note 74, assume a 15% noncompliance rate. For more details on planning techniques that might be used to avoid a wealth tax, *see* Jason Oh & Eric Zolt, *Wealth Tax Design: Lessons from Estate Tax Avoidance*, 74 TAX L. REV. 175 (2021).

[83] The estimates of billionaire wealth are not generally provided below the billion or hundred million level; the apparent precision here is an artefact of the inflation adjustment. While it may not provide a perfectly accurate estimate of the wealth of each household, we present the wealth estimates to two decimal places so that the increase in wealth post-tax is visible; otherwise, each household's increase in wealth of $26.7 million disappears in the rounding.

Warren Buffett	72.23	96	24	72.25	25%
Larry Ellison	63.13	93	30	63.16	32%
Larry Page	54.46	91.5	37	54.49	40%
Sergey Brin	52.54	89	36	52.56	41%
Steve Ballmer	56.39	68.7	12	56.42	18%
Alice Walton	58.21	61.8	4	58.23	6%

As Table 3 makes clear, the average rate of wealth taxation responds to the household's increase in estate size over the year. Billionaires whose wealth grew less see a lower average tax rate as a share of their overall wealth. Due to Paine's graduated rate schedule, Paine's proposal also allows for increasing wealth over time, at a maximum rate equal to $26.7 million a year. Over ten years, those in the top Paine bracket would see their real wealth increase by one quarter of a billion dollars, or a more than one billion dollar increase in real wealth over 40 years. The Paine plan constrains but does not prevent the accumulation of wealth, even for the very wealthiest.

Part III: 21st Century Analogs to the Paine Tax

Although Paine's wealth tax proposal was not adopted during his lifetime, his ideas remain relevant to the tax policy debates of today. Indeed, Paine's tax policy priorities speak directly to the 21st century challenges of the rise of oligarchic wealth concentration and the deteriorating conditions of American democracy. Through the lens of Paine's core wealth tax principles, this Part discusses three contemporary proposals to address current levels of wealth inequality. Although each proposal we discuss has elements that distinguish it from Paine's proposal, all three share the following features. First, they all endeavor to tax wealth. Second, they all attend to the civic implications of tax policy. And third, they target a specific political group for tax liability. By contrasting these proposals with Paine's initial 18th Century wealth tax, we also see one clear difference: Paine's willingness to deem certain levels of wealth concentration as "prohibitable luxuries," with a top marginal rate of 100%. After proceeding through the details of each proposal, this Part concludes with a table summarizing the salient features of the contrasting tax policies of common purpose.

A. Achieving Paine's Ambitions Through a Property Tax Regime

Some features of Paine's wealth tax design specifications closely parallel 21st century wealth tax proposals. For the sake of clarity, this section will focus on the elements of Senator

Elizabeth Warren's Ultra-Millionaire's Tax ("UMT"),[84] although there are a variety of proposals by both scholars and politicians who have sought to expand the federal tax system in the US to include wealth as a taxable base.[85]

The taxable base in Warren's UMT endeavors to capture all property interests of the taxpayer, referred to in campaign materials as the taxpayer's "net worth" and in the introduced legislation as "net value of all taxable assets."[86] This taxable base is further elaborated to encompasses "all property of the taxpayer… real or personal, tangible or intangible, wherever situated, reduced by any debts… owed by the taxpayer."[87] Additional anti-abuse rules in the legislation include interests in grantor trusts and certain gifts within the taxable base.[88]

While Paine's taxable base is only the annual proceeds from wealth rather than the wealth itself, his definition of underlying wealth that triggers tax liability is similarly broad to Warren's UMT. Paine proposes to tax "all estates of the clear yearly value of £50, after deducting the land tax, and up."[89] Since Paine chooses not to provide his own definition of the term "estate" used in *Rights of Man*, his omission suggests he is relying on a common understanding of the term at the time. According to *Black's Legal Dictionary*, the term "estate" has been used since at least the 15th century to refer to an individual's property interests, including land but not exclusively land.[90] Notably, Paine did not use the term "landed estate," a term commonly used in the late 18th Century to describe an estate comprised *solely* of land.[91] Paine also does not use limiting terms like "ancestral estate" or "entail" that would have specified a narrowing of his tax base to certain categories of inherited or inheritable property.

The UMT bracket structure makes plain the political targets of Warren's proposed wealth tax regime. No household with less than $50 million in assets would be liable for remitting UMT

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[84] *See* The Ultra-Millionaire Tax Act of 2021, S. 510, 117th Cong. (2021) (text of the legislation); Elizabeth Warren, Pramila Jayapal & Brendan Boyle, *Summary: Ultra-Millionaire Tax Act of 2021*, ELIZABETH WARREN (Mar. 1, 2021), https://www.warren.senate.gov/imo/media/doc/Summary%20-%20Ultra%20Millionaire%20Tax%20Act%20of%202021%20(1)_.pdf (bill summary); *Ultra-Millionaire Tax*, WARREN DEMOCRATS, https://elizabethwarren.com/plans/ultra-millionaire-tax (last visited Sept. 13, 2021,1:14 PM) (campaign related materials when first proposed as a candidate for President of the United States).

[85] *See, e.g.*, Brian Galle, David Gamage, Emmanuel Saez & Darien Shanske,*The California Tax on Extreme Wealth: Revenue, Economic, and Constitutional Analysis* (Sept. 16, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3924524; *Senator Bernie Sanders' Wealth Tax*, PENN WHARTON BUDGET MODEL (Jan. 23, 2020), https://budgetmodel.wharton.upenn.edu/estimates/2020/1/23/senator-bernie-sanders-wealth-tax; JEREMY BEARER-FRIEND, GREAT DEMOCRACY INITIATIVE, RESTORING DEMOCRACY THROUGH TAX POLICY 10–12 (2018).

[86] The Ultra-Millionaire Tax Act of 2021, S. 510, 117th Cong., § 2902 (2021). Campaign materials specify: "All household assets held anywhere in the world will be included in the net worth measurement, including residences, closely held businesses, assets held in trust, retirement assets, assets held by minor children, and personal property with a value of $50,000 or more." *Ultra-Millionaire Tax*, WARREN DEMOCRATS, https://elizabethwarren.com/plans/ultra-millionaire-tax (last visited Sept. 13, 2021,1:14 PM).

[87] The Ultra-Millionaire Tax Act of 2021, S. 510, 117th Cong., § 2902(a) (2021).

[88] The Ultra-Millionaire Tax Act of 2021, S. 510, 117th Cong., § 2902(c)(2)-(3) (2021).

[89] Paine, Table 1, p.497.

[90] BLACK'S LAW DICTIONARY (11th ed. 2019).

[91] *Id.* Paine is also clearly aware of land taxes at the time since he proposes allowing for land tax deductions, yet he does not propose using the same tax base as the land tax.

taxes. This forms a "zero bracket" for the vast majority of American households.[92] The next bracket applies a 2% tax on households with a net value of assets between $50 million and one $1 billion.[93] The top bracket would then apply an additional 1% on the portion of annual net value of assets that exceeds $1 billion, for a top rate of 3%.[94] This bracket structure is estimated to apply to only 75,000 households in the US.[95]

Warren's UMT treats the individual as the taxable unit for determining value of net assets, with the additional specification that "individuals who are married will be treated as one applicable taxpayer."[96] Hence, a taxpayer who owns $100 million in assets is not able to avoid the UMT by marrying someone with $0 in assets.[97] This approach is similar to Paine's proposal due to the operation of property rules at the time of his publication. Although not explicitly noted by Paine, the law of "coverture" would subsume a married woman's property rights into the rights of her husband.[98]

Like Paine's proposed wealth tax, the UMT would also require annual assessment and remittance. To allay criticisms about liquidity concerns, the UMT includes an option to defer payment up to five years, with interest applied to the deferred liability.[99]

The motivating principles for Warren's UMT also echo Paine. As Warren explains in her public preamble to the UMT, "For too long, the ultra-rich… have used their influence to rig the system in their favor – corroding our democracy…." This specific concern with the outsize political influence of billionaires then justifies a tax on their wealth. The remedy to a political problem wherein some members of the polity have more influence than others is not purely a matter of lobbying reform or expanding voting rights, but a matter of tax policy generally and a tax on wealth specifically.

The UMT is also designed based on concerns with heirs who inherit wealth. In the example provided to illustrate the UMT, Warren explains, "Consider two people: an heir with $500 million in yachts, jewelry, and fine art, and a teacher with no savings in the bank. If both the heir and the teacher bring home $50,000 in labor income next year, they would pay the same

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[92] The Warren Office estimates that 99.95% of households in the US would not be subject to the UMT. Elizabeth Warren, Pramila Jayapal & Brendan Boyle, *Summary: Ultra-Millionaire Tax Act of 2021*, ELIZABETH WARREN (Mar. 1, 2021), https://www.warren.senate.gov/imo/media/doc/Summary%20-%20Ultra%20Millionaire%20Tax%20Act%20of%202021%20(1)_.pdf.

[93] The Ultra-Millionaire Tax Act of 2021, S. 510, 117th Cong., § 2901(b) (2021).

[94] *Id*. The additional 1% becomes an additional 4% in the event the U.S. adopts universal health insurance.

[95] *Ultra-Millionaire Tax*, WARREN DEMOCRATS, https://elizabethwarren.com/plans/ultra-millionaire-tax (last visited Sept. 13, 2021,1:14 PM).

[96] The Ultra-Millionaire Tax Act of 2021, S. 510, 117th Cong., § 2902(c)(2) (2021).

[97] This is not to say other avoidance strategies are not possible. A married couple with $100 million in assets could divorce and evenly split their assets 50/50, so that neither would be subject to the UMT.

[98] The primary exception to this is the use of a "separate estate trust." *See* Allison Anna Tait, *The Beginning of the End of Coverture: A Reappraisal of the Married Woman's Separate Estate*, 26 YALE J. L. & FEM. 165 (2014). In the event of such a trust arrangement, Paine's rate schedule would need to be applied to each spouse.

[99] *Ultra-Millionaire Tax*, WARREN DEMOCRATS, https://elizabethwarren.com/plans/ultra-millionaire-tax (last visited Sept. 13, 2021,1:14 PM).

amount in federal taxes, despite their vastly different circumstances."[100] The constituencies targeted by the tax are heirs to fortunes, who are held in contrast to public servants who earn a living through wages.

Both Paine and Warren also share a concern with a taxpayer's 'ability to pay' in which taxes are shouldered by those with the means to. Paine states a priority of "removing the burden to where it can best be borne" and Warren notes, "A family's wealth is an important measure… of its ability to pay taxes."[101] This concern is then expressed through the progressive rate structures of both tax proposals.

Despite their many similarities, there are distinguishing features between Paine's proposal and Warren's. First, Paine would substitute a commutation tax with his wealth tax, and so the baseline for evaluating his proposal is thus the limitations of the commutation tax. His revenue targets and distributional concerns are in comparison to commutation. By contrast, the UMT is not proposed as a substitute for the federal income tax regime or other federal taxes, though it does seek to fill gaps of where the income tax is no longer effective.[102] The UMT is an additional tax liability on ultra-millionaires rather than a shift from one base to another.

The Paine and Warren proposals also have distinct implications for the ability of billionaires to acquire new wealth. Under the Paine proposal, a billionaire could not accrue any wealth above approximately $27 million in a single year, because this excess amount would be taxed at 100%. Under Warren's UMT, a billionaire's whose return on investment exceeded her top rate of 3% would get to keep such accession, less potential income tax liability. In effect, the Warren proposal does not set a ceiling for wealth accession by billionaires, while the Paine proposal essentially caps current levels of wealth accumulation for anyone above the $994 million threshold.

B. Achieving Paine's Ambitions Through a Transfer Tax Regime

While Warren's UMT proposes to tax wealth through a new federal property tax regime, others have sought to address extraordinary wealth concentration by reforming the transfer tax system. In this section, we discuss efforts to reform the estate and gift tax in order to achieve similar ambitions to Paine. For purposes of clarity, we focus on Professor Lily Batchelder's proposal to tax wealth through a revised transfer tax regime.[103] Batchelder's proposal is

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[100] *Ultra-Millionaire Tax*, WARREN DEMOCRATS, https://elizabethwarren.com/plans/ultra-millionaire-tax (last visited Sept. 13, 2021,1:14 PM).
[101] *Ultra-Millionaire Tax*, WARREN DEMOCRATS, https://elizabethwarren.com/plans/ultra-millionaire-tax (last visited Sept. 13, 2021,1:14 PM).
[102] Warren regularly cites the current average tax rate on households relative to their wealth, pointing to the lower average rates on billionaires. According to her, "Increasing income taxes won't address this problem." *Ultra-Millionaire Tax*, WARREN DEMOCRATS, https://elizabethwarren.com/plans/ultra-millionaire-tax (last visited Sept. 13, 2021,1:14 PM).
[103] Lily L. Batchelder, *Leveling the Playing Field Between Inherited Income and Income from Work through an Inheritance Tax*, *in* TACKLING THE TAX CODE (Ryan Nunn & Jay Shambaugh eds., 2020),

especially salient because she is now Assistant Secretary of Tax Policy at the U.S. Treasury Department.[104]

Professor Batchelder proposes a shift from taxing decedents to taxing heirs.[105] Although Batchelder explicitly describes her proposal as a shift away from transfer taxes towards income taxes, the proposal includes specific rules for inheritances that do not extend to other categories of income, such as an exemption amount schedule for inheritances and a constructive realization rule that applies to inheritances but not other appreciated assets.[106] The proposal also triggers tax liability only upon transfer. This article does not contend that Batchelder is inaccurate in describing her proposal as integrating inheritance taxes within the income tax relative to the current law baseline in the US, but for our purposes of contrasting Paine's approach with Batchelder's, transfer taxes are the most relevant baseline.[107]

Batchelder shares many of her policy motivations with Paine. In concluding her argument for the adoption of a new tax on inheritances, she states that "we should recommit to a vision of America as a land of opportunity where one's financial success depends relatively little on the circumstances of one's birth. A first step is to start taxing extraordinarily large inheritances the same way we tax good old hard work."[108] Here she sees equality of opportunity as specifically constrained by inherited wealth, something that Paine also sought to use tax policy to alter. And she not only connects this to an intellectual legacy of egalitarianism, but also political power, invoking New Dealer FDR. As noted by Batchelder, "President Franklin Delano Roosevelt once said, 'Inherited economic power is as inconsistent with the ideals of this generation as inherited political power was inconsistent with the ideals of the generation which established our government'. The same could be said today."[109] Batchelder's proposal recognizes the political power that comes with wealth, and the power that can be inherited through wealth, and she has proposed a tax policy to address this fundamentally democratic concern.[110]

To be sure, Batchelder includes a number of additional rationales for shifting to an inheritance tax model, invoking the tax policy triumvirate of fairness, efficiency, and administrability for evaluating tax policy.[111] Unlike Paine, she is also explicit about the racial

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https://www.hamiltonproject.org/papers/leveling_the_playing_field_between_inherited_income_and_income_from_work_through_an_inheritance_tax. Because the proposal was made in her capacity as a law professor at NYU and prior to her confirmation in the US Senate, Batchelder is not referred to by her Treasury title.

[104] *Roll Call Vote 117th Congress – 1st Session: Vote Summary*, UNITED STATES SENATE (Sept. 22, 2021, 2:50 PM), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1171/vote_117_1_00372.htm.

[105] Batchelder, *supra* note 102.

[106] "Under the proposal, there would no longer be any separate wealth transfer tax system; the estate, gift, and GST taxes would be repealed. Instead, taxation of inheritances would be integrated into the income and payroll taxes." Batchelder, *supra* note 102, at 56.

[107] Batchelder is also explicit that her proposal could be combined with a wealth tax or an accrual tax. Batchelder, *supra* note 102, at 71 ("the proposal offered here is a complement rather than a substitute for these reforms.").

[108] Batchelder, *supra* note 102, at 7.

[109] Batchelder, *supra* note 102, at 87.

[110] She also notes the power that comes from wealth earlier in her article. *See* Batchelder, *supra* note 102, at 50 ("People with very large estates typically have multiple reasons for saving: They might enjoy being wealthy relative to other people, with the prestige and power that it confers while they are alive").

[111] *See* Batchelder, *supra* note 102, at 46-53.

equity implications of our current approach to wealth taxation, noting that inequality in inheritances limits the upward mobility for Black men and also exacerbate downward mobility.[112] Nevertheless, these additional motivations operate in tandem with the concerns over equality of opportunity and economic power.

Under Batchelder's proposal, inheritances would be included in the taxable base of an heir as part of their income. This is a shift from our current estate and gift tax regime, where taxes are assessed on the decedent or donor. Hence, "the focal point for taxation would shift from the amount transferred to the amount heirs receive."[113] The gross estate would be defined similarly to Paine in that the estate would include the value "of all property, real or personal, tangible or intangible, wherever situated" but a greater number of deductions are allowed relative to Paine's limitation on land tax as the exclusive deduction.[114] Most importantly, Paine proposes to tax the produce from an estate, while Batchelder would tax the entire value of the estate.

Batchelder's proposed bracket structure is simply the current tax rates already applied to income under our federal income tax and payroll taxes. This ranges from 10% to 37% under 2021 federal income tax rates plus up to 15.3% under our payroll taxes.[115] However, because of the partial deductibility of payroll taxes, Batchelder calculates a top marginal rate of 49.5%.[116] Batchelder notes that her proposal "can be scaled to different revenue targets"[117] with the rate structure of course determining the amount of tax revenue raised. In order to explain the design features as applied to a hypothetical taxpayer, she chooses an exemption amount of $2.5 million, but this is also adjustable based on revenue targets.[118]

Unlike Paine's annual assessments, Batchelder's inheritance tax proposal would only trigger tax liability in years where inheritances are received by the taxpayer. The tax liability would not recur in future years. To contrast with Paine's proposal, consider a taxpayer who inherits $10 billion worth of land. Under the Batchelder proposal, federal income tax rates would apply to that transfer in the year received, less the liquid asset cushion[119] on $500k, to be paid by the recipient of the land.[120] Under Paine's proposal, tax liability would be assessed annually, including year of receipt, but only on the produce of the land received. In both proposals, the taxable amount would be determined by aggregating all assets of the taxholder, rather than

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[112] Batchelder, *supra* note 102, at 47. This is not to say that Paine was unconcerned with racial inequality generally, just that he is not explicit about race in the context of his wealth tax proposal in the second volume of *Rights of Man*. For an elaboration on the potential implications of his proposal for abolition, *see supra* Part I.
[113] Batchelder, *supra* note 102, at 56.
[114] IRC §2031 defines "gross estate". For an itemized list of the deductions allowed for determining "taxable estate," *see* IRS Form 1041, lines 10 through 21, https://www.irs.gov/pub/irs-pdf/f1041.pdf.
[115] IRC §1 for income tax rate schedule. IRC §1401(a)-(b) for SECA rate.
[116] Batchelder, *supra* note 102, at 81 n.14.
[117] Batchelder, *supra* note 102, at 56.
[118] Alternative specifications are 500k lifetime exemption and 1 million lifetime exemption.
[119] Batchelder, *supra* note 102, at 58.
[120] This hypothetical assumes there are no built-in gains at the time of the transfer. The Batchelder proposal views transfers as constructive realizations for which income tax would also be paid by the grantor. Batchelder 57.

looking at a single asset or transfer. Under both the Paine and Batchelder proposal, the new tax regime would be effective immediately.[121]

The Batchelder proposal is attentive to the unique politics of family-owned businesses and primary residences, providing additional carveouts for this political constituency. "The third feature of the proposal would address the politically sensitive issue of family-owned businesses and primary residences through a special provision… To address these concerns, the proposal would allow heirs to indefinitely defer the tax they owe on taxable inheritances to the extent it exceeds the liquid assets they inherit, minus a cushion of $500,000."[122] The deferral period would still require interest paid on the amount of unpaid tax liability.[123] These provisions seem partially motivated by the symbolic features of tax policy, wherein proposals are understood as expressions of political values.

The share of taxpayers impacted by the proposed change is generally narrow relative to the overall population of US taxpayers. Based on lifetime exemption amounts of $2.5 million, $1 million, and $500,000, the proposal would impact only the top 0.02 percent, 0.08 percent, and 0.18 percent of households in a given year.[124] Batchelder notes that even if the calculation were limited to those receiving inheritances, the proportion is below 10% for all exemption amounts.[125]

C. Achieving Paine's Ambitions Through an Income Tax Regime

Lastly, Paine's concern with taxing "overgrown estates" aligns with contemporary reforms to the federal income tax. Specifically, proposals to adjust income tax treatment for wealth concentration, so that billionaires are no longer able to avoid annual tax liability on appreciated assets. Although our federal income tax nominally taxes all new accessions to wealth each year, the realization requirement allows most billionaires to avoid tax on their annual gains. For the sake of clarity, this section will focus on the elements of Senator Ron Wyden's Billionaire's Income Tax ("BIT").[126]

The Wyden tax proposal is principally motivated by current inequities in the income tax system. The BIT would level the tax liability faced by wage earners and those with passive sources of investment income. According to Wyden, "There are two tax codes in America. The first is mandatory for workers who pay taxes out of every pay check. The second is voluntary for billionaires who defer paying taxes for years, if not indefinitely."[127] Wyden is concerned that "middle-class families who earn their incomes from wages and salaries may face higher average

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[121] Batchelder, *supra* note 102, at 61 ("Finally, the proposal would not be phased in, but would be effective immediately.").
[122] Batchelder, *supra* note 102, at 58.
[123] Batchelder, *supra* note 102, at 58.
[124] *See* Batchelder, *supra* note 102, at 71. *See also* Batchelder, *supra* note 102, at 83, fn 34.
[125] Estimates were nor provided based on proportion of households over their entire lifecycle.
[126] Billionaire's Income Tax, https://www.finance.senate.gov/imo/media/doc/Billionaires%20Income%20Tax.pdf.
[127] *Wyden Unveils Billionaires Income Tax*, U.S. SENATE COMM. ON FIN. (Oct. 27, 2021), https://www.finance.senate.gov/chairmans-news/wyden-unveils-billionaires-income-tax.

tax rates than billionaires"[128] and his BIT seeks to end this inequality. To do so means changing the tax treatment of accrued wealth.

Wyden's taxable base is the net accrual of new wealth in a tax year, consistent with the general principles of an income tax that tax accessions to new wealth rather than total wealth. Under Wyden's plan, "tradable assets (assets like stocks that are easily valued on an annual basis) owned by billionaires will be marked to market each year," meaning that gains will be taxed and losses will be deducted in each year rather than upon realization.[129] His plan also includes inheritances in the taxable base of the *donor*: "Gifts, bequests, and transfers in trust by an applicable taxpayer are generally treated as an applicable transfer, requiring recognition of gain or loss."[130] This is a departure from the current income tax treatment of transfers. It is also clearly distinct from Paine's proposal, which sought to incentive transfers to heirs by reducing tax liability for estates that diminished in size through such transfers.

In Wyden's proposed bracket structure, "only taxpayers with more than $100 million in annual income or more than $1 billion in assets for three consecutive years would be covered by the proposal."[131] Additional accommodations are made for those with concentrated holdings in a single company. Such taxpayers may "elect to treat up to $1 billion of tradable stock in a single corporation as a nontradable asset" which permits deferral of tax liability with a modest interest rate.[132] Due to the narrow requirements for the BIT, only 700 household would face a new tax liability under the proposal.[133]

Like Paine's proposal, the timing of the BIT is annual taxation. Enactment of the BIT would mean "a taxable event occurs at the close of each taxable year that an applicable taxpayer holds a tradable covered asset, and gain or loss will be taken into account in the taxable year in which the taxable event occurs as though the tradable covered asset had been sold for its fair

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[128] *Billionaires Income Tax – One Pager*, U.S. SENATE COMM. ON FIN. (Oct. 27, 2021), https://www.finance.senate.gov/imo/media/doc/Billionaires%20Income%20Tax%20-%20One%20Pager.pdf.
[129] An appealing feature of mark to market is that inflation of value of an asset for purposes of claiming losses then makes one more susceptible to taxable gains in future years, so it is viewed as somewhat self-correcting.
[130] *Billionaires Income Tax – Section-By-Section Summary*, U.S. SENATE COMM. ON FIN. (Oct. 27, 2021), https://www.finance.senate.gov/imo/media/doc/Billionaires%20Income%20Tax%20-%20Section-by-Section.pdf, at 4.
[131] *Billionaires Income Tax – One Pager*, U.S. SENATE COMM. ON FIN. (Oct. 27, 2021), https://www.finance.senate.gov/imo/media/doc/Billionaires%20Income%20Tax%20-%20One%20Pager.pdf.
[132] *Billionaires Income Tax – One Pager*, U.S. SENATE COMM. ON FIN. (Oct. 27, 2021), https://www.finance.senate.gov/imo/media/doc/Billionaires%20Income%20Tax%20-%20One%20Pager.pdf. ("The deferral recapture amount is calculated by allocating an equal amount of gain to each year in the holding period, determining how much tax would have been owed on the gain in each year, and assessing interest on unpaid tax for the time the tax was deferred. The interest rate used is the short-term federal rate plus one percentage point, and no interest accrues prior to the date of enactment of the proposal or the first tax year the individual is subject to the Billionaires Income Tax, whichever is later.").
[133] *Billionaires Income Tax – One Pager*, U.S. SENATE COMM. ON FIN. (Oct. 27, 2021), https://www.finance.senate.gov/imo/media/doc/Billionaires%20Income%20Tax%20-%20One%20Pager.pdf.

market value."[134] Similar to the Batchelder proposal, the rate of the tax is set by current income tax rates.

Table 4. Wealth Tax Design Specifications

	Paine Proposal	Ultra-Millionaire's Tax	Inheritance Tax	Billionaire's Income Tax
Taxable Base	Yearly Value	Net Worth	Inheritance	Income
Preferential Rate for Couples	N/A[135]	No	Yes	No[136]
Annual Assessment	Yes	Yes	No, only at transfer	Yes
Zero Bracket	Estates below $2.2 million per year[137]	Net worth below $50 million	Estates below $2.5 million[138]	Assets below $1 billion or annual income below $100 million
Top Marginal Rate	100%	6%[139]	49.5%[140]	40.8%[141]

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[134] *Billionaires Income Tax – Section-By-Section Summary*, U.S. SENATE COMM. ON FIN. (Oct. 27, 2021), https://www.finance.senate.gov/imo/media/doc/Billionaires%20Income%20Tax%20-%20Section-by-Section.pdf, at 1.
[135] Until the late 19th Century, married women in Britain did not have independent property rights. *See generally*, EILEEN SPRING, LAW, LAND & FAMILY: ARISTOCRATIC INHERITANCE IN ENGLAND (1993) (describing the law of coverture and other limitations on the property rights of women).
[136] §495 Billionaires Income Tax, https://www.finance.senate.gov/download/billionaires-income-tax-legislative-text.
[137] The figure is drawn from our calculations in Table 2 in *supra* Part II.C.
[138] Batchelder provides estimates for three different exemption amounts, but focuses her discussion on the $2.5 million exemption amount. The figure presented here also includes her retention of the $15,000 annual exclusion under current law.
[139] This top rate applies in years where there is also a national, comprehensive health insurance program that bans duplicative private insurance. If such conditions are not present, then the top marginal rate is 3%. The Ultra-Millionaire Tax Act of 2021, S. 510, 117th Cong., § 2901(b)(2) (2021).
[140] This percentage includes the top income tax rate (currently 37%) and the payroll tax rate (15.3%) that Batchelder proposes to apply to inheritances, gifts. The deductibility of certain payroll taxes under the income tax makes the combined rate lower that 52.3%. *See* Batchelder *supra* note 103 at fn14.
[141] Top income tax rate of 37% and NIIT rate of 3.8%. Most assets will likely be characterized as capital assets, with a long term capital gain rate of 20%.

Estimated Revenue Raised From Billionaires Over 10 Year Window	$1.7 trillion[142]	$1.39 trillion[143]	< $337 billion[144]	$557 billion[145]
Estimated Proportion of Population Subject to Top Marginal Rates	00.001%[146]	00.001%[147]	00.22%[148]	00.0004%[149]

PART IV: The Common Sense of Taxing Wealth

A progressive wealth tax has a uniquely American pedigree, coming directly from the foremost popular writer of the Revolution. Paine's plan for a wealth tax sprang from the same source as his impassioned case for an American republic: a lifelong advocacy for freedom from concentrated power.

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[142] Original calculation assuming a 5% rate of return on the wealth of U.S. billionaires. Tax brackets applied from Table 2. Total billionaire wealth acquired from FORBES, *supra* note 79.
[143] Saez & Zucman, *supra* note 73 at 4. This figure is specific to the revenue raised by the 4 percent Billionaire Surtax included in the Warren plan (which raises $1.374 trillion) as well as the 2 percent rate on the first $950 million of these 1005 households with a 15% avoidance rate ($16.23 billion). The overall revenue expected over ten years for the Warren plan is $3.9 trillion. *Id*.
[144] Batchelder provides six different estimates based on different exemption levels and whether or not constructive realization of appreciated gains is adopted. However, Batchelder does not provide a specific estimate on billionaire's and her top breakouts are for inheritances above $2.5 million, so this figure is substantially larger than just revenue from billionaires. Batchelder *supra* note 103 at 65 Tbl. 3 & Appendix I Tbl. 3.
[145] Wyden's proposal applies to those with over a billion in assets or over a hundred million in income, so this figure is overstated to the extent there are taxpayers who earn over $100 million in a year who are not billionaires. In public statements, Wyden seems to assume his tax would only apply to billionaires, but due to the limited disclosure of the Joint Committee on Taxation's revenue estimate provided to Senator Wyden, this total revenue figure is the only publicly available estimate. *Wyden Statement on Billionaires Income Tax Score*, U.S. SENATE COMM. ON FIN. (Nov. 5, 2021), https://www.finance.senate.gov/chairmans-news/wyden-statement-on-billionaires-income-tax-score.
[146] This figure determined by number of billionaires in US divided by total population of US.
[147] Both Paine and Warren limit top rates to billionaires.
[148] Calculated based on Batchelder *supra* note 102 at Appendix Table 1 of (total lifetime inheritances above $2.5 million / total inheritances) / US population.
[149] This figure is derived by taking Wyden's estimated number of tax returns impacted (700) and dividing by the number of tax returns filed in 2020 (157,200,000). Wyden *supra* note 127; IRS, DATA BOOK, 2020 2, Publ'n 55-B (2021), https://www.irs.gov/pub/irs-pdf/p55b.pdf. Notably, Wyden's estimate of impacted taxpayers is only 70% of Saez & Zucman's estimate, revealing some differences in underlying data sources, though also revealing the common point that these proposals would impact extremely few households.

In this Part, we summarize our new conclusions about the wealth tax debate based on a synthesis of the four tax proposals included in our review: Paine's tax on the yearly value of estates, Warren's annual tax on net worth, Batchelder's tax on inheritances, and Wyden's tax on unrealized income. Viewed together, these proposals clarify the centrality of political values that motivate tax policy, including the enduring concern with wealth as a challenge to democratic ideals. They also illustrate the fluid relationship between income taxes and wealth taxes. Lastly, they prompt a renewed consideration of a 100% marginal rate for certain tax bases.

Paine's work encourages us to consider tax policy as a primarily political endeavor. Rather than a set of technocratic nudges, Paine proposes we assess a tax's effect in terms of the polity, rather than simply the economy. This standard for evaluating tax policy is remarkably prescient, as 21st Century proposals to tax wealth again invoke the challenge of concentrated political power as a central rationale.[150] And to the extent that addressing concentrated political power is a central focus for evaluating the desirability of a tax, then tax policy that targets concentrations of wealth becomes the ideal form of tax.[151] If the corruptions of political and economic life that Paine criticized are with us today, his proposal warrants serious consideration.

Indeed, Paine's proposal seems especially relevant to the contemporary moment if we directly compare the wealth distribution of late 18th Century Britain with that of the contemporary United States. At the start of the 19th Century, the top one percent of British households received about 15 percent of the total national income.[152] In the United States today, the amount of income received by the top 1% of earners has risen from 10 percent in 1980 to 19% in 2019.[153] Similarly, the top 1% of estates in Paine's Britain held 24% of all wealth; the top 1% of American households have 27% of total wealth.[154] The level of economic inequality in the contemporary United States is strikingly similar to the level that Paine believed corrupted British politics. And, just as Paine claimed, extremes of wealth corrupt American elections and distort American politics.[155] The level at which Paine believed "there ought to be a limit to property, or the accumulation of it by bequest," is directly comparable to the highest levels of wealth in America today.

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[150] *See supra* Part III.

[151] For an elaboration of the tax scholarship that seeks to center political power, *see* Jeremy Bearer-Friend, Ariel Glogower, Ariel Jurow Kleiman & Clinton Wallace, *Taxation and Law and Political Econom*y, 83 OHIO L. J. (forthcoming 2022).

[152] Peter H. Lindert & Jeffrey G. Williamson, *American Incomes 1774-1860* No. (Nat'l Bureau of Econ. Research, Working Paper18396, 2012).

[153] *Business Income at the Top*, AMERICAN ECON. ASS'N (Feb. 16, 2021), https://www.aeaweb.org/research/chart/inequality-pass-through-income-us#:~:text=In%201980%2C%20the%20top%201,50%20percent%20of%20earners%20combined.

[154] Peter H. Lindert, *Unequal English Wealth Since 1670*, 94 J. POL. ECON. 1127 (1986); Alexandre Tanzi & Mike Dorning, *Top 1% of U.S. Earners Now Hold More Wealth Than All of the Middle Class*, BLOOMBERG NEWS (Oct. 8, 2021), https://www.bloomberg.com/news/articles/2021-10-08/top-1-earners-hold-more-wealth-than-the-u-s-middle-class.

[155] *See, e.g.*, MARTIN GILENS, AFFLUENCE AND INFLUENCE (2012); Joshua L. Kalla & David E. Broockman, *Congressional Officials Grant Access to Individuals Because They Have Contributed to Campaigns: A Randomized Field Experiment*, AMERICAN J. POL. SCI. (2014).

Paine also reveals the limited analytic value of sorting tax policy by its taxable base. While anxiety over the constitutionality of wealth taxes has swallowed much of the public debate, the ease by which Warren's UMT can be converted into Paine's tax on yearly value also demonstrates the limited substance behind the wealth tax versus income tax preoccupation. While it is not the ambition of this article to resolve the direct tax dilemma posed by *Pollock*, it should be obvious that a tax of 5% on the net worth of an individual who enjoys a 5% rate of return on their wealth is economically equivalent to a 100% tax on a 5% rate of return of that same individual.

Perhaps the most eye-catching aspect of Paine's wealth tax is its top rate: 20 shillings in the pound, or 100%. There are good reasons to take this aspect of Paine's proposal seriously. Properly designed to the fit the complex modern economy, there are many potential benefits to a tax that would in essence impose a maximum revenue from personal wealth. The 100% marginal rate is applied at levels of wealth that are indisputably luxurious: orders of magnitude beyond the needs of any household and beyond the reward that could plausibly be credited to individual industry. And while many of the most concerted critiques of expanding the taxable base or increasing tax rates hinge on claims to freedom, Paine's own proposal is specifically motivated by the threat of oppression in a society *without* his tax plan. To be free, for Paine, one must be free to participate in representative government. "Overgrown influence" corrupts elections, Paine rightly informs us; because extremes of wealth are extremes of power, they erode republican government and leave the citizenry less free.

To be clear, as we outline in Table 3, Paine's 100% marginal rate on the revenue from wealth does not tax 100% of wealth. Paine's tax would at its maximum apply a rate nearly equal to wealth's rate of return, which has been, on average, about 5% in recent decades. However, the average tax rate under Paine's plan would be substantially higher than 5% when wealthy people accrue enormous windfalls, as occurred during the first year of the pandemic. Through its responsiveness to rates of accrual, Paine's tax would create a strong incentive for extreme wealth holders to divide or otherwise dispose of the portion of their wealth that is above the revenue cap.

Were it to be implemented in the 21st Century, Paine's proposal would strictly limit further accumulation by billionaires, and diminish the incentive to hoard wealth in the first place. By stemming the tide of economic inequality, his proposal would reduce the outsized power of wealth in political life. As we face the vital question of how to preserve and expand democracy in the United States, we should reconsider a plan that dates nearly to the country's founding: Thomas Paine's 100% marginal rate on the revenue from extreme wealth.