

36. "The Earth Belongs to the Living"

To James Madison

Paris September 6, 1789

I sit down to write to you without knowing by what occasion I shall send my letter. I do it because a subject comes into my head which I would wish to develop a little more than is practicable in the hurry of the moment of making up general dispatches.

The question Whether one generation of men has a right to bind another, seems never to have been started either on this or our side of the water. Yet it is a question of such consequences as not only to merit decision, but place also, among the fundamental principles of every government. The course of reflection in which we are immersed here on the elementary principles of society has presented this question to my mind; and that no such obligation can be so transmitted I think very capable of proof.—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. The portion occupied by any individual ceases to be his when himself ceases to be, and reverts to the society. If the society has formed no rules for the appropriation of it's lands in severality, it will be taken by the first occupants. These will generally be the wife and children of the decedent. If they have formed rules of appropriation, those rules may give it to the wife and children, or to some one of them, or to the legatee of the deceased. So they may give it to his creditor. But the child, the legatee, or creditor takes it, not by any natural right, but by a law of the society of which they are members, and to which they are subject. 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.—To keep our ideas clear when applying them to a multitude, let us suppose a whole generation of men to be born on the same day, to attain mature age on the same day, and to die on the same day, leaving a succeeding generation in the moment of attaining their mature age all together. Let the ripe age be supposed of 21. years, and their period of life 34. years more, that being the average term given by the bills of mortality to persons who have already attained 21. years of age. Each successive generation would, in this way, come on, and go off the stage at a fixed moment, as individuals do now. Then I say the earth belongs to each of these generations, during it's course, fully, and in their own right. The 2d. generation receives it clear of the debts and incumberances of the 1st. the 3d. of the 2d. and so on. For if the 1st. could charge it with a debt, then the earth would belong to the dead and not the living generation. Then no generation can contract debts greater than may be paid during the course of it's own existence. At 21. years of age they may bind themselves and their lands for 34. years to come: at 22. for 33: at 23. for 32. and at 54. for one year only; because these are the terms of life which remain to them at those respective epochs.—But a material difference must be noted between the succession

of an individual, and that of a whole generation. Individuals are parts only of a society, subject to the laws of the whole. These laws may appropriate the portion of land occupied by a decedent to his creditor rather than to any other, or to his child on condition he satisfies the creditor. But when a whole generation, that is, the whole society dies, as in the case we have supposed, and another generation or society succeeds, this forms a whole, and there is no superior who can give their territory to a third society, who may have lent money to their predecessors beyond their faculties of paying.

What is true of a generation all arriving to self-government on the same day, and dying all on the same day, is true of those in a constant course of decay and renewal, with this only difference. A generation coming in and going out entire, as in the first case, would have a right in the 1st. year of their self-dominion to contract a debt for 33. years, in the 10th. for 24. in the 20th. for 14. in the 30th. for 4. whereas generations, changing daily by daily deaths and births, have one constant term, beginning at the date of their contract, and ending when a majority of those of full age at that date shall be dead. The length of that term may be estimated from the tables of mortality, corrected by the circumstances of climate, occupation &c. peculiar to the country of the contractors. Take, for instance, the table of M. de Buffon wherein he states 23,994 deaths, and the ages at which they happened. Suppose a society in which 23,994 persons are born every year, and live to the ages stated in this table. The conditions of that society will be as follows. 1st. It will consist constantly of 617,703. persons of all ages. 2ly. Of those living at any one instant of time, one half will be dead in 24. years 8. months. 3dly. 10,675 will arrive every year at the age of 21. years complete. 4ly. It will constantly have 348,417 persons of all ages above 21. years. 5ly. And the half of those of 21. years and upwards living at any one instant of time will be dead in 18. years 8. months, or say 19. years as the nearest integral number. Then 19. years is the term beyond which neither the representatives of a nation, nor even the whole nation itself assembled, can validly extend a debt. . . .

I suppose that the received opinion, that the public debts of one generation devolve on the next, has been suggested by our seeing habitually in private life that he who succeeds to lands is required to pay the debts of his ancestor or testator: without considering that this requisition is municipal only, not moral; flowing from the will of the society, which has found it convenient to appropriate lands, become vacant by the death of their occupant, on the condition of a payment of his debts: but that between society and society, or generation and generation, there is no municipal obligation, no umpire but the law of nature. We seem not to have perceived that, by the law of nature, one generation is to another as one independant nation to another. . . .

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. But persons and property make the sum of the objects of government. The constitution and the laws of their predecessors extinguished then in their natural course with those who gave them being. This could preserve that being till it ceased to be itself, and no longer. Every constitution then, and every law, naturally expires at the end of 19 years. If it be enforced longer, it is an act of force, and not of right.—It may be said that the succeeding generation exercising in fact the power of repeal, this leaves them as free as if the constitution or law had been expressly limited to 19 years only. In the first place, this objection admits the right, in proposing an equivalent. But the power of repeal is not an equivalent. It might be indeed if every form of government were so perfectly contrived that the will of the majority could always be obtained fairly and without impediment. But this is true of no form. The people cannot assemble themselves. Their representation is unequal and vicious. Various checks are opposed to every legislative proposition. Factions get possession of the public councils. Bribery corrupts them. Personal interests lead them astray from the general interests of their constituents: and other impediments arise so as to prove to every practical man that a law of limited duration is much more manageable than one which needs a repeal.

This principle that the earth belongs to the living, and not to the dead, is of very extensive application and consequences, in every country, and most especially in France. . . .

Turn this subject in your mind, my dear Sir, and particularly as to the power of contracting debts; and develop it with that perspicuity and cogent logic so peculiarly yours. Your station in the councils of our country gives you an opportunity of producing it to public consideration, of forcing it into discussion. At first blush it may be rallied, as a theoretical speculation; but examination will prove it to be solid and salutary. It would furnish matter for a fine preamble to our first law for appropriating the public revenue; and it will exclude at the threshold of our new government the contagious and ruinous errors of this quarter of the globe, which have armed despots with means, not sanctioned by nature, for binding in chains their fellow men. We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay. I should be pleased to see this second obstacle held out by us also in the first instance. No nation can make a declaration against the validity of long-contracted debts so disinterestedly as we, since we do not owe a shilling which may not be paid with ease, principal and interest, within the time of our own lives.—Establish the principle also in the new law to be passed for protecting copyrights and new inventions, by securing the exclusive right for 19. instead of 14. years.

Besides familiarising us to this term, it will be an instance the more of our taking reason for our guide, instead of English precedent, the habit of which fetters us with all the political heresies of a nation equally remarkable for it's early excitement from some errors, and long slumbering under others. . . .