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THE UNIVERSITY OF CHICAGO

**TOCQUEVILLE'S "NEW POLITICAL SCIENCE": A CRITICAL ASSESSMENT
OF MONTESQUIEU'S VISION OF A LIBERAL MODERNITY**

VOLUME I

**A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE SOCIAL SCIENCES
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY
COMMITTEE ON SOCIAL THOUGHT**

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For my parents, with love and gratitude

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ABBREVIATIONS OF MAIN WORKS CITED

Works of Montesquieu:

- Considerations** *Considerations on the Causes of the Greatness of the Romans and their Decline*, translated by David Lowenthal. Ithaca: Cornell University Press, 1965.
- OC** *Oeuvres Complètes*, Pléiade ed. Paris: Gallimard, 1951. Cited by volume and page.
- Persian Letters** *Persian Letters*, edited by C.J. Betts. Harmondsworth, U.K.: Penguin, 1973.
- SL** *The Spirit of the Laws*, translated by A. Cohler, B. Miller, and H. Stone. Cambridge, UK: Cambridge University Press., 1989. Cited by book and chapter.

Works of Tocqueville:

- AR** *The Old Regime and the Revolution*, translated by John Bonner. New York: Harper, 1856. Citations are by book and chapter; unlike Bonner, I follow the traditional division into three books, in which book III starts with the chapter following II.12 [So Bonner II.13 = AR III.1.] I have occasionally modified the translation by reference to the French text: *L'ancien régime et la révolution*. Paris: Flammarion, 1988.
- Cherbuliez** "Report given before the Academy of Moral and Political Sciences on January 15, 1848, on the subject of M. Cherbuliez' book entitled *On Democracy in Switzerland*." Published as "Appendix II" to *Democracy in America*, translated by George Lawrence [New York: Anchor, 1969], pp. 736-749. Cited by page number from this edition.

- DA *Democracy in America*, translated by Henry Reeve and revised by Francis Bowen and Phillips Bradley. New York: Vintage, 1990. Citations are by volume, part, and chapter, followed by page number. In order that citations may be compatible with other editions, I have preserved, unlike Bradley, the traditional division of volume I into two parts, the first part ending with chapter 8. Thus, “I.ii.1” is chapter 9 of volume one in the Bradley edition. I have occasionally modified the translation by reference to DAN, below.
- DAN *De la Démocratie en Amérique*, édition historico-critique par Eduardo Nolla. Paris: Vrin, 1990. Citations follow the rule used for DA. Included by Nolla as notes to this edition are extensive selections from Tocqueville’s manuscript, drafts, and notes used in preparing *Democracy in America*, from the papers lodged in Yale’s Beinecke Library (“YTC”).
- Journey *Journey to America*, edited by J.P. Mayer, translated by George Lawrence. New Haven: Yale University Press.
- OC *Oeuvres Complètes*, edited by J.P. Mayer and then François Furet. Paris: Gallimard, 1951–. Cited by Tome, volume, and page.
- OCI *Oeuvres et Correspondence Inédits*, edited by Gustave de Beaumont. Paris: Michel Levy, 1861. Two volumes; cited by volume and page.
- PSCF “The Political and Social Condition of France.” *London and Westminster Review*, April-July 1836.
- Recollections *Recollections*, translated by Alexander de Mattos. New York: Meridian, 1959. Translation modified using *Souvenirs*, reprinted in *Tocqueville*. Paris: Lafont, 1986.
- Selected Letters *Selected Letters on Politics and Society*, edited by Roger Boesche. Berkeley: University of California, 1985.
- Other Works:*
- ITDA *Interpreting Tocqueville’s Democracy in America*, edited by Ken Masugi. Savage, Maryland: Rowman and Littlefield, 1991.
- TND Manent, Pierre. *Tocqueville et la nature de la démocratie*. Paris: Julliard, 1982.

ACKNOWLEDGMENTS

In my time here at the University of Chicago, as well as in writing this dissertation, I have naturally incurred many debts. It is fitting that, in recounting these, I should single out four teachers — four whose different roles in this project correspond, very roughly, to Aristotle's four causes. First place must go to my chair, Professor Ralph Lerner. As Aristotle says, the primary sense of what we mean by the "substance" of something is the matter, the stuff "in the beginning." Certainly, the genesis of my serious interest in Tocqueville was a class on that subject Professor Lerner gave my first year here. The experience was memorable: lively, provocative and entertaining, Professor Lerner had his dialectical rapier out and ready. It was he who first made me see that Tocqueville's apparent simplicity and clarity concealed a profundity and subtlety way beyond my expectations. In the intervening years, Professor Lerner has continued to be a material cause in a more modern, Newtonian sense: as a constant check on my flights of democratic abstraction, he has tried to exert a gentle gravitational attraction over my writing, and pull me back to the concrete, to the ground. He certainly had his work cut out for him.

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I want to say a few words about those who, for me, put the social in Social Thought. What the ancient philosophers say about the best way of life, that it is friendly and playful conversation about the greatest and most serious things, might seem exaggerated to some. Yet, life in the Committee has shown me that this is no idle boast, or at least not a boast; some of my happiest memories are of the countless conversations that have been, to a large extent, the substance of my education over the past decade. This is a good place for making friends. Here, I want to thank a few by name, who, in addition to sharing their wisdom, also made very material contributions to helping me with this dissertation. First, Daniel Doneson, in many ways the fourth member of my committee. It was his response to a paper I gave at the Political Theory Workshop [a project he threw himself into with characteristic abandon] that first made me see where I was going, and then of course the fundamental difficulties therein. More generally, my frequent consultations with this peripatetic zetetic were like an

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Finally, there are debts of a more personal kind; these are hard to tally, and even harder to explain to others, so I will be brief. Graduate school is rarely easy, to be sure; my extended career here, at any rate, has certainly had its nadirs as well as its zeniths. With wit, generosity, sensitivity, and affection, Jadran Lee saw me through some of the worst of these, and guided me back to my better self. As did my parents, who never — despite considerable

provocation — lost faith that I would finish. It is to them, who sustained me, that these efforts are dedicated.

INTRODUCTION

This dissertation, a comparison between the social thought of Tocqueville and the political philosophy of Montesquieu, aims to do more than simply contribute to the study of the history of ideas. Both thinkers remain fundamental interpreters of the form of government whose prospects are of decisive importance to Europe, the United States, and arguably the whole world: liberal democracy. In the early 1990s, Francis Fukuyama's revival of Alexander Kojève's interpretation of Hegel,¹ which asserted that liberal democracy represents the "end of history," captured public attention, but the debates surrounding that thesis were only a small eddy in the complex currents of contemporary political and social thought. Much of that thought turns on similar questions: what is the basis or foundation of liberal democracy — human nature, certain specific historical circumstances, or both? Is liberal democracy just? Does it satisfy fundamental human aspirations? What exactly is "liberal" about it, and in what respects is this aspect in tension or in harmony with its democratic aspect?

At least since Louis Hartz spoke of America's "absolute and irrational attachment to Locke," political and social scientists have been exercised by the idea that an inherited "liberalism" (understood as the protection of individual rights, especially those to property, and a respect for legal forms and constitutional procedures) has impeded the full development of democracy.² Another, related, set of debates concerns the relation of

¹Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992).

²Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt Brace, 1983; originally published 1955), p.6. That it is the "anti-liberal" character of much contemporary

liberalism to “modernity,” a historical epoch whose boundaries, definition, significance, originating causes and foundations are interpreted in a variety of distinct, yet related, ways. Depending on the critic, the basis of modern society might lie most fundamentally in the secular theological-political order first proposed by 17th and 18th century philosophers, or the rise of monarchy and the breakdown of aristocratic power and legitimacy, or the political and moral effects of an increasingly cosmopolitan commercial society, or the transformation of the division of labor by a capitalist economy. Although they understand what constitutes “modernity” in radically different ways, critics of many stripes assume that it is the “liberal” in liberal democracy that makes it a peculiarly modern form of politics. Thus, many of the communitarian critics of liberalism appeal to post-modernism, by which they mean a critique of Enlightenment rationalism and individualism, whereas other critics of modernity attempt to refound liberal ideas on explicitly post-modern or relativist principles.³

That an understanding of Tocqueville will shed light on these questions seems obvious. Few would deny that Tocqueville was a brilliant observer of mass democracy as it first emerged in 19th century America in its “liberal” form, an instance of a larger process, which, as Tocqueville predicted, overthrew all of the European old order. Moreover, Tocqueville is still widely recognized as an important theorist of liberal democracy. According to one admirer, Raymond Aron, the theme of Tocqueville’s two main works can be summed up in the question, “Why is America liberal, and France not?”⁴ The democratic

critical theory that unites its otherwise highly diverse strands is apparent from the very title of one recent survey, by Steven Holmes, *The Anatomy of Anti-Liberalism* (Cambridge: Harvard, 1993).

³For the former, see Russell Hanson, *The Democratic Imagination in America* (Princeton: Princeton U.P., 1985) and Roberto Unger, *Social Theory: Its Situation and its Task* (Cambridge: C.U.P., 1987); for the latter, see Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: C.U.P., 1989).

⁴*Main Currents in Sociological Thought* (New York: Anchor, 1967), p. 240.

social condition, according to Tocqueville, is the inevitable fate of modern man; a healthy democratic politics, in which citizens can and do exercise their rights, is not at all fated. Liberal democracy is the best possible form of modern society, but also the most fragile; Tocqueville shows why its well-being requires some combination of propitious circumstances and diligent statesmanship.

The difficulty arises in trying to pin down Tocqueville's philosophical "take" on both modern society in general, and liberal democracy in particular, a difficulty that we must surmount if we are ever to bring his thought to bear on current debates. The problem can be stated succinctly: Tocqueville is an advocate of the "liberal" form of democracy, and in fact sees liberty as a cure for many of democracy's defects; at the same time, his analysis shares much with current criticisms of "liberalism," in particular a concern with moderating that society's excessive "individualism" and fostering active political participation.

The hypothesis of this dissertation is that the distinctive aspects of Tocqueville's political science of liberal democracy — and the relevance of that political science for us — are most clearly illuminated via a comparison with the political science of Montesquieu. Two facts make such a hypothesis plausible on its face. First, Tocqueville's contemporaries liked to compare the two. According to Henry Reeve, Tocqueville's first English translator, *Democracy in America* was "the most important treatise on the Science of States that has appeared since Montesquieu."⁵ Second, the two thinkers share a certain understanding of modernity, a concept much contested in our own time. As Ralph Lerner has argued,

⁵Quoted at p. 54 of S. Drescher, *Tocqueville and England* (Cambridge, Mass.: Harvard U.P., 1964). A similar judgment was expressed by Tocqueville's political, and to a certain extent intellectual, mentor, Pierre Paul Royer-Collard: "to find a work to compare it with, you have to go back to Aristotle's *Politics* and [Montesquieu's] *Spirit of the Laws*," cited in the editor's introduction to *Democracy in America*, edited and translated by Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), p. xxxiii. This fine translation appeared as I was finishing this dissertation; the editors' introduction contains many excellent comparisons of Tocqueville and Montesquieu.

Montesquieu and Tocqueville, along with whole range of thinkers of the 17th and 18th century, proceed from a similar understanding of the connection between modernity and Enlightenment, the latter term referring to the promulgation of the study of the connection between moral virtue and social utility (and, one might add, class interest). For these thinkers, a “revealing fact” about aristocratic society is its “sense of shame or pride that kept that study secret,” whereas the modern project involves an attempt to overturn, by demystification, aristocratic pretensions, and to refound society on genuine, rather than imaginary or vain, needs.⁶

However, the claim that Tocqueville should be approached via a comparison with his predecessor would seem to violate Tocqueville’s own principles. According to Tocqueville, history is moving all men in the Christian world, whatever their form of government, toward the same unprecedented condition: the democratic “social condition” (*état social*). Contemplating this condition, Tocqueville exclaimed “I am tempted to burn my books in order to apply none but novel ideas to so novel a condition of society” [DA I.ii.9, p. 316].⁷ At the same time, the long-run contours of this new order of things were obscured in Europe by partisan divisions that emerged out of the struggle against the old order — “It is as if the natural bond (*le lien naturel*) that unites the opinions of man to his tastes, and his

⁶“Commerce and Character,” in *The Thinking Revolutionary* (Ithaca: Cornell, 1987), pp. 195-221, at p. 197. Concerning this point, the modern critique of the element of pretense and illusion that characterizes pre-modern society, Lerner cites *Democracy in America* II.iii.8 and *Spirit of the Laws* III.7, IV.2, XIII.1. This article contains many helpful citations of, and comparisons between, Montesquieu and Tocqueville, esp. pp. 202-7. However, as I will argue, Tocqueville is only ambiguously part of the modern “Enlightenment project” that Lerner describes, and views his own philosophic activity not so much as advancing the progress of modernity as guiding and limiting its impact.

⁷All citations to *Democracy in America* are indicated by “DA,” to Volume, part, and chapter, followed by the page number in the edition edited by Phillips Bradley (New York: Vintage, 1990). The translations are taken from this edition, unless otherwise indicated; however, I have preserved, unlike Bradley, the traditional division of volume I into two parts — I.ii starts at what is chapter 9 in the Bradley edition.

actions to his principles, was now broken” [DA Lintro, p. 11]. Thus, Tocqueville was impelled to go to America where “[democracy’s] development has been the most peaceful and the most complete, in order to discern its natural consequences...” [p. 14]. In Tocqueville’s famous words, “A new science of politics is needed for a new world” [p. 7]. A new science of politics is not only necessary but also possible because the political institutions that had emerged in America through the fortuitous absence of an aristocracy — institutions that can provide guidance to European statesmen — were unknown to previous political science.

Nonetheless, that Tocqueville was “tempted to burn” the books of his predecessors should not lead us, in trying to understand him, to stop reading them. That the novelty of Tocqueville’s thought was largely, in his own view, the result of the practical challenges and opportunities provided by a novel historical situation would suggest, on the contrary, that his new political science can be understood most distinctly in the light of its philosophic ancestry. What is “new” about the new world only becomes clear once one understands the ways in which the prior “science of politics” proved inadequate to the challenges that world presented. My argument is that the most representative figure of the old science of politics that was Tocqueville’s point of departure, the basis for the thought that had to be adjusted and perhaps even rejected in the face of new realities, is Montesquieu — either directly or as it trickled down through the French liberal tradition of Constant, Guizot, and Royer-Collard.

The thought of both Montesquieu and Tocqueville is deployed around the fundamental, and interrelated, themes of “modernity” and “liberty.” Montesquieu, as will Tocqueville, develops a science of comparative politics that does not depend on any notion of a trans-historical “best regime,” or even on the modern notion of “natural rights,” as bases of comparison. The historical character of his political science constitutes the core of Montesquieu’s originality; in this, Tocqueville is his legitimate heir. In fact, just as

Tocqueville does with America, Montesquieu presents himself as confronting a novel political phenomenon, England. As Pierre Manent has judiciously pointed out, Montesquieu first presents a “seemingly exhaustive classification” of governments — despotisms, monarchies, and republics — and then quite deliberately introduces England, which does not fit into any category.⁸ One might say that his idea of a “new science of politics” is not as new as Tocqueville claims.

The similarities go deeper: neither thinker allows his appeal to history to end in relativism; rather, both use history deliberately to assess the possibilities offered and problems posed by the peculiarly modern forms of politics. In Montesquieu’s idealized version, England represents the possibility of a new type of regime in which political authority rests on a secular basis and is largely directed toward protecting individual property rights through institutional checks and balances, devices that would minimize the need for civic virtue. As Tocqueville does with America, Montesquieu gives this modern English liberalism a central place in his political science, while at same time making us aware that other regimes, especially the French monarchy, have much to recommend them. English government has its origins in the particular “forms” that grow out of European feudalism; it is neither a practical possibility at all times and places nor a perfect solution to the human problem. Even so, for Montesquieu England, despite its shortcomings, represents the form of politics most consistent with natural or universal human needs.⁹ This qualified acceptance certainly has its Tocquevillean parallels; for Tocqueville the democratic or

⁸*The City of Man* (Princeton: Princeton U.P., 1998), p. 12.

⁹I follow here the interpretation of Montesquieu given by Thomas Pangle in *Montesquieu’s Philosophy of Liberalism* (Chicago: U. of Chicago, 1973). As Pangle points out, Montesquieu has certain reservations about England, and in fact prefers the aristocratic tastes of France to England’s grim commercialism, but these reservations prove to not be decisive: see pp. 219-239. The same would appear to be true about Tocqueville’s reservations about modern democracy, but, as I will try to argue, not for the same reasons.

modern social condition is “more just” than aristocracy; yet even the best, liberal, form of that condition — represented by America — has defects which make it permissible to “regret” the past, if not to try to turn back the clock.

However, while the chief warrant for casting Montesquieu in the role of Tocqueville’s ancestor is that both are fundamental interpreters of “modern liberalism,” the former is so *avant la lettre*. Unlike Tocqueville, Montesquieu is not trying to accommodate Europe to something that has already happened, such as a democratic revolution; he is propounding a novel political alternative only implicit, or imperfectly realized, in the current age. This new kind of government, or rather Montesquieu’s interpretation of it, is a transformation of the classical mixed regime; as is well known, his “description” of England in *Spirit of the Laws* XI.6¹⁰ is an important source for the liberal doctrines of “separation of powers” and “limited government” and for the liberal distinction between “state” and “society.” While Montesquieu presents liberalism as something emerging out of history, part of the goal of that presentation is to help “modern liberalism” take shape as a fully developed, self-conscious alternative. Our sense of a break with the past, of being “modern,” is not itself the chance product of history; a truly “new order of the ages” becomes possible only after philosophers such as Montesquieu provide the theoretical grounds for asserting such a discontinuity.¹¹

¹⁰Citations will be to the edition translated and edited by A. Cohler, B. Miller, and H. Stone (Cambridge, UK: Cambridge U.P., 1989), by book and chapter.

¹¹Manent, *op. cit.*, p. 6. One might reasonably object that Montesquieu hardly invented the English sense of being “modern,” to say nothing of their idea of having limited or balanced government. However, history can only eventuate in a sharp break — “modernity” — if there is also some deliberate act, such as the activity of thought by which the meaning of that break becomes thematized to the society that effected it. While the English constitution, for Montesquieu, emerges *historically* out of the struggle between King and Parliament, modern constitutional liberalism cannot fully be what it is until it understands itself, thanks to Montesquieu, in a *principled* way, namely as the replacement of the classical question of “who rules?” with the modern or formal question “how is rule exercised?” It almost goes without saying that Montesquieu might be wrong about the nature of modern

For his part, Tocqueville hardly seems to conceive of himself as an architect or promoter of modernity, and indeed seems to face an entirely different, revolutionary, scenario, in which liberalism and modernity have threatened to part company. Even if, as some readers of the *Persian Letters* have maintained,¹² Montesquieu had intimations of a pending revolutionary crisis, it was not overwhelming. One could at most argue that Montesquieu's liberal reforms aimed to avert the same storm whose debris Tocqueville and his generation were left to reassemble.

Thus, juxtaposing Tocqueville's and Montesquieu's understanding of modern politics reveals both a marked similarity in the structure and substance of their thought and an equally marked disparity in historical situation. Any comparison between the two should illuminate both the nature of Tocqueville's originality and the contours of whatever in the modern condition demanded that originality. Perhaps the main difference between the two lies in their assessment of the modern condition, a condition drastically transformed during the three quarters of century separating the two. However, my comparison between the two should not be taken as an attempt to cast Montesquieu as Tocqueville's sole *point de départ* on the way to a new science of politics. Despite the profound interconnection of history and liberty in his analysis of politics, Tocqueville is no simple inheritor of Montesquieu.

The aristocrat, unlike the modern scholar, is often as coy about his intellectual parentage as he is scrupulous about establishing his bloodline. Tocqueville famously once allowed as how he "communed a little each day" with Pascal, Montesquieu and

politics; as we shall see, Tocqueville's analysis carries the implication that Montesquieu did not quite understand the nature of the changes that would overtake his version of liberalism.

¹²Pangle, *op. cit.*, p. 217; Diana Schaub, *Erotic Liberalism: Women and Revolution in Montesquieu's Persian Letters* (Lanham, Md.: Rowman and Littlefield, 1995).

Rousseau,¹³ yet he provided few details as to how this reading shaped his own thought and observation.¹⁴ In fact, the exact nature of Tocqueville's relationship to his philosophical ancestry is a matter of considerable scholarly controversy. Some scholars, for example, point to the resemblance between Montesquieu's "intermediary bodies" and Tocqueville's stress on the importance of voluntary associations, both thinkers' condemnation of despotism and praise of individual liberty, and their similar modes of analysis, which are both "comparative, historical, sociological."¹⁵ Others, particularly those influenced by Leo Strauss, are more impressed by the resemblances between Tocqueville and Rousseau; these scholars stress the critique of "bourgeois individualism," or the mores and sentiments required by democracy.¹⁶ Peter Lawler has made a strong case that Pascal is the most

¹³Letter to Louis de Kergolay, November 10, 1836, cited by James Ceaser in "Alexis de Tocqueville on Political Science, Political Culture, and the Role of the Intellectual," *The American Political Science Review*, volume 79 (1985), pp. 656-672, at p. 657.

¹⁴He does provide some details, but — as we shall see — more in his notes, correspondence, and drafts than in his published works. For example, in *Democracy*, Montesquieu is cited by name three times [I.i.5; I.ii.6, I.ii.10], Pascal three times [I.ii.5; II.i.10; II.iii.19], and Rousseau not at all. As consideration of the other materials reveals, such apparently casual citations completely mask the importance of these authors for Tocqueville; however, these materials do not, by themselves, settle the question of Tocqueville's own understanding of his relation to these authors.

¹⁵Melvin Richter, "The Uses of Theory: Tocqueville's adaptation of Montesquieu" in *Essays in Theory and History*, ed. by M. Richter (Cambridge, MA: Harvard, 1970), pp. 74-102, at p. 80. See also Aron, *op. cit.*; James Ceaser, *Liberal Democracy and Political Science* (Baltimore: Johns Hopkins, 1990); Anne Cohler, *Montesquieu's comparative politics and the spirit of American constitutionalism* (Lawrence, Kan.: University Press of Kansas, 1988).

¹⁶Allan Bloom, "The Study of Texts," reprinted in *Giants and Dwarfs* (New York: Simon and Schuster, 1990), p. 312. See also John C. Koritansky, *Alexis de Tocqueville and the new science of politics: an interpretation of Democracy in America* (Durham, N.C.: Carolina Academic Press, 1986); Wilhelm Hennis, "Tocqueville's Perspective — *Democracy in America*: In search of the 'new science of politics'," in *Interpreting Tocqueville's Democracy in America*, edited by Ken Masugi (Savage, Maryland: Rowman and Littlefield, 1991) (Hereafter "ITDA").

important philosophic influence on Tocqueville.¹⁷ On the other hand, some even claim that it is misguided to compare Tocqueville with philosophers because Tocqueville's observations are allegedly not guided by coherent concepts.¹⁸ Finally, to the extent that one might acknowledge that Tocqueville does develop a "conceptual system," historian François Furet has made a strong argument that it is based on Tocqueville's own experience of aristocracy and democracy, not his reading.¹⁹

Differences between scholars on the issue of Tocqueville's literary ancestry are, at bottom, based on different assessments of Tocqueville's philosophical affiliations; or, to put the same thing another way, the issue at the heart of the matter is that of Tocqueville's liberalism. Typically, scholars who understand Tocqueville to be a "liberal" see him as a descendant of Montesquieu.²⁰ The main reason that the importance of Montesquieu for Tocqueville continues to be a disputed question is that it is unclear that the two authors share a single understanding of liberty. At the most superficial level, Tocqueville lays far more stress on the "positive" or participatory aspects of liberty than does Montesquieu, and indeed, as one commentator has it, there is something "strange" about Tocqueville's

¹⁷*The restless mind: Alexis de Tocqueville on the origin and perpetuation of human liberty* (Savage, Md.: Rowman and Littlefield, 1993).

¹⁸See the analysis of the many alleged "contradictions" in Tocqueville by Jon Elster in *Political Psychology* (Cambridge UK: Cambridge U.P., 1993).

¹⁹"Le Système Conceptuel de la 'Démocratie en Amérique'," the preface to Alexis de Tocqueville, *De la Démocratie en Amérique*, (Paris: Flammarion, 1981) pp. 5-46. See p. 30: "...Tocqueville ne conceptualise que son expérience — et c'est probablement ce qui le sépare de la plu part des grands esprits philosophiques, formés surtout par l'étude abstraite des doctrines et des idées..."

²⁰By far the most important of these is Jean-Claude Lamberti, in *Tocqueville et les deux démocraties* (Paris: Presses Universitaires de France, 1983); *La notion d'individualisme chez Tocqueville* (Paris: Presses Universitaires de France, 1970); and "Two ways of conceiving the republic," pp. 3-26 in *ITDA*, cited above.

liberalism.²¹ This dissertation will not argue that Montesquieu is the only or most important modern thinker to have “influenced” Tocqueville. Rather, it will show how a comparison with Montesquieu brings into sharp focus why Tocqueville’s new approach to the question of liberty became necessary.

Ideally, any attempt to situate Tocqueville philosophically would compare him not just with Montesquieu, but with others such as Pascal and Rousseau; to do so is beyond the scope of this dissertation. However, in the case of Rousseau, the lack of a separate accounting is not as much of a problem as one might at first suppose. As Pierre Manent has argued, despite their political differences, there is a strong philosophical common ground between Montesquieu and Rousseau, in the sense that they share a similar understanding of the difference between ancient and modern politics:

Will one say that the two philosophers share the same concept of virtue, but make different and even squarely opposed “value judgments” about it? If the answer were to be yes, we would have come upon a rare instance, a problem, and a situation where appeal to the notion of “value judgment” is indispensable to understanding the human world.²²

Montesquieu and Rousseau would thereby appear to have a similar understanding of what the fundamental political alternatives are, namely a republicanism based (allegedly like that of the ancients) on “virtue” understood as love of the common good, versus a modern commercial or individualistic liberalism. Thus, one may, without deciding which of the two thinkers was more important for Tocqueville’s intellectual development, see how Tocqueville’s new understanding of the nature of modern society led him to inaugurate a “new science of politics” by setting that understanding against the criteria of modernity

²¹Roger Boesche, *The Strange Liberalism of Alexis de Tocqueville* (Ithaca: Cornell U.P., 1987).

²²Pierre Manent, *The City of Man* (Princeton: Princeton U.P., 1998), p. 30.

developed in the thought of Montesquieu.²³ This new understanding is at the core of the difference between Tocqueville's "liberalism of a new kind" and the mainstream of French liberalism, the liberalism of Constant, Royer Collard, and Guizot, which descends more directly from Montesquieu. By rendering questionable the coherence of that coupling arranged so successfully by Montesquieu and castigated so severely by Rousseau, the pair liberalism/modernity, Tocqueville changes the meaning of liberalism itself.

Thus, getting a fix on Tocqueville's philosophical relationship to Montesquieu will go a long way toward clarifying the scholarly disputes about the intention of his work without tackling the vexed, and probably insoluble, question of which author "influenced" Tocqueville most.²⁴ Moreover, the scholarly question as to the relation of Tocqueville's thought to that of his predecessors is inseparable from the philosophic question as to the adequacy of that thought. As I hope to show, Tocqueville may actually be correct in claiming that the fully developed, which is to say self-conscious or post-revolutionary, form of the democratic *état social* creates the need for a "new science of politics." If this is so, then it becomes much more plausible to read his growth away from Montesquieu as

²³In *The New Liberalism of Alexis de Tocqueville* (University of Chicago: PhD. Dissertation, 1987), Joseph Alulis argues that "the importance of Montesquieu and Rousseau for Tocqueville is that they provide for him the statement of the problem of modern liberalism that is his point of departure" (p. 40). Like Manent, Alulis argues that Montesquieu and Rousseau, even though partisans of different alternatives, have a similar theoretical understanding of what the alternatives are. According to Alulis, Tocqueville's "liberalism of a new kind" proceeds by trying to steer a middle course between "this division of modern liberalism between the commercial republic and the republic of virtue" (p. 47), an attempt which constitutes "a deliberate effort to reform the modern tradition by recourse to classical teaching." (p. 20) As will become apparent, Alulis's approach is similar in some ways to my own. However, for Alulis the main reason for Tocqueville's attempt to transcend the limitations of the modern understanding of the political alternatives is his dissatisfaction with "virtue" understood as the subjection of the individual to the general will. While agreeing with Alulis that Tocqueville seeks to hold on to Montesquieu's fundamentally "liberal" orientation, I maintain that the main impetus for Tocqueville's new political science is the inadequacy of previous thought to understand the modern reality.

²⁴See Richter, *op. cit.*, on the inherent vagueness of the concept of "influence."

explicable, not by recourse to other authors, but by his observation of truly new phenomena. Such a reading could teach us something not just about Tocqueville — whose private thoughts we will never know — but about liberalism.

To consider Tocqueville's work in conjunction with Montesquieu in fact points us away from the purely biographical question of that work's genesis, and back toward the question of modern politics from which I began: the relation of liberalism and democracy. Montesquieu was, and still is, widely recognized as the great source of liberalism generally and the American Constitution in particular, and yet the history of modern democracy shows that America eludes the categories of Montesquieu's analysis. For Montesquieu, history — both that of classical antiquity and of the English civil war — shows that popular government requires an invasive and repressive politics to inculcate civic virtue and restrain tendencies toward self-interest and inequality. To be sure, Montesquieu prepared the way for a combination of limited and popular government by suggesting that the English regime that emerged after 1688, unique in having the protection or fostering of liberty for its end or purpose, was "a republic which hides under the form of monarchy" (*Spirit of the Laws*, V.19). Yet, for Montesquieu, the formalism of this modern liberalism depended upon the undemocratic material of Peers and King, out of which the workings of balanced powers are constructed.

The legacy of Montesquieu would make the possibility of a fully democratic liberalism theoretically questionable, and yet in America Tocqueville is confronted with just such a regime. In fact, America represents the full emergence of the democratic principle, and Tocqueville understood his voyage there as "un élément de l'expérimentation systématique de cet esprit déductif";²⁵ it would appear that, at least at the beginning, the modern or democratic social condition is fully compatible with liberalism. Closer inspection

²⁵Furet, *op. cit.*, p. 9.

of the American case, however — particularly the problem of American “exceptionalism” — suggests that Tocqueville is not more but less sanguine than Montesquieu about the compatibility of modernity and liberty. America might have been lucky: in Tocqueville’s analysis the liberal character of America is attributable less to the deliberate efforts of the Founders, and their efforts to devise republican remedies for the defects of republican government, than to the American “point of departure,” the historical legacy of English liberty.

While “liberal” democracy is a peculiarly modern form of democracy, neither liberty nor enlightenment constitutes the core of the modern condition; the tendencies of that condition are revealed more in the centralized administration that was long gestating in the *ancien regime*, and which reemerged after a brief yet bloody revolutionary interregnum. Departing from Montesquieu, Tocqueville maintains that modern liberty is achievable only *either* through the presence of modern analogues to *pre-modern* institutions and practices, or, in some cases, by radically curtailing the application of modern principles. Tocqueville at first seems to blame the difficulty in establishing a liberal modernity in Europe solely on the revolutionary passions roused in the struggle against the old order — but this is not his last word on the subject. Tocqueville’s reinterpretation of modernity as the democratic social condition means he must rescue statesmanship from the constricted possibilities which Montesquieu’s advice to “follow the general spirit” [of a country] had left it. European statesmen will have to do deliberately what was done in America largely by, or at least with the blessings of, history or chance: find means of guiding and limiting the impact of the democratic revolution.

This study is organized into six chapters. The first chapter outlines my point of departure, Montesquieu’s liberal political science, paying particular attention to his understanding of liberty, his comparative politics, and his philosophy of history. I argue that

the first theme guides the latter two: the differences between the classical republic and feudal monarchy are understood in terms of the tendencies and potentials of these regimes with respect to liberty. Furthermore, these comparisons — when set against the novel alternative, the English separation of powers — help Montesquieu construct a linear history. As Montesquieu tells the story, the English have managed to achieve, partly by dumb luck, the best possible resolution of the political problem: a government that, by its very structure, tends toward the liberty of its subjects. Montesquieu, by making the English and the rest of the world cognizant of the modern liberal achievement (and its limits), solidifies that achievement without recourse to Locke's dangerous — because both revolutionary and disputable — appeal to nature and natural rights.

I next lay out the grounds for Tocqueville's philosophy of history and show how it varies from that of his predecessor. In chapter two, I explore the basis for Tocqueville's main conceptual and comparative category, the *état social*, by comparing it with the role that "forms of government" have in Montesquieu. While the two thinkers understand the difference in the spirit animating "modern" and "pre-modern" societies in remarkably similar ways, Tocqueville gives equality a much greater role in constituting the modern social condition and sees a reciprocally important role for inequality in constituting pre-modern society. The distinctive aspects of Tocqueville's view of modernity appear most clearly in his chapter on "Honor" in *Democracy* [DA II.iii.18], an extended treatment of the difference between modern and pre-modern legitimation, which I consider a sustained critique of Montesquieu. Examining this critique, I conclude that Tocqueville, unlike his predecessor, does not see feudal prerogatives as the origin of modern "subjectivity" or "individuality."

After looking at Tocqueville's understanding of the difference between the modern and pre-modern social condition, I turn, in chapter three, to the two thinkers' understanding of history: how do they understand the motion of the driving forces behind the rise of

modernity? The political and social engines of modern politics in Montesquieu's history — monarchy and commerce — are also the forces behind Tocqueville's democratic *état social*. But these engines operate differently for the two. For Montesquieu, monarchy's importance lies in that its political form is an ancestor to limited sovereignty and the separation of powers; for Tocqueville, monarchy matters chiefly as a destroyer of aristocratic society and the progenitor of a novel conception of Justice. And commerce for Tocqueville is less of a cause, more of an effect of the "Providential" march of equality. These differences, I conclude, mean that for Tocqueville "modernity" is a much deeper, more universal, and more unstoppable reality than it is for Montesquieu.

Having examined Tocqueville's transformation of his predecessor's comparative politics and philosophy of history, I turn to the second half of the dissertation, an explication of what Tocqueville means by "liberty" and what that conception owes to the thought of Montesquieu. In chapter four, I begin by raising the issue of the differing senses of "liberty" in Tocqueville and suggest a way of resolving the apparent contradiction between the liberal, republican, and aristocratic meanings that Tocqueville gives that concept: they all moderate the despotic potentials of the modern social condition. Montesquieu equates the "modern" and "liberal" aspects of English government; for him, the forms of this government aim to mitigate the despotic potential present always and everywhere, in even the most Enlightened souls. But for Tocqueville, the main danger to liberty stems not from human nature *per se*, but from the nature of modern or democratic society: liberal politics must moderate the despotic potential of a progress that threatens to dissolve all concrete social bonds, perhaps even politics itself. In one sense, his goal here resembles Montesquieu's, namely sovereignty that is "regulated" or "rule governed" [*reglé*]: a republic limited by legality or formality. Both Montesquieu and Tocqueville see the mediation of rule by the form of a constitutional order as what distinguishes modern from classical republicanism with its direct rule, either of the few or the many. But for Tocqueville

giving democracy a respect for forms requires reinvigorating popular sovereignty, not attenuating it. This difference, I argue, appears in the way Tocqueville discusses “forms,” treating such institutions as juries and local government as means of civic education, rather than as mere restraints on popular will.

Chapter five starts from the fact that, although Tocqueville’s “new political science” is consistent with Montesquieu’s constitutional liberalism, it has much broader goals than Montesquieu’s “opinion of security.” I show that, paradoxically, Tocqueville’s understanding of modern liberal democracy shares elements with Montesquieu’s discussion of the classical republic, especially in two key areas: township government on the one hand, and mores and the family on the other. At the same time, as I argue in the second half of the chapter, Tocqueville does more than narrow the difference between classical republicanism and modern liberal republicanism, as that difference is understood by the adherents of the latter such as Montesquieu. Tocqueville’s new political science, in a seemingly unwitting *rapprochement* with the political philosophy of Aristotle, approaches three critical dimensions of political life in a manner that resembles the authentic spirit of the classics themselves far more than Montesquieu’s caricature of them: the question of the “regime”, or who rules; the phenomena of revolution and partisanship; and finally, but perhaps most fundamentally, the relation between liberty and virtue or excellence.

In getting a critical distance on modern society, however, Tocqueville does not look to pre-modern thought, and its appeal to the contemplative life as the standard for human excellence, but to pre-modern politics, all forms of which Tocqueville puts under the heading “aristocracy.” In chapter six, I turn to a question that has occupied many commentators: in what manner does Tocqueville’s new political science look to “aristocracy” for guidance? Commentators who view Tocqueville as an “aristocratic liberal” all too often trace the “aristocratic” aspects of this thought to the legacy of Montesquieu, in particular to the connection the latter makes between the prerogatives of

feudal aristocracy and the rights of the modern citizen. At the same time, such critics admit that Tocqueville's example of modern liberty, America, is, and must be, far more democratic than Montesquieu's England. However, I argue that the impression given by such readings — that Tocqueville is largely a democratic “updating” of an aristocratic Montesquieu — is fundamentally misleading. Despite the fact that his version of a modern liberal regime is far more democratic than Montesquieu's, in Tocqueville's thought the psychological basis of liberty, even modern liberty, has much closer affinities with “aristocracy” and with the pre-modern spirit generally, than it does for Montesquieu. The “aristocratic” nature of Tocqueville's liberalism is not what links him with Montesquieu; it is what most clearly distinguishes him from Montesquieu. The clearest evidence for this paradoxical thesis appears from a comparison of the use made by Montesquieu and Tocqueville of feudalism in its relation to modern liberty. For Montesquieu feudalism is important because it could produce new governmental forms of which the ancients were unaware, such as a system of representation and a limited or lawful executive power, whereas for Tocqueville the importance of understanding feudal aristocracy lies in understanding the type of human beings that that regime, along with classical republicanism, fostered — and which modern society will lack more and more. The practice of the new political science, and the fate of modern liberty itself, requires clear-sightedness about the limitations of modern society as these appear via comparison with the real merits of past systems.

However, that Tocqueville even has a clear and consistent teaching about the relation between modernity and liberty is controversial; his statements on the compatibility of liberty and equality seem inconsistent, and more than one scholar has argued that Tocqueville had a major change of heart between writing the two volumes of *Democracy*.²⁶ These difficulties

²⁶See Seymour Drescher, “Tocqueville's Two Democracies,” *Journal of the History of Ideas*, 1964, pp. 201-216.

are no accident, as I show by looking at two related questions that bear on the interpretation of Tocqueville's writing: his treatment of American "exceptionalism" and his rhetorical mode. Tocqueville is not as contradictory as he seems, but rather employs a political rhetoric that deliberately obscures how exceptional American liberty is, and in general underplays how dependent modern liberty is the lucky inheritance of pre-modern forms. From a comparison with one of Montesquieu's early, and very revealing, works I show that the two rhetorical ends stand in almost direct opposition. Montesquieu tries to contain Machiavellian hubris by exaggerating the degree to which political action is limited in its effects by the impersonal *esprit générale*, inventing what Tocqueville calls "democratic history" for a democratic end, the reining in of ambition. These sorts of dogma, Tocqueville maintains, are one of the most pernicious aspects of the modern intellectual world; to combat them, to inspire dispirited moderns and thereby expand the scope of human action, Tocqueville goes so far as to deliberately present as the result of reflection and choice what he shows in other places, to be accidental or unplanned. Tocqueville encourages the modern friends of liberty in Europe to believe that to some degree American liberty can be attributed to the choices of "wise legislators," and is not simply exceptional or fortuitous. At the same time — for the sake of intellectual clarity — he also gives many grounds to the more astute reader for suspecting that the main legislator in the American case was Fortune.

Tocqueville's manner of writing and his understanding of the relation between liberty and modernity both differ sharply from those aspects of Montesquieu's thought, and for the same reason: for Tocqueville there is necessarily a *permanent* gap between the thought at the theoretical core of political science, and the responsible or public-spirited rhetoric through which the political scientist expresses himself in political life. By questioning the compatibility of liberty and the modern social condition, Tocqueville questions the fundamental premise of the *siècle des lumières*, that the perspectives of society and of rational inquiry can and should be brought together. This questioning

becomes especially apparent, as I argue in the last part of the chapter, in the manner in which Tocqueville breaks from Montesquieu on the question of religion. Seeing the connection between belief and the spirited love of liberty, Tocqueville is led to an understanding of the relation between philosophy and politics radically different from that underlying the Enlightenment project that Montesquieu had so subtly advanced. While Montesquieu ends the *Spirit of the Laws* by suggesting that even the greatest philosophers were, at bottom, driven by the pettiest of partisan passions, Tocqueville struggles — perhaps not entirely successfully — to reclaim the combination of civic responsibility and proud intellectual independence that characterized classical political philosophy.

CHAPTER ONE

MONTESQUIEU'S MODERN LIBERALISM

In the notes he used to prepare *Democracy in America*, Tocqueville wrote: “That governments have relative goods. As for Montesquieu, I admire him. But, when he portrays the English constitution as the model of perfection, it seems that for the first time, I notice the limits of his genius. This constitution falls today into the same [text interrupted].”¹ This tantalizing fragment highlights, in two ways, the reasons for my hypothesis that Montesquieu is Tocqueville’s “point of departure,” the chief exponent of the form of liberalism Tocqueville was forced to modify in developing a “new science of politics for a new world.”

First, and most obviously, Tocqueville finds Montesquieu out of date; England, which once seemed the model of modern liberty, is for him an aristocratic anachronism. In looking for the shape of the future, Tocqueville will cross not the Channel, but the Atlantic. Nonetheless, as Pierre Manent has pointed out, Tocqueville’s very idea of the “authority of the present moment” — his belief that the time for a certain form of politics has passed — can be traced with some justice to Montesquieu.²

¹From Tocqueville’s manuscript, drafts, and notes for *Democracy in America* lodged in Yale’s Beinecke Library (“YTC”), cited in *De la Démocratie en Amérique*, édition historico-critique par Eduardo Nolla (Paris: Vrin, 1990) (Hereinafter DAN), tome I, p. 14, note n.

²*The City of Man*, p. 16.

Secondly, the thesis “that governments have relative goods” is not — as it might first appear — a point of disagreement between the two. Indeed, that thesis is perhaps what Montesquieu was most renowned for. Tocqueville only faults Montesquieu for appearing to depart here from his main contribution to political science, his denial that there exists any form of government that is always and everywhere, “by nature,” the best. As Montesquieu puts it at the beginning of the *Spirit of the Laws* [I.3]: “the government most in conformity with nature is that of which its particular disposition corresponds the best to the disposition of the people for which it is established.”

Montesquieu rejects the leading theme of classical political science, as Tocqueville will do later, to give new importance to history. Both men replace the classics’ question of the “best regime” with a set of related questions: what disposition of the people (i.e., what social condition produced by particular historical and natural circumstances) is prerequisite to each form of government?; how much and what form of liberty is possible within the demands of each form of government?; and, what is the particular character of modern politics and society? This approach leaves both in an ambiguous position as to the possibility of judging the relative merits of various regimes. But both thinkers’ tendency towards a detached “objectivity” is checked by their reliance on liberty as something like a trans-historical principle: it is not only the practical goal of their inquiries but also the basis of their understandings of history. Thus their “sociological” aspect — their tendency to defer to existing circumstances — is only half the story; both leave some room for “politics,” or the possibility of choice.

In *Democracy in America*, Tocqueville famously distances himself from the partisans who favor and those who oppose democracy; he sees not so much “differently” but “further” than the contending parties [DA Intro, p. 16]. As Marvin Zetterbaum has argued, Tocqueville achieves this apparent neutrality by appealing to history, to historical

inevitability.³ Nowhere is this connection between neutrality and history clearer than at the end of *Democracy*:

[Aristocracy and Democracy] are like two distinct orders of human beings, each of which has its own merits and defects, its own advantages and its own evils. Care must therefore be taken not to judge the state of society that is now coming into existence by notions derived from a state of society that no longer exists; for as these states of society are exceedingly different in their structure, they cannot be submitted to a just or fair comparison. [DA II.iv.8, p. 333]

Still, Tocqueville's partisanship toward liberty is unambiguous. As he exclaimed to his English translator: "...I have only one passion, the love of liberty and human dignity. All forms of government are in my eyes only more or less perfect ways of satisfying this holy and legitimate passion of man."⁴ This "passion" forms the basis of Tocqueville's "new political science": even while demonstrating the inner necessity and logic of the rise of the democratic *état social*,⁵ this science also reveals to men, especially statesmen, that they are free. Modern politics, while its scope is constricted, still has not withered away.⁶ His

³Tocqueville and the problem of democracy (Palo Alto, Calif.: Stanford University Press, 1967).

⁴Letter to Henry Reeve of March 22, 1837 in *Selected Letters on Politics and Society*, edited by Roger Boesche (Berkeley: University of California, 1985), p. 115. (Hereinafter, "Selected Letters").

⁵This term is variously translated as "social condition" or "social state"; as we shall see in more detail in the next chapter, neither of these translations is entirely satisfactory. In French, the word "état" can refer to one's situation or status: on an official form, such as for renewing a passport, "état civile" refers to married, single, or divorced status. Thus, the word retains something of the meaning it had in the "Etats Generaux ("Estates General") — which was a gathering of the men of various conditions or social ranks. As we shall see, the crucial aspect of a democratic *état social* is that men who could be interchangeable are filling "roles" — which is to say that where one is in society is not seen as inheritable or a question of *nature*. If these points are not kept in mind, one might think that the observation with which Tocqueville begins *Democracy* — that nothing struck him more in America than the "equality of conditions" — refers primarily to equality of wealth, which it does not.

⁶Raymond Aron, in *Main Currents in Sociology* (New York: Anchor, 1968) wisely points out how, strictly speaking, neither Montesquieu nor Tocqueville is a "sociologist." With regard to the former, Aron says, Montesquieu preserves the "classical" idea that the most important determinant of a society is the nature of its political forms. One could easily quibble with the term "classical," but Aron's main point is sound: while giving more

analysis is chiefly concerned with getting statesmen to choose institutions that permit and encourage people to exercise their capacity to choose, to govern themselves rather than exist as passive “subjects” or *administrés*.

A similar tone of historical neutrality pervades the *Spirit of the Laws*, but Montesquieu does not begin the work with an avowal of liberal ends. Rather, he assumes the mantle of the detached but benevolent observer, saying he writes not to censure any particular regime, but rather to explain the reasons for a country’s maxims [SL, preface]. Thus, it would appear that Montesquieu’s disavowal of partisanship in favor of a particular regime is not, like Tocqueville’s, the basis for an alternative form of partisanship, one on behalf of liberty. Rather, at least initially, he presents his own inquiry as driven not to any political end but by a purely theoretical spirit, to try to render the world intelligible by impartial observation [SL preface; OC I 229-31]⁷:

importance than earlier thinkers to semi-“autonomous,” hence “progressive” forces like the economy, Montesquieu does not take the step of his successors in eliminating politics. Aron notes that Montesquieu sees the folly of what such a step would imply, namely a belief in an automatic progress [vol. 1, pp. 62-3].

Likewise, Aron points to the paradox that Tocqueville uses many “sociological” explanations, or those based on general causes that supersede the deliberate intentions of particular individuals, but is still ultimately a *political* thinker, not treating human action as trapped in a web of impersonal necessity. Aron notes that, while the first volume of the *Ancien Regime*, focused as it was on explaining the origins of revolution, recurred to general causes, Tocqueville’s conception of revolution itself was inherently “political.” Thus, Aron judges, the second volume of the *AR* “would not have omitted what, for Montesquieu as for himself, was the essence of history, the event at a given juncture — a series of contingent circumstances or a decision made by one man, all of which might easily have been imagined otherwise.” [Vol. 1, p. 270, p. 277]

⁷While for the most part I rely on the translation of SL cited in my introduction, I have occasionally had recourse to the French original in *Oeuvres Complètes*, Pléiade ed. (Paris: Gallimard, 1951); citations to the latter (other than minor modifications of the Cohler translation) are styled OC, then by volume and page.

I first examined men, and believed that, in this infinite diversity of laws and mores,⁸ men were not led just by their fantasies.

I set down principles, and I saw particular cases conform to [lit. “bend or be pliant to”] them as if by themselves, the histories of all nations being but their consequences, and each particular law tied to another law or dependent on a more general law.

Montesquieu qualifies this obvious attempt to extend Newtonian science to the human world [cf. SL I.1]⁹, and to claim the laurels for doing so, saying he has paid particular attention to the gap between the ancient and modern worlds. His “Author’s Notice” describes this gap as similar to that between the “political virtue” of the classics and “Christian virtue” — a difference that requires “new ideas,” giving old words “new meanings,” and even minting “new words.” However, although there is supposedly a new order of things in the human world¹⁰ — which would make it rather different from the

⁸This mirrors in a strange way the first sentence of the Preface, which begins “Si dans le nombre infini de choses dans ce livre...” The book is somehow reflective of the infinite, yet rule-governed, diversity of the whole. Moreover, as the rest of this first sentence suggests, the book also claims to mirror the degree of goodness of the whole — while there might be things which, counter to the author’s expectations, would give offense to someone, this is merely due to our inherently limited or partisan perspective: not even the least detail was put in with “mauvaise intention.” [p. 229].

⁹This comparison with Newton is made by Louis Althusser in *Montesquieu, La Politique et L’Histoire* (Paris: PUF, 1969). Althusser is at pains to show Montesquieu as a forerunner of the Marxist idea that human beings, as subject to historical “laws” of development, are at any given moment not capable of judging the significance of their own actions. Aron’s analysis, as I have indicated, shows why such a claim is overdrawn — yet it also contains an element of truth, is so far as Montesquieu contributes to the modern demotion of the status of politics, of the role of choice. I return to this topic in the last chapter.

¹⁰The manner in which Montesquieu speaks of the gap between ancient and modern in the Preface gives one pause, because what appear at first to be two alternatives are actually identical: “When I turned to antiquity, I sought to capture its spirit in order not to consider as similar those cases with real differences or to overlook differences in those that appear similar.” It is hard to say what this repetition might mean — it might only be a way of pointing to the incommensurability — if there were no differences that concealed similarities — of ancient and modern.

An alternative explanation — that Montesquieu wishes to let the real similarities stay concealed — is suggested by the “Avertissement de l’auteur,” which was added to the 1757 edition; this edition appeared after Montesquieu’s death but was prepared under the direction

Newtonian cosmos of fixed “relations” where “every diversity is uniformity, every change is consistency” [SL I.1] — Montesquieu claims to be teaching the Truth about the human world in the strongest possible sense. His political science claims to be no mere heuristic model, adaptable according to the circumstances or the “values” of the political scientist, but a philosophical teaching,¹¹ an intellectually and morally compelling vision of the way things are:

I do not write to censure that which is established in any country whatsoever. Each nation will find here the reasons for its maxims, and the consequence will naturally be drawn from them that changes can be proposed only by those who are born fortunate enough to fathom by a stroke of genius the whole of a state's constitution....

If I could make it so that everyone has new reasons for loving his duties, his prince, his homeland and his laws and that each could better feel his happiness in his

of Montesquieu's son, using notes left by his father. The main purpose of this “Warning” or “Notice” is twofold: to insist that just because “virtue” is the “principle” or spring of the classical republic does not mean that virtue can be found only there; and to insist that political virtue is not the same as either Christian or moral virtue. These claims both establish the difference between antiquity and modernity, but not in an entirely harmonious way: it is unclear whether classical political virtue can still be found in modern times, but is irrelevant — or whether classical virtue takes new disguises, as “moral” or “Christian” — and in these forms is still essential to the well functioning of modern governments. The latter alternative is suggested by the image used in the “Notice” of the watch, which is worth quoting at some length:

“It should be observed that there is a very great difference between saying that a certain quality, modification of the soul, or virtue is not the spring that makes a government act and saying that it is not present in that government. If I were to say that a certain wheel, a certain gear, is not the spring that makes this watch move, would one conclude that it is not present in the watch? Far from excluding moral and Christian virtues, monarchy does not even exclude political virtue. In a word, honor is in the republic though political virtue is its spring; political virtue is in the monarchy though honor is its spring.”

What is interesting about this metaphor is that while a certain wheel may not be the one that makes the watch move, there are no irrelevant gears in a watch. Indeed, from *Pensée* 833 [OC I, p. 1228], it seems that — in texts as well as machines — there may need to be “wheels” turning in opposite directions. Taking these passages together, we are led to the possibility that moral or Christian virtue may not be the spring that makes modern governments “move,” but that is not to say that virtue ceases to have — if now in a subterranean way — a political role, perhaps to give direction or to restrain.

¹¹Pierre Manent, in *The City of Man*, flags the inherent difficulty of Montesquieu's project: trying to both be philosophical and give “authority” to history. See esp. pp. 14ff.

own country, government, and position, I would consider myself the happiest of mortals. [SL, Preface]

However, as Thomas Pangle and others have noted, there are good reasons for not taking these protestations of dispassionate conservatism at face value — not least of which is that Montesquieu was living under a monarchy. Not only does he condemn despotism and suggest that monarchy has tendencies in that direction [see, e.g. VIII.8; III.5, end with V.10-11; cf. Persian Letter no. 102]¹²; he even says, after noting that virtue is not the “spring” of monarchy, that “I hasten and I lengthen my steps, so that none will believe that I satirize monarchical government” [SL III.6]. On the other hand, England, which according to Montesquieu is the only example of a regime with political liberty as its end [XI.5], clearly holds a special place in his treatment. According to Tocqueville, Montesquieu conceives liberal England to be the best practical alternative. Thus, Tocqueville does not take Montesquieu’s professed neutrality seriously; rather, he considers modern English liberalism the most important standpoint from which Montesquieu judged the goodness of other regimes.

Of course, Tocqueville’s interpretation of Montesquieu may not be adequate: Montesquieu may be more ambivalent toward the English regime than Tocqueville realizes, just as Tocqueville is ambivalent about America. In other words, both thinkers may consider their respective versions of a liberal polity a standard or example for the modern world, rather than a form of government which is unqualifiedly the best in all times and places. At any rate, liberty for Montesquieu is both a trans-historical or objective criterion and yet the explicit goal of only one, distinctively modern, form of government. Montesquieu flags the problematic relation of liberty and history at the beginning of Book XI of the *Spirit of the Laws*, the famous treatment of the novel constitution of England, by noting that men have

¹²Citations to the *Persian Letters* are to the edition of C.J. Betts (Harmondsworth, U.K.: Penguin, 1973).

called many different things liberty; “each has given the name of liberty to the government that was consistent with his customs or his inclinations...” [SL XI. 2]. Thus understood, liberty is a sentiment rather than a fact, relative to those who experience it. However, Montesquieu does not accept this intuitive understanding, but rather comes by degrees to *define* political liberty as “that tranquility of spirit which comes from the opinion each has of his security” [SL XI.6]. In effect, the common or untutored understanding of liberty — lack of restraints — points in three directions: tradition (government according to the community’s accepted customs); self-government (men’s collectively choosing the restraints they live under); or liberalism (the individual’s freedom *from* the lawless impositions of others, including the government). While there is still something subjective in Montesquieu’s definition — it is one’s own opinion of one’s security that matters — it moves Montesquieu away from those who equate free government with government that follows the people’s inclinations: in democracies “the power of the people has been confused with the liberty of the people” [SL XI.2].

While traditionally seen as the end of one particular regime, democracy, liberty understood as the individual’s sense of security from arbitrary power under a “rule of law” can be, according to Montesquieu, promoted to various degrees in all “moderate” forms of government. In monarchy, for example, the decisions of the tribunals “should be preserved...so that one judges there today as one judged yesterday and so that the citizens’ property and life are as secure and fixed as the very constitution of the state” [SL VI.1]. If this were not the case, and “judgments were the individual opinion of the judge, one would live in this society without knowing what engagements one has contracted” [XI.6]. The advantage of law, as opposed to personal rule by one or many, is that it constitutes a known boundary; the subject can be secure as long as he stays within it. This formalism directs attention away from the “ends” of the various governments, or the human types they tend to produce, promoting a distinction between the public realm of action and the private realm

of thought. Montesquieu urges rulers not to hire spies to gauge their subjects' intentions and thoughts: "When a man is faithful to the laws, he has satisfied what he owes the prince. He must at least have his house as an asylum and be secure about the rest of his conduct" [SL XII.12].

This "liberal" sense of freedom leads Montesquieu to single out England, the regime of "balanced powers" par excellence, as an unprecedented form of government where there does not seem to be any particular ruler or rulers who threaten individuals' security. Indeed, the English climate supposedly makes the citizens too restless to tolerate any government where responsibility is sufficiently definite for those in power to be blamed for a policy [SL XIV.13]. It is the personal rule of one person over another that gives rise to the feeling of insecurity. In the English system the personal power of judges is replaced by an impersonal institution, the jury: "In this fashion the power of judging, so terrible among men, being attached neither to a certain state nor to a certain profession, becomes, so to speak, invisible and null" [SL XI.6]. Much like his fellow "liberal" Locke, Montesquieu seems to see the purpose of a free state as to preserve, by the rule of law, as much as possible of the "natural" or pre-political liberty men had before instituting government [SL I.2-3].¹³

Tocqueville's understanding of political liberty differs from Montesquieu's, most notably, in the increased importance for Tocqueville of the "republican" or self-governing aspect of liberty. Tocqueville famously raises the possibility of a "soft despotism," wherein the inhabitants would, through the rule of law or an "impersonal" state, be secure against arbitrary power yet not have political liberty in any positive, meaningful sense. It is

¹³That Montesquieu should be classified as a "liberal" is in fact controversial; not all contemporary scholars would accept Tocqueville's judgment that Montesquieu regards England as the definitive solution to the political problem. See B. Manin, "Montesquieu et la Politique Moderne," *Cahiers de Philosophie Politique*, Nos. 2-3, 1985.

impossible, however, to assess the significance of Tocqueville's "new kind of liberalism" without seeing its roots in his critique of his liberal predecessors' tendency to identify liberty with modernity. The most profound statement of this identification is Montesquieu's presentation of England in the *Spirit of the Laws*. The distinctive aspects of England's constitution turn out to be not, as in the case of the classical "best regime," something deliberate or the result of rational inquiry, but the unplanned result of history; the liberal constitution is brought about by accident but, once in existence, effects a sharp break with the past. This unprecedented polity is emblematic, in Montesquieu's presentation, of modernity itself.

In this chapter, I will examine the grounds for Montesquieu's identification of liberalism with modernity. Montesquieu's understanding of history stems from his critique of classical republicanism; he holds that European feudalism and its legacy, monarchy, introduced institutional structures unknown to the classics, structures with the potential to overcome the classical republics' defects with respect to liberty. Montesquieu shows these potentials to be realized not in monarchy itself, but only in the modern "solution" of the problem of liberty, England, a kind of synthesis or a "republic that hides under the form of monarchy" [SL V.19]. Without going all the way to Hegel's view that history has a moral teleology, as the development of man's capacities for rational self-determination, Montesquieu's presentation of modern liberalism is the beginning of the end-of-history thesis.

**A. POLITICAL LIBERTY AND THE CONSTITUTION: ASSESSING
THE POTENTIALS AND LIMITATIONS OF CLASSICAL
REPUBLICANISM AND FEUDAL MONARCHY**

Montesquieu's new liberal "definition" of liberty that he offers in SL XI might seem like an imposition of his own arbitrary preference, but the philosophical ground for it has been carefully prepared in the earlier books of the *Spirit of the Laws*. To base liberty on

the “opinion of security” implies that fear is the most fundamental human passion, which is in fact what Montesquieu maintains in his sketch in Book I of the “state of nature” prevailing among people “before the establishment of societies” [SL I.2]. While Montesquieu criticizes Hobbes for claiming that men would naturally want dominion, and does not depict the state of nature as so bad that men would be immediately be impelled to leave it, he shares with Hobbes and Locke the idea that human beings are by nature directed, not so much towards any particular goal, but away from something bad: death.¹⁴ Thus, despite important modifications to his predecessors, Montesquieu remains squarely within the bounds of classical liberalism: men are by nature individuals, and government and positive laws are instituted to remedy the inconveniences of their natural condition [SL I.3], or more precisely their condition after they start coming together to provide for their basic needs: “As soon as men are in society, they lose their feeling of weakness; the equality that was among them ceases, and the state of war begins.” The question then becomes: how well do the various forms of law and government provide for our basic need of security?

Despotism, the unmediated rule of one that has fear as its “principle,” may be the most obvious way to end human conflict. It “leaps to view,” Montesquieu says, because “only passions are needed to establish it” [SL V.14]. At the same time, under the diversity of circumstances in which they have found themselves, men have also devised a multiplicity of non-despotic or “moderate” governments. Montesquieu’s social science respects this diversity, and indeed Montesquieu shows how the security of the subjects can be improved in many cases without changing the regime’s fundamental presuppositions, especially by reforms in the criminal law. But while the types of government that can be established

¹⁴Pangle, *op. cit.*, p. 89. Pangle argues that Montesquieu substantiates this teaching by showing the unsatisfactory aspects of the various regimes, which do try to point human beings towards a certain good, such as virtue or honor. The liberal regime thus emerges as the best response to man’s inherent purposelessness.

depend to a large extent on pre-existing factors such as climate, terrain, the economy, population, and religion, these governments vary in “the degree of liberty that the constitution can sustain” [SL I.3]. Because governments exist to provide men security but often do this very imperfectly or in an extremely roundabout way, Montesquieu only partly defers to men’s untutored view of liberty as simply that which follows their own inclinations.

Certainly, Montesquieu admits the connection between the “republican” and the “liberal” senses of liberty, between “self-government” and “security.” But the connection is through the rule of law: republics are considered free, he explains, because in them “the very laws seem to speak more and the executors of the law less” [SL XI.2]. While “security” is more easily achieved under a republic’s general laws than under the rule of an individual [SL VI.3], republics “are not free states by their nature” [SL XI.4], because they can and do often overrule their own laws.¹⁵ Republics do not completely answer the problem of the natural human tendency towards despotism, towards having one’s own way. Overcoming this requires that the functions of government be divided among various agents or “powers” of sovereignty. Thus, “in order to form a moderate government, one must combine powers, regulate them, temper them” — but such combinations are an artifice which “chance rarely produces and prudence is rarely allowed to produce” [SL V.14]. Montesquieu’s doctrine of moderate government culminates in his famous doctrine of the separation of powers:

¹⁵See the discussion of ostracism in SL XII.19; XXVI.17; and XXIX.7. The discussion in XXVI.17 of ostracism is most curious, because it constitutes a rehabilitation of ostracism and the classical republic; Montesquieu suggests that the practice is not bad in itself, but only in our current historical situation, where we seem unable to distinguish the legal, the moral, and the political:

“Ostracism should be examined by rules of political law and not by the rules of civil law; far from being able to stigmatize popular government, this usage is, on the contrary, quite apt for proving its gentleness; we would have sensed this if, in spite of exile’s always being a penalty among ourselves, we had been able to separate the idea of ostracism from that of being punished....”

Nor is there liberty if the power of judging is not separate from legislative power and from executive power...In the Italian republics, where the three powers are united, there is less liberty than in our monarchies...Observe the possible situation of a citizen in these republics. The body of the magistracy, as executor of the laws, retains all the power it has given itself as legislator. It can plunder the state by using its general wills; and, as it also has the power of judging, it can destroy each citizen by using its particular wills. [SL XI.6]

Unlike in the case of Rousseau, for Montesquieu liberty does not mean obedience to a “general will,” nor is liberty guaranteed by the law’s taking the form of general rules — which is why for Montesquieu representation is not a defect but a desideratum, as is a divided legislative power¹⁶ These ensure that the legislative “power” is sufficiently restrained to not encroach upon the functions of judgment and execution — a restraint necessary for the rule of law, the only means by which the individual can be secure in his life, possessions, and thoughts.

Montesquieu’s “legalism” represents a sharp departure from the classical political science of Plato and Aristotle, for whom law was secondary to regime type. The classics compared regimes according to the character of their rulers or the degree to which the understanding of “virtue” that holds sway in each regime (that is, the human type each regime tends to produce as its end) resembles true virtue. As Leo Strauss pointed out, this approach arises naturally out of the arguments in politics over who deserves to rule.¹⁷ Montesquieu’s criterion of “moderate government” replaces this classical question of who deserves to rule with the modern question of how rule can be made lawful or depersonalized. After Montesquieu, “sovereignty,” or the question of who rules, is distinct

¹⁶Of course, these two authors do not mean the same thing by “general will.” Montesquieu’s separation of executive and legislative powers anticipates Rousseau’s demand that the law take the *form* of general rules, so as to foreclose the oppression of or by particular individuals; to this Rousseau adds the demand that the law be *formed* generally, or democratically, so that it can be understood as being the will of each citizen who participates in its formation.

¹⁷“On Classical Political Philosophy” in *The Rebirth of Classical Political Rationalism* (Chicago: University of Chicago, 1989).

from “government,” or how rule is exercised. While in any given government its “powers” might be arranged in ways more or less conducive to the rule of law, the goal of lawfulness or formality is distinct from the end that the laws, as expressions of the character of the regime’s ruling class, tend to promote.

Governments may differ as to their ends, but Montesquieu does not rank or classify governments on that basis. Rather, he looks to their “nature,” or by the number holding sovereign power, and the manner in which that power is exercised. This procedure, which gives priority to how rule is exercised, rather than what sort of men exercise it, seems to lead away from the classical question of what form of government is intrinsically the best.¹⁸ Even England does not seem to play the same role for Montesquieu that the “best regime” does for ancients, namely as a standard of the best constitution by which one could hold up other constitutions to scrutiny. Political liberty, as Montesquieu understands it, exists in varying degrees in every government: “Not much trouble need be taken to discover political liberty in the constitution. If it can be seen where it is, if it has been found, why seek it?” [SL XI.5].

At the same time, though, Montesquieu shows that the nature of some governmental forms is more conducive, other things being equal, to liberty than others’. On the one hand, he gives pause to those who would identify liberty with republican rule — ostracism in Athens required the vote of 6000, and bills of attainder the approval of both Houses of Parliament, but both are still violations of liberty [SL XII. 19]. Yet, when discussing the epitome of liberalism, England, Montesquieu also seems to suggest that liberty and self-government are inseparable: “As, in a free state, every man, considered to have a free soul, should be governed by himself, the people as a body should have legislative power...” [SL

¹⁸As Alexander Pope famously said in the *Essay on Man* [iii.303]: “For forms of government, let fools contest/Whate’er is best administer’d is best.”

XI.6]. This sentence is even more curious, given that Montesquieu had said earlier in the same chapter that, because of their complete violation of separation of powers, the Italian republics had less liberty than the European monarchies.

There is a puzzle, then, in Montesquieu's treatment of the relation between republicanism and liberty. While he redefines "liberty" in a very un-republican way as security, he does not entirely divorce it from its ancestor, ancient democracy, in which [SL XI.2] "the power of the people has been confused with the liberty of the people." Perhaps we can clarify this puzzle by looking more closely at what Montesquieu treats as the "constitutional" or inherent difficulties of republics with respect to liberty, because these difficulties are, for Montesquieu, precisely those that can be overcome by the institution of monarchy. At the same time, monarchy itself has certain defects with respect to liberty. After looking at what Montesquieu sees as the contribution of each type of constitution to liberty and examining his assertion that the monarchical form of government was not understood by the ancients, we shall be in a better position to understand Montesquieu's construction of a modern politics.

1. THE DEFECTIVE "NATURE" OF REPUBLICS — THE IDENTITY OF THE SOVEREIGN AND THE JUDGE — AND A POSSIBLE SOLUTION WITHIN THE "NATURE" OF MONARCHY

The defects of republics with respect to liberty seem to be of two kinds: one with respect to, in Montesquieu's term, their "nature" or structure, the other their "principle" or necessary animating passion. The first, as we have seen, concerns the absence of the separation of powers and hence the rule of law. Montesquieu does admit cases, such as Venice, of republics where different governing bodies exercise the different powers. This makes little difference: "But the ill is that these different tribunals are formed of magistrates taken from the same body" [XI.6], i.e., from the class of people who rule, either the aristocracy or the people as a whole; this "makes them nearly a single power." As we shall

see, this same objection grounds Tocqueville's skepticism about the efficacy of separation of powers in America: given the people's preponderance over all branches of the government, its institutional divisions are a weak reed against the tyranny of the majority.¹⁹

In other words, the problem with republics is that, as in despotisms, the "sovereign" is the same as the "judge" [SL VI.5]. This is true because "political interest forces civil interest" [VI.5], meaning that the necessities of the form of government itself demand that the people as a whole have a voice in serious cases such as treason (otherwise, as Montesquieu agrees with Machiavelli, the republic would be corrupted, as the treasonous could easily buy off a few officials), but "it is always a drawback if the people themselves judge their offenses."²⁰ The only solution is that "the laws must provide, as much as they can, for the security of individuals in order to remedy this drawback" by "limitations on the people's power to judge." These limitations were imposed in the classical world by "legislators": for example, in Rome "they wanted the goods of condemned men to be made sacred so that the people would not confiscate them," and in Athens Solon gave the Areopagus the power to review the people's judgments. These good laws are not an entirely

¹⁹M. Diamond, in "The Separation of Powers and the Mixed Regime," *Publius* 3 (Summer 1978), writes (p. 33) that the modern notion of separation of powers "emerges in ways that are confusingly entangled with the traditional idea of the mixed regime" but becomes "especially visible in the moment of our founding." This seems unjust to Montesquieu: perhaps our own notion of an entirely "Republican remedy for the diseases most incident to Republican government" [*Federalist* 10] does not sufficiently recognize Montesquieu's own understanding of the working of the separation of powers. For Montesquieu, English liberty requires, to some degree, the incorporation of class differences into the structure of the government.

²⁰This necessity or defect holds even in Montesquieu's English regime and in the U.S. constitution: offenses of public officials are to be handled by the legislature, by impeachment in the lower house and trial in the upper. For Montesquieu, bicameralism is a way to moderate the sacrifice of "civil interest" (the security stemming from an independent judiciary) to "political interest" (safeguards against corruption) that inheres in any republic, even one disguised as a monarchy.

adequate solution to the difficulty that republics pose to security, however, because legislative power stays with the people: they can un-make what the legislator has made.

It is in this chapter [SL VI.5], where he implies that the sovereign and the judge are identical in a republic, that Montesquieu gives one of his few cross-references: "Other limitations placed on the people's power to judge will be seen in Book 11." By this he indicates, I think, that the problem of judicial independence cannot be resolved at this stage in his argument. Only when he has introduced the idea of separation of powers (and the mixed government that most fully embodies this separation, England) can Montesquieu discuss this matter fully. In other words, the judge cannot be separate from the sovereign until the government is detached from the people.

This detachment requires some admixture of monarchy. Monarchy for Montesquieu is not a particularly liberal regime; but it paves the way to liberalism by introducing a division within government between the executive and judicial "powers." Monarchy, like despotism, is the rule of "one alone," but unlike despots, monarchs rule by law because of "mediate channels through which [their] powers flow," [SL II.4] the prime example of which were the French *parlements* or courts of the *noblesse du robe* that had to ratify all acts of the King. Conversely, the willfulness that epitomizes despotic rule is, for Montesquieu, consequent on the absence of any such "intermediary bodies." Although a king is the sovereign, or the ultimate source of the law, he cannot ride roughshod over the established prerogatives of various social interests, nor can he apply the law to particular cases at will: "In despotic states the prince can judge. He cannot judge in monarchies" [VI.6].

Of course, to be useful in the development of liberty, monarchy must first overcome its tendency to lapse into despotism. Most kings don't naturally tend to respect judicial independence or the rule of law. On the contrary, Montesquieu is constantly urging them to do so; appealing in a Machiavellian way to their self-interest, he argues that the king who

keeps himself and his ministers [VI.6] out of the judgment business can prop his authority securely on the “neutrality” of his tribunals. The despot, who rules by fear, must himself always be fearful, but a king can avoid this by governing through law: “Royal authority is a great spring that should move easily and noiselessly...In a certain way, command is easy: the prince must encourage and the laws must menace” [XII.25; cf.VIII.6, end]. Lacking a stick, Montesquieu holds out a carrot to rulers: governing by general rules offers a way to overcome Machiavelli’s dilemma in the *Prince* about whether is better to feared or loved. Perhaps the monarch can have it both ways: “Indeed, why should one not love him? He is the source of almost all the good that is done, and almost all punishing is the responsibility of the laws” [XII.23].²¹

By reminding monarchs that it is in their interest to respect the rule of law, Montesquieu reminds his readers that these rulers have very powerful temptations to do otherwise. All too often, princes convene extra-judicial bodies like Star Chamber — “with this method one put to death all the peers one wanted” [XII.23] — and spy on subjects, which is “not the ordinary practice of *good* princes” [XII.24, my emphasis]. Montesquieu pleads that these expedients are unnecessary for the prince — as Tocqueville would put it, the monarch should obey his self-interest “properly understood” and leave judging to others. One wonders: will he do so? This tension in monarchy reminds us of what Montesquieu says about republics, that they should limit the people’s power to judge, or at

²¹Of course, Machiavelli also recommends “princes should have anything blameworthy administered by others, favors by themselves,” and offers as an example of such “good institutions” the French “*parlement* and its authority.” See, *The Prince*, trans. by Harvey C. Mansfield (Chicago: University of Chicago Press, 1985), chapter XIX, pp. 74-75. Machiavelli teaches that by putting responsibility off on an independent judge, you can avoid being seen as a partisan of either the people or “the great.” While such devices prevent your being hated, they do not overcome the choice between being feared and loved; the prince certainly cannot and should not expect to be loved. Montesquieu, by focusing not just on the independence of the judge, but law’s impersonality, goes Machiavelli one better, and further disguises responsibility and the necessity of giving offense inherent in rule: it is now the law, not a human ruler, that “menaces” or is feared.

least [the implication is that such limits often don't work] discourage them from misusing it [XII.20 with VI.5; note that each of these chapters refers to the other]. Good laws go against the grain, against the bad tendencies of the constitutions under which they are enacted. In particular, good laws constrain bad kings.

While the classics, such as Plato, dealt with the ruler's desire to be loved (and the connection between *eros* and tyranny) by educating the ruler or rulers, Montesquieu attempts, in his promotion of liberty, to depersonalize rule itself, to buffer it from the monarch's personality. Montesquieu does not admit the theoretical possibility, as Aristotle does, of an absolute "king" who rules for the common good without law [XI.9 with *Politics* 1279b5 and 1286a6].²² He accuses Aristotle of distinguishing regimes on the basis of "accidental things, like the virtues and vices of the prince" [XI.9]. Instead, Montesquieu's regime types are institutional: a "monarch's" rule must "flow" through intermediary bodies, and hence respect fixed rules; not so the despot [II.4; VIII.6]. In fact the relation of "trust" Montesquieu wants to achieve between the government and the governed cannot come to be via the virtues of any flesh and blood ruler, either one or many, but only in the impersonal rule of law. For example, the law, unlike men, can assert that all children born in wedlock are the husband's: "the law trusts the mother as if she were modesty itself" [VI.17]. The law, after all, can "trust" the citizens, because its purpose is not to discover the truth, but to set boundaries and resolve disputes. Montesquieu's trust in

²²This same difference between Montesquieu and classical political science is evident from the source of the epigraph that Montesquieu attributes to Plutarch and places at the beginning of *Esprit des Lois*, that "Law is Queen of all, mortals and immortals." The quote is actually from Pindar, and is cited more famously, or infamously, by Plato at *Gorgias* 484b and *Laws* 690b. In the essay to which Montesquieu refers, "To an uneducated Prince" — cited by Montesquieu as "Qu'il est requis qu'un Prince soit savant" — Plutarch recommends education as leading to true virtue, which would not need the restraint of law to avoid tyranny. Montesquieu's entire project is to make it apparent that such a goal is impossible; in all cases, self-government requires the mediation or restraint of an external form or law.

monarchs who are secure with the “established order” is a move towards Hegel’s “impersonal state,” although for Montesquieu the king and his ministers, as executives, must retain a “certain passion” — it is the judiciary that is “cool headed” [VI.6].

The way monarchy, as opposed to the republic, can foster liberty thus lies not in the *tendencies* of this form of government, but in its institutional *potential*: the prince can be tamed²³ more readily than the people. It is only personal rule that can be “depersonalized”: only when sovereignty is concentrated at a single point above society can a government evolve which is distinct from society, the “state.” As in Hobbes, such a sovereign offers a way to short-circuit the partisanship that plagued the classical republics, where each class in society used the regime to further its interests through competing notions of justice.²⁴ Popular sovereignty, while more likely than a monarch to express its will through general rules or laws, is by its nature intractable to limitation, because it is not able to coexist with intermediary bodies, those bodies that are the fixed “mediate channels through which power flows” that “the government in which one alone governs by fundamental laws...necessarily assumes”[II.4]. In republics, the “fundamental law” concerns suffrage [II.1 and 2]; it does not limit the sovereign’s power but defines who constitutes the sovereign. Thus, Montesquieu lists three, rather than four, “natures” of government — “one alone” may govern according to fundamental law or not, whereas republics govern by fundamental law by definition. Popular sovereignty is, by its very nature, unlimited.

²³The expression is taken from Harvey Mansfield, *Taming the Prince* (Cambridge MA: Harvard U.P., 1989).

²⁴Cf. Mansfield, *op. cit.* p. 185.

2. ESTABLISHING THE NOVELTY OF “MONARCHY”: MONTESQUIEU’S CRITIQUE OF THE THEORY AND PRACTICE OF CLASSICAL POLITICS.

That the contribution that the institution of monarchy makes towards liberty lies for Montesquieu in its form, in an arrangement of governmental “powers” contained within a unified sovereignty, can be seen in his treatment of the origins of monarchy [XI, chpts. 7-11]. Significantly, he takes up this subject just after treating the topics of separation of powers and the English government [XI.6] and just before an extended critical treatment of classical politics [XI.12-20]. Book XI, “Political liberty and the Constitution,” is obviously of pivotal importance to the *Esprit des Lois* as a whole, and it is not too farfetched to describe the chapters on monarchy as a kind of fulcrum to Book XI, separating the chapters on the great modern constitution, England, from those on the greatest growth of antiquity, Rome.

In these chapters, Montesquieu makes the surprisingly categorical assertion that classical republicanism was flawed because it lacked the historical experience of European monarchy: “The ancients, who did not know of the distribution of the three powers in the government of one alone, could not achieve a correct idea of monarchy” [XI.9], a failing of which he accuses both ancient theory [chapter 9] and ancient practice [chapters 8, 10-11]. The mistake the ancients made was that “to temper the government of one alone,” they “could imagine only a republic,” or else dividing the sovereignty fatally between two kings.²⁵ The Greeks did “imagine” “the true distribution of the three powers” “only in

²⁵In this connection, Montesquieu makes the claim that Aristotle mistakenly classifies Lacedaemonia as a monarchy, when it was really a republic. This, as Montesquieu certainly knew, seriously misrepresents Aristotle, who maintained that Sparta was a mixed regime: 1265b30-35, 1270b17-25, 1293b17-20, 1294b13-20. Aristotle rejects classifying Sparta as a monarchy, because the office of king was a kind of generalship “that can arise in all regimes” and should therefore be “dismissed,” being a question of “laws rather than the regime” — 1286a1-5 — the very point that Montesquieu makes. For Aristotle, the only regime which can claim the title of kingship is the absolute rule of one without laws [1285b30; 1286a5-10] — which, as we have seen, Montesquieu would call despotism, the

the government of many, and they called this sort of constitution *police*” [XI.11; Montesquieu’s emphasis; note the transformation of Aristotle’s term, polity, into “police”]. However, what neither ancient theorists nor practitioners were able to imagine was a sovereignty that was both unified and tempered by law. In arguing that monarchy is an unprecedented political form, Montesquieu is forced to enter into an extended debate with the theorists and practitioners of classical republicanism.

The only constitution of the ancient Greeks that “might arouse the idea of the monarchical constitution” was that of the “heroic times,” where “the people had the legislative power, and the king, the executive power and the power of judging” [XI.11]. Unlike Aristotle, from whom the account of this government is taken almost²⁶ verbatim, Montesquieu treats this form of government as almost the worst of all possible worlds, both weak and despotic at the same time:

“virtue or vice” of the prince being merely an “accidental thing” [XI.9], not something to distinguish a king from a tyrant. Montesquieu does mention here that Aristotle discusses “five types” of kings, but passes over in silence the last of the five and for Aristotle the only “kingship” in the strict sense, absolute rule, perhaps because it represents too great a temptation. While initially it would seem that Aristotle is the “optimist” for holding out such a possibility, it turns out that he raises very similar objections to it as Montesquieu — 1287a27 — b27 — that the law is more dispassionate than an individual.

While fully aware of the practical dangers of absolute kingship, Aristotle raises this issue to make a theoretical point: behind the quasi-impersonality of the law always lies the regime, the rule of a certain person or persons [1282b10; 1287b20]. Montesquieu, in looking for an institutional solution to the problem of human partisanship, is hopeful that the prince can be tamed and the rule of law coexist with the rule of one as law’s “executive,” whereas Aristotle connects the rule of law especially with a particular regime, democracy, or ruling and being ruled in turn [1287a17-20]. As Aristotle might say, the impartial umpire over and separate from society is a figment of Montesquieu’s imagination. For his part, Tocqueville suggests — as we will see — that Montesquieu’s emphasis on formal restraints is exaggerated, and seriously underestimates the democratic basis of modern society.

²⁶Montesquieu’s account is a direct quote of *Politics* 1285b5-10, except that where Aristotle says the kings had “authority over those sacrifices that did not require priests,” Montesquieu says the kings were “kings, priests, and judges.” Montesquieu thus silently rejects one element that may have moderated kingly authority, namely religious custom and priestly power. In addition, Aristotle never says the people had legislative power.

In the government of the kings of heroic times, the three powers were badly distributed. These monarchies could not continue to exist; for, as soon as the people could legislate, they could reduce royalty to nothing at least caprice, as they did everywhere.

Among a free people who have legislative power, among a people enclosed within a town, where everything odious becomes even more odious, the masterwork of legislation is to know where properly to place the power of judging. But it could not be placed worse than in the hands of the one who already had executive power. The monarch became terrible immediately. But at the same time, since he did not legislate, he could not defend himself against legislation; he had too much power and he did not have enough. [XI.11]

This passage makes clear that “where properly to place the power of judging” is, for Montesquieu, *the* problem, and why this is an intractable problem for republics or “free peoples.” In order to sustain an “executive” power independent of the people, the prince must have at least part of their legislative power, but, by implication, without such an independent “executive,” there can be no independent judiciary, as the only other combination — a people retaining legislative and executive powers, but delegating judicial powers — is not raised as a possible solution. Monarchy is an achievement of modern times, because in classical times “[i]t had not yet been discovered that prince’s true function was to establish judges and not to judge” [XI.11].

One might object that Montesquieu does say [XI.11, end] the classics found a republican solution to the problem of judging. However, he says only that the Greeks “*imagined*” [my emphasis] the “true distribution of the three powers” “in the government of many,” by which he refers to Aristotle’s description of polity or the mixed regime. This is a curious assertion, first because Aristotle has no doctrine of the separation of powers, but rather speaks of a regime that mixes democratic and oligarchic elements. In fact, the idea of the separation of powers is meant to replace that of the mixed regime — the balance of institutions with differing functions replacing the balance of social classes against each other. Secondly, Montesquieu uses the term “imagined” — recalling Machiavelli’s criticism of the “imaginary principalities” put forward as models by the classics. Whereas he claims that the “particular distribution of powers” in the “monarchies we know”

“approximates political liberty” in the constitution and hence the true distribution [XI.7], Montesquieu nowhere makes such a claim for an actual Greek republic.

Leaving the Greeks, Montesquieu makes, as a conclusion to Book XI, a detailed inquiry into the Roman republic, perhaps the most successful example of the “mixed regime.” In Montesquieu’s hands, however, Rome shows the limitations of the mixed regime as compared to the separation of powers; as T. Pangle has argued, “Rome as interpreted by Montesquieu exhausts the institutional arrangements available to a republic.”²⁷ While Montesquieu says of the republic “in itself and in its particular nature it was very good,” he also claims, without fully explaining what he means, that “it fell from its general vice” [XI.12]. This “vice” seems to be class conflict, leading to an unchecked power of the government when one class gains the upper hand. While at first the “constitution was monarchical, aristocratic, and popular” (reminding one of the English constitution Montesquieu had described earlier in Book XI), “and such was the harmony of power that there was neither jealousy nor dispute,” the balance fell apart when the monarchy self-destructed, first by becoming, with the initial help of the people, too powerful, and then being overthrown by the people. This led to an unstable antagonism between the patricians and the plebeians, because while the former had been a necessary part of a monarchical constitution, its collapse meant “the people were able to bring down the patricians without destroying themselves” [XI.13].²⁸

The moral of Montesquieu’s somewhat complex re-telling of Roman history seems to be that from the perspective of liberty, there was no entirely satisfactory solution to the

²⁷Pangle, p. 125. As in much else, I am indebted to Pangle for my understanding of the place of Rome in Montesquieu’s treatment.

²⁸Of course, as we shall see, this begs for comparison with Tocqueville’s analysis of the collapse of the French monarchy.

resulting class conflict. Strikingly, even while Rome was “flourishing,” it “suddenly lost its liberty”:

In the heat of the disputes between the patricians and the plebeians, the latter asked for fixed laws to be given so that judgments would no longer be the result of capricious will or an arbitrary power. After much resistance, the senate acquiesced. Decemvirs were named to compose these laws. It was believed that they had to be granted great power because they had to give laws to parties that were almost incompatible...Ten men alone in the republic had all the legislative power, all the executive power, all the power of judgment. Rome saw itself subject to a tyranny as cruel as that of Tarquin.” [XI.15]

In other words, the Decemvirs were an unsuccessful attempt at the liberty of modern monarchy, government according to fixed laws; what was lacking was the necessary infrastructure for fixed laws, “intermediary bodies” to channel the flow of power. This passage might be said to represent Montesquieu’s disagreement with Hobbes: an impartial “umpire” over society cannot be established without the necessary structures guaranteeing its impartiality — structures which, as we shall see, arose for Montesquieu only with the decay of feudalism.

For Montesquieu the history of Rome, especially the class conflict endemic to it, showed why the “mixed regime” of the classics could provide no stable basis for liberty. In the ancient world, liberty — namely some separation of the “three powers” — existed only when the constitution was unstable, when it was changing. For example, after the expulsion of the kings, when the aristocrats became superfluous,

...the situation required that Rome be a democracy, but nevertheless it was not one. The power of the principal men had yet to be tempered, and the laws had yet to be inclined towards democracy.

States are often more flourishing during the imperceptible shift from one constitution to another than they are under either constitution. At that time all the springs of the government are stretched...there is a noble rivalry between those who defend the declining constitution and those who put forward the one that prevails. [XI.13]²⁹

²⁹See Machiavelli, *Discourses on Livy*, I.4.

Such a transition period plays out in chapter 14, which describes “How the distribution of the three powers began to change” and concerns the corrections by the people to abuses of liberty. At that point the balance between classes produced an effect similar to the separation of powers, as judicial powers were taken away from the patrician consulate and given to other magistrates. Yet, as we saw, “in the flourishing state of the republic, Rome suddenly lost its liberty” [chpt. 15]; and although liberty was regained after the abolition of the Decemvirs, it was lost again as plebeians destroyed the Senate’s power and left Rome at the mercy of the knights, at once rapacious tax collectors and judges. Here, Montesquieu makes an explicit, and unfavorable, comparison of Rome with France:

Far from giving such people the power of judging, they should continually have been watched by judges. It must be said in praise of the old French laws that the stipulations made for the men of public business were made with the distrust one has for enemies. In Rome, when judgments were transferred to the tax collectors, virtue, police, laws, magistracy, and magistrates were no longer. [XI.18]

Using law to regulate the “men of public business” with the “distrust one has for enemies” is perhaps the defining spirit of the modern separation of powers; the best the ancients could do, with the mixed regime, was to let actual enemies contest each other for a share in the public business.

In “Why the ancients had no clear idea of monarchy” [XI .8], Montesquieu shows how liberty came to be built into the “nature” of the government itself rather than produced by chance through a precarious balance between classes contesting sovereignty. This chapter begins with a puzzling assertion: “The ancients did not all know the government founded on a body of nobility, and even less the government founded upon on a legislative body formed of the representatives of a nation.” While the ancients certainly had aristocracies, what Montesquieu means by “nobility” is a class that does not have sovereign power but channels that power [II.4 with II.3]. Nobles under a monarchy have “prerogatives,” or honor that is entirely distinct from any share in sovereignty, whereas in an aristocracy these prerogatives would be entirely a function of their membership in a

governing body — in the aristocratic republic, “privileges should be for the Senate” [V.8]. In other words, in modern monarchies, “rights” have become somewhat detached from “sovereignty,” becoming something like property.³⁰

In monarchy, the nobility limits the king’s sovereignty without dividing it. Montesquieu emphasizes this by looking at “how the plan for the monarchies we know was formed” [XI.8] after the German conquest of Rome. When the conquerors became so dispersed that they could no longer debate public business, they entrusted it to “representatives.” For this “Gothic government,” a “mixture of aristocracy and monarchy,” Montesquieu has the most extraordinary praise:

Its drawback was that the common people were slaves; it was a good government that had within itself the capacity to become better. Giving letters of emancipation became the custom, and soon the civil liberty of the people, the prerogatives of the nobility and of the clergy, and the power of the kings, were in such concert that there has never been, I believe, a government on earth as well tempered as that of each part of Europe during the time that this government continued to exist; and it is remarkable that the corruption of the government of a conquering people should have formed *the best kind of government that men have been able to devise*. [XI.8; my emphasis]

Montesquieu says this government arose through the “corruption” of the original Teutonic aristocracy, because by representation, the dispersed nobles lost their actual governing power to the king, who certainly issued the letters of emancipation. It is critical that Montesquieu does not say here, as he does in the beginning of his account of Rome, that there was a “harmony of power” [XI.8] between the king, nobles, and people, but rather a “concert” between the *power* of the King, the *prerogatives* of the nobility, and the *liberty* of the people. Liberty in England is the descendant of “this fine system [that] was found in the forest” [XI.6]. Out of the prerogatives or independence that the Teutonic nobles

³⁰This would suggest that the priority of rights over duties, which Leo Strauss argues is characteristic of modern political philosophy, has its deepest roots not in philosophy, but in history. See *Natural Right and History* (Chicago: University of Chicago, 1953), pp. 181-2.

preserved via their representatives grew an independence that came to be extended to the people as “civil liberty.”

3. DEFECTS IN THE “PRINCIPLE” OF REPUBLICS: THE BURDEN OF CIVIC VIRTUE

For Montesquieu, monarchy made available to Europe an institutional form that could resolve the obstacle to liberty inherent in the “nature” or structure of republics, namely the impossibility of separating “the sovereign” from “the judge.” As we would say, the modern separation of state and society made possible the modern separation of powers, by which the government became subject to law. However, the classical republics pose a second and deeper difficulty for liberty through their “principle” or animating passion, civic virtue. To be sure, Montesquieu’s idea that virtue is a problem for liberty is somewhat obscured by his rhetoric about classical virtue, rhetoric that influenced Rousseau: “Most of the ancient peoples lived in governments that had virtue for their principle, and when that virtue was in full force, things were done in those governments that we no longer see and astonish our small souls” [IV.4]. “Love of the republic,” which is what Montesquieu means by political virtue [V.2], would of course seem to be a good or at least a necessary thing, which is why, as T. Pangle has argued, Montesquieu’s criticism is somewhat veiled.³¹ Nevertheless, Montesquieu indicates quite clearly that this sort of virtue is a certain repression of the character; the advantage of monarchy, by comparison, is that it does not depend on this sort of repression to function.

By comparison with the “small souls” of the moderns, there is something impressive about the classical citizen: “The political men of Greece who lived under popular government recognized no other force to sustain it than virtue. Those of today speak to us

³¹Pangle, *op. cit.* pp. 15-16.

only of manufacturing, commerce, finance, wealth, and even luxury” [SL III.3]. But the moral demands of the ancient republic make it, for Montesquieu, at best an example to be admired rather than imitated: “political virtue is a renunciation of oneself, which is always a very painful thing” [SL V.5]. Republics require an education that is, unlike that of monarchy, at odds with the passions [V.5]. Rousseau, following Montesquieu’s interpretation of civic virtue, explicitly argues that such virtue requires the extirpation of our original nature: “The more these natural forces are dead and destroyed, and the acquired ones great and lasting, the more the institution as well is solid and perfect.”³²

Montesquieu’s presentation of classical republicanism makes, without stating explicitly, the same point: classical virtue is contrary to nature.³³ Ancient education, which trained men for “a continuous preference of the public interest over one’s own,” was based on “singular institutions” such as those of the Spartans, which mixed “larceny with the spirit of justice, the harshest slavery with extreme liberty, the most heinous feelings with the greatest moderation” [V.6]. Furthermore, Montesquieu is quite frank about the psychological mechanisms by which such “singular institutions” work, making in the very chapter [V.2] where he defines virtue a comparison of the republic with a repressive monastery:

Love of the homeland leads to goodness in mores, and goodness in mores leads to love of the homeland. The less we can satisfy our particular passions, the more we give ourselves up to passions of the general order. Why do monks so love their order? Their love comes from the same thing that makes their order intolerable to them. Their rule deprives them of everything upon which ordinary passions rest; what remains, therefore, is the passion for the very rule that afflicts them. The more

³²*The Social Contract*, translated by Roger and Judith Masters (New York: St. Martins, 1978), II.vii.

³³The connection between Montesquieu’s view of the republican notion of liberty and the liberal notion of liberty, as well as the contrast between both and the classical notion of liberty, which is directed by and hence subordinated to, an idea of human excellence, is well described by Pangle, *op. cit.*, p. 54.

austere it is, that is, the more it curtails their inclinations, the more force it gives to those that remain.

For Montesquieu political virtue is, as Pangle puts it, a species of “fanaticism.”³⁴ Montesquieu implies this by claiming that the Greeks’ training, directed towards a society of “athletes and fighters,” would have made them “harsh and savage” if it had not been “tempered by others that might soften the mores,” such as music, “which curbed the effect of the ferocity of the institution” [IV.8].

The secret of the “singular institutions” of the ancients would seem to be, then, that they used the energy of suppressed passions to reinforce the ones to which they gave rein. Chief among these repressed passions is the “desire to possess” [V.3], or to acquire wealth. Democracy, the quintessential or most “perfect” [II.3, end; cf. Aristotle *Politics* 1288a6-18] form of republic, and hence the form which most requires virtue [III.4, beginning], is based on a love of equality; one cannot love the common good unless “each there should have the same happiness and the same advantages” [V.3]. Thus, the desire for pre-eminence must be re-channeled into “rendering greater services to one’s homeland than other citizens” [V.3]; excellence must be put to the service of equality itself. This equality “can be anticipated only from the common frugality” [V.3], because luxury would be a sign of, and feed, the desire for inequality; hence the laws must closely supervise the division and transmission of property [V.4, 5]. Nevertheless, the “extreme course” of such regulation is often an “impractical and dangerous” way of maintaining mores [V.7; one thinks of the class conflict Montesquieu discusses in XI].

To be sure, Montesquieu muddies these waters a bit by speaking of a commercial republic, Athens, in which “mores are not corrupted...because the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, wisdom, tranquility, order, and rule” [V.6]. Montesquieu [and Tocqueville] will certainly make great use of this

³⁴Pangle, *op. cit.* p. 76.

“orderly” nature of commerce in understanding the functioning of modern regimes. Nevertheless, the rest of Montesquieu’s treatment makes clear that in the classical world, the commercial republic was something of an anomaly and could be sustained only through a fragile combination of circumstances.³⁵ By giving the individual the freedom to acquire, the

³⁵See Pierre Manent’s thought-provoking analysis of the connection for Montesquieu between commerce and chance in the republic of Marseilles [SL XX.5] in the *City of Man*, p. 39 ff. Manent draws the conclusion that Montesquieu does not have any determinate idea of a human nature, because as dependent on circumstance, commerce is not any more natural than other ends of regimes, such as war. In my opinion, this conclusion is overdrawn, because the dependence of commerce on chance only holds in the ancient world, where the political form necessary for the full liberation of commerce — namely constitutional government or the modern nation state — had not yet evolved. For Montesquieu, some forms of government are more congruent with satisfying the natural needs described in SL I.2, but because we have no natural *telos* towards politics — or in fact, anything — the realization of these forms depends upon art or chance [V.14, end]. Thus, I cannot agree with Manent’s claim that for Montesquieu, “Commercial cities are thus not particular political regimes among other political regimes: they are born and live out of another logic of human action than the one at work in ordinary politics” [p. 41]. Rather, it seems that by being a union founded on mutual needs, and giving rise to the sentiment of “exact justice” [SL XX.2], the spirit of commerce is closest to the rules of equity which [I.1] are the necessary, rational conditions for the possibility of all politics.

Additionally, Manent’s claims that Montesquieu does not give any philosophical argument for the priority of commerce to war; or alternatively, that Montesquieu simply assumes, contrary to the classics, the priority of commerce over war, do not, it seems to me, give sufficient consideration to SL X.2-3 on the one hand, and on the other Aristotle *Politics* 1325a1-15; 1328a1-10; 1329b25-30; 1333b10-1334 b5. In claiming that Rousseau’s choice of “particularity” over “commerce” is a choice “on the side of Plato” [note 34, p. 209], Manent would seem to be neglecting one of the more important of his own insights, that it is a very one-sided, polemical, Spartan Plato whom Rousseau inherits from Montesquieu. Indeed, as Manent argues convincingly, Montesquieu had invented such a caricature of antiquity only to flatter our modern vanity in being civilized and universal [p. 37]. The difference between Montesquieu and the classics on the relative merits of commerce and war concerns, in large part, an assessment of how much politics can or should dispense with the spirit of war and become ‘universal’ — and in the case of Montesquieu, this assessment must itself take into consideration the extent to which the European nation state that evolved out of the context of Christianity had *already* taken decisive steps in that direction, towards commercial society.

Montesquieu does indeed give, as Manent claims, “authority” to history, but that is not the whole story. As in the case of other moderns, Montesquieu’s promotion of commerce over war as a means of acquisition is connected to his implicit denial of the possibility of philosophy as the classics understood it, as the only truly autonomous life. Plato and Aristotle, too, saw war as an unfortunate necessity, and wanted to make the warriors into gentlemen — but not by replacing warriors with peaceful traders. This priority of war to commerce in ancient thought reflects — as Montesquieu is well aware — the thought that the man of

commercial republic puts frugality itself at risk: “luxury is always proportionate to the inequality of fortunes...for wealth to remain equally divided, the law must give each man only the physical necessities” [VII.1]. Thus, commercial republics contain the seeds of their own dissolution: “the ill comes when an excess of wealth destroys the spirit of commerce; one sees the sudden rise of the disorders of inequality” [V.6], namely luxury. This seems almost inevitable; as Pangle puts it, “Solon’s Athens, though admirable in some institutions, leads to Periclean Athens where ‘a rich man would despair to think some believed him dependent on a magistrate’ [V.7].”³⁶

In the classical republic, therefore, the spirit of commerce could not be *laissez-faire*. Despite what Montesquieu says about the orderliness of the commercial spirit, the individual’s “desire to possess” is always inherently problematic in a republic [V.3]. In order for this desire to be kept orderly it must be kept in bounds and not allowed to degenerate into the spirit of luxury. The effects of acquisitiveness had to be controlled through laws and mores: the citizens’ wealth must be kept at a “middle level” so that each remains able and obliged to work. If such restraints are easier when frugality is initially forced on the inhabitants by a harsh natural setting, such as that of Marseilles on a rocky coast [SL XX.5], for the most part, and in the long run, constant political regulation, such as the “revolution in each family” made by re-distributive inheritance laws, is always required to prevent luxury. Without such laws, the effects of luxury snowball even as the necessary

commerce, unlike either the slave-holding aristocrat or the philosopher, makes a habit of accommodating his ways to those of others (the ironic Socrates only pretends to do so — the underlying hubris being not entirely invisible.) From the progression of the *Nicomachean Ethics* one sees that magnanimity is a “virtue” for Aristotle in so far as it reflects the virtue of the philosopher. Unlike Rousseau, Montesquieu accepts the terms of the alternatives as they are bequeathed him by the classics: if the claims of the philosopher to be “above politics” and to rule his passions are vain pretenses, then the priority of war over commerce, of *megalopsychia* over *sophrosyne*, is unjustifiable.

³⁶Pangle, *op. cit.* p. 78

civic virtue to restrict luxury decays — “so far as luxury is established in a republic, so far does the spirit turn towards the interest of the individual...soon it becomes an enemy of the laws that hamper it” [VII.2]. In the ancient world, this process of corruption was forestalled most successfully with the assistance of chance: natural circumstances sufficiently harsh so as to remind citizens of the need to preserve the spirit of frugality in their mores, and hence accept burdensome constraints on the transmission and enjoyment of wealth.

Republican government, by its own nature and the nature of human beings, had to stamp its mold on citizens and restrain their passions — and not just as far as property is concerned. As the desire for luxury is unlimited, reflecting the intrinsic limitlessness of money, Montesquieu connects that desire with limitless desires for other things, particularly erotic things — “judged by the price [the Romans] put on things,” “their desires became immense”: “a good cook [cost] four talents; young boys were priceless” [VII.2]. Immediately after discussing luxury, Montesquieu moves to a discussion of the condition of women [VII.9-17]; he links their freedom or lack thereof to the degree of freedom for luxury and related passions. From this movement it is clear that the austere mores of the classical republic, at least within the family, were founded on the extreme restraints placed on women, in particular the harsh penalties they faced for adultery. Such restraints hold even or especially in commercial republics, where legislators “have banished even that commerce of gallantry that produces laziness” [VII.8].

In short, republican virtue is a harsh constraint, one that must become harsher as its original basis, the frugality and equality of property in the early republic, erodes. In this case, if the republic is to be preserved, a substitute means of maintaining mores must be found, such as adding the conservative — and undemocratic — element of a Senate “to which age, virtue, gravity, and service give entrance...who are seen by the people as simulacra of gods...”[V.7], or by giving fearful, and unchecked, power over violations of morality to censors, typically the old. Revealingly, both the original restraints on property

and the later correctives to mores are laws “given by legislators” to the people, not created by the people. Montesquieu stresses that the censors must be an unchecked authority, “independent by its nature,” which he compares directly to the “tyrannical magistracies” in aristocratic republics such as Venice, which put down intrigue through anonymous accusation [V.8; cf. XI.6].

Monarchy’s remedy to the illiberal bent of classical virtue has the same basis as its proto-solution to the difficulty posed by republics to the separation of powers: an executive power “separate” from society. In contrast with the sternness of classical virtue, “this much constraint is not needed in a monarchy” [V.7], precisely because monarchical government is more “repressive,” an *external* restraining force on its subjects. Montesquieu states emphatically “virtue is not the principle of monarchical government” because “The state continues to exist independently of love of the homeland...and all those heroic virtues we find in the ancients” [III.5]. The same reasoning makes aristocracy, where a “part” of the people has sovereign power, a kind of mean between democracy and monarchy:

The people, who are with respect to the nobles what the subjects are with respect to the monarch, are contained by the nobles’ laws. Therefore, they need virtue less than the people of a democracy.... Aristocratic government has a certain strength in itself that democracy does not have. In aristocratic government, the nobles form a body, which, by its prerogative and for its particular interest, represses the people; having laws is enough to ensure they will be executed [III.4].

By implication, to govern others, or to be governed by them, does not require painful self-renunciation; the “virtue” required by aristocracy is only the lesser one of moderation, in order that the nobles see themselves, not just the people, as subject to law.

From his harsh depiction of civic virtue and his treatment of it as one of several possible mechanisms of social control, it is clear why Montesquieu says that by associating liberty with “democracy,” as is traditionally done, “the power of the people has been confused with the liberty of the people” [XI.2]. (As we shall see, Tocqueville, partly

because he is more skeptical of institutional substitutes for virtue, will come back to a more republican idea of liberty that includes self-rule.) To maintain austere mores, the “singular institutions” of the classical republic had to be quite invasive; for example, “The Roman law that wanted the accusation of adultery to be made public maintained the purity of mores remarkably well” [V.7]. Montesquieu shows monarchies leave much more of what we would call a “private sphere” than republics :

Though all crimes are by their nature public, truly public crimes are nevertheless distinguished from private crimes, so called because they offend an individual more than the whole society.

Now, in republics private crimes are more public, that is, they run counter to the constitution of the state more than against individuals; and, in monarchies, public crimes are more private, that is, they run counter to individual fortunes more than against the constitution of the state itself [III.5].

This wider private sphere makes monarchy the form of government more able to conform to Montesquieu’s strictures on the criminal law in book XII — namely to confine punishment to overt acts, as opposed to thoughts, and to make shame, rather than criminal sanctions, the basis of mores. This increased latitude for the individual is a direct consequence of the fact that virtue is not the principle of monarchy: “*The laws replace all the virtues*, for which there is no need; the state excuses you from them; here an action done noiselessly is in a way inconsequential” [III.5; my emphasis]. This does not mean that monarchs do not try to regulate private actions, only that the order of the constitution does not require them to do so.

Following from the fact that man’s provision for his individual, material needs is prior to politics, the way that the nature of monarchy, as compared to that of republics, permits greater freedom for the pursuit of material gain and its related passions is directly relevant to the question of I.3 as to the “degree of liberty their respective constitutions could sustain.” Now, Montesquieu makes clear that none of the restraints that republics place on the private passions, both the acquisitive and the erotic, are as strong in monarchies: “luxury is singularly appropriate in monarchies...they do not need to have sumptuary laws”

[VII.4]. The taste for luxury is a consequence of the inequality of fortunes enshrined in a monarchical society of orders [SL VII.1], and once this inequality is established, luxury becomes a necessity: “If wealthy men do not spend much, the poor will die of hunger” [VII.4]. Idle men with no compelling political or business concerns turn their attentions elsewhere. As for women, at court “they ... take up the spirit of liberty that is almost the only one tolerated” [VII.9] and try to use their influence to further the personal ambitions of the men they favor. Certainly, such a situation has considerable charms [XIX.5].

At the same time, Montesquieu does not equate this lack of public control with liberty in the strict sense, namely security for one’s life, possessions, and thoughts. Although liberty is connected with an independent “private sphere,” it is not identical with such independence. A monarch’s indulgence is not the same as the rule of law. While commerce does not need to be restrained by the monarch, in some ways it is impeded by the spirit of monarchy. Neither the nobles nor the prince should engage in commerce; the possible abuse of their prerogatives would [XX.19-21] destroy the security necessary for the economy to function. Furthermore, as Montesquieu says, “gallantry” produces laziness; the dispositions associated with spending wealth are not the same as those that acquire it. Thus, the “greatest enterprises” are found not in monarchies, but in republics. Great enterprises are “always necessarily mixed with the public business,” and in monarchies traders are somewhat apprehensive that the monarch will interfere, whereas in the governments of many, “one’s belief that one’s prosperity is more certain in these states makes one acquire everything” [XX.4].³⁷ Monarchies tolerate a wider private sphere than republics, and their form has superior potential for the rule of law and the establishment of liberty; this potential cannot be realized, however, within monarchy proper.

³⁷This has to be compared to Tocqueville’s rather different explanation of such “heroic” commerce.

Montesquieu's treatment of commerce in the republic shows that the natural desire for security will eventually corrupt the republic, because the freedom to acquire necessities leads to a desire for the superfluous; his treatment of monarchy shows that the desire for superfluities, and its political consequences, can erode the freedom to acquire anything at all. After looking at the place of commerce in both republics and monarchies, we are in a better position to understand both halves of Montesquieu's statement that "in republics private crimes are more public...and, in monarchies, public crimes are more private" [III.5]. While republics are forced, if they wish to preserve their constitution, to sharply curtail individual passions, even legitimate passions connected with the desire for security, and thus make things which are by nature private a matter of public concern, monarchies err to the other extreme. If in republics the public sphere threatens to submerge the private, in monarchies, strictly speaking, there is no "public sphere": any offense is an offense directly against the king. Therefore, public financial institutions necessary for economic commerce, such as banks and trading companies, are not suitable for the "government of one alone," because "such an institution immediately becomes the prince's" [XX.10]. If the disposition to commerce is a kind of mean between public virtue and private luxury, then we would expect that the constitution most suitable to commerce — as most solicitous of the security of the individual and his property — would be a mean between the republic and monarchy. To be more precise, it is a "republic that hides under the form of monarchy."

B. THE CONSTITUTION OF MODERN LIBERTY: ENGLAND

From looking at Montesquieu's analysis of liberty in republics and monarchies, we can see that his assessment of the merits and defects of these governments is based on how well they tend to protect the individual's real need for security, which is the basis for all government. Furthermore, because security is connected to our ability to acquire wealth, the propensity for which is consequent to our natural desire for self-preservation, the relation of

republics and monarchy to liberty is exemplified in the relation these regimes have to commerce. The great examples Montesquieu gives of both liberty and commerce are republics — monarchy being inferior in both respects — but his analysis of the institution of monarchy reveals a potential to surpass republics, when the monarch is transformed into an “executive” through the introduction of a representative legislature. This transformation is manifest in England, the “nation where the republic hides under the form of monarchy” [V.19]. The regime most favorable to commerce is, as it turns out, the “one nation in the world whose constitution has political liberty for its direct purpose” [XI.5].

The English constitution, or rather Montesquieu’s interpretation of it, is the “mirror” [XI.5] of liberty, whereas the “monarchies we know” only “approximate liberty” [XI.7].³⁸ These other governments only “approximate” the English mirror of

³⁸B. Manin in *op. cit.* argues that Pangle is wrong to see England as Montesquieu’s best regime, or practical solution, by arguing (p. 183) that for Montesquieu there is a plurality of regimes that can provide security equally well, such as monarchy with its fixed laws. This flatly ignores, among other things, Montesquieu’s statement that there is “no liberty” when all three powers are not separate; his statement (also in XI.6) that when the legislative and executive powers are combined, as in the kingdoms of Europe, one can *fear* (my emphasis) that the same monarch or senate that makes tyrannical laws will execute them tyrannically; and his statement that in “the monarchies we know...the three powers are not distributed and cast on the model of [England]; each approximates political liberty accordingly; and if it did not approximate it, the monarchy would degenerate into despotism.”

Manin makes the error of putting the “approximations” on the same plane as the model, because he makes a distinction, contrary to Montesquieu’s express definition in SL XI.3, between liberty and security: “Le régime anglais a la liberté individuelle pour objet mais celle-ci n’est pour Montesquieu qu’un moyen, parmi des autres, de garantir la sécurité” (p. 182). Manin relies, to establish this, on an unpublished fragment from the *Pensées*, which states that a “subject” people, such as under a monarchy, might have as much security, “well or badly founded,” as a “free” people, because “mores contribute more to the happiness of a people than laws,” and mores restrain kings. Manin’s use of this quote lets slip by unnoticed the crucial “well or badly founded”: Montesquieu is looking for a secure foundation for security, that of the constitution “free by its nature,” rather than mores, which are in danger of corruption — in SL VIII.8, Montesquieu warns that European mores will not “hold firm” if monarchies become more powerful or absolute, and despotism will result. Despite or rather because of Montesquieu’s equation of liberty with security, peoples living under constitutions not “free by their nature” might be “secure” or living under fixed rules but not free — their security is not quite so secure.

liberty for several reasons. First, monarchy, as Montesquieu presents it, is an unstable political form, being itself a “corruption” of an earlier political form, the aristocratic government of the conquering Germans. Liberty in a monarchy comes from the fact that the sovereign is separate from society. But because of the fragility of the intermediary bodies that do not share in sovereignty, monarchy risks transformation into a popular state or a despotism [II.4]. Civic rights exist, but they are not guaranteed. They could be quickly taken away by a sovereign’s abuse of his power [VIII.8], and if one follows Montesquieu’s references to Cardinal Richelieu [III.5; V.10-11; XII.8], one sees that he fears the French monarchy has already traveled a considerable distance toward despotism.³⁹ England, however, does not seem to run a similar risk; for one thing, the processes that threaten to further corrupt the French monarchy have already played themselves out: in England intermediary bodies have been abolished [II.4], and the nobility engages in trade [XX.21]. The result is not “despotism” but a “popular state,” albeit of a peculiar kind, one with a monarchical “executive” or form.

Liberty in England has a more solid or “institutional” foundation than in monarchy proper: it is built into the system through a division within the sovereign itself, a separation of powers. This means that England, better than monarchy, fulfills monarchy’s own potential for liberty: law is executed by an “impersonal state” separate from society. Furthermore, as more “institutional” or less dependent on molding a particular kind of citizen, the English system is less susceptible to corruption. As Montesquieu says, the corruption of a government almost always occurs through its “principle,” the passion that

³⁹The despotic tendencies of the French monarchy, and the inherently unstable character of monarchy per se, are much clearer in the *Persian Letters*. Consider especially Letter 102: “Most European governments are monarchies; at least that is what they are called, for I do not know that there have ever been such things. At any rate, it would have been difficult for them to have existed for long in a pure form. Monarchy is a state of tension, which always degenerates into despotism or republicanism.”

animates it. While other regimes have a “principle” in addition to their “nature” or structure (e.g., in monarchy each class must maintain its own honor or prerogatives), England in Montesquieu’s treatment has a complicated structure (the separation of powers) but no principle: “all the passions are free there” [XIX.27].

The second reason why the English constitution is more conducive to liberty than monarchy, besides its being less susceptible to despotic tendencies, has to do with the element of republicanism mixed into it, its representative legislature. This only seems paradoxical.⁴⁰ The representative legislature of the English constitution is an expression of the natural (or rather, the people’s) belief that liberty requires self-determination — “As, in a free state, every man, *considered* to have free soul, should be governed by himself, the people as a body should have legislative power” [XI.6; my emphasis].⁴¹ At the same time, this quasi-republic constrains self-determination by an institutional form that avoids the unlimited or willful character natural to direct popular sovereignty. This republic in drag actually fulfills monarchy’s “institutional potential” for liberty. Look again at Montesquieu’s claim in the chapter [SL XI.8] “Why the ancients had no clear idea of

⁴⁰One way that Montesquieu tries to counter our natural tendency to equate liberty with self-determination is to argue that liberty is more consistent with the modern idea of a morality higher than politics: “It is true that in democracies the people seem to do what they want, but political liberty in no way consists in doing what one wants. In a state, that is, a society where there are laws, liberty can consist only in having the power to do what one should want to do and in no way being constrained to do what one should not want to do.” [SL XI.3] Nevertheless, this edifying language should not blind us to the fact that political liberty may very well leave us free to do what we should not want to do, and in no way constrains us to do what we should want to do. In the very next chapter, XI.4, the criteria are subtly changed: in a free constitution, “no one will be constrained to do the things the law does not oblige him to do or be kept from doing the things the law permits him to do.” As the rest of XI.3 makes clear, for Montesquieu political liberty is not directed towards any moral end more substantive than legality itself; the distinction between “independence” and “liberty” rests solely on the mutual security that the rule of law provides, without which an individual would not have liberty.

⁴¹As I maintain, the premise of Montesquieu’s entire argument is that no one has a free soul, or can govern himself — hence the need for law to be “king of all” [SL I.1].

monarchy” that “the ancients did not at all know the government founded on a body of nobility and *even less* the government founded on a legislative body formed of the representatives of the nation” (my emphasis). The second part of this statement does not refer to monarchy at all, but to England (since monarchy proper does not have, according to Montesquieu, a representative legislature⁴²). *In Montesquieu’s story England is a further step away from antiquity in the direction taken by monarchy.* Representation, the potentiality opened up by monarchy and fulfilled by England, is the device by which republicanism can be made safe for liberty.

Montesquieu’s idea of representation is that it makes self-rule compatible with limited government; it speaks volumes that he makes this point (of all places) in a chapter entitled “On the excellence of monarchical government”[V.11]. Here, Montesquieu advances the argument we have mentioned before, that it is more advantageous for a prince to be a monarch than a despot: “As it is in its nature to have under the prince several orders dependent on the constitution, the state is more fixed, the constitution more unshakable, and the persons of those who govern more assured.” However, the supporting example he gives is not from a monarchy at all, but from a republic: he cites Cicero’s claim that appointing representatives of the people, the tribunes, saved the republic because “the force of the people without a leader is more terrible.” Montesquieu lets the reader infer what he does not say: the people, too, can be a despot with too much power and not enough.

The rest of V.11 is a comparison between despotism, which is “full of revolutions” because “the people, led by themselves, always carry things as far as they can go,” and monarchies, where the intermediate powers, wanting to preserve their position, moderate the

⁴²See e.g. II.4: “I have said intermediate, subordinate, and dependent powers; indeed in a monarchy, the prince is the source of all political and civil power, “ or XI.6, “In most kingdoms in Europe, the government is moderate because the prince, who has the first two powers [legislative and executive], leaves the third [judicial] power to his subjects. “

demands of the people, and in which “the people do, in a way, have tribunes.” By this strange use of the tribunes of the Roman republic to show the “excellence of monarchical government,” Montesquieu leaves out, but forces the reader to consider, how the modern device of representation could moderate the despotic tendencies of pure republicanism. His Rome, even after the establishment of representatives, was not a representative government, because the people retained full legislative power. Likewise he notes that the Greek republics were prone to revolution [XII.18], much like the unstable despotic regime he describes in V.11. The “regime” in the classical republic was simply the despotism of one class over another — hence the immoderate character of revolutionary changes in the constitution.⁴³ Modern representation, then, is for Montesquieu a check on the people as well as on the prince.

Thus Montesquieu sees the English constitution as a higher synthesis⁴⁴ of republic and monarchy. Its achievement is of course the separation of powers, and so Montesquieu places his famous distinction between the three types of power present in all governments at the beginning of the discussion of the English constitution [XI.6]: England somehow makes manifest what has been always true, but never yet noticed, about government in general.

⁴³The despotic character of republican class rule is the reason why Montesquieu is so interested in redefining liberty so it does not mean a share in rule. See *Pensées* no. 631 [OC I, pp. 1151-2]: “This word ‘liberty’ hardly signifies, in politics, little more than what the poets and orators have made it signify. This word, strictly speaking, expresses only a relation and cannot serve to distinguish the different sorts of governments: the popular state is the liberty of the weak and poor and the servitude of the rich and powerful; and monarchy is the liberty of the great and the servitude of the little [people].”

⁴⁴Hegel, in section 273 of the *Philosophy of Right*, credits Montesquieu for his apt treatment of the difference between the ancient republic, based on the “sentiment” of virtue, and England, where “the power of particularity has developed and become free,” so that “a form of rational law other than the form of sentiment is required.” Cited by Pangle, in *op. cit.*, note 3 to p. 116, at p. 314. Hegel here treats particularism as a given aspect of modern society to which politics must respond; he does not appear to understand the importance that Montesquieu gives to monarchy as the *source* of the separation of state and society, the separation that made the liberation of particularity or subjectivity *possible* by replacing virtue with executive power.

Once separated, the judicial, executive, and legislative “powers” of government are each less threatening to liberty. As in classical republics, judgment is rendered by the people, in juries, but unlike in the classical republic these juries are selected by the litigants and supposedly constrained by the executive to apply the law: “the power of judging, so terrible among men...becomes, so to speak, invisible and null” [XI.6].⁴⁵ The monarch’s transformation into an “executive” makes his power less fearsome; it is now largely ministerial to the legislature, as its enforcement arm. As for the legislative power, it is limited not only because its acts must take the form of general rules, but also because it rules not by its own authority, but also by delegated authority, as the people’s agent.

How is this “separateness” of the powers to be maintained? It is not enough that each power have its special function; the powers must have equal force, to prevent “encroachments.” The separation of powers depends upon containing the legislative power. As we learned from Montesquieu’s discussion of the weaknesses of the classical “mixed regime,” the popular branch of government tends to dominate; but the English constitution has several devices that, for Montesquieu, prevent this from happening. Through representation, as Madison put it fifty years later, the popular will is “refined and enlarged.” Not only do the representatives moderate popular demands on government; they are more qualified than the people to conduct public business, as the only thing the people as a body can do well is choose who should govern them [XI.6]. Through bicameralism the legislature is weakened by being divided, and the upper house, composed of nobility, can impede the people from infringing established rights. And through the executive veto over legislation, the executive gets a share in the prerogatives of the legislature, allowing him to maintain his own.⁴⁶

⁴⁵As we shall see, Tocqueville also sees the jury as critical part of a “liberal” republic, but for almost the opposite reasons. See Mansfield, *op. cit.*, p. 235.

⁴⁶Cf. Montesquieu’s discussion of the kings of Greece’s heroic age: SL XI.11

The English system neutralizes the threats to liberty from the underlying *principles* of monarchy and classical republicanism as well. As Harvey Mansfield has remarked, in Montesquieu's version of a republic the only "executive" is virtue: without virtue the citizens will not enforce laws against themselves.⁴⁷ A real executive obviates this problem, eliminating the need for virtue. In the English constitution, there is no need for any "principle," either virtue or honor: what replaces these things is party politics. That is, in the English regime self-interest is liberated but politicized: it is appropriated by the political system and poses no threat to it. Unlike in monarchy, where the nobles defend only their personal prerogatives, citizens in Montesquieu's England see their interests as being bound up with the predominance of either the executive or the legislature and join parties that further one or the other branch. The general fear of too much power in one branch produces a stable, self-regulating equilibrium: "if one party gained too much, the effect of liberty would be to lower it while the citizens would come and raise the other party like hands rescuing the body" [XIX.27]. This flexibility is possible because the predominance of self-interest leads, unlike in the ancient world, to a weakening of partisan attachments — "As each individual, always independent, would largely follow his own caprices and his fantasies, he would often change parties...often, in this nation, he could forget both the laws of friendship and those of hatred" [XIX.27].

To be sure, just as other constitutions do, the English constitution has characteristic passions or human types. However, the English regime does not, as other regimes do, rely on these passions; they are only a consequence of free institutions, not a necessary "spring" or "principle" such as fear, virtue, or honor. The English regime does not seem to need any kind of "education," or formation of the character of its citizens: "all the passions are free there" [XIX.27]. One aspect or consequence of this exceptional liberty of

⁴⁷*Op. cit.*, p. 224 ff; 233.

the English constitution is found in the public importance, in this regime, of a pursuit that is usually understood as intrinsically private, the acquisition of wealth. In England politics and commerce have a unique relationship: “other nations have made commercial interests give way to political interests: England has always made its political interests give way to the interests of its commerce” [XX.7]. In England, unlike the classical republics, commerce needs the restraint neither of sumptuary laws nor of a harsh natural situation. Nor, however, is England a monarchy. As there is no taste or time for luxury, there is no need to curb it: “There would be a solid luxury, founded not on the refinement of vanity, but on real needs...frivolous things would be proscribed...because many men would have more goods than occasions for expenditure” [XIX.27]. From being either a means to necessities, or the source of unnecessary pleasures, commerce in England becomes an end in itself.

CONCLUSION

Montesquieu rejects both the classical standard of the regime that is best everywhere and always, that is, by nature, and the modern standard of inalienable or natural rights. Unlike Locke, Montesquieu has a decidedly un-revolutionary teaching: “in an enlightened age, one trembles even while doing the greatest goods. One feels the old abuses and sees their correction, but one also sees the abuses of the correction itself” [SL, preface]. Men have a natural need for security, but the governments which men have devised to provide for this need are so conditioned by particular natural or historical circumstances, and rest on such a complex web of relationships, “the legislator or statesman cannot cut through this particularity.”⁴⁸ At the same time, this historically minded political science culminates in his presentation of the modern liberal constitution, England. This regime’s liberal republicanism differs from classical republicanism in the forms inherited from the singular

⁴⁸Pangle, *op. cit.*, p. 43.

intervening history of European feudalism and monarchy; it is only possible on the basis of those forms. As Pierre Manent puts it, for Montesquieu “the solution to the political problem in no way follows from the rational and deliberate quest for the best regime...Events in Europe were wiser than the wisest of the ancient philosophers.”⁴⁹

The role of the English constitution in Montesquieu’s political science — as arising from particular circumstances but having universal significance — mirrors the role of America in Tocqueville’s thought, as both revelatory of the general nature of the modern social condition and exceptional in its liberal politics. Yet the democratic *état social* that defines the modern condition for Tocqueville is neither a political regime nor inherently liberal. Nor is the softening of mores through commerce necessarily benign. The Americans have made liberty and democracy compatible, and this is exceptional. Tocqueville’s understanding of modernity as the democratic social condition — an understanding connected to the real advancement of the democratic revolution that separates his historical situation from that of Montesquieu — leads him to rethink the difference between antiquity and modernity as understood by Montesquieu and the subsequent liberal tradition. It is this rethinking, I will argue, that underlies Tocqueville’s “liberalism of a new kind.”

⁴⁹*City of Man*, p. 14.

CHAPTER TWO

TOCQUEVILLE AND MONTESQUIEU ON THE COMPARISON BETWEEN MODERN AND PRE-MODERN SOCIETY

Montesquieu's political science, as I argued in the previous chapter, presents England's liberal constitution via a contrast between the mediated sovereignty of its liberal republicanism and the direct popular sovereignty of the classical republic. Modern republicanism was possible, Montesquieu shows, only via the legacy of European monarchy; this form of government contained the potential for the liberal separation of state and society, because the monarch could be, and in fact was, transformed into the "executive." Clearly, Tocqueville's thought also centers on the defining questions of "modernity" and "liberty." The content of these notions, however, and the understanding of their relationship, are markedly different.

First, Tocqueville has a very different understanding of history. Even more pointedly than in Montesquieu, the categories of Tocqueville's comparative politics are shaped by his conception of modernity, but this typology is not, or not in any obvious way, based on the different forms through which sovereign power is exercised. Unlike the case of Montesquieu, modernity in Tocqueville's account — "the democratic social condition" — is not so much a political regime as an unstoppable social transformation that, although it has tremendous political consequences, can take a variety of political forms. From "equality of conditions," Tocqueville draws many of the same psychological consequences that Montesquieu draws from the nature of the English government. This brings us to the second major difference: for Tocqueville, liberty has a somewhat ambiguous relation to

modernity. Not only is the modern condition not derived from a particular type of government, but certain aspects of that social condition, in fact some of the very aspects that Montesquieu associates with liberty, are for Tocqueville congenial with despotism.

This ambiguous relation for Tocqueville between liberty and modernity is nowhere more visible than in the preface to *L'ancien régime et la révolution*. Initially, he says, the men of 1789 wanted both equality and liberty, to “acknowledge and confirm rights as well as destroy privileges.” In the end, however, the revolutionary passion against inequality was more powerful than the aim of protecting rights, the revolutionaries “stripping the nation of every vestige of self-government, of constitutional guarantees, and of liberty of thought, speech, and the press.” This parting of the ways of liberty and equality, far from being exceptional, is as Tocqueville goes on to explain, exemplary of the very nature of the modern condition. While “all the men of our day” are driven by an “unknown force” towards the “destruction of aristocracies,” it is in societies where aristocracy has disappeared “in which it will be most difficult to resist...the establishment of despotism,” because of the affinity between the democratic social condition and despotism. In modern society,

When men are no longer bound together by caste, class, corporate or family ties, they are only too prone to give up their whole thoughts to their private interest, and to wrap themselves up in a narrow individuality in which public virtue is stifled. Despotism does not combat this tendency; on the contrary, it renders it irresistible, for it deprives citizens of all common passions, mutual necessities, need of a common understanding, opportunity for combined action; it walls them up, so to speak, in private life.¹

¹“Preface” to *The Old Regime and the Revolution*, tr. John Bonner [New York: Harper, 1856] [all citations in English are to this edition], pp. viii-ix. Future citations will be to “AR”, by Book and chapter; unlike Bonner, I follow the traditional division into three books, in which book III starts with the chapter following II.12 [So Bonner II.13 = AR III.1.] I have occasionally modified Bonner by reference to the French text: *L'ancien régime et la révolution* [Paris: Flammarion, 1988].

The individualism and desire for material gain by which both Montesquieu and Tocqueville characterize modern society, Tocqueville claims, are compatible with (and even assisted by) a despot's monopoly on political life. The modern social condition, equality, might make for a truer or less arbitrary form of liberty; but, it also weakens considerably, in Tocqueville's eyes, the social and psychological bases of liberty.

Paradoxically, a more "sociological" treatment of modernity in Tocqueville is connected to or results in a much more "political" conception of liberty than Montesquieu's. As modernity is constituted, in Tocqueville's analysis, by a state or condition ("*état*") of society rather than by a form of government, the democratic "*état social*" is compatible with both free and despotic government. On the one hand, the modern importance of commerce and, more generally, of the private sphere are not, for Tocqueville, a consequence of free government; on the other, self-government plays a more central role in Tocqueville's notion of free government than in that of Montesquieu. Liberty and modernity, while of a piece in Montesquieu's thought, are in Tocqueville's case rather different problems — in fact their separation by Tocqueville may be what distinguishes him from Montesquieu.

To see clearly the reasons for Tocqueville's reformulation of the problem of modern liberty, one has to see clearly the nature of their differences on a philosophical level, in their understanding of politics. However, the radical novelty of the democratic *état social* — both as a concept and as a reality — makes comparison problematic. At first sight, the closest equivalent to the concept of the *état social* would seem to be Montesquieu's notion of the "general spirit" [or "mind"] of a country.² This mysterious entity, which seems to be what used to be called "national character," is for Montesquieu the overall tone of a society,

²See, e.g., Eduardo Nolla's comment at editor's note "b" to DAN I.i.3, p. 37: "Social condition in Tocqueville's treatment reminds one of the concept of the general spirit in Montesquieu."

set not only by its politics and laws, but also by extra-political factors such as climate, religion, and mores; more precisely, the relative importance of these factors in determining the *esprit générale* varies from society to society [SL I.3 with XIX.4]. Once established, this *esprit générale* becomes a kind of second nature, carrying everything along with it; Montesquieu says that the legislator should follow it as much as possible unless it runs counter to the principles of the government, because “we do nothing better than following our natural genius” [SL XIX.5].

It is natural enough to see Montesquieu’s notion of the *esprit générale* in Tocqueville’s definition of the *état social*:

Social condition is commonly the result of circumstances, sometimes of laws, oftener still of those two causes united; but when once established, it may justly be considered as itself the source of all the laws, the usages, and the ideas which regulate the causes of nations: whatever it does not produce, it modifies [DA I.i.3, p. 46].

This resemblance is deceptive, however, because Tocqueville does not, as Montesquieu does with the *esprit générale* in SL XIX, use the concept of *état social* to explain the diverse character of the different nations: there are only two forms of *état social*.³ Indeed, for Tocqueville national character seems to be something *additional* to the character given by the *état social*; thus in DA I.ii.10, he treats of things, such as race relations, that are “American without being democratic” [p. 331]. While at one point in *Democracy* [I. ii. 3, p. 187, translation modified] Tocqueville gives a definition of “*esprit*” that is remarkably similar to Montesquieu’s: “certain ways to which all must conform... the sum of these

³It does seem probable that Tocqueville, in developing his notion of the *état social*, used as his point of departure Montesquieu’s idea of the general spirit as the totality of the relations that constitute society. At editor’s note “d” to DAN I.i.3, p. 37, Nolla quotes a list from Tocqueville’s notebooks of ten “causes” of the social condition of the Americans — but many of these, such as their mores and their Puritanical “point of departure,” Tocqueville eventually treats as aspects of American particularity.

common ways is called a spirit; there is a spirit of the bar, the spirit of the court,"⁴ he never uses this notion of *esprit* as a basis for defining the *état social*. Rather, Tocqueville develops the concept of the *état social* as a way of understanding modernity. The apposite comparison to Montesquieu is thus not to the notion of the *esprit générale*, but to the latter's way of contrasting modern with classical republicanism.

At the same time, Tocqueville's procedure casts doubt on the legitimacy of such comparisons. As Pierre Manent has pointed out, for Tocqueville the modern condition, in which individuals are not understood as having a fixed rank in society, is so unprecedented that it renders obsolete the distinctions not only of Aristotle's political science, namely classification according to regimes, but also those of Montesquieu's liberalism, the forms of government. Thus, for Tocqueville, "aristocracy" refers not to a particular regime, but to all forms of pre-modern society, from Indian tribes to the Greek polis to European feudalism. Manent notes that the portrait of aristocracy and aristocratic man is drawn chiefly because "the portrait of democratic man requires it" — i.e., it is the necessary background against which Tocqueville depicts the rise of democratic society.⁵ This background is necessary because the democratic "social condition" is not so much a fixed state of affairs as an ongoing process, an overturning of the aristocratic social condition. Even in America, which never had an aristocracy *per se*, the differences between aristocrat and democrat persist in the two political parties [DA I.i.10, p. 175; TND p. 32], one of which wants to limit, the other to extend, the power of the people. For Tocqueville, a salient example of this conflict is the struggle of the populist Andrew Jackson against the "aristocratic" second Bank of the US.

⁴Cited by James Ceaser, *Liberal Democracy and Political Science*, p. 230, note 43. Ceaser remarks: "we are obviously meant to think of Montesquieu's usage of the term."

⁵Pierre Manent, *Tocqueville et la nature de la démocratie* [Paris: Julliard, 1982], pp. 29-30. Hereinafter TND.

What Tocqueville calls the “democratic revolution” replaces the power of individuals and corporate bodies with the power of the mass, or the majority. What this process, unimpeded, puts at issue is the very existence of concrete social ties themselves, and not just hereditary ties. Tocqueville can therefore say that in the Western states of the U.S., where “the inhabitants are but of yesterday,” “we may behold democracy arrived at its utmost limits” [DA I.i.3, p. 51]. That this extreme situation is not merely a peculiarity of the U.S. but only an extreme because un-moderated expression of modernity can be seen from his notebooks, where Tocqueville says that the current age “resembles no other”: “Today, in a word, one should never forget, it is the very existence of society itself that is in question rather than the forms of its government.”⁶ Modernity is thus hardly a project of Tocqueville’s but a massive, and, strictly speaking, unfinishable, social transformation requiring a “new political science” to reconstitute society.

Any comparison of Tocqueville’s categories with those of his predecessor must therefore keep in mind differences in their situations and purposes: Montesquieu is an advocate and an architect of modernity, who looks to the past for materials and guidance, both positive and negative, to give us the sense of England as a distinctively modern republic, while Tocqueville, finding himself in the midst of the democratic revolution, seeks to understand and regulate the consequences of a seemingly ever more radical rupture with the past. Given the revolutionary upheaval of the near century that separates the two, it is hardly surprising that the shape of “modernity” looks rather different to Tocqueville.⁷ In

⁶Cited DAN I, intro, pp. 8-9; editor’s note “w.”

⁷James Ceaser, in *op.cit.*, p. 69, claims that “the variation among these thinkers may owe more to changed circumstances than to any fundamental disagreement of method. Tocqueville’s analysis of the modern era rests on the claim that there has been a decisive change in conditions since the time of Montesquieu.” As we shall see, Ceaser’s verdict that these new circumstances forced Tocqueville to be more of a “partisan” of democracy than Montesquieu is only half true; Tocqueville is more democratic in his practical recommendations, but more distant, in his theoretical orientation, from the democratic premises of modernity than is Montesquieu.

addition, Tocqueville notes that his focus on the effects of democracy leads to simplification, and in some cases, falsification, of the phenomena.⁸ Even so, Tocqueville's social thought represents a definite shift in outlook from his predecessor, in particular in their readings of the past.

To begin with, then, I compare how these two thinkers understand pre-modern society. The vagueness and breadth of Tocqueville's conception of "aristocracy" would seem to make a comparison with Montesquieu's much narrower conception of "antiquity" problematic, yet a juxtaposition of the two reveals that this apparently arbitrary difference in scope is in fact due to a theoretical difference over the basis of pre-modern society. Tocqueville proceeds similarly to Montesquieu: from structural aspects of aristocratic societies, he derives certain characteristic human passions. Because both thinkers are "comparative, historical, and psychological,"⁹ a careful comparison of the two reveals much about Tocqueville's originality. While both versions of pre-modern society present similar features, namely a sense of connectedness and a restraint of the spirit of commerce, in Tocqueville these features have a markedly different basis than they do in Montesquieu: the defining aspects of the pre-modern moral landscape arise not from the requirements of republican government, but from the *inegalitarian* way of conceiving human relations that is common to all pre-modern societies.

⁸See, e.g. the quote from Tocqueville's manuscript notes at editor's note "b", DAN II.iii.18, p. 192 — "The capital vice of this chapter, what makes it speak falsely, is that I give to honor a unique source [in social condition] when there are many. Honor is, no doubt, founded on particular needs growing from many sources, be they the political and social condition, be they the physical constitution and the climate. It thus grows, whatever I might say, out of the fancy of men." It would seem that for Tocqueville, unlike for Montesquieu, to make something an outgrowth of nature, as opposed to society and politics, is to make it an outgrowth of human "fancy." Compared with Montesquieu, Tocqueville would seem to have a higher standard for attributing "rationality" to a given aspect of society, which does not include what men are led to institute "unconsciously" as a response to their situation.

⁹See M. Richter, *Op. cit.*, p. 80; S. Drescher, *Dilemmas of Democracy: Tocqueville and Modernization* (Pittsburgh: U. of Pittsburgh, 1968), p. 24.

We can see this etiology most clearly in Tocqueville's most theoretical discussion of the differences between the principles governing pre-modern and modern legitimation, namely the chapter on honor in *Democracy in America*, which I maintain is an extended, if implicit, critique of Montesquieu. To understand this critique, however, it is first necessary to show in some detail what Tocqueville's comparative analysis of civic morality has in common with that of his predecessor — only then does the nature of his break with Montesquieu become clear, in particular the replacement of the classical city with feudalism as the paradigmatic case of pre-modern society. Emblematic of this break is Tocqueville's new understanding of the difference between "honor" and "virtue"; these terms no longer refer, as they had in Montesquieu, to two distinct types of passions which were the "principles" of republics and monarchies, a classification by which Montesquieu had made monarchy a transitional regime between ancient and modern republicanism.

In conclusion I'll turn to the consequences of Tocqueville's new analysis of pre-modern society. First, Tocqueville effects something like a *rapprochement* of classical and modern patriotism; this will be important later when we show how Tocqueville tries to find, under modern liberal democracy, substitutes for classical virtue. In Tocqueville's story, feudalism is not an intermediate stage en route to the modern order; in its static hierarchy of orders, and absence of political life, it is even further from the modern order than is classical republicanism. Second, and more important, Tocqueville's political science implicitly rejects Montesquieu's understanding of the relation between "state" and "society." Not the forms of government, but the conceptions of legitimacy that the *état social* makes possible and necessary, structure the fundamental political alternatives. The replacement of the form of sovereignty as point of comparison between ancient and modern brings with it, as I will argue in the next chapter, an entirely new view of the nature of history, of the forces which brought about the modern condition. As I show in subsequent chapters, it is Tocqueville's

more radical understanding of modernity that explains his departure from the parameters of Montesquieu's modern liberalism.

*A. THE ALTERNATIVE TO MODERNITY: TOCQUEVILLE'S
NOTION OF "ARISTOCRACY" COMPARED WITH
MONTESQUIEU'S CLASSICAL REPUBLIC*

As we saw, antiquity has, in Montesquieu's treatment, two related faces, one having to do with the unmediated nature of sovereignty in the classical republic, the other having to do with the principle or passion required by such a structure, either "virtue" or "moderation." Tocqueville's notion of pre-modern society, "aristocracy," is much broader — the classical republic being a special, and not even the most representative, case — and has a markedly different foundation: permanent inequalities in status and, what for Tocqueville are closely related to this, fixed relations of dependence.¹⁰ By comparing where Tocqueville and Montesquieu locate the basis of tighter social bonds and the restraint of commerce and its attendant passions and interests — two features both thinkers attribute to pre-modern society — we see why Tocqueville marks the classical republic as a special, outlying case of

¹⁰An important exception to this are the Native Americans, who Tocqueville compares to both the classical citizen — "The famous republics of antiquity never gave examples of firmer courage, prouder souls, a more intractable love of independence..."[DA I.i.1, p. 23] — and to the feudal baron: with his "lofty idea of personal worth" and his contempt for labor as a means of acquiring wealth, he has "the same ideas, the same opinions, as the noble of the Middle Ages in his castle" [DA I.ii.10, pp. 343-4]. It is strange to think of the Indians as "aristocratic", given that Tocqueville says that the Indians' virtues stem from the *lack* of inequality among them [DA I.i.1, p. 23], and a nomadic life which prevents the gradual building up of "civilization" — which necessarily "takes place in the same spot and is handed down from one generation to another" [DA I.ii.10, p. 342]. In thus describing the Indian as the prototypical anti-modern, anti-bourgeois, Tocqueville would seem to be departing from his own understanding of the basis of aristocratic society, and merely following in the footsteps of Montaigne, Rousseau, and Chateaubriand. However, one might also say that the Indians' freedom and equality are the exceptions that prove the rule; the proud virtues characteristic of man's ruder, vigorous beginnings are possible within "civilization" only by way of the fixed inequalities that Tocqueville describes as characteristic of aristocracy.

“aristocracy.” (One paradoxical consequence of this different typology, in which feudalism and the classical city fall under the same heading, is that it resuscitates as “pre-modern” something slighted in Montesquieu’s account of antiquity — the pursuit of the theoretical life — despite the fact that this inclination is far more characteristic of the classical city than of feudalism. As we’ll see later on, the connection Tocqueville sees between inequality and intellectual virtue renders questionable the link Montesquieu makes between modernity, commerce, and “Enlightenment.”)

The most obvious point of resemblance is that for both thinkers, pre-modern man, in contrast to modern man, is taken out of himself through connections with others. As we have seen, the archetypal form this connection takes in Montesquieu is virtue, the citizen’s subjecting his private interest to the common good; this “virtue” is presented as most at home in democracy, because it is through a sense of equality, especially equality of property, that each can feel he is part of the whole. When a less stringent form of virtue is required, as in the aristocratic republic, or when the nature of the government no longer requires virtue at all, as in monarchy or liberal constitutionalism, then inequality is not contrary to the spirit of the constitution. Inequality, therefore, comes with the *loss* of connection. Even in Montesquieu’s aristocratic republic, the aristocracy is bound together by a common interest in ruling over others — [SL III.4] — which means by the equality between them. In monarchy, as we saw, there is little conception of a public sphere, each man’s honor or social position being his main concern. In liberal constitutionalism, where individuals are mostly concerned with the acquisition of wealth, political alliances between citizens are constantly shifting and are matters of expediency: “in this nation, [the citizen] could forget both the laws of friendship and those of hatred” [SL XIX.27].¹¹

¹¹Compare *Pensée* 604, “On Friendship” [OC I, pp. 1129-31]: “Friendship was the characteristic virtue of the Romans... the constitution of the state was such that each was driven toward making friends...A man was not powerful within the Senate or the People without the help of his friends...Citizen was held to citizen by all sorts of chains. One was tied

By contrast with Montesquieu, Tocqueville stresses the inegalitarian nature of pre-modern society. Not that Montesquieu ignores ancient inequalities; he notes that as a practical matter, democratic “virtue” was preserved only by the conservative restraint exerted by aristocratic elements in the republics’ constitutions. Sparta, Montesquieu’s prime example of a virtuous republic, is an aristocracy [SL XVIII].¹² But Tocqueville’s view of modernity as the democratic *état social* places the emphasis differently: conceiving the classical city as a subset of “aristocracy” implies that the bonds uniting members of pre-modern society originate, most fundamentally, on a very different level than that of shared sovereignty. For Tocqueville, the most important social bond, the bond that gives pre-modern men the taste for (and the need for) political rule in the first place, is that between the noble or citizen and his dependents (serfs, slaves, or family):

to one’s friends, one’s freedmen, one’s slaves, one’s children. Today, all is abolished, including paternal power: every man is isolated. It seems that the natural effect of arbitrary power is to particularize all interests... However, the ties which detached man from himself to attach him to another made him do great things. Without this, everything is vulgar, and there remains only base interest, which is nothing more than the animal instinct common to all men.”

That Montesquieu sees the particularization of interests as common to both arbitrary power and modern English liberalism bears some resemblance to Tocqueville’s connection between modernity and despotism. In Tocqueville, however, the emphasis is not on the “particularization” of interest being produced by some arrangement of governmental powers — either liberal or despotic — but rather the other way around: despotism is closer to the “instincts” of democratic society, whereas liberal political forms are a moderation of those instincts.

¹²Strikingly, the discussion “On republican government and laws relative to democracy” [SL II.2] is about both the aristocratic and democratic forms of the republic — indeed, from the good use by democratic lawgivers of devices like the division of the city into classes, or voting by choice, it becomes hard to tell the difference between the two forms of the classical republic. More important than, or perhaps the source of, the “equality” at which Montesquieu says classical virtue aims, is his assertion of virtue’s entirely “political” character: the connection between citizens comes from the dispositions necessary to self-government. One might say that Montesquieu takes the “aristocratic” elements of classical virtue and makes them into mere means of virtue’s preservation — a politicized notion of virtue that, if it understood itself, would be egalitarian. Compare Plato, *Gorgias* 512c ff.

In aristocratic societies men do not need to combine in order to act, because they are strongly held together. Every wealthy and powerful citizen constitutes the head of a permanent and compulsory association, composed of all those who are dependent upon him or whom he makes subservient to the execution of his designs. [DA II.ii.5, p. 107]

In other words, for Tocqueville the primary “connectedness” that characterizes aristocratic society is not political, but social — or rather, in pre-modern societies, all social relations already have a sort of political character:

It is evident that these mutual obligations are not engendered from natural right (*droit naturel*), but from political right (*droit politique*), and that society obtains more than the claim of humanity by itself could do. It is not at all a “man” to whom one believed oneself bound to lend support; it was a vassal or lord.

[DA II.iii.1, p. 162]

If the hallmark of the disconnectedness of modern society is its abstractness, then that of pre-modern society is its concreteness, in not only personal, but also property, relations. In *Democracy*, Tocqueville first contrasts the aristocratic and democratic social conditions, not by reference to the personal ties between master and slave, or lord and serf, but by the differing forms of land ownership [DA I.i.3]. The aristocratic custom of primogeniture, and the resulting continuous ownership by a family of a given piece of land, produces a certain aristocratic spirit: pride in family and a sense of connection between generations. By contrast, the abolition of primogeniture sets loose the beginning of the democratic social condition: the breaking up of estates means that “the property ceases to represent the family...”

Now, as soon as you divest the landowner of that interest in the preservation of his estate which he derives from association, from tradition, and from family pride, you may be certain that, sooner or later, he will dispose of it; for there is a strong pecuniary interest in favor of selling, as floating capital produces higher interest than real property and is more readily available to gratify the passions of the moment...Where family pride ceases to act, individual selfishness comes into play. [DA I.i.3, pp.49-50]

The connectedness of pre-modern society — both between and within social classes — is, for Tocqueville, intimately bound up with the fixed nature of pre-modern property relations;

the modern individual is “equal” [despite differences in wealth] because he is abstract, almost interchangeable — not inherently rooted in any property or connected to anyone in particular. As Eduardo Nolla points out, this formulation of the difference between aristocratic and democratic men assigns them fundamentally different orientations towards time — modern man is isolated at once from both “society and history,” living in “an eternal present.”¹³ The sense of being “modern” that, as Pierre Manent has argued, is essential to modernity¹⁴, stems for Tocqueville not from any book, but from the drift of the democratic *état social* itself. The Americans are all Cartesians, treating tradition as mere information, but they never read Descartes [DA II.i.1].

Like Montesquieu, Tocqueville notices a certain slackening in modern times of the political spirit. But because he locates pre-modern “connectedness” in personal and property bonds, not in any republican sharing in political life by citizens, Tocqueville can explain pre-modern societies’ tendency to an active political life by the pre-eminence and power that aristocracy gives certain individuals. As Pierre Manent points out, whereas in modern society men participate in rule only in a very weak way, as members of the general will, aristocratic society is a society of “individual influences”, where men exercise power over others because of their particular rank.¹⁵ Therefore, Tocqueville can see a decline in the political spirit even in the United States since its founding. As the laws abolishing primogeniture eventually erode the basis for the prominence of certain families, the idea of political leadership itself becomes problematic: there is a loss of authority on the part “not only of great names and great wealth, but even of the natural aristocracy of knowledge and virtue” [DA I.i.3, p. 51]. Acknowledgment of this latter sort of “aristocracy” characterized

¹³“Introduction” to DAN, p. lviii.

¹⁴*City of Man*, p. 11.

¹⁵For the following discussion, see TND, pp. 30ff.

early New England, which Tocqueville calls “a democracy more perfect than antiquity had dared to dream” [DA I.i.2, p. 35; DA I.i.3, p.46]. Thus, the “atomization” of modern society is not produced, as in Montesquieu, by the “artificial” nature of modern sovereignty, or the absence of virtue, but because the basic equality underlying modern society means that, in the absence of mitigating circumstances, individuals are isolated from group bonds and without most of the political weight or influence that once inhered in their persons.

It will not quite do, therefore, to say that Montesquieu emphasizes the classics’ equality and Tocqueville their inequality because the former looks to politics, the latter to society. Tocqueville’s interpretation of the divide between the classical citizen and the modern bourgeois places more stress on the inegalitarian basis of the former because he understands that divide differently on the level of psychology. As we remember, for Montesquieu, the spirit of commerce is not absent from antiquity; rather, as that spirit is problematic for civic virtue, well-ordered republics hold self-interest in check.¹⁶ Montesquieu contrasts classical virtue with moderns who “speak to us only of manufacturing, commerce, finance, wealth, and even luxury” [SL. III.3]; there were “things that were done” by ancient virtue that “astonish our small souls” [SL IV.4]. While Tocqueville’s description of the smallness of modern man, “continually engaged in the contemplation of a very petty object, namely himself,” would certainly be congenial to

¹⁶This might seem to be contradicted by what Montesquieu says in SL V.6 about Athens being a commercial republic, and the spirit of commerce being a kind of substitute for virtue, bringing with it “frugality, economy, moderation, work, wisdom, tranquility, order, and rule.” However, it becomes clear in the course of Montesquieu’s presentation [see esp. SL XXI.7] that the classical republican form of government did not as a rule, permit taking advantage of this spirit; the combination of democracy and acquisitiveness in Athens led only, in the end, to the expansion of imperial ambitions and to class conflict. Montesquieu points out that unlike England, Athens completely failed to make productive use of its maritime empire. Marseilles, the example Montesquieu gives of a stable commercial republic in antiquity, is only an apparent exception; the role of exceptional circumstances [SL XX.5] in preserving this government makes it the exception that proves the rule.

Montesquieu, the same cannot be said of Tocqueville's conception of the great-souledness of pre-modern man. Patriotism is not his distinguishing feature — rather, it is the breadth of his field of vision. While the ceaseless movement of democratic society throws man back onto himself and the present moment, the aristocrat's perspective is wider, directed not only towards those above and below him in society, but backward to his ancestors and forward towards his descendants. Furthermore, because of the inherited and seemingly permanent superiority of the aristocrats, “vast ideas are commonly entertained of the dignity, the power, and the greatness of man.” [DA II.i.10, p. 44].

Montesquieu is certainly aware that this ancient civic-spiritedness and the relatively smaller place of commerce were due to the prideful distinction between citizens on the one hand and slaves or aliens on the other: “Finally, all common commerce was disgraceful for the Greeks. A citizen would have had to provide services for a slave, a tenant, or a foreigner; this idea ran counter to the spirit of Greek liberty...” [SL IV.8]. Nonetheless, under the great-souledness of the ancients Montesquieu refers to their extraordinary patriotism and courage, virtues that are, properly understood, egalitarian: “Men cannot render [their country] equal services, but they should equally render it services” [SL V.3]. Thus Montesquieu makes what seems like a rather strange claim, that in republican government “slaves are contrary to the spirit of the constitution” [SL XV.1], being a despotic element — “the cry for slavery is the cry of luxury” [XV.9]. For Montesquieu, it would seem that slavery and inequality are anomalies in classical republicanism, rather than part of its defining ethos.

Of course, Montesquieu's interpretation of classical civic virtue as an egalitarian form of self-denial is contrary to the interpretation of the classical authors themselves.¹⁷

¹⁷See Manent, *City of Man*, p. 18, who signals Montesquieu's “bad faith”: “What was for ‘the political men of Greece’ the principle of the critique of democracy becomes in Montesquieu's formulation the well spring of its functioning.”

Aristotle, for example, notes that claims of the various parties to share in rule are based on some particular, distinctive attribute — even the democrats claim rule on the basis of their freedom, or that they are not slaves [*Politics* 1283a 17]. Notably, to the extent that the “love of equality” was a political passion, it belonged to the party opposed to those understanding themselves as the “virtue” party [*Politics* 1278a15-20 with 12805-15]. Despite the crudeness of his reduction of ancient republicanism to a subset of “aristocracy,” Tocqueville restores this inegalitarian side of classical virtue. Therefore he drops, in his sketch of “aristocratic society,” Montesquieu’s insistence on the repressive nature of the classical republic.

Tocqueville considers citizens of pre-modern societies to be less enthusiastic in pursuing material well-being not because their selfish drive for it is repressed, nor even because they are so “great-souled,” but because of the simple security of their position:

In aristocratic societies, the rich, never having known a different condition than their own, never entertain a fear of changing it; they can scarcely even imagine another. Material well-being is therefore not at all life’s goal for them, but a way of life. They consider it, in a way, like existence itself, enjoying it without ever giving it a thought. The natural and instinctive taste that all men have for well being, being thus satisfied without trouble or fear, their soul carries itself elsewhere and attaches to some more difficult and greater enterprise, which animates and engrosses it. [DA II.ii.10, p. 128, translation modified]

What is “repressive” about pre-modern society for Tocqueville is not its treatment of commerce, but the unnatural character of its fundamental distinctions, such as those between citizen and slave, or lord and serf.¹⁸ In an unpublished passage in the manuscript of *Democracy in America*, Tocqueville describes the feudal social condition as “the most

¹⁸This should be compared with Aristotle, who implies that, even though the existence of slavery itself is natural, the distinction between master and slave in all existing cases is not. For all practical purposes, the distinction between master and slave is made on the basis of force, namely capture in war, and hence on the basis of convention, not nature; this is still true in those cases [the Greeks] where the ones making the distinction claim that it is “natural, ” that they are free everywhere: *Politics* 1254b15-1255b15; compare 1327b22-40. Political life properly so called raises the question of justice, hence the question of nature; as based on some partisan convention it cannot resolve that question.

exceptional social condition that ever was and the farthest from the natural and ordinary condition of humanity” because “never, in the Western world, had men been separated by so many artificial barriers” [DAN II.iii.18, p. 198]. What holds for feudalism holds, albeit to a lesser extent, for the barriers constituting ancient societies. These barriers were so fundamental to pre-modern society that even its greatest minds, Tocqueville claims, could not see past them:

At the time of their greatest enlightenment, the Romans slaughtered the generals of their enemies, after having dragged them in triumph behind a chariot; and they flung their prisoners to the beasts of the Circus for the amusement of the people. Cicero, who declaimed so vehemently at the notion of crucifying a Roman citizen, had not a word to say against these horrible abuses of victory. [DA II.iii. 1, pp. 166–7]

For Tocqueville, the function of pre-modern moral codes was to maintain these barriers; even if these codes required sacrifices of self-interest on the part of the rulers, the sacrifices served their *class* interest. Thus, the difference between the ancients and the moderns is not really, as Montesquieu has it, that the former value virtue, the latter “self-interest” and utility, but rather that among the ancients [virtue’s] “utility was studied only in secret” [DA II.ii.8]. For Tocqueville, the open pursuit of self-interest has inherently democratic consequences; pre-modern ruling classes are thus more concerned to maintain moral codes in which their traditional prerogatives are secure. In effect, Tocqueville takes what Montesquieu offers as the less onerous form of antiquity — aristocratic “moderation” as opposed to democratic “virtue” — and makes it the basis of pre-modern society *tout court*.

For establishing the spirit of the ancient world, far more important, in Tocqueville’s eyes, than the qualities of character required for a direct share in politics by citizens, is the psychology characterized by what Nietzsche calls the “pathos of distance.”¹⁹ That

¹⁹*Beyond Good and Evil*, trans. Walter Kaufmann (New York: Vintage, 1966), section 257.

inequality was the defining aspect of the classical ethos means that in some ways, that ethos is even further from the modern outlook than Montesquieu implied. In introducing the “aristocratic” character of classical literature, which for Tocqueville means its freedom from the commercial spirit, Tocqueville re-interprets the very case that Montesquieu had used as an example of the commercial spirit in antiquity, Athens: “slaves... discharged the greater part of those duties which belong at the present day to the lower or even to the middle classes. Athens, then, with her universal suffrage, was, after all, merely an aristocratic republic, in which all the nobles had an equal right to the government” [DA II.i.15].

This interpretation of pre-modern society as essentially inegalitarian leads Tocqueville to something that has no real parallel in Montesquieu’s depiction of antiquity: the conclusion that the tendencies of aristocratic ages “facilitate the natural impulse of the mind to the highest regions of thought, and they naturally prepare it to conceive a sublime, almost divine, love of truth” [DA II.i.10, p. 44]. For Tocqueville, the human relations of aristocratic society go so deep as to shape the nature of knowledge itself: science in aristocracy is more theoretical, in democracy more practical, because “in aristocratic ages science is more particularly called upon to furnish gratification to the mind; in democracies, to the body” [*Ibid.*, p. 45]. But while Tocqueville retains a classical notion of the parallel distinctions between mind and body, and between theory and practice, he grafts this onto a modern notion of the sterility of classical science. Pre-modern men may have a purer love of truth than modern, but the inequality of conditions that fosters this also “leads men to confine themselves to the arrogant and sterile research for abstract truths” [*Ibid.*, p. 46].²⁰

By contrast, the classical citizen in Montesquieu’s account is hardly characterized by a propensity towards contemplation; that account of antiquity is curiously slanted

²⁰This same ambiguity of pre-modern man with respect to theory — his stronger impulse towards theory, albeit with a more arbitrary content — occurs also with respect to morality, as we will see when we discuss Tocqueville’s notion of honor.

towards the Spartan case. To be sure, he is aware of Athens and its intellectual life — he even says that “taste and the arts” there “were brought to a point that whoever believes they have been surpassed will forever be in ignorance of them” [SL XXI.7]. However, in Montesquieu’s categories Athens is atypical, a corrupt version of antiquity — its refinement an effect of commerce. It is hardly surprising, then, that Montesquieu compares the spirit of Athens to that of the French monarchy [XIX.7], with respect to the urbane or sociable humor which is the natural home of “taste.” The development of the arts and sciences was and is tied to the development of commerce, which “cures destructive prejudices” and “softens pure mores” [XX.1]. Universality and luxury, the outgrowths of commerce that foster knowledge, are at odds with the sharp distinction between citizen and foreigner, and the frugality that characterize the essence of the classical republic in Montesquieu’s presentation.

This is hardly to suggest that if Montesquieu’s prototypical ancient is the patriotic warrior, Tocqueville’s is the contemplative sage. Far from it. Tocqueville also says the most characteristic virtue of pre-modern inequality is martial virtue:

A class that has succeeded in placing itself above all others, and which makes perpetual exertions to maintain this lofty position, must especially honor those virtues which are conspicuous for their dignity and splendor and which may be easily combined with pride and the love of power [DA II.iii.18, p. 232].

Yet, for Tocqueville this proud virtue is not inimical to the life of contemplation — in fact, the aristocrat’s character in some ways resembles and is conducive to that life. For example, Tocqueville says of aristocratic literature that “every line is written for the eye of the connoisseur and is shaped after some conception of ideal beauty” [DA II.i.15]. Furthermore, study of the classics is for Tocqueville a counterbalance to the tendencies of the democratic age, which stresses the immediately useful. Tocqueville’s aristocrat thus bears some resemblance to Aristotle’s gentleman — who, as the patron of “beautiful but useless things,” is also the potential patron of philosophers.

**B. PRE-MODERN VERSUS MODERN LEGITIMACY:
TOCQUEVILLE'S NOTION OF "HONOR" AS A
CRITIQUE OF MONTESQUIEU**

Tocqueville's portrait of pre-modern or "aristocratic" society focuses on some of the same features as Montesquieu's picture of classical antiquity, namely connectedness and restraint of commercial spirit, but understands these features in a way perhaps more consistent with the inegalitarian self-understanding of classical virtue than does Montesquieu. Tocqueville's conception of the pre-modern implies, generally, that the formal aspects of government are less important than Montesquieu claimed, and specifically, that feudal institutions are not the critical missing link between ancient and modern republicanism. Admittedly, Tocqueville does not explicitly make these criticisms of his predecessor — they are only implicit in the inclusion of republics under the rubric of "aristocracy." However, it is telling that Tocqueville's most theoretical and systematic statement of the difference between aristocratic and democratic society, the chapter on "Honor" in *Democracy in America* [II.iii.18], constitutes a sustained critique of Montesquieu's view of the "principles" of government.

To be sure, Tocqueville does not explicitly frame the chapter as a critique of Montesquieu.²¹ Tocqueville merely says "what our fathers designated as honor absolutely was in reality only one of its forms" [p. 238]²², but in the Yale manuscript drafts and notes

²¹Joseph Alulis, *op. cit.* p. 98, argues that Tocqueville's liberal ends are what make him reluctant to make his philosophical disagreements with Montesquieu explicit, so as to leave the reader with the impression that their differences are minor or matters of detail. Indeed, as Alulis notes (p. 108), in the sole explicit criticism of Montesquieu in DA, at I.i.5, p. 93, Tocqueville is in error: he faults Montesquieu for not seeing the importance of religion in despotic governments, when in fact Montesquieu had made that very point using the very same example that Tocqueville does, the Ottoman Empire [SL V.14]. The mistake may be inadvertent, but as I will argue in a later chapter, Tocqueville does in fact allude here, albeit in a somewhat superficial and misleading manner, to the real nature of his departure from his predecessor's approach.

²²All citations in this section, unless otherwise indicated, are to DA II.iii.18.

for the chapter, it is clear whom he has in view: “Montesquieu spoke about our honor, not at all about honor as such.”²³ Moreover, these same manuscripts strongly suggest that Tocqueville’s research for writing this chapter included reading the relevant sections of the *Esprit des Lois*. One folder has written on it “Read what Montesquieu had written on honor, books III, IV, and XXVIII.” In the folder are two letters, one from Tocqueville’s father Hervé to himself, the other from a M. Feuillet of the Institut Royal to Hervé, who apparently was consulted on the question of honor [DAN, *loc. cit.*]. The father’s letter passes on M. Feuillet’s advice, namely to read the above-mentioned books from *Esprit des Lois*, and then goes on to explain how the “special honor” of the various ranks of society, particularly of the nobility, was understood under the monarchy. In fact, Tocqueville did not consult Montesquieu as a dry text on the spirit of monarchy, of “our fathers”; that spirit, as Montesquieu describes it, was still a living memory in a very real father.

In criticizing “our fathers” for having “given a generic name for what was only a species,” Tocqueville insists that “honor is found in democratic centuries as in times of aristocracy” [p. 238]. This may seem like a merely semantic point. For Montesquieu, we remember, “honor” refers to a passion specific to monarchies, and it appears at first that Tocqueville is simply changing the meaning of the term: it no longer refers to man’s social status, which the sovereign is bound to respect; it refers now to “the aggregate of those rules by the aid of which... esteem, glory, or reverence is obtained” [p. 230, note 2]. Montesquieu’s “honor,” as a limitation on sovereigns and a kind of private property, is the opening wedge in the distinction between state and society; it is a particular *type* of passion that Montesquieu distinguishes from classical “virtue,” the passion directed towards the general good. By contrast, what Tocqueville means by “honor” is not a specific type of

²³“Montesquieu a parlé de notre honneur et non point de l’honneur.” In YTC cited in editor’s note “v” to DAN II.iii.18, p. 200.

passion, but the *criteria* for allocating praise and blame in any society — it is a general theory of civic morality. However, this apparently semantic difference turns out to reflect a substantive difference in these thinkers' understanding of the relation between modern and pre-modern society; and again, it is this difference that lets Tocqueville reclassify the ancient republic as a kind of aristocracy.

“Honor” as Tocqueville uses it encompasses what Montesquieu means by virtue and also the notions of justice that govern modern commercial republics. As a standard of judgment of men's actions, the content of “honor” may be closer to the universal or the particular, depending upon who rules. As this standard is founded on human needs, in democracies it is founded on more universal needs; hence, “honor” in democratic countries conforms most closely to “those simple notions of right and wrong which are diffused all over the world” [p. 230]. By contrast, the moral standards governing pre-modern societies are more particular, because they are formed by the interests of a particular class. This category includes not just the peculiar code of honor of the feudal nobility, but also classical virtue:

certain peculiar notions of glory and disgrace obtained among [the Romans] which were not derived solely from the general principles of right and wrong. Many human actions were judged differently according as they affected a Roman citizen or a stranger, a freeman or a slave; certain vices were blazoned abroad, certain virtues were extolled above all others. [p. 234]

Thus, for Tocqueville the specific difference of pre-modern society is its particularistic conception of legitimacy — ruling is a privilege of some, not a right of all. This is why, contrary to Montesquieu, Tocqueville's categories group together ancient republicanism with feudalism.²⁴ As Pierre Manent points out, this “particularistic”

²⁴According to Manent [TND, p. 38], this constitutes a sharp break with “the Western civic tradition, which saw an incompatibility between the life of the citizen and the domination of a landed aristocracy. In the course of modern centuries, the traditional European order was often combated in the name of the civic ideal, in particular in the name of the Roman or Greek ideal . However, that which the aristocratic European order and the ancient city have in

character of pre-modern society is also brought out in Tocqueville's contrast of aristocratic and democratic liberty, which appeared in an 1836 article in *The London and Westminster Review*, entitled "The social and political condition of France before and after 1789." Here, we are interested in what Tocqueville means not so much by liberty as by the *nature of the title* to liberty: aristocratic liberty is "the enjoyment of a privilege" which "produces in those who receive it an exalted sentiment of their individual value."²⁵ The title of pre-modern liberty is "particular," meaning held by a particular rank in society, or a particular society as opposed to others. "The Romans thought that they alone of the human species should enjoy independence; and it was less from nature than from Rome that they believed to hold the right of being free."²⁶ By contrast, the modern or "democratic" definition of liberty has recourse to something universal, namely natural rights, but as Manent points out: "...the democratic definition of liberty has nothing specifically political about it: it evokes only man and nature, and by nature everyone has an absolute right over themselves."²⁷

In including the ancient Romans among those having "an exalted sentiment of their individual value," Tocqueville is using language identical to that in his comparison between the Indians and the European nobility in DA I.ii.10: the one in his miserable hut, the other in his castle has "une superbe idée de sa valeur individuelle" [DAN I.ii.10, p. 253]. This comparison of Indian to feudal nobility is not original to Tocqueville; it appears in Guizot's lectures on the history of civilization that Tocqueville followed at the Sorbonne in 1828-9.

common is the conviction that the simple fact of being a man is not a sufficient title to enjoy the right of liberty and the other eminent advantages of political life."

²⁵"The Political and Social Condition of France," *London and Westminster Review*, April-July 1836, p. 165. Hereinafter PSCF.

²⁶*Op. cit.*, p. 166.

²⁷TND, p. 37.

Yet, Guizot — more closely following Montesquieu — takes the Germanic “pleasure of individual independence” as the root of modern subjectivity:

It was through the German barbarians that this sentiment was introduced into European civilization; it was unknown in the Roman world, unknown in the Christian church, and unknown in almost all the ancient civilizations. When you find liberty in ancient civilizations, it is political liberty, the liberty of the citizen: man strove not for his personal liberty....he was devoted to an association, he was ready to sacrifice himself to an association.²⁸

Tocqueville, by showing how the “exalted idea of individual value” is not contrary to, but part and parcel of the tighter social bonds of pre-modern society, subtly challenges the basis of the typology by which Montesquieu, and following him Guizot, had so sharply distinguished the classical republic from feudalism. For Montesquieu different “natures” of government, different structures of sovereignty, call for different *types* of sustaining passion, different “principles” of government. Simply put, Tocqueville returns the meaning of principle to its ordinary sense. Government rests upon opinion, upon some principled basis for its legitimacy; the impossibility of asserting any particularistic title to rule that characterizes the democratic *état social* makes it radically different from other epochs.

The difference between Montesquieu’s and Tocqueville’s approaches is signaled by the different ways they distinguish “virtue” and “honor.” In Montesquieu “virtue” is the preference for the general good over one’s own good that characterized ancient republicanism, “honor” the sense of one’s own worth that the subjects of monarchy demand be respected. Tocqueville, just as he takes “honor” away from its specific association with monarchy, takes “virtue” away from the republic. Both are present in all societies; the difference for Tocqueville seems to lie on the level of motivation: “honor acts in view of the public, different in that from simple virtue which lives on itself, contented with being its own witness” [DA II.iii.18, p. 241]. No longer specific to the classical republics,

²⁸Francois Guizot, *The History of Civilization in Europe*, trans. by William Hazlitt, edited by Larry Siedentop (London: Penguin, 1997), pp. 44-45.

for Tocqueville “virtue” refers to an action done for its own sake, rather than the sake of public approval. In effect, Tocqueville makes the classical republic somewhat less impressive, and the *ancien regime* somewhat more impressive, from the standpoint of morality than they are in Montesquieu. The moral criteria that predominate in each are relative to the conception of honor given by the *état social*, and neither has a monopoly on the possibility of “virtue.”

However, the ways in which Tocqueville’s distinctive use of the concept of “honor” is connected to his differences from Montesquieu on the nature of pre-modern society will become fully clear only after we look at what their approaches have in common. Tocqueville’s “conventionalist” account of honor, which traces the criteria of social praise and blame to the principles underlying the *état social*, comes as close to relativism as does Montesquieu’s understanding of the *esprit générale*. This problem is not solved by an appeal to “virtue” because, for Tocqueville, virtue means moral virtue and morality does not seem, in the end, to have any higher ground than the requirements of society.²⁹ The important distinction in Tocqueville’s account is not between absolute principles and conventions relative to a particular society, but between universal conventions and particular conventions — a distinction central to Montesquieu as well. At the same time, Tocqueville’s distinctive understanding of the origins of “particularity” gives a new importance to feudalism as the model for pre-modern society. That feudalism is no longer, as Montesquieu portrayed it, the transitional element from classical to modern republicanism is part of a larger picture: Tocqueville’s view of a modernity more radically different from its antecedents than the modernity sketched by his predecessor.

²⁹Tocqueville recoiled at such a thought, but, as we shall see, confessed in his private notes that he was unable to find a basis upon which to refute it.

I. TOCQUEVILLE'S CONVENTIONALIST ACCOUNT OF "HONOR" AND ITS RELATION TO MONTESQUIEU'S POLITICAL SCIENCE

Tocqueville's account of honor has far more in common with Montesquieu's than differences in terminology might lead one to suspect. In comparing the features of pre-modern and modern morality, the "deux méthodes fort distinctes dans le jugement public qu'ils portent des actions de leurs semblables," Tocqueville notes that "these peculiarities may be otherwise explained than by the mere caprices of certain individuals and nations, as has hitherto been customary." This is, arguably, a nod to the famous preface to the *Spirit of the Laws*, where Montesquieu says he believes that "amidst the infinite diversity of laws and mores, [men] were not led by their fancies [*fantaisies*] alone." Indeed, later in the chapter, Tocqueville notes that in features of aristocratic honor, "the *fantaisie* of men enters only in the details." Thus, while claiming that he will depart from the approach of "our fathers" to the question of honor — pointing out a connection between honor and inequality which, "If I am not mistaken, has never been clearly pointed out before" [p.241] — Tocqueville also signals that his approach is not so novel: his vocabulary has strong resonances with the political science of his illustrious predecessor.

This approach — a political and hence historicized account of moral standards — presents the same philosophical difficulty as it did for Montesquieu, namely the problem of relativism. Montesquieu himself flags this problem by first claiming that he will discuss virtue only in its "political" sense [SL, Author's Notice], and then proceeding to distinguish "moral" from "political" virtue in a way that seems to parody and wash out Aristotle's distinction between the good man and the good citizen in *Politics* III.4. Montesquieu distinguishes the two in the context of how the "spring" of monarchy, honor, is in everyone's self-interest (but watch the footnotes):

Thus, in well-regulated monarchies everyone will be almost a good citizen, and one will rarely find someone who is a good man; for in order to be a good man,³⁰ one must have the intention of being one³¹ and love the state less for oneself than for itself.

For Aristotle, the distinction between the good man and the good citizen emerges because different regimes have differing standards of virtue: “If, then, there are indeed several forms of regime, it is clear that it is not possible for the virtue of the excellent citizen to be single, or complete virtue” [*Politics* 1276b30-32]. Montesquieu's discussion denies, in effect, that there are any criteria of morality higher than those given by society; he suggests that the morality of the “good man” is simply political virtue practiced “for its own sake,” i.e., without regard for how the good of the agent and the state are connected. From this is it clear both that the distinction between moral and political virtue is not, for Montesquieu, entirely stable — it seems that moral virtue is simply political virtue that has forgotten its *raison d'être* — and why Montesquieu puts virtue in the “singular” or denaturing institutions of ancient republics, and honor in modern monarchy. The “good citizens” of the latter ask not what they can do for their country, but what their country can do to protect them and theirs.

Tocqueville's drafts and notes for the chapter reveal that he is struggling with similar difficulties, albeit with different words. However, while Montesquieu is playful and ambiguous about the relation between the good man and the good citizen, Tocqueville's private thoughts about the relation of the relative and the absolute are anguished:

I fear being too absolute in saying that honor comes out of the particular needs of a particular society, and as a consequence it [honor] is always useful and sometimes

³⁰[Montesquieu's footnote] These words, *good man*, are to be taken here only in a political sense. [!!]

³¹[Montesquieu's footnote] See note 9. [Note 9, referring to the rarity of “virtue” in monarchy mentioned in III.5, reads: I speak here about political virtue, which is moral virtue in the sense that it points to the general good, very little about individual moral virtues, and not at all about that virtue which relates to revealed truths....]

necessary for [society's] existence, which would legitimate in a way all sorts of [honor's] immoralities and extravagances to the detriment of virtue...I fear that nothing results from my chapter but that the true and the false, the just and the unjust, good and evil, and vice and virtue are only relative things, which depend on one's point of view, a result which would anger me greatly, because I believe it false and moreover such an opinion would be in blatant disagreement with the totality of my opinions. I am now too tired to see clearly, but it will be necessary to come back to this with a fresh head...³²

Now, this private dilemma, the relation between "honor" or the standards relative to a particular society, and "virtue" or absolute standards [in Montesquieu's language, between "political" and "moral" virtue], seems to be resolved in the text of *Democracy* decisively in favor of the democratic or universal notion of justice.³³ Even in aristocratic times, these universal notions supposedly coexist with contradictory notions of honor as a "dim but mighty instinct" of "a more general, more ancient, and more holy law." Furthermore, the more democratic a society becomes, the more its notions of honor approach these universal notions; if all differences of interest between men, including national differences, could be eliminated, then "no conventional value whatever would be attached to men's actions...[these actions] would all be regarded by all in the same light; the general necessities of mankind, revealed by conscience to every man" [DA II.iii.18]. What is the reason then for Tocqueville's private doubts? Why, for example, is not the purely democratic version of honor called "virtue," to distinguish it from pre-modern "honor"? We certainly might expect this, following from the way Montesquieu understood "virtue"

³²Yale Tocqueville manuscripts, cited at editors' notes "d" and "e" to DAN II.iii.18, p. 193.

³³This has led some commentators, such as Marvin Zetterbaum, to assert that Tocqueville is simply a partisan of democracy. As we shall see in chapter five, however, this question is rather complicated. Tocqueville differs from Montesquieu precisely because he does not think that the universal human need for security is itself an adequate criterion for evaluating regimes; he preserves the classical connection between virtue or excellence and human fulfillment or happiness. This makes him both more inclined to insist upon democratic *politics*, and less inclined to accept the egalitarian and individualistic *theoretical* premises of modernity, than is Montesquieu.

and “honor,” namely as two “principles” of differing constitutions. Instead, Tocqueville insists that honor has both democratic and aristocratic forms.

The end of DA II.iii.18, while rhetorically fatal to the aristocratic notion of honor, does not solve the problem of the relativity of “virtue” as Tocqueville understands it for two reasons: democratic honor is, as much as aristocratic honor, a convention; and the universality of democratic honor does not make it superior on all counts. First, the timeless morality to which democratic honor asymptotically approaches is “natural” only in a derivative sense:

Mankind is subject to general and permanent needs that have given birth to [*fait naître*] moral laws, to the neglect of which men have naturally, in all places and all times, *attached* [my emphasis] the notion of censure and shame: to infringe them was to do ill; to do well was to conform to them. [p.230; translation modified]

In his drafts, Tocqueville is somewhat more explicit about the origin of morality in social utility:

There are certain general rules that are necessary for the existence and the well being of human *societies* [my emphasis], whatever may be the time, the place, and the laws; these rules, individual conscience points out to all men, and public reason³⁴ constrains them to conform to them. Voluntary obedience to each of these general rules is virtue. [YTC, cited DAN III.iii.18, p. 192, note c.]

It should go without saying that showing a rule to be a necessary common denominator of human societies does not, in itself, provide the individual with a reason for voluntary obedience. Nor, would it appear, does Tocqueville think we have any natural impulsion towards society; rather, society answers to our natural needs, but society is not possible

³⁴Interestingly, Tocqueville draws rather different consequences than does Rousseau from locating the origin of morality in “*la raison publique*.” For Rousseau, the central problem with modern Enlightenment is hypocrisy: “every private person’s reason dictates to him maxims directly contrary to those the public reason preaches to the body of society...” Note “IX” to *Second Discourse on Inequality in Discourses and Essay on the Origins of Language*, trans. V. Gourevitch (New York: Harper, 1990), p. 208. By contrast, for Tocqueville the problem is that democratic man is *unable* to think outside convention: “The approach I address to the principle of equality is not that it leads men away in the pursuit of forbidden enjoyments, but that it absorbs them wholly in quest of those which are allowed” [DA II.ii.11, p. 133].

unless we agree on certain rules. These rules have the character of Hobbes's "Laws of nature" which, as Hobbes points out, have the character of conclusions, rather than "laws."³⁵ The most one could say is that in a purely democratic situation — where these general rules were the only rules we had to follow — they would cease to *appear* conventional, as they would serve no evidently partisan interest.

Tocqueville's comparison of modern and pre-modern standards of justice, much like Montesquieu's analyses of the various types of "principles" or necessary passions in the different regimes, is based not on a distinction between absolute and conventional standards, but between universal and particular conventions. Strikingly, Tocqueville's treatment of the nature and origins of democratic honor is similar to that of the "relations of fairness" which Montesquieu says govern the "possible relations of intelligent beings" and which are universal standards of justice prior to positive law [SL I.i]. These are not the "laws of nature" which Montesquieu discusses in I.ii; rather they seem to be the general conventions necessary for any society³⁶, such as the principle that "assuming that there were societies of men, it would be just to conform to their laws."

This interpretation of Montesquieu's notion of universal justice — that it consists not of the principles of the best political order but of those conventions necessary to society as such — is confirmed by Montesquieu's description of the fictitious Troglodytes in *Persian Letters* 11, naturally savage beings who, lacking principles of equity or justice such as a regard for the lives and property of others, are incapable of society. Gradually they learn that such conduct is self-destructive — the most far-sighted among them begin to teach the children that "the individual's self-interest is always to be found in the common interest" [Letter 12] — and as a result of this, the community prospers. One thinks, of

³⁵*Leviathan*, chpt. 15, end.

³⁶I follow here the interpretation of T. Pangle, *op. cit.*, p. 28.

course, of Tocqueville's doctrine of "self-interest properly understood." But while the notion of justice originates in praise and blame organized to serve, as Tocqueville would say, "the general and permanent needs of mankind", this notion must be enforced by some particular political order. For Montesquieu, particularity enters because justice must be expressed through and colored by positive law, especially those laws which establish a particular form of government, which Montesquieu calls "political right" [SL I.3].

Tocqueville's notion of "democratic honor," then, is similar to Montesquieu's geometric rules of equity — both are the rules necessary for the possibility of any form of society, of any determinate form of justice or law. However, universality, as pure convention, does not solve the problem of what true virtue is, and Tocqueville, unlike his predecessor, is not content to simply drop the question. Yet he cannot resolve it either. In his drafts for the chapter, Tocqueville struggles to find some way to distinguish honor and virtue, proposing that in the case of honor the rule for a man's actions lies outside him in "opinion," whereas in the case of virtue, it lies within him in "conscience" or "doing good without any other motive than the pleasure of doing it and of conforming to a duty."³⁷ This "Kantian" turn — the appeal to good intentions — is no more successful in separating the "moral" from the "political" than it was in Montesquieu's playful distinction of the good man and the good citizen. The appeal to "conscience" does not give virtue any transcendent ground if members of differing societies, obeying a bewildering multiplicity of different rules, sincerely believe they are acting for the sake of "duty" rather than good reputation.

Nor, on the other hand, can Tocqueville's own appeal to "conscience," at the end of DA II.iii.18, as pointing to the universal notion of justice, prove that democratic virtue is in no way political, and is the only form of virtue that is "moral." The democratic notion of just and unjust, even if in some mysterious way universally held, is still an *opinion*, as it

³⁷DAN II.iii.18, p. 193, note e.

originates in the praise and blame that men attribute because of their most general needs.³⁸ Moreover, action for the motive of duty itself is, according to Tocqueville, something that is more characteristic of aristocratic societies, whereas modern democratic society is dominated by the idea of self-interest [DA II.ii.8]. While Tocqueville “doubt[s] whether men in aristocratic ages were more virtuous than in others” [DA II.ii.8], because aristocratic “virtue” was indeed in the aristocrats’ interest, Tocqueville never even raises the reverse possibility, that modern men are more virtuous or more inclined to act from duty.³⁹

To sum up this first consideration: Tocqueville does not simply identify the moral criteria of the democratic *état social* with “virtue” — to do so would constitute, in a strange way, both an affirmation and a reversal of Montesquieu, taking virtue from the ancients and giving it to the moderns as the truer partisans of self-denying impartiality. Rather, he says even action that the agent understands as “for the sake of duty” depends on criteria given by society, by honor.⁴⁰ In modern society, the difference between “virtue” and “honor,” if

³⁸In his notes to the chapter, Tocqueville attempts to fudge the difference between what are essentially two conflicting accounts of the origins of “conscience” — as an instinct for those rules necessary to any society, and as a voice indicating duty chosen for its own sake: concerning the general rules necessary to society, “individual conscience indicates them to all men and public reason *constrains* them to conform thereupon. *Voluntary* obedience to these rules is virtue” [my emphasis — DAN II.iii.18, p. 192, quoted at editor’s note “c”]. Tocqueville’s dilemma arises because he cannot give any reason why there is a necessary connection between duty for its own sake and these general rules, which is perhaps why in the chapter on honor he speaks almost exclusively about various conventional rankings of virtues; in the single mention of virtue *tout court* [quoted above], virtue is an end in itself but is not associated with conscience, the needs of society, or democracy.

³⁹See SL XX.2: “The spirit of commerce produces in men a certain feeling for exact justice, opposed on the one hand to banditry and on the other to those moral virtues that make it so that one does not always discuss one’s own interests alone and that one can neglect them for those of others. By contrast, total absence of commerce produces the banditry that Aristotle puts among the ways of acquiring. Its spirit is not so contrary to certain moral virtues; for example, hospitality, so rare among commercial countries, is notable among bandit peoples.”

⁴⁰As to what is true virtue, or action according to duty that is not limited by a particular conception of honor, Tocqueville does not tell us. Perhaps he thinks it is his own practico-philosophic activity. The validity of such a claim would seem to depend on whether

anything, is narrowed, which is why democracy needs Enlightenment so much. Not studying the utility of “virtue,” as the ancients did, “in secret,” Montesquieu’s argument that the people should be enlightened “because the prejudices of the magistrates begin as the prejudices of the nation” [SL, preface], takes on a new significance. Since they rule directly, the people must not only apply rules impartially, but understand their underlying rationale. The universality of modern honor or justice might make its content less arbitrary than, and hence preferable to, aristocratic honor — we shall say more about this when we come to Tocqueville’s understanding of history — but as “honor” it is still a convention, an artifice that society must impose on the individual, now with the full awareness of all concerned that it is a convention.

Furthermore, the conceptions of honor that govern particular democracies, even though they may approach the universality of those conventions necessary for society as such, are not and cannot be identical to those rules — these conceptions still fill the needs of a *particular* society. For example, as a predominantly commercial nation, the Americans make an “arbitrary classification of men’s vices...all those vices that tend to impair the purity of morals and to destroy the conjugal tie are treated with a degree of severity unknown in the rest of the world” [pp.235-6]. This classification, if “arbitrary,” nevertheless turns out, if one considers the needs of American society, to be rational: “public opinion...condemns that laxity of morals which diverts the human mind from the pursuit of well-being” [p. 237]. Tocqueville thus raises a question, albeit in a delicate way, about the basis of even those norms that might seem to lie at the heart of modern

he overcomes the limitations of partisanship. To do so would appear to be his ambition: he asserts the vantage point of an privileged historical situation between aristocracy and democracy [letter of March 22, 1837 to Henry Reeve, in *Selected Letters*], and says that if he had been writing for an aristocratic time, his political science would be quite different, directed towards the moderation of aristocratic limitations [DA II.ii.15]. What remains to be considered in a later chapter are what the grounds might be for Tocqueville’s claim that he could see, “not differently, but further than, the parties” [DA intro, p. 20].

propriety.⁴¹ The continuing necessity of particularity — i.e., of forms of self-restraint *beyond* the simple rules of right and wrong necessary to any society — might suggest that Enlightenment is not enough. Therefore Tocqueville gives such importance to mores.

This brings us to the second and decisive reason why Tocqueville speaks of democratic standards as a form of “honor,” as conventions: democracy as less arbitrary or more universal may be more “just” than aristocracy (one recalls that Montesquieu as well reserves his term meaning love of the common good, “virtue”, for democracy), but Tocqueville clearly does not see such justice as the whole of virtue, or at any rate of human excellence. As we shall see, it is just the reverse: Tocqueville fears that the rise of democracy may constitute an unparalleled spiritual catastrophe for the human race, especially given that democracy tends to neither recognize nor cultivate the natural inequality of intellect.⁴² Like Montesquieu, Tocqueville considers liberty at least as important as justice. On his analysis, however, the principles of the democratic or “just” form of liberty may pose threats to liberty that Montesquieu never anticipated.

⁴¹A similar point about sexual mores is made, in a much more radical way, in a citation from an article in *L'Encyclopédie* about honor that is quoted in a letter from Tocqueville's father to Tocqueville of 17 January 1838, written in response to Tocqueville's request for information on the subject of honor [cited DAN II.iii.18, p. 200, editor's note “v”] The passage reads: “It is always necessary to remember the great principle of utility of David Hume: it is utility which always decides our esteem. However, certain qualities and talents are in different times more or less useful. Honored at first, they are less so in the future. If the community of women is not established, conjugal fidelity will be their honor.” The corollary to this theorem is clear.

⁴²See, e.g., the letter of March 18, 1841 to J.S. Mill [*Selected Letters*, p. 149ff]: “the greatest malady that threatens a people organized as we are is the gradual softening of mores, the abasement of the mind, the mediocrity of tastes; that is where the great dangers of the future lie.” Cf. DA II.i.10.

2. THE ORIGINALITY OF TOCQUEVILLE'S UNDERSTANDING OF PRE-MODERN SOCIETY: PARTISANSHIP AND FEUDALISM

Tocqueville's comparison of modern and pre-modern notions of honor shares the same basic structure as Montesquieu's account of the principles of right — namely a distinction between universal conventions necessary to society as such and conventions serving the needs of a particular society. However, while both thinkers seem to associate “particularity” more with antiquity, “universality” more with modernity, Tocqueville's analysis of honor does this in a rather different way, as we can see by comparing the two thinkers' accounts of the particularity and forcefulness of the civic morality of antiquity.

As we saw, Montesquieu had noted the strangeness or “singularity” of some aspects of the classical republics — such as the institutionalized pederasty of Sparta — but he connected such idiosyncratic practices with the repressive or denaturing function of classical virtue [SL IV.6]. The more unusual the custom, the more it cuts against universal human inclinations, the more it binds those it “educates” to the community. Tocqueville's account of honor, by contrast, connects such singularity with partisanship, i.e., with the fact that pre-modern “honor” represents the interests of a particular class and country. This is also what gives such notions their strength. While “it has sometimes been inferred that the laws of honor were strengthened by their own extravagance,” “the [aristocratic] notion of honor is not the stronger for being fantastic (as seems to be the case with Montesquieu's notion of classical virtue)⁴³, but it is fantastic and strong for the self-same cause” [DA

⁴³See the description of Greek “legislators” such as Lycurgus in SL IV.6: “I pray that one pay a little attention to the breadth of genius of those legislators who saw that by running counter to all received usages and by confusing all virtues, they would show their wisdom to the universe. Lycurgus, mixing larceny with the spirit of justice, the harshest slavery with extreme liberty, the most heinous feelings with the greatest moderation, gave stability to his town.”

II.iii.18, pp. 240-241], namely its partisan origin. By contrast, the abstract and somewhat anonymous status of men in democratic society means that

[in modern society] there is nothing for public opinion to catch hold of...in such circumstances honor must be less imperious and less urgently pressing, for honor acts solely for the public eye, differing in this respect from mere virtue, which lives upon itself, and is content with being its own witness. [p. 241]

This might seem to contradict what Tocqueville says in other places about the peculiar importance of public opinion in democratic societies, but he is referring here to the strength of the connection they *feel* to other's opinions, not the *content* of people's beliefs. Men in democracies are more uniform in their character, and yet — at least according to the long-run tendencies — more anonymous and hence less vulnerable to shame and public opprobrium than are men in pre-modern societies.

The “close and necessary connection between what we call honor and inequality of conditions,” has, Tocqueville alleges, “never been clearly pointed out before” [DA II.iii.18, p. 241]. This striking claim to originality makes no sense if honor is taken in Montesquieu's sense, as belonging to early modern monarchy — for Montesquieu certainly ties this notion of honor to inequality [SL III.7]. Rather, this claim of Tocqueville's measures the extent of his departure from Montesquieu: unlike his predecessor, Tocqueville makes inequality what is responsible for the *connectedness* of pre-modern society. For Montesquieu, by contrast, the inequality that makes honor possible is part of what makes post-feudal monarchy a transition state to modern liberalism — the prerogatives of each rank are an early kind of private property that the sovereign is bound to respect. (The strength of “honor” in this sense is not proportional to the degree of inequality, but to the lawfulness of the sovereign.)⁴⁴

⁴⁴See *Persian Letter* 89: “It can be stated as a principle that, in each country, the desire for glory increases in proportion to the liberty of the subject, and diminishes similarly; glory is never coupled with servitude. “ That by “glory” Montesquieu refers to what he will later call the “principle” of monarchy, and by “liberty” the protection of fixed laws, is clear from what immediately follows:

While the account of honor in DA II.iii.18 makes it clear why Tocqueville's notion of pre-modern society encompasses both European feudalism and the classical republic, this same account makes an important distinction between the two, a distinction that further shows his departure from Montesquieu. For Montesquieu, the classical republic is the paradigmatic case of what is pre-modern, whereas Tocqueville's analysis of honor makes the classical city somewhat ambiguous in this respect. Instead, it is the face-to-face relationships of European feudalism, where loyalty was to an immediate superior and "the supreme power of the nation never governed the community directly," that epitomize pre-modern society for Tocqueville. Because power was mediated in this way, "few traces are to be found in the Middle Ages of that passion that constituted the life of the nations of antiquity; I mean patriotism" [pp. 233-4]. While this idea about the "life of the nations of antiquity" is certainly in line with Montesquieu, in the manuscript Tocqueville had immediately added "and which has reappeared for the moderns in so far as the feudal world transformed itself" [DAN II.iii.18, p. 195]. This phrase was circled and then crossed out in the manuscript, but the subsequent sentence makes the same point: "the very name of patriotism is not old in our language." Tocqueville emphasizes in a footnote: "Even the word *patrie* was not used by French writers until the sixteenth century."

Thus even while placing classical antiquity under the rubric of "aristocracy" — because rights adhere only to some, namely citizens, rather than to man as such — Tocqueville is not unaware of the equality existing among citizens in the ancient city which

"A man of sense said to me the other day: 'In France, in many respects, there is greater freedom than in Persia, and so there is greater love of glory. This fortunate peculiarity makes a Frenchman, willingly and with pleasure, do things that your Sultan can only get out of his subjects by ceaseless exhortation with rewards and punishments.

Consequently, with us, the sovereign jealously guards the honor of his lowliest subjects, and in order to protect it he has law courts that are regarded with respect; they are a sacred national treasure, which is unique in that the sovereign does not control it. He could not do so without damaging his own interests...' "

Montesquieu had made so much of. However, for Tocqueville this equality puts classical antiquity and modernity on the same side of an institutional dividing line from feudalism: both contain a sphere for “politics” which is separate from, even while being influenced by, social relationships. The power of the community as a whole over each — and the consequent sentiment of patriotism — stems from some kind of equality, whether the abstract, “natural,” equality of modern society or the equal share in the regime of the classical citizen. As we might expect, this brings with it a reassessment of Montesquieu’s view of the “singular” nature of classical patriotism. Strikingly, Tocqueville in his drafts [YTC cited at DAN II.iii.18, p. 195, editor’s note “j”] notes a “parallel of ancient and modern patriotism;” he even likens the American national character to the Roman.

This hardly means that Tocqueville does not distinguish ancient and modern patriotism; he does, in a variety of ways, but the distinction is never entirely stable.⁴⁵ For example, in the passage from the rough drafts cited above, Tocqueville stresses that we cannot judge patriotism when it is a mere “vehicle” for partisan passions — the example he gives is of the French during the wars after the Revolution, who fought less for France itself than for “the Revolution which assured the triumph of democracy.” On the other hand, there is true patriotism, which “takes man beyond the material interests of life and elevates him over the fear of death” and which can go against one’s partisan passions — the example Tocqueville gives here is of the Roman Senate’s gratitude to a consulate elected by the people. However, Tocqueville’s analysis of the inegalitarian basis of pre-modern honor

⁴⁵Moreover, the distinction between ancient and modern patriotism seems to reappear in the distinctions between various forms of modern patriotism. In DA II.iii, Tocqueville notes that all free peoples are “proud”, but not in the same manner: the Americans have a querulous vanity which always needs confirmation by others, whereas the aristocratic English have a pride which “lives on itself”, a “reserve full of disdain and ignorance” of the rest of the world’s opinions. This contrast appears to be a reprise of Montesquieu’s contrast between French vanity and Spanish pride [SL XIX.9-10], except what Montesquieu traces to the presence or absence of commerce, Tocqueville traces, characteristically, to the contrast between equality and inequality.

makes the “disinterestedness” of the classical citizen a matter of pretense and delusion, in the best cases of self-delusion. That is, although classical patriotism may have transcended at times the division between plebe and patrician, it always served the interests of citizens as opposed to slaves and foreigners.⁴⁶ Ancient patriotism differs from modern only in that it interpreted itself as directed by something higher than politics, namely the idea of the “noble” as opposed to the useful. This self-interpretation may be salutary or conducive to human excellence — Tocqueville’s analysis leaves no doubt that it is — but the chapter on honor also makes clear that these moral pretensions are simply an error that classical “virtue” shares with all pre-modern forms of belief.⁴⁷

Better known than Tocqueville’s distinction between modern, ideological patriotism and the classical citizen’s “disinterested” love of country, however, is the distinction he draws in DA I.ii. 6 between “instinctive” and rational patriotism. On the one hand, there is that

love of country that has its principal source in the unreflective, disinterested, and indefinable sentiment that binds the heart of a man to the place of his birth. This instinctive love is wrapped up with the taste for ancient customs, respect for elders, and the memory of the past.... it is a sort of religion; it does not reason at all, but believes, feels, and acts. [pp. 241-2; translation modified]

⁴⁶One might object that modern patriotism as well is based on the distinction between citizen and foreigner. However, from within the assumptions of the modern *état social* — the “natural equality” of men — the distinction between insider and outsider is morally problematic, and indeed modern regimes often have difficulty justifying it, usually falling back on merely pragmatic reasons. The case for preferring one’s own is easier for the democrat if his country — like France under Napoleon — is in the vanguard of the global march of equality.

⁴⁷Compare the critique of the “great souled man” in Aristotle, *Nicomachean Ethics* 1124a5-20, who pursues honor while aspiring to an excellence independent of those who give honor, with what Tocqueville says in the notes he used in preparing DA II.iii.18: “One should never lose sight of this capital difference between virtue and honor, that virtue leads men to do good for the pleasure of doing so, *or at least therein lies its pretension*, whereas honor has for its principal and almost sole object, to be seen and approved.” YTC, cited DAN II.iii.18, p. 200, note v, my emphasis.

And on the other hand, that form of patriotism more appropriate to the democratic social condition:

There is another more rational than the former; less generous, less ardent perhaps, but more fruitful and more lasting. This one is born from enlightenment; it develops with the help of laws and grows with the exercise of rights, and it winds up, in a way, by being wrapped up with personal interest. A man understands the influence that the well being of the country has on his own.... and he interests himself in the prosperity of his country, first as a thing that is useful to him, and finally as his own work. [p. 242, translation modified]

This distinction between the old “instinctive” and new “rational” patriotism might seem very much in line with a Montesquieuan contrast of ancient virtue versus modern interest, were it not for the fact, as Joseph Alulis has pointed out, that Tocqueville’s main example of the *old* patriotism is not the classical republic, but monarchy!⁴⁸ In monarchy the sense of connectedness that is part of the aristocratic *état social* is still present, but it combines with the partial breakdown of the feudal condition, so there is now one person who rules over the community “directly” and symbolizes it to such an extent that, for example, “the French experienced a sort of joy in surrendering themselves irrevocably to the arbitrary will of their monarch and said with pride: “We live under the most powerful king in the world” [p. 242].

Moreover, Tocqueville’s distinction between “instinctive” and “rational” patriotism turns out to be not quite so clear cut; as we shall see when looking at his discussion of the township in DA I.i.5, what starts out as interest can become a habit and a taste. [Nor, as I shall argue, is the notion of “self-interest properly understood” so simple to understand]. Tocqueville sees the township as a place for public-spirited virtue within the modern liberal regime, invoking terms with classical resonances like “city [*cit * rather than

⁴⁸*Op. cit.*, p. 100: “...what Tocqueville calls instinctive patriotism and links with monarchy resembles Montesquieu’s idea of republican virtue.” By the same token, as Alulis notes (p. 99), the way Tocqueville describes reflective patriotism, each loving the country on the basis of its tie to his own interest, is identical to what Montesquieu says about the spirit of monarchy.

ville] and “the public thing.” Americans have good reason be involved in local affairs, but at the same time, “they are attached to their city for a reason analogous to that which makes the inhabitants of mountains love their country...[for its] marked and distinctive traits [DA I.i.5, p.68].⁴⁹ In showing that the old, instinctive patriotism had more to do with the fixity of an aristocratic *état social* than with the requirements of republican government, Tocqueville softens the sharp divide Montesquieu draws between ancient and modern republicanism.

CONCLUSION

Tocqueville’s understanding of modernity as the democratic *état social* — an understanding closely bound up with his displacement of the classical city in favor of feudalism as the paradigmatic case of pre-modern society — reveals what is new about Tocqueville’s “new political science”: a reconfiguration of the Montesquieuan view of the relation between government and society. Montesquieu used the classical republic as the great alternative to modern liberalism because his comparative scheme focused largely on the structure of sovereign power, setting off the direct rule of the people or part of the people against the impersonal or institutionalized sovereignty of modern government. The way we now speak of the “separation” of state and society in modern “liberalism” mirrors the fact that in Montesquieu’s scheme England has a “nature” but no “principle.” The structure of government does not require specific human passions, which leaves society to constitute itself: “all the passions are free there” [SL XIX.27]. The defect that Montesquieu sees in classical republicanism — namely the repressive and occasionally despotic tendencies of classical virtue — is, in our current terms, that government is insufficiently

⁴⁹See Alulis, *op. cit.* pp. 96-97. Alulis notes that the example of mountainous republics, which are strongly attached to what is peculiar to their own, is used by Montesquieu in SL XVIII.2.

separate from society, a consequence of the nature of the government, not the nature of society.

The distinction between state and society, if fully realized only in England's liberal formalism, is implicit for Montesquieu in all regimes, in the distinction between the "nature" of the government and its "principle." That the principle, the characteristic passion that is the "spring" of the government, is for Montesquieu associated with society can be seen from the distinction between "political right" and "civil right" in SL I.iii. The former are the laws which bear on the relation "between those who govern and those who are governed" and "form" the state; the latter bear "on the relation that all citizens have with one another" and "maintain" the government. To make the same point, Montesquieu quotes a jurist named Gravina, who distinguishes between the "political state" as "the union of all individual strengths," and the "civil state" as "the union of these wills." It is society that Montesquieu submits to universal standards — namely the requirement that one citizen not fear another — and conceives of in universal terms, as commercial society. However, outside of England's liberal constitutionalism, the various other forms of government rest on a more particular social foundation — and vice versa.

According to J.C. Lamberti, Tocqueville's concept of the *état social* "permits one to understand what he owed to Montesquieu and the manner in which he continued his thought," namely by finding "a relation between a type of government and a society defined essentially by its dominating passions."⁵⁰ However, this comparison seems to miss the very thing that is novel about Tocqueville's concept of the *état social*. To be sure, the distinction between politics and civil society seems fundamental to Tocqueville's thought: the beginning of DA II maintains that the first volume concerns how the democratic *état*

⁵⁰Lamberti, *Tocqueville et les Deux Démocraties* (Paris: PUF, 1983), pp. 30-31. Hereinafter, "Two Democracies."

social had changed “the physiognomy of the political world,” and the second volume, the changes to “civil society.” Furthermore, the volume dealing with politics is more particular, as it deals with America, whereas the latter deals with the more universal theme of the democratic *état social* as such.⁵¹ And, for Tocqueville as well as Montesquieu, it is only in modern times that politics and civil society are distinct spheres. However, Tocqueville traces the modern separation of government and society not to the nature or formal basis of modern government, but to the principles implicit in the democratic *état social*.

Pierre Manent remarks about Tocqueville’s use of the democratic *état social* as the “generative principle” or essential fact about American society:

One can therefore say that the generative principle of democracy in America is neither distinctly political nor distinctly social; it only conjoins the one with the other because, in addition to both, it determines the ‘majority of human actions’. It is the fundamental opinion according to which the Americans see the world and conceive of their tasks, rights, and obligations in the world...it is in the complete hold of this principle on the totality of their life that resides the specificity of their regime. [TND p. 23]

What holds true of modern society also holds true of pre-modern: while not dictating a form of politics, the principles of the *état social* — which are the main component of what Tocqueville calls “honor” — define the available political alternatives. In the chapter on the “Sovereignty of the People” in *Democracy* [I.i.4], Tocqueville makes a threefold distinction between countries where “a power exists which, although it is to a degree foreign to the social body, directs”; other countries where “the ruling force is divided, being placed at the same time in society and outside of it”; and the United States, where “society governs itself through itself.” As Pierre Manent has argued [TND pp. 18-9], the first and third cases are examples of the democratic social condition, governed either despotically or democratically; the second refers to aristocratic society. In pre-modern

⁵¹See the quote from Tocqueville’s notebooks cited at editors note “d”, DAN II, p. 7: “The first book more American than democratic. This one more democratic than American.”

politics, there is no “state” separate from society, society containing within itself the basis for a principled division between rulers and ruled.⁵² By contrast, moderns have a “state” that either dominates society or is wholly directed by it, an artifice made necessary by the inherent formlessness and abstraction of the democratic *état social*.

Tocqueville’s insistence on the inegalitarian basis of pre-modern society is therefore of a piece with his replacing the form of government as the fundamental category of historical comparison with the *état social*.

Tocqueville does not see the most fundamental aspect of the modern condition as arising from the fortuitous combination of monarchical and republican political forms, but from a revolutionary change in the structure, and legitimating opinions, of human relations. In order to compare Tocqueville’s account of modern society with that of Montesquieu, however, we need to look at Tocqueville’s analysis of the forces responsible for the emergence of modern society out of pre-modern society. In other words, we need to look at what is perhaps the most obscure aspect of Tocqueville, his understanding of history, because it is Tocqueville’s radically new view of history that leads him to reformulate the liberal notion of liberty that his contemporaries had inherited from Montesquieu.

⁵²Of course, in the ancient republics, the fact that titles to rule were particular did not change the fact that they were contestable. Mansfield and Winthrop, in their “Introduction,” (pp. xlv-xlv), contrast the primacy of politics in Aristotle’s idea of the regime, wherein a part rules the whole, with Tocqueville’s idea of the democratic *état social*, which, “by avoiding the contest over causality between politics and society,” is “able to appear and serve as a whole,” and is thus “a quintessentially democratic concept.” Such looking askance hardly settles the question as whether Tocqueville was right that an “altogether new democratic world” *needed* such a new concept. The authors point to several difficulties that arise from Tocqueville’s departure from — or rather, “going half way with Aristotle” (p. xlvi) — but are unclear whether these arise from Tocqueville’s defects as a thinker, or the inherent ambiguities of modernity itself. I will return to these questions in a subsequent chapter.

CHAPTER THREE

FORCES IN HISTORY — MONARCHY AND COMMERCE

So far, we have seen how, because of his new understanding of what distinguished pre-modern regimes from modern, Tocqueville replaces Montesquieu's main axis of comparative politics, the form of government, with the concept of the *état social*. In this chapter, we turn to a comparison of their views of history, or how they understand what drives the rise of modern society. Tocqueville's understanding of this history — the continuous and apparently "Providential" rise of the democratic social condition over the past seven hundred years — is set out in the famous introduction to *Democracy in America*, as a plea for European statesmen to regulate this condition before it is "too late" or becomes so far so advanced as to make liberal institutions impossible. The basis for this inevitability is obscure, to say the least — as Pierre Manent has justly remarked, "Tocqueville never unveils the motivating force of the irresistible historical movement that he describes so well."¹

This obscurity has led some, such as Marvin Zetterbaum, to wonder whether Tocqueville even really believed his famous "inevitability thesis" or was only using it rhetorically to foster the triumph of democracy and focus efforts on improving it.² Such objections are worth examining in some detail, because they flag the theoretical difficulties

¹Pierre Manent, *An Intellectual History of Liberalism*, translated by Rebecca Balinski (Princeton: Princeton U.P., 1994), p. 114.

²Marvin Zetterbaum, *Tocqueville and the Problem of Democracy* (Palo Alto, CA: Stanford U.P., 1967).

in Tocqueville's understanding of history. According to Zetterbaum, Tocqueville uses the thesis to maintain a "facade of neutrality" between aristocracy and democracy, in order to give his own democratic agenda the authority of apparent impartiality. But, as Zetterbaum shrewdly points out:

His public advocacy of a thesis implying that all men have been blind instruments in the fulfillment of God's design coexists uneasily with his abhorrence, equally public, of those "absolute systems which represent all the events of history as depending upon great first causes linked by the chain of fatality, and which, as it were, suppress men from the history of the human race."³

In a letter to Corcelle, Tocqueville faults Hegel for doing something that looks, to Zetterbaum, rather similar to what Tocqueville himself is doing, namely asserting "that in a political sense all established facts ought to be submitted to as legitimate, and that the very circumstance of their existence was sufficient to make obedience to them a sort of duty."⁴ For Zetterbaum, then, an "inevitability" of the movement from the aristocratic to the democratic social condition, could not, by Tocqueville's own criteria, be morally compelling — it would in fact have constituted "moral obtuseness" for Tocqueville not to see one or the other condition as more in line with the "proper ends" of man.⁵

Tocqueville, of course, was hardly trying to argue that the rise of the democratic *état social* foreclosed human choice, but rather to show that the choice that remained was the political choice between freedom and despotism. Yet, Zetterbaum finds this resolution of necessity and choice deeply unsatisfactory: he faults Tocqueville because "he does not advance our knowledge of how men and nations may be both blind instruments in the hands

³*Op. cit.*, pp. 11-12, citing Tocqueville, *Recollections*, translated by Alexander de Mattos (New York: Meridian, 1959), p. 64. Future citations will be to this edition. Zetterbaum points out that this is the identical criticism to that leveled at democratic historians at the end of DA II.i.20.

⁴Letter of 22 July 1854, cited Zetterbaum p. 18.

⁵*Op. cit.*, pp. 17-18.

of God and, within limits, free agents.”⁶ Nor is this all. As an understanding of history, the inevitability thesis would appear to suffer from serious theoretical defects:

Specifically, we need answers to such questions as these: Was there any preparation in the pre-egalitarian epoch for the development into equality that was to follow? Was it an epoch with historical laws unrelated to those of the modern period, or perhaps with no laws at all? Tocqueville does not tell us.⁷

From these difficulties, and the fact that Tocqueville’s “first consideration is always the effect his thought will have on society,” Zetterbaum argues that Tocqueville’s presentation of the rise of the democratic condition cannot be part of a serious attempt to understand the meaning of European history, but a “thesis advanced for public consumption.... [that] was good for men to believe in,” so they would not be “dissipating their energies in a struggle to revive an unjust social system.”⁸ Zetterbaum’s conclusion is worth quoting in full:

It is only by virtue of the hypothesis that the thesis is meant to serve a just end that the various paradoxes that surround it may be resolved, and Tocqueville’s deliberate failure to resolve them be explained. The inevitability thesis was free from the evils of the Hegelian Pandora’s box because a democratic revolution would, if properly controlled and directed, bring about a social and political system that was intrinsically just, independent of any vindication through the historical process. *The inevitability thesis, then, is a salutary myth, and the propagation of salutary myths is wholly consistent with other strains of Tocqueville’s thought, most notably with his defense of spiritualistic myths designed to restrain certain unwholesome features of democracy.*⁹

One must admit that the “inevitability thesis” does present certain theoretical difficulties, such as why it is not human history as a whole that has laws, only that of Christian civilization. Moreover, Tocqueville is famously no stranger to salutary myths.

⁶*Op. cit.*, p. 12. Zetterbaum goes on: “Nowhere in Tocqueville’s work do we find more than a superficial account of how men may be said to be both free and not free.”

⁷*Op. cit.*, p. 8.

⁸*Op. cit.*, p. 17.

⁹*Op. cit.*, p. 19, my emphasis. Zetterbaum refers the reader to his own, subsequent discussion of DA II.ii.15, where Tocqueville says that, for moral reasons, he would rather have men believe in any doctrine that taught the immortality of the soul, no matter how absurd, rather than materialism. See Zetterbaum pp. 118-121.

However, the thesis that the time for a choice between aristocracy and democracy has passed is not one of them: for Tocqueville, as Zetterbaum himself points out, the idea of inevitability is not salutary; modern statesmen even need to be inoculated against an excessive proclivity towards this idea. To be sure, Tocqueville's ascribing the rise of the democratic *état social* to *Providence* is a piece of political rhetoric, one designed to "bend the will," as Tocqueville has it, of democracy's pious, aristocratic opponents.¹⁰ Nevertheless, this rhetorical mask is one that Tocqueville makes it relatively easy to see through. The introduction suggests how "Providence" can be understood in purely secular terms:

It is not necessary that God himself should speak in order that we may discover the unquestionable signs of his will. It is enough to ascertain what is the habitual course of nature and the constant tendency of events. I know, without the Creator's raising his voice, that the planets move in the orbits his finger has traced. [DA Intro., p. 7]

If the democratic *état social* was the result of "the continuous tendency of events," a tendency which, after a certain point, had grown irreversible, then there would be no "paradox" involved in Tocqueville's depicting it using the image of "Providence," referring in a pious way to what is accessible to reason, the "habitual courses" of both nature and history. On whatever level such an image is understood, its manifest purpose is to stop a useless and counterproductive struggle against a modernity too far advanced to overturn, without advancing modernity further by weakening the appeal of religion. As we shall see, if anything, the "rhetorical" dimension of Tocqueville's text is not to downplay, but to exaggerate, the latitude for choice available to European statesmen.

What Zetterbaum finds suspect, of course, is not the religious masks of Tocqueville's rhetoric, but the alleged status of the "inevitability thesis" as a piece of social science. However, Tocqueville's working notes and drafts for *Democracy* — not to mention

¹⁰See the letter to Eugene Stoffels of 21 February 1835, cited Zetterbaum p. 21. The piety of the rhetoric is aimed not *just* at aristocrats; Tocqueville says democratic statesmen should be careful to preserve religion "as the most precious bequest of aristocratic ages" [DA II.ii. 15, p. 145].

the entire *Ancien Regime* — show that Tocqueville was indeed at pains to understand how equality of conditions arose out of aristocracy, how an *état social* with “laws of motion” arose out of one that was static. While in the introduction to *Democracy* Tocqueville discusses only in a very abstract or “democratic” way the causes that had promoted the rise of the democratic *état social*, in his working notes these causes are enumerated more specifically, along with several which did not make it into the text.¹¹ This list of causes, if not showing that men were “blind instruments in the hands of God” or some impersonal process, does make it plausible that Tocqueville means what he says: that “[i]n running over the pages of our history, we shall not find, so to speak, a single great event of the last seven hundred years that has not turned to the profit of equality” [DA I.intro., p. 5]. In these same notes, moreover, Tocqueville at least suggests why the democratic revolution, once started, tends to accelerate: “I see that, by a strange bizarreness [sic — “*une étrange bizarrerie*”] of our nature the passion for equality, which should decrease as inequality of conditions [decreases], on the contrary increases by the same measure that conditions equalize.”¹²

¹¹Tocqueville’s list of 23 such causes in YTC, cited at DAN I.intro, p. 4. Among the ones that didn’t make the cut were “The saints. Men given over to the *moral* grandeur of man. The saints taken from all classes”; “Moveable property. Tyranny towards the Jews which made them invent paper money”; “Instruction started by the monks in the Cathedrals...Political power of the University of Paris.” “Commencement of Heresies. John Huss.” In general, the analysis of the introduction focuses on the revolutionary potential of institutions like the monarchy and the clergy; it is only later in the book (II.i.3) that Tocqueville looks at Christian belief as a source of the modern *état social*.

¹²YTC, cited editor’s note “r” to DAN I.intro., p. 7. In this same note, the image of democracy as an irresistible flood is given a more Biblical cast: “Instead of wanting to raise impotent dikes, let us rather try to build a holy ark which could carry the human species on this ocean without shores.” In none of the preparatory materials in YTC that have been published by Nolla does Tocqueville ever suggest that the advent of the democratic *état social* in Europe can be stopped or even slowed down.

Even more tellingly, Tocqueville in his private correspondence expresses his *fear* that the rise of the democratic *état social* has become, at least by his time, inevitable.¹³ Shortly after his arrival in America, writing to his oldest friend, Louis de Kergorlay, he notes that with the abolition of primogeniture,

Estates were broken up...the family spirit was lost, the aristocratic tendency, which had marked the first period of the republic, was replaced by a democratic tendency *which is irresistible and which no one can have the least hope of fighting*. Now the division of properties is immense, the rapidity with which they change hands surpasses everything I could have imagined.

The same process, Tocqueville goes on to say, is underway in France:

We ourselves are moving, my dear friend, toward a democracy without limits. I am not saying that this is a good thing; what I see in this country convinces me, on the contrary, that France will come to terms with it badly; *but we are being pushed toward it by an irresistible force*. All the efforts that will be made to stop this movement will only provide pauses, since *there is no human force that can change the law concerning estates* and with this law our families will disappear, estates will pass into other hands, riches will tend more and more to be equalized.¹⁴

¹³For his part, Zetterbaum argues that unpublished materials show that Tocqueville had “private doubts” about the truth of the inevitability thesis, yet the materials he cites (pp. 10-11) hardly prove his point. The most important of these are a letter to Harriet Grote of 24 July 1850 and a passage from the *Recollections*. In the former, Tocqueville notes that fundamental changes such as that between “Roman civilization” to “barbarism,” or from that to “feudal hierarchy” were not foretold or “even imagined” by contemporaries, and asks “Who can thus affirm that one form of society is necessary and that another cannot exist?” (see *Selected Letters*, p. 251) In the latter, Tocqueville raises the famous doubt as to whether “what we call necessary institutions are often no more than institutions to which we have grown accustomed, and that in matters of social constitution the field of possibilities is much more extensive than men living in their various societies are ready to imagine.” (See *Recollections*, p. 81) In the case of both passages, however, the context is the same: Tocqueville’s doubts about whether the institution of private property is an insurmountable barrier to the march of equality. Far from proving Tocqueville’s “private doubts” about the inevitability of the democratic condition, these show that Tocqueville faulted his contemporaries for not taking seriously enough the possibility that modern egalitarianism would go so far as Socialism. Zetterbaum’s use of the letter to Mrs. Grote to prove Tocqueville’s “open and unreserved” doubt about the inevitability of equality is particularly tendentious; he omits the letter’s beginning, where the “primordial laws” of which both he and she “could not conceive of living outside” are those of “liberty, and the individual responsibility that is its consequence, above all property.”

¹⁴Letter to Kergorlay of June 29, 1831 in *Selected Letters*, pp. 45-59, at pp. 54-55. Italics mine.

In another letter to Kergorlay, written close to the publication of the first volume of *Democracy*, Tocqueville again voices the fear that the democratic condition is both inevitable and likely to deteriorate into despotism:

I am as deeply convinced as one can be of anything in this world *that we are being carried away irresistibly* by our laws and our mores toward an almost complete equality of conditions. Once conditions are equal, I confess that I no longer see any intermediaries between a democratic government (and by this word I do not mean a republic, but a state of society in which everyone more or less would take part in public affairs) and the government of one person ruling without any control...if an absolute government were ever to establish itself in a country that is democratic in its social state and demoralized as France is, one cannot conceive of what the limits of the tyranny would be....Therefore only the first choice remains. I hardly like it any better than the latter...

But isn't it very difficult to establish a democratic government among us? Of course. So, *if I had the choice, I would not attempt it.*

Far from showing that Tocqueville doubted the truth of the inevitability thesis, maintaining it as a public teaching for the political end of advancing the cause of democracy, the letter actually exposes Tocqueville's doubts about how, if at all, the thesis should be communicated: "There is the way I see things; *it remains to be known if I ought to make this view public and in what form I should reveal it.*"¹⁵

Admittedly, in the "form" he did "reveal" this belief, Tocqueville somewhat overstates his case, no doubt to "bend the will" of the aristocratic reactionaries to accept democracy — but not without making quite clear, later in the text, his *modus operandi*. To portray men over the past seven centuries as being "blind instruments of God" or History reads the overall trend of a historical process, and its present irreversibility, back into its beginnings. A causal account is not necessarily a claim that things could not have been otherwise, because human choices are themselves causes; Zetterbaum is right to object that

¹⁵Letter of January 1835 in *Selected Letters*, pp. 93-96. Italics mine. According to Andre Jardin, this letter, although published in the Kergorlay correspondence, was probably intended for Eugene Stoffels. See *Tocqueville: A Biography* (New York: Farrar, Strauss, and Giroux, 1988), p. 93.

the introduction to *Democracy* conflates causality with inevitability.¹⁶ But Tocqueville is perfectly aware of this: in the chapter on democratic historians, he faults them for conflating those very things [DA II.i.20, p. 88]. Far from hiding behind the “shield” of the inevitability thesis, Tocqueville rather shines a bright light on his own guise as a democratic historian: he even notes that his own personification of the abstraction “equality” as a causal agent in history is typical of the intellectual shortcuts that democratic man employs [DA II.i.16, p. 69]. General causes are indeed more important in democratic times, but that fact, combined with the democratic love of abstraction, leads modern historians to go too far:

As it becomes extremely difficult to discern and analyze the reasons that, acting separately on the will of each member of the community, concur in the end to produce movement in the whole mass, men are led to believe that this movement is involuntary and that societies unconsciously obey some superior force ruling over them. [DA II.i.20, p. 87]

Tocqueville clearly rejects turning history into an impersonal system, finding this both conceptually inadequate and politically dangerous, yet he also faults aristocratic historians: “the connection of events escapes them” [p. 87]. It is only in the *Ancien Regime* that Tocqueville practices the kind of history that examines how several causes “concur in the end to produce movement in the whole mass”: more than a very cursory understanding of the breakdown of aristocracy lies outside the scope and purpose of *Democracy*.

Despite his rhetorical simplifications and amplifications, Tocqueville undeniably understood the “movement” of the last seven centuries of European history, its most fundamental characteristic, as a “continuous tendency” towards equality of condition, and he believed that movement had gone so far as to preclude any possible choice between the aristocratic and democratic *état social*. Nevertheless, questions such as those raised by Manent and Zetterbaum remain: What are the forces driving the process that Tocqueville

¹⁶Zetterbaum notes in *op. cit.* (p. 15) that Tocqueville was favorably impressed with the distinction that J.S. Mill made in his *Science of Logic* between necessity and fatalism.

describes? How can there be a truly new order of the human world, where what was once possible is no longer so? Is the democratic *état social* “natural,” or does it rest on some historical event or events, such as the Enlightenment or Christian revelation? Tocqueville’s understanding of history is fairly obscure; but comparing it with Montesquieu’s will shed some light on its most important features.

In a letter to Louis de Kergorlay, Tocqueville, speaking of the “mixture of history properly so called with historical philosophy” that he intends to write in the *Ancien Regime*, says his “model” will be “Montesquieu’s book on the grandeur and the decadence of the Romans.” Montesquieu is Tocqueville’s model because he achieves the right degree of abstraction: “One passes there, so to speak, across Roman history without pausing, and nonetheless one perceives enough of that history to desire the author’s explanations and to understand them.”¹⁷ For our purposes, however, the apposite comparison is not just between the two thinkers’ method, but also between their understandings of history as a process with an overall meaning or direction, and of the reasons for the emergence of a “modern” society or government. To be sure, in the *Spirit of the Laws* Montesquieu appears to reject anything like Providence and give a far greater role to chance: the proto-modern regime of monarchy is the contingent result of a particular European history, and the English disposition towards liberty is an effect imposed on their character by the climate [SL XI.8; XIV.13]. Nonetheless, Montesquieu’s account of the origins of modern liberalism is an important forerunner of Tocqueville’s “historical philosophy” because it is

¹⁷Letter of December 15, 1850; *Selected Letters*, pp. 256-7. Tocqueville goes on to say that Montesquieu, because he treated “a very vast and very remote epoch,” was more able to say “very general things” than he will be. However, Tocqueville is referring here to his initial plan, to write a history of the ten years under Napoleon; the volume that Tocqueville wound up writing was more suited to the conceptual or general, being of a “very vast” epoch.

a progressive or linear history;¹⁸ England, as we have seen, both combines the virtues of previous regimes and answers to men's most natural, fundamental need for security.

Besides this general "directional" similarity, Tocqueville's understanding of history owes much to Montesquieu in its specifics. In describing two related kinds of change, political and social, Tocqueville identifies the same forces as Montesquieu but explains their importance quite differently. First, for both thinkers, the stage upon which the drama of history is played is monarchy. In other words, the importance of monarchy for both thinkers lies in its being a transitional regime from pre-modern to modern society. As we shall see, Tocqueville seems to have a very similar idea to Montesquieu's of the nature and history of European monarchy — where he differs from his predecessor concerns the contribution monarchy makes to the formation of modern society. In line with his new understanding of the modern condition as the democratic social condition, Tocqueville

¹⁸Judith Shklar, in *Montesquieu* (Oxford: Oxford U.P., 1987) argues [p. 50] that "Linear history is alien to Montesquieu generally. He did not believe in cumulative progress, and his sense of the most recent past was one of radical discontinuity rather than of continuous development." This view rests in turn on her assessment that [Montesquieu] "looked upon the middle ages as a black hole of barbarism." However, Montesquieu refers to the "Gothic government" of the Holy Roman Empire in strikingly different terms: "There has never been, I believe, a government as well tempered as that of each part of Europe during the time that this government continued to exist, and it is remarkable that the corruption of the government of a conquering people should have formed the best kind of government that men have been able to devise" [SL XI.8]. Shklar's assessment is also in flagrant contradiction with the history of the growth of commerce Montesquieu offers in SL XXI, which culminates in his famous statement that because of the restraints an internationalized commerce places on rulers, "one has begun to be cured of Machiavellianism, and one will continue to be cured of it" [SL XXI.20].

If there is a "great discontinuity" in Montesquieu, it is between ancient and modern, not between medieval and modern, as is apparent from Shklar's own account [pp. 49-50; cf. SL, preface]. As I have argued, because of the importance of the form of sovereignty in Montesquieu's account, the dispersed power of the feudal state is the seed of modern liberalism. The very structure of SL XI shows that the novel institutions of feudalism are what bridge the radical discontinuity between greatest political achievements of antiquity and modernity, Rome and England, between the mixed regime and the separation of powers. Shklar's assessment of where the discontinuity lies is perhaps more applicable to Tocqueville, for whom the decay of feudalism and the rise of absolute monarchy are the key transition points to the modern condition, the democratic *état social*.

transforms the role monarchy played in Montesquieu's scenario. Rather than stress the monarch's role as a forerunner of England's constitutional executive, Tocqueville dwells on monarchy's erosion of aristocratic society, its replacement of dispersed power by centralized authority over a homogeneous mass. The most important consequence of this process — and perhaps, for Tocqueville, the most basic foundation of the modern age — is an unprecedented conception of justice based on natural equality. Barring exceptional circumstances, modernity has revolutionary origins — the ground for which was prepared by monarchy.

At the same time, Tocqueville's depiction of the growth of "democracy" as a social transformation underlying many political forms shares much with a second aspect of Montesquieu's depiction of modernity, the "spirit of commerce." This "spirit" is both connected to and yet separable from liberal government and the rule of law; as separable it has something of an undirected, inevitable, and universal character that resembles in many ways what Tocqueville says about the democratic *état social*. Yet even while describing the democratic *état social* in terms evocative of Montesquieu's description of commerce, Tocqueville subtly changes the terms of Montesquieu's analysis: commerce is only an aspect, perhaps even a moderating result, of a more fundamental transformation of human relations by the principles of the democratic revolution.

In this chapter, then, I will compare Montesquieu's discussions of monarchy and commerce with Tocqueville's understanding of the role of these forms of human association in producing and perpetuating the democratic *état social*. In doing so, my goal is to throw into relief the nature of Tocqueville's much more radical view of history. Tocqueville's analysis of the origins of the democratic *état social* deprecates the importance of those particular "physical" and "moral" causes that for Montesquieu limit both the effects of commerce and the possibility of modern liberal politics. What Tocqueville

referred to as his “philosophy of history” or “historical philosophy”¹⁹ is more universal and “sociological” than Montesquieu’s, because history is less directed toward the development of a *particular* form of government, the modern liberal regime. At the same time, Tocqueville’s view of the overall trajectory of European civilization has this more sociological or trans-political appearance precisely because it is *less* encumbered by the sociological or sub-political factors that Montesquieu had used to explain national differences. Unlike commerce, “equality of conditions” has a directly political dimension, as its accompanying standard of justice encourages, nay demands, the revolutionary overthrow of all aristocratic governments.

To write a “universal history” involves relating that history to man’s nature, but Tocqueville’s more radical sense of “universality” makes this relation both more direct and more mysterious. Although both Montesquieu and Tocqueville see the rise of modern government or society as befitting man’s nature, they do so in different ways — from being a standard by which to judge historical progress, as it is in Montesquieu, human nature seemingly becomes in Tocqueville a force which moves history along. The sacrifice of the “particularity” in the Montesquieuan account creates its own difficulties, however. In the conclusion to this chapter, I will point out some of the theoretical and practical problems raised by this new and more potent view of History, which lead to the thesis advanced in the following chapter: that Tocqueville’s new view of liberty is motivated by these very problems.

¹⁹As Mansfield and Winthrop note in their “Introduction,” p. xxvii, both terms are found “in two nearly contemporary letters on the study of the Old Regime in France that AT was planning,” namely one to Kergorlay of 15 December 1850 (*Selected Letters*, p.256), and one to Beaumont of 26 December 1850 (*Oeuvres Completes*, VIII.2, p. 343).

**A. THE CONTRIBUTION OF MONARCHY TO THE MODERN STATE:
THE SEPARATION OF POWERS OR THE LEVELING OF RANKS?**

Superficially, there is a world of difference in the status that our two thinkers give to monarchy: what Montesquieu presents as one of the three basic types of constitution, where “one alone governs, according to fixed and established laws,” Tocqueville presents in the *Ancien Regime* as an engine of social change. Given the replacement of “sovereignty” with “*état social*” as the main criterion of comparison, this is to be expected — monarchy drives the transition between the aristocratic or feudal and the democratic social condition. What Montesquieu stresses about monarchy is its intermediary bodies that channel sovereign power, whereas Tocqueville highlights monarchy’s *erosion* of these very bodies: “we have destroyed those individual powers which were able, single handed, to cope with tyranny; but it is the government alone that has inherited all the privileges of which families, guilds, and individuals have been deprived...” [DA intro p. 10]. Centralized authority and equality of conditions are two sides of the same coin — the nobility that Montesquieu says is essential to monarchy was in fact destroyed by it. Tocqueville begins *Democracy* with a claim that he will demonstrate in great detail in the *Ancien Regime*: “In France the kings have always been the most active and the most constant of levelers” [DA intro pp.4-5].

In pointing to the unstable and even self-contradictory character of monarchy, Tocqueville would seem to be rejecting the viability of monarchy as presented by Montesquieu — a limited or lawful sovereignty of one over a society of composed of different orders. However, the differences between the two on this score are less than they appear. In the first place, as we saw in the first chapter, Montesquieu is well aware of the despotic potential of monarchy. As he says in SL VIII.17, “Rivers run together into the sea; monarchies are lost in despotism.” This same view is expressed by Montesquieu’s alter ego, Usbek, in the *Persian Letters* [#102]: “Monarchy is a state of tension, which always degenerates into despotism or republicanism. Power can never be divided equally between

prince and people: it is too difficult to keep the balance.” In *Persian Letter* 136, this analysis is specifically applied to France by an unnamed “learned friend” giving Rica a guided tour of a modern library:

Here are the historians of France, where royal power is at first to be seen in the process of formation.... going into decline for several centuries, but gradually making gains on every side and reaching the peak of its development; like rivers which on their way diminish in size or disappear underground, then emerge again and, swollen by the rivers which flow into them, sweep away rapidly everything which lies in their path.²⁰

Since he lives under such a government, Montesquieu is more restrained when speaking in print in his own name. Nevertheless, as we saw in the *Spirit of the Laws*, Montesquieu’s analysis of monarchy shows some concern about its potential despotism — his rhetorical thrust, as far as kings are concerned, is to dissuade them from violating the prerogatives of the nobility or intermediary bodies.

Moreover, Montesquieu is more than aware of the “leveling” aspect of centralizing authority. From *Persian Letter* 88, we learn that France has already gone a long way toward becoming an undifferentiated mass society: “In Paris, liberty and equality prevail: neither birth, nor virtue, nor even success in war, however outstanding, can save a man from being lost in the crowd.” In this same letter, Usbek distinguishes France from Persia, where “a man becomes a great lord only if the monarch gives him some share in the government.” The implication is that, just as Tocqueville argued in the *Ancien Régime*, distinctions of nobility, if not attached to political authority, are pretty thin gruel — despite distinctions in

²⁰It may be coincidental, but Montesquieu’s metaphor of a river going underground and reappearing — “semblable a ces fleuves qui, dans leur course, perdent leurs eaux ou se cachent sous terre, puis, reparaissent de nouveau” — is repeated almost verbatim by Tocqueville in describing the continuity, namely administrative centralization, between the ancien régime and modern France: “Il y a un grand nombre de lois et d’habitudes politiques de l’ancien régime qui disparaissent ainsi tout a coup en 1789 et qui se remontent quelques années après, comme certains fleuves s’enfoncent dans la terre pour reparaître un peu plus loin...” (my Italics). Montesquieu, OC I, p. 336 with *L’Ancien Régime et la Révolution* (Paris: Flammarion, 1988), p. 90.

“honor,” people are becoming more alike. As Diana Schaub has suggested, Montesquieu’s treatment of eighteenth century society shows it gradually coming to be dominated by mass opinion, foreshadowing Tocqueville’s view of public opinion in modern society.²¹ Montesquieu’s claim that the collapse of intermediary bodies must result “in either a popular state or despotic state” [SL II. 4] speaks in identical terms of what Tocqueville calls the two possible political outcomes of the democratic social condition. In fact, the connection between equality and absolute authority [the latter being the equality of all except one] is one that Tocqueville explicitly traces to Montesquieu:

Montesquieu remarked that nothing is more absolute than the authority of a prince who immediately succeeds in a republic, since the indefinite powers that had fearlessly been entrusted to an elected magistrate are then transferred to a hereditary sovereign. [DA I.ii.10, citing Montesquieu, *Considerations*, Chapter XV].

Therefore, we can say that Tocqueville retrospectively agrees with Montesquieu’s assessment of eighteenth century monarchical society — the growth of absolute authority coupled with a leveling of society. Moreover, both thinkers contrast this picture of a senescent monarchy with a similar analysis of and appreciation for monarchy in its original, healthy condition in the feudal era. For both, this health consisted in a balance between social orders. Recall the high praise of this government that Montesquieu gives in SL XI.8, cited in my first chapter, concerning the “concert” between the “civil liberty of the people,” the “prerogatives of the nobility and clergy,” and the “power of the kings”: “there has never been a government on earth as well tempered as that of each part of Europe during the time that this government continued to exist.” In the introduction to *Democracy*, Tocqueville makes a similar claim about medieval monarchy: “While the power of the crown, supported by the aristocracy, peaceably governed the nations of Europe, society, in the midst of its wretchedness, had several sources of happiness which can scarcely be appreciated. The power of his subjects was an insurmountable barrier to the tyranny of the

²¹Diana Schaub, *Erotic Liberalism* (Savage, Md.: Rowman and Littlefield, 1995).

prince; and the monarch...derived a motive for the just use of his power from the respect he inspired" [DA intro p. 8].

Montesquieu, no less than Tocqueville, sees the feudal balance of social orders as an inherently unstable situation. Just prior to the passage from *Persian Letter* 102 quoted above, where Usbek speaks of the "tension" in monarchy, he says, "Most European governments are monarchies; at least that is what they are called, for I do not know that there have ever been such things. At any rate, it would have been difficult for them to have existed for long in a pure form." Montesquieu speaks of the representative institutions that sprang from European monarchy as the result of "corruption": "it is remarkable the corruption of the government of a conquering people should have formed the best kind of government that men have been able to devise" [SL XI.8]. Montesquieu defines "corruption" in general as a change in constitution when "a state has lost its principles" [SL XI.13], and in this case to the weakening of the Teutonic tribes' originally aristocratic constitution by the admixture of monarchy: when the conquest was over, the tribal leaders were dispersed and could no longer govern directly. In England the representative form survives in a "popular state," divorced from its original matter; on the Continent the impetus given by the original "corruption" has proceeded so far as to almost completely destroy the original "concert" between the social orders.²²

²²Diana Schaub, in *op. cit.*, makes the interesting suggestion that whereas England is Montesquieu's preferred solution to the problem of liberty on the political level, because of the exclusion of women from social life in that regime, the French monarchy is the preferred solution on the social level. In SL XIX. 5, Montesquieu gives high praise indeed for the charms of the more relaxed moral atmosphere produced through the influence of women and their tastes; the absence of these things in England, and the resulting gravity, is due to the men's being busy with public business. Schaub's penetrating and suggestive analysis does not answer what seems to be the key question — the relative priority of the political and social solutions — or whether "erotic" liberalism and constitutional liberalism, the "feminine" and "masculine" variants of modernity, can be combined. Furthermore, as we shall see, Tocqueville's own analysis gives little hope for such a synthesis.

For Tocqueville as well, the history of feudalism its heyday until the collapse of the *ancien regime* had been, necessarily, one long story of institutional decline, a process proceeding at different rates in various countries, and coinciding with the rise of the monarchical nation-state. At its peak, as Tocqueville had learned from Guizot, feudalism constituted the common basis of European civilization: “in the fourteenth century the various social, political, administrative, judicial, economical, and literary institutions of Europe were more nearly alike than they are now, though civilization has done so much to facilitate intercourse and efface national boundaries” [AR I.4, p. 31; compare SL XI.8]. From the fourteenth century on, in France in particular, “it would seem as though the civilization of society had involved the relapse of the political system into barbarism” [AR I.4, p. 31]. Here “barbarism” hardly means a relapse into the practices of the Teutonic invaders, but the ever-declining prerogatives of nobles and localities *vis à vis* the sovereign.

The inherent tendency of feudal monarchy to erode its own basis, via the state’s usurpation of the prerogatives of intermediary bodies, is the Montesquieuan theme that links the *Ancien Regime* with *Democracy*. For example, Tocqueville refers in the latter to the both rude and fragile character of township government: “Municipal freedom is not the fruit of human efforts; it is rarely created by others, but is, as it were, secretly self-produced in the midst of a semi-barbarous society” [I.i.5, p. 60]. In *Democracy*, of course, Tocqueville downplays the rights of the nobility and their historical connection to localities’ rights for obvious rhetorical reasons: he is, after all, trying to make room among democratic passions for some moderating holdovers from the decentralized medieval constitution. But the shadow of Montesquieu’s analysis remains: for the most part only implicitly in *Democracy*, more explicitly in the *Ancien Regime*.

1. THE CONTRIBUTION OF MONARCHY TO MODERNITY: GOVERNMENTAL FORMS VS. SOCIAL TRANSFORMATION

Given the degree to which Tocqueville follows Montesquieu in analyzing the origins, development, and character of monarchy, where do the two differ? The most important difference lies in their respective assessments of monarchy's historical contribution. For Montesquieu, as we saw, the distinguishing or unprecedented aspect of the English constitution is that it is a "republic which hides under the form of monarchy" [SL V.19]. The contribution of monarchy to modern republicanism is thus its "form": a sovereignty at once unified and limited, which makes possible the independence of the judiciary and the rule of law. However, as Montesquieu makes perfectly clear [SL II.4], in England the social bases of limited monarchy — namely intermediary bodies — are no longer present. Thus, because the substance has changed, the formal aspect of monarchy must play out in an entirely new way, as a separation of powers.

This distinctively modern solution, although supposedly self-regulating once established, is neither possible everywhere nor fostered by the tendency of history. It takes both work and good fortune. Indeed, outside of England the European contribution of limited sovereignty is in serious danger of collapse. In a chapter entitled "A danger of the corruption of the principle of monarchical government," Montesquieu writes:

Most European peoples are still governed by mores.²³ But if, by a long abuse of power or by a great conquest, despotism became established at a certain time, neither mores nor climate would hold firm, and in this fine part of the world, human nature would suffer, at least for a while, the insults heaped upon it by the other three [SL VIII.8].

²³From the context, it would appear that the "mores" Montesquieu is concerned with are the degrees of honor that limit sovereigns — he is using a "republican" term in a new context.

Montesquieu thus holds open the possibility of a failure, on the continent, of moderate government — and thus of the spread of liberal modernity itself. England's secular, commercial society can be diffused across the Channel only if the institutions introduced under monarchy, or what remains of them in the mores that now restrain sovereigns, are not trampled upon by a despotic monarch.

Tocqueville is less impressed with those institutional aspects that Montesquieu says distinguish the limited sovereignty of feudal monarchy from despotism. He is more concerned, in thinking about what limited the monarchy *even its heyday*, with the mores of those living under it:

There was a time in Europe when the laws and the consent of the people had invested princes with almost unlimited authority, but they scarcely ever availed themselves of it. *I do not speak* of the prerogatives of the nobility, of the authority of high courts of justice, of corporations and their chartered rights, or of provincial privileges, which served to break the blows of sovereign authority and to keep up a spirit of resistance in the nation. Independently of these political institutions... the manners and opinions of the nation confined the royal authority within barriers that were not less powerful for being less conspicuous.... *The constitution of nations was despotic at that time*, but their customs were free. [DA I.ii.9, p. 326; italics mine.]

In this passage, Tocqueville could be read as suggesting that there is not as much difference as Montesquieu seems to think between the healthy feudal monarchy of the fourteenth century restrained by the *pouvoirs intermédiaires*, and the corrupt eighteenth century monarchy restrained only by mores.

That Tocqueville downplays the restraining force of institutional forms in monarchy is consistent with the fact that, unlike Montesquieu, he does not trace the distinctively modern aspects of modern government to the legacy of these forms. Liberal democracy, moreover, is not a democracy that “hides under the form of monarchy” — if anything is hidden in America, it is the aristocratic origins and/or function of practices such as decentralization, associations, and judicial review. Americans, who care less for names than do the French, do not even remember that counties were once ruled by counts. To be sure, Tocqueville does seem to share with Montesquieu the idea that the health of the *English*

regime, compared with other monarchies, consists in finding a more modern basis for monarchical forms [AR I.4, end]. England, however, is a curiosity and an exception, a modern aristocracy. Moreover, if finding new equivalents for the old forms is vital to the question of *liberty*, such discoveries are in no way necessary to the progress of *modernity*,²⁴ because the democratic *état social*, while transforming the political alternatives, is itself not dependent on particular arrangements of governmental power. Tocqueville's deprecation of institutions is apparent from a remark comparing the US Constitution and the July Monarchy: "notwithstanding the different constitutions of these two countries, public opinion is the predominant authority in both of them" [DA I.ii.10, p. 416]. While Tocqueville credits the work of the Founders, all good students of Montesquieu, in framing

²⁴It is precisely this aspect of Tocqueville — that the most decisive aspects of modern regimes stem from the *état social* and not the deliberate choices of statesmen — that Thomas West finds objectionable, in "Misunderstanding the American Founding," pp. 155-177 of ITDA. According to West, "In contrast to Tocqueville's approach, the political science of the Founders maintains that government forms society." [p. 159]. This means, in the first place, that Founders allegedly thought "that however much government is affected by popular mores, those mores are finally formed by government" [p. 160], and in the second place, that the modern principle of natural human equality is also a deliberate principle: "it is a precise deduction from a rational insight." However, the Founder's source, Montesquieu, speaks less in terms of the causal power of law and government, but rather of their consistent "relations" with aspects of society such as mores.

Leaving aside the accuracy of West's account of the Founding, what is striking about his reproaches is that they completely fail to consider the possibility that Tocqueville's demotion of the role of politics is itself based on a rational insight — namely an insight into the peculiar nature of the modern world. In other words, West fails completely to take up that aspect of Tocqueville so successfully brought out by Manent, in particular Manent's claim that the very basis of the modern assertion of equality, "nature," means that this principle has "nothing specifically political about it: it invokes only man and nature, and by nature everyone has an absolute right over himself" [TND, p. 37]. West tries to avoid this difficulty by referring to Locke's "law of nature" that limits natural rights [p. 161], making both equally a question of reason or rational theology [p. 162] — but even Locke admitted that the idea of men in the "state of nature" having the "executive power" of the law of nature is a "strange doctrine." West sees correctly, however, that if Tocqueville is right about the nature of modernity — that its underlying principles are not "political" properly so called — then Tocqueville's conceptions of democratic government and liberty have an aristocratic aspect: their adoption by Americans stems from England's historical legacy [157-8; 161].

a good Constitution, for him the most fundamental bases of American liberty lie elsewhere, especially in the *mœurs* transmitted via the Puritan *point de départ*.

From Tocqueville's perspective, Montesquieu's concern about the possible relapse into despotism is based on an overestimation of the independence of governmental institutions from their underlying social bases. In *Democracy*, the only explicit challenge to Montesquieu faults his understanding of the source of a despot's power:

Montesquieu, who attributed to absolute power an authority peculiar to itself, did it, as I conceive, an undeserved honor; for despotism, taken by itself, can maintain nothing durable. On close inspection we shall find that religion, and not fear, has ever been the cause of the long-lived prosperity of an absolute government [DA I.i.5, p. 93].

As Joseph Alulis has argued, this criticism appears, on the surface, to be an astonishing blunder, because Montesquieu in fact points out the peculiar strength of religion in despotic governments.²⁵ However, the context of the quote makes Tocqueville's point clear: it is part of a larger debate with Montesquieu about whether public virtue, or some substitute for its psychological effects such as religion, is a necessary "spring" for all regimes, not just republics.

For Tocqueville no arrangement of powers, however artful, is by itself sufficient to maintain a government; if the inhabitants of a country do not see the government as legitimate, i.e. connected to themselves, they will "oscillate between servitude and license":

When a nation has arrived at this state, it must either change its customs and its laws, or perish; for the source of the public virtues is dried up; and though it may contain subjects, it has no citizens. Such communities are a natural prey to foreign conquests...nor can the prodigious exertions made by certain nations to defend a country in which they lived, so to speak, as strangers be adduced in favor of such a system; for it will be found that the main incitement was religion.²⁶

²⁵Alulis, *Op. cit.*, p. 98; Montesquieu SL V.14: "In [despotic] states, religion has more influence than in any other; it is a fear added to fear. In Mohammedan empires the peoples derive from religion a part of the astonishing respect they have for their prince."

²⁶DA I.i.4, p. 93. Tocqueville gives the Islamic states as an example of a despotism energized by religion — the same example Montesquieu uses — and then goes on to fault Montesquieu for not making the point!

Given that the authority of religion is fading with the rise of the democratic social condition, especially where that condition is not moderated by free institutions, it is hardly surprising that the “type of despotism democratic nations have to fear” is the entirely novel one of “soft despotism,” which is perfectly compatible with the modern goal of comfortable self-preservation.²⁷

In *Democracy*, then, Tocqueville distances himself from Montesquieu’s institutionalism: the arrangement of governmental power cannot be considered a “form” separable from its matter. By this move, Tocqueville launches a critique of Montesquieu in two related ways: a) the historical importance of monarchy does not lie where Montesquieu thought it did, because the basis of the modern condition is not any political form; and b) the question of modernity is entirely distinct from the question of liberty.²⁸ This critique becomes more pointed, and more explicit, in the *Ancien Regime*, especially in Book II, chapter 9: “How men [who were] so similar were [yet] more divided than they ever had been into small groups, [groups] estranged from and indifferent to one another.” This title does not do justice to the chapter’s important subject — the genesis of individualism, of the modern social condition itself, out of the monopolization of authority by the state and the consequent trivialization of the political and social role of aristocracy. This “individualism”

²⁷Twentieth-century totalitarianism might certainly seem to give the lie to Tocqueville’s assessment of the soft character of modern despotism, but one could arguably fit this novel form of hard despotism into a Tocquevillean framework as well. This seems to be the goal of Hannah Arendt’s last chapter in *The Origins of Totalitarianism* (New York: Harcourt, Brace, 1973), entitled “Ideology and Terror: A novel form of government.” As Arendt notes (p. 474), “terror can rule absolutely only over men who are isolated from each other and that, therefore, one of the primary concerns of all tyrannical government is to bring this isolation about.”

²⁸One revealing measure of this difference, as we will argue in a later chapter, is that while Montesquieu focuses on how the limiting function that intermediary bodies have on sovereignty can be replaced with the “separation of powers,” Tocqueville wants to encourage new types of intermediary bodies: associations and decentralization. For Tocqueville it is the aristocratic, not the modern, aspects of monarchy that bear imitating.

was not yet individualism proper, but “a sort of collective individualism, which prepared people for the real individualism with which we are so familiar,” and was, through the decline of political liberty, more advanced in France than in England: “people were more isolated than they had been anywhere else.” In II.12, Tocqueville shows how the growth of state power had reduced the aristocrats that remained in the country to mere “rich landowners.” Through a kind of “absenteeism of the heart,” they were no longer bound to the peasants as their feudal leaders: “These men were no longer their subjects, and not yet their fellow citizen[s]: a fact unprecedented in history.”

Reasoning back (with 20/20 hindsight) from the fact of revolution to its causes, Tocqueville argues, in effect, that in the eighteenth century it was in France that the progress of modernity — the breakdown of the bonds constituting the aristocratic *état social* — was the most advanced. In this, Tocqueville only restates what he had said twenty years earlier, more directly and more paradoxically, in “The Political and Social Condition of France”:

He who, without resting in first appearances...had embraced in one view all of these different objects, could not have failed to conclude that the France of that day, with her noblesse, her state religion, her aristocratic laws and customs, was already, taken altogether, the most really democratic nation of Europe...[PSCF, pp. 156-7]

Thus monarchy contributes most to the emergence of a modern condition not by its political forms, but by its ability to empty those forms of substance.²⁹ By Tocqueville’s time, it had become all too clear that England in the eighteenth century was not the most modern of nations; it was only the most liberal.

However, Tocqueville in the *Ancien Regime* does not content himself with implying that Montesquieu has missed the point. In II.9, he criticizes Montesquieu by name; the apparent casualness of the citation, and its import, are breathtaking. Disdaining point-by-

²⁹In this respect, one can surmise that it is for more than stylistic reasons that it is not Montesquieu’s treatment of modernity, contained in the *Esprit des Lois*, but his presentation of the rise and fall of Roman virtue in the *Considerations*, which forms Tocqueville’s “model” for the *Ancien Regime*.

point scholastic refutations, Tocqueville breezily — with not even a mention of better-known works — says: “Montesquieu, visiting Great Britain in 1739, writes aptly: ‘I am in a country which scarcely resembles the rest of Europe,’ but he doesn’t add anything.” What is audacious is the immediately preceding claim, which the Montesquieu reference is supposed to support, namely that it is only in England that there is “aristocracy” in the true sense, namely as a political regime rather than a merely privileged class:

Everywhere that feudalism was established on the European continent, it ended up being a caste system; only in England did it again become an aristocracy. I have always been astonished that a fact unique to England among modern nations, and which alone could make sense of the peculiarities of its laws, its spirit, and its history, has not attracted more attention from philosophers and statesmen, and that habit has made it invisible to the English themselves. It has often been half-seen, half-described; never, it seems to me, had it been fully and adequately grasped. Montesquieu....[see above]

Tocqueville is thus claiming that Montesquieu, of all people, did not understand what was distinctive about England, and hence the true basis of English liberty. As a single line from a letter written almost a decade before the publication of *Esprit des Lois* would be a flimsy basis for such a claim, Tocqueville follows the quotation from the letter with a paragraph showing that he has read the magnum opus, considered the analysis therein, and rejected it as insufficient:

It was much less its parliament, its freedom, its press, its jury, which made England even then so different from the rest of Europe, but rather something much more effective, and much more peculiar. England was the only country where the caste system had not been merely changed but really destroyed. In England, nobles and commoners engaged in the same businesses, pursued the same professions, and, what is more important, married each other. [AR II.9]

To be sure, while this passage shows how for Tocqueville, it was not the form of her institutions that made England distinctive, it does not seem to show that he thought England had reestablished aristocracy. Indeed it seems to indicate that he thought England the most democratic of nations. Taken as a whole, though, the chapter shows why a “caste system” is closer to the modern-democratic spirit than to the aristocratic; precisely the “caste” aspect of French aristocracy signified that politically it had ceased to matter.

In the eighteenth century France was more aristocratic in appearance, England in reality; contemporary observers were, however, almost always taken in by appearances. Tocqueville claims that even Burke failed to understand the enormous difference in spirit between England's "open aristocracy" and the French sale of noble titles. Aristocracy survived in England because the boundary between noble and commoner in England, as indistinct, did not attract hatred; in France that boundary, "although very easy to cross, was always fixed and visible" [AR II.9]. More important, in England's republican system, the various classes had to combine in politics. In France, one has to go back to the fourteenth century to find such a spirit:

Everyone knows the famous act by which the nobles and bourgeois of a large number of towns agreed, at the beginning of that same century, to defend the nation's freedom and the privileges of their provinces from the encroachments of royal power. One finds several episodes like these, which seem to belong to English history, in our own. Such events were no longer to be seen in the centuries thereafter. [AR II.9]

For Tocqueville, just as France, in the decades just prior to the Revolution, had become the nation in Europe where individualism and the breakdown of the aristocratic *état social* were the most advanced, so England, by comparison, was more liberal but less "modern," and for the same reason. The English were free not because of their distinctively modern liberal institutions, but because their aristocracy had maintained something of the vitality that the French and the English had shared centuries earlier, the result of a regime in which classes had to combine through political alliances.

If this contrast between England and France in the eighteenth century resembles anything in Montesquieu, it is the contrast in the *Considerations* between the "tumult" of class conflict in Rome's free republic, and the tranquility of despotism:

What is called union in a body politic is a very equivocal thing. The true kind is a union of harmony, whereby all the parts, however opposed they may appear, cooperate for the general good of society — as dissonances in music cooperate in producing overall concord. In a state where we see commotion there can be union...

But, in the concord of Asiatic despotism — that is, of all government that is not moderate — there is always real dissension. The worker, the soldier, the lawyer, the

magistrate, the noble are joined only inasmuch as some oppress the others without resistance. And, if we see any union there, it is not citizens who are united but dead bodies buried one next to the other.³⁰

One might say that “dead bodies buried next to each other” sums up the verdict Tocqueville renders on the caste system in the *Ancien Regime*. As we will see, the implication of Tocqueville’s analysis as to what is the one thing most needful for France — a vigorous political life, rather than the mediation of popular will by liberal institutions — is part of what separates Tocqueville from the bulk of his “liberal” contemporaries. While Tocqueville is as solicitous as his predecessor to preserve constitutional forms and legal formalities, he is more impressed with the potentials and difficulties presented by the democratic or individualistic material that those forms try to contain.

2. A NEW CONCEPTION OF JUSTICE

If for Montesquieu, modern government is distinctive by virtue of certain institutions and *practices*, Tocqueville considers modern society to be constituted most fundamentally by a revolutionary break in the way men *conceive* of social relations — in their understanding of justice. This is to be expected. While “equality of conditions” struck Tocqueville as the prime “fact” about America [DA, intro], one must keep in mind what he means by “condition”: class or estate. Given that democratic society brings with it new forms of inequality of wealth, the force of equality as a “generative fact” (*fait générateur*) can lie only in the way men at all ranks of society now understand their relation to their fellows as “similar,” *semblables*. Modern equality may have an “objective” basis, such as the new importance of moveable over landed wealth, but its most fundamental ground is

³⁰*Considerations on the Causes of the Greatness of the Romans and their Decline*, translated by David Lowenthal (Ithaca: Cornell, 1965), chpt. 9, pp. 93-94. Of course, given the satirical aim of the *Persian Letters*, the reference to “Asiatic despotism” may very well be made with France in mind.

the destruction of the opinion that legitimated the aristocratic *état social*: people's circumstances are no longer publicly recognized to inhere in them as part of their "quality," a quality that can be inherited.

What is new about the opinion that underlies modern society is the assertion of the "natural" equality and independence of every man, an assertion with inherently revolutionary consequences:

According to the modern, the democratic, and we venture to say the only just notion of liberty, every man, being presumed to have received from nature the intelligence necessary for his own general guidance, is inherently entitled to be uncontrolled by his fellows in all that only concerns himself, and to regulate at his own will his own destiny.

From the moment when this notion of liberty has penetrated deeply into the minds of a people, and has solidly established itself there, absolute and arbitrary power is thenceforth but a usurpation, or an accident; for, if no one is under any moral obligation to submit to another, it follows that the sovereign will can rightfully emanate only from the union of the wills of the whole. From that time passive obedience loses its character of morality, and there is no longer a medium between the bold and manly virtues of the citizen and the base compliances of the slave. [PSCF, p.166]

This is the key importance for Tocqueville of the social transformation wrought by the monarchy: its erosion of social bonds provided the fertile ground for this new, revolutionary appeal to the "natural" independence of the individual. In England this modern opinion — albeit combined with certain "rude and half-civilized" theocratic notions — had been the particular property of the Puritans, men who, like Athena from Zeus, "escaped full sized and fully armed from the milieu of the old feudal society" and founded democratic America [DA I.i.2, pp. 35, 37]. In the France of the *ancien regime*, however, the gestation of the opinion underlying democratic modernity was due to the centralizing tendency of the regime as a whole, and it was undiluted by other inclinations. From Louis XIV and "*L'état, c'est moi*," it's a short step to J.J. Rousseau and the General Will.

To be sure, the "collective individualism" towards which monarchy tends is only quasi-modern, because for Tocqueville the modern condition in the full sense requires the conscious overthrow of the pre-modern principles that separate society into several orders.

Nevertheless, monarchy's quasi-modern tendencies contain a potential for revolution, an event that suddenly brings out explicitly what was long implicit. Only in exceptional circumstances, such as America's, where the most advanced and republican sectors of the old society had simply removed themselves from its midst, could the new *état social*, and its inevitable political consequences, be realized without a revolution. The modern outlook is distinctive precisely because it is inherently revolutionary: in discussing the virtues of feudal monarchy, Tocqueville not only makes the Montesquieuan point about the balance of power between social orders; he also notes that the people "never having conceived of a social condition different from their own...received benefits from [their leaders] without discussing their rights...and submitted to their exactions without resistance or servility, as to the inevitable visitations of the Deity" [DA intro p. 8]. For Tocqueville, the character of pre-modern politics required that its legitimating opinions remain undisturbed by the philosophic distinction between nature and convention.

Much of the mystery about the movement of post-feudal history described in the introduction to *Democracy* is eliminated when we understand that Tocqueville sees that history as a process of demystification — as the gradual laying bare for all to see of the arbitrary foundations of the opinions sustaining the aristocratic *état social*. Both the monarchy and its sister institution, the church, opened up new careers not dependent on noble birth, but on ability — the monarch through his use of lawyers and financiers, and the church by recruiting from all ranks of society. Tocqueville's point is that these two central institutions, or as Pierre Manent has it, these two pretenders to universality³¹, subverted the aristocratic *état social* by an end run around feudal ranks: "From the time when the exercise of the intellect became a source of strength and wealth...all the gifts which Heaven scatters every which way turned to the advantage of democracy; and even when they were in

³¹*Intellectual History of Liberalism*, p. 7.

the hands of its adversaries, they still served its cause by throwing into bold relief the natural greatness of man” [DA, intro p. 5].

It is important to see that the workings of these institutions did not make visible the natural *equality* of man, but rather the fact that men’s natural *inequalities*, especially those of intellect, did not correspond to the conventional hierarchies. This did not lead — when has it ever? — to a groundswell of opinion demanding the natural rule of the wise.³² Rather, it destabilized the political hold of the aristocratic principle by putting various types of inequality in conflict with each other. In the “Political and Social Condition of France,” Tocqueville notes that in all forms of society, there are

a certain amount of real or conventional advantages which, from their nature, can only be possessed by a small number....[such as] birth, wealth, and knowledge....they therefore form so many aristocratic elements....[that] are to be found amongst every people, and at every period in history. [PSCF, pp. 148-9]

The hold of an aristocracy depends upon the same class of people being able to monopolize all those advantages, and yet by the end of the eighteenth century, they could not do so. The richer part of the Third Estate and literary men or intellectuals formed what Tocqueville says “may be called the natural aristocracy”; these men, to assert their pride of place against the hereditary or conventional aristocracy, were “obliged to profess the general principle of equality, as a means of overthrowing the particular barrier which was opposed to themselves” [PSCF, pp. 149-150].

However, the “bold relief” into which monarchy threw man’s “natural greatness” is only part of the story — the monarchy in Tocqueville’s account did not accomplish its modernizing function by simply making visible the difference between nature and convention. After all, as Tocqueville makes clear in the *Ancien Regime*, the revolutionary

³²Modern meritocracy is not philosopher kingship. As the name implies, the elite “civil servant” trained at institutions such as the *Grands Ecoles* is not supposed to be a “ruler,” but in the service of the people.

core of the Enlightenment, that “it was necessary to substitute simple and elementary rules, based on reason and natural law, for the complicated and traditional customs which regulated society in their time” [AR III.1], is not so new. One might even say that it is common to the entire intellectual tradition of the West: “For three thousand years it had been floating backward and forward through the minds of men without finding a general resting place” [*ibid.*]. The key question is how this approach, from being “buried in the brain of philosophers,” became “a passion among the masses” [*ibid.*]. It is towards this question that the analysis of monarchy in the *Ancien Regime* is directed — how the centralization of authority led, first to schemes to “rationalize” society such as those of the physiocrats, and then to a deep animus against convention as such.

In Tocqueville’s explanation of this effect lies the profound originality of his understanding of the dynamics of monarchy. The assertion of “natural equality” against an existing social order arose not as a weapon against despotism, nor even from an outcry against inequality as such, but from the fact that aristocrats still had privileges without any real power. In other words, what fosters revolutionary passion is the very thing that Montesquieu says is distinctive about monarchy — the replacement of aristocracy with “nobility,” a class with rights but not powers. The privileges of “honor” [in the Montesquieuan sense] that remain after the aristocracy has lost its political, and even its judicial importance, cause hatred precisely because the inequality that remains is merely a form without any substance. This reaction, while hardly confined to the intelligentsia, was particularly intense among them:

It was not chance which led the philosophers of the eighteenth century to advocate principles so opposed to those on which society rested in their day. They were naturally suggested by the spectacle they had before them. They had constantly in view a host of absurd and ridiculous privileges,³³ whose burden increased daily.

³³Joseph Alulis (*op. cit.*, p. 48) takes this phrase as evidence that Tocqueville is a supporter of this thesis of “natural equality,” and only differs from the philosophes as regards questions of means, not ends. Yet, Tocqueville states unambiguously that what is

while their origin was growing more and more indistinct; hence they were driven towards notions of natural equality. They beheld as many irregular and strange old institutions, all hopelessly jarring together and unsuited to the time, but clinging to life long after their virtue had departed; and they naturally felt disgusted with all that was ancient and traditional, and — each taking his own reason for his own guide — they sought to rebuild society on some wholly new plan. [AR III.1]

In the *Ancien Regime*, Tocqueville merely elaborates a thesis he had developed twenty years before: that it is not inequality or power that makes men hated, but “the appearance of power, without its substance” [PSCF, p. 144]. The “virtue” that Tocqueville says had departed from the forms of the *ancien regime* can be taken in an entirely Machiavellian

absurd is not the inequality of the privilege, but its lack of political substance. As the article “The Political and Social Condition of France” makes clear, Tocqueville discusses the “natural equality” of men as a distinctly modern belief whose importance lies in the fact that forms of obedience that originally possessed a certain “morality” are now, because this belief has become the norm, degrading [PSCF, pp. 164-5].

Commentators like Zetterbaum or Alulis who take Tocqueville simply as a “democrat” do not take this “historicism” seriously enough. As we shall see, Tocqueville’s thought is democratic only in the limited sense that he does not view politics in the light of the “natural right” of the wise or virtuous to rule maintained by Plato and Aristotle, the absence of this consideration being the deep reason why for Tocqueville the modern notion of every man’s “natural” independence is “the only just” form of liberty. Conventional aristocracy retains a semblance of justice only if it can be plausibly considered as a simulacrum of a natural title on the part of a certain “few” to rule, such as Plato’s utopian philosopher-kings. In the absence of such a natural title, the claim of democratic *liberty* wins *faute de mieux*. — but not that of democratic *rule*. If no title to rule is natural, then all are “historical”; they must therefore be considered in terms of their practical effects, which depend to a large extent on what men believe to be true. While in effect denying there is any natural basis for the rule of the wise or virtuous, Tocqueville hardly accepts the principle of majority rule as anything but a necessary means to modern legitimacy.

Pace Zetterbaum, “impartiality” between democracy and aristocracy does not require an “indifference” between them, only a willingness to see clearly the different sorts of errors that each side makes. For Tocqueville the aristocratic idea of liberty is vulnerable to critique because it is always based on some particular criterion, hence is simply arbitrary, whereas the democratic view makes a more subtle error: it abstracts from certain highly relevant facts, namely the inequality of men’s natural gifts, and of the degree to which various ways of life bring these gifts to fruition and allow their expression. Tocqueville differs from the classics in that for him, the shortcomings of the democratic point of view do not go so far as to mean that it would be good, by nature, for some to be ruled by others; he differs from them as well in that the aristocratic principle does not, automatically, give rise to the democratic counter claim. Rather, Tocqueville’s “historicism” means that he can go so far as to say that in societies where the aristocratic principle did predominate unchallenged, “men enjoyed a degree of happiness that can scarcely be appreciated.”

sense: “When once the reality of power has been abandoned, to wish to retain its appearance is a dangerous game” [PSCF p. 144]. It was this “dangerous game” of the monarchy that made the thesis of men’s natural equality plausible and attractive — not to mention that despite the caste distinctions in the *ancien regime*, men were in fact becoming more alike in their tastes and opinions [AR II.8].

Thus in Tocqueville’s view the widespread acceptance of the thesis of natural equality constitutes a sharp or revolutionary break with all previous political life, but one with a long gestation; this transformation seems to have little to do, in Tocqueville’s treatment, with the deliberate efforts of modern philosophers. Philosophers may invent whatever they please, but the spread of their ideas depends upon something they do not control, namely the *état social* — which might even make them superfluous, as the unconscious Cartesianism of Tocqueville’s Americans has made Descartes.³⁴ One might maintain, however, that this historical analysis, which traces the revolutionary potential of modernity to the contradictions of monarchy rather than to the efforts of philosophers, is not original and can in fact be found in Montesquieu. Several scholars have even argued that the end of the *Persian Letters* — the uprising of Usbek’s wives against his despotic authority — foreshadows the French Revolution.³⁵ However, in this case hatred is directed towards the “sovereign” and his unlimited power [especially since Usbek’s absence from the harem means that his wives are denied what small compensations for his despotic rule his presence might offer]. As Tocqueville correctly pointed out, though, while the original political battle was instigated by the nobility against the king³⁶, the real revolutionary animus

³⁴See Mansfield and Winthrop, “Introduction,” p. li.

³⁵See T. Pangle, *op. cit.*, p. 217; Schaub *passim*.

³⁶Schaub makes a compelling case that the correct comparison to made with Usbek’s wives is the French parlements, those “intermediary” judicial bodies that channel the king’s power. In the context of our current argument, Schaub’s comparison only suggests that

was directed not against the king, but against the nobility. Furthermore, the subsequent elimination of the monarchy left the sovereign's absolute power unchallenged — although, because of its very link with the idea of nobility, a personal, hereditary sovereignty was eliminated.

Tocqueville's analysis of the contribution to the rise of modern society made by monarchy and its transformation thus departs from Montesquieu in two ways: monarchy's legacy is not the institutional forms of mediated sovereignty, but the undermining of the aristocratic *état social*; and as a radically new understanding of man's "natural" equality arises out of this process by which monarchy becomes the modern state, the despotic tendencies of monarchy are not a threat to the emergence of modernity but are in fact perfectly in line with the centralizing instincts of democratic man. Furthermore, it is by understanding this departure that one can understand the paradoxical character of the thesis of the *Ancien Régime*: that there is both a fundamental continuity between the workings of the monarchy and that of the Revolution — namely the centralization of authority — and a fundamental discontinuity which makes it so hard to understand the outlook of a time still within living memory. The modern condition, being based on a new understanding of "natural" equality, constitutes a rupture in history — but it is a rupture a long time in the making. Paradoxically, in comparison with Montesquieu's, Tocqueville's analysis of monarchy makes modernity both more inevitable and more radically different from what came before.

Montesquieu might have foreseen some of the sentiments in the nobility that helped start the revolution. He certainly did not forecast the revolution's true character.

B. MODERN SOCIETY: COMMERCE OR EQUALITY?

While Tocqueville takes a somewhat different view of monarchy's modernizing potential than does Montesquieu, he shares the more fundamental connection his predecessor makes between modernity and universality. That is, as we have seen from the previous chapter, both thinkers connect the modern condition with a certain cosmopolitanism, a "softening" of the mores that divided pre-modern nations and classes. However, the two thinkers understand the foundation of this modern cosmopolitanism somewhat differently.

For Montesquieu, modernity is characterized not just by liberal political forms, but also by a social force that crosses political boundaries, the spirit of commerce. While this "spirit," which "cures destructive prejudices" and "softens pure mores" [SL XX.1], is a universal and universalizing phenomenon, for Montesquieu its prevalence and its exact nature depend on particular circumstances. These circumstances are most frequently natural or accidental, such as the harsh natural setting of Marseilles, which both permitted and forced a commercial life on its inhabitants; the strategic commercial location of Corinth or England; or a temperate climate that encourages men to work rather than be lazy and keep slaves. However, unless properly directed by propitious political circumstances — such as the English constitution, or, to a lesser extent, monarchy — the spirit of commerce would corrupt the constitution. For Montesquieu, modern society is linked with what we now call the modern "state" separate from society, because it is only with the monarchical form of government, especially in republics that "hide" under such forms, that the commercial spirit and all that goes with it can be safely unleashed.

The role played by "commerce" in Montesquieu — a universal and universalizing spirit — is taken in Tocqueville by the spirit of equality. Although fostered by the centralizing force of monarchy and its destruction of aristocratic virtue, this spirit — like that of commerce in Montesquieu's treatment-- tends to cut across political boundaries,

because it is somewhat detachable from the political circumstances it in which it arose. In the margin to the manuscript to the introduction to *Democracy*, next to the phrase “democracy, which ruled over American society, appeared to me to be rapidly advancing towards power in Europe,” Tocqueville wrote, “I remember that I saw something analogous in France, I thought one could usefully examine the effects in the two countries and I conceived the idea of the book” [DAN I intro. p. 3, note “e”]. The spirit of equality is diffuse, cosmopolitan, and resistant to political restraints; it is as emblematic of modernity for Tocqueville as commerce is for Montesquieu.

Certainly Montesquieu’s influential discussion of commerce, by counter-posing the modern commercial spirit against traditional virtue, would easily have lent itself to Tocqueville’s consideration and revision. For example, Montesquieu says commerce gives men a sense of “exact justice” [such as, presumably, paying back what is owed, neither more nor less], which he says is “opposed on the one hand to banditry and on the other to those moral virtues that make it so that one does not always discuss one’s own interests alone and that one can neglect them for those of others” [XX.2]. Montesquieu goes on to indicate, however, that this comparison, which seemed to be between three alternatives, is in fact between only two. The two non-commercial options turn out to be two sides of the same coin:

By contrast, total absence of commerce produces the banditry that Aristotle puts among the ways of acquiring. Its spirit is not contrary to certain moral virtues; for example, hospitality, so rare among commercial countries, is notable among bandit peoples.

Given that Montesquieu has said that, in contrast to traditional practice, he uses the term “virtue” to refer to “political virtue” [SL, Author’s foreword], his use here of the term “moral virtue” is striking; he seems to be implying that in so far as there are “virtues” distinguishable from the love of country necessary to republics, they are more at home in

societies whose wealth is acquired by force, not trade. Commerce both corrupts and improves; it improves by corrupting:

Therefore, one should not be surprised if our mores are less fierce than they were formerly. Commerce has spread knowledge of the mores of all nations everywhere; they have been compared to each other, and good things have resulted from this.

One can say that the laws of commerce perfect mores for the same reason that these same laws ruin mores. Commerce corrupts pure mores, and this was the subject of Plato's complaints; it polishes and softens barbarous mores, as we see every day [SL XX.1].

This contrast, between a modern commercial society founded on the spirit of enlightened self-interest, with a morality that enables this spirit to flourish by confining it to the orderly channels of commerce, and a ruder but more generous pre-modern society that has some connection to "banditry," reappears in Tocqueville's thought. At the end of the chapter in *Democracy* entitled "What are the real advantages that American society derives from a democratic government" [I.ii.6, p. 252], Tocqueville dwells on the softening effects of democracy. If one wants, he writes, "to give a certain elevation to the human mind, and teach it to regard the things of this world with generous feelings," then "one must avoid the government of democracy." On the other hand,

...if you hold it expedient to divert the moral and intellectual activity of man to the production of comfort and the promotion of general well being; if a clear understanding be more profitable to man than genius; if your object is not to stimulate the virtues of heroism, but the habit of peace; if you had rather witness vices than crimes, and are content to meet with fewer noble deeds, provided offenses be diminished in the same proportion...then equalize the conditions of men and establish democratic institutions [DA I.ii.6, pp. 252-3].

The contrast Tocqueville draws here (with the revealing exception of the contrast between "genius" and "clear understanding") between democratic society and its predecessors is almost identical to Montesquieu's typology of bandit and commercial societies. Like banditry, aristocracy cannot be restored once corrupted because, despite the splendor of its virtues, it originated in force at the primitive beginnings of society:

I do not think a single people can be quoted, since human society began to exist, which has, by its own free will and its own exertions, created an aristocracy within its own bosom. All the aristocracies of the middle ages were founded by military

conquest; the conqueror was the noble, the vanquished became the serf. Inequality was then imposed by force; and after it had once been introduced into the manners of the country, it maintained itself and passed naturally into the laws. Communities have existed which were aristocratic from their earliest origin, owing to circumstances anterior to that event, and which became more democratic in each succeeding age. Such was the lot of the barbarians, and of the Romans after them. [DA I.ii.10, p. 421]

History for both thinkers is linear: the democratic social condition in Tocqueville and commerce in Montesquieu have the same moral effects because they have the same causes, namely men's gradual discovery of their resemblance to each other. If the particularism of pre-modern society — whether of “pure mores” or of aristocracy — is something artificial that must be imposed, then it is easy to see why “commerce” or “equality” could launch a process of progressive undermining whose subsequent growth and influence is beyond the power of human choice or politics. Montesquieu's description of commerce in terms of “corruption” provides the metaphor for Tocqueville's view of equality: it is an irreversible process that tends to accelerate.

One could easily multiply examples of places where Tocqueville takes the effects that Montesquieu attributes to commerce and makes them a function of equality. Of course, substituting “equality” for commerce as the motor of modernity tends to demote commerce itself. Tocqueville stresses the markedly commercial tone of modern society. But by portraying commerce largely as an effect of modernity rather than one of its causes, he subtly challenges both the role of commerce in Montesquieu's view of history, and Montesquieu's view of the modern condition. The spirit of commerce, for Tocqueville, does not have the same transformative power that it does for Montesquieu, because he “historicizes” it by making it part of the democratic *état social*. (As we'll see, commerce cannot even fully satisfy the psychological needs that spur its development.)

To be sure, in the introduction to *Democracy*, commerce combines with the centralizing monarchy to produce the democratic social condition. It both benefits from and enables the fluid, egalitarian social relations of modernity. Tocqueville insists that commerce

“opened a new road to power” outside the feudal hierarchy, either by the new importance of financiers to kings, or because “land began to be held on any other than a feudal tenure.” As soon as this happened, “every discovery in the arts, every improvement in commerce of manufactures, created so many new elements of equality among men.” [DA intro, pp. 4-5]. Montesquieu, meanwhile, is hardly blind to the egalitarian side of commerce; he notes “the usage that permitted commerce to the nobility in England is one of the things that most contributed to the weakening of monarchical government there” [SL XX.21]. However, the leveling effects of commerce are hardly as important for Montesquieu as they are for Tocqueville, as can be seen from one example from *Spirit of the Laws*.

For Montesquieu, perhaps the single most important piece of evidence for the revolutionary force of commerce, that it softens and civilizes despite men’s efforts to stop it, is the invention of “letters of exchange”: “in this way commerce was able to avoid violence and maintain itself everywhere, for the richest trader had only invisible goods, which could be sent everywhere [SL XXI.20 — “How commerce in Europe penetrated barbarism”]. This chapter shows how through the cunning of history, civilization was reborn not through the recovery of Aristotle but in spite of his influence. The medieval prohibition against charging interest on loans meant that “commerce passed to a nation then covered with infamy,” the Jews, who as outsiders were unable to protect their goods from “being pillaged with the same tyranny by the Princes”; this oppression created the need for letters of exchange. In effect, this device achieved through mere paper, and without politics, what republics like the Venetians and the Dutch had to do in physical reality: create a “retreat in the midst of the stormy sea” [XX.5] from conquest.³⁷ It placed wealth, so important to sovereigns, “out of their power,” obliging them to govern well and foster prosperity, rather

³⁷It is noteworthy that in XX.5, the ancient example of Marseilles concerns a “retreat” along a rocky coastline that already exists by nature or chance; whereas the modern example, Holland, uses land created by human effort or art.

than just grab what they wanted. This curb on sovereign power prompts Montesquieu's famous remark that "One has begun to be cured of Machiavellianism, and one will continue to be cured of it. There must be more moderation in councils. What were formerly called coups d'état would at present, apart from their horror, be only imprudences" [SL XXI.20].

Tocqueville is certainly aware of the invention of exchange letters: while not among the aspects of commerce discussed in the introduction to *Democracy*, they do appear as part of the list in Tocqueville's notebooks, mentioned above, that enumerates what he had in mind when he claimed in the introduction that Europe had been tending towards democracy for seven hundred years.³⁸ In Tocqueville's account of modernization, however, these letters of exchange have nowhere near the importance that Montesquieu gives them. The relevant notebook entry reads simply: "Transferable property [*propriétés mobilières*]. Tyranny towards the Jews which made [them] invent paper money." In other words, Tocqueville subsumes letters of exchange under the more general idea of how the fluidity of money, in comparison with fixed feudal relationships, acted as a powerful solvent on the aristocratic social condition.

Thus, in Tocqueville's thought, by contrast with Montesquieu's, commerce is not a force limiting sovereigns or curing Machiavellianism; at most it is one of the new roads to power that constitute the democratic revolution.³⁹ This theme, the derivation of commercial man from democratic man, unifies the chapters making up the second half of DA II.ii. To begin with, [II.ii.10] democracy gives men the taste for "physical well being": whereas men

³⁸Cited editor's note "h" at DAN I.intro, p. 4.

³⁹Tocqueville's emphasis on commerce as a new road to power outside that of a land-based aristocracy is closer to what Montesquieu says in the *Considerations* chpt VIII [p. 85] about the difference between the old aristocracy of Rome, the patricians, and the new nobility based on wealth. Whereas the former could not defend themselves against the political encroachments of the plebeians, "since riches necessarily confer power, the nobles resisted with more force than had the patricians."

in aristocracies take either their wealth or their poverty for granted, men in the more fluid democratic social condition are concerned either to gain new wealth or to not lose what they have. Further, equality brings a general respect for labor, and thus for all honest trades [II.ii.17]; idleness loses its dignity.

Once Tocqueville has derived the taste for physical well being from the nature of democratic society, he can deduce several well-known economic consequences of modernity, such as the declining importance of agriculture with respect to industry, or the increasing division of labor and the creation of an “industrial aristocracy.” But commerce is not, as in Montesquieu, what is most fundamental to the character of modern society; rather, its modern importance is only a particular face of the “abstract” or undetermined nature of relations between democratic men. As obligations between modern men are not concrete or pre-existing, and hence can only exist on the basis of agreement or consent, they take the form characteristic of economic relationships, the contract. Tocqueville stresses that even the most aristocratic relationship, the one between master and servant, becomes a mere business arrangement.

By tracing the commercial spirit to something more fundamental, the psychology of democratic man, Tocqueville in effect historicizes that spirit even more than Montesquieu. Tocqueville emphasizes that men in aristocratic times “often display a haughty contempt” [DA II.ii.10] for material comforts. He does not pick up on Montesquieu’s discussions of the twin problems of luxury and corruption in the classical republic; what one might call the “erotic” aspect of commerce in Montesquieu — namely the connection between commerce and an absence of limits that is part of the natural structure of human desire in all times and places [see, e.g., SL VII.2] — is missing in Tocqueville. Moreover, for Tocqueville the pursuit of gain is not entirely satisfying for modern men either. Democratic man pursues material goods, not because all men have a natural desire to do so, but because of the uncertainty and vulnerability of his condition, which throws him back on his own resources.

But, the more fundamental consequence of that condition is a restlessness or unease [*inquiétude*], which makes that pursuit unsatisfying. Tocqueville notices that the Americans were “serious and almost sad, even in their pleasures,” as the pursuit of worldly gain is an inadequate, because self-contradictory, response by democratic man to the consequences of his own mortality:

It is strange to see with what feverish ardor the Americans pursue their own welfare, and to watch the vague dread that constantly torments them lest they should not have chosen the shortest path that may lead to it.

A native of the United States clings to this world’s goods as if he were certain never to die; and he is so hasty in grasping at all within his reach that one would suppose he was constantly afraid of not living long enough to enjoy them...Death at length overtakes him, but it is before he is weary of his bootless chase of that complete felicity which forever escapes him. [DA II.ii.13, pp. 136-7]

From the chapter which immediately precedes the chapter on restlessness, namely “Why some Americans manifest a sort of Fanatical Spiritualism” [DA II.ii.12], it is clear that the undefined and isolated situation of the modern individual may actually drive a few away from the pursuit of worldly goods: “The soul has wants which must be satisfied; and whatever pains are taken to divert it from itself, it soon grows weary, restless, and disquieted amid the enjoyments of sense.”⁴⁰

Tocqueville’s displacement of commerce from a cause to an effect of modern enlightenment and the democratic *état social* also weakens the tie between commerce and modern “universality.” Tocqueville presents America as both the most democratic and the most deeply commercial of nations, similarly to the way Montesquieu presents England.

⁴⁰This possibility of disgust with the crassness of commercial society is found in Montesquieu’s England as well: “The majority who are witty would be tormented by that very wit; having disdain or disgust for everything, they would be unhappy while having so many grounds not to be so” [SL XIX.27]. However, unlike in Tocqueville, this disaffection is both confined to those with “*esprit*” — presumably those men of letters who are driven to produce “scathing” “works of satire” — and not, strictly speaking, justified. Moreover, this appears to be a specifically English problem — the crass egoism of commerce is, in the more moderate version of modernity, France, softened both by aristocratic “taste” and by “society,” the desire to please others.

For both thinkers, the universal tendencies underlying modernity are most clearly visible in one particular instance. However, while Montesquieu's England exactly epitomizes the modern condition as he understands it, Tocqueville's America is something of an exceptional case, *not* the most typical instance of what he understands modernity to be.

The differences between the two descriptions are revealing. For Montesquieu, commerce reflects the natural or universal human desire to acquire, to provide for the insecurity given to us as our condition; the propensity to pursue gain is thus just waiting to be unleashed by a favorable political climate, such as England's.⁴¹ England's modern government, which has a "nature" but requires no principle, permits the liberation of commerce and self-interest; also important is England's situation as an island. Tocqueville, too, cites America's physical situation and free political institutions [DA I.ii.9, p. 320; II.iii.18, pp. 235-6; I.ii.10, pp. 423-9]; but he downplays the importance of the former, citing Canada and South America to argue that "Physical causes do not therefore affect the destiny of nations so much as has been supposed" [DA I.ii.9, p. 320; cf. SL XX.5 and XXI.7]. Instead he dwells on the American character, in which a general tendency of modern society has become so pronounced as to become a national characteristic: the Americans, "who make a virtue of commercial temerity," differ "from all the commercial nations of our time" [DA II.iii.18, p. 236]; they "show a sort of heroism in their manner of trading" [I.ii.10, p.424]. Unlike his European counterpart, the American entrepreneur "does not follow calculation, but an impulse of his nature" [p. 425], referring to the "nature" of Americans, not human beings generally.

Thus Tocqueville links America's commercial culture with its particular political institutions somewhat differently from the way Montesquieu links commerce with the

⁴¹Some may prefer banditry to trade, but this is a risky way to provide for one's insecurity, and requires some bravery: Montesquieu suggests that most men will give it up, as commerce softens mores and provides easier alternatives to gain wealth.

English constitution. In Montesquieu's case, it is a question of finding the political form which *permits* unfettered commerce — republics must restrain commerce as problematic for virtue, and monarchies do not provide property rights secure enough for large-scale enterprise [SL XX.10]. If, as in England, the constitution provides sufficient liberty (i.e., security), an entrepreneurial spirit will flourish: "In short, one's belief that one's property is more certain in these states makes one undertake everything, and because one believes what one has acquired is secure, one dares to expose it in order to acquire more" [SL XX.4]. In Tocqueville's treatment of America, by contrast, free institutions must *encourage* commerce. In this connection, Tocqueville compares the impoverished French population of Canada and the industrious population of New England, who differ mainly by their laws and customs [DA I.ii.9, p. 320]. He elaborates in DA II.ii.7 ("The relation of civil to political associations"), explaining that the habit of associating for political goals teaches men how to combine in common economic enterprises. Active political participation, not just secure property rights, are necessary for an entrepreneurial culture to develop. As we shall see, this ties into Tocqueville's more "political" notion of modern liberty.

This shift away from "nature" as a force governing commerce is part of Tocqueville's more general critique of Montesquieu's use of nature. A little earlier, in what is certainly an implicit criticism of Montesquieu, Tocqueville writes: "Many people attribute these singular antisocial propensities and the reserved and taciturn bearing of the English to purely physical causes. I may admit that there is something of it in their race, but much more of it is attributable to their social condition, as is proved by the contrast with the Americans." [DA II.iii.2, p. 169; compare SL XIV.13].⁴² While Montesquieu had used "climate" rather than "race," Tocqueville's point here is that men are less conditioned by

⁴²Eduardo Nolla notes that the influence of climate in *Democracy* is "manifestly much greater in the drafts and the manuscript than in the final version" [DAN I.ii.9, p. 216, editor's note f].

the particular variations within “nature” than Montesquieu alleged. Tocqueville makes commerce less of a natural proclivity and more of a national characteristic than Montesquieu.

Perhaps because of its different origins, commerce for Tocqueville serves to moderate different human passions than it does for Montesquieu. In Montesquieu’s case, we remember, commerce can stand in for civic virtue, as the frugality and other habits necessary to get wealth [SL V.6] impose a self-restraint which checks the luxurious tendencies created by having wealth. This is especially true in England’s free government, where, because of constant political and economic competition, there is no time for the idleness and politeness which come with absolute government [SL XIX.27], and which foster luxurious tastes. Thus, in Montesquieu’s England, commerce functions as a kind of self-regulating mechanism — a constant preoccupation with the pursuit of wealth prevents the excesses which come from its unequal possession: “There would be solid luxury, founded not on the refinement of vanity, but on that of real needs, and one would scarcely seek in things any but the pleasures nature had put there” [SL XIX.27, p. 331].

Tocqueville’s discussion of America certainly picks up on this idea of modern bourgeois taste, although he traces it to equality, not commerce, and is equivocal in his evaluation of it: “The reproach I address to the principle of equality is not that it leads men away in the pursuit of forbidden enjoyments, but that it absorbs them wholly in the quest of those that are allowed” [DA II.ii.11]. However, commerce in America is useful less as a check on luxury — for Tocqueville, the modern age holds different possibilities and dangers than it does for Montesquieu — than as a check on the revolutionary potential of an egalitarian age. While Tocqueville traces America’s non-revolutionary character partly to the absence of an aristocracy to overthrow, he describes commerce as another brake on revolution:

I know of nothing more opposite to revolutionary attitudes than commercial ones. Commerce is naturally adverse to all the violent passions; it loves to temporize, takes

delight in compromise, and studiously avoids irritation. It is patient, insinuating, flexible, and never has recourse to extreme measures until obliged by the most absolute necessity [DA II.iii.21, p. 254; compare Montesquieu, SL XX.1-2; XXI.20].

Commerce becomes, in Tocqueville, not so much an engine of modernity, as a moderating force upon its underlying anti-nomian longings.

C. THE ORIGINS OF MODERNITY: THE LAWS OF NATURE OR NATURE'S GOD?

So far, we have seen how Tocqueville's explanation of modernity deploys "monarchy" and "commerce" as contributing causes of the democratic social condition, but in ways markedly different than in Montesquieu's account of world history. Neither monarchy's institutional legacy of limited sovereignty, nor the correlative liberation of acquisitive passions, is for Tocqueville the foundation of the modern age. Thus Tocqueville radicalizes the concept of modernity itself even as he makes its origins more obscure. Equality of conditions takes on the role of un-chosen, automatically growing catalyst that Montesquieu had given to commerce, a role it fills with difficulty. Equality is not subject to the same limitations from particular circumstances, both natural and sociopolitical, which circumscribed the growth of commerce in Montesquieu's account. Nor is it obviously rooted in nature as acquisitiveness is for Montesquieu. Whereas Montesquieu stresses that men's proclivity towards commerce, somewhat held in check in ancient societies, was nonetheless present there just as in the modern world, Tocqueville insists men's passion for equality — as well as their related inclination to pursue material gain — grows in proportion to the historical fact of equality. Where then is this equality supposed to come from?

In short, Tocqueville's new interpretation of modernity, while perhaps more satisfying than Montesquieu's as a description of experience, is bought at a heavy theoretical price: the very specific uses Montesquieu's narrative makes of both history and nature in tracing the origins of the English regime are no longer sufficient to explain the

origins of a modernity which is more universal, inevitable, and radically new. No wonder, then, that Tocqueville falls back on religious language in describing this history — men “have all been blind instruments in the hand of God” [DA I intro, p.6] — or describes his own reaction to it as a kind of “religious terror.” While, as we have seen, Tocqueville does make several attempts to describe the mechanisms by which this condition arises — the “how” — these do not entirely clarify the “why.” Tocqueville does not rest satisfied with this causal aporia — yet none of his attempts to resolve it is entirely satisfactory.

That for Tocqueville the most fundamental aspect of man’s new condition is a mentality — namely the belief in the “natural equality” of man — might suggest that the most fundamental modern revolution occurs not on the level of politics or economics, but on that of thought, of philosophy. Indeed, Tocqueville sometimes seems to lean this way, in sharp contrast to Montesquieu, who mentions Hobbes only to criticize him (and, what is really remarkable, does not mention Locke even once in a work which makes the English constitution the high point of liberty!). In the very first chapter of DA II, “On the Philosophical Method of the Americans,” Tocqueville points to the ever *more* radical character of modern thought, by which he means the ever broader scope of what it submits to man’s own judgment rather than to traditional authority:

In the sixteenth century reformers subjected some of the dogmas of the ancient faith to the scrutiny of private judgment; but they withheld it from the discussion of all the rest. In the seventeenth century Bacon in the natural sciences and Descartes in philosophy properly so called abolished received formulas, destroyed the empire of tradition, and overthrew the authority of the schools. The philosophers of the eighteenth century, generalizing at length on the same principle, undertook to submit to the private judgment of each man all the objects of his belief.

Who does not perceive that Luther, Descartes, and Voltaire employed the same method, and that they differed only in the greater or less use that they professed should be made of it [DA II.i.1, p. 5].

This transformation poses a difficult theoretical problem — not only the eventually greater breadth, but the initial narrowness of the modern method, must be explained: “Why did Descartes, choosing to apply his method only to certain matters, though he had made it fit to

be applied to all, declare that men might judge for themselves in matters philosophical, but not in matters political?" [p. 5]

As we have seen, Tocqueville tends to look at the shape of ideas as a function of the demands of the *état social*, rather than of the activity of the thinker. In the chapter under consideration, Tocqueville makes his usual explanatory move and traces the initially narrow application of the principle of enlightenment to the prevailing social condition.

The philosophical method here designated may have been born in the sixteenth century; it may have been more accurately defined and more extensively applied in the seventeenth; but neither in one nor in the other could it be commonly adopted. Political laws, the condition of society, and the habits of mind that are derived from these causes were as yet opposed to it [p. 5].

In his drafts, however, Tocqueville takes a somewhat more cautious and less reductionist view of the relation between knowledge and society; he also explains the reason behind his apparently simpleminded approach in *Democracy*:

After having produced a book that indicated the influence which equality exercised on ideas, usages, and mores, it would be necessary to produce another that showed the influence exercised by ideas, usages, and mores on equality of conditions. For the two things have a reciprocal effect on each other. And to take but one example, the comparatively democratic social condition of European peoples in the 16th century allowed the doctrines of Protestantism, founded in part on the theory of intellectual equality, to come into being and spread; and on the other hand, one could hardly deny that these doctrines, once admitted, had singularly hastened the leveling of conditions.

If I have examined the first of these influences, without occupying myself with the second, it is not because I had not known or appreciated the extent and the power of the latter. But I believed, that in a subject as difficult and as complicated, it was already doing a great deal to study separately one of the parts, to show it separately in relief, leaving to more capable hands the task of bringing into view, in one fell swoop, the entire tableau [YTC cited at DAN II.iii, title page, p. 143].

This dialectic of "reciprocal effect," while a more satisfying and complete view of the progressively more radical undermining of the authority of tradition, is not without difficulties of its own: if ideas are not simply the product of social conditions, but have a causal importance of their own, then perhaps it is to an initial revolution in thinking, not any social transformation, that one should look for the most fundamental origins of modernity.

Moreover, this picture of reciprocal influence leaves out of account another phenomenon that Tocqueville notices: the direction in which social conditions will influence thought is in no way predictable, as it is sometimes precisely the *lack* of democracy that leads to an excessive rationalism in thought. Thus Tocqueville in his notes identifies a “natural taste of the human mind (*esprit*) for general ideas” that lets certain minds in aristocratic societies “transcend the limitations of these societies,” which means that “aristocratic societies can enlighten themselves without ceasing to be aristocratic.”⁴³ Therefore, Tocqueville goes on to say,

One should not judge the condition of a people by certain adventurous spirits which appear within their fold, because it may happen that the latter are even more theoretical [*généralisateurs*] as the people themselves are less, and that the impossibility of establishing anything in the real world is what pushes them so energetically into entirely imaginary regions...I think the Germans of our day would not be carried so far into the research into general truth in philosophy if it was permitted to them to generalize some of their ideas in politics [YTC cited DAN II.i.3. p. 26, editor’s note “b”].⁴⁴

It is only, Tocqueville continues, when an entire people takes this spirit of generalization that one can call their social condition democratic and say that “from now on it is no longer a question of defeating democracy, but only of regulating it” [*loc. cit.*]. On this account, equality of conditions can explain only the changing demand for ideas; it does not explain the increasing radicalization of the ideas themselves.

Pointing out the ever more radical character of modern thought does not resolve, but only expresses, the theoretical conundrums into which Tocqueville’s modification of Montesquieu’s understanding of history has led him. One explanation, and an explanation

⁴³A quite different case is the radicalism of the philosophes in the *Ancien Regime*, which Tocqueville explains as a product of democratic passions among people who still lack experience of the practicalities of democratic government. That would fit in perfectly with the “reciprocal effect” scheme.

⁴⁴Marx makes almost exactly the same point about the Germans in *The German Ideology*, reprinted as pp. 146-200 in *The Marx-Engels Reader*, edited by Robert C. Tucker (New York: Norton, 1978).

to which Tocqueville sometimes seems inclined, for the “Providential” progress of equality and its Promethean, antinomian energy, is that equality somehow actualizes the nature of man. This would constitute a complete reversal of Montesquieu, for whom nature is only a negative standard: as we saw, for Montesquieu man is pointed away from the state of nature towards government, but no government in particular. The English constitution, the best practical solution to the political problem, hence emerged only by chance; it is best because, as a most artificial form of government, it is the most capable of restraining man’s naturally despotic inclinations. Its separation of powers, which “chance rarely produces and prudence is rarely allowed to produce,” stands at the other extreme from despotism, which “only passions are needed to establish” [SL V.14 with XI.7].

For Tocqueville, given his stronger sense of historical inevitability, nature would appear to be both more compelling — more of a positive standard, rather than a mere challenge to be faced — and less concrete. As we have seen, Tocqueville’s twin contrasts of aristocratic with democratic honor and liberty finally imply that the democratic condition befits the “natural” equality of men, aristocratic distinctions being something artificial that needs to be imposed by force. This is not to say that Tocqueville denies there are strong natural inequalities, but for him these do not have by nature a force or authority of their own. Instead, the most powerful natural experience is of likeness: even aristocrats are attracted by the sweetness and charm of family relations in the democratic order, because “the natural bond is drawn closer in proportion as the social bond is loosened” [DA II.iii.8, p. 195]. And, in any case, the inequalities in men’s natural gifts, in particular those of the intellect that “proceed directly from God” [DA I.i.3, p. 52] are exacerbated and made relevant only by civilization. In his *Memoir on Pauperism*, Tocqueville notes “equality is encountered only at the two extremes of civilization.” But the equality which occurs at the end of history is very different from the purely natural equality at the beginning; the original equality or near equality is only between pre-social men who are equally “weak and

ignorant,” whereas civilized men “can all *become* [my italics] equal because they all have at their disposition analogous means to obtain ease and happiness.”⁴⁵

For Tocqueville the modern condition corresponds somehow to the natural beginnings — while at the same time being the furthest point away from these beginnings. There is no reason why this correspondence should hold; the best Tocqueville can do is show the mechanisms that contributed to the development of equality in the context of European history. Yet Zetterbaum’s question remains: why is the growth of equality not a law of all civilization as such? It would certainly be very strange if it were only from the peculiar point of departure of late medieval Europe that history started moving towards its “logical” end. Indeed, as the example of antiquity shows, “civilization” can proceed quite far along without recognizing man’s natural equality:

Nothing shows the truth of this proposition [viz., the effect of social conditions on thought] more clearly than the opinions of the ancients respecting their slaves. The most profound and capacious minds of Rome and Greece were never able to reach the idea, at once so general and so simple, of the common likeness of men and of the common birthright of each to freedom; they tried to prove that slavery was in the order of nature and that it would always exist. Nay, more, everything shows that those many of the ancients who had been slaves before they became free, many of whom have excellent writings, themselves regarded servitude in no other light. [DA II.i.3, p. 15]

“Nature” is not satisfactory as an efficient cause of the modern condition: even if men are “naturally” equal in some respects, neither nature nor man’s conquest of nature works to realize that equality (as they had, assisted by chance, in Montesquieu).

When Tocqueville speaks in the introduction to *Democracy* of the growing equality common to both the U.S. and France, it is of “the same revolution going on throughout the *Christian* (my italics) world.” Apparently Tocqueville does not consider modernity quite so universal or natural as its own self-understanding — namely, men’s mutual recognition of

⁴⁵These passages from the *Memoire* are cited by Nolla at DAN I.intro, note q, pp. 6-7, as part of a critique of Zetterbaum. As Nolla notes, in the *Memoire* Tocqueville is “following almost literally Rousseau on the *Discourse on Inequality*.”

their “natural” equality — would make it appear. Like Christianity, equality makes a universal *claim*; yet Christianity is based on the “historical” event of Revelation, and for Tocqueville the democratic revolution, too, seems to be limited to those countries where Christianity was *actually* — i.e., historically — able to dominate.

The idea that some aspects of Christianity are congenial to modernity — or maybe are the real basis of modernity — is certainly not original to Tocqueville. It is a commonplace of his time, and an opinion that was ably defended well before that. Montesquieu, for example, notes that the “gentleness so recommended in the Gospel” is more suited to moderate than despotic government [SL XXIV.3]. More indirectly, he suggests that the trans-political nature of commerce resembles Christianity, as both tend to replace obedience to particular laws by obedience to some principles of equity underlying all law. Montesquieu follows Machiavelli in seeing a significant parallel between the decline of civic spirit in Antiquity and the rise of Christianity⁴⁶ — as one can see by comparing his praise of Stoicism in SL XXIV.10 with his criticism in the following chapter of religions which are overly “contemplative.” Stoicism, the most practically minded of the ancient schools “alone [of ancient philosophical sects] knew how to make citizens.” At the same time, this sect shared many features in common with its more “contemplative” younger, and more demotic, sibling Christianity — “the Stoics considered wealth, human greatness, suffering, sorrows, and pleasures to be vain things” [SL XXIV.10]. This likeness of the most, and the least, civic minded of the sects of antiquity hardly augured well for the future of classical political virtue. Montesquieu indicates that Christianity reveals nothing so much

⁴⁶See *Discourses on Livy*, trans. H. Mansfield and N. Tarcov (Chicago: University of Chicago Press, 1996), II.2, p. 131: “Thinking then whence it can arise that in those ancient times peoples were more lovers of freedom than these...our religion, having shown the truth and the true way, makes us esteem less the honor of the world...the ancient religion did not beatify men if they were not full of worldly glory...Our religion has glorified humble and contemplative more than active men.”

as the death of the ancient world by natural causes. The contemplative understanding of classical virtue had, quite naturally, replaced the practical: the latter, through its own success or imperial conquests, eliminated its own scope of action. Indeed, because of its contemplative leanings Montesquieu does not see Christianity as entirely compatible with modern liberal republicanism until, by way of the Reformation, it was infused with this-worldly principles, and thus made compatible with the idea of “work” [See SL XXIV.5, 11-12 with *Persian Letter* 85; note the use of the “Gabars” as an Islamic parallel to the Protestants].

Tocqueville’s analysis of the relation between Christianity and the modern order, however, asserts a deeper connection between the two than Montesquieu’s. On the one hand, he does follow his predecessor in attempting to give a socio-political explanation for Christianity’s rise out of the death of antiquity: the centralization of authority in the Roman Imperium, and the consequent weakness and political insignificance of individuals by comparison with the Emperor, “predisposed men to listen to the general truths that Christianity teaches” [DA II.i.5, p. 24]. On the other hand, Tocqueville names Christianity itself — rather than the Renaissance and Reformation — as the ultimate source of modernity’s founding principle, equality. The thought of the greatest minds of antiquity “was barred from further progress...the advent of Jesus Christ upon earth was required to teach that all members of the human race are by nature equal and alike” [DA II.i.3, p. 15]. The subsequent growth of equality over the past “seven hundred years” that Tocqueville describes in the Introduction to *Democracy* would merely be the means by which history brings this fundamental shift in outlook to practical fruition, at the same time overcoming the Catholic/aristocratic modification of Christianity that feudalism had accomplished.

Because Tocqueville notes that the social condition of the Roman Empire “predisposed” men to Christian teachings (which presumably pre-existed), he might appear to have some even more fundamental level of explanation for the origin of the

principle of natural equality. In fact, he does not. Indeed, Tocqueville's account of Christianity's original "context" is as reductionist as his attempt to derive the character of revolutionary ideology from the social conditions of the *ancien regime*. And it runs Tocqueville into a similar aporia: his demand-side explanation of ideology is insufficient, as he confesses in a letter to Kergorlay written 16 May 1858 — i.e., *after* the publication of the *Ancien Regime*:

There is moreover in this disease of the French Revolution something very strange that I can sense, though I cannot describe it properly or analyze its causes. It is a virus of a new and unknown kind. There have been violent Revolutions in the world before; but the immoderate, violent, radical, desperate, bold, almost crazed and yet powerful and effective character of these Revolutionaries has no precedents, it seems to me, in the great social agitations of past centuries. Where did this new race come from? What produced it? What made it so effective? What perpetuates it? [F]or the same men are still with us, even though the circumstances are different now; and they have a progeny everywhere in the civilized world. I am exhausting my mind trying to conceive a clear notion of this object and am seeking a way to depict it properly. Independently of all that can be explained about the French Revolution, there is something unexplained in its spirit and in its acts. I can sense the presence of this unknown object, but despite all my efforts, I cannot lift the veil that covers it. I can palpate it as through a foreign body that prevents me from grasping it or even seeing it.⁴⁷

One can see the same point, in a more modest way, from Tocqueville's use of the example of China in *Democracy in America*: while China is perhaps the closest parallel to the modern social condition, its equal subjection to centralized authority is not sufficient to produce the revolutionary new view of man as equal "by nature" which is the basis of the modern self-understanding.⁴⁸

To conclude, it would seem that for Tocqueville, despite the "naturalness" of the democratic social condition, its historical origins have something of a miraculous or

⁴⁷Cited by Francois Furet, *Interpreting the French Revolution* (Cambridge, UK: Cambridge UP, 1981), 163. The citation is from Tocqueville, OC, Tome XIII, Vol. 2, pp. 337-8.

⁴⁸Although China posed some of the same dangers as modernity to knowledge: DA II.i.10; to ambition, DA II.ii.19.

unexplained character. In Tocqueville's hands, "history" or the rise of the modern condition becomes a motion whose origins are unexplained and yet whose mechanisms are intelligible: it is thus like nature itself. Nowhere is this clearer than in the "Newtonian" comparison between the rise of democracy and the motion of the planets in the introduction to *Democracy* [p.7], the implication of which is surely that just as universal gravitation gave a powerful description of nature's "how" by circumventing the question of its "why," so Tocqueville, in making clear the "nature" of democracy, has overcome his "religious terror" [DA intro. p. 6]⁴⁹ without gaining knowledge of ultimate things. Moreover, like nature itself, history can be shaped by human artifice or knowledge, in particular that of the new political science: the form that the material of modern democratic society will take is hardly pre-determined. As we saw, Montesquieu's conception of liberty was based on the need to mediate, through artifice, the naturally despotic tendency of direct rule; in making history into a second nature, Tocqueville is led to radically modify that understanding of liberty, and the relation of liberty to modernity that Montesquieu associates with it. It is to that subject that we now turn.

⁴⁹See the discussion in Manent, TND, pp. 8-9.

CHAPTER FOUR
TOCQUEVILLE'S APPROPRIATION OF MONTESQUIEU'S
MODERN LIBERALLISM

We come now to the hinge of my argument: to show how Tocqueville, via a transformation of Montesquieu's understanding of the difference between antiquity and modernity, and a rejection of his progressive view of history, is led to pose the problem of modern liberty in a manner radically different from that of his predecessor. For Montesquieu, the fortuitous advent of modern England's liberalism replaces, and makes unnecessary, the classics' deliberate search for the best regime. Prior governments had been more or less free, and directed towards diverse ends, but it was only through a series of happy accidents, rather than the conscious design of some founder or lawgiver, that a government had emerged that worked as if it had "political liberty for its direct purpose" [SL XI.5]. The balance that had emerged between King and Parliament had made it almost impossible for rulers to rule directly, outside the constraint or mediation of fixed, known rules, and thus made it possible to think of government in the novel terms of legislative and executive "powers," so called because neither of them are sovereign, each being only an aspect or agent of sovereignty. The *Esprit des Lois*, taken as a whole, shows how this new form of government combines the advantages, and moderates the defects, inherent in the main two previous political forms that one might look to when trying to find a basis for the rule of law: the classical republic and the post-feudal European monarchy. While perhaps not replicable elsewhere, the practical achievement of English liberal constitutionalism (once

Montesquieu has interpreted and theorized it) provides the grounds for a self-conscious sense of “modernity” — a sense of having superseded the past, a happy closure.

Of course, I have structured my treatment of Montesquieu’s political science around the two coextensive themes of liberty and modernity to highlight the more complicated interplay of these themes in Tocqueville. Liberty is for Tocqueville, as for Montesquieu, the guiding theme of political science and the standard by which different regimes are compared. Further, Tocqueville shares his predecessor’s — and in general, the nineteenth century’s — idea of “modernity”: history, no longer an endless cycle but a meaningful culmination, has brought us to a singular, and definitive, moment. But for Tocqueville, as we saw, the larger meaning of history lies not in the achievement of liberty or free government but in the rise of the “democratic social condition,” a condition based practically on the dissolution of hereditary class distinctions but most fundamentally on a belief in the natural equality of human beings. In striking contrast to Montesquieu, for Tocqueville the question of liberty is distinct from the question of modernity; the democratic social condition is not *constituted* by liberty but requires (if there is to be liberty at all) a liberty of a *new kind*.

We are now in a position to compare Montesquieu and Tocqueville on the question of liberty, but there is a difficulty.¹ While it is far from simple to prove that Montesquieu’s notion of liberty forms the linchpin of his entire political science, it’s not hard to discern that he *has* a clear and consistent notion of liberty. Tocqueville presents the opposite problem: liberty is manifestly his overriding practical concern, but it is very difficult to say exactly what he means by it. Tocqueville never defines liberty; he even says it is impossible for those who have never tasted liberty to know what it is! [AR III.3, end]. The reason why

¹It now becomes clear why I found it advisable to defer a consideration of Tocqueville’s notion of liberty until after I had contrasted Tocqueville’s comparative politics, and his philosophy of history, with Montesquieu’s. Without this larger context, simply to compare what Montesquieu and Tocqueville mean by “liberty” would have been a mere exercise in semantics.

Tocqueville's notion of liberty is so elusive, as a comparison with Montesquieu's approach to the question of liberty shows, is that in Tocqueville's treatment liberty cannot simply be put on the "modern" side of the divide between antiquity and modernity, whether that divide is understood in Tocqueville's terms or in Montesquieu's. There are two, related, difficulties: Tocqueville distinguishes a "modern" form of liberty, while showing at the same time that liberty and the democratic *état social* have a most uneasy relationship; and, the demands of modern liberty, as understood by Tocqueville, seem to evade some of the difficulties that Montesquieu had pointed to in setting out the alternatives of ancient or direct versus modern or institutionally mediated republicanism.

First, as we have seen from the passage cited in my chapter two from the introduction to the *Ancien Regime*, Tocqueville sees the modern or democratic social condition as more compatible with despotism than with liberty:

When men are no longer bound together by caste, class, corporate or family ties, they are only too prone to give up their whole thoughts to their private interest, and to wrap themselves up in a narrow individuality in which public virtue is stifled. Despotism does not combat this tendency; on the contrary, it renders it irresistible, for it deprives citizens of all common passions, mutual necessities, need of a common understanding, opportunity for combined action; it walls them up, so to speak, in private life. [AR, preface]

This diagnosis might very well lead one to expect that Tocqueville would try to appeal to some objective or a-historical ground or definition of liberty, based on man's nature, that modernity puts in danger — just as Montesquieu had made such an appeal to establish the *criterion* of modernity. Famously, he does not. What replaces such a definition is Tocqueville's analysis of the difference between democratic and aristocratic, modern and pre-modern, liberty. As Pierre Manent points out, this distinction "situates itself at the most problematic core of his vision."²

²TND, p. 36.

While the modern belief in natural equality is connected, theoretically, to the idea of individuals' natural freedom and independence from each other, the practical consequence of the inherent weakness of the individual so conceived is that he is easily subjected to the "general will" of the mass. Modern or democratic liberty has, in practice, a self-undermining tendency. Consequently, Manent argues, "in order that democratic societies understand liberty, it will be necessary to *add* liberty to this equality with which it would seem to be identical."³ If liberty must be added, though, it would seem to be a criterion *external* to the nature of modern society — much like the "exalted sentiment of one's individual value" [PSCF, p. 165], which is endangered by modern society but native to aristocratic society and the particularistic self-assertion of citizens or of nobles. Tocqueville equivocates between the aristocratic and democratic versions of liberty because while the latter is "just," its underlying rationale, the democratic belief in the "natural" equality and independence of men, is not the whole truth. Moreover, this belief is shared by men in all modern regimes, but not all of these are free; this rationale is thus perhaps necessary but hardly sufficient to motivate the actual practice of liberty such as one finds it in modern liberal democracies. However, if liberty means different things at different times and is not grounded by any objective or natural standard — how can it serve as any kind of critical standard by which to judge regimes?

Secondly, even if one assumes that Tocqueville is unambiguously on the side of, as he calls it in "The Political and Social Condition of France," "the modern, the democratic, and we venture to say the only just form of liberty,"⁴ this does not resolve our perplexity: the means by which Tocqueville wants to promote democratic liberty seem to confound Montesquieu's distinction between ancient and modern republics. Sometimes Tocqueville

³TND, p. 43, my emphasis.

⁴PCSF, p. 167.

discusses liberty by way of the “liberal” themes of the separation of powers, intermediary bodies, or the idea of rights — all of which, he insists, belong to modern liberal democracy. At other times, however, Tocqueville treats popular sovereignty, together with the dispositions and habits it requires in its citizens, as essential to modern liberty — rather than, as Montesquieu would have it, a mere means, one among many in modern government, to promote “liberty” understood as the rule of law. Tocqueville thus uses “political liberty” to refer to that which Montesquieu had distinguished as belonging to the “power” of the people as opposed to their liberty. Self-government, Montesquieu argued through his analysis of classical republics, requires an austere education in “virtue” incompatible with interest-based modern politics. Therefore, Montesquieu had shown how the principle of self-government was, in the modern republic, sharply curtailed in practice by liberal forms. Yet, while insisting both that the sovereignty of the people could no longer be contained by governmental forms, and that what modern society needed was occasions for citizens to be involved directly, Tocqueville continues to associate modern society with “interest” rather than virtue.

As Tocqueville’s discussion of modern liberty blurs the dichotomy, central to the *Esprit des Lois*, between ancient or illiberal and modern republics, so it often echoes the more sympathetic presentation of the ancients in Montesquieu’s *Considerations*. In that work Montesquieu seems impressed not so much with the self-denial required by classical virtue as with its connection to individual strength and self-reliance. Strikingly, these are the very qualities Tocqueville emphasizes in his discussions of *modern* liberty; more than possessing either rights or a share in sovereignty, his definition of a free people is one that is made up of a certain type of citizens, those who can act and think on their own. Political liberty for Tocqueville is neither merely liberty in the “negative” sense (the “opinion of security” stemming from a lack of fear of prosecution or harm by another citizen) nor the franchise; rather, it rests on a capacity or strength of character that makes one less

dependent on others. He lauds those Americans who combine a sense of personal responsibility with what we now call “gumption” or a “can-do” attitude. They are free men, able to act on their own initiative to meet society’s needs or their own, likely to set up local government or associations rather than passively waiting, as the French were wont to do, for a centralized administrative power to help or direct them.⁵

In short, Tocqueville treats the Americans’ capacity for liberty as a kind of virtue. In his notebooks, after recording a conversation with the president of Harvard University, who characterizes Massachusetts as “a union of little republics,” Tocqueville notes the connection between decentralized authority and the taste for liberty in striking terms:

One of the happiest consequences of the absence of government (when a people is happy enough to do without it, a rare event) is the ripening of individual strength which never fails to follow therefrom. Each man learns to think and to act for himself without counting on the support of any outside power which, however watchful it be, can never answer all the needs of man in society. The man thus used to seeking his well-being by his own efforts alone stands the higher in his own esteem as well as in that of others; he grows stronger and greater of soul [*Journey to America*, p. 51].

Unlike Montesquieu, however, Tocqueville does not consider the spirited love of liberty to be merely a political virtue. He finds that what is true of action soon becomes true of thought as well, and he worries that in modern democracy men are forgetting their spirited self-assertion, losing the courage of the founders to voice their thoughts in the face of public censure [DA I.ii.7]. By the time of Volume II of *Democracy*, Tocqueville’s concern had so deepened that he questioned whether modern man would continue to be sufficiently spirited even to think such thoughts, much less express them [DA II.i.1-2; 9-10]. While Montesquieu had suggested softness (commerce and luxury) led to the growth of

⁵The *locus classicus* is, of course, the discussion of the effects of local liberty and administrative decentralization in DA I.i.5, and the discussions of associations in DA I.ii.4 and II.ii.5; Tocqueville’s constant frame of reference is the comparison of this activity with the passivity brought about by the French administrative state, the latter subject being more fully discussed in the *Ancien Regime*.

knowledge, Tocqueville, in a surprising reversal, claims that precisely the “soft” tendencies of modern man will prevent the future emergence of intransigent truth-seekers like Pascal [DA II.i.10]. He departs from Montesquieu in this linkage of the problems of political and intellectual liberty, together with the connection to spirited self-assertion that modern liberty must preserve.⁶

Thus Tocqueville detaches liberty from a privileged association with “modernity,” and applies it toward multiple ends: individual freedom from government restrictions, civic involvement, individual initiative and sense of responsibility, intellectual autonomy. Given all this, one wonders whether he holds any coherent or even consistent understanding of liberty at all, or simply a hodgepodge of concerns from different sources. Such difficulties in Tocqueville’s notion of liberty have sparked much scholarly controversy: some interpreters deny that Tocqueville is part of modern “liberalism,” others maintain that he is, and still others hold that he is a “strange” or “aristocratic” liberal.⁷

As usual, however, Tocqueville’s position becomes clearer by comparison with Montesquieu’s. Montesquieu’s analysis of regimes prior to England was guided, we remember, by his estimation of the degree of liberty compatible with each of these moderate

⁶*A fortiori*, these same considerations distinguish his discussion from Rousseau’s political solution to the problem of modern liberty, namely the civic denaturing of individuals so that they identify with the “general will.” Tocqueville’s notion of liberal government modifies, but does not entirely break with, Montesquieu’s “liberal” distinction between the “power” of the people and their liberties, upon which the limitation of government is based.

⁷For examples of the first type, see the articles by Hennis, Banfield, and West in IDTA, as well as John Koritansky, *Alexis de Tocqueville and the New Science of Politics: An Interpretation of Democracy in America* [Durham, NC: Carolina UP, 1986]; for the second view see the works, cited previously or below, of Zetterbaum, Lively, Lamberti, Aron; for the third see Roger Boesche, *The Strange Liberalism of Alexis de Tocqueville* (Ithaca, NY: Cornell UP, 1987) and Alan Kahan, *Aristocratic Liberalism* (Oxford: Oxford UP, 1992), both of whom follow the suggestion of Melvin Richter [*op. cit.*] that Tocqueville is part of the “tradition” of “civic humanism,” as that term is used in the works of J.G.A. Pocock. I will assess the respective merits of these various lines of interpretation as the need arises in the course of my interpretation.

regimes: republics and monarchies each had potentials for liberty in different ways, and even despotism could be moderated by mores. Montesquieu interpreted various forms of the pre-modern and proto-modern as predecessors, because approximations, of England's liberal modernity. Strikingly, Tocqueville never uses liberty as a standard of comparison for pre-modern societies, as the project of building a progressive history demanded Montesquieu do; rather, Tocqueville uses it as a standard for comparing the governments of modern societies, in particular the U.S., France and England.

This crucial shift of the focus of comparison happens, I would suggest, because for Tocqueville pre-modern societies are essentially *constituted* by some type of political liberty.⁸ To be sure, aristocratic liberty, forming as it does the basis of class rule, necessarily takes an arbitrary, hence unjust form, as it is embodied in the particular rights of the few. Even so, liberty is natural to pre-modern societies, whereas in democracy it “will always be the product of art” [DA II.iv.3, end]. Tocqueville's departure from Montesquieu is nowhere clearer than on this point: rather than developing a criterion of liberal modernity, as Montesquieu does using England, Tocqueville approaches the problem of liberty by first constructing a pre-modern ideal type, “aristocracy.” Then he uses this ideal type to compare how free the various modern governments are, i.e., what place is left for freedom in the different political forms taken by the material of the modern *état social*. As Pierre

⁸Tocqueville's brief remarks about China might seem to be an exception [DA II.i.10 with II.iii.19], but as he uses China to illustrate the possible long-term effects of the modern social condition, this pre-modern example of egalitarian despotism seems to be the exception that proves the rule. To be sure, as I pointed out in the last chapter, China lacks the defining aspect of Western modernity, the belief in the “natural” equality of man, yet the effects of its centralized administration are still illustrative for modern democrats. The belief in natural equality is at the root of the modern social condition, but is not sufficient to determine the specific political forms that condition will take. If anything, centralized government will have even more of an effect in the modern *état social* — hence the relevance of the Chinese example to understand the consequences of administrative centralization in our own day.

Manent puts it, “democracy, under the heading of the political art, has for its task the construction of that which was given in aristocratic societies.”⁹

Thus, despite Tocqueville’s claim that the democratic form of liberty is “more just,” commentators who suspect an aristocratic coloring to Tocqueville’s notion of liberty are on to something.¹⁰ The taste for liberty is only problematic in modern society, where men do not assert the prerogatives due them as part of their *particular* condition — just as, in Tocqueville’s treatment of honor, the force of social norms becomes weaker as their content approaches the universal. As the democratic *état social* reveals the defects of the aristocratic societies with respect to justice, so aristocracy forms the comparative standard by which one can see the problems the modern condition poses to political liberty.¹¹ Various forms of modern politics can be distinguished, then, based on how far they preserve, in a more just form to be sure, those pre-modern sentiments and social relations which inspire men *both* to acting and thinking independently of society or public opinion, *and* to claiming an active share in political rule. Whereas Montesquieu separates these two qualities of independence and active political participation, Tocqueville treats them as inseparable constituents of liberty. He finds both in aristocratic “society” or rather in aristocratic politics; aristocratic society for him is constituted by its politics, by a particular distribution of liberties. It is only the government of *democratic* society that may be free or not, depending on the form its politics take.

⁹TND, p. 45

¹⁰As Tocqueville candidly said to Gobineau: “That liberty is more difficult to establish and to maintain in democratic societies like ours than in certain aristocratic societies that preceded us, I have always said.” Letter of January 24, 1857 in *Selected Letters*, pp. 342-8, at p. 347.

¹¹Pierre Manent, TND, pp. 157; 161ff.

The markedly “political” aspect of Tocqueville’s conception of liberty is what most obviously separates that conception from Montesquieu’s. This difference can be traced to the fact that [as we would put it] the separation of “society” as a relatively autonomous realm from “government,” implicit in Montesquieu’s notion of liberty and his distinction of modern from classical republicanism, is not the burden of Tocqueville’s notion of liberty. As we remember, Montesquieu had recast the relation between state and society as part of a deliberate project to redefine the function of government as the making and execution of laws in order to protect the security of individuals. Montesquieu’s reconceived government leaves matters such as sexual mores and religious practice largely to constraints such as custom and public opinion [SL XII.4ff].¹² By Tocqueville’s time, however, this limited conception of political authority, although not always honored by modern governments, had become an unexamined axiom for most modern men. As one of Tocqueville’s American interlocutors says, “Everything which is a question of opinion is perfectly free,” which assumes not only that governmental sanctions are applicable only in the case of concrete harm to another individual, but that the opinions of others do no harm.¹³ Thus, Tocqueville takes the separation of state and society largely as a given: in his view it is a consequence of the growth of the democratic social condition, a condition whose effects his concept of liberty aims to moderate.

I can now state my thesis quite simply. Tocqueville, like Montesquieu, is a “liberal” in the sense that he understands the true end of politics to be securing liberty through

¹²His procedure here is not without a certain slight of hand, as if the idea of a “private sphere” of actions immune to legal supervision followed naturally from the idea of “law” itself, namely that law cannot punish a person’s inner thoughts or character as such, but only as they appear publicly, i.e. through their actions. This makes it appear, falsely, that laws that are not “liberal” are simply confused.

¹³*Journey to America*, translated by George Lawrence [New Haven: Yale, 1960], p. 30.

artifices. But because they read the meaning of European history differently, Tocqueville and Montesquieu differ on the biggest danger these artifices must overcome. Whereas Montesquieu aims primarily to neutralize people's "natural" fear and insecurity, Tocqueville is more worried about the "nature" of the growth of democratic society: its inherent tendency, originating in something more fundamental than the form of government, (a modern demotion of "politics" anticipated but not clearly seen by Montesquieu) to dissolve all concrete social relations into "democratic dust."¹⁴ Although he means many things by liberty, Tocqueville's *goal* in fostering it is always the same: to stem democracy's threat to the full exercise of human capacities. While consistent with Montesquieu's project of safeguarding against "despotism" in the sense of arbitrary power, Tocqueville's liberal artifice aims more specifically at the new "soft despotism" possible only in modernity. The statesman's art is to moderate the democratic social condition's natural tendency both to foster an unlimited passion for equality and to dissolve society into disconnected, dependent subjects of a paternalistic state.

To these ends, Tocqueville argues that certain pre-modern institutions, namely property, the family, and religion, while they must take new forms to be more compatible with the democratic social condition, are not and should not be based entirely on modern principles, which derive all authority from consent. Rather, they should continue to rest on

¹⁴J.C. Lamberti highlights this transformation, if unintentionally, when he instructively juxtaposes the two thinkers' notion of artifice in his exhaustive study *Tocqueville et les deux Démocraties* [Paris: PUF, 1983] [Hereinafter "Two Democracies"], at p. 293. Lamberti notes, on the one hand, Montesquieu's contrast [SL V.14] between the rare artifice of the balanced powers of moderate government, and despotic government, the simplest and hence most likely form of rule, which "only passions are needed to establish, " and on the other, Tocqueville's warning [DA II. iv. 3] that "individual independence and local liberties will always be the product of art, whereas centralization will be the natural form of government." As I'll argue below, Lamberti's attempt to cast Tocqueville as a liberal follower of Montesquieu shows a failure to grasp the significance of Tocqueville's new problematic of liberty, where the chief locus of concern is no longer "nature" or the unmediated will of one man over another, but the "natural" tendencies of modernity.

principles understood as given by something beyond human convention or agreement, either Nature or God. For example, the democratic family, different though it is from the aristocratic family, is rightly based on an order — the differentiation of inherently male and female responsibilities — seen, at least in the America of Tocqueville’s day, as “natural,” making this order quasi-”aristocratic” by Tocqueville’s own definitions.¹⁵ At the same time, Tocqueville thinks the other, more explicitly political, aspects of society, such as intermediary bodies between the sovereign and the citizen, can and must be reconstituted according to the principles of equality and consent.

Despite the upheaval of revolution, and the influence of Pascal and Rousseau, Tocqueville is neither anti-liberal nor anti-modern. Tocqueville’s more radical conception of modernity leads him some distance away from, but not to a wholesale rejection of, Montesquieu’s liberalism precisely *because* he reinterprets modern liberty as a politics directed to the moderation of modernity’s illiberal potentials, potentials not clearly seen by Montesquieu. In this chapter, I examine the extent to which Tocqueville’s presentation of a liberal democracy appropriates and carries forward Montesquieu’s project: describing the bases of a politics that is both modern and liberal. The first section focuses on the vexed question of what sort of “liberal” is Tocqueville, the second on the manner in which Tocqueville’s version of liberalism interprets those liberal institutions that play such a prominent role in Montesquieu’s thought. In both, I argue that Tocqueville does not so much reject as reinterpret Montesquieu’s goal of limiting the republican principle by liberal

¹⁵As Tocqueville says in his notes for DA, “the aristocracy of sex is the most natural, the most complete, and the most universal that is known” [DAN II.i.3, p. 26, editor’s note b]. Tocqueville goes on to say that the mixing of the sexes in Europe, as compared to the “orient,” has made the minds of both sexes bolder and their ideas more general, but his treatment later in *Democracy* shows that, if this moderation of difference is a stimulus to thought, it is bad for society if carried too far. Democratic thought (via the self-radicalizing tendency in that thought that Tocqueville described so well) has in our time recast the order of the family as mere “sex roles”; this has made it possible to view these “roles” ironically but has hardly managed to eradicate them from modern practice.

“forms,” reconsidering that goal in light of the problem of post-revolutionary legitimacy and the resulting awareness of modern liberal institutionalism’s intrinsic limits.

This analysis sets the stage for the following chapter, which argues that, paradoxically, Tocqueville is led to incorporate, into his understanding of modern liberty, elements of Montesquieu’s discussion of the classics: modern liberty requires practices, habits, and opinions which blur the very distinction between ancient and modern republicanism upon which Montesquieu had so adamantly insisted. Moreover, these considerations ultimately lead Tocqueville to a fundamental, if implicit, critique of Montesquieu’s understanding both of classical republicanism, and ultimately of the problem of liberty itself. If this is true, then it is not possible to treat Tocqueville’s “liberalism of a new kind” as a simple adaptation of Montesquieu’s political science to new circumstances. While Tocqueville does share with Montesquieu a fundamental similarity in approach — of not judging politics by some absolute “best regime” or standard of human excellence, but rather of trying to make as much room for “liberty” as the circumstances of a particular regime allow — Tocqueville’s post-revolutionary rethinking of the problem of liberty seems to bring with it a partial return to the concerns of classical political science, namely politics understood as a clash between partisan views of Justice.

*A. FROM LIBERTY AS SECURITY TO DEMOCRATIC LIBERTY:
IS TOCQUEVILLE A “LIBERAL”?*

To see what Tocqueville’s discussion of modern liberty carries forward of Montesquieu’s modern liberalism, let’s begin by comparing how they understand the relation of modern liberty to its antecedents. While Tocqueville does not define liberty, he does, as we have seen, distinguish between “aristocratic” and “democratic” forms or bases of liberty, between privileges held as a result of one’s rank in pre-modern society, and the

sovereignty that all modern individuals claim over themselves. Strikingly, “aristocratic liberty” encompasses both the classical citizen’s claim to share in rule [as opposed to women, slaves, resident aliens, and, in many cases, the demos], and the special prerogatives, such as those of nobles and towns, held under feudal monarchy. Montesquieu, too, depicts the classical republic and the feudal monarchy as the two main non-despotic alternatives prior to England. A problem arises, however, because in their respective analyses modern liberty has a somewhat different relation to its two pre-modern antecedents.

Montesquieu, as we have seen, is at pains to distinguish the “power of the people,” or the previous and “false” understanding of liberty as a share in sovereignty, the source of the factional conflict that plagued the classical republics, from the true understanding of liberty — the opinion of security — “found” in modern constitutionalism. Strange as it may seem, the *sine qua non* of the latter is the government of the barbarian tribes who conquered Rome — “this fine system was found in the forests” [SL XI.6] — so it is in the dim past that we must look to understand what is distinctive about the modern republic. In Montesquieu’s version of history, because “the ancients had no clear idea of monarchy” [XI.8], namely “the government founded on a body of nobility,” they could not even dream of, let alone establish, a liberal constitution. This modern or limited form of government, wherein the “executive power” of one became ministerial to law’s general rule, had as its necessary predecessor feudal, i.e. real, monarchy, wherein sovereignty was channeled by *pouvoirs intermédiaires* who do not, strictly speaking, share in it. For Montesquieu, this peculiarly European form of government was the necessary bridge from antiquity to modernity, because it is under monarchy that the question of the “form” of government, or how rule is exercised, became separate from the question of who rules.¹⁶ Despite being the ancestor to the modern separation of powers, however, feudal monarchy was very defective with respect to liberty — “the common people were slaves.” Rather, the merit of “Gothic government” lies in the fact that “it was a good government that had within itself the capacity to become better,” as the “prerogatives” of the nobility became, in England, the “liberties” of the people [XI.8].

Tocqueville’s emphasis is different. For him the democratic revolution — the birth of modernity — had its long gestation in the necessary self-destruction of European feudal monarchy, not in its fortuitous improvement in England. Whereas Montesquieu considers feudal prerogatives — and the institutional forms that evolve from them — the *sine qua non*

¹⁶See Mansfield, *Taming the Prince*, esp. pp. 239-42 with p. 177; 187-8; cf. pp. 28-32.

of modern constitutional liberty, Tocqueville presents such class-based prerogatives — rights held apart from any share in government — as the furthest contrast with the situation of modern man and his understanding of liberty, even further than classical citizenship with its built-in inequalities. While Tocqueville does acknowledge the improvements on classical republicanism that mediated sovereignty makes possible, he does not consider it the defining element that separates classical and modern republics. Hence the problem: modern or democratic liberty does not arise with, nor is it inherently linked to, any institutional forms that would limit popular sovereignty so as to make individual rights more secure, or in fact any specific institutional forms at all.

The apparent differences between liberty understood as the “opinion of security” and democratic liberty founded on an idea of “natural equality” — namely that the latter, unlike the former, is not separable from the “power of the people” — prompt several related questions: What sort of “liberal” is Tocqueville, i.e., to what degree does his notion of liberal democracy promote the goals of Montesquieu’s liberalism? How does Tocqueville understand the problem pointed to by Montesquieu’s critique of classical republicanism, namely the fundamental tension between liberty and democracy? And, to what extent, and in what way, does Tocqueville’s political science incorporate Montesquieu’s solution to this problem, namely limiting the republican principle through the forms of liberal government? These questions highlight the subtlety of Tocqueville’s position. On the one hand, as I will argue in the first section below, Tocqueville’s more democratic understanding of modern liberty is not, in itself, due to a departure from Montesquieu’s liberal principles; rather, it stems from Tocqueville’s post-revolutionary rethinking of the relations between popular sovereignty, formal restraints, and legitimacy. On the other hand, Tocqueville is no straightforward liberal follower of Montesquieu, as J.C. Lamberti and others have maintained. Their line of interpretation, I will argue in the second section below, pays insufficient heed to the degree to which modernity understood

as the democratic social condition impels Tocqueville to rethink the basis of the distinction Montesquieu had made between the power of the people and their liberty — in other words, to re-conceptualize the entire problem of modern liberty itself.

1. LIBERAL REPUBLICANISM: RETHINKING THE RELATIONS BETWEEN POPULAR SOVEREIGNTY, FORMAL RESTRAINTS ON POPULAR WILL, AND PUBLIC SPIRITEDNESS.

From the famous passage in “The Political and Social Condition of France” in which Tocqueville contrasts the aristocratic with the democratic form of liberty — perhaps the clearest indication Tocqueville gives of their distinction — there would seem to be a simple harmony between the democratic view of liberty and the “liberal” understanding common to both Montesquieu and Locke:

According to the modern, the democratic, and we venture to say the only just form of liberty, every man, being presumed to have received from nature the intelligence necessary for his own general guidance, is inherently entitled to be uncontrolled by his fellows in all that only concerns himself, and to regulate at his own will his own destiny.¹⁷

This definition of liberty, as Edward C. Banfield points out, is “very much like”¹⁸ what Tocqueville sees as the basis of the liberal democratic American regime in *Democracy in America*: “that Providence has given to every human being the degree of reason necessary to direct himself in the affairs that interest him exclusively is the grand maxim upon which civil and political society rests in the United States” [DA I.ii.10, p. 418]. Moreover, the democratic definition of liberty would also express perfectly the spirit of what is often called “negative liberty,” the phrase “inherently entitled” recalling Locke’s “natural” or “inalienable rights.” Montesquieu, to be sure, does not speak of a social contract or inalienable rights; giving far greater weight to history than earlier liberals, he curtails any

¹⁷PSCF, p. 167.

¹⁸Edward C. Banfield, “The Illiberal Tocqueville,” in ITDA, pp. 239-254, at p. 244.

demand that society live up to some universal standard. Yet, as we saw in the first chapter, his conception of liberty as security, and his conception of modern government, both follow from a similar rejection of any natural basis for the rule of one man over another. Much as in Tocqueville's description of America, in Montesquieu's England man regains something of his natural sovereignty over himself: "as no citizen would fear another citizen, this nation would be proud, for the pride of kings is founded only on their independence" [SL XIX.27].

Yet, it is obvious that the promotion of the "negative" or "liberal" notion of liberty is hardly Tocqueville's only concern. Banfield, for example, goes so far as to claim that Tocqueville holds two "antagonistic" concepts of liberty, because the modern conception of liberty is identical with "individualism," which Tocqueville considers the key defect in the modern *état social*. "Individualism" leaves men with a false sense of self-sufficiency:

they owe nothing to any man, they expect nothing from any man; they acquire the habit of always considering themselves as standing alone, and they are apt to imagine that their destiny is in their hands...[in the democratic social condition] each man is thrown back forever upon himself alone, and there is a danger that he may be shut up in the solitude of his own heart. [DA II.ii.2, p. 99; cited by Banfield pp. 242-3].

By making "individualism" the main defect of modern society, says Banfield, Tocqueville is led to an illiberal notion of liberty based on civic virtue. In being so quick to assert an "illiberal" and "antagonistic" character to Tocqueville, however, Banfield ignores an important difference between "individualism" and the modern definition of liberty. Modern democratic liberty implies that men are "inherently entitled" to determine only what concerns themselves alone; the fact that some things are properly a matter of public concern makes individualism a false view, one whose error modern men can see by gaining actual experience of politics. Democratic politics is the way to ameliorate the vices of the democratic social condition. Moreover, in pointing to the passage in *Democracy* that resembles the "modern definition of liberty," Banfield jumps right over the preceding

sentence, which places this definition back at the beginning “of a long chain of opinions which binds the whole Anglo-American world,” whose “last link” is the “sovereignty of the people” [DA I.ii.10, p. 418].

Despite the injustice of making Tocqueville a follower of Robespierre,¹⁹ however, Banfield’s charges of an “illiberal Tocqueville” have the merit of drawing attention to the place where Tocqueville’s approach to the question of liberty departs from his predecessor’s. It would seem that, from Tocqueville’s perspective, Montesquieu’s version of modern liberal government — being self-governing or republican in principle, while in fact strongly limiting popular will via institutional forms inherited from monarchy — is based on an evasion of the democratic consequences of modernity, and thereby places too much reliance on forms. For Tocqueville the modern notion of liberty necessarily brings with it a democratic notion of justice, of who should rule — a claim no modern regime can afford to ignore if citizens are to have any reason to obey the law other than force, and hence if there is to be limitation on the use of force based on the distinction between its lawful and unlawful uses.

It is only rule and obedience without legitimacy, Tocqueville says in the introduction to *Democracy*, that degrade men: whereas men in aristocratic ages “submitted to their exactions without resistance or servility, as to the inevitable visitations of the Deity” [DA I, intro p. 8], the only basis left for legitimacy now is popular sovereignty. A central task for modern liberty, Tocqueville says in the same place, is therefore to reestablish on democratic

¹⁹See Banfield, *op. cit.*, p. 251: “All this is reminiscent of Robespierre, whose vision of political life, Stephen Holmes has written, was dominated by a dichotomy between base self-interest and noble virtue, for whom citizenship presupposed a preference for the public interest over all private interests, and for whom the first duty of a politician was to form and preserve public morality.” (Banfield cites here Holmes’s *Benjamin Constant and the Making of Modern Liberalism* (New Haven: Yale U.P., 1984), pp. 48-9.)

grounds the legitimacy that has been shaken by the overturning of aristocracy, a task in principle consistent with limiting sovereign power by formalizing it:

The great end of justice is to substitute the notion of right for that of violence; to place intermediaries between the government and the use of physical force. It is a strange thing, the power, accorded by the general opinion of men, to the intervention of courts [DAN I.i.8; cf. the discussion of judicial review in I.i.6]

While Tocqueville understands completely the connection between liberal or limited government and the individualism of modern thought, the latter is an insufficient basis for the former — as has always been the case, government power can be limited only by an accepted notion of its lawful use.

Liberal or limited government cannot be based simply on the restraint of popular sovereignty by formal or procedural safeguards, because a respect for these forms can come only from establishing the distinction between right and force on a modern or democratic basis. That modern liberal government depends upon finding a moral basis consistent with popular sovereignty is apparent from Tocqueville's discussion of "The Idea of Rights in the United States" [DA I.ii.6]. It is rights, rather than mere popular sovereignty, that make modern government more than a matter of pure force: they "enabled men to define anarchy and tyranny, and taught them how to be independent without arrogance, and to obey without servility" [p. 244]. The idea of individual "rights" as a moral limit on government power is inseparable from the idea of "right" as the moral obligation of the individual to obey a government that respects those limits:

The man who submits to violence is debased by his compliance, but when he submits himself to the right of commanding which he recognizes in his fellow man, he rises in some measure above the person who gives the command. There are no great men without virtue; without respect for rights no great people, and one could almost say, no society, for what is a union of rational and intelligent beings that are held together only by force? [DA I.ii.6, pp. 244-5, trans. modified]

By fusing²⁰ in this passage “right” [*droit*] and “rights” [*droits*], and by seeing both through the opposition between freedom or morality on the one hand, and force or necessity on the other, Tocqueville presents the liberal doctrine of rights as a way in which liberty can be reconciled with “virtue” — rights are “the idea... of virtue introduced into the political world” [p. 244]. As principled limits, rights are superior to the limitless popular sovereignty asserted in revolution; in the democratic social condition, the only way to ensure respect for rights is “to endow all with the peaceful exercise of certain rights,” [p. 245] including suffrage. The effect of giving rights to all, together with almost all having some property to defend, is that “in America, the most democratic of nations, those complaints against property in general, which are so frequent in Europe, are never heard...while in Europe the same classes sometimes resist even the supreme power, the American submits without a murmur to the authority of the pettiest magistrate” [p. 245].

The symbiosis between the “liberal,” lawful, or rights-based aspect of modern government on the one hand, and its basis in popular sovereignty on the other, is thus rather different from Montesquieu’s scheme of the modern liberal constitution. In Montesquieu’s presentation, that constitution’s *raison d’être*, seen retrospectively or with the benefit of hindsight, is that it surmounted the difficulties attendant on direct popular sovereignty, in particular the class conflict that was rife in the ancient world. This conflict made private rights, especially those of property, insecure. In Montesquieu’s modern, constitutional republicanism, where individuals are almost always governed by the application of fixed rules, rights are protected, but not under any doctrine: the limits on power in the English government do not stem from a distinction between the legitimate and illegitimate use of

²⁰Compare Hobbes, *Leviathan*, ed. by Edwin Curley (Indianapolis: Hackett, 1994.), chpt. 14, at p. 79: “For though they that speak of this subject, use to confound Jus and Lex, Right and Law; yet they ought to be distinguished, because Right, consisteth in Liberty to do or forbear; whereas Law determineth and bindeth to one of them: so that Law and Right, differ as much as obligation and Liberty; which in one and the same matter are inconsistent.”

power.²¹ Rather, they result from an “arrangement” of powers only possible, as Pierre Manent points out, by “forgetting” the problem of legitimacy altogether.²²

In the English system, popular sovereignty is not limited by being formalized in a constitution, as in Tocqueville’s America. Rather, the issue of who rules is simply buried; Tocqueville can say justly — and without contradicting his predecessor’s analysis — that England does not really have a “constitution,” parliament being at once a “legislative and constituent assembly” and hence, despite a changing series of compromises, all-powerful [DA I.i.6, p. 100 with Tocqueville’s “appendix M” to that passage, in DA II at p. 355]. In

²¹Strikingly, Montesquieu does distinguish monarchy, as governed by principles of legitimate succession, from the peculiarly harsh form of despotism in the Islamic world, “where the religion regards victory or success as a judgment of god, so that no one is sovereign by right, but only by fact” [SL V.14]. Montesquieu makes a similar association between moderate government and the distinction between power and right in VIII.8: “Most European peoples are still governed by mores. But if, by a long abuse of power or by a great conquest, despotism became established, neither mores nor climate would hold firm, and in this fine part of the world, human nature would suffer, at least for a while, the insults heaped on it in the other three.”

However, the crucial point is that for Montesquieu *modern* liberal government does not rest on the distinction between legitimate authority and mere power, between fact and right — hardly surprising, considering the circumstances of that regime’s birth in 1688. While this regime does seem to depend, as Montesquieu argues in XIX.27, on massive popular resistance to any attempt to overturn its “fundamental laws,” this resistance is, as we shall see, predicated on the fundamental desire of modern liberal citizens to maintain an arrangement of powers wherein they feel that they are *not* governed. What is characteristic of Tocqueville’s procedure, on the other hand, is that he finds a modern application for a distinction Montesquieu employs in his discussion of pre-modern governments.

²²*An Intellectual History of Liberalism*, [Princeton: Princeton U.P, 1994], p. 55: “Thus Montesquieu’s thought represents that unique, exquisite moment of liberalism when the question of legitimacy could be forgotten...” For Manent, however, this forgetting refers specifically to the English, and the compromises of 1688 between king and parliament, a separation of governmental “powers” which is both based on and moderates popular sovereignty, whereas I argue that demoting the importance of the question of legitimacy characterizes Montesquieu’s analysis of politics as such. [Even in the case of monarchy, the most fundamental fact is not its lawfulness but the underlying “nature” of the government, namely the role of the *pouvoirs intermédiaires*]. See also Mansfield, *Taming the Prince*, p. 242: “For Montesquieu, the end of government is not virtue or happiness but security, and citizens have no devotion to any particular way of arriving at it, hence no devotion to any particular regime. “

Tocqueville's account, the basis of English liberty is no longer that popular sovereignty is contained by "hiding under the form of monarchy." Rather, from the perspective opened up by the French revolution, England becomes a curious exception to the general tendency of modernity, an aristocracy preserving itself by hiding under the forms of mixed government and by drawing new members into its ranks from the rising middle classes, thus transmitting its conservative tastes. Normally the flood waters of the democratic revolution leave no ground on which to build such polite, albeit fictitious²³, compromises, because the passion for equality grows as conditions become more equal.

The interpretation of history that Tocqueville, in the wake of an age of revolution, comes to — namely, that of a process over the long term that washes out any non-democratic elements — means that he must be concerned, in a way that Montesquieu was not, with the erosion of legitimacy that stems from modern man's tendency to withdraw from politics. The strength of liberty in America depends as much on encouraging men to participate in politics, as it does on regulating the expression of the popular will. The artifices of the new political science are necessary because the natural tendencies of the democratic or modern social condition put limited government and public spirit in jeopardy, both for the same reason. As Tocqueville says, by comparison with aristocratic society, in modern society

If no one is under any moral obligation to submit to another, it follows that the sovereign will can rightfully emanate only from the union of the wills of the whole. From that time passive obedience loses its character of morality, and there is no longer a medium between the bold and manly virtues of the citizen and the base compliances of the slave. [PSCF, p. 166]

Modern liberty "requires" these civic virtues because, if men withdraw from politics, law-abidingness is reduced to the "base compliances of the slave." As Pierre Manent points

²³Consider Aristotle, *Politics* 1278a35-40 with 1281b25-35.

out, democratic man tends not to want to leave the state of nature, but to re-create it²⁴, but the logical consequence of conceiving the individual as by nature in a state of perfect liberty is to make all government into Leviathan. The moral basis of limited government is clear from the case of France: the revolutionary collapse of legitimacy brings forth the joint ideas that government is pure force and that the scope of government is unlimited [See, e.g., DA I, Intro., pp. 10-12 with DA I.ii.10, pp. 416-7].

Tocqueville's frequent depiction of the love of liberty as a spirited or "manly" virtue (putting the "vir" back in virtue, as it were)²⁵ consciously revises the soft tone of Montesquieu's liberal modernity, and combines the spirited assertion of rights against the government found in Locke with the spirited demand of the citizen to have a part in making the law found in the *Social Contract*. It is only natural to wonder, though, just how "liberal" this revision is; virility might seem, after all, more at home with the ancients than with the moderate and rational desire for comfortable self-preservation of commercial society. Indeed, in the preface to the *Ancien Regime*, Tocqueville deplores the centralizing monarchy's destruction of "those masculine virtues (*les vertus males*) which we need so much and possess so little" in terms that seem to be taken directly from Montesquieu's *Considerations*. As an example of a "democratic society" that has "private virtue" but has lost its freedom along with its public spirit, Tocqueville cites "the Roman empire and its decline." That Tocqueville associates the decline of liberty in France with "the ruling

²⁴TND, p. 47.

²⁵See, e.g. DAN I.intro, p.3: in a liberal democracy there would be "une male confiance" between the classes; DAN I.i.3, p. 44: leveling or revolutionary equality is distinguished from "un passion male et légitime pour l'égalité"; DAN I.ii.8, p. 214: the sense of responsibility taught by jury duty is a "disposition virile, sans laquelle il n'y a pas de vertu politique"; DAN II.iii.3, p. 151: Americans show in their mutual relations a "virile confiance"; DAN II.iii.5, p. 158: the equality of master and servant in America "transportaient dans la servitude quelques-unes des habitudes viriles que l'indépendance et l'égalité font naître."

passions [having] become a desire for wealth at all cost, a taste for business, a love of gain, and liking for comfort and material pleasures” (AR, preface) suggests that he understands the connection between modernity and despotism more as Rousseau does, through the opposition between bourgeois and citizen.

At the same time, the “virile” love of liberty is not necessarily classical civic virtue: in AR II.11, Tocqueville’s example of it is the feudal nobility’s assertions of prerogatives against the state. The modern *état social* has made the need for such spirited resistance, depicted in terms that seem to conflate Montesquieu’s discussions of classical “virtue” and monarchical “honor,” even greater. Pace Rousseau, for Tocqueville citizen obedience to “the general will” (always a negative term for Tocqueville) is not liberty, as precisely the omnipotence of a democratically elected government puts liberty in danger. Majoritarianism is only one of liberty’s “exterior forms”:

All this signifies, if I am not mistaken, that after having permitted the sovereign to direct, in the manner of a master, each citizen [variant: particular or private wills — *volontés particulières*] and to bend him every day to his fancy, one submits [the sovereign] himself from time to time to the general wills [*volontés générales*] of the nation [DAN II.iv.6, p. 268].

Tocqueville’s promotion of “virtue” in modern democracy thus does not, as in Rousseau, argue against the modern representative state. Indeed, for Tocqueville the proud love of independence shown by those with “les vertues males” is not only consistent with, but essential to, maintaining the strength of formal restraints on popular will such as constitutional government, the separation of powers and the rule of law. Tocqueville offers the stable and liberal American democracy, where public spiritedness includes the spirited assertion of individual liberty, as an example to the French that, despite what their experience might indicate, democracy need not take a revolutionary and illiberal form.

In sum, objections that Tocqueville is “illiberal” and “incoherent” in calling for the “virtues of the citizen” fail to confront the reasons for Tocqueville’s correction of Montesquieu’s liberalism. Tocqueville, in response to his analysis of the fundamentally

democratic character of modernity, and his concern for modernity's Hobbesian tendencies, finds the fundamental basis of constitutional government in the idea of "rights," the spirited insistence by the modern citizen on the distinction between legitimate and illegitimate use of power.²⁶ For Tocqueville, democracy's illiberal tendencies stem not most fundamentally from the breakdown of the forms that mediate popular will — although such institutions do help shore up liberty — but from the underlying modern crisis of legitimacy, by which the floodgates of democratic passion are opened, and the respect for forms swept away:

Do you not see that religious belief is shaken and that the divine notion of right is declining, that morality is debased and the notion of moral right is fading away? Argument is substituted for faith, and calculation for the impulses of sentiment. If, in the midst of this general disruption, you do not succeed in connecting the notion of right with that of private interest, which is the only immutable point in the human heart, what means will you have of governing the world except by fear? [DA I.ii.6]

Tocqueville's answer to the question of how democracy can be limited — an answer different from that of both Montesquieu and the "liberals" of Tocqueville's own day — is not less suffrage but more:

When I am told that the laws are weak and the people are turbulent, that passions are excited and the authority of virtue is paralyzed, and therefore no measures must be taken to increase the rights of the democracy, I reply that for these very reasons some measures of the kind ought to be taken. [DA I.ii.6]

Such a procedure has risks, and Tocqueville admits them. In his highly important chapter on "The Unlimited Power of the Majority" [DA I.ii.7], he considers the difficulty caused by the inherently unlimited nature of the democratic principle, of popular sovereignty. Democracy is to be limited by individual rights, by becoming "liberal

²⁶See Harvey Mansfield, "Constitutionalism and the Rule of Law," *Harvard Journal of Law and Public Policy*, vol. 8, (1985), pp. 323-6, at p. 323: "In moments of self-congratulation, we say to ourselves that we have a 'government of laws, not of men.' It was in such a moment when Americans rid themselves of Richard Nixon, using this phrase to show that it was not enough for the landslide majority of Nixon voters to win, or that it was not even winning, unless such a person as he turned out to be was unseated with a reassertion of law. "

democracy,” but the sovereign power of public opinion determines the boundary between public and private concerns, as well as the distinction between legitimate versus illegitimate authority. The formal restraints on democratic will depend upon the distinction between legitimate and illegitimate exercise of power — but the latter distinction must still be based, unfortunately, on that will. In accepting the democratic form of liberty as the “true” or “just” form of liberty, Tocqueville admits he risks giving up any principled basis for limiting democracy:

I hold it to be an impious and detestable maxim that, politically speaking, the people have a right to do anything; and yet I place in the wills of the majority the origin of all the powers. Am I, then, in contradiction with myself? [DAN I.ii.7, p.196].

Pointedly, in confronting this difficulty, Tocqueville does not make any overt appeal to anything outside the democratic principle, such as natural law or rights. Instead he claims that:

There exists a general law, which has been made or at least adopted, not only by the majority of this or that people, but by the majority of all men. This law is Justice. Justice, therefore, forms the limit on the right of each people [the MS adds ‘to command’]... When I refuse to obey an unjust law, I do not contest the right of the majority to command, but I simply appeal from the sovereignty of the people to the sovereignty of mankind. [DAN I.ii.7, p. 196]

We are left to wonder: how could an appeal to the “sovereignty of mankind” in any real sense limit the power of the majority? The moral ground for such an appeal is obscure. How can Tocqueville be a “liberal” if he recognizes no principle more fundamental than majority rule?

Despite the apparent strangeness of the notion of the “sovereignty of mankind,” Tocqueville’s examples in this part of DA I.ii.7 of majority despotism or arbitrary power follow the lines of Montesquieu’s liberal concerns: violations of the rule of law or of minority rights.²⁷ From my treatment of Tocqueville’s concept of “honor” in Chapter Two,

²⁷See Tocqueville’s footnote “4” to DA I.ii.7, p. 261.

it is clear that what he has in mind by the “limit” placed on majorities stemming from “Justice” is the universal conventions necessary to society as such, very much like the “rules of equity” Montesquieu says govern intelligent beings [SL I.1], such as law-abidingness and equality under the law. Thus, the “sovereignty of mankind” actually refers to fixed restraints that stem from human nature and the idea of lawfulness itself — whether “mankind” “adopts” these limits or not. The advent of the democratic social condition, however, means that neither any Lockean appeal to a trans-historical “natural law” nor Montesquieu’s historicist appeal to moderation remain generally persuasive, given that democratic man tends not to accept the existence of any principle that would limit human will.

Tocqueville’s appeal to the “sovereignty of mankind” is only practical or rhetorical — i.e., a concession in the face of the power of democracy — as is clear from what immediately follows. After discussing the notion of the sovereignty of mankind, Tocqueville notes that a majority may abuse power as much as an individual: “the power to do everything, which I should refuse to one of my equals, I will never grant to any number of them”; of course, by this same reasoning there is no argument to grant this power to mankind as a whole. Numbers by themselves do not persuade. In his notebooks written during his American voyage, Tocqueville is rather more candid:

“That ‘the people are always right’ is the dogma of republics, just as ‘the king is never mistaken’ is the religion of monarchical states. It is a large question to know whether one is more false than the other; but what is very certain, is that neither one nor the other is true” [entry of 25 Oct. 1831, from OC V, 1, 184, cited in *Two Democracies*, p. 125].

Tocqueville, like Montesquieu, shows that no claim to rule, even that of the people, is itself a claim on behalf of liberty; unlike Montesquieu, however, Tocqueville tries to find principled limits which somehow, as Marvin Zetterbaum puts it, “solve the problem of

democracy on the level of democracy.”²⁸ Tocqueville can advocate moral limits on democracy only by publicly appealing to the “sovereignty of mankind.” Democratic rule allows for no appeal to any principle outside popular sovereignty, including the very principles of individual liberty and natural rights that justify such rule; the modern condition shows the impossibility of combining in practice the democratic principle of justice with any other principle. As a statesman, Tocqueville must adopt the democratic perspective to speak to democrats about improving and limiting democracy; as we shall see, however, it is only through a comparison with “aristocracy” that the manner in which democracy needs improvement is established for the political scientist. What remains to be seen is how Tocqueville deals with the difficulty pointed to by Montesquieu in his critique of classical republicanism, namely that the principle of popular sovereignty by itself necessarily leads to illiberal extremes: “Who would think it! Even virtue has need of limits” [SL XI.4].

2. REVOLUTIONARY VERSUS LIBERAL DEMOCRACY, OR RECONCILING THE POWER OF THE PEOPLE AND THEIR LIBERTY

An “illiberal” caricature of Tocqueville, as we saw in the last section, results from applying simplistically to his thought — without taking into account his different understanding of the problem posed by a new historical situation — Montesquieu’s dichotomy between the classical or illiberal republic, and the modern liberal constitution. Indeed, Tocqueville is as concerned as his predecessor about the illiberal potentials of, and therefore the need for formal restraints upon, democracy, and for many of the same reasons. One thing is certain: once allowances are made for the change in historical situation,

²⁸*Op. cit.*, pp. 24-26. This is why Zetterbaum classifies Tocqueville as a modern liberal, a follower of Hobbes, Locke, and Montesquieu, and at the same time [!], as a follower of Rousseau.

including the constraints on political rhetoric imposed by this change, the divergence between Tocqueville and Montesquieu's liberalism begins to look less severe. Thus many interpreters, including Raymond Aron and Jean Claude Lamberti, see a "liberal" continuity between Tocqueville and Montesquieu, pointing to the centrality in Tocqueville's thought of the contrast between the illiberal revolutionary democracy of France and the liberal democracy of America. In particular, Lamberti's reading of Tocqueville, as presented in the monumental *Tocqueville and the Two Democracies*, represents perhaps the most serious and comprehensive attempt to show Tocqueville as a liberal follower of Montesquieu.

Lamberti has argued convincingly that the contrast between the liberal spirit and the revolutionary spirit runs throughout Tocqueville's thought. This opposition is laid out in a crucial passage of Tocqueville's notes for DA II, which is worth citing in full:

Definition of the revolutionary spirit:
 taste for rapid changes
 use of violence to effect them
 tyrannical spirit
 contempt for forms
 contempt for acquired rights
 indifference to the means in view of the end, doctrine of utility
 satisfaction given to brutal appetites.

 The revolutionary spirit which is everywhere the greatest enemy of liberty and especially so within democratic peoples, because there is a natural and secret tie between it and democracy. It wells up from the natural defects of democracy and despises them [DAN II.iv.7, p. 276, editor's note "u," citing YTC CVg. "Rubish," *[sic]* 2].

Advocates of a "liberal" Tocqueville such as Aron and Lamberti see his depiction of the revolutionary spirit as clear evidence of his continuity with Montesquieu partly because they understand his analysis of that spirit's hold in France to center on the question of why the French failed to adopt Montesquieu's liberal institutions, and the consequences of their failure to do so. For example, Lamberti notes that Tocqueville's Americans remain faithful to the doctrine of separation of powers, while his Frenchmen, spurred by the revolutionary passions arising from hatred of the aristocracy, revealed their illiberal character by

(unwisely) departing from the forms recommended by Montesquieu.²⁹ As Lamberti points out, the Americans were more accurate interpreters of Montesquieu because 1) they, at least by 1789, made a constitution that did not rigidly separate powers, but rather to kept the three powers in equilibrium, whereas in France an “absolute separation of powers under the regime of the ‘91 constitution led to an all out war between them”³⁰; and 2) the French Constituent Assembly rejected a unitary executive as too monarchic and a second branch of the legislature as too aristocratic.³¹

Certainly, the history of the French revolution itself might seem to support this institutional interpretation of the initial failure of French liberalism — the “Montesquieuan” faction, the Monarchiens, who supported constitutional monarchy, being defeated by the first of a series of ever more radical elements. As Lamberti justly observes, the first few years of the French revolution telescoped a democratic tendency that in America, as Tocqueville found, took until the Jacksonian period (i.e., 40 years) to come to fruition.³² But as I showed in the last section, and as Lamberti knows, Tocqueville would extend, not limit, political democracy to cure the revolutionary contempt for forms. The exact terms of the critical passage for Lamberti’s interpretation — Tocqueville’s description

²⁹Besides the more exhaustive treatment in *Two Democracies*, this point is also the theme of the briefer “Two ways of conceiving the Republic,” in ITDA, pp. 3-26; see esp. p. 8.

³⁰*Two Democracies*, pp. 148-9; the remark about “all out war” is a quote from Laboulaye, according to Lamberti a “distant disciple” of Montesquieu, cited from *Histoire des Etats Unis* [Paris: Charpentier, 1870], t. 3, p. 293. By the American or “moderate” interpretation of the separation of powers, Lamberti is referring to things like executive veto, Senate confirmation of appointments, etc. Lamberti notes here that Madison, in *Federalist* 47, shows his descent from Montesquieu via an examination of the British constitution, undertaken to refute the simplistic idea of a strict separation.

³¹*Two Democracies*, p. 146.

³²*Two Democracies*, pp. 146-7. In America this tendency did not weaken the executive — one thinks of “King Andrew” — but rather showed how the executive might become the most populist of governmental powers.

of the “two ways of conceiving the republic” [DA I.ii.10] — need to be kept clear. On the one hand, in America the majority is kept from being “all powerful,” but not by liberal institutions: “...above it, in the moral world, are found humanity, justice, and reason, in the political world acquired rights.” On the other hand, as Tocqueville notes with scathing irony, according to the radical idea in vogue in Europe

Democracy is not the rule of the majority, as one thought up to now, but the rule of those who are strenuous partisans of the majority. It is not the people who preponderate in this kind of government, but those who know what is good for the people, a happy distinction which allows men to act in the name of nations without consulting them and to claim their gratitude while their rights are trampled underfoot [DA I.ii.10, pp. 416-417].

For Tocqueville, as we saw, the root of the revolutionary crisis of legitimacy is that in the modern *état social*, “obedience loses its morality”; obedience being a matter of right rather than fact depends upon citizens understanding the law as their own will. In Lamberti’s reading, however, popular sovereignty is only a concession Tocqueville must make to adapt Montesquieu’s liberal institutions to the equality of conditions; the corollary of this reading is that the only real obstacle to these institutions is the persistence of aristocratic society and mores, or rather the necessary revolutionary reaction to this persistence. In other words, Lamberti’s Tocqueville is merely a democratized Montesquieu: in this reading only the revolutionary transition to modernity, not modernity itself, is problematic for liberal or limited democracy. This view of Tocqueville juxtaposes his opposition between “liberal” and “revolutionary” — with his famous remark that the Americans are free because they were born equal instead of having to become so through revolution. Lamberti is thus inclined to take as the whole story Tocqueville’s reassurances in the introduction to *Democracy* that American liberty reveals the “nature” of the modern social condition without the distorting effects of revolution and class antagonism.³³

³³*Two Democracies*, pp. 37-9. In *Democracy* [I.ii.5], Tocqueville repeats the claim that he went to America because “In Europe we are at a loss how to judge the true character and permanent instincts of democracy, because in Europe two conflicting principles exist and we

Therefore, he attributes to Tocqueville the opinion that France will become liberal when social mobility increases; then he proceeds to fault Tocqueville for overestimating the speed with which that mobility would be brought about by the revolutionary change in inheritance laws.³⁴

Lamberti's view of Tocqueville overstates the importance of institutions in securing modern liberty, and the role of persistent aristocracy in thwarting "liberalism" in France. In other words, it mistakes a rhetorical point for Tocqueville's deeper argument, and confuses Tocqueville's causes with his effects. If Tocqueville thinks the most fundamental basis of liberal government is not institutional checks on power, but the general respect for rights that grows from popular experience with democratic government³⁵, then Lamberti has it more or less backwards: the most fundamental threat to free government — and the true source of revolutionary passions — is neither the breakdown of institutions that mediate popular will, nor class conflict per se, but individualism and the degeneration of civic spirit it produces. This antipathy between individualism and liberal government is especially clear in the *Ancien Regime*, where Tocqueville traces, as we saw, the origins of the revolutionary mentality in France, a society characterized by what he provocatively labels "collective

do not know what to attribute to the principles themselves and what to the passions that the contest produces." Tocqueville then proceeds to treat this claim as logically equivalent to the claim that it is in America the real character of democracy must be judged — but this logic is faulty, because American conditions might be, and in fact are — as Lamberti notes that Tocqueville often says — exceptionally favorable to democracy. Lamberti tries to dispose of this problem created by the ambiguous status of "American exceptionalism" in Tocqueville by alleging that the text is susceptible to different "readings" [p. 132] — a procedure which, as we shall see, does not get to the heart of the matter.

³⁴*Two Democracies*, p. 64.

³⁵This means, in effect, that practical experience teaches democrats not to take their principles to their logical extreme. If one wanted confirmation of that fact, one might compare the popular hostility, during the Jacksonian period, towards the Second Bank of the United States (an example used by Tocqueville as indicative of the peoples' inherent hostility to any power not dependent on majority will — DA I.ii.10, pp. 409ff), with the current bipartisan support for the Federal Reserve.

individualism.”³⁶ That mentality originated, not only out of class divisions and resentments against a political useless and impotent nobility, but also the habit of people of all classes to think of appealing to the fiat of some absolute and central power to achieve their ends, rather than pursuing them through the give and take of common political life. Tocqueville’s framework explains the 1848 revolution better than that of the doctrinaire liberalism of his contemporaries: despite its conformity to the separation of powers, the narrow-minded and narrowly based “liberal” institutionalism of the July monarchy only perpetuated the political deficit and social disintegration which characterized the *ancien regime*. In Lamberti’s reading, the basis for Tocqueville’s superiority in this respect to the rest of the French liberal tradition — and by implication Montesquieu — is not sufficiently clear.

For Tocqueville, liberalism failed in France not because representative institutions were too weak to contain revolutionary passions, but because a society formed in the absence of genuine political life was not really a society at all. Lamberti sees this point, but he chooses to emphasize what is symptomatic of this political decay — class conflict — rather than its underlying basis in the growth of the French state. For this reason, Lamberti understands Tocqueville’s analysis of the weak basis of liberty in France as proceeding

³⁶As Lamberti himself points out in an earlier work (in *La Notion d'Individualisme chez Tocqueville* [Paris: PUF, 1970], at p. 40 and p. 53), this label suggests that, given the natural tendency of democratic society towards individualism, that the illiberal tendencies of modernity are a continuing problem, not stemming solely from the excesses fostered by its revolutionary birth. By the time of writing *Two Democracies*, however, Lamberti had come to the opinion that the importance of “individualism” represents a major shift in Tocqueville’s understanding of the problem of modern liberty, which Lamberti dates, via an analysis of the MS drafts and notes for DA II, to 1838. According to Lamberti, this shift blurs the distinction between the “revolutionary” and the “democratic” at the base of Tocqueville’s liberalism, and is the end result a movement away from Tocqueville’s liberal mentor, Royer-Collard [*op. cit.*, pp. 178ff ; 304]; Lamberti goes so far as to say that DA II has two separate conclusions [pp. 303ff]. As I will argue in the next chapter, however, the opposition between liberty and revolution does not function the same way in Tocqueville’s thought as in liberals such as Royer-Collard who are closer descendants of Montesquieu — and as the chapter on the township in DA I.i.5 shows, civic spirit is a part of Tocqueville’s understanding of liberty from the beginning.

primarily via comparison with America. However, in the *Ancien Regime*, the important comparison is not with America, but England; as we saw, it is in the course of this comparison that Tocqueville explicitly faults Montesquieu [AR II.9]. While he saw the difference between aristocracy and monarchical nobility, Montesquieu apparently did not see that having a healthy “aristocracy” was what most fundamentally distinguished 18th-century England, not its system of checks and balances. To understand why the situation of liberty in France is precarious, it is the history of England, rather than the absence of aristocracy and class conflict in America, that forms the truer basis of comparison. The lucky absence of aristocracy in America, says Tocqueville [DA II.iv.4] is merely the enabling condition that let the aristocratic liberties of the English be democratized in a moderate way.

By arguing that Tocqueville sees modern liberty primarily as something embodied in institutions, and the main obstacles to establishing liberal institutions as the political passions engendered in class conflict, Lamberti tries to assimilate Tocqueville to Montesquieu. But, liberal institutions are not the core of Tocqueville’s new political science. To be sure, Tocqueville, like Montesquieu, understands the problem of modern liberty in terms of regulating popular sovereignty by formalizing it; only, because of the nature of the modern *état social*, Tocqueville finds Montesquieu’s institutional solution inadequate and attempts instead to reinvigorate virtue. Lamberti makes an additional argument, however, that Tocqueville is a follower of Montesquieu: Lamberti finds in the contrast between revolutionary and liberal democracy an adaptation of Montesquieu’s contrast between “regulated” and “extreme” democracy in the classical republics. As Lamberti points out, Tocqueville’s depiction of revolutionary upheaval, where “obedience loses its morality,”

reminds one of what Montesquieu says about the spirit of “extreme equality” in SL VIII.3.³⁷

This argument clearly has some merit: in both authors, the question is how to limit the unruliness of the democratic principle so that it does not conflict with authority, to make democracy *reglé* or lawful. Here is how Montesquieu understands the difference between “the true spirit of equality” and “the spirit of extreme equality”:

As far as the sky is from the earth, so far is the spirit of equality from the spirit of extreme equality. The former consists neither in making everyone command nor in making no one command, but in obeying and commanding one’s equals. It seeks not to have no master but to have only one’s equals for masters.

In the state of nature, men are born in equality, but they cannot remain so. Society makes them lose their equality, and they become equal again only through the laws.

Such is the difference between democracy that is regulated [*reglée*], and the one that is not, that in the first, one is only equal as a citizen, and in other, one is also equal as a magistrate, senator, judge, father, husband, or master.

The natural place of virtue is with liberty, but virtue can no more be found with extreme liberty than with servitude. [SL VIII.3]

For Tocqueville, the example of America proves that “one does not have to despair of regulating democracy, with the help of laws and mores.”³⁸ Echoes of Montesquieu’s distinction between the “extreme” and the “regulated” forms of equality resound in the Introduction to *Democracy*, where the liberal and revolutionary forms of the modern condition are contrasted. On the one hand,

I can conceive of a society in which all men would an equal love and respect for the laws in which they consider themselves the authors; in which the laws of which they consider themselves the authors; in which the authority of the government would be respected as necessary, and not divine; and in which the loyalty of the subject to the magistrate would not be a passion, but a quiet and rational persuasion. With every individual in the possession of certain rights which he is sure to retain, a kind of manly confidence and reciprocal courtesy would arise between all classes, removed alike from pride and servility [DA I.intro, p. 9].

³⁷*Two Democracies*, p. 69.

³⁸DAN II.ii.9, p. 239: “L’exemple de l’Amérique prouve seulement qu’il ne faut pas désespérer, à l’aide des lois et des mœurs, de régler la démocratie.”

On the other hand, in France the violent collapse of the old order has created a situation very much like Montesquieu's extreme equality, because democratic passions are completely unchecked and no principle of legitimate authority fills the gap between "everyone commanding" and "no one commanding": "The spell of royalty has been broken, but it has not been succeeded by the majesty of the laws" [p. 10].

It must be stressed, however, that if the distinction "liberal/revolutionary" that Tocqueville applies to democracy can in some way be traced to Montesquieu's distinction "regulated/extreme," Tocqueville's represents, at the same time, a transformation of the terms of Montesquieu's analysis. As Pierre Manent points out, even Tocqueville's version of the "liberal" form of democracy seems to resemble Montesquieu's extreme equality; see, for example, what Tocqueville says about the equality in America between masters and servants.³⁹ Nevertheless, Tocqueville insists it would be false to say that the modern relation between master and servant has no order: "they are ordered in a different manner [than in aristocracy]; the rule [*regle*] is different, but there is a rule" [DAN II.iii.5, p. 158]. That rule is consent, the obligation that grows from a mutual contract between employer and employee. Tocqueville's answer to the potential unruliness of equality is to regulate democracy by moralizing it, by making consent a mutually binding reality; this represents a sharp break from Montesquieu's critique of classical democracy, which presumes that the principle of equality tends to degenerate into anarchy. For Montesquieu, a regulated or lawful democracy depends on virtue, or the love of country and the laws — but as this passion is really based on the citizen's love of his equality with other citizens, it tends, if unmixed, to degenerate into the love of extreme equality.⁴⁰ Therefore the ancient democracies were necessarily moderated by an aristocratic element in the constitution, a

³⁹TND, pp. 23-24.

⁴⁰Mansfield, *Taming the Prince*, p. 226

class with an interest in maintaining the distance between rulers and ruled and hence the form of the constitution [SL II.2]. As Montesquieu says in another context, distinguishing the love of the common good from the rule of law, “even virtue has need of limits” [XI.4].

The critical point — which, strangely enough, Lamberti’s reading of Tocqueville as a follower of Montesquieu misses — is that for Montesquieu, the distinction between the true and extreme loves of equality could not be maintained in practice: one must deviate from popular sovereignty to maintain the civic virtue necessary to it, and this creates insuperable difficulties, especially factional conflict. Lamberti takes Tocqueville’s link between the excessive love of equality and the revolutionary birth of the democratic condition and tries to assimilate it to Montesquieu’s point that, in the classical republic, a people that has contributed to a triumph becomes impossible to lead.⁴¹ This ignores what Montesquieu sees as the republic’s permanent, inherent internal contradiction: that it can’t live with nobles, but it can’t live without them. The more democratic the republic becomes, the more it needs, but the less likely it is to have, virtue. As shown most clearly by the case of Rome, the mixed regime was a very imperfect solution to the problem of the love of extreme equality endemic in republics: the patrician element could be maintained against popular encroachment only by a policy of foreign conquest, which a people “jealous of their glory” knew required the “courage” and “wisdom” of a Senate [SL XI.17]. Even so, patrician privileges were gradually eroded to the point where, “counter to the principles of democracy,” the patricians were denied a share of the “legislative power” [XI.16]; moreover, foreign expansion eventually undermined republican virtue. For Montesquieu, the internal contradictions of republicanism — perhaps even in the very concept of “self-government” — resulted first in anarchy, then in tyranny.

⁴¹*Two Democracies*, p. 72, citing Montesquieu SL VIII.4.

Tocqueville's understanding of how to make liberty compatible with modern democracy — a regime which, being based on universal or natural rights, is considerably more democratic than the classics — would seem, then, to brush off the difficulties Montesquieu found in the democratic principle.⁴² After all, it is the very difficulty of maintaining the distinction between a “regulated” and “extreme” democracy, only compounded by the incompatibility of virtue with modern conditions, that had led Montesquieu to try to bypass it altogether and emphasize the new possibilities for a liberal government that the English found, after some hard knocks, in the institutions of monarchy:

It was a fine spectacle in the last century to see the impotent attempts of the English to establish democracy among themselves. As those who took part in public affairs had no virtue at all...after much motion and many shocks and jolts, they had come to rest on the very government that had been proscribed... The political men of Greece who lived under popular government recognized no other force to sustain it than virtue. Those of today speak to us only of manufacturing, commerce, finance, wealth, and even luxury. [SL III.3]

⁴²Lamberti's reading avoids the difficulty by claiming that “For him, as for Montesquieu, democracy is not incompatible with obedience” [p. 69]; he contrasts both thinkers with Plato, who allegedly saw an inherent tendency of democracy to degenerate. Lamberti is probably thinking of *Republic* 557e, where Socrates refers to a “divinely sweet” democratic freedom to do as one pleases; however, the all-too-repressive character of democracy is pointed to at *Republic* 426b-c; 492b-d; 494a; 499d-500a; 517a. For Plato, no less than for Tocqueville, the most fundamental problem with democracy is not excessive freedom, but the majority's constraints on freedom, especially freedom of the mind. [I am indebted to Nathan Tarcov for pointing out these passages, and for clarifying the Socratic critique of democracy for me; see his essay “The Meanings of Democracy” in *Democracy, Education, and the Schools*, ed. Roger Soder (San Francisco: Jossey-Bass, 1995)].

If anything, it is Montesquieu who is further away from Plato; Lamberti can only establish an equivalence between Montesquieu and Tocqueville by equating the love of equality that Tocqueville says is the dominant passion in modern society [and one harmful to liberty] with the “love of equality” which Montesquieu says is the “principle” of classical democracy. For the latter, however, this sustaining principle is a love of the laws, precisely the self-restraint that is needed by democracy, and which tends to degenerate into the love of extreme equality. Democracy tends to anarchy, argues Montesquieu, because the principle required by democracy is not automatically produced by it — and may even be destroyed by it — whereas the problem that both Tocqueville and Plato have with the democratic principle is its excessive tenacity.

For Tocqueville, however, the fundamentally democratic character of modernity makes a return to these “proscribed” forms impossible, but at the same time, the long-run consequences of equality of conditions are not revolutionary. Contrary to what Montesquieu claims, democracy is not — at least if it encounters no aristocratic opposition — unruly. The very existence of America proves that “regulated” democracy does not require the stern and repressive education in virtue required by the classical republics, as a liberal order is possible on an entirely democratic basis.

However, the possible compatibility of liberty and democracy does not mean that Tocqueville is simply more “optimistic” about modern democracy than his forbear. As we shall see, the self-reinforcing orderliness of the modern *état social* may be part of the problem; modern societies may be tranquil without being free. Tocqueville’s laying all of the “illiberal” potentials of modernity at the door of its revolutionary birth — such as in the introduction to *Democracy* — is part of a deliberate rhetorical strategy, and is not his last word; the success of American liberal democracy depends not simply on the absence of revolution but also on some fortuitous historical carry-overs that this absence of revolution made possible.⁴³

⁴³Admittedly, Lamberti is aware of this ambiguity in Tocqueville as to whether liberal America, or illiberal Europe, is more connected to the past: “Condorcet had understood that the United States gave Europe an image of its political future. Tocqueville, however, while amply developing this idea, had also been highly aware of the American point of departure, this air of ‘antiquity’ mixed with the ‘biblical odor’ of Puritanism and, of above all, he had noted the continuity, better preserved in America than in Europe, of the three ages of right” *Two Democracies*, p. 114. Lamberti, however, ultimately traces this ambiguity to what he sees as a weakness in Tocqueville’s liberalism, namely the impossibility of entirely separating “revolution” from “democracy.” Against this I will argue that Tocqueville does manage to show that modern democracy is not revolutionary — but this is only necessary, but not sufficient, for modern democracy to be liberal. As we shall see, Lamberti is correct to sense that there is an “aristocratic” aspect to Tocqueville’s understanding of modern liberty, but contrary to Lamberti, this does not unite his political science with, but rather distinguishes it from, Montesquieu’s liberalism.

**B. TOCQUEVILLE'S APPROPRIATION OF MONTESQUIEU'S
MODERN LIBERAL INSTITUTIONS**

The ends of liberal democracy, in Tocqueville's presentation, are not opposed to, but rather encompass the notion of modern constitutional liberty that Montesquieu endorses. Tocqueville's critique of individualism and concern for the "manly virtues of the citizen" might seem to place him at some remove from the goals and concerns of Montesquieu's liberal constitutionalism, but only until one factors in the modern *état social*; the moral demands of popular sovereignty, by which Tocqueville proposes to regulate modern democracy, are consequent on the equal sovereignty that each modern individual claims over him- or herself. Unlike Montesquieu, Tocqueville does not see the "power of the people" and security for oneself and one's property as necessarily in conflict. In fact, the American example shows that extending the former can benefit the latter by reducing the dangers to security posed by both class conflict and the growth of the state. While Tocqueville certainly does not ignore the importance of modern innovations such as representative government — following Montesquieu, he notes that the "republics of antiquity...all perished from not having known this system" [DA I.ii.9, p. 290] — he considers not representation but universal suffrage most fundamental for cooling the excesses of democratic passions.

Tocqueville's modern liberalism thus differs from Montesquieu's in grounding liberal institutions in a legitimacy engendered by a healthy republican political life, rather than in an equilibrium of competing parties and institutions. On the other hand, Tocqueville also shares Montesquieu's understanding of the classical republic as inherently defective and irrelevant to modern times. In his review of Cherbuliez's *On Democracy in Switzerland*⁴⁴, Tocqueville faults the author for treating Switzerland as the "basis for a

⁴⁴Published as "Appendix II" to *Democracy in America*, trans. by George Lawrence [New York: Anchor, 1969], pp. 736-749, hereinafter cited as "Cherbuliez," with the page number from this edition.

book treating of the theory of democracy” [p. 737], because far from having “the institutions which embody and the spirit which animates modern freedom,” the Swiss are “the last venerable ruins of a vanished world” [p. 740]. Tocqueville presents Switzerland as an illiberal republic, not only because the Swiss considered political liberty as a restricted privilege [just as in Tocqueville’s discussion of the “aristocratic” nature of the classical city in DA II.i.15], but because they lacked “the division of powers [that] was approved by all writers,” as well as the freedoms of press, association, religion, and industry. Notably, Tocqueville makes the Montesquieuan point that the modern spirit of liberty was more in evidence in the European monarchies than in the Swiss republic [p. 738].

The review, then, shows Tocqueville to follow the main lines of Montesquieu’s critique of the classical republic. Tocqueville reserves special scorn for the element of pure or direct democracy in the Swiss cantons, where — going beyond the classical polis in the direction of Rousseau⁴⁵ — the assembled people are consulted “as to whether they want to modify or to maintain the Constitution. That, at intervals, undermines all the laws at once” [p. 741; contrast *Social Contract*, III.18; cf. II.6]. Moreover, “executive power...is confided to a small assembly, where responsibility is divided and action debilitated,” and it lacks the powers “essential” to it of veto, pardon, and appointment of ministers [p. 741] — in other words, it lacks the features of executive power developed by Montesquieu in SL XI.6. Tocqueville’s claim that “the chief defect in the laws of Swiss democracy lies in the bad constitution and bad composition of the judicial power...The idea of judicial independence is a modern one” [p. 741] recalls Montesquieu’s claim that “the masterwork of legislation is to know where properly to place the power of judging,” the separation of such power

⁴⁵Thanks to Nathan Tarcov for pointing out to me that Tocqueville’s objections are as much directed against the “Rousseauist” aspect of the Swiss republics as against classical republicanism per se. The classics did not distinguish the form of government from sovereignty; neither did they understand law as an emanation of the general will nor subject it to periodic re-approval.

from sovereignty being the distinct improvement of modern government bequeathed by monarchy [SL XI.11 with XI.8-9]. To all these defects of the Swiss government, Tocqueville opposes the modern republic of New York State, based on a separation of powers, a one-man executive, bicameralism, and an independent judiciary: a constitution “framed in a way to combat the natural defects of democracy” [p. 744].

Clearly, then, Tocqueville shares with Montesquieu the goal of a distinctly modern or institutionally mediated republicanism, as one can see easily enough by a casual remark about bicameralism in *Democracy*: “This theory, nearly unknown to the republics of antiquity, first introduced into the world almost by accident, like so many other great truths, and misunderstood by several modern nations, has at length become an axiom in the political science of the present age” [DA I.i.v, p. 84]. At the same time, he shows why there must be a closer connection between modern liberty and popular sovereignty, the democratic revolution having rendered the terms of Montesquieu’s institutional solution to the problem of liberty inadequate. As I will argue in the first section, despite some appearances to the contrary, Tocqueville indeed carries forward Montesquieu’s critique of the mixed regime, his reservations about the “separation of powers” being based for the most part not on principle, but on its efficacy in the democratic *état social*. In the second section, I look at how Tocqueville, even in advocating many of the same liberal institutions promoted by Montesquieu, reinterprets them, moving from the legalistic function of curbing popular will that they have in his predecessor’s political science towards the expanded ends of educating democracy.

1. TOCQUEVILLE’S UNDERSTANDING OF THE SEPARATION OF POWERS AND ITS ROLE IN MODERN LIBERTY

Perhaps the best place to see the relation between Tocqueville’s new political science and Montesquieu’s idea of modern government is the chapter in *Democracy* entitled “On

the Unlimited Power of the Majority” [DA I.ii.7]. At first glance, Tocqueville appears highly critical of his predecessor’s suggestion that a separation of powers can transcend partisanship:

I do not think that, for the sake of preserving liberty, it is possible to combine several principles in the same government so as to really to oppose them to one another...there is no such thing as mixed government...because in all communities some one principle of action may be discovered which preponderates over the others. England in the last century, which has been usually cited as an example of this sort of government, was essentially an aristocratic state... [DA II.ii.7, pp. 259-260].

This rejection of “mixed government,” especially in the reference to England, sounds like a criticism of Montesquieu.⁴⁶ However, we remember that Montesquieu was also presenting a government with separated powers as an improvement on the classical mixed regime, and for reasons similar to Tocqueville’s, namely the impossibility of any stable balance between classes. If anything, Tocqueville’s objection to mixed government carries Montesquieu’s point even further, because the “principle of action” which must predominate and thus cannot be mixed is either the modern or pre-modern: the incompatibility is not, as in Montesquieu, simply between two classes.⁴⁷ To what extent Tocqueville thought his predecessor shared his self-conscious modernity is unclear, but in any case his objection would seem to apply mainly to misunderstandings of Montesquieu’s presentation of England, not to the idea of separation of powers.

In fact, Tocqueville consistently, in his writings and political actions, understands government in terms of Montesquieu’s framework of “executive,” “legislative” and

⁴⁶This is the opinion of Eduardo Nolla; see DAN I.ii.7, p. 197, editor’s note “p”.

⁴⁷This might suggest, however, that Tocqueville would be somewhat more sanguine about the possibility of mixed government within the context of antiquity — i.e., as the combination of several different “aristocratic” forms of justice. We remember that Montesquieu and Tocqueville have a somewhat different analysis of the limits and demise of antiquity. For Montesquieu the problem is the inability of the mixed regime to provide a stable basis, through both its nature and principle, for liberty. For Tocqueville, the critical event is the altogether novel happening of Christianity.

“judicial” powers delegated by a single sovereign; and he advocates government based on a balance of these powers precisely as an alternative to mixed government. This is especially clear in sketches Tocqueville made for a speech before the 1848 Constitutional Convention, where he is at pains to defend bicameralism against the charge that it is an aristocratic institution.⁴⁸ The prejudice against bicameralism, Tocqueville says in the “Sketches,” arises by looking at the issue through the “fictions” of the old constitutional monarchy, one of which was that “One divided a thing indivisible by its nature, the sovereign.” [p. 203].

By contrast, Tocqueville says, from a united sovereignty “flow all the powers”; the sovereign “delegates its powers to diverse agents,” executive, legislative, and judicial [p. 202]. The question, Tocqueville says, is whether it “it is useful to divide legislative power” [p. 202]. He answers this question in the affirmative: one should “slow power down.” To do so is not a matter of preventing “tyranny” — this has more to do with “time, place, and events” — but of preventing a “rapid and ill-considered government, oppressive of minorities, contemptuous of acquired rights, heedless, without precedents” [p. 203]. The divided government he proposes is consistent with the modern idea of a unified, but separate, “sovereign”: such an arrangement of “powers” has little to do with the classical understanding of the mixed regime.⁴⁹ (However, as J.C. Lamberti points out, “Tocqueville

⁴⁸See “Two sketches for a Speech” in *Oeuvres Completes* [Paris: Gallimard, 1951–], Tome III [“Ecrits Politiques”], volume 3, pp. 202-6. I am indebted to the late Francois Furet for alerting me to this passage.

⁴⁹Lamberti claims [*Ibid*, pp. 146-7] that Tocqueville’s modern understanding of bicameralism, as not being “aristocratic” or connected to the idea of the mixed regime, probably stems from having read “de Lolme, the best disciple of Montesquieu in the 18th century; now the latter in his work *The English Constitution* [1771] demonstrates rationally that the division of legislative power is a necessity of all representative regimes.” However, while Tocqueville does cite de Lolme in the endnotes to *DA I*, it is not on this issue. Indeed, de Lolme is cited to show the English view of the absolute sovereignty of Parliament, this body being able “to do all things except make a man a woman or a woman a man.” Tocqueville uses this as evidence, Parliament as absolute being both a “legislative” and “constituent” assembly, that England does not have a constitution at all. [DA I.i.6 with note “M”]

was not able to draw his colleagues on the Constitutional Commission of 1848 away from the revolutionary tradition of a unicameral assembly.”⁵⁰)

Thus Tocqueville follows Montesquieu in considering the separation of powers a necessary correction to the classics and “an axiom in the political science of the present age” [DA I.i.4, p. 84]. Yet his treatment of the separation of powers undercuts Montesquieu’s optimism. In Montesquieu, the rule of law is achievable because “the form of these three powers should be rest or inaction” [SL XI.6, p. 164]. Tocqueville suggests Montesquieu has overstated the possibility of the rule of law and understated the necessarily partisan character of any regime. Trusting in political *forms*, by which class interests might be balanced against each other, pays insufficient attention to the underlying *matter*, the tendency given a regime by its social basis. England, despite the complexity of its institutions, is no exception:

...the laws and customs of the country were such that the aristocracy could not but preponderate in the long run and direct public affairs according to its own will. The error arose from seeing the interests of the nobles perpetually contending with those of the people, without considering the issue of the contest, which was really the important point [DA I.ii.7, p. 260].

In modern society, which is even less constituted by politics than was pre-modern society, the influence of the forms of free government over the “matter” of democratic society is even weaker. Not law but the democratic conception of justice is supreme.

Tocqueville is driven to criticize Montesquieu’s formal schema on grounds of efficacy, not principle. The problem, he explains in the same chapter, is that power separation could be effective only under certain conditions:

If, on the other hand, a legislative power could be so constituted as to represent the majority without necessarily being the slave of its passions, an executive so as to retain a proper share of authority, and a judiciary so as to remain independent of the other two powers, a government would be formed which would still be democratic while incurring scarcely any risk of tyranny. [p. 261]

⁵⁰*Two Democracies*, p. 147.

The conditional phrasing, however, presages the chapter's negative conclusion: that Montesquieu's "institutionalism" is insufficient to curb the majority's unlimited power in the U.S.: "I do not say that there is frequent use of tyranny in America at the present day; but I maintain that there is no sure barrier against it, and that the causes which mitigate the government there are to be found in the circumstances and the manners of the country more than in its laws" [pp. 261-2].

So far, then, Tocqueville appears to share Montesquieu's goal of providing against the arbitrary use of authority by dividing up governmental powers (including dividing the legislative to counter the natural weakness of the executive) but to doubt that modern democratic society can provide good enough material to effect a proper balance. I cannot leave it at that, however, because for Tocqueville the rule of law is only the necessary, not the sufficient, condition for liberty. In his chapter on the "Unlimited Power of the Majority," Tocqueville departs from his predecessor in a more fundamental respect: considering the problems democracy poses for the separation of powers prompts him to distinguish between "tyranny" and "arbitrary power." Tyranny, he says, "may be exercised by means of the law itself, and in that case it is not arbitrary; arbitrary power may be exercised for the public good, in which case it is not tyrannical." [DA I.ii.7, p. 262]. What sort of "tyranny" Tocqueville has in mind is clear from the immediately following section, on the "power of the majority over opinion." This power is tyrannical but not arbitrary: it is perfectly consistent with the rule of law and even liberal guarantees of freedom of speech. The heterodox are not punished, only pushed to the margins by public opprobrium and ignored.

That Tocqueville's distinction between tyranny and arbitrary power amounts to a break with Montesquieu is obscured by his careless use of the term "despotism" to refer to both — a term that Montesquieu had carefully defined as arbitrary rule and used as a conscious replacement for the "tyranny" discussed by the ancients. We remember that Montesquieu had criticized Aristotle for distinguishing between king and tyrant "by

accidental things, like the virtues or the vices of the prince,” rather than by the “form of the constitution” [SL XI.9]. Thus, Montesquieu replaces the moral distinction between kingship and tyranny with the institutional distinction between kingship and despotism, the relevant criterion of the latter being whether power flows through intermediary bodies and is thereby contained within the form of law. If it does, the law will be obeyed because the law satisfies the prerogatives of the various ranks; if it does not, the ruler must rule through fear, through violence. Strikingly, the *Spirit of the Laws* does have a chapter “On Tyranny” [XIX.19] — but what we learn here is that tyranny is either despotic or purely subjective: the only “real” tyranny “consists in the violence of the government,” the other species merely “felt when those who govern establish things that run counter to a nation’s way of thinking.”

For Tocqueville, however, the “tyranny” exercised by democratic society over opinion is neither violent nor merely subjective. In fact, subjects may be *less* aware of it, the more it is actually restricting them. The bounds of discussion narrow measurably, but those who live within the new form of “despotism” may not notice its existence:

Fetters and headsmen were the coarse instruments that tyranny formerly employed; but the civilization of our age has perfected despotism itself, though it seemed to have nothing to learn. Monarchs had, so to speak, materialized oppression; the democratic republics of the present day have rendered it as entirely an affair of the mind as of the will that it is intended to coerce [DA I.ii.7, p. 264].

This, then, is the surprising overall movement of DA I.ii.7, “The Unlimited Power of the Majority.” A consideration of the problems implementing the separation of powers in modern society leads Tocqueville, not to reject this device, but to question the very notion of liberty it presupposes. While it is only with the analysis of “soft despotism” in DA II that the character of Tocqueville’s break with Montesquieu becomes fully evident, the appearance in DA I.ii.7 of the problem of “tyranny” as distinguished from arbitrary power implies that he has already there transformed the basic framework of Montesquieu’s liberalism. As I will argue below, reflecting on the partisan nature of modern society,

marked by the dominance of one *particular* type of human being, leads Tocqueville to look beyond subjectively felt security under impartially administered law. Guarantees against arbitrary power are a necessary condition for liberty, Tocqueville admits. But they do not suffice, which leads Tocqueville to reopen the question that Montesquieu had regarded as settled, namely what true liberty is.

2. FROM FORMAL RESTRAINTS ON POPULAR WILL TO EDUCATING THE DEMOCRATIC CONTEMPT FOR FORMS

Whatever their differences, Tocqueville shares Montesquieu's goal, a constitutional or lawful republicanism maintained by means of a modern government based on separated and balanced powers. For Tocqueville, however, the "nature" of modern government cannot be depended on to maintain this balance, and even if this balance is maintained, its result — the rule of law — is inadequate as a response to democracy's illiberal or unlimited tendencies. These tendencies must be addressed in other ways. Rather than throwing out Montesquieu's liberal institutions, Tocqueville endows them with social purposes far beyond their original, legal ends. He discusses the American use of some of the same "legalistic" institutions that Montesquieu finds so important in England, but re-interpreted so as to completely transform the terms of Montesquieu's liberalism.

For example, we remember that for Montesquieu an independent "judicial power" helps ground the rule of law that gives the citizen a sense of security [SL VI.1]. Certainly, Tocqueville also sees the rule of law as absolutely necessary to liberty. Speaking of political associations, Tocqueville says he can conceive that a government might need to pass laws regulating some of them and "leave to tribunals the care of punishing those who disobey," but "I do not recognize the right of any government" to give the executive power the right of "permitting or prohibiting associations according to its arbitrary will." In the first case, the citizen "knows what to expect" and can avoid prohibited actions, whereas the fear and

uncertainty created by arbitrary power mean that “the spirit of association would be entirely paralyzed” [DAN II.ii.7, p. 111]. Tocqueville’s unusually categorical statement of principle here reminds one of Montesquieu’s claim that “Nor is there liberty if the power of judging is not separate from the legislative power and the executive power...If judgments were the individual opinion of the judge, one would live in this society without knowing precisely what engagements one had contracted” [SL XI. 6]. Moreover, Tocqueville’s depiction of the social paralysis resulting from an arbitrary executive is remarkably similar to the “ruining of every kind of industry” that Montesquieu says stems from fear of despotic confiscations [SL V.14].

In a new twist, however, Tocqueville relies on the independent judiciary to curb the legislature, not just the executive. “The power vested in the American courts of justice of pronouncing a statute to be unconstitutional,” he insists, “forms one of the most powerful barriers that have ever been devised against the tyranny of political assemblies” [DA I.i.6, p.103]. Montesquieu’s model relies on the hereditary “executive power” to provide such a barrier — it works because the person of the king is “sacred”⁵¹ and not accountable to the legislature for his actions. But Tocqueville, faced with an even weaker, post-revolutionary executive, shows how the judiciary must fill in as the main check on the inherently popular legislative power. This is especially true of local government, where officials “are inevitably obliged to make great use of judicial penalties as a means of administration” because “an elective authority that is not subject to judicial power will sooner or later either elude all control or be destroyed” [DA I.i.4, pp. 73-4]. While this political role for the judicial power is a departure from Montesquieu’s account, where “among the three powers of which we

⁵¹I indebted to Christopher Nadon for drawing my attention to this fact. The full text is [SL XI.6, p. 162]: “His person should be sacred because, as he is necessary to the state so that the legislative body does not become tyrannical, if he were accused or judged there would no longer be liberty. In this case the state would not be a monarchy but an unfree republic.”

have spoken, that of judging is in some fashion, null” [SL XI.6], it is consistent with the ends of that account, namely the regulation of democracy. Yet, alongside this expansion of the judiciary’s role, which shows a certain continuity with Montesquieu in promoting the rule of law, Tocqueville also re-imagines the purpose of the laws themselves.

A quick comparison of their understandings of the jury, for instance, shows how Tocqueville puts the legalistic devices of Montesquieu’s liberalism to larger ends. For Montesquieu, juries serve to minimize the fear created by “the power of judging, so terrible among men”; they take this power away from an official “permanently in view” [SL XI.6, p. 158]. Now, Tocqueville does make a similar point about *judges*: when a state disciplines a township for failure to pay taxes, “government authority, anxious to keep out of sight, hides itself under the forms of a judicial sentence” [DA I.i.4, p. 76]. However, this “hiding” under legal forms is a question of legitimacy, not security: not the feeling of safety created by impersonal rule, but the restraints on democracy that are accepted only if made by those who plausibly speak for something higher than their own political interest. As for Tocqueville’s discussion of the jury, here his concern is not at all with impersonal rule or the effect of the jury from the point of view of the accused or potentially accused. Rather, it is the effect on the jurors that counts — the jury is a “free public school” which teaches respect for the law because it “invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society and the part which they take in its government” [DA I.ii.8, p. 285].⁵² Thus, while both thinkers have a “liberal” appreciation for “the rule of law,” this appreciation turns out to have a revealing difference in emphasis. In Montesquieu’s England, juries hide the exercise of judicial power, allaying the fears of the governed; in Tocqueville’s liberal democracy, highly visible judges restrain

⁵²See the discussion in Mansfield, *Taming the Prince*, p. 235.

assemblies by speaking on behalf of the law, even as jury duty educates the people to respect that law.

Highly skeptical of liberal constitutionalism's ability to stalemate the exercise of popular will through institutional forms, Tocqueville is far more interested in how these forms can educate the habits and sentiments underlying that will into a reasoned respect for formality itself. Thus he praises not only judges but lawyers in general as a quasi-aristocratic counterweight to democracy: they have "certain habits of order, a taste for formalities, and a kind of instinctive regard for the regular connection of ideas, which naturally render them very hostile to the revolutionary spirit and the unreflecting passions of the multitude" [DA I.ii.8 p. 273]. Their habits and instincts resemble aspects of aristocracy, and "the profession of law is the only aristocratic element that can be amalgamated without violence with the natural elements of democracy" [p. 276]. Moreover, this "aristocratic element" trickles down to the *demos*: because "scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question," the "language of law" "gradually penetrates... into the bosom of society" [p. 280].

The "formal," from its role in Montesquieu as the means by which rule can be depersonalized, becomes in Tocqueville's version of liberalism the way in which "right" can be distinguished from "force." In Montesquieu's England, formalized rule allows individuals to feel independent of each other and society; for Tocqueville, given the power of modern public opinion, the contribution of "formalism" to limited government is in its effect on a shared political culture. Tocqueville shows how in America, government is limited not so much by the Constitution and its distribution of power, as by respect for the Constitution, from "language of law" penetrating "into the bosom of society." This new interpretation of liberalism amounts to a new understanding of the basis of liberalism. For Montesquieu, what distinguishes the modern liberal order is that it does produce the human dispositions necessary to sustain it. For Tocqueville, however, no arrangement of laws and

government, not even modern constitutional democracy, can hold this balance. While Montesquieu makes the separation of powers so constitutive of English liberty that in that case alone, “mores follow laws” [SL XIX.26, end], Tocqueville says that among the causes that maintain democracy in the U.S., “the contribution of physical causes is less than that of laws, and that of laws less than mores” [DA I.ii.9, p. 322]. In searching for the bases of the mores that can sustain liberal democracy, Tocqueville is forced to look elsewhere besides the institutions of modern liberalism. Paradoxically, as we shall see in the next chapter, he is led to consider precisely that regime that Montesquieu had posed as the great alternative to modern liberalism — the classical republic.

THE UNIVERSITY OF CHICAGO

**TOCQUEVILLE'S "NEW POLITICAL SCIENCE": A CRITICAL ASSESSMENT
OF MONTESQUIEU'S VISION OF A LIBERAL MODERNITY**

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CHAPTER FIVE

SPLITTING THE DIFFERENCE — CLASSICAL REPUBLICANISM, MODERN LIBERALISM, AND DEMOCRATIC LIBERTY

Tocqueville, through his treatment of modern liberal institutions, transforms the political science of his predecessor — not by making his “new political science” less liberal, but by posing the question of modern liberty in the light of the dynamic of the democratic *état social*. Just as in the case of his liberal predecessor, his political science aims at a type of republicanism “regulated” by constitutional forms and the rule of law. For Tocqueville, though, modern society makes problematic the distinction between legitimate and illegitimate power that is the necessary basis of such forms. At the same time, as we saw when looking at Tocqueville’s distinction between “arbitrary power” and “tyranny” in DA I.ii.7, adapting Montesquieu’s liberalism to the difficulties posed by the democratic *état social* leads Tocqueville to expand his predecessor’s notion of liberty well beyond the “opinion of security.” This expansion poses a problem: while not “illiberal,” Tocqueville is not a simple “liberal” either.

Thus, while we have seen how Tocqueville integrated into his own understanding of liberal democracy some of the materials of modern liberalism that he, along with his contemporaries, inherited from Montesquieu, we have yet to grasp in a precise way the admittedly “strange” or novel character of his own “liberalism” — if indeed we can call it that. To unravel this conundrum, the proper point of departure is Tocqueville’s *own* understanding of his complex relation to the movement both he and its adherents referred to as “liberalism.” As we shall see, Tocqueville is well aware of the paradoxes in his relation

to the mainstream of French liberalism; moreover, his analysis of that relation implies that establishing modern liberty depends upon *dampening* the Montesquieuan opposition between “liberty” and “virtue,” between modern and classical republicanism. This implication plays out in the details of the “new political science” that Tocqueville asserts is [DA I, Intro] “is needed for a world quite new.” The “old” political science, Montesquieu’s modern liberalism, suggested the irrelevance of the classical republic and celebrated the advent of modernity; the new political science will try to remind modern democratic man of his limitations.

The manifest differences between Tocqueville’s politics and the mainstream “liberalism” of contemporaries such as Guizot and Royer-Collard led him, in a letter of 24 July 1836 to his friend Eugene Stoffels, to make the famous remark that “I am a liberal of a new kind.”¹ The meaning of that oft-quoted declaration, however, is revealed only in the context of the letter as a whole. From both this letter and his next one to Stoffels of 5 October 1836, it appears that Tocqueville is defending himself against his friend’s charge of holding “radical and almost revolutionary theories,”² a mistaken accusation that stems, Tocqueville argues, from accepting the narrow view of alternatives assumed by the contemporary political world. Thus, Tocqueville begins his defense by a dichotomy familiar from the Introduction to *Democracy in America*:

The thing that has struck me the most about my country, all the time although particularly for the last few years, has been to see gathered on one side the men who prize morality, religion and order; and on the other those who love liberty and equality before the law.

¹*Oeuvres et Correspondence Inédits*, ed. Beaumont (Paris: Michel Levy, 1861) [hereinafter OCI], Vol. I, letter of 24 July 1836, pp. 431-5, at. p. 433.

²*Op. cit.*, p. 433; all quotations in this paragraph are from this letter. See also the letter of 5 Oct, pp. 435-438; reprinted in English *Selected Letters*, pp. 112-115. In this second letter, Tocqueville is again at pains to stress “I do not think that in France there is a man less revolutionary than I.”

Now, the goal of Tocqueville's new liberalism, as we learn by the end of the letter, is to bridge this gap. But the identities of the two parties in question are not entirely clear, leaving the exact content of his project somewhat vague. In particular it is ambiguous, especially when considered with the parallel passage in the Introduction to *Democracy*, whether Tocqueville is referring by the first half of the above dichotomy to aristocratic reactionaries who want to bring back the *ancien regime* or to the defenders of the status quo — namely those “liberals” such as Guizot, running the July monarchy, who sacrifice republicanism to order.

On the one hand, the subsequent application of the dichotomy in the letter suggests the second alternative:

I love liberty more sharply, more sincerely than you. You desire it, if it is possible to obtain it without trouble; and you are ready to take your part to do without it. Such as is the case with a multitude of respectable men [*honnêtes hommes*]³ in France...I

³Tocqueville's derogatory use of this term recalls its use in the *Spirit of the Laws* to refer to the man of modern monarchy, who loves the state more out of personal interest than for its own sake, and who is merely concerned with observing social proprieties and asserting that the prerogatives of his rank be respected [SL III.6 and IV.2]. The contrast is with the stern virtue of the classical citizen; one of the “dregs” of antiquity left in modern times, the “*honnête homme*” William Penn, “has formed a people in whom integrity seems as natural as bravery was among the Spartans” [IV. 6].

To be sure, Montesquieu's “*honnêtes hommes*” are a little less slavish than their more modern bourgeois cousins Tocqueville is describing, if only because the former's sense of propriety is not simply to maintain social order, but to also insist on what is theirs. This difference, however, only reflects their more fundamental difference in assessing the relation of history and liberty. Montesquieu sees the character of the modern “*honnête homme*” — who, whether bourgeois or noble, is more “self-interested,” law-abiding, and subject to public opinion than the classical citizen — in terms of a general opposition between “liberty” and “virtue.” Thus, in discussing the monarchical nobility Montesquieu follows what first seems a moral criticism — that their motive, “honor,” differs from classical virtue because it concerns “not so much what calls us to our fellow citizens as what distinguishes us from them” — with an example of how this very fact about “honor” can limit the sovereign's actions, the implication being that “virtue” contains no such internal limit [SL IV.2; cf. XI.4]. Montesquieu thus anticipates Hegel's claim that it is only at the end of history, the epoch based on “subjectivity” or the individual, that liberty in the full sense can be developed — whereas for Tocqueville, as I will argue, with the erosion of the social bond [which is the essential dynamic of the democratic social condition], any “self” that would be asserted against the sovereign tends to wither away to the vanishing point.

do not want to be confused with those friends of order who would sell out free will [*libre arbitre*] and the laws to be able to sleep tranquilly in their bed. There are already enough of these types, and I dare to predict that they will never achieve anything great and lasting.

On the other hand, in *Democracy* it seems to be the aristocratic reactionaries who represent the party of morality and religion:

I notice virtuous and peaceful men whose pure mores, tranquil habits, independent means and intelligence place them naturally at the head of the populations which surround them...however civilization often finds in them its adversaries; they confuse its abuses with its benefits, as in their mind the idea of novelty is indissolubly linked with that of evil [and they seem to want to establish a monstrous tie between virtue, poverty, and ignorance, so one could strike at them all at once].

Near them I see others who, in the name of progress, attempt to materialize man, who want to find Utility without concerning themselves with Justice, Science far removed from Belief, and well-being separate from virtue: these men proclaim themselves the champions of modern civilization, and they insolently place themselves at its head, usurping a place which has been abandoned to them, to which they are entirely unworthy.⁴

On this reading, it is the party of those who want liberty without morality or religion that seems closer to the spirit of the narrow bourgeois oligarchy that, according to the *Souvenirs*, characterizes the July monarchy.

Nonetheless, even if we cannot with certainty map Tocqueville's dichotomy between the "party of liberty" and the "party of morality and religion" onto the actual divisions characterizing French politics at the time, one thing is clear: finding a way around the current political impasse presented by the July monarchy's stagnant "liberalism" is the driving force behind Tocqueville's desire to reconcile liberty and material progress with morality and religion. Immediately after the passage in the letter to Stoffels quoted above, where the "friends of order" are condemned for their small-mindedness, he says:

I will *therefore* [my italics] show frankly this taste for liberty, and a desire in general to see it progress in the political institutions of my country; but at the same time I

⁴DAN I, Intro, p. 13. As Nolla indicates, the bracketed phrase is only in the MS, being deleted from the published version presumably due to the criticisms of Tocqueville's father and brother. In the margin, however, Tocqueville wrote "Thus ones wanted virtue and poverty, the others well being without virtue" (*op. cit.*, p. 13, footnotes "h" and "j").

will profess such a great respect for justice, such a true love of order and the laws, an attachment so deep and so reasoned for morality and religious beliefs, that I cannot believe that one would not clearly notice in me a liberal of a new species, and that one would confuse me with the majority of democrats of our day.

Putting together what Tocqueville says in the letter with what he says in *Democracy*, we can gather that his position acquires its peculiar character by critiquing the liberalism of his contemporaries from left and right simultaneously, which almost seems like joining Montesquieu's antinomies. On the one hand, Tocqueville rejects the modern materialistic and utilitarian view of man, but not the material progress attendant on the growth of commercial society; on the other hand, he rejects sacrificing political liberty for the sake of public order, while at the same time seeing the need to dampen the revolutionary spirit and confine liberty within constitutionalism and legality.

Of these difficulties, as the letter shows even more unambiguously than his published statements, Tocqueville is highly aware. To be sure, *Democracy* initially presents the separation of the proponents of liberty and equality into one camp, and the defenders of morality and religion into another, as something anomalous, even unnatural: it stems from the "strange coincidence of events" wherein the church was part of the old regime, directing revolutionary passions against both simultaneously, which led in turn to a strange political world where

the natural bond that unites the opinions of man to his tastes, his actions to his principles, was now broken; the harmony that has always been observed between the feelings and the ideas of mankind appears to be dissolved and all the laws of moral analogy to be abolished [DA I.intro, pp. 11-12].

Yet, such an astute reader of the *Spirit of the Laws* as Tocqueville could hardly attribute the split between virtue and liberty simply to the accident of modernity's revolutionary birth, and indeed any idea of some pre-established harmony between virtue and liberty is undercut more and more as the reader penetrates further into *Democracy*. Aware that the current constellation of French politics is not so contrary to nature that one could transform it by

simply enlightening its inhabitants, Tocqueville writes — even after the publication and success of the first volume of *Democracy* —

God alone knows if I will ever be in a position to act in any manner whatsoever on my contemporaries, and it is perhaps a great presumption to even think about it. But be sure that if I ever act, it will be prudently, by leaving an example to follow and letting men deduce my ideas from my conduct, rather than throwing them all at once at men's heads...my goal would be to reunite, as I was saying at the beginning of this letter, the two or three great things which we see separated.... If such pure and honest men wanted to love liberty the way they loved virtue, these two things would regenerate each other, and we would be saved [OCI I., p. 434].

That the Americans have “succeeded in incorporating to some extent” the “distinct elements” of “liberty” and “morality and religion” is due to their peculiar “point of departure,” their Puritan history [DA I.i.2]. As a “new species of liberal,” Tocqueville’s own “point of departure” [as he calls it in the above letter] is to unite, in the souls of the best men of France, these same elements “which we see separated.” The artifices of Tocqueville’s “new political science” are an attempt to foster consciously what the Americans achieved⁵ through good fortune — mores and institutions conducive to a modern liberty.

The original, almost idiosyncratic appearance of Tocqueville’s “liberalism” when compared to that of his contemporaries thus reflects his complex relation to Montesquieu’s treatment of modern or constitutional liberty: Tocqueville blunts the opposition between modern liberty and “virtue” that Montesquieu sets up and that Tocqueville’s contemporaries personify. In the first part of this chapter, I will show how this rapprochement leads Tocqueville to advocate, for the sake of modern liberty, a form of civic

⁵As is the case with Montesquieu’s self-fulfilling description of the historic significance of the English political achievement, the American synthesis of liberty with morality and religion gains its full, “world-historical,” significance — as showing a way out of the dilemma of choosing between the various unattractive political alternatives that for Tocqueville characterize post-revolutionary France — only via Tocqueville’s description and interpretation. [For this point, and many other helpful comments on this chapter, I am indebted to Christopher Nadon].

virtue with important resonances to Montesquieu's discussion of the "principle" or human dispositions needed to sustain the *classical* republic. At the same time, Tocqueville's disgust with the liberalism of the July monarchy shows that he does not view civic virtue as Montesquieu did, as merely a necessary means to "regulate" democracy, which can therefore be dispensed with wherever possible. Thus, in the second part of this chapter I will argue that Tocqueville's democratic liberty, in so far as it has classical overtones or is a kind of "virtue," is closer in spirit to the classics' self-understanding than it is to Montesquieu's understanding of the classics — his explicit statements about the irrelevance of the classics in understanding the world of modern politics notwithstanding.

This chapter's strange conclusion is that Tocqueville's efforts lead him — without knowing it, and so to speak against his will — back towards the political science of Aristotle. However, as he neither intends nor achieves a philosophic critique of the basis of modern thought, Tocqueville's critical perspective on modern man is not that of pre-modern thought — the self-sufficiency of the contemplative life. Rather, as I will argue in my final chapter, it is pre-modern political practice, which Tocqueville conceptualizes as "aristocracy," that forms the critical standard by which he measures the dangers modern society poses to liberty — the deformations and limits with which the democratic social condition threatens the human soul and its flourishing. The "new kind of liberalism" that emerges from this critical perspective aims not to overturn democracy, but to moderate its impact; moderation, however, is possible only if there are statesmen who, understanding democracy's limitations, seek not to overturn it but to improve it. Such a project requires a new understanding of the relation of political science and politics, a new kind of rhetoric. Tocqueville not only reorients the relation between liberalism and modernity in Montesquieu; as I will argue, he transforms the relation Montesquieu had posited between liberalism and enlightenment.

**A. MONTESQUIEU'S TREATMENT OF THE SPIRIT
OF CLASSICAL REPUBLICANISM — ITS ROLE IN
TOCQUEVILLE'S MODERN LIBERTY**

It is undeniable that Tocqueville is as aware as his predecessor of a vast difference in spirit between classical and modern republicanism, and understands this difference in much the same way. To this point G.W.Pierson, in *Tocqueville and Beaumont in America*, cites the following passage from Tocqueville's American diaries:

The theory of the ancient republics,' he had jotted down to start with, 'was the sacrifice of the individual to the general good; in this respect one can say that it was virtuous. The theory of this one seems to be to include the interest of the individual in that of the whole.

In a line of thought that resembles Montesquieu's analysis of the decline of the Roman republic in the *Considerations*, Tocqueville's initial encounter with America fills him with wonder at the possibility of a republic made up of citizens of such diverse national origins, mores, and religious beliefs: "What can be then the only tie which unites the different parts of this body? Interest?"⁶

That Tocqueville both accepts Montesquieu's opposition between classical "virtue" and modern "interest," but unlike Montesquieu believes that modern liberty depends upon finding the means to blunt this opposition, is central in defining his relation to his predecessor. Unlike Montesquieu's treatment of England, Tocqueville does not simply characterize America as the free play of self-interested passions: the liberty of the Americans depends upon the modification of those passions by mores and political habits that they inherited from the Puritans and the tradition of English liberty. For Tocqueville, unlike for his predecessor, the question of modern liberty is inseparable from the question

⁶Both quotes cited in G.W. Pierson, *Tocqueville and Beaumont in America* [New York: Oxford U.P, 1938], pp. 113-4. Pierson is quoting from *Oeuvres Completes*, ed. Beaumont [Paris: Michel Levy, 1860-66], Vol. VIII, 228-9.

of finding a modern equivalent for “virtue.” He spells out the problem in the following remarkable, and frequently cited, passage from his notebooks:

Concerning virtue in republics.

The Americans do not constitute a virtuous people but they are free nonetheless. This does not disprove conclusively that, as Montesquieu thought, virtue is essential to the existence of republics. One does not have to take the idea of Montesquieu in a narrow sense. What this great man had wanted to say is that republics cannot subsist except by the action of society on itself. What he understands by virtue is the moral power that each individual exercises on himself and which impedes him from violating the right of others.

When the triumph of man over temptations is the result of the weakness of the temptation or a calculation of self-interest, it does not constitute virtue in the eyes of the moralist, but it does enter into Montesquieu’s conception, who was speaking of the effect much more than the cause. In America it is not virtue that is great, but temptation which is small, which amounts to the same thing. Montesquieu therefore was right although he spoke of ancient virtue and what he said of the Greeks and Romans still applies to the Americans.⁷

For Montesquieu, we remember, virtue was necessary in republics only because, in the absence of the separate “executive power” of the modern monarchical and post-monarchical state, the enforcement of self-imposed laws required citizens with self-restraint. Tocqueville’s more radically democratic understanding of modernity leads him to conclude

⁷YTC Cited DAN I.ii.9, p. 243, editor’s note “a”; also by Aron, *op. cit.*, p. 258 ; Kahan, *op. cit.*, p. 187; Boesche, *op. cit.* p. 195; and Melvin Richter, *op. cit.*, pp. 100-101. Richter, like Boesche and Kahan, sees Montesquieu’s contribution to have been as an exponent of the republican tradition of “civic humanism” — an analysis which, despite the many merits of his paper, leads him to maintain that, as far as the peculiarly factious and self-interested politics of England’s modern liberalism, “Of this aspect of Montesquieu’s thought, there is little acknowledgment in Tocqueville” [p. 95]. As we have already seen, however, Tocqueville largely accepts Montesquieu’s arguments for the superiority of modern constitutional government over the classical republics, but questions whether the devices of the former are adequate to the problem of modern liberty.

Richter thus underestimates the degree to which Tocqueville appropriated aspects of both the modern and the classical regimes discussed by Montesquieu. Instead, under the [admitted] influence of Pocock, Richter maintains that Tocqueville’s “assumption of civic humanism about the preconditions of a healthy democratic polity” was that citizens “must be actuated by common ends, by the general interest, rather than by petty self-or party interest” [p. 95], despite the fact that Tocqueville says, in the very quote Richter cites, that American republicanism approximates the effects of virtue by blunting this very antithesis!

that some equivalent to the self-restraint and public spirit of classical virtue remains necessary for modern governments if they are to be free.

Initially, though, it would seem that the modern equivalents to virtue that Tocqueville describes have less in common with Montesquieu's depiction of republics than with his depiction of the spirit of "order and rule" that is necessary for the successful pursuit of commerce. As we saw, Tocqueville argues that the spirit of calculation and compromise elicited by commerce is diametrically opposed to revolutionary ardor. Moreover, the doctrine by which Tocqueville says Americans stimulate and justify their active concern with public affairs — "self-interest properly understood" — seems far from the spirit of the classics. What matters most about this doctrine, on most readings, is that it is a form of self-interest.

This interpretation — that "self interest properly understood" has little in common with "virtue" — would appear to be borne out by Tocqueville's own presentation of modern civic education. In America, the classical republic's need for a repressive "education" (as Montesquieu calls it in SL IV, using the term in the same sense as the classics did) in virtue is replaced by a need for enlightenment⁸ about the workings of complex political system. Facing a bewildering coexistence of federal and state authority, the citizen must be enlightened about his rights and duties in such a system if it is to work:

The whole structure of the government is artificial and conventional, and it would be ill adapted to a people which has not been long accustomed to conduct its own

⁸See Lamberti, *Two Democracies*, who compares [pp. 131 ff] this to the "enlightenment" of the people mentioned as a desideratum in the preface to SL, and the discussion of the "education" of citizen in a classical republic by the institutions of founder/legislators. However, the relation between "education" and "enlightenment" in these two authors is vastly different. In Montesquieu's modern liberal regime, the only "legislator" is Enlightenment itself, the weakening of prejudice by the universalizing effects of commerce; "education" in the sense discussed in Book IV is not a part of this regime because "all passions are free there." Thus, that the citizen needs an education in Tocqueville's modern republicanism distinguishes it from Montesquieu's liberal constitutionalism.

affairs, and in which the science of politics has not descended to the humblest classes of society...I have scarcely ever met with a plain American citizen who could not distinguish with surprising facility the obligations created by the laws of Congress from those created by the laws of his own state...

The Constitution of the United States resembles those fine creations of human industry which ensure wealth and renown to their inventors, but which are profitless in other hands [DA I.i.8, p. 167].

In a similar spirit, when closing the chapter on “How the Americans combat Individualism by the principle of self-interest properly understood,” [DA II.ii. 8], Tocqueville stresses again the need for “enlightenment” in modern democracy; this time the reason is not the complexity of modern government, but the replacement of the spirit of “instinctive virtue” by rational calculation:

We must enlighten men at all costs, because the century of blind devotion and instinctive virtues is already far from us, and I see a time approaching where liberty, public tranquility, and social order itself will not be able to do without enlightenment [DA II.ii.8, p. 124, translation modified].

Modern citizens, if no longer moved by an inculcated zeal for the public interest, must understand not only the workings of the polity but the connection between its functioning well and their own well-being, as well as what they need to contribute in order to accomplish these things. “The sole difference,” Tocqueville says, between the political turbulence of democracy in France and the well-ordered democracy of America, “is not that there is more selfishness among us” but that “there it [selfishness] is enlightened, here not at all” [DA II.ii.8].

Nonetheless, despite all these appearances, Tocqueville’s insistence that liberal democracy requires a *modern* form of virtue should not obscure the fact that, unlike Montesquieu’s liberal constitution, it does require a form of *virtue*, a moderating of the democratic social condition’s natural tendencies. One can easily see this, in fact, in the immediate sequel to the passage cited above distinguishing France and America:

Everybody I see about me seems bent on teaching his contemporaries, by precept and example, that what is useful is never wrong. Will nobody undertake to make them understand how what is right [*l’ honnête*] can be useful? [DA II.ii.8]

Tocqueville here stands on their head, not only the principles of bourgeois liberals — those friends of “progress” who want “utility” more than “justice,” from whom he distinguishes himself in the above cited letter to Stoffels — but those of their master, Montesquieu.

In SL XXI.20, “How commerce in Europe penetrated barbarism,” Montesquieu lays bare, *en passant*, one of the cornerstones of his liberalism: “Whenever one prohibits a thing that is naturally permitted or necessary, one only makes dishonest the people who do it.” Montesquieu and his spiritual descendants argue *against* forbidding the useful or necessary — the public only suffers when men cannot pursue their legitimate self-interest. By contrast, Tocqueville argues *for* something that requires a concerted effort: modern men need to be taught that public spiritedness is in their own interest. If this doctrine resembles anything in Montesquieu, it is not the liberal spirit of modern England, but the fictional treatment of classical republicanism in the *Persian Letters*, the story of the Troglydytes, who through hard experience learn that unless they each care for the common good, they must suffer terrible anarchy or submit to the rule of a monarch. Montesquieu suggests thereby that if a tame version of the monarch could be found, the hard self-restraint of virtue would be unnecessary.

To fully understand why Tocqueville finds a modern form of “virtue” more necessary than Montesquieu does, we must first see why he considers it possible. Tocqueville’s statement of the difference between the spirits of classical and modern republicanism in DA II.ii.8 reveals a subtle, yet significant shift in emphasis from the approach of his predecessor.

For Montesquieu, the underlying basis of the difference is psychological — the classical citizens’ ability to do “great deeds that astonish our small souls” was due to their stern civic “education.” Such a formation of character is neither necessary nor possible in modern states; “partly from the opposition there is for us between the ties of religion and

those of this world,” modern men receive “three different or opposing educations: that of our fathers, that of our schoolmasters, and that of the world” [SL IV.4]. By “our fathers,” *nos peres*, Montesquieu refers, arguably, not just to the paterfamilias, but the father confessor. As I mentioned in chapter 3, Montesquieu follows Machiavelli⁹ in claiming that the trans-political character of the moral horizon of the modern world — Christianity — weakens civic attachments and is incompatible with the “worldly” demands of political life.

While Tocqueville largely, albeit not publicly, seconds these considerations¹⁰, he locates the basic difference between the classical and modern citizens not primarily at the level of their education and training — although they do so differ — but at the level of social structures and the forms of justification that are possible in each age. Modern men are more “self-interested” not because the modern condition makes a cohesive “education” impossible; rather, their character differs from that of the classical citizen because men are, objectively, less tied to each other, and to men in this condition certain forms of argument are no longer plausible:

...since the imagination takes less lofty flights, and every man’s thoughts are centered in himself, moralists are alarmed by this idea of self-sacrifice and they no longer venture to present it to the human mind. They therefore content themselves with inquiring whether the personal advantage of each member of the community does not consist in working for the good of all [DA II.i.8, p. 121].

Tocqueville’s new emphasis on the constraints upon modern “moralists,” as opposed to the dependence of virtue on the constraints peculiar to classical republics that

⁹See the citation in my chapter 3 to *Discourses* II.2. From Montesquieu’s tripartite division, one might surmise that the reason the fragmentary character of modern education is only “partly” due to Christianity is that there is also the opposition between that of the “schoolmasters” and the world: the human qualities that one reads constituted excellence in the classical republics are far from those required for success in modern regimes.

¹⁰See the letter to Gobineau quoted in Lamberti, *op. cit.*, p. 31, from OC IX, p. 46: “The obligations of men between themselves as citizens, the obligations of the citizen toward the country seemed to me mal-defined and neglected in the morality of Christianity. It is there, it seems to me, the weak side of this admirable morality — by the same token, it is the only truly strong side of ancient morality. ”

Montesquieu emphasizes, suggests that ancient moralists, because of the “lofty flights” of the pre-modern imagination, could improve men by beautifying man, by giving him an image of himself that smoothed out the rough edges. In this new light, it appears that the “noble” aspect of classical virtue was only skin deep — a fact known to those ancients, aristocratic statesmen and their teachers, who dissected virtue “in secret,”¹¹ so as to preserve the charm of the surface:

I doubt whether men were more virtuous in aristocratic ages than in others, but they were incessantly talking of the beauties of virtue, and its utility was studied only in secret [DA II.i. 8, p. 121].

The civic virtue of the classical republic, then, differed from the qualities required by modern republics, not so much by being a “disinterested” passion — which Montesquieu compares to the love of ascetic monks “for the very rule that afflicts them” [V.2] — but by its *pretense* of being something more than civic: of being for the sake of noble (as the Greeks would say, *καλον*, which also means “beautiful”) rather than useful actions.

From putting all of this together with the chapter on “honor” [DA II.iii.18], we can infer why, for Tocqueville, classical virtue could not remove the veil and own up publicly to her true *raison d'etre*: virtue’s partisan origin as a means of maintaining the rule of some over the rest, a means which works only to the extent its origin as a means can be forgotten or concealed. To a large extent, therefore, the rulers as well fell under the spell of virtue’s charms, as depicted by the ancient moral philosophers.¹² These charms extending to the promise of quasi-divinity:

¹¹Although not always in secret: see the critique of timocracy in Plato, *Republic* 548a-c; cf. 338e-339a.

¹²As Machiavelli suggests in the *Prince*, Scipio “conformed to what had been *written* of Cyrus by Xenophon” [chpt. 14, end; my emphasis], rather than what could be learned by the deeds of Cyrus. Thereby, he was guilty of an “excessive mercy” which led to ruinous lack of discipline in the army, which “would in time have sullied Scipio’s fame and glory. “ Nevertheless, “while he lived under the government of the Senate, this damaging quality of his not only was hidden, but made for his glory” [Chpt. 17, end]. The link between these two references to Scipio constitutes an implicit complaint — a complaint part of the famous attack

When the world was directed a by small number of powerful and rich individuals, they loved to entertain a sublime idea of the duties of man; it pleased them to profess that it was glorious to forget oneself and that one should do good without a view to self-interest, as God himself [DAN II.ii.8, p. 113].

Whatever might be studied about virtue “in secret,” this noble idea of virtue was “the official doctrine of the time in matters of morals” [*Ibid*; the MS has “in matters of moral philosophy,” with “philosophy” crossed out].

Conversely, if the pride of the ancients led them to think too highly of themselves, the moderns perhaps think too little. The Americans, who claim they are motivated purely by self-interest

...to sacrifice a portion of their time and property to the welfare of the state...fail to do themselves justice; for in the United States as well as elsewhere people are sometimes seen to give way to those disinterested and spontaneous impulses that are natural to man; but the Americans seldom admit that they yield to emotions of this kind; they are more anxious to do honor to their philosophy than to themselves. [DA II.ii.8, p. 122]

Given that Tocqueville sometimes claims that the role of virtue in modern republics can be simply filled by public enlightenment, it is eye-opening to learn that modern, no less than classical, public spiritedness is accompanied by a certain amount of self-deception (and, therefore, requires a certain habituation), but in the opposite direction!

Interpreters of Tocqueville who stress his continuity with Montesquieu’s liberalism stress that “self-interest properly understood” is a form of self-interest. Properly understood [*bien entendu*], however, does not necessarily mean rationally understood. The beginning of the very next chapter [DA II.ii.9] suggests otherwise. Rational calculation is an insufficient basis for modern public morality: “if the principle of self-interest rightly understood had nothing but the present world in view, it would be very insufficient” [p.

at the beginning of Chpt. 15 on the “utopias” of ancient philosophers as having no practical value — that the ancient writers actually did harm by their excessive tact. (For making me see the importance of the fact that it is *writings* that Machiavelli, deviously, says Scipio conforms to, I am indebted to Nathan Tarcov, as well as the writings of Harvey Mansfield.)

125]. Tocqueville compares the belief that contributing to the affairs of the community is just good sense — that there is a coincidence of common and individual good — with the believer’s hope that a just God will give the virtuous their due in the next life (or, as Americans express this hope today, that “what goes around, comes around, “a sentiment that may be closer to faith than those who articulate in this way are aware). This impugning of the strictly calculating pretensions of modern public spiritedness is done in a most politic manner, however: Tocqueville [citing Pascal] says obedience to the dictates of faith can be understood as in one’s long-run self-interest, leaving the reader free to make the reverse inference, that the civic spirit of Americans would not be possible without there being beneath their professed hardheadedness, a hopeful, and therefore generous, character.¹³ One

¹³That Tocqueville’s analysis of the character of modern democratic civic virtue is correct — that it claims to be based only on an appeal to an each individual’s reason, but in fact requires citizens having certain moral dispositions which guide and limit the use of their reason, can be seen by considering the original, somewhat less “republican,” formulation of modern liberalism in Locke’s *Second Treatise*. [I cite here the edition of the *Two Treatises* edited by Peter Laslett (Cambridge, UK: Cambridge University Press, 1960).] Locke limits the legitimate ends of government via opposition to Hobbes, because if government is an artifact, to limit its authority requires opposing the thesis that without a sovereign we are naturally in a state of war. Locke is thereby led to assert that there is a “Law of Nature” accessible to our reason which supposedly requires us to respect the rights of others, a “law” of which every man, by punishing breaches of it, is the “executor” [paragraph 7].

Liberal, as opposed to despotic, government needs citizens with certain dispositions — but these dispositions are a result of reason only to the extent that the Law of Nature is so. However, while in the state of nature each individual arguably has an interest in “punishing” those who would try to take what they claim as theirs, Locke cannot find any strictly rational basis for mutual *respect* of rights, or lawful self-restraint, before the compact establishing civil society and law properly so called. This difficulty is implicit in the fact that the pre-political morality that “reason” allegedly “teaches” — the only means by which Locke can avoid the terrible consequence of the “right to everything” in Hobbes’s state of nature, the necessity of absolute sovereignty — is not, strictly speaking, arrived at on rational grounds, or without an appeal to truths knowable without divine revelation. To defend this morality, Locke appeals to the allegedly self-evident propositions that (a.) human beings are God’s workmanship, hence his property (so killing or enslavement constitutes theft); and that (b.) the other beings, while also made by Him, were specifically made for our own use [paragraph 6].

That liberal government, given our nature, is the most rational response to the political problem is one thing; but to suppose that the moral dispositions necessary to sustain this government can arise by appealing to the unfettered exercise of each individual’s reasoning

might even see the doctrine of self-interest properly understood as an unwitting imitation of God, understood as that which, through loving itself, is led to love and care for the world.

Contrary to the impressions left by viewing the political alternatives through Montesquieu's categories, then, for Tocqueville the classical citizen is not as noble, nor the American as calculating, as their self-understandings proclaim them to be. This rapprochement makes finding a modern version of virtue — i.e., one compatible with an egalitarian and rationalistic justification — both possible and necessary. Therefore, despite the modern sound of “self-interest properly understood,” Tocqueville's discussion of modern civic virtue has affinities, as his notes suggest, with Montesquieu's discussion of classical republics. These echoes of the classics are especially audible in two aspects of Tocqueville's discussion of how a modern form of civic virtue can be encouraged: the role of the township, and the importance of mores and the forms of family life.

I. THE TOWNSHIP: THE CLASSICAL ELEMENT IN TOCQUEVILLE'S MODERN LIBERAL DEMOCRACY

One of the most remarkable differences between Montesquieu's liberal constitution and Tocqueville's liberal democracy is the importance, for the latter, of the township [*commune*]. For Montesquieu, it would appear that the independence of the township has

is quite another. By his use of “theology,” Locke blurs the line between these, bringing together the practical conclusions of individual reasoning and the general reason that is law, and encouraging the spirited defenders of free government to be proud of having principles based on reason. This prideful assertion of reason is rather different from the self-deprecating claim of Tocqueville's American, that his civic spirit is just a form of reasoning about self-interest. At the same time, the widespread acceptance of the principle that the individual can only accept as legitimate what is ascertainable to his reason — the famous unconscious “Cartesianism” that Tocqueville attributes to democracy, and which one might attribute just as easily to the influence of Locke — is perhaps the root of the individualist timidity that the doctrine of self-interest properly understood seeks to rectify.

no place in modern England; rather, it is one of those “intermediary bodies” of monarchy whose abolition, like that of seigniorial justice, is the basis of modern republicanism:

In a few European states, some people had imagined abolishing all the justices of the lords. They did not see that they wanted to do what the Parliament of England did. If you abolish the prerogatives of the lords, clergy, nobility and towns in a monarchy, you will soon have a popular state or else a despotic state [SL II.iv, p. 18].

As a republic, or to speak more precisely and use the generic term used by Montesquieu a “popular state,” England has no more room for intermediary bodies than did the classical republics. Unlike in the classical republics, however, there is also no room in the modern popular state for the spirit of direct popular government. As we have seen, the people are relegated to the negative role of preserving liberty by making sure that neither branch of the government gets too powerful: “the citizens would come and raise the other party like hands rescuing the body” [SL XIX.27].¹⁴

¹⁴The *Federalist* [no. 63] highlights that it is not “representation” per se that distinguishes ancient from modern republican government [as representation existed in antiquity, such as the tribunes]: “The true distinction between these and the American Governments lies in the total exclusion of the people in their collective capacities” [Madison’s italics]. This point is made in the context of an argument for the Senate as a check on the more populist House, a context which suggests that the people are “excluded in their collective capacities” not just because each representative is elected by only one part of the people, but because no branch can stand for the people if there is more than one branch that “represents” them. (The executive could stand for the people as a whole if he were elected by all, were it not for the fact that his function is only to execute that will as expressed by the law.)

The *Federalist* here follows the spirit, if not the letter, of the *Spirit of the Laws*. Madison’s analysis of the danger of one body representing this “collective capacity” cites examples such as the unchecked growth of the power of the Roman Tribune. Madison’s argument is entirely in line with the analysis of the democratic imbalance in the classical mixed regime in SL XI.2 ff. Moreover, Montesquieu would hardly disagree with Madison that “representation,” considered abstractly or separate from the separation of powers, is not the real dividing line between ancient and modern. As we saw, monarchy’s intermediary bodies — the origins of modern representative government [SL XI.8] — are compared by Montesquieu in SL V.11 to the tribunes as understood by Cicero: the force of the people was moderated, the latter claimed, by being “represented” by a leader. The modern solution which grows out of monarchy’s “meditated” sovereignty is better because various bodies may speak on behalf of the people, but there is — no more in England than in France — no

Montesquieu's opposition to a modern role for direct popular rule stands in marked contrast to Tocqueville's extraordinary treatment of the township in DA I.i.5. In what seems like a direct criticism of Montesquieu, Tocqueville claims: "A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty" [p. 61]. By the "spirit of liberty," Tocqueville clearly means more than constitutionalism or the rule of law. In classical or direct democracies, Montesquieu had said, "the power of the people has been confused with the liberty of the people" [SL XI.2], but the township matters for Tocqueville precisely because it embodies this "confusion": unlike other levels of government, it is a form of direct democracy, which gives the people the power and the taste for self-government. Moreover, if township governments do not have real power, this spirit cannot be developed: "if you eliminate the power and the independence of the township, you will never find anything there except subjects (*administrés*), certainly not citizens (*citoyens*)" (p. 67, translation modified). This contrast between the *administré* and the *citoyen* has obvious classical overtones, as does Tocqueville's claim that "administrative centralization is suited only to weakening the peoples which submit to it, because it tends to unceasingly diminish their civic spirit [*l'esprit du cité*]" [p. 87, translation modified; DAN I.i.v, p. 71].

Of course, Tocqueville's Americans understand local self-government as entirely a consequence of modern or democratic principles:

In the nations by which the sovereignty of the people is recognized, every individual has an equal share in sovereignty and participates equally in the government of the state.

Every individual is always supposed to be as well informed, as virtuous, and as strong as any of his fellow citizens...

In all that concerns the obligations of citizens to each other, he becomes a subject. In all that concerns himself, he stays a master: he is free and accountable only to God. Hence arises the maxim, that everyone is the best as well as the sole

particular one that "stands for" them, which is why they will come to the aid of one branch when the other gets too strong.

judge of his own private interest, and that society has no right to direct his actions unless they seem harmful to it or when it has need of his assistance...

The township, taken as a whole, and in relation to the central government, is only an individual, like any other to whom the theory I have just indicated is applicable. Municipal independence flows therefore, in the United States, from the very dogma of the sovereignty of the people; all of the American republics have more or less recognized this independence, but it is in New England that circumstances have particularly favored its development [DA I.i.5, p. 61, translation modified; DAN I.i.5, p. 53].

Yet if the “dogma” of the sovereignty of the people justifies municipal independence once established, said dogma can hardly explain its existence. If local autonomy simply arose from the very nature of the democratic principle, why does Tocqueville say it is “fragile” and “easily destroyed” unless “amalgamated with the mores of a people,” and that legislators cannot create its spirit [p. 60]? As we have seen, the democratic reality — the psychology of individualist withdrawal from politics and the tendency towards centralization — is in some tension with this easy derivation of local freedom from democratic principles. Thus Tocqueville contrasts the township with the more “artificial,” and more modern, governments that stem from deliberate human institution; local freedom is “natural” in the sense of belonging to early or “semi-barbarous” [p. 60] stages of society. While all of American government is supposedly based on popular sovereignty, it is only in the township that this power is exercised “immediately”; this lack of “representation” is “contrary to our ideas” [p. 62] — including, of course, the tradition of French liberalism that takes its bearings from Montesquieu.

The Americans — without even realizing it — owe their love of liberty partly to the persistence of some rather archaic forms. Historically, of course, the origins of the township’s direct, even rude, form of liberty hardly lie in the classical republic. In the *Ancien Regime*, Tocqueville shows in some detail how municipal liberty was a feudal institution that developed in two different ways in the old and new world:

When the rural parish of the Middle Ages was removed beyond the reach of the feudal system and left uncontrolled, it became the New England township. When it was cut loose from the seignior, but crushed in the close grasp of the state in France,

it became what remains to be described...parochial officers...were elected, really or nominally, but they served far more as instruments of the state than as agents of the community. [AR II.3, pp. 68-9].

At the same time, Tocqueville's treatment of the township does not focus on its distinctively "feudal" aspects, namely as one of Montesquieu's several *pouvoirs intermédiaires* that have particular rights as opposed to a share in sovereignty. Quite the contrary: the American township resembles the French parish "as closely as a living body resembles a corpse" [AR II.3, p. 68] because the latter, with no real power, offers men no chance to govern themselves. Moreover, as we have seen, the idea of the liberty of a man or city as stemming from a particular title — the rights which Athenians or barons claim as their particular due — Tocqueville sees as common to both feudal and classical times. Tocqueville interprets the township not so much by its origins as by its end: to promote civic virtue, albeit of the more attenuated kind possible in modern republics, by preserving a space for the direct or natural form of republican life.

Certainly Tocqueville, accepting his predecessor's idea of the vast difference in spirit between the ancient and modern worlds, does not try to equate the township with the austere republicanism of Sparta. Like Montesquieu [SL IV.6], he knows the difference between Lycurgus and William Penn. Nonetheless, Tocqueville treats the township as a partial remedy for precisely the modern "educational" difficulties that made Montesquieu consign virtue to the past: the discrepancy between the lesson the "world" teaches, namely self-promotion, and the more edifying principles we imbibe from "fathers" and "schoolmasters" [SL.IV.4]. The township is a worldly education in the necessity of common action: "town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it" [DA I.i.5, p. 62].

Because Tocqueville sees the main distinction between modern and pre-modern as more doctrinal (namely the kinds of justification that are possible) than psychological, the

township can encourage a simulacrum of pre-modern habits, even if these are now understood according to modern principles. The matter after all — human beings — is still the same. Classical virtue, for Montesquieu, required an austere, self-denying patriotism — “a continuous preference of the public interest over one’s own” [SL IV.5] but the township teaches the converse. Only by a direct in share in politics, such as that made possible by the township, can men learn that they cannot provide for their interests without combining with others [DA II.ii.7, p. 115]. The township, then, along with the more general “science of association” that Tocqueville goes on to develop later, is the crucible wherein are formed the habits that are the basis for the American doctrine of virtue: “self-interest properly understood,” or the hopeful blurring of the line between the common and individual goods. Via the sentimental attachment to the local community that arises out of his share in overseeing its ever so mundane concerns, the modern citizen even begins to feel a connection between his own interest and the nation as a whole [DA I.i.5, p. 94].

It is only in the more general influence of the spirit of local self-government on politics, moreover, that Tocqueville finds the complete solution to Montesquieu’s dilemma of democracy: the corruption of the love of equality into the spirit of extreme equality [SL VIII.3; cf. III.3]. In the latter, we remember, all social order, including the law, becomes an unjustified constraint. It is in very much the same terms that Tocqueville, in the chapter on the township, describes the subject of European centralized states. The government being a distant and alien body, he obeys only when its power is there for him to fear: “he braves the law with the spirit of a conquered foe as soon as its superior force is withdrawn; he perpetually oscillates between freedom and license” [DA I.i.5, p. 93]. The American, on the other hand, obeys because he sees the law as his own; he is not merely kept in check by the long arm of the state. Moreover, while this modern citizen considers it in his interest to uphold the sanctity of the nation’s law, he does so primarily (as the contrast with Europe shows) because of his *sentimental* connection with his local community. Luckily, the

Americans are not as rational as they think they are; one sign of this is a lack of self-awareness: they do not seem to understand how annoying their constant patriotism is to foreigners [DA II.iii.16].

The contribution of the township to the spirit of a “regulated democracy,” then, is the reason why Tocqueville can say of Montesquieu “although he spoke of ancient virtue...what he said of the Greeks and Romans still applies to the Americans.”¹⁵ Tocqueville draws a similar comparison between the classics and the political vitality of the Americans in *Democracy*, where he brings in Montesquieu’s *Considerations*. Tocqueville informs his countrymen that:

...an American cannot converse, but he can discuss, and his talk falls into a dissertation. He speaks to you as if he were addressing a meeting; and if he should chance to become warm in the discussion, he will say “Gentlemen” to the person with whom he is conversing...if an American were condemned to confine his activity to his own affairs, he would be robbed of one half of his existence; he would feel an immense void in the life which he is accustomed to lead, and his wretchedness would be unbearable [DA I.ii.6].

At the end of this passage Tocqueville has a footnote:

The same remark was made at Rome under the first Caesars. Montesquieu somewhere alludes to the excessive despondency of certain Roman citizens who, after the excitement of political life, were all at once flung back into the stagnation of private life. [*Ibid*; the citation is, according to Nolla’s note in DAN, “probably” to *Considerations* chapter 11, OC II, p. 131]¹⁶

However, the most fundamental point of contact between Tocqueville’s liberal democracy and Montesquieu’s discussion of the classical republic is not the impetus towards civic-spiritedness provided by the requirements of unmediated self-government, but as the role of the township shows, the relation between liberty and mores. The spirit of local liberty, Tocqueville says, can be “easily destroyed” by governments if it has not been

¹⁵Cited above.

¹⁶Intriguingly, the dissatisfaction Montesquieu is speaking of in the passage is on the part of Cicero and other members of the Senatorial class deprived of their political function, authority now being “the office of one alone.”

“mixed with national ideas and habits” and “entered into the mores” [*moeurs*] [DAN I.i.5, pp. 49-50]. However, it is the pre-modern, pre-liberal side of Montesquieu’s discussion of mores which grounds Tocqueville’s understanding of the contribution of mores to modern liberty.

2. THE ROLE OF MORES: MONTESQUIEU’S LIBERALISM VS. TOCQUEVILLE’S MODERN LIBERTY

As we have already seen, the roles of mores and national character are distinctive, and distinctively liberal, aspects of Montesquieu’s political science. More pointedly than Aristotle, for whom the form of regime is the sovereign fact about a society, the form or arch that determines its character, Montesquieu insists that the scope of politics is and ought to be limited by pre-existing circumstances. While some of these are simply the physical circumstances of a nation, others are acquired dispositions of a people that cannot, or not easily, be shaped by government and law: “mores and manners are usages that laws have not established, or that they have not been able, or have not wanted, to establish” [SL XIX.16]. As Montesquieu shows with the examples of China [XIX.18] and Sparta [IV.6 with XIX.16], once established, mores are highly resistant to change. Indeed, to a great extent it would appear that free government consists in having laws follow mores, rather than trying to use law to overturn them [XIX.14]; to the extent that mores become corrupt, it would seem that law can provide at best very imperfect remedies for this situation [XIX.26, end].

The distinction between laws and mores is, as we have seen, part of the “liberal” aspect of Montesquieu’s political science, in which the government’s coercive and punitive power is limited by a distinction between public and private: “laws regulate the actions of the citizen, mores regulate the actions of the man” [SL XIX.16]. Yet Montesquieu complicates this picture, especially in the case of pre-modern regimes, in two important

ways. First, despite the “natural” distinction between laws, mores, and manners, which “only singular institutions thus confuse” [XIX.21], it turns out that the examples of the most durable mores — China and Sparta — are also the examples of such “singular” institutions [IV.6 with XIX.16-20]. In both the Chinese and Spartan cases, according to Montesquieu, the precepts of the “legislator” extend to all aspects of life, so much so that the distinction between man and citizen ultimately makes little sense.

Mores have to come from somewhere: it appears that they are a kind of societal “afterglow” from a previously illiberal polity. Moreover, as Montesquieu indicates, even to the extent that a society does distinguish, in principle, the sphere of law from that of mores, the two are still in fact related; moral character, even if outside the sphere of law or punitive sanctions, can hardly be a matter of indifference. Just as “action,” or what is exterior, stems from and reveals “character,” the interior, so the character that makes a “citizen” inclined to do certain things is formed by the mores “which regulate the actions of the man.” Even the most superficial aspects of custom, manners, are part of this same continuous proportion between the exterior and formal, and the private and material: “mores represent laws, and manners represent mores” [SL XIX.16].¹⁷ The distinction between public and private, between laws and mores, is at best provisional; it is a desideratum, not a fact.

Montesquieu’s distinction between law and mores is related to the distinction between the realms of government and the family. The character of human relations in each

¹⁷If this is stated “geometrically”: law:mores::mores:manners, one might conclude that mores are both the “interior” side of the citizen — the basis of his intention to obey the law — and the public or “exterior” side of the man, the basis of the habits by which his character is formed in the family. Manners would be, on this account, most idiosyncratic or irrelevant to society, but the truest indication of the self. On the simultaneously public and private aspect of mores, cf. *Social Contract* III.1, where Rousseau derives “mathematically” the relation Montesquieu makes [SL VIII.16-20] between population, the form of government required, and the degree to which rule is matter of force rather than persuasion: “the less relationship there is between private wills and the general will, that is, between mores and the laws, the more repressive force ought to increase.”

of these two realms, Montesquieu shows, is closely related to that in the other. In his treatment of republics, as I argued in chapter one, Montesquieu shows why these regimes necessarily conflated the public and the private in a most illiberal way. Classical virtue, in fact, could be maintained in the long run only by a near despotic authority of the fathers, as Montesquieu suggests by juxtaposing the following two propositions: “Nothing maintains mores better than the extreme subordination of the young to the elderly...Nothing gives greater force to the laws than the extreme subordination of the citizens to the magistrates” [V.7]. This shows, in fact, that the republican “solution” to the problem of civic education is self-contradictory. Because republics lack the “repressive force” of “other governments” [namely, those with an executive — see III.3], the “extreme subordination” of one citizen to another holding the office of magistrate depends on mores, but because mores tend to decay, their laws “must therefore, seek to supplement them; they do so by paternal authority,” such as the life and death power of Roman fathers [V.7].

The distinctive contribution of monarchy to modern government, a separate “executive” power, allows for a greater separation of the public and the private, of the realms of law and mores: “where there is no question of such pure mores, one wants each person to live under the power of magistrates” [V.7]. As we would say, the growth of the power of the state has the potential to liberate sons — (and wives) — from paternal authority.¹⁸ However, monarchy is inherently fragile, precisely because its defining principle — honor — by which it is something other than despotism, rests on nothing more solid than mores, which an abuse of power could overturn [VIII.8]. The real solution to the problem posed by mores is the English regime; unlike other regimes, in which “laws follow mores,” in this regime, “mores follow laws” [SL XIX.26, end]. The separation of powers

¹⁸Here, Montesquieu makes an extremely rare criticism of the contemporary monarchy: speaking of the Roman custom of delaying the time of coming of age, he says “perhaps we were wrong to take up this usage” [V.7].

finally enables mores to be what Montesquieu says they are by their “nature”: principles that govern the action of the man, as opposed to the citizen, which is to say dispositions that are “inspired” in men by the “general spirit” of society rather than by the threat of legal or punitive enforcement [XIX.12; cf. XIX.14].

When we move from Montesquieu’s discussions of the differing relations of laws and mores in the various forms of government, to Tocqueville’s discussion of the importance of mores to modern liberty, one thing is striking: for Tocqueville, the term “mores” generally refers to certain pre-modern dispositions or habits that moderate the extreme aspects of the modern social condition and that modern statesmen should be careful not to disturb. That is, Tocqueville preserves the basic insight of Montesquieu’s political science — that much of society is governed by principles rather different than those that constitute the government — but he rejects Montesquieu’s “solution.” For Tocqueville, modern liberal politics does not automatically produce the human dispositions necessary to it. Thus, while having — because of his sense of the radically democratic character of his historical moment — an even more acute sense than his predecessor of the impossibility of using law to dictate mores, Tocqueville shows how modern liberty rests, to a considerable extent, on the moral effects of pre-liberal principles that continue to have an effect in the “social” or “private” sphere.

This is especially true in what Tocqueville says about the mores that govern the family. To be sure, the reduced authority of fathers in democracy means that modern “mores” are nothing like those of Montesquieu’s classical republic. As we have already seen, Tocqueville follows Montesquieu in showing that modern mores are softer than pre-modern [DA III.iii.1 with SL XX.1]. Nevertheless, two aspects of Tocqueville’s discussion of mores and the family have a decidedly pre-modern cast — the related issues of the status of women and conjugal fidelity. In these areas, Tocqueville seems more inspired by Montesquieu’s discussion of the classical republic than by his discussion of England.

To see this, one has only to juxtapose the following two claims: Montesquieu's claim that "in republics women are free by the laws, and captured by mores" [SL VII.9], and Tocqueville's remarkable claim that

the Americans... have allowed the social inferiority of woman to continue, they have done all they could to raise her morally and intellectually to the level of man; and in this respect they appear to me to have excellently understood the true principle of democratic progress. [DA II.iii.12, p. 214]

For both Montesquieu and Tocqueville, it would appear that the moral tone necessary for republics is dependent on a deep inconsistency in the application of the government's defining principles. Given Tocqueville's conceptual scheme, a discord between the orders of the family and the government is all the more striking. Tocqueville cites with approval the American belief that men and women have distinctive functions in the family given to them by nature; this belief clearly violates the principle defining the modern *état social*: our natural independence and equality. For Montesquieu, republics require that freeborn women have their freedom — (i.e., their sexual freedom) — sharply curtailed by custom; Tocqueville goes further and says that American education gives women "the hearts and minds of men" [p. 212] — but still leaves them "confined within the narrow circle of domestic life" [p. 214].

About the reasons underlying the flagrant contradictions that define the status of women in republics, both thinkers have similar views: both find a link between the situation of women and the moral temperaments that predominate in any given society. In Montesquieu's case, this can be seen by his comparison of the role of women in republics with the effects of their much freer status in royal courts [SL VII.8-9]. In the latter, Montesquieu finds amorous intrigues wherein "each man uses their charms and passions to advance his fortune" [VII.9 — exactly how this done, Montesquieu leaves in decent obscurity]. Moreover, as Montesquieu alleges, the "commerce of gallantry" that comes with this erotically charged, and competitive, atmosphere means that the freedom of women

induces in men an excessive desire to please them. This desire stimulates the taste for luxury and it makes men into over-civilized fops, “that makes one no longer conduct oneself by any but the maxims of ridicule that women understand so well how to establish” [SL VII.8]. By contrast, the mores that govern women in a republic are directed towards “gravity” — which means that men are not encouraged in the pursuit of luxury or diverted from public business by a frivolous gallantry. Moreover, the absence of dangerous liaisons makes possible an atmosphere of mutual trust and civic friendship, upon which democratic life depends.

Tocqueville gives a similar analysis of the effect of restrictive mores on the character of the American woman and family, and the relation of these to republican life. As for Montesquieu, for Tocqueville a stable republic depends upon a certain moral tone, stemming from an orderly family life, which in turn depends upon the character of women. However, for Tocqueville the main contrast is not between republican austerity and monarchical sensuality, but between the ordered liberty of America and European revolutionary anarchy. In what must be something of a rhetorical exaggeration, or maybe conflation of cause and effect, Tocqueville blames the shortcomings of European politics on the European family:

In Europe almost all the disturbances of society arise from the irregularities of domestic life. To despise the natural bonds and legitimate pleasures of home is to contract a taste for excesses, a restlessness of heart, and fluctuating heart...While the European endeavors to forget his domestic troubles by agitating society, the American derives from his own home that love of order which he afterwards carries with him into public affairs [DA I.ii.9, p. 304].

This orderliness does not, to be sure, stem from anything like the despotic power of fathers in the pre-modern world: “In America the family, in the Roman and aristocratic senses of the word, does not exist” [DA II.iii.8, p. 192]. Indeed, Tocqueville is at pains to argue that equality of conditions is most conducive to regular morals and orderly family life: for example, absent from America is the aristocratic custom of arranged marriages, which in Europe is a frequent cause of adultery. Nevertheless, upon closer examination it would

appear that Tocqueville traces the strictness of family mores in America, in large part, to something quite undemocratic: the role given by American mores to women.

The American woman, in Tocqueville's depiction, has something resembling the "gravity" that Montesquieu says characterizes the women of the well-ordered republic, although for a very different reason. The character of American women is not simply the result of their being "confined" by mores. Rather, that character comes from the resoluteness needed to bridge a certain gap: between the independence given to them in girlhood, an upbringing in keeping with democratic principles [DA II.iii.9], and the restrictive condition of women within marriage. Tocqueville's analysis of the difficult situation in which American mores place women, and the effect of that situation on their character, is worth quoting at some length:

...Thus in the United States the inexorable opinion of the public carefully circumscribes woman within the narrow circle of domestic interests and duties and forbids her to step beyond it.

Upon her entrance into the world a young American woman finds these notions firmly established; she sees the rules that are derived from them; she is not slow to perceive that she cannot depart for an instant from the established usages of her contemporaries without putting in jeopardy her peace of mind, her honor, nay, even her social existence; and she finds the energy required for such an act of submission in the firmness of her understanding and in the virile habits which her education has given her...

...When the time for choosing a husband arrives, that cold and stern reasoning power which has been educated and invigorated by the free observation of the world teaches an American woman that a spirit of levity and independence within the bonds of marriage is a constant subject of annoyance, not of pleasure; it tells her that the amusements of the girl cannot become the recreations of the wife, and that the sources of a married woman's happiness are in the home of her husband [DA II.iii.10, pp.201-2] .

In Tocqueville's depiction, American mores seem to have finally achieved the female virtue that, in Montesquieu's treatment, the classics had pursued clumsily and intrusively by such devices as despotic censors.

The American woman, as Tocqueville shows her, is the only element of the modern liberal regime to have classical virtue in Montesquieu's sense — namely the painful

renunciation of one's own interests for a common good. Tocqueville places such importance on what seems her virtue, her "virile habits" of almost masculine fortitude, that he makes the surprising claim that the "singular prosperity and growing strength" of the American people "ought mainly to be attributed...to the superiority of their women" [DA II.iii.12, p. 214]. At the same time, this virtue has its costs, costs that Tocqueville understands in much the same terms as Montesquieu. Montesquieu's contrast between republics and monarchies carries the implication that the gravity of a virtuous republic, including the gravity of its women, is unappealing from the standpoint of erotic charm and allure [SL XIX.5-7; 12]. Likewise, Tocqueville finds that the American woman, by comparison with her more cloistered European counterpart, has a hard-boiled savvy but is lacking in feminine charm. American education, wherein girls are taught independence and to see the world without illusions (and then placed in a highly confined situation) tends "to make cold and virtuous women instead of affectionate wives and agreeable companions for men" [DA II.iii.9, p. 200].

Tocqueville's discussion of the mores of the American family, then, like Montesquieu's discussion of the role of mores in the classical republic, concerns the quasi-private foundations of civic virtue, foundations whose underlying principles are in considerable tension with those of the government. The lawful or "regulated" form of classical democracy, as Montesquieu implies in SL VIII.2-3, depended on some rather undemocratic forms of authority: the extreme form of democracy makes one feel equal not just to the "magistrate, senator, judge" but also to the "father, husband, or master." To be sure, Tocqueville goes a considerable degree towards showing how mores themselves can be transformed by equality; masters and servants, for example, can have relations of equality that are regulated by contract [DA II.iii.5]. Yet, the very fact that for Tocqueville mores are necessary to, but not generated by, modern liberty — that modern democracy is not self-

regulating, unlike Montesquieu's liberal constitution — makes one suspect just how far mores can be thus reinterpreted.

For Tocqueville the family is such a limit case. However, Tocqueville avoids raising the thorny issue of how far mores are consistent with the modern principle. Instead, any contradictions between the two are swept under the carpet via the rubric of “regulated democracy,” the same evasion used in American practice. Tocqueville says that the Americans do not feel democracy requires overturning the order of the household. Rather they see their belief that “the natural head of the conjugal association is man” as the unproblematic consequence of the facts that “every association must have a head” and that “the object of democracy is to regulate and legalize the powers that are necessary, and not to subvert all power” [DA II.iii.12, p. 212]. Now, while these facts might well be a convincing argument for democrats that they should respect the authority of a “magistrate, senator, [or] judge” that they have put in office, by themselves they do not establish the “natural” authority of husbands. Rather, it would seem that the recourse to “nature” in this instance reveals that democratic principles are not — or perhaps cannot be — extended to every aspect of society.¹⁹ As in Montesquieu's discussion of republics, mores are

¹⁹Cf. Aristotle *Politics* 1259a38-b10: of the three kinds of rule — despotic, royal, and political — the rule of the husband over the wife is closest to the third, but cannot be identified with it. In political rule, men rule over those who “tend by their nature to be on an equal footing” with them, and so alternatively share in office. This rotation does apply to husband and wife, but Aristotle leaves the reasons for this curiously vague. Aristotle is vague about the same question, and in the same manner, as Tocqueville: the mutual dependence, and yet incommensurability, of the realms of family and politics. A brief look at Aristotle's allusive ambiguities might thus shed some light on this problem, a problem Tocqueville as well chooses to leave implicit.

In this critical passage, Aristotle's argument at first seems to be that husband and wife cannot rule and be ruled in turn because “the male, unless constituted in some respect contrary to nature, is by nature more expert at leading than the female...” However, Aristotle had distinguished in the immediately preceding sentence the “political” rule over the wife from the “kingly” rule over the child — precisely the distinction that the subsequent argument about nature conflates — and he then proceeds to qualify the “egalitarian” aspect of political rule by noting that officeholders “seek to establish differences in external appearance, forms of address, and prerogatives,” in the same way that King Amasis, of

beneficial because they moderate, and to a large degree oppose, the official or defining principles of the republics they sustain. Another such necessary, and external, basis is religion, and as we shall see in the following chapter, it is on the relation of religion to modern liberty that Tocqueville shows his greatest divergence from Montesquieu.

B. TOCQUEVILLE'S DEPARTURE FROM MONTESQUIEU'S LIBERAL POLITICAL SCIENCE

Although in contrast with Montesquieu, Tocqueville views it as necessary for there to be a *modern* form of civic virtue, it might seem that such virtue is still, ultimately, a mere means to the same liberal ends, if means now made necessary in his day by the subsequent advance of the democratic *état social*. One can hardly help noticing, however, that

humble birth, made his subjects worship a statue of a god cast out of his golden foot pan. Strikingly, it is this statement of the radically conventional nature of political inequality, which is followed immediately by the assertion that "The male always stands thus in relation to the female." The context suggests that destiny is — contrary to first impressions — something more than biology.

We can get some clue of Aristotle's intention by noting that what is "always" is not what is "by nature." In the case of ruling, what is natural is not even what is true "for the most part." In a sense, the strongest "always" rules — such as in the rule of the soul, by definition, over the body, which as necessary is despotic [1254b5] — but only the rule of reason is "by nature." Thus, men not defective by nature, natural rulers, are rare [1254a36ff with 1284b25ff, 1287a28-32]. In more instances than men's pride will let them admit, wives are wiser [consider the reference to Sophocles's *Ajax* 293 at 1260a30]; in a few cases, they may even be stronger. In any case, natural differences between the two sexes, of whatever kind they might tend to be, are insufficient to constitute the order of the household; presumably, Aristotle would agree with Plato that running the household like the city would require the radical changes proposed by the *Republic*.

Thus, Aristotle indicates that more powerfully than in the city, in the family nature is "always" magnified and distorted by convention, a convention which presents itself as "nature." In this respect, it would appear that Tocqueville, by not explicitly challenging the American self-understanding of these things, follows the practices of ancient moralists and does not tear off the veil of virtue's appearance — although his remarks about the coldness of American women, and his treating the American principle of the sexual division of labor as an application "of the great principle of political economy which governs the manufacturers of our age" [DA II.iii.12, p. 211] strongly suggest that such a familial order is good only for its utility to society .

Tocqueville does not treat self-government as simply instrumental to constitutional government. A lack of public debate and engagement is bad, not only because it threatens to increase the power of the state; it is bad or degrading for the characters of men who live within such a state. For example, Tocqueville's complaint against the July monarchy was not so much that it violated rights, but that the stultifying effects of such a narrowly based suffrage made the middle class "a little corrupt and vulgar aristocracy."²⁰ This government was, as Tocqueville says in the *Recollections*, completely dominated by the spirit of the middle class, which "was moderate in all things except the taste for well being" and "which, mixed with that of the people or the aristocracy, could work miracles, but which alone will never produce anything other than a government without virtue and without grandeur."²¹

Tocqueville's disgust with the July monarchy shows that his difference with Montesquieu is not simply over means, or over how modern liberty can be realized. The ends Tocqueville looks to in his notion of political liberty — namely, its benefits to modern democracy — are considerably wider than those of Montesquieu's liberalism. Montesquieu's ends are encapsulated in his distinction between "political liberty," the opinion one has of one's security, and "philosophical liberty," the opinion one has of freely exercising one's will [SL XII.2]. As Harvey Mansfield puts Montesquieu's position: "It is more satisfying to say, 'You can't boss me around!' than it is to actually boss others around."²² Tocqueville's treatment of political liberty suggests that this is not the case. It is not the rule of law — to neither boss nor be bossed around — but only an active share in politics, that develops the capacity and inclination of men to act in all fields of endeavor:

²⁰Letter to Nassau William Senior of August 25, 1847, in *Selected Letters*, p. 188.

²¹*Recollections*, p. 3; translation modified using *Souvenirs*, in *Tocqueville* [Paris: Lafont, 1986], p. 730.

²²*Taming the Prince*, p. 245.

I have no doubt that the democratic institutions of the United States, joined to the physical constitution of the country, are the cause (not the direct, as is so often asserted, but the indirect cause) of the prodigious commercial activity of the inhabitants. It is not created by the laws, but the people learn how to promote it by the experience derived from legislation [DA I.ii.6].

In tying political liberty more closely to a share in sovereignty than does his predecessor, Tocqueville brings political liberty closer to “philosophical liberty,” the exercise of one’s will — which, despite the strange appellation he gives it, is for Montesquieu the uninstructed or vulgar view of liberty.

Certainly, it is striking that in pointing to the relative lack of liberty in Europe as compared to America, the main question for Tocqueville is not the presence or absence of arbitrary power, but rather that Americans lacked the passivity and sense of powerlessness he had observed in the Old World. As Tocqueville said in his diary “If there is something blocking the public way, the neighbors on the spot form a body to discuss it.”²³ While Montesquieu had also described the liberal regime as one of prodigious commercial and political activity — where “all the passions are free” unless “the state is like a man laid low with some disease” [SL XIX.27] — in Tocqueville this energy is more directly the result of a vigorous republican life. Such vigor is unlikely in the highly centralized states of Europe, except in times of revolution; even then, the ensuing moral anarchy usually results in an increase in the power of the administrative state and an even more passive population. Thus, in America a hundred thousand people may form an association to combat drunkenness, but

It is probable that if these hundred thousand men had lived in France, each of them would singly have memorialized the government to watch the public houses all over the kingdom. [DA II.ii.5, p. 110]

The democratic liberty that Tocqueville wishes to promote is not inconsistent with, only broader in its aims than, modern liberty as interpreted by Montesquieu. Tocqueville is,

²³Roger Boesche, *The Strange Liberalism of Alexis de Tocqueville* (Ithaca: Cornell, 1987), pp. 117-8; p. 181, quoting Tocqueville, *Journey to America* pp.45, 42-3.

as these categories are usually understood, neither “liberal” nor “illiberal.” I defend this paradoxical claim by looking at how Tocqueville departs from the characteristically “liberal” features of Montesquieu’s political science in three areas: the importance of the question of justice, or who rules, to political science; the connected question of how revolution and partisanship should be understood; and finally, the relation of liberty and virtue. Tocqueville’s new political science raises questions as to the adequacy of Montesquieu’s “liberal” starting point: that politics is, despite the heterogeneity attributable to the variety of forms of sovereignty, natural circumstances, mores, etc., essentially an artifice made for collective and individual security. Rather, despite Tocqueville’s emphatic rejection of the relevance of the classics — both classical practice and classical theory — for modern political science, he reintroduces something like Aristotle’s view of politics. Fundamental to politics, more than the provision of security (whether mediated by law, or, in the case of foreign enemies, by force), is the clash of differing understandings of Justice. The singular character of the modern social condition, in Tocqueville’s view, is that by the total victory it gives to one of these understandings, the democratic understanding, it lets that condition threaten to replace politics by administration — thus truncating the essential basis of human connectedness, and the possibility of a properly human existence.

1. JUSTICE AND THE REGIME: WHO RULES?

As we saw, Tocqueville’s closer association of liberty and sovereignty is largely understandable as an adaptation to his post-revolutionary situation, in which the question of legitimacy is unavoidable. At the same time, this difference with Montesquieu entails a more fundamental disagreement as to how political science should understand the phenomenon of rule. Montesquieu, respecting the diversity of governments and their various social bases, modifies Hobbes’s idea that there only needs to be some power to arbitrate between citizens — but he does not return to the classical idea of politics as a conflict about justice, because

the stakes in those contests pale in importance compared with the general human need for security. What is important for the political scientist is no longer, Montesquieu argues, the classical questions of “who rules?” or “who should rule?” but “the degree of liberty that each constitution can sustain” [SL I.3], because the form of government possible for a society is in large part determined by the form of passions, opinions, and habits that predominate in that society.

Although Montesquieu demotes or sidesteps the classical question of “who rules?” in favor of the liberal question “how secure are we?” he does not underestimate the factional conflict over sovereignty that plagued the classical republics. Rather, he interprets this conflict in a manner radically different from its classical formulation. The priority of liberty to justice in Montesquieu’s political science as a whole, not just in the case of England, becomes evident by comparing his presentation of the classical republic with that of Aristotle [*Politics* 1280a7ff], who views the conflicts of republican political life as not simply power struggles between the few and the many, but conflicts over the question of justice or who deserves to rule. For Aristotle, the causes of revolution stem from the partisan character of each regime: the arguments of the party excluded from rule have some merit [*Politics* 1301a27ff]. The thrust of Montesquieu’s treatment, however, is that these arguments about who deserves to rule should not be and are not the real issue. Rather, the salient point is that the practical impossibility of complete “self-government” requires the republican principle always to be mediated or restrained: in the classical case, by some combination of mores and aristocratic institutions, in the modern case by an independent, hereditary “executive” whose person is “sacred” and not accountable for his actions, and by a legislature with an aristocratic branch.²⁴

²⁴SL II.2-3 [which, despite their titles, are each about both democracy and aristocracy]; SL XI.6. Montesquieu’s insistence that the person of the monarch be “sacred,” together with the other highly undemocratic elements of the English model, might suggest

While in theory the universality of men's natural desire for security points to the conclusion that republics [and by implication, all governments] are more "perfect" to the extent they are democratic [SL II.3, end, with VI.3] — because it would seem that men need not fear each other if they all share in rule and govern by general laws — Montesquieu's whole project is, I have maintained, to indicate at the same time why the effectual truth is such a different matter. The English constitution shows that the securing of *the* democratic end — the universal human end of security — requires confining republicanism by some rather undemocratic forms. Neither, for Montesquieu, does the importance of security for all men indicate a "natural public law" specifying the limits of legitimate authority, limits which — when the government violated the constitutional order that embodied them — would justify rebellion. Rather, his demotion of the importance of *arguments* about justice is connected to a general demotion of the role of choice in politics. Montesquieu's liberalism goes hand in hand with the quasi-"deterministic" or "sociological" aspects of his political science, wherein a particular form of government is, if not simply a product of, then a more or less reasonable response to, and hence constrained by, its particular natural and historical circumstances. Only the fact that a given government may be more or less moderate, hence more or less free, provides some room for deliberate improvement within these circumstances.²⁵

that Montesquieu is aware of, and is trying to divert, the revolutionary tendencies of modern republicanism.

²⁵Pierre Manent, in *The City of Man*, underlines both this "sociological" aspect of Montesquieu and the latter's equation of liberty and modernity, but goes too far, I think, in conflating these features and claiming that Montesquieu wishes to establish the "authority of the present moment" or of modernity as such. According to Manent, for Montesquieu notions of "reason" and "nature" had been transformed by the "Enlightenment" to the point where "they are incapable of giving an account that would include both the ancient world and the new authority, which is as well the authority of the New, and of which "England," as a collection of facts and effects, is the active presence" [p. 16]. Manent himself — quite sensibly — contradicts this by noting that it is the French monarchy that is the *present* moment, and which lies between the two extremes of despotism and the separation of powers [p. 12]. In fact, *both* extremes provide a frame of reference, unlike the

In implicit contrast to Montesquieu, for Tocqueville it is precisely the democratic basis of modern liberty — each individual's claim to universal or natural sovereignty over himself — that does not permit subordinating the question of who rules the community to the question of what guarantees individual security of life and property. Thereby, Tocqueville expands considerably what politics can and should do. Whereas Montesquieu cautioned the French that trying to imitate the English would do more harm than good [SL XIX.5; cf. Preface], for Tocqueville liberty *requires* getting the French to do deliberately what the Americans did through good fortune. He is at pains to incite men to concern themselves with politics, and he takes more seriously than Montesquieu does the perspectives arising therein. Rather than viewing various political possibilities from the outside, in the light of what man's needs would be in some natural pre-political state, Tocqueville takes as his fundamental starting point the phenomenon of partisan conflict over rule. Like the political philosopher-umpire of Aristotle's *Politics* [1282b23], Tocqueville, rather than stepping aside, sifts the views of each side, while remaining critical of each: "I tried to see, not differently, but further than the parties."²⁶

indeterminate territory between them of moderate government, that is not relative to the here and now, perhaps because for Montesquieu they *manifest* the opposition between reason and nature.

Furthermore, Manent's imputation of "historicism" to Montesquieu, indeed to the Enlightenment as such, leads to the curious interpretation of the French Revolution as a reaction to this modernist spirit of fragmentation and incommensurability: the revolution "wanted to reestablish the efficacy of the One" [p. 17]. This takes the revolution's rhetorical appeal to classical virtue at face value, but as Tocqueville argues, if anything was emblematic of the abstract, indefinite, and unlimited aspect of modernity — the authority of the new as such — it is the revolutionary spirit. For Montesquieu, as we have argued, England is "modern" in an entirely different sense, namely *because* it is liberal (i.e., the emergence of the separation of powers has made it possible to classify the types of governments in a historical *totality*, as approximations of this liberal system) rather than liberal because it is "modern," as in Manent's indefinite sense of the "future" [p. 12], a continual, because merely polemical, supercession of the past.

²⁶In a rare citation to Tocqueville, Leo Strauss alludes to this passage in the course of an argument that such an approach has an affinity with that of classical political philosophy, which Strauss opposes to the character of modern political science. According to Strauss, the

It would seem, however, that this characterization of Tocqueville's political science faces an insuperable difficulty: the very meaning of the democratic *état social* is that, in the long run, there is no more debate over the "regime" in Aristotle's sense. Moreover, as we saw in chapter two, it is precisely the radical novelty of the democratic social condition that leads Tocqueville to replace political categories of comparison with the category of the *état social*, to all appearances more "sociological" than the "regime" because compatible with many forms of government. Even so, the notion of *partisanship* regains importance in Tocqueville's discussion, although the fundamental basis of partisanship, the classical struggle between the few and many, appears to have disappeared. This is true even though the modern social condition tends to disallow *any* claims of "the few," not only the inherently defective or partisan claims of the conventional or existing aristocracy but eventually even the claims of the "natural aristocracy of talents and virtue" [DA I.i.3] that were originally democracy's strongest argument.²⁷

latter is distinctive in its attempt to understand politics from an extra-political perspective, as its basic distinctions and concern for "method" stem not from political life but the philosophic tradition, especially the founding concepts of modern natural science. "On Classical Political Philosophy," in *The Rebirth of Classical Political Rationalism* [Chicago: University of Chicago Press, 1989] pp. 49-51 with note "2" to p. 51, on p. 272.

²⁷See DA Intro: "From the time when the exercise of the intellect became a source of strength and of wealth, we see that every addition to science, every fresh truth, and every new idea became a germ of power placed within the reach of the people...all the gifts which Heaven scatters at a venture turned to the advantage of democracy; and even when they were in the possession of its adversaries, they still served its cause by throwing into relief the natural greatness of man." This description suggests that the triumph of the democratic notion of justice — namely, the natural equality of men grounded on the fundamental importance to all of security — cannot be explained simply as a result of the inherent attraction or superiority of that view of justice, or more broadly from Europe's Christian universalism. Rather, the popularization of the distinction between nature and convention, which constitutes the revolutionary difference between ancient and modern democracy, depended upon the political role that monarchs willingly gave to the naturally talented. Only by such public recognition could man's "natural greatness" be thrown into "bold relief."

Tocqueville's analysis of the tendencies of the democratic *état social* is based on the observation that, strangely, the victory of equality has made democratic man ever more partisan. This is true partly because there is something inherently democratic about all politics²⁸, a fact which becomes ever more emphatically visible as democracy advances: the democratic social condition has brought "the principle of the sovereignty of the people, which is always to be found, more or less, at the bottom of almost all human institutions" [DA I.i.4] finally into open view. What seems to argue against viewing as "political" the rise of the democratic social condition — its apparent origin from some necessary and impersonal forces like "Equality" — shows only the limits of the democratic and human point of view, which is unable to understand how many separate actions could all promote the same goal.²⁹ The modern condition is, in truth, the result of many separate and deliberate actions tending towards a common end — and, as such, is most fundamentally a political phenomenon. The very basis of the democratic condition is the uncontested supremacy of the *principle* that humans are free to choose,³⁰ the principle of the sovereignty of the people; the alternative principle, that the aristocratic social order reflects the nature of things, has been overthrown along with its adherents. As Aristotle suggests, the democratic principle of

²⁸A point nicely illustrated by the opening scenes of Plato's *Republic*, in which the many with force compel the one with reason, Socrates, to turn aside from philosophy and his usual avoidance of political matters, and assist them with the question of the best political order.

²⁹See "Appendix Y" to DA II.iv.2, p. 367.

³⁰According to Harvey C. Mansfield, "choice" is not the democratic, but the aristocratic or "oligarchic" principle, because "when freedom is exercised in choice, oligarchical exclusion comes into use, for after the choice what is chosen must be defended against what is rejected and indiscriminate democratic openness cannot be sustained." See, "Liberal Democracy as a Mixed Regime," in *The Spirit of Liberalism* (Harvard University Press: Cambridge, MA, 1978), pp. 7-8. At the same time, Mansfield notes in this brilliant essay that democrats, to defend their superiority as human beings, as free and hence worthier than the rest of nature, are led naturally by this towards politics, towards an "exclusionary choice" in favor of some *particular* political order. I will return to this topic in the following chapter.

justice — the claim by the free to share in ruling and being ruled — is the principle of “political” rule per se; the claim to rule on the basis of some superiority, when taken to its logical conclusion, transcends the sphere of law and political argument altogether, approaching the idea of perfect kingship or the direct rule of reason [*Politics* 1287a1-40 with 1288a14-17].

Thus, although Montesquieu speaks of forms of government, and Tocqueville of social condition, it is in Tocqueville that we find an analysis preserving the importance of politics, of the question of who rules, whose importance Montesquieu’s “sociological” approach to politics had obscured. In the case of Montesquieu, his apparent relativism or impartiality is due to a prudent understanding of how much the natural and historical circumstances of each society limit the degree of liberty it can obtain. Montesquieu does not mediate between two claims or parties, but between one possibility, the liberal constitution, and the myriad circumstances that impede the realization of liberty elsewhere. In fact, it is precisely because the notion of liberty underlying Montesquieu’s political science (namely, that regimes are free to the extent they provide the security all men naturally need) is more unambiguously democratic than Tocqueville’s liberty, that it is Tocqueville who senses more acutely the partisan basis of democracy, even of liberal democracy that appeals to “nature.” Montesquieu accepts severe limitations on democracy because he accepts absolutely the theoretical basis for the democrat’s claim — each natural man’s sovereignty over himself — and sees how democratic practice threatens the democratic end of being free from the will of another. Tocqueville presents the reverse side of this paradox: his liberalism is far more democratic in practice than Montesquieu’s, but at the same time his judgment is that the best form of modern regime neither simply expresses human nature nor solves the political problem definitively.³¹

³¹Lamberti, in *Two Democracies*, cites [p. 55, citing YTC CV, k, cahier 2, chemise 18] an arresting passage from the notes Tocqueville used in preparation of DA II: “Danger of

This paradox — that Tocqueville's resurrection of the question of justice makes him practically more democratic, but theoretically less democratic than Montesquieu — is implicit in the tensions created by Tocqueville's expansion of the ends of Montesquieu's modern liberalism. On one hand, while advancing the "liberal" thesis that liberty can "regulate" democracy, Tocqueville also hopes, by the artifices of his new political science, to encourage modern men to share in political life. On the other hand, Tocqueville's democratic man, except when faced with opponents, such as in revolution, is *not* by nature a political animal. As we shall see in the next section, far from trying to sidestep the contestable question of justice, as Montesquieu does, Tocqueville comes to fear the uncontested rule of the principle of equality: the complete withering away of revolution is only marginally better than revolutionary upheaval. If a vigorous civic life arises from argument about the meaning of justice or the title to rule (an argument for which the classics believed there is no unproblematic practical answer), then the practical hegemony of one view of justice would mean the end of politics properly so called.

letting a single social principle take, without contestation, an absolute direction of society. General idea that I have wanted to bring out with this work." Lamberti, however, equates this critique of the democratic principle, and Tocqueville's attempt to moderate it, with the "aristocratic moderate" Montesquieu, who said "The more an aristocracy approaches democracy, the more it will be perfect." [p. 55, citing SL II.4] Revealingly, Lamberti fails to note that the "moderation" comes from different directions, and is in fact of a radically different character. For Montesquieu, inequality is a necessary compromise in the republic, because of the tension between theory and practice, between the "nature" of the republic, popular sovereignty and its animating "principle," virtue. As will be shown in detail below, Tocqueville's critique is on an entirely different level — the problems posed by the democratic social condition are not chiefly the practical ones of arbitrary power or anarchy. The difficulty is more profound: the concept of our "natural" independence and equality is not the entire human truth, not only because the hegemony of this peculiarly modern notion puts in danger that common life through which our capacities are developed and exercised, but also because that notion tends to make unintelligible natural differences in those capacities, and the question of human excellence generally.

2. REVOLUTION AND PARTISANSHIP

To see more clearly that Tocqueville, at least in his conceptual scheme, reintroduces something like Aristotle's view of politics as partisan conflict over who deserves to rule — the modern condition being the apparent exception that proves the rule — we must compare more carefully how our two thinkers view modern partisan conflict, especially in its most extreme form, revolution. We have already seen, in my previous chapter, some of the weaknesses in the argument that Tocqueville's critique of revolutionary democracy makes him a liberal follower of Montesquieu. However, perhaps both the "liberal" reading of Tocqueville and my critique of it beg an important question: what is Montesquieu's understanding of the relation of liberty and revolution?

Posing the question in these terms, as a direct comparison of Montesquieu and Tocqueville on the issue of revolution, does seem to present a major difficulty. If one considers, as Tocqueville does, the French revolution as the first truly modern revolution — by "modern" meaning the attempt to cut society's ties to the past — then common sense says it is anachronistic to compare these two authors on "revolution." Considering, however, that Montesquieu ridicules the first English revolution and passes over the second in silence, treating 1688 as a return to the *status quo ante* of the "proscribed form" of monarchy and as a proof that democracy is impossible in modern times [SL III.3], one could say that Montesquieu's political teaching of moderate government is decidedly "un-revolutionary," in a sense close to Tocqueville's understanding of the term: avoiding the raising, in politics, of the question of first principles.

Tocqueville's judgment on revolution is much more ambiguous than that of Montesquieu and his liberal successors. Unlike his near contemporaries Guizot and Royer-Collard, Tocqueville does not view the end of contests of fundamental principles — even assuming that such a thing could or would bring stability — as an unmixed blessing. To see this difference, we will start by sketching the understanding of revolution of Montesquieu

and his ideological heir, Royer-Collard, in order to determine Tocqueville's relation to that elder statesman on this issue. Secondly, we will see how this difference between Tocqueville and his liberal predecessors is encapsulated in Tocqueville's distinction between the "revolutionary spirit," which is so far from being necessarily connected to revolution that it can even be routinized in a state bureaucracy, and "great revolutions." Finally, we will see how the difference in perspective between Tocqueville and his liberal predecessors is adumbrated in their different understanding of the non- or sub-revolutionary partisanship that takes place *within* modern regimes.

a. Rethinking revolution: Tocqueville's departure from Montesquieu and the liberal tradition.

As we have already had occasion to note, Montesquieu is a most un-revolutionary author. In sharp contrast to Locke (of whom there is no mention in the *Spirit of the Laws*) Montesquieu focuses our attention primarily on the circumstances, natural and social, that argue against excessive political rationalism: "in an enlightened age...one feels the old abuses and sees their correction, but one also sees the abuses of the correction itself" [SL, preface]. Of course, one "correction" whose abuses are of particular concern to Montesquieu, as it is commonly equated with liberty, is popular sovereignty. To common opinion Montesquieu opposes effectual truth; liberty can be "found" in the English constitution "as in a mirror" precisely because it divests republicanism of its usual revolutionary tendency toward "extreme" democracy. It does so by "hiding" popular will within monarchical forms — just as Montesquieu himself hides the question of legitimacy.

In effect, then, Montesquieu says the English are free because they are un-revolutionary — not, as Tocqueville says about America, because they never had an ancien regime to overthrow, but because they were able to forget that they had had a revolution and so preserve the old forms. This does not simply mean that Montesquieu prefers gradual

change to violent revolution, because he sees passions unleashed by the latter as inimical to constitutional government. Rather, his whole comparison of classical and modern republicanism is an attempt to show, as I have argued, that popular sovereignty cannot, by itself, be the basis of or standard for government, because it is inherently revolutionary; the democratic principle, the love of equality, has no intrinsic limit. Liberty is “found” in the English constitution not merely because of checks and balances, but because, through hard experience [especially Cromwell], the English have learned to avoid posing the question of first principles.³²

The English political mentality as Montesquieu depicts it — an evasiveness and embarrassment about questions concerning first principles — seems almost exactly the opposite of the revolutionary intellectual climate that Tocqueville claims characterizes France in the mid 18th century:

[authors]...all started with the principle that it was necessary to substitute simple and elementary rules, based on reason and natural law, for the complicated and traditional customs which regulated society in their time. [AR III.1]

Given the difference in historical situations — namely that for Montesquieu revolutionary passions are at most a distant cloud on the horizon, while Tocqueville finds himself surveying the wreckage of a storm that has yet to finish — one would expect Tocqueville to be even more adamantly against revolution than Montesquieu, as was his former teacher, Guizot, who also dissociated liberty from popular sovereignty. Now, while Tocqueville certainly follows Montesquieu by understanding liberty as a moderation of democracy’s

³²Thus the alarm of Edmund Burke when the English enthusiasts of the French Revolution began to insist that the principle of popular sovereignty, which Burke admits was invoked in the “extraordinary” circumstances of 1688, be made into a general basis for all government. *Reflections on the Revolution in France* (Indianapolis: Hackett, 1987), pp. 12-20. See esp. p. 17: “The two Houses, in the act of King William, did not thank God that they had found a fair opportunity to assert a right to choose their own governors. They threw a politic, well wrought veil over every circumstance to weaken the rights which in the meliorated order of succession they meant to perpetuate.”

revolutionary side — its tendency to overturn formal constraints, including rights — Tocqueville opposes revolution ambivalently and for different reasons than Montesquieu. In *Two Democracies*, Lamberti argues that Tocqueville’s opposition of “liberal” and “revolutionary” is an inheritance from the thought of Tocqueville’s “mentor” Royer-Collard [pp. 167ff], the latter having “read and contemplated *The Spirit of the Laws* ceaselessly” [p. 168]. As Royer-Collard, himself an important figure in the history of French liberalism, was perhaps the primary living exemplar of the Montesquieuan tradition that Tocqueville knew, an understanding of Tocqueville’s relation with this elder statesman is crucial for discerning the originality of Tocqueville’s views on revolution.

As Lamberti points out, Tocqueville — in an important letter to his friend Freslon of 8 July 1858 — explicitly characterizes Royer-Collard’s liberalism as founded on the opposition between “liberal” and “revolution” [cited pp.171-3; OCI II pp. 440-447].³³ Lamberti, however, maintains that Tocqueville’s thought gradually evolved through consideration of the phenomena of centralization and modern “individualism,” so that “In 1836-7 it was possible for Tocqueville to understand in the same way as Royer-Collard the distinction between liberal ideas and passions, and their revolutionary deformation; beginning in March ‘39, that was no longer possible” [p. 178]. Lamberti is right to point out that the cooling-off of relations between the two men around 1838 corresponds to extensive rewriting of DA II on the one hand, and Tocqueville’s growing concern over

³³Tocqueville says to Freslon: “All the principle actions of M. Royer-Collard are, in effect, tied together by two ideas.... 1. Throughout his entire life, M. Royer-Collard believed that one could and should distinguish the liberal spirit from the revolutionary.... he never thought it was necessary to destroy everything in the old French society, only to break what was an obstacle to the modern spirit, to a considered liberty, to the equality of rights, to the opening of careers and destinies to the hopes of every man.... 2. The second central idea [*idée mere*], closely related to the first.... was that monarchy was, in France, a necessary institution, and it was amusing to see the singular effect that this doctrine produced [in him], mixed as [his acceptance this doctrine] was with the complete absence of servility and the most republican nature that I have ever met. Horror at a court and the most unshakeable adherence to the idea of a king....” [OCI II 443-445].

modern “individualism” and the political deficit of French liberalism on the other. This, however, does not necessarily show a fundamental change in Tocqueville’s thought, but may perhaps only reflect the inevitable stresses created by filial success and independence.

In fact, while it is only implicit in his letter to Freslon, all the evidence suggests Tocqueville’s “liberalism” had either diverged much earlier from that of the older generation, or perhaps had *never* been that of the older generation. This is clear from his manifesto of a “new kind of liberalism” of 24 July 1836, quoted at the beginning of this chapter, as well as from the Introduction to *Democracy*: it is an anomaly of revolutionary confusion and its aftermath that “naturally proud and noble men” [such as Royer Collard] are hostile to the idea of a republican France [DA I, p. 17]. Indeed, Lamberti’s conclusions are vitiated by his rather perceptive analysis of the nature of the editorial changes of 1838: they *downplay* the extent to which Tocqueville breaks with his liberal contemporaries.³⁴ As Lamberti shows in detail, Tocqueville in 1838, under the influence of Kergorlay a) moves the treatment of “individualism” from the beginning of DA II to II.ii; b) instead begins with a theme — the influence of democracy on thought — which gives the appearance of continuity with DA I’s argument about the tyranny of the majority; and c) while alerting moderns to the threat of “soft despotism,” actually soft-pedals his thesis that the traditional liberal concerns about revolutionary anarchy are no longer the real issue [*Two Democracies*, p. 233; 279].

³⁴ Besides the fact that the 1838 revisions tend to go in the *opposite* way from the way Lamberti characterizes Tocqueville’s substantive break with Royer-Collard, Lamberti finds himself characterizing the substance of that break in two inconsistent ways. First, because Tocqueville replaced Royer-Collard’s opposition “liberal — revolutionary” with “democratic — revolutionary,” “individualism, initially considered in 1836 as revolutionary, took on a double signification as democratic, or in its excessive forms, revolutionary.” [p. 212] Not being able to maintain such a blurry distinction, however, Tocqueville eventually came to the idea that the democratic social condition would lead, if not moderated, to a “soft despotism” which would embody, albeit in a “regular” and “benign” way, revolutionary Machiavellianism. This leads Lamberti to maintain that DA II has two, inconsistent conclusions: we discuss the difficulties of this thesis below.

Thus the editorial changes made in 1838 do not represent some new discovery of the dangers of individualism or a break with Royer-Collard's schema of "liberal vs. revolutionary" and resulting emphasis on gradual reform. All along, Tocqueville's "liberalism" had given more weight to popular sovereignty than had that of his "liberal" contemporaries. Rather, what Tocqueville begins to fear is that the complete hegemony of the liberal point of view — which is to say, the end of revolution — will trivialize popular sovereignty itself. The fact that "great revolutions will become rare" once the democratic social condition is fully established is not, for Tocqueville, an entirely good thing, because with stability will come stagnation:

I fear...that mankind will be stopped and circumscribed; that the mind will swing backwards and forwards forever without begetting fresh ideas; that man will waste his strength in bootless and solitary trifling, and though in continual motion, that humanity will cease to advance [DA II.iii.21].

This possibility demands a new political rhetoric. As Lamberti says about the bold final chapters of *Democracy*:

But all truth is not good to say and Tocqueville hesitated before writing that the principal risk of the democratic tendency towards centralization was despotism: 'In order to combat despotism,' he wrote in his notes, 'I am obliged to prove that it leads to anarchy. If it only leads to itself, many of our contemporaries would perhaps follow it voluntarily.' And he added in the margin, 'if one could believe in a tranquil and stable despotism, which is to say the worst of all, my cause would be lost'" [pp. 279-280, citing YTC CV, k, cahier 2, 48-9; a fuller version of this note is reported in DAN II.iv.6, editor's note "j," pp. 265-6].

b. Great revolutions versus the revolutionary spirit

That Tocqueville comes to fear the withering away of political conflict over fundamental principles might seem to flagrantly contradict his analysis of revolution's threat to ordered liberty. After all, as we have seen, for Tocqueville modern liberty seems to depend on *settling* the question of legitimacy. Thus, it is not surprising that as great a scholar as Lamberti went so far as to accuse Tocqueville of offering — because he is unable to sustain the distinction between democracy and revolution — two inconsistent

conclusions³⁵ to DA II: the first, DA II.iii.21, showing Tocqueville's prediction (and rather qualified acceptance) of the eventual triumph of a liberal, because non-revolutionary, modernity; and the second, in the next chapter, portraying a new form of "soft" despotism in which "revolutionary tendencies, becoming more gentle and more regular, without entirely disappearing from society, will be gradually transformed into habits of subjection to the administrative authority of the government" [DA II.iv.7, p. 328].

These apparent conundrums, however, can be resolved through an important distinction, pointed out by Lamberti himself, between the "revolutionary spirit" and "great revolutions."³⁶ Great revolutions are the great contests of principle and the great men who come to the fore in those contests; the "revolutionary spirit" is the general collapse of the idea that politics have moral limits — a collapse that modern revolutions (that is, democratic revolutions in a society that offers no elements opposed to democracy) tend to produce.

Thus Tocqueville has high praise for the revolutionaries of '89, not only because they were "liberal" rather than radical — i.e., they did not love equality more than liberty — but precisely because their concerns, and their characters, were nobler and more vast than those of the "bourgeois" liberals of his day:

They had a proud reliance in their own strength; and though this often leads to errors, a people without it is not fit for freedom. They had no doubt but that they were appointed to transform society and regenerate the human race. These sentiments and passions had become a sort of new religion, which, like many religions which we have seen, stifled selfishness, stimulated heroism and disinterestedness, and rendered men insensible to the many petty considerations which have weight with us [AR III.2, p. 190].

Making an argument that at first seems to contradict this praise, Tocqueville in DA II.iv.7 stresses the disastrous consequences of the "*esprit révolutionnaire*" for modern peoples. But it turns out that the danger of this spirit is not its tendency, as in Montesquieu, to

³⁵*Two Democracies*, p. 283; p. 304.

³⁶*Two Democracies*, p. 271.

anarchy or despotism. Instead, Tocqueville develops his rather different understanding of the dangers of the *esprit révolutionnaire* to modern society by way of a contrast with pre-modern revolution: in aristocratic societies, revolution is followed by “politics regaining its former bearings,” because revolution encounters “habits, ideas, defects, and impediments which are contrary to it.” But revolution in modern society — Tocqueville’s prototype for which, as Lamberti argues, is not America but the “individualistic” France of the 1830s — encounters no resistance from either aristocracy or liberal mores and institutions to its democratic character, and therefore gives free reign to the “revolutionary spirit.” Unobstructed, this spirit is likely to regularize itself as authority, as “*moeurs gouvernementales et ... habitudes administratives*” [DAN II.iv.7, p. 276]: the new soft despotism is the routinization of the revolution’s democratic charisma.

The chapter “The type of despotism democracies have to fear” [II.iv.6], when read together with both Tocqueville’s contrast in the AR between the ‘89 revolutionaries and his liberal contemporaries, and his description of democratic modernity’s monotony [quoted above] in DA II.iii.21, reveals a *consistent* analysis of how modernity might cause a diminution of human capacities. The end of revolution and the routinization of revolutionary Machiavellianism are two sides of the same coin. The modern administrative state, albeit subject in “the most important affairs” to the “external” forms of liberty, such as a representative assembly, yet controls its subjects in all the small affairs of life to such an extent that, “making less useful and more rare the exercise of free will,” it threatens to make them “gradually fall below the level of humanity,” “becoming a herd of timid and industrious animals, of which the government is the shepherd” [DA II.iv.6]. Tocqueville thus paints a vivid picture of post-revolutionary stagnation, in which the long-term stability of liberal institutions, if they are joined to a centralized administrative state, only shows a “constitution which would be republican by its head, and ultra-monarchic in all its other parts” [DA II.iv.6].

Tocqueville's ambivalent judgment about the end of revolution — praising the greatness of revolutionary politics or contests of fundamental principle, while condemning the effects of the “*esprit revolutionnaire*” — underscores in a dramatic way the results of our attempt to trace his notion of political liberty back to its Montesquieuan ancestry. The rapprochement Tocqueville effects between what Montesquieu calls “the power of the people” and “the liberty of the people,” does more than adapt the latter's liberalism to a post-revolutionary world (although this is certainly a large part of Tocqueville's purpose). A regime that assures the “opinion of one's security” could still eventuate in a monotony no less oppressive than the hold of tradition — or perhaps even more so, since men who endure modern stagnation are, unlike their forbears, in a state of continual agitation. This danger underscores, contrary to Montesquieu's assertion [XII.2], the inseparability of political liberty not only from “the opinion that one exercises one's will,” but also from its actual exercise.³⁷ Unless the “power of the people” is something actual — either as revolution in the extreme case or as decentralized politics in the moderate case — liberty in any real sense will be much diminished. This does not mean that Tocqueville is, in any simple sense, more “sympathetic” to revolution than Montesquieu. Rather, Tocqueville argues that a lack of fundamental debate over the regime, not a mere absence of revolution *per se*, can lead men, politically and intellectually, to be “administered” in a way that preserves the Machiavellianism of revolution but stifles revolution's aspirations to justice.

³⁷In an arresting passage from his drafts for DA II, Tocqueville proclaims: “All man is contained in his will. His entire future is hidden there as in a seed that becomes fertile with the first ray of good fortune. There are women who rank those character traits highest which give daily tranquility, and for whom the meaning of happiness does not go beyond the peace and quiet of the household. These women are similar in kind to the men who prefer the social paralysis of despotism to the agitation and great emotions of liberty. Both hold an equal rank in my esteem.” DAN II.iv.6, p.266, editor's note “m,” citing YTC CVa, p.56.

**c. The nature of non-revolutionary partisanship:
Tocqueville versus Montesquieu**

Tocqueville's understanding of the relation between liberty and revolution, then, throws into bold relief the fact that his notion of liberty is more political, more connected to partisanship, than that of his predecessor. The same thing can be seen, in a more modest way, by comparing the way they analyze the peculiar, non-revolutionary partisanship that persists within modern regimes. As we have seen, for Montesquieu, modern parties — as opposed to the class-based parties of antiquity — are based on each man's "affection" for either of the two "visible" powers of government; because of the general solicitude for liberty (or desire not to be governed), people switch allegiances when either the executive or legislative gets too strong: "...the citizens would come and raise the other party like hands rescuing the body" [SL XIX.27]. Montesquieu's description of the self-regulating party system of liberal government presupposes citizens who, unlike the those of the classical city who fought over who was to be included in the sovereignty, are individuals first, and hence more concerned to limit the government's power than loyal to any principle or class.

Tocqueville tacitly rejects this analysis of modern parties: even within the "puerile" controversies and tiny differences of opinion that characterize American politics, which almost always consist of competing self-interests thinly veiled by some "contrive[d]" principle:

The deeper we penetrate into the inmost thought of these parties, the more we perceive that the object of the one is to limit and that of the other is to extend the authority of the people. I do not assert that the ostensible purpose or even the secret aim of American parties is to promote the rule of aristocracy or democracy in the country; but I affirm that aristocratic or democratic passions may be easily detected at the bottom of all parties, and that, although they escape a superficial observation, they are the main point and soul of every faction in the United States [DA I.i.10].

As "democratic" or "aristocratic," the passions of the partisans are not merely blind expressions of zeal on behalf of one's interests; they express, to varying extents, differences in principle. In fact, Tocqueville argues, if there were no element of principle in the

differences between the parties, then political argument would be impossible [DA I.ii.3, end]. Tocqueville replaces Montesquieu's contrast between classical, class-based factions and the more artificial parties that mirror the structure of modern government with a similar, and yet subtly different, distinction between "great parties," such as the Federalists and Republicans at the time of the American founding, which represent fundamental differences of principle, and "minor parties," which appear at times of social and political stability, and are not characterized by "lofty purposes." Neither type of party is free from private interest, "which always plays the chief part in political passions," but in the case of great parties, this interest "is more studiously veiled under the pretext of the public good; and it may even be sometimes concealed from the eyes of the very persons whom it excites and impels" [DA I.i.10, p. 174].

To be sure, Tocqueville's description of the pettiness of small parties — whose motivating passions are more properly described as economic, rather than political — is not too far from Montesquieu's portrayal of modern party government, wherein:

As each individual, always independent, would largely follow his own caprices and his fantasies, he would often change parties; he would abandon one and leave all his friends in order to bind himself to another in which he would find all his enemies; and often, in this nation, he could forget both the laws of friendship and those of hatred [SL XIX.27].

As both Tocqueville and Montesquieu would say, such men can hardly be called "citizens." However, what is important is not only Tocqueville's more negative assessment of the political deficit of modernity, but also his different analysis of its basis: it stems not from covering up or redirecting the question of legitimacy by constitutional government, but from "solving" that question so there are no longer any disagreements over fundamental principles:

Hence it happens that when a calm state succeeds a violent revolution, great men seem suddenly to disappear and the powers of the human mind to lie concealed. Society is convulsed by great parties, it is only agitated by minor ones; it is torn by the former, by the latter it is degraded; and if the first sometimes save it by a salutary perturbation, the last invariably disturb it to no good end.

America has had great parties, but has them no longer; and if her happiness is thereby considerably increased, her morality has suffered [DA I.i.10, p. 175].

This development — what we refer to today as “interest group liberalism” — is at odds with a genuine common life. As Tocqueville suggests in the next chapter, whereas differences in opinion lead to common discussion and an attempt to determine the truth, differences of interest — propped up by the democratic opinion that differences of opinion are purely subjective, the only solid thing being interest — are matters of fact, hence outside the realm of discussion and an irreducible basis of division among men [DA I.i.11, end].

In sum, for Tocqueville “politics” — in the classic sense of debate over who rules — persists even within the truncated horizon of modern liberal democracy precisely because the difference of opinion concerning the role of the people, which was explicit in the contest between the Federalists and Republicans, is still present in a muted way in the politics of “small parties.” On the one hand, Tocqueville sees political liberty, including a decentralized regime that provides possibilities for public life broader than deciding which party should run the legislature, as the main cure for the ills of the democratic social condition. On the other hand, however, he shows that the unchallengeable victory of the political principle underlying that condition — popular sovereignty — together with the declining influence of important individuals inherent in the modern condition, threatens to rob political life of much of its impetus and its dignity, even in the decentralized states of America.

3. LIBERTY AS A VIRTUE

Tocqueville’s concern over the possible stagnation of modern man, both political and intellectual, reminds us that Tocqueville treats liberty not just as something “found” in constitutions but as a disposition of men’s characters, as a kind of “virtue.” This still leaves unresolved the question of virtue’s role for Tocqueville. Is his vision of it a) similar

in scope to the modern (and Montesquieuan) interpretation of classical virtue, as “civic virtue” or the passion necessary to sustain republican government; or b) closer to the classics’ own idea of virtue as human excellence or the full development of human capacities, an idea of virtue broader than the qualities fostered and praised by any particular type of party or regime?³⁸ By observing how Tocqueville treats the questions of justice and partisanship, we have already glimpsed an answer. Tocqueville’s phenomenological approach to the study of politics — an approach which sees not “differently” but “further” than the parties — shares something with Aristotle’s point of departure in the contest over claims to rule or human excellence. From the uneasy fit of Tocqueville’s treatment of the liberal disposition on either side of Montesquieu’s division between classical republics and modern liberalism, one might also infer Tocqueville values the love of liberty for its own sake as well as for its utility in helping “regulate” democracy.

The love of liberty, a type of character Tocqueville associates with “*les vertus males*,” manifesting itself as it does through individual initiative and extra-governmental associations, is a form of spirited self-assertion different in kind from the self-denying love of the common good Montesquieu says is required to avoid the decay of popular sovereignty. True, Tocqueville also argues that this disposition is both required and fostered by an active civic life. However, one cannot reduce this energetic self-assertion and sense of

³⁸For the distinction between the modern understanding of classical virtue and the classical understanding, see Leo Strauss, “The Spirit of Sparta or the Taste of Xenophon,” *Social Research*, November 1939, vol. 6, no. 4, pp. 502-536, esp. the concluding paragraph. The thesis of this complex article is that for Xenophon [and we add, for Montesquieu], Spartan virtue is the epitome of political virtue, but not virtue simply; Xenophon’s *Lacedaimonian Constitution*, while on the surface laudatory, is — in its interstices — quietly satirical. Xenophon, Strauss claims, neither completely endorses the claims of political virtue as Rousseau does, nor does he take his reservations about political virtue as a cue to look elsewhere, as [we add] did Montesquieu. It must be added that for Strauss, Xenophon’s detachment from “political virtue” stems from “philosophy,” whereas Tocqueville does not provide any ground — other than the equally problematic reason of a privileged historical situation — for his position as mediator between democracy and aristocracy.

personal responsibility to the “passions” that Montesquieu says are all free in modern constitutional government, without which the state would be a “man laid low by disease” [SL XIX.27], for Tocqueville typically associates this spirited aspect of the taste for liberty with what we would call “character” or “moral integrity.” Tocqueville’s typical example of this taste is the courage of those who, for the public good, take unpopular stands on public affairs [DA I.ii.7].

Nevertheless, differences between Tocqueville’s treatment of the taste for liberty and classical virtue as Montesquieu understood it hardly prove that this taste is closer to classical virtue as understood by the classics. For one thing, Tocqueville himself thought that classical political thought had no substantive theoretical relevance to contemporary problems; of Aristotle he said to a friend that he was “a little too ancient for my taste; we are not sufficiently Greek to get a great deal of profit from such books.”³⁹ Moreover, even with its moral overtones, Tocqueville’s “taste for liberty” — if it is merely the socially useful animus necessary to sustain democratic government, i.e., a government where the interests of the majority are looked after — would still be better understood as a relative of Montesquieu’s [or Rousseau’s] “virtue,” itself a descendant of Machiavellian “*virtú*,” rather than as something choice-worthy for its own sake. After all, like these and other moderns, Tocqueville uses “liberty,” rather than “virtue,” as the guiding principle of his political science. Yet, what are we to do with the fact that Tocqueville clearly saw an active share in public life as indispensable to a truly human life? This is particularly true in his own case: to Kergorlay he writes that his friend should not, and he himself cannot, confine himself like “decent people” “who are successfully occupied with their affairs” “to the

³⁹Letter of 6 July 1836 in OCI, p. 63; cited, with wrong page number, by Lively, *op. cit.*, p. 31.

petty cares of private existence,” because to do this would be to “condemn myself to leading the life of a potato.”⁴⁰

It is this implication that political liberty is necessary to a fully human life and hence is an end in itself — even more than the combination of “liberal” and “republican” elements — that marks Tocqueville’s expansion of Montesquieu’s idea of political liberty. For Tocqueville, it would appear that an active share in political life is either a necessary part of human excellence, or at least necessary in society as a whole for human excellence to be developed.⁴¹ This view of political liberty — which Tocqueville says [AR III.4, p. 204] is more than the hatred of despotism fostered in those badly governed — bears a remarkable likeness to Aristotle’s argument in *Politics* III.9 against the view that government is simply an alliance for mutual interest, wherein each “treated his own household as a city and each other merely as if there were a defensive alliance against those committing injustice...” [*Politics* 1280b25-27].⁴² As Aristotle rejects an entirely utilitarian view of political

⁴⁰Letter to Kergorlay of September 21, 1834 in *Selected Letters*, pp. 92-93, at p. 93.

⁴¹At the same time, political liberty is not sufficient to foster the highest human capacities — for Tocqueville, men like Pascal would be unlikely to emerge in even the best constituted modern regimes. In DA II.i.9, Tocqueville fudges this issue, saying the absence of high culture is an American, rather than democratic, phenomenon — but these grounds for hope are overturned in II.i.10.

⁴²The chief piece of empirical evidence Aristotle brings up here against this, to use Tocqueville’s term, “individualistic” view of politics — that not just some ideal city but even real cities are more than such alliances — is intermarriage between tribes, which together with other phenomena such as public festivals is “the work of affection” between citizens or “the intentional choice of living together.” (cf. Plato, *Laws* 773.) This fact is intriguing because it is the absence of intermarriage that Tocqueville points to show the divided and individualistic nature of French society both before and after the revolution — the kind of social fabric prone to illiberal, revolutionary passions. Likewise, it is the presence of intermarriage between classes that Tocqueville uses to distinguish the “aristocratic” nature of England from the “caste” aspect of France.

For Tocqueville no less than Aristotle, intermarriage thus seems inseparable from a political community properly so called, as one sees from its role in Tocqueville’s contrast between the vigorous, albeit inegalitarian, political life of aristocracy where men’s share in public affairs makes them more connected to each other, and vice versa, with the divisive and exclusive spirit of caste fostered by privileges of rank that bring no political rights.

association, because “while coming into being for the sake of living, [the polis] exists for the sake of living well” [1252b30], so Tocqueville condemns the view of liberty as a mere means to protecting life and property as both self-refuting and ignoble: “He who seeks freedom for any thing but freedom’s self is made to be a slave” [AR III.4, p. 204].

For Tocqueville, the taste for political liberty is good not *simply* because without it we would fall under the fearful rule of arbitrary power or personal caprice. Even in the first volume of *Democracy*, as we saw, Tocqueville has an understanding of the “tyrannical” tendencies of modern society that have nothing to do with arbitrary power, or even with citizens’ opinions as to whether they are being tyrannized or not. By the time of writing the second volume of *Democracy*, he has come to the conclusion that in modern society the old type of despotism is extremely unlikely, and even refers to the treatment of despotism in the first volume — which stays closer to the concerns of Montesquieu — as “trite, hackneyed, and superficial.”⁴³ Tocqueville’s vision of a new “soft” despotism furthers his aim of bringing liberty closer to virtue. Liberty cannot be defined negatively, as the absence of despotism, because liberty is primary: what makes the new “soft” despotism despotic is not the nature of its institutions, but the slavish character of its “citizens.” A soft despotism is a society of well-administered and happy (couch) “potatoes” who, even if they are governed by law, lack the desire to act or think on their own that is indispensably part of a complete human life.

Tocqueville explicitly, in this connection, criticizes Montesquieu — as we have already noted — for tracing the distinctive character of England to its free institutions. Rather, it is the aristocratic nature of England that is the true basis of its liberty and what separates her from other, “caste” like, European societies [AR II.9].

⁴³Cited from Yale manuscripts by Lamberti, “Two Ways,” in ITDA, p. 18. We will deal with the apparent problem this stated difference between the two volumes of *Democracy* poses to the consistency of Tocqueville’s thought — particularly on the question as to the relation between liberty and modern society — in the following chapter.

Without being “illiberal,” Tocqueville regards the goals of the liberals — men more directly descended from Montesquieu — as somewhat narrow:

I regard, as I have always done, liberty as the first of goods; I have always seen in it one of the most fertile sources of the male virtues and great actions. There is neither tranquility nor well being which can keep me far from it [*Oeuvres Completes*, ed. Beaumont [Paris: 1861], VI. 439].⁴⁴

What concerns Tocqueville in particular is the tendency of democratic society to soften and enervate men to the point where they cannot act or think independently, because they no longer believe in themselves. Thus, Tocqueville “would willingly exchange several of our small virtues for this one vice” [DA II.iii.19, end] of “pride,” that human disposition which was the *bête noir* of that ultra-modern and egalitarian, Hobbes. From Tocqueville’s perspective, though, fostering the “male virtues” does not require curtailing the modern or democratic principle that each man should be free to determine his own good — with the important exception of foreign policy, where Tocqueville’s enthusiastic support of French Empire in Algeria shows that he understands the national interest to lie in more than prudent self-defense.⁴⁵ Even so, Tocqueville’s support of spirited self-assertion is primarily directed at the individual, and is meant as a corrective to the spiritual one-sidedness of modernity; in another age, Tocqueville would have fostered other ends [DA II.ii.15].

⁴⁴Cited by J.C. Lamberti, in *Two Democracies*, p. 61.

⁴⁵See William E. Thomson, *Liberalism and the limits of Justice: Tocqueville’s reflections on nobility and spiritual decline* (Ph.D. Dissertation, University of Chicago, 1996). If political democracy is the cure for the defects of the democratic social condition, a condition in which, as Tocqueville says in DA II.iii.1, political bonds are weakened, and replaced with natural or sentimental ties, the “manly” love of equality that corrects individualism must be understood to mean, primarily if not exclusively, equality among citizens. A completely cosmopolitan equality is based exclusively on our natural sameness as sentient beings; the awareness of this sameness results merely in the very weak and undemanding sense of connection to others based upon compassion. Such compassion is not the cure for, but is fact highly compatible with, a situation of “individualism”: as is clear from Rousseau’s *Social Contract* II. 5, democratic obligation to others is not based upon pity for them, but in sharing with them a common law, rules which express a will that is general but not universal.

Tocqueville's concern for modern liberty, then, is a consequence of his understanding of political science as an umpire between various imperfect alternatives; like Aristotle, Tocqueville tries to show both in what ways various alternative forms of society are defective with respect to human excellence, and the various ways their politics can be improved. Moreover, as in Aristotle's treatment of virtue in the *Ethics*, Tocqueville's concern for liberty as a human capacity leads beyond the sphere of politics altogether — for, as we have seen, Tocqueville extends the meaning of “liberty” to the power of the mind to free itself from prevailing opinion. One of the paradoxes of Tocqueville's thought is that for this thinker, whose concerns are preeminently practical and who even claims that philosophy is a futile and even demoralizing enterprise [DA II.i.5], one of the chief pieces of evidence of the danger that the modern condition poses to human liberty is its effect on the life of the mind [DA II.i.2 with i.10]. In stark contrast to Montesquieu, who bases liberty on something subjective, the *opinion* of security, Tocqueville lays open the possibility of a tyranny which those in it do not experience as such: he fears that men may lose, not only the spirited desire to defend their political liberty, but even the ability, in private, to think for themselves or be aware of their own subjection.⁴⁶

⁴⁶Although Tocqueville does judge the democratic social condition defective by its tendency to prevent the emergence of contemplative men such as Pascal, Tocqueville does not judge the pre-modern contemplative life epitomized by Pascal to be the best way of life *simply*. For one thing, while Pascal's is perhaps the noblest form of life, his is not — like that of Plato's Socrates — the happiest. For another, while philosophy in aristocratic ages does not have the practical, utilitarian cast of modern science, but is distinguished by an “ardent love, this proud disinterested love of what is true, that raises men to the abstract sources of truth....” the other side of this coin is that “permanent inequality of conditions leads men to confine themselves to the arrogant and sterile research for abstract truths...” [or, in the best case, that of Pascal, to a crushing sense of our inevitable abject failure in this attempt to comprehend the absolute]. For the advancement of knowledge, the most “fecund” period is neither aristocracy nor democracy, but to the stimulation of ideas given by the revolutionary upheaval separating these two epochs, namely Tocqueville's own [DA II.i.10, pp. 44, 46, 42-3; cf. the letter to Henry Reeve of March 22, 1837 in *Selected Letters*, p. 115].

Admittedly, Tocqueville's rejection of the possibility that the philosophic life is the most fully human and happy life makes it problematic as to how he could take the role of Aristotelian umpire: what would be the basis of Tocqueville's standard of human excellence? Perhaps, as Peter Lawler has argued, Tocqueville's standard falls somewhere between the philosophic and the political lives, a combination of doubting self-awareness and prideful self-assertion in politics. According to Lawler, political liberty is the end appropriate to man's "mixed" condition, "what Tocqueville, following Pascal, calls the beast with the angel in him."⁴⁷ This formulation, as Lawler notes,⁴⁸ recalls Aristotle's *Politics*, and although Tocqueville does not follow Aristotle all the way to the conclusion of the *Ethics*, and the praise of the contemplative life, Tocqueville's greatness of soul leads him — strangely enough, given his strong desire to play a role in politics — to a certain detachment from politics that cannot help remind one of classical philosophy. This isolation is more profound than Tocqueville's often noted inability to fit in with any of the existing

⁴⁷Peter Lawler, *The Restless Mind: Alexis de Tocqueville on the Origin and Perpetuation of Human Liberty* (Lanham, MD: Rowman and Littlefield, 1993), p. 8. According to Lawler's existentialist reading, Tocqueville's model for the contemplative life is Pascal, whose high degree of self-awareness culminates in the experience of his finitude, contingency and misery without God. He argues, somewhat unpersuasively, that for Tocqueville Pascal is not an example of the proud and sterile aristocratic form of contemplation, but a "unique" case of theory that is neither aristocratic nor democratic (p. 79). Lawler is thus forced to leave ambiguous which of two conclusions he would reach: a) Tocqueville, in stressing the importance of politics, falls short of Pascal by pursuing politics as a "diversion" from or "alleviation" of the mind's restlessness arising out of the "pure" but "unendurable" experience of the fundamental abyss; b) Tocqueville showed that Pascal's analysis of the soul's disorder, as "too pure or doubtful or apolitical," "distorts the human phenomena," because he saw "political life was not simply a diversion from the truth about human existence, but part of that truth" (p. 8). The second possibility seems more adequate, and is consistent with Tocqueville's verdict on Pascal as an "aristocratic" thinker: a noble example of the pure and exalted, but also sterile and useless, love of truth.

⁴⁸See Lawler, p. 101: "Aristotle defined man as a political animal and, as such, between beast and God." Lawler is apparently referring to *Politics* 1253a3-4: "He who is without a city is either a mean sort or superior to man, " although his version resonates more with the definition of man in Nietzsche's *Thus Spoke Zarathustra*.

parties of his day; Tocqueville is, at bottom, somewhat removed from the political agenda of the “new liberalism” he is so ardently promoting, and perhaps from the sphere of political life altogether. He reveals much about this aspect of his soul in the following passage from his preparatory notes for DA II:

The great men of paganism often willingly sacrificed to false gods [variant: idols] in which they did not believe, because they knew that the peoples were incapable of conceiving, except by way of this crude image, the idea of the one and supreme divinity the belief in which is necessary to the human race.

By the same token, statesmen who know that legality is not order [variant: is only the exterior form of order and not order] should nevertheless honor it [variant: bend one’s knees before it] as the only permanent image of order which can be grasped by the faculties [lit. “*organes*”] of the vulgar [DAN II.iv.7, citing YTC].⁴⁹

CONCLUSION: TOCQUEVILLE AND THE CLASSICS

It might be objected that the way I have tried to establish the “classical” aspect of Tocqueville’s notion of political liberty — in particular, by pointing to Tocqueville’s fear of an end to political conflicts over fundamental principles — is problematic. If the greatness of the revolutionaries’ political ambition is a virtue only explicable with reference to the spirit of the *ancien régime* — and Tocqueville says as much — then the version of liberty fully consistent with the instincts of the modern social condition would tend in practice to become indistinguishable from Montesquieu’s political liberty, namely a means to secure one’s private interests. How can I both say that Tocqueville considered man a more political animal than Montesquieu did, and hence blurred the latter’s distinction between the classical republic and modern liberty, and at the same time argue that for Tocqueville, unlike for Montesquieu, modern man requires, as the revolutionary tide subsides, to be persuaded to associate liberty with self-government?

⁴⁹Consider Plato, *Laws* 714a, 875c-d. (Thanks to Nathan Tarcov for directing my attention to these passages.)

Given that for Montesquieu self-government is only a means to liberty, it will not do to understand the more pronounced importance of “self-government” in Tocqueville’s democratic liberty as simply an adaptation of Montesquieu to new circumstances. How, then, are we to account for Tocqueville’s more expansive view of liberty? Bracketing the enormous question of the impact on Tocqueville of political philosophy subsequent to Montesquieu — in particular, of Rousseau — much of the explanation lies in the fact that Tocqueville’s post-revolutionary situation demanded no mere updating but a rethinking of the relation between liberty, self-government, and history, on the basis of two related considerations. First, the revolutionary impact of the Enlightenment made it all too obvious that the “principle” upon which any regime rests is no mere “passion,” but rather an argument informed by some partisan justification for the distribution of rule. Once men became disabused of the illusion that the political order corresponded to a natural or divinely established hierarchy, political liberty could hardly be confined to “the opinion of security.” Taking to the streets if necessary, citizens of all Western regimes forced a re-founding of those regimes on an avowedly republican basis.

Secondly, and unexpectedly, this revival of a tumultuous republicanism proved to characterize only the initial stages of the democratic revolution: the sovereignty of the people was, in the long run, not at all “revolutionary” or inconsistent with the rule of law. In the new social condition, the aim of Montesquieu’s political science — to redefine political liberty as security — became redundant: willy-nilly, modern man was becoming more oriented towards the private, and not only because the progress of the democratic social condition narrowed the scope of political conflict. The modern condition revealed that the democratic claim itself, when unopposed by other claims, is essentially pre-political, the claim of “natural” independence reflecting the desire of all human beings, as *particular* or *material* beings, not to be ruled. A society based on such a claim tends, in Pierre Manent’s

formulation of Tocqueville's analysis, towards a perfected version of the state of nature⁵⁰, towards a dissolution of the social bond — but by threatening to “isolate man in the solitude of his own heart,” the modern condition threatens man's very humanity, the development of his faculties that stems from his interaction with his fellows.

While there may be a modern form or definition of liberty — and indeed it is essential to Tocqueville's practical purpose that liberty and democracy be presented as compatible — the practical reality is more ambiguous. The inherent tensions in modern liberty lead Tocqueville, as we have seen, first of all to reinterpret Montesquieu's analysis of republicanism and liberty within the framework of Tocqueville's new understanding of history; and second, to (implicitly) question the understanding of liberty at the basis of Montesquieu's political science.

I do not wish to overreach by suggesting that Tocqueville reinvents classical political science. For one thing, Tocqueville has no philosophical doctrine of the best human life *tout court*; for the same reason, he harbors no idea of “perfect Justice” or the just regime “in speech,” an unrealizable standard of Justice different from the many possible legitimate regimes in practice [Plato, *Republic* 472c-473c with Aristotle, *Politics* IV.1, 1288b22-40].⁵¹ Rather, like other modern thinkers, Tocqueville equates the questions of justice and legitimacy; that he finds democracy partisan because it threatens liberty or human excellence does not mean he finds it deficient with respect to justice. Tocqueville accepts the modern or democratic view of popular sovereignty as political legitimacy — unlike Montesquieu, who, with the classics, understands a variety of possible legitimate regimes depending on the circumstances. More precisely, Tocqueville insists that the modern condition requires

⁵⁰*Intellectual History of Liberalism*, p. 113.

⁵¹See Leo Strauss, *Natural Right and History* [Chicago: University of Chicago Press, 1953], p. 191; cf. the remarks about Montesquieu on p. 164.

governments to have a democratic basis, because men are degraded by obeying authority they find illegitimate.

Nor, however, does Tocqueville conceive of his own project in terms of some theoretical critique of the premises of modern thought. Rather, the tension between liberty and modernity, and the expansion of liberty from its liberal meaning, appear in Tocqueville's work in an entirely different way, in the use of the concept "aristocracy" to guide the outlook of the new political science. As we shall see in the next chapter, Tocqueville's liberalism does indeed have an "aristocratic" character — and it is this that separates from [and not, as is commonly thought, that unites him with] — his predecessor.

CHAPTER SIX

TOCQUEVILLE'S ARISTOCRATIC LIBERALISM

Once one sees how Tocqueville develops his political science in light of a new, post-revolutionary, understanding of modernity, it is no longer surprising that he looks much further afield than liberal constitutionalism and the separation of powers in attempting to understand and promote modern liberty. Through his discussions of the township and mores in *Democracy*, even the classical republic — in the guise of the prerogatives of the township that emerged from a decentralized feudalism — is enlisted in the cause of modern liberty. Moderns cannot simply imitate pre-modern regimes such as the classical republic, but they can learn from them, and indeed liberty requires that they do so.¹ To those

¹James Ceaser, discussing in *Liberal Democracy and Political Science* the treatment of the township in *Democracy*, states (p. 164): "Tocqueville showed that a modern liberal democracy depends on elements that are both liberal and republican." For Ceaser, however — perhaps too impressed with the continuities between Tocqueville and Montesquieu (see, e.g., pp. 43, 68-9, 144, 230) — the latter element is not based on the "antiquated classical republican ideal of virtue," but "a particular kind of *rational* citizen" (p.163). I maintain, on the contrary, that Tocqueville's new political science is concerned to find means to blunt that very distinction between rational and instinctive patriotism, between modern and pre-modern, that he, Tocqueville, admits. Indeed, Ceaser himself suggests as much. In his discussion of Tocqueville's distinction between the state, which is a "contrivance" (p. 163) made by man, and the township (*commune*), which is "rooted in nature" (p. 163, citing DA I.i.5, p. 62), Ceaser shows that rationality is hardly the salient aspect of the regime's republican element. Quite the contrary: the township is salutary because it is where political passions, even prejudices, can be expressed instinctively, without mediation by liberal institutions, in a manner Ceaser terms an "organic" outgrowth of "nature" (p. 163).

Tocqueville supports indirect or constitutional democracy on the national level, and direct democracy on the township level, because, as Ceaser claims, "A satisfactory modern regime must combine a rationally constructed principle of rule with a respect for the natural foundations of community that are found in the *communes*." Indeed, Tocqueville's support for those "natural foundations," for local self-government, is in deliberate opposition to

democratic readers who are unreflective partisans of modernity, Tocqueville insists that liberty can be distinguished from modernity or equality precisely because liberty “has appeared in the world at different times and under various forms; it has not been exclusively bound to any social condition, and it is not confined to democracies” [DA II.ii.1, p. 95].

Tocqueville thus emphatically denies what seemed obvious to the mainstream of 19th-century liberalism — the true inheritors of Montesquieu — that it is on the issue of liberty that modern civilization shows its superiority. While American liberal democracy certainly rests upon many of the features that Montesquieu claims *distinguish* modern or liberal constitutions — limited government, moderation of democracy, separation of powers and representation — Tocqueville reinterprets these features as the political means of *moderating* the modern social condition. Even so, Tocqueville’s main practical or rhetorical aim is to show that, though the modern condition is not constituted by liberty, it is compatible with liberty. As Tocqueville reassures his readers in the introduction to *Democracy*, the American experiment is free from the revolutionary passions caused by the “accidents” of European history, such as the alliance of the *ancien regime* with religion, and therefore is a truer indication of the “nature” of the democratic social condition. By the

“*philosophe* rationalists,” who want to use the state to impose their schemes and “regard communal liberty as an enemy of their designs” (p. 163). Thereby, Ceaser argues, Tocqueville wants to find a “middle ground” (p. 153) between modern rationalists whose utopias simply abstract from nature and “traditionalists” like Burke who celebrate the local, traditional, and instinctive (pp. 146-156). This interpretation of the “philosophic foundation” (p. 153) for Tocqueville’s project to moderate the revolutionary excesses of modern rationalism leads Ceaser to claim both that a) Tocqueville’s intention is to return that rationalism to its “original, empirical form,” (p. 148), and at the same time, that b) Tocqueville saw those excesses as “derived logically from its (modern rationalism’s) deficiencies as a political doctrine,” and hence modern liberal democracy needed to have “mixed in republican ideas of participation and traditionalist themes of religiosity” (p. 166). Ceaser falls prey to such difficulties in characterizing just how modern is Tocqueville’s “middle ground” because, while he notes correctly (pp. 150-153; 156) that Tocqueville’s critique of modern rationalism does not lead him to Burkean historicism, or a rejection of reason as a standard for politics, Ceaser does not bring out what I claim is the true basis of Tocqueville’s distinctive rationalism, its *aristocratic* orientation.

same reasoning, the cleavages which define the political world in modern Europe, and the precarious situation of liberty which results, are anomalies, since revolutionary upheaval makes the best men, who would ordinarily defend liberty, oppose it. The nature of the true political alternatives that confront modern man cannot, during the revolutionary moment², be seen clearly: “the natural bond that unites the opinions of man to his tastes, and his actions to his principles, was now broken” [DA, intro, p. 11]. America is, happily, a more representative indicator of the long-term prospects of modern liberty: “that same democracy, which rules over American society, appears to be rapidly advancing towards power in Europe” [DA Intro, p. 3].

If, as Tocqueville seems to suggest in the introduction to *Democracy*, America is an undistorted mirror of the modern condition, the means by which Tocqueville hopes to promote liberty in democratic society should owe nothing to the aristocratic version of liberty. As we shall see, though, Tocqueville’s position is more complicated: this initial impression he gives the reader of a hard line separating modern from aristocratic liberty is not his last word. Many interpreters, however, simply take Tocqueville at this first word, by which the compatibility of liberty and equality reflected in America is held out as a beacon of hope to Europe. One notable example is Raymond Aron, who writes: “On the contrary, in America, free institutions were born with society itself and had as a foundation not the privileged arrogant spirit of the aristocracy, but a religious spirit. Accepting the laws, the citizen obeys a power he respects, whoever may hold it temporarily.”³ If Aron were right,

²In the *Recollections*, written in 1848-9, Tocqueville claims (p. 2) that “The year 1830 closed the first period of our revolutions, or rather our revolution: for there is but one, which has remained always the same in the face of varying fortunes, of which our fathers witnessed the beginning, and of which we, in all probability, shall not live to see the end.”

³“The Liberal Definition of Freedom,” in *Politics and History*, edited and translated by Miriam Conant (New York: Free Press, 1978), pp. 139-165, at p. 144. As we shall see, this opposition between “religion” and aristocracy is somewhat opposed to Tocqueville; for Tocqueville religion removes some things out of popular or majority control, and elevates some forms of authority and law above the status of mere temporary placeholders.

that for Tocqueville there is a complete antithesis between the “religious spirit” that is the moral basis of democratic liberty, and the “arrogant spirit of aristocracy,” then Tocqueville would be, no less than Montesquieu, an unambiguous partisan of modernity.

Such a conclusion, however, is too easy. Just as it is inadequate — as I showed in my last chapter — to simply interpret Tocqueville as a “liberal,” it is not quite true that aristocratic and democratic liberty are as cleanly divided in Tocqueville’s thought as he often makes it seem. Indeed, he is a “liberal of a *new* kind” because for Tocqueville, unlike Montesquieu, the promotion of modern liberty is indebted to a critical detachment from modernity, to a perspective that does not simply reject the aristocratic point of view out of hand. We saw, in the last chapter, that Tocqueville traces the dangers the modern *état social* poses for liberty to the *partisan* character of the mentality that is the ultimate basis for that condition. At the same time, in Tocqueville’s view of history, democratic society is *closer* to nature than is aristocratic society. As the advent of equality is both irreversible and more just, attempts to re-impose aristocracy would be both counterproductive and undesirable. More philosopher than partisan, Tocqueville’s skeptical detachment from democracy — as opposed to aristocratic opposition to democracy — does not entail a practical desire to

A more highly developed variant of Aron’s view is the interpretation of J.C. Lamberti, who treats the liberalism of Montesquieu as essentially feudal/aristocratic, and that of Tocqueville as an attempt, only partially successful, to refound that liberalism on equalitarian and Christian foundations, or alternatively to combine in a modern synthesis feudal independence, classical citizen participation, and Christian equality. For the first version, see *Two Democracies*, p. 77: “All of his work is an immense effort to transplant into, and for the benefit of, democracy, aristocratic values, which are, in the first place, the taste for human excellence, mutual respect, and a proud affirmation of personal independence, all of which constitute for him, as for Chateaubriand, the heart of aristocratic liberty.” For the second version, see *Two Democracies*, p. 79 and *Individualisme*, p. 38: “To be exact, the idea of liberty which is democratic and just comprises three elements: the notion of independence, inherited from the Germanic notion by the intermediary of aristocracy; the notion of participation in political life, inherited from classical morality; and the idea of equal rights for all, inherited from Christian morality.”

We will discuss the difficulties posed by these analyses below.

overturn it. As he hardly could have expected the same sort of detachment from his readers, and did not wish to encourage counter-revolution, a concern for the political effect of his writing would have led Tocqueville naturally to keep the role of “aristocracy” in his conceptual scheme somewhat murky. By obscuring the aristocratic side of his partisanship on behalf of liberty, Tocqueville forestalls facile rejection of his pleas for moderation by democrats, and avoids encouraging destructive attempts at reaction by aristocrats. It is thus Tocqueville himself who is to blame for leading interpreters such as Aron astray; it is only by laying bare this rhetorical dimension of Tocqueville’s writing that the true dimensions of the chasm separating him and Montesquieu become apparent.

Such a reading might seem unnecessarily perverse, especially to moderns who do not share the sensibilities of aristocrats who “were incessantly talking of the beauties of virtue,” while “its utility was only studied in secret” [DA II.ii.8]. After all, Tocqueville ends *Democracy* with the precept that it would be wrong to understand the defects of modern society by a comparison with aristocracy: “Care must be taken not to judge the state of society that is now coming into existence by notions derived from a state of society that no longer exists,” democratic and aristocratic society being so different as to be “two distinct orders of human beings” [DA II.iv.8, p. 333]. At the same time, however, the character of the “arguments” that Tocqueville uses to establish this proposition is arresting, to the say the least. To forestall those who might be inclined to make such judgments, Tocqueville makes two rather bold assertions about God: his famous claim that, as historically inevitable, the growth of democracy represents the *will* of God [DA, Intro]; and that, from God’s *point of view*, the universal point of view, the general happiness of mankind outweighs the admittedly serious threats to liberty and excellence posed by the growing equality of conditions [DA II.iv.8, p. 333].⁴ Moreover, in addition to the patently

⁴As we saw in chapter 3, Marvin Zetterbaum, in *Tocqueville and the Problem of Democracy*, conclusively establishes the rhetorical dimension of Tocqueville’s invocations of

rhetorical aspects of such statements, those who pay attention would notice that, as *Democracy* progresses, the axiom that might have provided a rational ground for accepting Tocqueville's strictures against judging democracy by external criteria — namely the optimistic claim in the introduction that America with its liberty is a case of “democracy...abandoned almost without restraint to its instincts” [DA Intro, p. 14] — is itself abandoned. If liberty were consistent with democracy's “instincts,” then to judge democracy by criteria external to it would be unnecessary.

That Tocqueville's practical or political ends lead him to deliberately make the exact location of his point of view hard to discern is suggested by the manner in which he equivocates on the fundamental issue of American “exceptionalism.” While presented in the introduction to *Democracy* as revelatory of the general *nature* of the modern social condition, America in later chapters begins to take on a different hue, as a strange or exceptional variant of modernity, whose liberty stems from two historical accidents which forestalled democratic “instincts”: the blending of the spirit of liberty with the spirit of

God, but in effect, by trivializing that rhetoric's serious theoretical core, reverses its true polarity. Tocqueville indeed uses “Providence” to “bend the will” of democracy's aristocratic opponents; this does not mean that Tocqueville is a democratic partisan, only that the combination of theoretical detachment from and practical acceptance of democracy would be, clearly stated, unintelligible to partisans of either side. To stress too much the partial sympathy with aristocracy that is fundamental to his analysis, a sympathy suggested by his very qualified enthusiasm for even the best possible modern alternatives, would only produce an effect opposite to that which Tocqueville intended: democrats would reject all arguments to moderate the love of equality as mere partisan opposition, and aristocrats would redouble their efforts to oppose the advent of equality. Moreover, as Peter Lawler argues (*The Restless Mind*, pp. 126-8), Tocqueville's attribution of the justice of democracy to the “divine” or universal point of view would imply that such considerations are not as decisive from Tocqueville's own, limited, point of view, a partisanship in favor of the human. It is only from the perspective of the latter that the assertion of liberty, as a distinctively human assertion of pride or excellence as against the rest of nature — and hence of the fundamental inequality of humans insofar as they do or do not live up to this standard — is intelligible. Tocqueville claimed that he supported democracy by reason, but loved aristocracy by instinct, i.e. in a partisan way — and as Pascal said, “the heart has reasons which reason cannot know.”

religion that is the legacy of the Puritans, and the happy continuity of its governmental forms, inherited and adapted from an aristocratic English past. As we have already seen with the township, the forms of modern liberty owe more to pre-modern antecedents than their beneficiaries are aware. America is not quite as “modern” as it appears, and this may indeed be *why* it is liberal. Tocqueville’s inconsistent statements on the question of America’s “modernity” are best understood, I will maintain, as the inherent fallout from the tension between his theoretical framework — the use of “aristocratic society” as a conceptual device to show the tension between liberty and modern society — and his rhetorical aim. By studied ambiguities — by casting doubt on but never explicitly rejecting his initial use of America as prototypically modern — Tocqueville encourages moderates to be at the same time diligent and hopeful about the task of improving democracy. If, as the passions created by the revolutionary overthrow of aristocracy fade from the scene, Europe can become more like America, then the partisans of morality and order and the partisans of liberty can be brought together.

The problem of American exceptionalism highlights a fundamental aspect of Tocqueville’s “new political science”: its recommendations to moderate the “instincts” of democracy are, to be sure, democratic — but they are made, and could only be made, from a perspective exterior to democracy.⁵ Tocqueville intimates this via the shifting status of

⁵In “Democratic man, aristocratic man, and man simply: some remarks on an equivocation in Tocqueville’s thought” (*Perspectives on Political Science*, v. 27, no. 2, Spring 1998, pp. 79-84), Pierre Manent raises an astute and important objection which gets to the heart of the matter. Manent notes that “aristocratic liberty” — to use the terms with which Tocqueville depicts it in both DA and PSCF — rests on “domination” or force, arbitrary “privileges,” and “egoism,” and hence, in Manent’s words, “does not have the idyllic flavor” of the “pure” love of liberty extolled in AR III.3, what Tocqueville calls the “sublime taste” that “one must not try to make...comprehensible to the mediocre souls who have never felt it.” Therefore, the truly sublime love of liberty that guides Tocqueville is not really “aristocratic,” but the taste of a few beautiful souls within democracy, in Manent’s terms a “democratic spirituality.” These happy few, Manent claims, are guided by an essentially subjective or aesthetic aspiration by which all “the ‘old’ experiences — such as art, literature, love, and religion — attain an unprecedented purity, a truly ‘ineffable’ one.”

America in *Democracy* — from emblematic of modernity to an exception from its main dynamic — -an equivocation epitomized in Tocqueville's discussion of "rights." In DA I.ii.6, as we saw, Tocqueville argues that rights — certainly the distinctive feature of American liberalism — are the *modern* equivalent for virtue, because they are compatible with the idea of self-interest. However, in other places, Tocqueville puts the "modernity" of rights in question. The strongest statement of the connection between rights and aristocracy

because they are no longer tied together by being tied to a political regime, and hence to various forms of human domination: "democratic convention...detach[s] the different human experiences, that until then, bound them to one man's power over another."

Certainly, Tocqueville is no simple "aristocrat," but neither, of course, were the philosophers of aristocratic times: Lycurgus is not Socrates. At the same time, it must be admitted that Manent is right in so far as a private, "ineffable" "sublime taste" is something that moderns, not ancients, aspire to: Tocqueville is not Aristotle (although an aspiration to "pure" forms of "love and religion" that transcend partisan opinion and tyrannical desire is not exactly a stranger to Plato's thought). Where Tocqueville most differs, however, from the ancients is not by his "democratic spirituality" (in fact, Tocqueville had little patience for those, including several of his friends, whose "beautiful souls" led them to withdraw from politics). Tocqueville departs from classical philosophy not out of romantic mysticism, but through the *arguments* he makes for the weight of history: he notes that if he had been born in an aristocratic society his corrective measures would have had a different end, namely to encourage useful pursuits. The real question, therefore, is whether his analysis of history, his assertion that there is now a new order of the human world, is warranted by the facts — and the conclusion that there is such a new order does not necessarily imply that philosophy in the classic sense is impossible.

Admittedly, unlike Plato and Aristotle, Tocqueville does not appeal to a single trans-historical standard, but would moderate the defect of both aristocracy and democracy in the light of the virtues of the other. At the same time he does not, like the far more modern Hegel, attempt to how the virtues of antiquity and modernity could and would be combined in the modern rational state into a coherent whole. Seeing both the limitations and irreversibility of democratic modernity, Tocqueville refrained from the excessive political rationalism of the left, and the political anti-modernism of the right. He did so because he understood, a century prior to the verdicts on Rousseau and Nietzsche given by Leo Strauss, that attempts at either overturning or superceding modernity *practically* could only result in its intensification, and that the only reasonable political option was the moderate acceptance of modernity, coupled with a *theoretical* awareness of modernity's limits. To be sure, Strauss, through his attempt to restore the perspective of classical political philosophy, understands the defects of the modern left and right in a manner markedly different than Tocqueville, in terms of the philosophic radicalization, in the movement of thought from Rousseau through German Idealism to Nietzsche, of modernity's historicist tendencies: see *Natural Right and History*, especially pp. 252-3, and "What is Political Philosophy," in *What is Political Philosophy and Other Studies* (Chicago: University of Chicago, 1988), especially pp. 50-55.

comes in the dark remarks about centralization that conclude Volume II. Here, Tocqueville takes aristocratic liberty, namely the prerogatives of particular individuals or groups, and contrasts it with laws in democratic governments, which apply to all equally:

...the idea of intermediate powers is weakened and obliterated; the idea of rights inherent in certain individuals is rapidly disappearing from the minds of men; the idea of the omnipotence and sole authority of society at large rises to fill its place [DA II.iv.2, p. 291].

When discussing these tendencies of democratic society, Tocqueville treats rights as something Americans inherited from England, and hence something which predates equality: “The lot of the Americans is singular: they have derived from the aristocracy of England the notion of private rights and the taste for local freedom; and they have been able to retain both because they have no aristocracy to combat” [DA II.iv.4, p. 299]. These rights may be now understood as compatible with democratic principles, as founded on the supposed natural freedom and equality of every person, but they are not a natural consequence of democracy. Having their origins in aristocratic society, rights in modern society “will ever be the products of art” [DA II.iv.3, p. 296].

Such statements have not, for the most part, tarred Tocqueville indelibly as an aristocratic partisan, because they are dampened by other statements with opposite implications, along with a rhetorical tone that makes him seem more of a supporter of modernity, and thus more of a descendant of Montesquieu, than he in fact is. For example, his genealogy showing how modern rights originated in England’s aristocratic regime could easily — and to his contemporaries often did — appear to owe much to Montesquieu — unless one had clarity about the radical differences implicit their understandings of history, and of the role of England in that history. Taken as a whole, Tocqueville’s analysis of modernity, in which England is a curious, archaic exception, hardly follows the general spirit of the *Esprit des Lois*: rather, it carries the implication that pre-modern societies *as such* promote a stronger impulse to liberty than modern society. In the *Ancien Regime*,

Tocqueville is franker than in *Democracy*, and praises the spirit of liberty in the aristocracy before the Revolution. To be sure, Tocqueville admits and even highlights in the latter work that this was an imperfect *form* of liberty: it was based on the privileges of a few and encouraged “a spirit of independence and even insubordination” [AR II.11, p. 139], rather than liberty under the common rule of law. What is perhaps more striking to the modern reader, however, is that at the same time Tocqueville insists, almost defiantly, that “there was much more liberty then than there is now” and that the loss of the aristocracy, and aristocratic pride, “dealt liberty a wound that will never heal” [p. 140]. Clearly, what Tocqueville considers free in the aristocrat is his refusal to submit to authority considered illegitimate, compared with moderns who are governed merely by “fear of injury or hope of reward” [p. 149]. This comparison is unfavorable to moderns in precisely that area that they, following Montesquieu, claim their superiority: limited government.

If we take Tocqueville’s philosophy of history seriously as (to turn Zetterbaum right side up) the rational kernel of his assertions about “Providence,” then we can see that his analysis of the irreversibility of the rise of the democratic social condition does not necessarily imply a partisanship on behalf of democracy. On the contrary: the contemporary political situation imposes the requirement of improving democracy by purely democratic means, a task best performed by those with the least taste for such impositions. Tocqueville’s new political science encourages the statesman to promote by “art” what aristocratic society achieved by “nature,” namely the taste for liberty, via a rhetoric that, as much as possible, renders liberty consistent with modern principles, and obscures the aristocratic dimension implicit in its critical assessments. This is clearly the opposite strategy of Montesquieu, whose interpretation of history as progress via commerce, enlightenment, and modern liberal government is the polemical means to vindicate his democratic understanding of liberty as security. My argument is that the orientation of Tocqueville’s new political science, whereby aristocracy is used to show the limitations of

democracy, as well as the rhetorical posture demanded by that orientation, most clearly distinguishes it from that of his predecessor.

Those commentators who do acknowledge a link between aristocracy and liberty in Tocqueville's thought typically see his relation to Montesquieu in a very different manner. For many, it is precisely the aristocratic dimensions of Tocqueville's discussion of liberty that *link* him to Montesquieu. Given the resemblance between the description of the nobility in the *Ancien Regime*, and Montesquieu's treatment of the spirit of "honor" which animates monarchy, this view has certain plausibility. A proponent of one version of this view, J.C. Lamberti, claims that the basis of Tocqueville's understanding of aristocratic liberty can be traced to Montesquieu via Guizot's course on European civilization that Tocqueville followed at the Sorbonne in 1828-9. As mentioned in chapter two, in those lectures Guizot — very much like Montesquieu — credited the Germanic tribes with introducing the spirit of "individuality" into Europe, as compared with the participatory liberty of the ancients. Moreover, Lamberti notes that Guizot describes that spirit of independence in a way that strikingly resembles Tocqueville's description of the spirit of aristocratic liberty, namely the love of liberty for its own sake as opposed to any advantages it might bring. However, Lamberti sharply criticizes previous commentators who trace Tocqueville's understanding of *democratic* liberty to Montesquieu via this aristocratic or "Germanic" view of liberty. Like Aron, Lamberti maintains that for Tocqueville modern liberty is not founded on "the prideful exaltation of the self, but in the religious spirit."⁶ At the same time, according to Lamberti, the aim of Tocqueville's whole project of democratic liberty is an attempt to find an egalitarian equivalent to the aristocratic "prideful exaltation of the self" allegedly found in Montesquieu's notion of honor.

⁶Lamberti, *Individualisme*, p. 26.

To be sure, Guizot's historical account of modern liberty — which credits the Germanic tribes for introducing the distinctive spirit of modern European civilization, as opposed to that of classical republicanism — is very dependent on Montesquieu. As François Furet notes, Guizot saw feudal privileges as oppressive, but “its internal dialectic pointed to ‘a better future, ‘“ as they became extended to the people.⁷ For that very reason, it makes no sense to trace Tocqueville's understanding of the aristocratic dimension of liberty to Montesquieu or Guizot, both of whom saw in feudal liberties the imperfect beginnings of modernity, of individuality. As I have already noted, Tocqueville sees the spirit of liberty under the monarchy precisely not as a consequence of its modern aspects, but in its archaic aspects. Montesquieu was too impressed with the distance between the classical republic on the one hand, and *les honnêtes hommes* of 18th-century France and England on the other, to have agreed with the following lines of Tocqueville's:

The men of the eighteenth century hardly knew that sort of passion for well-being that is the mother of servitude, a passion soft and yet tenacious and unalterable, which willingly combines and, so to speak interweaves itself with several of the private virtues, such as family affection, regular *mœurs*, respect for religious beliefs, and even the lukewarm but assiduous practice of the established cult; which permits honesty (*l'honnêteté*), and forbids heroism, and is remarkably successful in producing orderly men and cowardly citizens. They were better and worse [AR II.11; translation mine].

The spirit of the ancien regime emerges implicitly through a contrast with the modern bourgeois; if this contrast resembles anything in Montesquieu, it is the latter's description of the public virtues of classical antiquity, which “astonish our small souls” [SL IV.4]. Notably, in the very passage Lamberti cites to show the essentially feudal nature of Tocqueville's notion of aristocratic liberty, Tocqueville refers to the Romans: it was by being Roman alone that they felt they had a title to be free.⁸ For Montesquieu, modern

⁷*Interpreting the French Revolution* (Cambridge, CUP, 1981), pp. 136-7.

⁸Lamberti, *op. cit.* p. 26.

government — both monarchy and the English regime — is freer than the classical republics partly because it does not require virtue, or love of the common good, or love of the common good over one's own. Therefore, it does not need to subject individuals to a repressive education. For Tocqueville what characterized the love of liberty in both antiquity and pre-revolutionary aristocracy, and what modern society does not foster, is not such "virtue" but the spirited defense of particularity, of what one understands as "one's own."

The aristocrat's assertion of his prerogatives, and the classical citizen's insistence on a share in rule, are not in Tocqueville's view radically different phenomena — under equality of conditions, both genuine individual autonomy and the "public virtues" are in jeopardy. This connection is suggested by Lamberti himself, who shows in *La notion d'individualisme* how Tocqueville traces the decline of public virtues to the separation of the public and private peculiar to democratic society, with its centralization of authority. "Individualism," Lamberti notes, is for Tocqueville by definition not a problem of pre-modern society, because of the interpenetration of public and private in inegalitarian social relations: certain individuals have political rights as their personal property, and even private relations, such as the family, have a political character.⁹ As we have seen, the absence of the "public virtues" in the "collective individualism" depicted in Tocqueville's *Ancien Regime* — namely the privileges asserted and held by various ranks, where the monarch's

⁹Lamberti, *op. cit.* p. 14. Even so, Lamberti treats Tocqueville's aristocratic liberty as being, in its pure form, unmitigated egoism, the source of modern "subjectivity" — "it does not, in itself, immediately have a moral content. It is pure free will, an absolute power to chose for oneself. This sentiment of liberty was living in the Germanic forests before the coming of Christ [p. 36]...Germanic liberty... involves obligation, but only with regard to oneself." This ignores the fact that Tocqueville saw the social bond as much tighter in pre-modern societies; Tocqueville may find aristocratic liberty defective as respect to Justice, but that does not mean that, as Lamberti asserts [p.36], aristocratic liberty is for Tocqueville simply an empty vessel waiting for content provided by Christianity, which "brings liberty to its moral fulfillment," or alternatively a content provided by a combination of Christianity (equality) and the classics (civic participation). Lamberti's view of the three-fold character of Europe's modern civilization — Germanic, Christian, and Classical — is identical to Montesquieu's own view of the matter in SL IV.4.

monopoly over politics had already destroyed the basis of aristocracy — reveals more about the nature of democracy than aristocracy

Tocqueville cannot be understood as a democratized Montesquieu, because it is Montesquieu, not Tocqueville, who attempts to show in England a democratic form of the mediated or lawful sovereignty made possible by monarchy, itself a “corrupt” form of the originally aristocratic government of the Teutonic tribes. When there had been just the right amount of this “corruption,” the prerogatives of nobility were further democratized and became the modern liberties that fill Montesquieu with such awe at England’s world-historical mission. It is in fact Montesquieu, not Tocqueville, who invents the democratic sense of history as modernity’s *deus ex machina*; perhaps the author of the *Esprit des Lois*, a work he styled on the title page *sine matram creatum*, wants the few who understand to think of him as a benevolent divinity, whose creation will eventually eliminate the true basis of the difference between the few and the many, the difference in wisdom. If on the practical or political level Tocqueville’s “liberalism” is more democratic than Montesquieu’s, their guiding theoretical orientations are the reverse. This paradox cannot be seen, however, unless one sees why Tocqueville includes classical republicanism as a case of “aristocratic liberty,” namely that it is the egalitarian aspect of modernity which is responsible for men who are both insufficiently public spirited and insufficiently spirited. One interpretation of Tocqueville’s liberalism that does not slight the importance of these facts is Alan Kahan’s *Aristocratic Liberalism*; a consideration of his reading will more clearly situate my own.

Kahan discusses Tocqueville’s “aristocratic” liberalism, not so much in its own terms, with reference to the real problems of modern politics Tocqueville’s thought is trying to confront, but for the sake of placing Tocqueville in the history of political thought. In Kahan’s intellectual history, “aristocratic liberalism” is a species of political rhetoric, not to say ideology. Aristocratic liberalism arose, in Kahan’s account, as a conjunction of the different but “not necessarily contradictory languages” of “liberalism and humanism,” a

form of discourse, Kahan claims, Tocqueville shares with Burckhardt and Mill. Kahan thus traces the “aristocratic” aspect of this sort of liberalism to the categories implicit in what, following Pocock, he calls the “civic humanist tradition,” the “values” transmitted by classical education, which consist in

a more or less unacknowledged kind of Aristotelianism” based on a “concept of human nature...that certain kinds of needs had to be fulfilled for a human being to reach his or her highest expression...Since among these needs are participation in society, political participation was thus a good in itself.”

As a type of “language,” this “unacknowledged Aristotelianism” is not, as the conventional wisdom has it, at odds with modern liberalism; indeed, as “aristocratic” it is compatible with the desire of liberals to protect rights and property against majority rule. Thus, for Kahan, “the aristocratic liberals also bring something new to the older traditions of humanist political discourse, and this lies in certain ideas (of negative liberty, commercial society, historicism, and so on) developed by the Enlightenment and the French Revolution.”¹⁰

This account has a certain surface plausibility, and yet it is profoundly misleading. Kahan simply leaps over the fact that the philosophical basis of modern liberty — the claim of every human being to have equal natural right to determine his own good — was made by the founders of modern liberalism in explicit opposition to Aristotle. Notably, Kahan’s acceptance of a “humanist” tradition leads him to the supposition that “it may well be that much of his Aristotelianism was derived via Montesquieu.”¹¹ However, it is precisely Montesquieu who epitomizes the modern liberal alternative to the classics — as we have seen, Tocqueville was an avid reader of Montesquieu, not of Aristotle, because he felt the latter irrelevant to modern conditions. Contrary to the importance of some broadly defined

¹⁰Quotes in this paragraph are from pp. 81-83 of *op. cit.* (Oxford: Oxford U.P., 1992).

¹¹*Op. cit.*, note 8 to p. 83, on p. 188.

“tradition” of classical learning, one should not slight as a likely source of Tocqueville’s distance from democratic modernity an aspect he explicitly acknowledges, his own aristocratic background. While there is some truth to Kahan’s attribution of an “unacknowledged Aristotelianism” to Tocqueville, it is not true in the exact sense: as we saw in the last chapter, Tocqueville’s point of view is closer to that of Aristotle’s “great-souled man” than to Aristotle’s notion of the philosopher. More importantly, the historian’s questions of the “sources” of Tocqueville’s distinctive notion of liberty become less important to the extent that we consider his analysis of the nature and difficulties of modernity, upon which this notion rests, to be correct. ¹²

Despite claims such as those of Lamberti and Kahan, Montesquieu can hardly be the source of either Tocqueville’s view of aristocratic liberty or the aristocratic orientation implicit in his “new political science.” Rather, as I argue in this chapter, it is only via a contrast with Montesquieu that one sees clearly that this orientation is the distinctive aspect of Tocqueville’s liberalism. To substantiate this, I first look at what many have seen to be the closest point of contact between Montesquieu and Tocqueville, namely the resemblance of the former’s *pouvoirs intermédiaires* with the latter’s discussion of associations. What most readers see is that Tocqueville’s discussion depicts associations as modern equivalents

¹²By seeing Tocqueville through his pre-conceived categories, as opposed to in the light of the problems of politics that Tocqueville discusses, Kahan’s account becomes hopelessly confused. Thus, while claiming the contribution of “humanism” to be Tocqueville’s concern to foster civic participation, Kahan turns around and credits humanism with the counter-majoritarian aspect of the “aristocratic liberals,” because “liberty, and not equality, made sense within Aristotle’s concept of human nature” [p. 84]. This pairing of liberalism and classical thought is extended, via the addition of Romanticism, to a veritable *ménage à trois*: “[aristocratic liberalism’s] emphasis of self-direction, moreover, fit well with the elements of their concepts of individuality that derived from later currents, such as the Romantics, Rousseau, and Kant.” Given such an amorphous pedigree, being an aristocratic liberal seems to boil down to not being a bourgeois liberal. Thus it comes as no surprise that Kahan puts in his Procrustean bed both Mill and Tocqueville, despite a radical difference in the ends towards which their idea of liberty is directed: individuality and diversity on the one hand vs. a prideful spiritedness in defense of rights, including a share in politics, on the other.

to the functions of powerful individuals in aristocratic society; what most miss is that for Montesquieu no intermediary bodies survive in modern government. Tocqueville's view of the function of associations, and the aspect of aristocratic society they replace, winds up being quite distinct from Montesquieu's understanding of the role of the *pouvoirs intermediaires*, as the ancestor of limited sovereignty.

Subsequently, I turn to the main difference between Montesquieu and Tocqueville, the nature of their political rhetoric. I first dispose of possible objections to my claim certain ambiguities in Tocqueville's presentation of the relation between liberty and modernity are deliberate: that they are simply inconsistencies, or evidence of an evolution of Tocqueville's thought, or even merely of his changing moods. I proceed to examine, via a comparison with Montesquieu, the devices and deployment of Tocqueville's rhetoric in two key areas: the latitude of statesmanship, and the relation of religion and politics. Because Tocqueville sees the limitations of democracy from a perspective exterior to democracy, he departs from Montesquieu on the rhetoric proper to the political scientist, and the public responsibility of political science, that is to say the relation between the political scientist or philosopher and modern society.

A. MONTESQUIEU'S POUVOIRS INTERMÉDIAIRES: THE ORIGIN OF TOCQUEVILLE'S ASSOCIATIONS?

As many have claimed, there is a resemblance between Montesquieu's discussion of monarchy's intermediary bodies, and Tocqueville's discussion of the role of associations. In modern society, associations buffer the "omnipotence of the majority," which is in some respects greater than was the power of the monarch:

In aristocratic nations the body of the nobles and the wealthy are in themselves natural associations that check the abuses of power. In countries where such associations do not exist, if private individuals cannot create an artificial and temporary substitute for them I can see no permanent protection against the most galling tyranny... [DA I.i.12, p. 195]

The reference to Montesquieu's treatment of monarchy seems clear enough, yet one commentator, Wilhelm Hennis says it would be "entirely incorrect" to see associations as a descendent of Montesquieu's intermediary bodies.¹³ Hennis points out what many earlier commentators had not noticed: that there is something odd in Tocqueville's using, for the sake of modern liberty, an equivalent to what Montesquieu had explicitly rejected as forming no part of a modern "popular state."

Any adequate assessment of the relation of Tocqueville's discussion of associations to Montesquieu's understanding of the dynamics of monarchy must therefore come to terms with this objection. The premise of this objection is that if Montesquieu limits the role of intermediary bodies to monarchy, to aristocratic society, Tocqueville could not, if he had been following Montesquieu, have seen any relevance of these bodies to democratic society. However, not only does Tocqueville explicitly treat modern associations as "artificial" [DA I.ii.4, p. 196] substitutes for the associations found naturally in aristocratic society, namely those composed of the lord and his dependents; he often describes democratic sovereignty, and sees the problem of its limitation, in ways markedly similar to the ways Montesquieu saw the dilemmas of monarchy. In his notes, Tocqueville says that "when the government [variant: sources of power] is found in the population itself and not above it, one feels something of the good and bad sentiments that the kings inspired in absolute monarchies — one fears it, adulates it, and often loves it with passion" [cited DAN II.ii.4, p. 102, note q].

Hennis is partly right in the sense that *Montesquieu* does not see modern liberty as needing a substitute for intermediary bodies that channel power according to law — liberty in the English regime stems instead from the separation of powers. However, Tocqueville's analysis of the democratic *état social* carries the implication that modern equivalents to such bodies continue to be necessary, in order to mediate the formless and absolute quality of

¹³"In Search of the 'New Science of Politics'" in *ITDA*, pp. 27-62, at pp. 52-3.

popular sovereignty. As we saw earlier, Tocqueville felt that popular sovereignty impaired the working of the separation of powers. In his notes, he wrote: "Political associations are necessary in democracies in the same measure that executive power is weaker in them. Without that, the majority is tyrannical" [DAN II.ii.5, p. 104, note h]. This challenge that the democratic social condition poses to the separation of powers is apparent even from Montesquieu's own depiction of modern liberal constitutionalism. English liberty, in his analysis, depends upon on an aristocracy with fixed prerogatives, whose share in legislative power divides that power, and checks the tendency of this branch of the government, as closest to popular will, to become absolute. According to Tocqueville, it has now become impossible to maintain or create any kind of aristocratic body, no matter what its advantages for the rule of law, so that modern equivalents to aristocracy, i.e. intermediaries between the sovereign and the individual, are more necessary in democratic times than they ever were.

Though associations are more necessary in modern society, they are necessarily weaker than the old intermediary bodies. In his notebooks, Tocqueville says:

Aristocracies are natural associations that need neither enlightenment nor calculation in order to resist the great national association which one calls the government. From there stems the fact that they are more favorable to liberty than democracy. There can be associations in democracy, but only through force of enlightenment and talent and they are never durable. In general, when an oppressive government has been able to form in a democracy, it only encounters isolated men, no collective forces. From there [stems] its irresistible power [YTC, cited DAN I.ii.4, p. 148, editor's note "h"].

In effect, Hennis underestimates what Tocqueville's discussion of associations owes to Montesquieu because he does not factor in the consequences of Tocqueville's different account of modernity.¹⁴ The inadequacy of the separation of powers in the face of the modern *état social* means that modern liberty requires some equivalent of the old

¹⁴The key fact Hennis cites to prove Montesquieu's irrelevance to Tocqueville, namely the "radically changed conditions" of Tocqueville's time [p. 38], thus turns out to be the most detrimental to his case.

intermediary bodies. From Tocqueville's post-revolutionary perspective, even the decayed aristocratic society of the late eighteenth century formed more of an obstacle to possible tyrannical usurpation than a truly democratic social condition. Now, the unlimited power of democratic sovereignty in America means "it is impossible to say what bounds could then be set to tyranny" [DA I.ii.10, p. 420]. As a deleted passage in his manuscripts of this chapter shows, Tocqueville is thinking at least as much of the more sensitive topic of post-revolutionary France here:

If Napoleon had succeeded to Louis XVI he would have found the royal power strong but surrounded by hindrances which would have imposed limits on his spirit of domination...Napoleon succeeding to that [government] representing the people was able to do everything" [DAN I.ii.10, p. 304].

Tocqueville's treatment in DA II.ii.5 of the contributions *civil* associations make to liberty marks, however, a sharper departure from Montesquieu. Introducing this discussion, Tocqueville says:

I do not propose to speak of those political associations¹⁵ by the aid of which men endeavor to defend themselves against the despotic action of a majority or against the aggressions of regal power [p. 106].

Like political associations, for Tocqueville civil associations seek to replace an aspect of aristocratic society the loss of which, in democratic society, threatens liberty. However, Tocqueville's discussion of civil associations is directed to a rather different problem than a despotic sovereign. Whereas each aristocrat, as the "head of a permanent and compulsory association," namely his dependents, "can achieve great undertakings," the weakness of individuals in democratic society will result, if government is the only active power, in a general "torpor" [DA II.ii.5, pp. 107-8]. To act, democratic men must combine; otherwise,

¹⁵Quoting only this much of this sentence, Hennis uses it [*op. cit.* pp. 52-53] as ammunition to show "how subtly Tocqueville distances himself from Montesquieu." In its entirety, what the sentence shows is the tendentious manner of Hennis's argument; the only thing Tocqueville "distances" himself from here is the earlier discussion of political associations in DA I, bodies that in this very quote are shown analogous to Montesquieu's *pouvoirs intermediaries*!

society will stagnate. As Hennis notes, Tocqueville praises associations because “Feelings and opinions are recruited, the heart is enlarged, and the human mind is developed only by the reciprocal influence of men upon one another” [DA II.ii.5, pp. 108-109]. Tocqueville suggests that the activity of associations not only prevents tyranny, but also is necessary for civilization or progress. In his notebooks, Tocqueville repeatedly says men would “return to barbarism” if all the activity performed by associations were to stop, and “if one delegated them to the big general association which one calls the government, then tyranny is inevitable” [DAN II.ii.5, p. 105, note “j”; cf. the other references to barbarism at p. 103, note c; p. 104, note h].

Admittedly, this is a far cry from Montesquieu’s discussion of intermediary bodies. While Tocqueville starts from Montesquieu’s connection between “nobility” and “liberty,” he develops this connection in a way that shows his radically different understanding of what it is about nobility that has an affinity with liberty. As an example of the leavening effect of associations, Tocqueville speaks of the activity of temperance societies in the United States, which he compares to a “man of high rank” setting an example for the people in the old order — whereas “if these hundred thousand men had lived in France, each of them would singly have memorialized the government to watch the public houses” [DA II.ii.5, p. 110]. This contrast — the dangerous passivity and dependence on the government of the French, versus Americans who use associations to mitigate the weakness of the modern individual — shows how Tocqueville is led, via his more “aristocratic” liberalism, to expand upon Montesquieu’s idea of liberty. As I have argued, Tocqueville takes liberty in the direction of virtue, the full development of human capacities. If the modern social condition renders problematic the “reciprocal action” of men on each other by which those capacities are developed, then associations provide a substitute for the influential individual found in pre-modern societies.

Thus, Hennis is correct to see some difference between Montesquieu's intermediary bodies and the role of associations in Tocqueville, and to trace this difference to their different notions of freedom. This, however, does not go far enough: the real root of their difference lies in their assessments of, and hence orientation towards, modernity. It is the connection between aristocracy and the development of human faculties that leads Tocqueville to worry, unlike Montesquieu, about a modern "return to barbarism." In discussing the influence of modern equality on the intellect, namely to promote the practical sciences at the expense of the theoretical, Tocqueville argues that civilization can "perish" not only as it did in Rome, by barbarian invasions, but also if through a general passivity and conformism, science is reduced to mere technology, as happened in China:

When the Europeans first arrived in China, three hundred years ago, they found that almost all the arts had reached a certain degree of perfection there, and they were surprised that a people who had attained this point should not have gone beyond it. At a later period they discovered traces of some higher branches of science that had been lost. The nation was absorbed in productive industry; the greater part of scientific processes had been preserved, but science itself no longer existed there. This served to explain the strange immobility in which they found the minds of this people. The Chinese, in following the track of their forefathers, had forgotten the reasons by which the latter had been guided [DA II.i.10, p. 47].

Tocqueville's use of China stands in striking contrast to Montesquieu's, who, while noting the immobility of China, had traced this to an unshakeable combination of mores, religion and laws [SL XIX.18]. Tocqueville, by contrast, stresses the *intellectual* stagnation that comes from the passivity fostered by an all-powerful central *government* — a stagnation now possible, because of the effect of democratic *état social* on the soul, even without such a government.

Tocqueville insists that moderns recognize that the practical applications of science depend, ultimately, on theoretical inquiry. As he puts it evocatively in *Democracy* II.ii.16, "In men, the angel teaches the brute the art of satisfying itself. It is because man is capable of elevating himself above the goods of the body and of scorning even life itself — of which beasts do not have any idea — that he knows how to multiply these same goods to a degree

they cannot conceive of.” At the same time, the disconnected and dispirited individuals of the modern *état social* are not, constitutionally, the sort likely to be led by their angelic side towards theoretical life: they tend, in fact, towards an apathetic, consumerist, relativism. By connecting theory to practice, Tocqueville raises the specter of a stagnation that would put in jeopardy the very thing that distinguishes modernity — progress of the arts and sciences — probably more out of a desire to instill a salutary fear in democratic man not to despise theory, rather than out of any genuine belief that technological “progress” is danger of subsiding. Nor, of course, does Tocqueville expect that the science of association can revitalize and raise the sights of modern man to such a degree that it will make Everyman an Archimedes. At the same time, Tocqueville’s remarks about democratic intellectual stagnation, in conjunction with his use of the Chinese example, show what the underlying basis is for Tocqueville’s understanding the moderating role of associations in terms so far removed from Montesquieu’s discussion of the *pouvoirs intermédiaires*.

The most fundamental basis for this new role for associations as means to promote the development of human faculties lies in Tocqueville’s implicit rejection of what Montesquieu had seen as the basis of modern intellectual progress, what Montesquieu called the “sociable humor” and we would call today “globalization.” Despite its name, the “sociable humor” has nothing to do with what Tocqueville meant by “association.” Exemplified by peoples such as the French and the Athenians, for Montesquieu this “humor” grows up together with commerce and the development of the arts [SL XIX.5-8 with XXI.7]. Communication with foreigners promotes change by loosening the attachment to one’s own way, promoting understanding through undermining mores: “The more communicative peoples are, the more easily they change their manners, because each man is more a spectacle for another; one sees the singularities of individuals better” [SL XIX.8]. For Montesquieu, the key stimulus to commerce and the arts is not the development of

men's faculties, but the enlarging of their desires, i.e. the growth of "taste" and "luxury," via the erosion of mores.

Tocqueville's discussion of the role of civil associations reveals an understanding of the relation between modernity and enlightenment that is almost diametrically opposed to that presupposed in Montesquieu's discussion of the "sociable humor." For Tocqueville lack of any fixed authority in democratic society brings the awareness of what Montesquieu calls "singularity," or contingency, to a fever pitch. Such awareness does not, however, weaken the attachment to one's own way as much as moderns such as Montesquieu seem to think. In discussing the debate of opinions that comes from freedom of the press, Tocqueville remarks that "no opinions are looked upon as certain" and that "men who have adopted one of them stick to it, not so much because they are sure of its truth as because they are not sure there is any better to be had" [DA I.ii.1, p. 189]. The possible modern stagnation that Tocqueville wishes to combat by associations does not stem from dogmatism but from impotence (although, paradoxically, the fearful prospect of skepticism indeed pushes democratic man towards a sort of dogmatism as well). Tocqueville understands the role of civil associations perhaps as a corrective to an enervating uncertainty unleashed by Montesquieu's communication revolution.

The end of the "art of association" is not widening horizons through an awareness of difference, but teaching and encouraging men how to act in common. Moreover, these associations comprise more than the commercial; many of them, like the temperance society Tocqueville cites, have moral or practical goals, and counteract the tendency of democratic society to become a "dust" of self-interested atoms. Nor, however, are they — like Montesquieu's *pouvoirs intermédiaires* — mere means of channeling the flow of sovereign power. For Tocqueville, associations develop men's capacities for action by fostering opinion, as opposed to mere interest — civil as well as political associations prepare men for

politics.¹⁶ It is this “politicizing” function of associations, and, as I argue in more detail below, of Tocqueville’s political project as a whole — that makes them quasi-“aristocratic.”

*B. ARISTOCRATIC LIBERALISM, AMERICAN EXCEPTIONALISM,
AND DEMOCRATIC RHETORIC*

Tocqueville’s discussion of associations shows how it is “aristocracy” which provides the criteria for his recommendations to improve democracy; this critical detachment from modernity most pointedly distinguishes his project from that of Montesquieu. This difference becomes fully manifest, however, only when one sees through the Montesquieuan mask of Tocqueville’s rhetoric, by understanding its purposes and devices. This prompts, however, a fundamental question: how can we be sure that such a rhetorical intention exists? Many Tocqueville scholars, while admitting ambiguities in Tocqueville’s analysis of democracy and liberty, see these as evidence of the development of his thought.

¹⁶In explaining this shift from Montesquieu’s “mechanical” understanding of the role of intermediary bodies to the more “teleological” notion of liberty fostered by civil associations, by which “the heart is enlarged and the human mind is developed,” Hennis claims that Tocqueville is inspired by the “moral spirit of Rousseau.” Although it is impossible to settle such a large question here, to attribute simultaneous moral and intellectual progress to the “reciprocal influence of men upon each other” hardly seems consistent with Rousseau, whose *First Discourse* equates progress in the arts with moral corruption. One could just as easily link Tocqueville’s discussion of associations with the moral spirit of Aristotle, keeping in mind the similarity between the following two contrasts: a.) Tocqueville’s contrast (e.g., DA I.ii.2, end) between a society reduced simply to interests — which as bare facts pertaining to each individual are not debatable — and a society with contending opinions, where men are able to discuss and act in common; and b.) Aristotle’s contrast between animals, who have voice only to indicate their individual pleasure and pain, and the logos of the political animal, “which serves to reveal the advantageous and the harmful, and therefore the just and the unjust” [*Politics* 1253a14-15], and which thus also serves to foster political argument about these things. Tocqueville does not share Aristotle’s understanding of a contemplative life above politics, but neither does he share Rousseau’s premise that man is by nature an asocial animal: for Tocqueville there is something unnatural in the “individualism” or withdrawal to which modern man is prone.

Within the framework of such an approach, it is impossible to discern a rhetorical or political dimension of Tocqueville's writing, because inconsistency is reduced to little more than evidence of Tocqueville's changing dispositions towards democracy.

To take the most prominent example of this kind of interpretation, Seymour Drescher argues that there is a fundamental shift in Tocqueville's opinions, occasioned by his experience in French politics, between his writing the 1835 and 1840 volumes of *Democracy*.¹⁷ According to Drescher, the volumes differ not only by subject matter, as is commonly thought and as Tocqueville in fact claims, but also by their assessment of the fundamental problems posed by democracy. Thus, in the 1835 volume, Tocqueville worries about the excess of "passion" in democracy, which would "fill its citizens with an immense sense of power and will to participate in directing the destiny of their society at every level," leading Tocqueville to worry about "the omnipotence of the majority" in terms of "the misuse of their power." By 1840, Tocqueville has seemingly come around to the opposite diagnosis of democracy — stagnation and impotence: "atomization [whose effect] would be to *decrease* [Drescher's italics] the tempo of political and economic activity." "In 1840," according to Drescher, "it is the tutelary administrative power, not the envious majority, 'which the most original minds, and the most energetic characters' cannot penetrate.'" Assuming that "power" means "elite," Drescher suggests that Tocqueville's "fear" in 1835 "for the existence of a true elite of talent in a society whose electorate refuses to suffer superiority" [apparently referring to DA I.ii.7] is overturned by Tocqueville's concern in 1840 about the elitism of a "tutelary administrative power."¹⁸

¹⁷In "Tocqueville's Two Democracies," *Journal of the History of Ideas*, 1964, pp. 201-216.

¹⁸All quotes in this paragraph are from *ibid*, p. 204; Drescher's citation of Tocqueville is to DA II.iv.6 [p. 319].

In Drescher's widely accepted scenario the Tocqueville of 1835, looking at America, conjectures that all modern democracy will be rambunctious, perhaps excessively so, whereas the more pessimistic Tocqueville of 1840, seeing America as exceptional, forecasts a political deficit as the more likely consequence of the democratic social condition in Europe. Certainly, as we have seen, the claim that American liberty originates in governmental forms inherited from the aristocratic English — made at the end of DA II.iv.4 — represents a change of perspective from the view of America in the "Introduction" as simply revealing the nature of democracy, of the new social condition, as such. It is all too tempting, then, to assume that Tocqueville, between 1835 and 1840, simply changes his mind on the fundamental issue: the fundamental character of modernity.

Such problems, however, are not so easily resolved. Drescher's suggestion of a complete reversal on Tocqueville's part — whose major premise seems to be that an elite is an elite — glosses over the fact in Tocqueville's own analysis in DA II.iv, majoritarian envy and bureaucratic regulation are two halves of the same coin. The disappearance of rulers who stand above and lead the crowd, by something that belongs to them as individuals, such as social position and/or natural ability, can only lead to the appearance of public "servants" specialized in crowd control.¹⁹ Drescher imagines

¹⁹The related "contradictions" that Drescher finds between the 1835 and the 1840 Tocqueville are equally facile, indeed almost shockingly so for a scholar of Drescher's reputation. For example, take the one that follows immediately after Drescher's unfortunate confusion concerning "elites." Here [*op. cit.*, p. 204], Drescher contrasts how Tocqueville's analysis of 1835 showed that "the interdependent equals who wished to achieve power tended to stultify independent authority," with the critique in 1840 of the stultifying effects of individualism on common action. Apparently, poor Tocqueville is so confused that first he says that there is too much "interdependence" in modern society (Drescher's term), and then, five years later, not enough. I simply note that

a. Drescher fails to note that the problem of "majority tyranny" in DA I.ii.7 is specifically not *political*, or a consequence of the *action* of some men on others, but the authority over men's minds of something social, without a definite *agent*: mass opinion. Tocqueville even goes so far here as to call this an entirely new, "spiritualized" form of tyranny — a tyranny not only consistent with, but, as we have maintained, that Tocqueville

contradictions because he evades confronting ambiguities, such as those we saw present in Tocqueville's view of liberty, as falling somewhere in between the Montesquieuan antipodes of the classical and modern republic. Revealingly, Drescher completely ignores the importance of township government in the *first* volume of *Democracy*, which Tocqueville says is both essential for the "spirit of liberty" [DA I.i.5, p. 51] and more difficult to found as society becomes more civilized and enlightened. On the one hand, the modern social condition, growing as it does from the de-legitimization of all aristocratic distinctions as arbitrary, bases much of its appeal, according to Tocqueville, on its claimed rationality. On the other hand, as Tocqueville shows in DA I, self-government, especially that of particular localities, seems to moderns self-evidently less rational than the administered — hence passive — equality toward which the modern condition instinctively tends.

Moreover, Drescher's interpretation glosses over Tocqueville's own distinction between the themes of the 1835 and 1840 volumes — the first focuses on the consequences of "democracy" as a form of government, and the second — which, as a corollary to its theme, is less centered on America — concerns the nature of "democracy" as the form of all modern society. Indeed, the fundamental tension between political liberty and modern society is built into the central concept of Tocqueville's thought, the *état social*. In a blunt passage he excised from the chapter preceding the one on townships, "The social condition of the Anglo — Americans" [DA I.i.3], Tocqueville distinguishes the democratic *état social*

shows is conducive to, and in turn supported by, the general isolation of men in their private lives;

b. In his citation [p. 204] to DA II.ii.5, pp. 108-9 concerning "the reciprocal action of men upon another," Drescher chooses not to cite the immediately following sentence: "I have shown that this action is almost null in democratic countries." From the perspective of Drescher's confused version, this claim of Tocqueville's makes no sense at all; from the context of DA II.ii.5, however, it is clear that this "action" refers to the *concrete* interactions of men as *individuals* with each other, especially in the assertion and counter assertion of political argument. This is "almost null" in democratic countries because very basis upon which any individual could assert the *validity* of their own particular claim is gone — the very reason Tocqueville gives in DA I.ii.7 for the dominance of mass opinion.

from democratic government: “These two things are not analogous. Democracy is a manner of being of society. The sovereignty of the people, a form of government. Neither are they inseparable, because democracy is more compatible with despotism...” [DAN I.i.3, p. 38]. Tocqueville’s basic concepts make modern liberty inherently problematic because modern principles make politics itself problematic. The growth of “equality of condition” both radicalizes the desire not to be ruled always present in democrats, and weakens any impetus to share in rule. Since modern man sees all ruling as illegitimate, he is led to accept the “alternative” of what we now call *management*, efficient administration of needs done in the name of someone, or something, else, such as “the people” or “society.” As a deliberately chosen form, democratic politics — as opposed to the democratic *état social* — has something “aristocratic” about it.²⁰

Attempts such as Drescher’s to account for Tocqueville’s ambiguities, even inconsistencies, by referring them to some alleged change of heart arise out of a failure to confront philosophically Tocqueville’s analysis of the nature of modernity. Once this analysis is grasped, the basic continuity — despite differences in mood, rhetorical intent, or emphasis — underlying all of Tocqueville’s reflections becomes clear.²¹ For Tocqueville

²⁰I am indebted for this point to Harvey Mansfield’s masterful exegesis of Aristotle’s *Politics* in *Taming the Prince*. According to Mansfield, for Aristotle the democrat bases his claim on the paramount importance of the body, or more generally, “matter,” the oligarch on that of form. As a consideration of Hobbes makes clear, it is what all share, namely the body, from which stems the resistance all men have to being ruled; it is from a principle of distinction or choice that something is a particular kind or form of thing, to the exclusion of others. Thus, for Aristotle “even a democracy, when it is a chosen form, paradoxically owes more to the oligarchic principle than to the democratic” (p. 36). By contrast, if humans are mere matter in motion, bodies trying to preserve themselves, then there are no natural titles to rule, and no grounds for asserting the superiority of particular kind or order over others. If this modern view is true, then even democratic loyalty to the principles of the Founding or the Constitution makes no sense; we are left with trying, as theorists like Rorty and Unger suggest, whatever “works,” i.e. whatever is in line with our current whims.

²¹To be sure, between writing the first and the second volume of *Democracy*, Tocqueville’s concerns about modern “individualism” and centralization have come into

the modern condition as such will always make liberty a *problem*. Tocqueville must make statesmen aware of this fact, but not so aware that they become paralyzed: modern man is all too likely to accept reasonings that the situation is futile.

Tocqueville's equivocations do not show any fundamental change of heart; indeed, one of his critics, Saint-Beuve, complained that he was incapable of learning anything. Rather, they should be read as rhetorical strategy.²² The second volume of DA is, undeniably, darker and more outspoken — and hence more valuable both in our attempts to unearth the conceptual basis of Tocqueville's observations, and as a critical theory of modernity. Yet, once that basis is understood, it becomes clear that the "darker" side of Tocqueville is present in all his observations, although often deliberately subdued. There is considerable justification for his having done so, considering it is the more moderate first

sharper focus — very possibly, as Lamberti and Drescher suggest, because of his subsequent reflection on English and French politics.

²²Another problem with accepting any "historical" account of Tocqueville's ambiguities is: which one? Each critic has his own "explanation" for a supposed rupture in Tocqueville's thought. For his part, Drescher maintains, in *Tocqueville in England* (Cambridge, MA: Harvard University Press, 1964), pp. 74-75, that Tocqueville did not become clear on the connection between democracy and centralization until his 1836 trip to England. This seems to ignore not only the forest — the logic of Tocqueville's basic concepts that we have described — for the trees, but also the much darker statements about American exceptionalism that are excised from the MS to DA I, to say nothing of those contained in his correspondence. As far as the former issue — the logic of Tocqueville's concepts — it is noteworthy that in DA I.i.5, Tocqueville identifies the attitude of the passive and dependent European subject with the belief that all government is force, not right — the very same crisis of legitimacy that Tocqueville identifies with equality of conditions in the introduction to DA I.

Lamberti, as noted in the last chapter, maintains that the major discontinuity in Tocqueville's thought stems from his discovery, via his experience of France, of "individualism" around 1838; this leads Lamberti, as also we saw, to the different, but equally untenable account of the break as occurring between DA II.iii and iv. Unlike in Drescher's account, for Lamberti Tocqueville remains a liberal follower of Montesquieu through the first three parts of DA II by supposedly distinguishing between "liberal" and "revolutionary" individualism. This distinction is, Lamberti himself notes, untenable — and so Lamberti then must have Tocqueville belatedly abandon it.

volume that achieved contemporary public acclaim, an acclaim necessary to his main end in writing — the promotion of modern liberty.

To be sure, it is inadequate to prove the existence of a clever rhetorical strategy by merely pointing to the author's equivocations, or to his motives, or to his popular success — one must catch the author in the act. This task becomes easier, however, when Tocqueville's manner of writing, and his understanding of the relation between political science and politics, is brought into focus through comparison with these same aspects of the thought of Montesquieu.

1. POLITICAL RHETORIC AND THE LATITUDE FOR STATESMANSHIP

Tocqueville's new political science deploys a rhetoric that, on the whole, gives grounds to hopeful moderns by giving a surface impression of continuity with Montesquieu, and hence with Montesquieu's partisanship on behalf of all things modern. As we saw, many of Tocqueville's illustrious contemporaries read him that way. This surface impression of continuity fades, however, when one examines more carefully the nature of Montesquieu's own rhetoric, which turns out to be in the service of different ends than that of Tocqueville. This tactical difference between Tocqueville and Montesquieu emerges, in turn, out of the deeper substantive difference between the two thinkers on the importance of statesmanship.

Just as Montesquieu's notion of liberty is based on the de-personalization of rule, so his rhetoric is concerned to make men moderate by making them feel subject to impersonal forces. The tenor of Montesquieu's agenda is revealed with surprising frankness in his essay "On Politics," "politics" being meant in the pejorative sense we often give the term: the Machiavellian sense of the quest for power so as to put one's stamp on the world, by hook or by crook. At the very beginning of this essay, Montesquieu candidly admits that

It is useless to directly attack politics in making one see how much it is repugnant to morality, to reason, to justice. These sorts of discourses persuade everyone and touch no one. Politics will exist as long as there are passions independent of the yoke of the laws. I think it would be better to take a more roundabout route and give the powerful a distaste for it by considering what little utility they would draw from it [OC I, pp. 112-119, at p. 112].

A little bit later, we see that Montesquieu's fundamental category of the particular "esprit" that characterizes each society is deployed for precisely this reason, to rein in the scope of politics and the desires of the ambitious:

In all societies, which are nothing but a union of *esprit*, a common character forms. This universal soul takes on a manner of thinking which is the effect of a chain of infinite causes, which multiplies and combines from century to century. From the moment this tone is given and received, it is this which governs, and all that sovereigns, magistrates, and peoples can do or imagine, whether they appear to shock this tone or to follow it, are always brought back to it, and it rules until [society's?] total destruction [op.cit., p. 114].

In subjecting peoples and rulers to the spirit of the age, Montesquieu wishes to promote the moderation of modern government — necessity, the very excuse that Machiavelli had used to unleash the ambitious, will now rein them, and him, in.²³ By turning modern hard-headedness to soft-hearted ends, Montesquieu fosters his democratic agenda — we remember that for Machiavelli the end of security, or the desire not to be oppressed, is characteristic of "the people."

This view of political science cannot help but remind us of Tocqueville's famous claim that both the advocates and the opponents of democracy served to bring about its rise — "they were blind instruments in the hand of God" — yet Tocqueville's rhetorical task is more complex and ambiguous than Montesquieu's. On the one hand, as we have seen,

²³Montesquieu leaves the impression both that the impersonal workings of history itself — the rise of modern commerce — are what are curing us of Machiavellianism [SL XXI.20], and at the same time that Enlightenment, such as that provided by his own work [SL, preface], is necessary to bring modernity to fruition. Montesquieu's version of modern liberalism requires statesmen to become aware of their own relation to history's workings, because as Pierre Manent argues in the *City of Man*, to be "modern" requires a self-consciousness of oneself as modern, as subject to and at the end of history.

Tocqueville admittedly uses Providence to “bend the will” of the opponents of democracy, by making them feel that resistance is futile.²⁴ They would not be wrong to do so: Tocqueville has rational grounds for maintaining not only that progress of equality has become irreversible, but, more generally, that the importance of the individual as an historical agent — and hence the scope of politics generally — is smaller in democratic ages. Yet, these genuine aspects of modernity dangerously encourage moderns to go too far, and believe that history is *wholly* determined by impersonal forces, by necessity. Tocqueville’s rhetoric must therefore stress the possibility of choice, perhaps even exaggerating it at times, while still revealing to modern statesmen what they are up against. To be free, democratic man needs to be goaded into resisting the debilitating trends of democratic thought — namely theories of history that leave no room for statesmanship [DA II.i.20, end].

The practical goal of Tocqueville’s political science is thus rather different, and much more complex, than that of Montesquieu’s cautious reformism, wherein statesmen are urged to respect the “general spirit” of their society. Tocqueville must bend the will of reactionaries to a democratic future and throw cold water on democratic excess by showing the dangers of equality to liberty; yet, while dashing the fondest hopes of each side, he has to avoid discouraging statesmen of either party from acting constructively. Moreover, Tocqueville’s more radical understanding of modernity forces on him a more difficult rhetorical burden than Montesquieu had: he does not, and cannot, follow his predecessor in mocking the possibility of a modern democracy, because popular sovereignty is, in the long run, the only viable alternative. That the complex ends and devices of Tocqueville’s rhetoric arise from his theoretical insight into the problematic relation between liberty and modern society is evident in his treatment of America. In *Democracy* Tocqueville almost simultaneously fuels and quashes hopes for European liberty: America as example that

²⁴*Tocqueville and the Problem of Democracy*, pp. 17 ff.

modern liberty is possible, America as exception that securing this liberty will not be easy. Tocqueville must walk a fine line between showing the singular causes of American liberty — so as to dampen excessive hopes of democrats and assist the prudential judgment of statesmen — and not relegating the example of America to irrelevance, thus encouraging apathy and cynical withdrawal from politics.

Tocqueville's balancing act in DA I proceeds by progressively complicating our initial impressions. The introduction to *Democracy* suggests that America reveals the "nature" of democratic society, yet as early as DA I.i.2, Tocqueville implicitly casts doubt on this ascription of universality to the American case. Here, the reader's initial optimism, even exhilaration, at the thought of a Providential or World-Historical phenomenon whose clearest manifestation is Freedom, is given pause. Without warning we are informed that American liberty is the inheritance of its singular *point de depart*. Not only were the Puritans the most intelligent and politically educated peoples ever known; at the same time, they combined the "distinct elements" of "the spirit of religion" and the "spirit of liberty." In the Introduction it was the *separation* of these elements that is attributed to historical accident, namely the hostility to religion promoted by the "strange coincidence" of the alliance of Throne and Altar in the ancien regime [pp. 12-13]; a few pages later it their *combination* which is fortuitous. As *Democracy* progresses it becomes ever more clear that the "spirit of religion" is part of the *pre-modern* inheritance of Americans that forms the basis of their liberty — religion gives moral principles that put limits on both the individual's natural freedom and the unlimited power of majorities.²⁵

²⁵Lamberti, in *Individualisme*, uses this distinction between the spirit of liberty and the spirit of religion as a basis for the sharp distinction he makes [p. 26] between aristocratic liberty and democratic liberty, because the latter is not founded in a "prideful exaltation of the self, but in the religious spirit." Aron, as we have seen, makes an identical distinction. Such a distinction would seem ignore: a.) Tocqueville's treatment of religion as a pre-modern legacy, precisely because it is based on a moral order it sees independent of human will; b.) The value in religion's teaching of an immortal soul, against the pantheistic tendency of modernity which so undercuts the prideful exaltation of the self as to weaken the springs of

Furthermore, as Tocqueville shows in the critical penultimate chapter of DA I, [I.ii.9, titled “The causes which tend to maintain democracy”], America not only has exceptional moral causes [to take Montesquieu’s term] of liberty, but exceptional physical causes, or as Tocqueville puts it, in a manner respectful of the connection between liberty and religion, “accidental or providential causes.” Lucky or blessed by isolation and a frontier, the Americans have avoided those things which create problems for republics: they have not had to develop a strong national government for defense, and the general level of well being means that there is general respect for property. Unlike in Europe, therefore, there is little class conflict or desire to overthrow the established order [DA I.ii.9].²⁶ At the very same time, however, Tocqueville candidly admits that taking these arguments for “American exceptionalism” too far weakens the case for European liberty, which is the goal of his political science: “if peoples in the democratic social condition could not stay free unless they lived in the wilderness, it would be necessary to despair of the future fate of the human race” [DAN I.ii.9, p. 241].

action; c Tocqueville’s deliberate attempt, in democracy, to foster pride — a virtue which is, at least on its face, not Christian. We will return to these topics later.

²⁶To trace the presence of a democratic republic in America to a combination of its unique natural and historical circumstances was, as James Schliefer has argued, the dominant view in the Europe of Tocqueville’s day, to such an extent that in American periodicals one saw complaints that Europeans desired to attribute American success only to factors for which Americans could claim no credit. See, *The Making of Tocqueville’s Democracy in America* (Chapel Hill: University of North Carolina, 1980), p. 37ff. This underscores the originality of Tocqueville’s goal, to use the American example to claim that despite the differences in circumstances, political democracy is possible in Europe [DA I.ii.9, p. 324]. Commenting on this passage Tocqueville’s father (who usually takes the more purely Montesquieuan or historicist approach common at the time), says, “Alexis should give the greatest attention to avoid a stumbling block which would demolish him, namely that he had written a book in favor of republics. Not only does reason enlightened by experience reject the possibility of establishing republics properly so called in the great European nations, the idea and even the word ‘republic’ are antipathetical to the very large majority of the French.” Cited editor’s note “o,” DAN I.ii.9, p. 240.

In this critical chapter, which before the addition of the chapter on the “Three Races,” was initially conceived as the concluding chapter of DA I, Tocqueville brings the reader to the brink of despair as to the possibility of modern liberty — and then stops. In arguing that the existence of America, if not simply revealing the European future, shows that that “it is not necessary to despair, with the aid of laws and mores, of regulating [*regler*] democracy,” Tocqueville adopts two strategies that show his typical mixing of rhetoric and analysis. First, he argues against the importance of physical causes, showing that other countries in the new world have not been as successful: mores, followed by laws, are more important than physical causes.²⁷ Secondly, he argues in the concluding section that even though Americans are subject to the same passions that arise in Europe, springing from a combination of “the nature of the human heart” and the democratic social condition, “the Americans have made great and successful efforts to counteract these imperfections of human nature and to correct the natural defects of democracy” [DA I.ii.9, p. 325].

To a careful reader, the rhetorical aspect [i.e. weakness] of this second argument is clear: just before speaking of the relevance of America to Europe he treats all the “moral

²⁷In a preparatory note for DA, Tocqueville flirts with a more pessimistic ranking, placing laws third after mores and physical causes. Moreover, as Tocqueville reasons in this note, because a “nation can, in the long run, modify its habits and its mores, but a single generation cannot succeed...it can only change the laws,” one must accept the unhappy conclusion that “not only does man not exercise any power over his surroundings, but does not, so to speak, possess any power over himself and remains almost completely a stranger to his own fate.” YTC, cited DAN, I.ii.9, editor’s note “d,” p. 216, and Schliefer, *op. cit.*, p. 60.

In general, as Schliefer notes (pp. 58-61), there is a marked discrepancy between Tocqueville’s notes and drafts on the one hand, and published text on the other, as to what is included in the term “circumstances,” the political “givens.” In the latter, “circumstances” refers solely to the physical aspect of the country, but in the former, Tocqueville uses it to refer to history and to mores, as consequences of the point of departure. For Schliefer, however, this discrepancy is only evidence of something like wishful, i.e. sloppy, thinking on Tocqueville’s part. To escape the “moral dilemma” caused by the sense of powerlessness his reflections about the role of circumstances engendered, Tocqueville “satisfied himself by shifting definitions, by taking advantage of the indefinite meaning of one of his fundamental concepts” (p. 61).

causes” of American liberty, including the historical legacies of local freedom and religion, as wise acts of American “legislators,” conflating laws, the only one of the three causes he himself sees as subject to political deliberation and choice, with mores.²⁸ That Tocqueville’s political rhetoric sometimes understates the conclusions of his analysis about the exceptional causes of America’s democratic republic does not mean he has no genuine hope for his practical aim — but European statesmen will have to be extremely deliberate and farsighted, doing under more difficult circumstances what Americans did with considerable outside assistance. Following hard upon Tocqueville’s tracks, then, we see him adopting a rhetorical mode diametrically opposed to Montesquieu: exaggerating the extent to which American liberty is the result of the deliberate exercise of human prudence, in order to enlarge the European sense of the scope of political choice.

We have already seen that whereas Montesquieu understands feudal monarchy as the imperfect precursor of modern liberal government, Tocqueville reminds moderns of aristocracy so they can see why their social condition poses a problem to liberty, namely because that condition threatens the “male virtues.” We can now see how this substantive difference is reflected in their respective uses of rhetoric. While the goal of Montesquieu’s rhetoric was to bring men around to what Tocqueville would call the democratic point of view, that men are subject to impersonal forces, the goal of Tocqueville’s rhetoric is both “aristocratic” — to make men see the limitations of modern society and act upon them — and evasive on the issue of liberty’s aristocratic affinities. On this latter issue, the modern

²⁸What Tocqueville had attributed just pages before to historical inheritance — “...the early settlers bequeathed to their descendants the customs, manners, and opinions that contribute most to the success of a republic. When I reflect upon the consequences of this primary fact, I think I see the destiny of America embodied in the first Puritan who landed on these shores” [DA I.ii.9, p. 290] is by the chapter’s conclusion assimilated to intentional choice.

political scientist needs to have both intellectual clarity for his own sake, and protective coloration in the public square.

To be sure, there is nothing explicitly “aristocratic” in the recommendations of Tocqueville’s new political science: modern liberty can not be established by opposing democracy, only by “moderating” it. Such moderation, however, takes on different hues, depending on whether one views it in the manner that Tocqueville intended his more practically or politically minded readers to view it, or in from the perspective opened up by the theoretical insights at the core of Tocqueville’s reflections. Once this difference is taken into account, one sees that what seem like inconsistencies, not only within one of Tocqueville’s works, but between one work and another, are not nearly as great as they seem.

For example, we often think — and in *Democracy* Tocqueville encourages us to do so — that there is a kind of pre-established harmony between private property and the natural freedom and equality asserted by democratic man. In the *Recollections*, however, Tocqueville shows markedly little surprise at the emergence of a socialist element in 1848, because it is socialism, not liberalism, which is more indicative of the logical, if not the psychological, *terminus ad quem* of the democratic revolution:

When the rights of property were merely the origin and commencement of a number of other rights, they were easily defended, or rather, they were never attacked; they then formed the surrounding wall of society, of which all the other rights were outposts...But today, *when the rights of property are nothing more than the last remnants of an aristocratic world*; when they alone are left intact, isolated privileges amid the universal leveling of society; when they are no longer protected behind a number of still more controvertible and odious rights, the case is altered, and they alone are left daily to resist the direct and unceasing shock of democratic opinion. [*Recollections*, pp. 10-11, my emphasis]

In a work not written for publication [and not published until 1893], Tocqueville suspects that what Marx would call modern “bourgeois” rights are to some degree “aristocratic,” and hence not so solidly grounded by — and perhaps even eroded by — their modern liberal justifications. One might argue that such speculations are simply battle fatigue from

the events of 1848. It is striking, though, that such events required of Tocqueville no fundamental adjustment of his understanding of modernity; there is no difference between his analysis of the origins of revolution in 1836, in "The Political and Social Condition of France," and in 1856 in the *Ancien Regime*. Indeed, the emergence of socialist demands vindicated both the theoretical and practical modes of Tocqueville's political science, even as these events put the liberals themselves to rout on both fronts: property, like all other rights, had to be understood more aristocratically, and defended more democratically, than it had by modern liberalism.

Admittedly, democratic man is, in the long run, not revolutionary but anti-revolutionary, even anti-political; he is prone, perhaps even too prone, to moderate his assertion of equality in the face of arguments for the rights of property.²⁹ As Peter Lawler points out, however, various "democratic" or "bourgeois" arguments, such as the economic advantages to society, or the connection of property to a more general exclusion of government from a "private sphere," are not the basis for Tocqueville's *own* opposition to socialism. Rather, as Lawler argues, this opposition stems from Tocqueville's *aristocratic* perspective, on his concern to preserve the spirited, proud assertiveness originating in our restless self-awareness, which distinguishes human beings from the rest of nature, and which makes them self-determining or political animals.³⁰ Men cannot assert

²⁹The passion for equality must then find a new animus: witness the transformation in the last half-century in the U.S. from the old, Marxist left to the recent "culture wars," whereby locus of the struggle for liberation shifted from the ownership of the means of production to the reading lists in college literature classes.

³⁰*The Restless Mind*, pp. 20-21. As a parallel to the idea that liberal democracy is a good because incomplete form of modernity — a parallel which shows the connection between property and politics — Lawler cites Marx's arguments, in "On the Jewish Question," concerning the incomplete nature of political emancipation. For Marx, mere political freedom or equality is incomplete because it still leaves men subject to chance and the wills of others — via the contingent and unequal distribution of property, especially capital — and to nature, via the technical or objective basis for the division of labor. It is these historical or contingent limits, Marx argues, which divide men into conflicting classes; these conflicts must be mediated by politics and are the basis for the opposition between the real

their prideful distinction from the rest of nature except by asserting distinctions between them and other men: the demand to abolish property, and the democratic and materialistic thought that is the origin of such demands, jeopardizes both forms of distinction simultaneously. As Lawler argues, Tocqueville's analysis of the democratic *état social* maintains implicitly what Marx maintains explicitly, namely that the sanctity of property is so far from being in simple harmony with modernity that the abolition of this right, at least from a ruthlessly logical point of view, is required by modern principles. The revolutionary demand for socialism, as a *political* attempt to abolish politics, is revelatory of the nature of democratic modernity, but at the same time an attempt limited to modernity's initial phases: as Tocqueville saw a century before Kojève spoke of the "civilized re-animalization" of man, material prosperity and the administrative state would make such attempts obsolete.³¹

The paradox that Tocqueville never stops considering is that the democratic *état social* is based on men's mutual recognition of each other as agents, by nature free and independent, and yet this modern "subjectivity," strictly or philosophically speaking, has more of an affinity with the subjection of the individual to the general will, than it does with assertions of rights, such as those to unequal property, against that will. Equality puts at risk even the human distinction from the rest of nature, so dear to Cartesians conscious and unconscious: in soft despotism "each nation is reduced to nothing better than a flock of

and the ideal. Lawler argues that Tocqueville, like Marx, understood the root of the modern project to be for man to free himself from contingency, by being limited or conditioned by something arbitrary, but unlike Marx did not see such a project as reasonable. For Tocqueville, as student of Pascal, our contingency is not "socially constructed" but a consequence of our finitude, and our restless awareness of it the basis of our humanity and freedom. At the same time, as Lawler claims, Tocqueville and Marx have a similar understanding of what would be required to abolish this unhappy sense of finitude: the end of men's free or assertive defense of "their own" in political debate, and the consequent replacement of politics by administration.

³¹*Op. cit.*, pp. 22-3; cf. Kojève's "Note to the Second Edition," pp. 159-162 in *Introduction to the Reading of Hegel*, translated by James Nichols (Ithaca: Cornell U.P., 1980).

timid and industrious animals, of which the government is the shepherd" [DA II.iv.6]. Even while allowing such pessimistic pronouncements to flash up occasionally from the depths, however, Tocqueville always is able to bring the reader back into the fold with his central practical axiom: that in the choice he presents to modern democratic statesmen, that between liberalism and despotism, the grounds of the first alternative are just as democratic, or modern, as the second.

2. RELIGION AND POLITICS

The divergence in the orientation towards modernity of Montesquieu and Tocqueville, as it appears through a comparison of their political rhetoric, would suggest that they understand the proper public role of political science very differently. As I have already noted, Tocqueville parts company with Montesquieu's unambiguous allegiance to the project of the Enlightenment, to transform the "cave" of politics with the light of truth. In particular, it is in their discussions of religion, and its relation to politics, that one sees most sharply the manner of Tocqueville's departure from the aims of his predecessor. Here too, Tocqueville's rhetorical task is complex, and produces some strange results, because on this sensitive topic Tocqueville is most frankly pessimistic about the tension between liberty and modernity. In arguing for the social utility of religion, the rhetorical mask is raised in just that place where one might have thought it most necessary. He does not hide his departure from Montesquieu; he practically flaunts it. This has the strange consequence that whereas Montesquieu works, with circumspection and apparent deference to the truth of Christianity, to undermine in the reader's mind the hold of all forms of religion, Tocqueville almost shouts from the rooftops the need for the partisans of modern liberty to defend any religion, whether as true or as a noble lie.

As usual, the nature of the differences between the two can be established only after giving the similarities their due. Both make similar apologies about treating religion under

its merely human or political aspect, at the same time denying that they thereby are implicitly slighting Christian revelation. Montesquieu makes the disclaimer that “I shall examine the various religions of the world only in relation to the good to be drawn from them in the civil state, whether I speak of the one whose roots are in heaven or those whose roots are in the earth.” [SL XXIV.1]. Similarly, Tocqueville proclaims “I have neither the right nor the intention of examining the supernatural means that God employs to infuse religious belief into the heart of man. I am at this moment considering religions in a purely human point of view...” [DA II.i.5, p. 22]. Both thinkers thus leave open the possibility of there being a true religion, while examining the social utility and political-psychological origins of all religion.

In the political science of both thinkers, religion becomes hard to distinguish from mores. In the *Spirit of the Laws*, this is at first kept implicit, although the relation between the two becomes clear by Book XIX — albeit only in non-Christian contexts. For example, after speaking of the Chinese, who make a “union of religion, laws, mores, and manners” [c.19], Montesquieu then says, “Only singular institutions thus confuse laws, mores, and manners, things that are naturally separate” [c. 21]. By moving from a list of a four things that the Chinese unify to list of three things that the Chinese confuse, Montesquieu might be suggesting that the fourth thing, “religion” is not naturally — i.e. even conceptually — a thing distinct from the other three. In the next chapter, called “Continuation of the same subject,” Montesquieu uses, to show that “good mores” permit simple laws, an example from Plato’s *Laws* concerning an “extremely religious” people. Tocqueville is somewhat less circumspect. In the penultimate chapter of DA I, the “Principal causes which tend to maintain the democratic republic in the United States” are threefold — circumstances, laws, and mores. The famous discussion of religion “as a political institution” forms the bulk of the third part, although Tocqueville prefaces this discussion with the remark that he takes

mœurs not only in its proper meaning, “which one could call habits of the heart”, but also in the sense of opinion, or “habits of the mind” [DAN I.ii.9, p. 222].

In these “political” treatments of religion, both thinkers show that the character of religion is shaped by the character of the society in which it arises. Tocqueville’s judgment that “By the side of every religion is to be found a political opinion, which is connected to it by affinity” [DA I.ii.9, p. 300] is very much in the spirit of Montesquieu’s remark that: “When a religion is born and is formed in a state, it usually follows the plan of the government in which it is established...” [SL XXIV.5]. Indeed, both thinkers give the same example of this principle: Protestantism is more akin to republics, because of its spirit of independence and liberty, Catholicism to monarchies [SL XXIV.5; DA I.ii.9, pp. 300-1]. Characteristically, Montesquieu’s explanation places more of a stress on climate — with the split in Christianity “the peoples of the north embraced the Protestant religion” because they “have and will always have a spirit of independence and liberty — whereas Tocqueville traces this spirit to the democratic *état social* [DA II.i.1, p. 5]. Montesquieu goes on to say, however, that subsequent divisions mirrored differences in governments: republics became Calvinist, principalities Lutheran.

Finally, and most importantly, both thinkers have a similar account of the weakening of the authority of religious belief in a modern regime, caused by the absence of personal or direct rule. Montesquieu, speaking of England, says

With regard to religion, as in this state each citizen would have his own will and would consequently be led by his own enlightenment or his fantasies, what would happen is either that everyone would be very indifferent to all sorts of religion of whatever kind, in which case everyone would tend to embrace the dominant religion, or that one would be zealous for religion in general, in which case sects would multiply [SL XIX.27].

Similarly, Tocqueville traces the weakness of religion in the democratic social condition to its becoming mere *opinion*, and as such, contestable; in such a condition “no new religion could be established” because “men who live at a period of social equality are not easily

led to place that intellectual authority to which they bow either beyond or above humanity.” [DA II.i.2]. The weakness of private opinion leads, as we have seen, to the moral authority of public opinion, an opinion that reflects a consensus, despite differences in sects, derived from the most general teachings of Christianity [DA I.ii.7; I.ii.9]. In sum, both thinkers describe a similar modern situation, in which religion becomes less a matter of genuine faith than of opinions accepted *faute de mieux*; this mildness leads to both toleration and a certain amount of social conformity. At the same time, this general attenuation of belief will be occasionally punctuated by what Tocqueville calls “outbreaks” of “fanatical spiritualism” [DA II.ii.12] — namely the zeal for “religion in general” that Montesquieu says leads to the flourishing of various “sects.”

Given these similar understandings by Montesquieu and Tocqueville of the situation of modern religion, the vast disparity in their assessments of this situation is all the more striking: Montesquieu accepts it with equanimity, whereas Tocqueville views it with alarm. Tocqueville goes so far as to say that modern political liberty itself depends upon belief [DA II.i.5, p. 22], whereas Montesquieu speaks of the necessity of virtue in *ancient republics*. To modern statesmen, by contrast, Montesquieu gives advice to statesmen in “detaching the soul from religion”; rather than oppose their subjects’ wills directly, they should tempt them with worldly goods, by “what leads one to indifference when other passions act on our souls and when those that religion inspires are silent.” [SL XXV]³² In marked contrast with spirit of Montesquieu’s modern liberalism, Tocqueville teaches statesmen and believers how to preserve religion as a critical pre-modern legacy, by not allowing religion to become entangled with political partisanship or opposed to any permanent tendency of democracy.

³²See the discussion in Pangle, *Montesquieu’s Philosophy of Liberalism*, pp. 249-59, esp. 256.

Thus, it is hard to avoid the impression that Tocqueville had Montesquieu in mind when criticizing the “philosophers of the eighteenth century” for their simplistic view of Enlightenment: “Religious zeal, said they, must necessarily fail the more generally liberty is established and knowledge diffused.” [DA I.ii.9, p. 308]. This is certainly an apt gloss on Montesquieu’s understanding of the general “indifference” to religion in the liberal regime, and his discussion of the softening of “pure mores” when commerce with other peoples weakens the certainty of one’s own views [SL XX.1]. Montesquieu implies that both “pure mores” and piety are more at home in narrow and illiberal regimes, such as the “singular” institutions of Sparta. Although despotism is not conducive to “pure mores”, it does seem to provide a hospitable environment for religion: “In these states, religion has more influence than in any other; it is a fear added to fear” [SL V.14]. “Religion has so much force in these countries” because despotism is unstable and lawless; religion forms a “permanent depository” when there is no other source of stable principles — as Montesquieu describes it, a celestial version of the French *parlements* [SL II.4].

Montesquieu, then, associates religion with the fear and ignorance of man’s early attempts at government — and he associates the social utility of religion primarily in the context of these early beginnings. For example, religion is strong in a despotic state because it is necessary: it is the only restraint on a despot’s will [III.10]. Moreover, for people in a barbarous condition, religion, even superstition, might be the only way to civilize them. The “first Greeks,” Montesquieu says, were

...small, often scattered, peoples, pirates on the sea, unjust on land, without a police and without laws. . . What could religion do to give a horror of murder other than what it did? It established that a man killed by violence was instantly angry with the murderer, that he inspired distress and terror in the murderer and wanted him to give up those places he had frequented [SL XXIV.24].³³

³³Montesquieu also gives another example of how the “laws of religion” had to adapt to the defective mores of a people — namely the Mosaic law [XIX.21, end] — that is a little closer to the dispensation under which he is living.

Montesquieu notes, however, that the force of civil law can replace the repressive function of religion [XXIV.14]. The example given here—the harsh government of Japan — makes this seem like an unattractive option, until we remember that the “repressive force” of a distinct “executive power” enabled both monarchy and England not to rely on virtue for law’s enforcement, and yet still be moderate. In Montesquieu’s treatment, religion is least important in the most artificial, complex governments, namely those of modern Europe. The Christianity that prevails in these regimes is praised for its “gentle mores,” but it seems that Montesquieu’s main goal is to transform belief from within, changing its self-understanding via the rhetoric of enlightenment and thus making it safe for liberalism. This requires radical changes in the current theory and practice of Christianity, namely privatizing its demands for human perfection: they are “counsels and not laws, for perfection does not concern men or things universally” [SL XXIV.7].³⁴

From a perspective colored by marked differences in both circumstances and outlook, Tocqueville rejects the view that “enlightenment” means the gradual weakening and eventual obsolescence of religion: “in America, one of the freest and most enlightened nations of the world, the people fulfill with fervor all the outward duties of religion” [DA I.ii.9, p. 308]. This is not the Enlightenment view of “enlightenment” — what the Americans have is not the automatic result of the diffusion of knowledge and the weakening of national prejudices, but something more demanding: a self-conscious awareness of the requirements of democratic government, an awareness that causes them to conceal their doubt. The Americans, far from showing an “indifference” to religion, show a solicitude for maintaining its public role, despite the inherent weakness of modern faith — a solicitude that mirrors Tocqueville’s own.

³⁴Pangle, *op.cit.* pp. 253-4.

Tocqueville's practical politics of religion is almost diametrically opposed to that of Montesquieu. On the one hand, what for Montesquieu is a desideratum, fully achieved only in England — the privatization of religion — is for Tocqueville an accomplished fact. No matter what the form of government, in the democratic *état social*, religion cannot claim any kind of political authority without being overthrown. A related goal of Montesquieu's — to de-emphasize the “dogma” of religion in favor of its teachings on “morality” [SL XXIV.8-11] — has likewise become the American reality. The sects in the U.S., despite their differences, “all preach the same moral law in the name of God,” which Tocqueville traces to their appreciation of the fact that “Society [as opposed to particular individuals] has no future life to hope for or to fear; and provided the citizens profess a religion, the particular tenets of that religion are of little importance to [society's] interests” [DA Lii.9, p. 303]. Toleration is the order of the day, given that no modern religion makes its “truth” politically authoritative. Moreover, modern men tend to not even view religion as if it were something that could be “true” or “false.” In a letter, Tocqueville makes the point bluntly: in America, only the Catholics remain “as intolerant in a word as people who *believe*.”³⁵

On the other hand, the despotic potential of the democratic social condition — namely the unlimited nature of popular sovereignty — means that maintaining this attenuated religion is crucial. Religion plays the same role in Tocqueville's liberal democracy that it plays in Montesquieu's despotism — as a limit, perhaps the only sure limit, on the power of the sovereign:

Christianity, therefore, reigns without obstacle, by universal consent; the consequence is, as I have before observed, that every principle of the moral world is fixed and determinate, although the political world is abandoned to the debates and the experiments of men.... Hitherto no one in the United States has dared to advance the maxim that everything is permissible for the interests of society, an

³⁵Letter to Louis de Kergorlay of June 29, 1831, in *Selected Letters*, pp. 45-59 at p. 50.

impious adage which seems to have been invented in an age of freedom to shelter all future tyrants [DA I.ii.9, pp. 304-5].

If one puts this together with what Tocqueville says in other places about hegemony of public opinion in democracy, one might easily conclude that the restraint religion places on democracy has a character similar to the one Montesquieu says religion places on despots, namely something automatic or self-generating. On this view, one can simply count on the democratic social condition to restrict the boundaries of thought, which in turn places moral limits on politics. Tocqueville maintains, though, that the “reigning” of Christianity depends on the cooperation of non-believers, a cooperation not to be found in Europe. In America, those affected by the modern “indifference” to religion nevertheless see that religion is good for society and consoling for those who believe: “As those who do not believe conceal their incredulity, and as those who believe display their faith, public opinion pronounces itself in favor of religion” [DA I.ii.9, p. 313].

As is clear from the introduction to *Democracy*, Tocqueville’s link of the “liberal” or limited character of American democracy to the unchallenged hold of religion over public opinion grows out his assessment of the French: they were and continue to be both irreligious and revolutionary. In the *Ancien Regime* [III.2], the link between a general social animus against religion and the illiberal or unlimited character of the French revolution is presented again. The general, and naive, hostility of French men of letters to popular religion stems from — besides the involvement of the Church in supporting the monarchy — the same cause as the abstract and extreme character of their schemes for reform: inexperience of free government. The writers Tocqueville cites as examples, such as Diderot, are certainly far less circumspect than Montesquieu on the religious question, but they share with Montesquieu the same pre-revolutionary understanding of the relation between religion and liberty. In taking aim at their failure, and perhaps that of the eighteenth century intelligentsia as a whole, to understand the salutary role of religion, Tocqueville implicitly condemns

Montesquieu. What Tocqueville says about the French nobility and bourgeoisie applies perhaps to himself: “each class in turn has learned, at the rough school of revolutions, the necessity of respecting religion” [AR III.2].

In looking to religion to moderate the despotic potential of the democratic social condition, however, Tocqueville goes well beyond adapting “liberal” goals to a changed understanding of the modern situation. As we saw in the case of associations, Tocqueville’s understanding that liberty requires either finding modern substitutes for, or partially preserving institutions of, pre-modern society leads him to deepen his understanding of the problem of liberty itself, and of the role of these institutions in promoting liberty. This is true of religion: while important in DA I and in the *Ancien Regime* as a moral anchor in the limitless sea of the democratic social condition, in DA II religion has an additional function — to moderate the “materialism” to which democratic ages are prone. The crucial pre-modern inheritance that religion transmits is the belief in the immortality of the soul, a belief that makes religion “the most precious bequest of aristocratic ages” [DA II.ii.15, p. 145]. Tocqueville considers this belief so “indispensable to man’s greatness” [p.146], he would rather that moderns believe in the absurd doctrine of metempsychosis than materialism: “the community would run less risk of being brutalized by believing that the soul of man will pass into the carcass of a hog than by believing that the soul of man is nothing at all” [p. 146].

A glance at SL XXIV.19, “That it is less the truth or falsity of a dogma that makes it useful or pernicious to men in the civil state than the use or abuse of it” shows how sharply Montesquieu’s concerns differ from Tocqueville’s — a difference underscored by the fact that the “dogma” that Montesquieu is concerned with is here is also the immortality of the soul. Montesquieu’s point is that this doctrine, unless well “directed”, has disastrous consequences:

Almost everywhere in the world, and in all times, the opinion that the soul is immortal, wrongly taken, has engaged women, slaves, subjects and friends to kill

themselves in order to go to the next world and serve the object of their respect or love [SL XXIV.19].

Christianity, Montesquieu hastens to add, has avoided such consequences by making its conception of the life to come so spiritual or far removed from our experience that “it makes us hope for a state that we believe in, not a state that we feel or that we know.” Montesquieu does not say here that anything good might come from Christian otherworldliness — only that Christianity has managed to “direct” such a doctrine so as avoid its worst dangers.

Tocqueville’s stress on the value of the belief in the immortality of the soul to modern democracy thus stands in direct opposition to Montesquieu’s treatment of the same theme. For Montesquieu the doctrine is, whether true or false, dangerous unless well directed; for Tocqueville, the doctrine is so beneficial that he prefers that people believe it in a false form than not believe it at all. This belief is “indispensable to man’s greatness” because, to begin with, it checks the tendency of modern men to pursue only material pleasures. Yet, this is not the most fundamental reason: Tocqueville admits that in an earlier age, it might have been sound to promote the pursuit of material pleasures, even if it is not now. It is only in the chapter on Pantheism [DA II.i.7] that Tocqueville shows most clearly the reason for support of religion. From putting together what he says against Pantheism with his arguments in favor of a belief in immortality, it becomes apparent how religion is a limit on the deepest tendencies of modern thought, tendencies which are problematic not only for human greatness, but for human liberty altogether.

Tocqueville’s praise of the “spiritual” side of religion is, implicitly, an accusation that Montesquieu had underestimated the effect of the modern condition upon belief. In the liberal regime, Montesquieu predicts, as far as religion goes each “would have his own will and would consequently be led by his own enlightenment or his fantasies...” [SL XIX.27] Tocqueville shows that this is hardly the case; the democratic social condition has such a

powerful effect upon opinion that even where men most believe they are following their own reason, that reasoning is confined by premises of which they are blissfully unaware. Pantheism, Tocqueville claims, is the doctrine natural to democratic ages, where the individual is weak and the idea of unity predominant. This doctrine, that only the whole is eternal, not anything within it, is not only inconsistent with the idea of personal immortality; it puts into question the distinctiveness of man as opposed to the rest of nature in a way that, as Lawler notes, is even more radical than socialist theory. Pantheism is the attempt to democratize or homogenize the whole, a materialism that renders the idea that there is a distinctively human realm — a realm of choice as opposed to natural necessity — illusory.³⁶ From what Tocqueville says about democratic historians, [DA I.i.20] “from necessity to necessity, up to the origin of the world, they forge a close and enormous chain, which girds and binds the human race,” one can easily infer how he would see the character of democratic philosophers, even theologians.

Tocqueville, in his reflections on modern religion and modern thought, divines a danger that Montesquieu does not see: ideology, or theories which are as all encompassing as religion, as tenaciously held, and which reduce politics and human choice to epiphenomena. Religion, and its teaching about the immortality of the soul, is the best hedge against the fanatical aspirations of modern rationalism to, as Lawler puts it, “show the necessity for the destruction of politics or human assertiveness altogether in the name of reason’s consistency.”³⁷ Tocqueville’s solicitude for the fate of religion is based on his understanding of the pantheistic character of the thought that was already trying to replace

³⁶Lawler, *The Restless Mind*, pp. 34-5.

³⁷“Democracy and Pantheism,” in ITDA, pp. 96-120, at p. 96.

it,³⁸ namely comprehensive schemes explaining all forms of society as part of one global human history. While it would be wrong to fault Montesquieu for not being clairvoyant, from a perspective including a century whose global wars were largely contests over the meaning of History, Tocqueville's concerns look prophetic.

C. CONCLUSION

In their "Introduction" to their translation of *Democracy*, Mansfield and Winthrop say of Tocqueville: "An aristocratic liberal he was, and if we knew everything contained in that difficult combination, we could stop here. But since we do not, the formula will serve as a beginning."³⁹ We can now see why putting together "liberal" and "aristocratic" is a "difficult combination." In the light of the emergence of the democratic *état social*, and of the nature of both the modern and pre-modern alternatives to liberal democracy, Tocqueville shows that the self-understanding of liberalism bequeathed to it by Montesquieu, namely as the epitome of modernity, must be radically transformed. To be a "liberal of a new kind," Tocqueville must achieve a critical distance on modernity without adopting either the theoretical detachment of classical philosophy, or the practical opposition to modernity of the aristocratic reactionary. Liberalism understood as the moderation of democracy requires, in the political scientist at least, impartiality similar to that with which Aristotle credits "political philosophy" [*Politics* 1282b23]: a view of the democratic *état social* from the outside. This detachment, however, must of necessity be discrete, or undersold, if it is to be beneficial. Towards democracy this aristocratic liberal is "ironic" in the Aristotelian sense, [*N. Ethics* 1127b23ff], because he understands democracy better than it understands itself.

³⁸See Tocqueville's criticism of Hegel in his letter of 22 July 1854 to Corcelle, cited by Catherine Zuckert in "Political Sociology versus Speculative Philosophy," ITDA pp. 121-152, at p. 123.

³⁹*Op. cit.*, p. xix.

CONCLUSION

Liberal democracy, that is, limited or constitutional democracy, is undeniably a peculiarly modern form of democracy, and it is widely agreed that it is this regime's "liberal" aspect that makes it "modern." Leo Strauss, famously, connects this new type of regime to the reorientation in philosophy accomplished by thinkers who pre-date this regime, such as Hobbes, a reorientation which made "rights" prior to, and the source of, duties.¹ From a rather different perspective, Stephen Holmes sees liberalism's "clearly identifiable set of principles" not as a philosophy, but as a political orientation; nevertheless, this orientation "cannot be detached from the political history, in the seventeenth and eighteenth centuries, of England and Scotland, the Netherlands, the United States, and France."² Montesquieu, himself a modern liberal, also links liberalism to modernity — although perhaps more in the manner of Holmes than of Strauss. That is, Montesquieu gives the liberal regime a historical foundation, rather than promulgating — as did Hobbes and Locke — a revolutionary teaching of a "natural public law," based on what is true of human beings everywhere and always.

Initially, it is hard to avoid the impression that Tocqueville goes even further along the path opened by Montesquieu's historicist turn; through his understanding of the more radically novel character of the modern *état social*, he is led, as we have seen, to reinterpret liberalism and its relation to modernity. At the same time, the continuing power of that reinterpretation forces us, citizens of a present-day liberal democracy, to consider the

¹*Natural Right and History*, pp. 181-2.

²*Passions and Constraints* (Chicago: University of Chicago, 1995), p. 13

possibility that Tocqueville's understanding of modern liberalism may in fact be superior to that of liberalism's founders, quite possibly because Tocqueville has a more profound understanding of the permanent human alternatives. While at the moment, liberal democracy appears firmly established in the wealthier countries and to be gaining ground in other parts of the globe, Tocqueville's analysis--in which the fundamental tendencies of modernity are not liberal--should give pause to any quick optimism. One has only to mention cases like Russia to suspect that the preconditions for liberalism may be more complex than simply Montesquieu's beneficent "corruption" of the spirit of commerce. Even in Europe, the current health of liberal regimes is hard to disentangle from the results of the American intervention in World War II, by which a liberal constitution was imposed on the loser by military force, and from decades of tranquil prosperity that arose under the Pax Americana. A specter still haunts Europe: the specter of American exceptionalism.

Moreover, even if this assessment is unduly pessimistic (or chauvinistic), and there continues to be a growing movement toward Montesquieu's version of a liberal world — a secular, commercial society presided over by a limited, representative government — Tocqueville leads us to wonder whether the same will be true of the virtues or human qualities that, far more than any institutions, distinguish the *citoyen* from the *administré*. If, as Tocqueville insists, the forms of liberal government may conceal the substance of a soft or administrative despotism, then the current trend towards liberal institutions in the world is not necessarily indicative of the long-term health of liberal democracy, either abroad or at home. As Harvey Mansfield suggests, that health requires something like the mixed regime, balancing democracy with the aspirations of those who wish to excel, the partisans of liberty.³ The Tocquevillean political scientist attempts to moderate modern democracy, to

³"Liberal democracy as a mixed regime," in *The Spirit of Liberalism* (Cambridge, MA: Harvard, 1978).

move it towards such a balance. If Montesquieu weds political science to history, giving grounds for optimism in the gradual emergence of modernity, Tocqueville tries to regain for political science its independence: the force of the present moment must be given its due weight, but the improvement of the present is impossible if one ceases to remember, understand, and even regret, the virtues of its past alternatives.

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