

The Rights of the Living Generation: Jefferson and the Public Debt

I set out on this ground, which I suppose to be self evident, "that the earth belongs in usufruct* to the living": that the dead have neither powers nor rights over it.... Then no man can, *by natural right*, oblige the lands he occupied, or the persons who succeed him in that occupation, to the payment of debts contracted by him. For if he could, he might, during his own life, eat up the usufruct of the lands for several generations to come, and then the lands would belong to the dead, and not to the living, which would be the reverse of our principle.

What is true of every member of the society individually, is true of them all collectively, since the rights of the whole can be no more than the sum of the rights of the individuals.... Then no generation can contract debts greater than may be paid during the course of its own existence....

On similar grounds it may be proved that no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please, during their usufruct. They are masters too of their own persons, and consequently may govern them as they please.

Thomas Jefferson to James Madison
Paris, September 6, 1789

* in trust. "Usufructus," wrote the 18th-century scholar Sir Robert Chambers in his Oxford lectures on Roman and English law, "is a right to make all the use and profit of a thing that can be made without injuring the substance of the thing itself."

Jefferson's letter of September 6, 1789, to James Madison, setting out the principle that "the earth belongs in usufruct to the living," is a key text in the Jefferson canon. He was writing home from Paris, at an early stage in the French Revolution; a few weeks before, the French nobility had renounced its feudal privileges, and Jefferson now set about providing Madison with a catalogue of the difficult tasks facing the National Assembly, from revising the laws of inheritance to deciding whether the French nation was obliged to pay off the debts of the crown. This was also the year the new American Constitution

went into effect — a constitution which, in light of Jefferson's principle, ought to have been made binding only for a length of a generation. For if one accepts the idea that all powers and rights belong to the living, it follows that "no society can make a perpetual constitution, or even a perpetual law."

The letter to Madison argues that each generation must leave its successors freedom — freedom from debt and freedom to make their own political choices. At the same time, by making his principle universal, Jefferson also places a significant limitation on both the present and the future, since the freedom each generation enjoys is circumscribed by the duty to respect the rights of its successors.

"The Right of Successive Generations"

The immediate context for Jefferson's thoughts on debt was an ongoing conversation, begun late in 1788, with a number of his Parisian friends. That discussion grew out of the crisis provoked by Louis XVI's decision to summon the Estates General, after all other possibilities of restoring the monarchy's finances had apparently failed. For Jefferson and his French friends — above all, Lafayette — there was suddenly and unexpectedly an opportunity to remake the French state, to "regenerate" it, in the patriotic language of the day, and place it on a constitutional basis. "Every body here," Jefferson reported early in 1789, "is trying their hands at forming declarations of rights."

By mid-1789, Jefferson and Lafayette had arrived at the idea of a right in each generation to revise the constitution at fixed intervals — "le droit des générations qui se succèdent," they called it, in a version worked out in late June and early July. Lafayette introduced this version to the National Assembly on July 11, only three days before events in the streets of Paris overtook the theorizing at Versailles. But when, on August 26, the Assembly adopted a final version of the *Déclaration des droits de l'homme et du*

citoyen, it was silent on the right of each generation to revise the constitution. For Jefferson and his friends, this must have been a sharp disappointment, though Jefferson did not say so, limiting his comments on the subject to the remark that "Their declaration of rights is finished."

But if the declaration was finished, Jefferson was not. The "*droit des générations qui se succèdent*" was obviously much on his mind that summer, and by September he was pondering the wider implications of the generational principle.

The themes of debt and the rights of the living generation were clearly tied to Jefferson's vision of an American society permanently liberated from the "contagious and ruinous errors" of the Old World. And, from a more strictly biographical point of view, the two themes were also tied to his own increasingly problematic financial situation. Jefferson belonged to an elite class of Virginia planters whose dependence on British merchants and British credit had helped to fuel pre-Revolutionary tension in the Old Dominion, and debt remained a powerful issue for Virginians like Jefferson even after independence. In the autumn of 1789, Jefferson himself knew that unless he could reach agreement with his creditors, ruin was a real prospect, and he was preparing to take his long-deferred leave and return to Virginia for six months or so in order to put his affairs in order.

Jeffersonian Legacies

Peter S. Onuf, editor

A group of leading scholars, including Herbert Sloan, Gordon S. Wood, Merrill D. Peterson, Joyce Appleby, and Jack P. Greene, among others, re-evaluate the legacy of Thomas Jefferson for our time.

Jeffersonian Legacies provides the next generation of students, scholars, and citizens a better understanding not only of Jefferson in his own world but also of his influence in the shaping of ours.

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Replying in 1786 to questions posed by the French writer Jean Nicholas Dêmeunier, Jefferson described the debts that he and other Virginians owed to British creditors as "hereditary from father to son for many generations, so that the planters were a species of property annexed to certain mercantile houses in London" (or, he could have added, annexed to houses in Bristol and Glasgow as well). In suggesting that the debtor was the slave of his creditor, Jefferson was exposing the rawest of raw nerves. To raise the prospect of slavery was a standard move in late-eighteenth-century Anglo-American political rhetoric, and one with particular resonance in slave-holding Virginia. That slaves had no independence went without saying, and without that independence, without control over one's own resources, there was no material basis for republicanism as the founding generation understood it. Debt as a kind of slavery, debt as the practical negation of liberty — Jefferson could hardly have been more explicit.

The Eighteenth-Century Background

Much of what Jefferson had to say about public debts derived from a full stock of late-eighteenth-century ideas and attitudes, and his text is a compendium of the standard assumptions of his day, examined and unexamined alike, about politics and economics. His was the conventional wisdom, codified in the works of Hume and Adam Smith and a hundred other commentators and capable of being summed up in the notion that a nation, like an individual or a family, cannot spend more than it takes in without risking bankruptcy and ruin. Jefferson accepted this premise without question; it conformed to the teachings of history as he understood them, and it was validated by his own experience as a Virginia planter. Debts were dangerous, and it was best to avoid them whenever possible; the thought that they could be made a lever of sound public policy was, as Jefferson might have put it, sheer heresy. Moreover, it was beyond dispute for Jefferson and most of his contemporaries that public debts sooner or later turned into instruments of political corruption. As Jefferson was to insist again and again in the 1790s, public debts created a dangerous and separate interest in the legislature fundamentally at odds with the good of society as a whole.

Similarly, the idea that the earth belongs to the living was not at all extraordinary in late eighteenth-century thought. When Jefferson observed in 1785 to the Rev. James Madison, president of the College of William and Mary, that "The earth is given as a common stock for man to labour & live on," he simply echoed a theme that natural law writers had insisted on since at least the seventeenth

century. By Jefferson's day, it was a cliché, but an important one nonetheless. God, after all, had given the earth to mankind, and if Jefferson's presentation remained resolutely secular, the point was as well established among the religious as among those of a more philosophical bent.

Even in the criticism of the dead hand of the past, Jefferson's arguments were by no means novel in 1789. The late eighteenth century had to be reminded — vehemently reminded — by Edmund Burke in 1790 that the past, as well as the present and the future, had its rights, and with that commanding intervention the terms of debate would begin to shift decisively. But in September 1789, Jefferson could assume that what he had to say about the oppressive weight of the past was accepted by all thinking men. Turgot's championing of the living generation in his essay on endowments for the *Encyclopédie* set the tone for progressive opinion throughout Europe. And it was entirely in keeping with that opinion to say that a people ought to be free to make its own decisions about political arrangements, and that constitutions, no longer regarded "with sanctimonious reverence," should be frequently revised.

Jefferson's Originality

In all of these respects, then, Jefferson was doing little more than repeating the standard arguments of late-eighteenth-century political thought. Yet in the end there is still something different about Jefferson's principle, and it is not simply that he goes to extremes others might have avoided, though that is part of it. The difference chiefly lies, I think, in Jefferson's modification of the standard terms of reference: a modification that involves both his use of the word "generation" in place of the standard Anglo-American and French practice of referring to "the people/le peuple," and his addition of the qualification "in usufruct" to the otherwise familiar notion that the earth belongs to the living.

Jefferson's adoption of "generation" as the favored term is an especially striking linguistic shift. Political discourse in the late-eighteenth-century United States made little if any use of the word; it does not, for example, appear in the pages of *The Federalist*. Instead, one normally referred to "the people," and while that phrase certainly included the present generation, it was somewhat different in emphasis and significance. To speak of "the people" is to speak abstractly; as Edmund S. Morgan has reminded us, "the people" is perhaps the ultimate fiction. "The people" never dies; it has the same corporate immortality and collective right of sovereignty that attached to the king's political body in earlier theory.

A "generation," on the other hand, and certainly a

"generation" as Jefferson defined it, is specific and identifiable. (Using demographic tables compiled by the French naturalist Buffon, Jefferson had arrived at the conclusion that a new generation comes of age and assumes power every nineteen years.) Unlike "the people," a generation has a limited duration, so that there will be a time after which it no longer has rights. That limitation is critical, for it allows Jefferson to establish with precision who can exercise

It should be possible, Jefferson said in his second inaugural address, "to meet within the year all the expenses of the year, without encroaching on the rights of future generations . . ."

rights and when. With "the people," rights are, in effect, inchoate; with a "generation," we know exactly what we are dealing with.

The addition of the phrase "in usufruct" is another means by which Jefferson brought greater precision to a familiar principle. Unlike "generation," which comes into the picture midway in the course of his deliberations preceding the letter to Madison, "in usufruct" is the product of the final stages in the formulation of Jefferson's doctrine. It expressly appears only in the letter to Madison, and not in any of the earlier documents. Yet it may be this late addition that most distinguishes Jefferson's doctrine from other versions in circulation. As Jefferson envisioned it in the letter to Madison, the estate any generation enjoys would be an estate for life only, an estate that must be passed on intact to the next in line of succession. Thus any generation would have only the limited interest and rights of a tenant for life. It could not commit waste or burden the estate with debts for the next tenant to pay; it could appropriate for itself only the current proceeds.

Like a trusted family counselor, Jefferson accordingly drew up a deed of settlement ensuring future generations the right to benefit from the common property, and the means he employed to effect this — a restriction, or entail, upon the use of that property — is the one a good eighteenth-century Anglo-American lawyer might have chosen. But "entail" was not a word that Jefferson could have used without raising eyebrows; as the leading American law reformer of his day, he was filled with hostility for anything that smacked of the "feudal system." Hence his need to find a more acceptable

way of putting the matter, and, in all probability, his resorting to "in usufruct," with its Roman, civil law overtones and its relative lack of connection to the common law tradition.

Even if Jefferson was only speaking metaphorically in 1789, his willingness to revive an outmoded legal doctrine he had consistently decried must strike us as paradoxical. We might further note the almost Burkean cast of Jefferson's letter. A year later, in 1790, Burke, who saw society as a "partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born," would write passionately of the limits on the right of any one generation to do as it wished, of its duty to preserve and pass on unimpaired to the future the heritage entrusted by the past to the present. To be sure, any suggestion of similarity would have outraged Jefferson, but authors are not always the best readers of the texts they create.

It is apparent from the eagerness with which he writes to Madison, the almost breathless quality of the catalogues of past abuses and the visions of the future, that Jefferson knew he had done something important, important enough that he was willing to assign to himself something he rarely claimed — priority. (As he notes in the letter, "The question Whether one generation has a right to bind another, seems never to have been started either on this or our side of the water.") The principle that the earth belongs in usufruct to the living generation of nineteen years' duration was, he felt, something new, and it confirms what historians have long argued: the standard doctrines of the Enlightenment had a radical potential that made them far more incendiary than some of their authors intended. Taking pride in his accomplishment and asserting the originality in his way of seeing things, Jefferson was convinced that his principle would preserve and further the republican experiment.

A Skeptical Reply

We can appreciate what must have been Jefferson's disappointment when James Madison politely but firmly told him that it would not work. Madison's February 4, 1790, letter says virtually everything that can be said about the problems the principle would cause if applied in the literal fashion Jefferson proposed. For unlike his older colleague, whose efforts at making constitutions had largely been in the realm of theory, Madison knew a thing or two about the practicalities. It had been hard enough to get the new federal Constitution adopted, and the prospect of having to repeat the process every nineteen years can only have filled Madison with alarm. For Madison, and others, the republic was still an "exper-

iment" and needed a chance to establish itself firmly — a chance the automatic expiration of the Constitution in 1807 would hardly supply.

More interesting in the reply is Madison's objection to the notion that one generation cannot impose obligations on the next. Madison suggests that there

Jefferson's notion of what the state could and should do never went beyond the idea of investing in capital improvements that would be of genuinely national benefit.

are, in fact, some public undertakings — "improvements" is his term — significant enough to justify a burden on "the unborn," and the American Revolution is his case in point. Would it be better to have foregone the armed struggle out of deference to the burden of debt on "posterity"? Madison cannot believe it; the addition to the estate was worth the cost, even if some of that cost was left to future generations.

But Madison's rejection was not the end of the matter, and Jefferson did not consign his principle to the realm of discarded ideas. On the contrary, almost from the outset of his resumption of public life in America in the spring of 1790, the principle was relevant to the conditions Jefferson encountered. The man who had placed a nineteen-year limit on public debts and confidently predicted that America's would easily be paid within that time was not prepared to accept the gospel according to Alexander Hamilton, least of all the notion that public debts could be turned into public blessings. We might read Jefferson's political path in the 1790s as an extended defense of the principle contained in his letter to Madison, and the debt reduction policies his administrations favored as practical efforts to implement it. The Jefferson who insisted in his second inaugural address of 1805 that even in times of war, it should be possible to "meet within the year all the expenses of the year, without encroaching on the rights of future generations, by burdening them with the debts of the past," had surely not given up on the insights of 1789.

Yet to note that Jefferson continued to advocate his principle in one way or another is not to suggest that it remained static. Jefferson was to live nearly thirty-seven years after writing the letter to Madison, nearly the length of two of his generations, and over time we find him placing an ever greater emphasis

on limiting and eliminating the public debt, and rather less on the need for constitutional change. That is to say, while Jefferson seems to have set aside his principle in the case of the United States Constitution (no doubt for reasons of prudence), he continued to envision a world free of the burdens and corruptions the national debt creates, a world that could give birth to a political culture very different from the one he knew and operated in. Without the ability to contract lengthy debts and wage costly wars at the expense of the future and to indulge in the other forms of waste that occupied so much of eighteenth-century Anglo-America's practical political energies, there would be little left to do except promote the good of the community.

Jefferson in fact sketches something of this vision in his final messages to Congress, particularly in conjunction with his request for a constitutional amendment that would allow Congress to undertake the sort of projects the nineteenth century called "internal improvements." Ever the strict constructionist, Jefferson had no wish to see Congress exceed its delegated powers and insisted on the amendment as the necessary prerequisite to spending the sums liberated through debt reduction on roads and canals and other additions to the national infrastructure. Wary of pork barrel politics, he wanted these projects funded out of current surpluses, and his notion of what the state could and should do never went beyond the idea of investing in capital improvements that would be of genuinely national benefit. And all of it was predicated on freedom from debt, on the practical application of the principle that the earth belongs in usufruct to the living.

Jefferson's Relevance

If the letter to Madison has roots in Jefferson's biography, as well as in a specific eighteenth-century setting, it may be worth asking, briefly, what it has to say in 1993. This is probably not the sort of thing historians are equipped to do, but the philosophical legacy represented by Jefferson's letter invites just such efforts.

Whatever else his principle may have meant to Jefferson, it was decidedly not an invocation of the "living constitution" — a constitution continually reinterpreted to address current needs — though the New Deal tried hard to make it appear so. Jefferson did imagine that each generation should have *its own* constitution, but that is a rather different matter. For Jefferson's constitutionalism was decidedly of the strict constructionist variety, and the notion that the text could be interpreted other than through the "original intent" he rejected out of hand. Convinced that all constitutions become corrupt over time, Jefferson understood that limiting their duration was

the best way of correcting the abuses that invariably creep in, of curbing the inherent tendency of judges and legislators to usurp the power that belongs only to the sovereign people.

If, on the other hand, Jefferson's hostility to public debt strikes a real chord in late-twentieth-century America — the 1992 presidential campaign provides ample evidence of how potent an issue debt can be — it is difficult to imagine that we will be able to achieve his dream of abolishing the debt altogether. Madison was probably right to suggest that some projects are worth the burden on future generations, and perhaps the most we can expect is a gradual reduction in the debt's rate of growth, if and when the deficit is finally brought under control. Still, the argument that the debts this generation has incurred will remain to blight the prospects of those who come of age in the twenty-first century has a good deal more relevance now than it might have had two or three decades ago, and Jefferson's principle is likely to find a place in the emerging debates over generational accounting.

Others, too, may discover new uses for Jefferson's principle. Environmentalists, I suspect, will find it attractive, and it is surprising that they seem not to have made much of it — they could do so with only minor violence to Jefferson's intentions. Equally, the current republican revival among constitutional lawyers and theorists should be fertile soil for this part of the Jeffersonian legacy. Yet these days the notion of the people's reinventing itself every nineteen years is more likely to frighten than to invigorate; if there is a hero for the republican revivalists, it is Madison, especially the Madison who entrenches the rights of minorities, not the Jefferson who argues for regular and repeated exercises in majoritarianism.

Jefferson's dream of being able to control the future by limiting the rights of the present has thus far proven illusory. If we cannot share his confidence that his principle will set all to rights, we can at least admire his capacity to entertain hopes for the future. That capacity is in short supply as the republic enters its third century, and perhaps in the end Jefferson's legacy is simply to remind us, in a disturbing way, of our own diminished expectations.

— Herbert Sloan

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