Democracy in America

Alexis de Tocqueville
The following are excerpts to Alexis deTocqueville’s monumental, four volume work. The page numbers within correspond to the original document.

The attached pages are from the Liberty Fund edition, edited by Eduardo Nolla and translated from the French by James T. Schleifer.

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SPECIAL INTRODUCTION

By Hon. John J. Ingalls

Nearly two-thirds of a century has elapsed since the appearance of “Democracy in America,” by Alexis Charles Henri Clerel de Tocqueville, a French nobleman, born at Paris, July 29, 1805.

Bred to the law, he exhibited an early predilection for philosophy and political economy, and at twenty-two was appointed judge-auditor at the tribunal of Versailles.

In 1831, commissioned ostensibly to investigate the penitentiary system of the United States, he visited this country, with his friend, Gustave de Beaumont, traveling extensively through those parts of the Republic then subdued to settlement, studying the methods of local, State, and national administration, and observing the manners and habits, the daily life, the business, the industries and occupations of the people.

“Democracy in America,” the first of four volumes upon “American Institutions and their Influence,” was published in 1835. It was received at once by the scholars and thinkers of Europe as a profound, impartial, and entertaining exposition of the principles of popular, representative self-government.

Napoleon, “The mighty somnambulist of a vanished dream,” had abolished feudalism and absolutism, made monarchs and dynasties obsolete, and substituted for the divine right of kings the sovereignty of the people.

Although by birth and sympathies an aristocrat, M. de Tocqueville saw that the reign of tradition and privilege at last was ended. He perceived that civilization, after many bloody centuries, had entered a new epoch. He beheld, and deplored, the excesses that had attended the genesis of the democratic spirit in France, and while he loved liberty, he detested the crimes that had been committed in its name. Belonging neither to the class which regarded the social revolution as an innovation to be resisted, nor to that which considered political equality the universal panacea for the evils of humanity, he resolved by personal observation of the results of democracy in the New World to ascertain its natural consequences, and to learn what the nations of Europe had to hope or fear from its final supremacy.

That a youth of twenty-six should entertain a design so broad and bold implies singular intellectual intrepidity. He had neither model nor precedent. The vastness and novelty of the undertaking increase admiration for the remarkable ability with which the task was performed.

Were literary excellence the sole claim of “Democracy in America” to distinction, the splendor of its composition alone would entitle it to high place among the masterpieces of the century. The first chapter, upon the exterior form of North America, as the theatre upon which the great drama is to be enacted, for graphic and picturesque description of the physical characteristics of the continent is not surpassed in literature: nor is there any subdivision of the work in which the severest philosophy is not invested with the grace of poetry, and the driest statistics with the charm of romance. Western emigration seemed commonplace and prosaic till M. de Tocqueville said, “This gradual and continuous progress of the European race toward the Rocky Mountains has the solemnity of a providential event; it is like a deluge of men rising unabatedly, and daily driven onward by the hand of God!”

The mind of M. de Tocqueville had the candor of the photographic camera. It recorded impressions with the impartiality of nature. The image was sometimes distorted, and the perspective was not always true, but he was neither a panegyrist, nor an advocate, nor a critic. He observed American phenomena as illustrations, not as proof nor arguments; and although it is apparent that the tendency of his mind was not wholly favorable to the democratic principle, yet those who dissent from his conclusions must commend the ability and courage with which they are expressed.
Though not originally written for Americans, “Democracy in America” must always remain a work of engrossing and constantly increasing interest to citizens of the United States as the first philosophic and comprehensive view of our society, institutions, and destiny. No one can rise even from the most cursory perusal without clearer insight and more patriotic appreciation of the blessings of liberty protected by law, nor without encouragement for the stability and perpetuity of the Republic. The causes which appeared to M. de Tocqueville to menace both, have gone. The despotism of public opinion, the tyranny of majorities, the absence of intellectual freedom which seemed to him to degrade administration and bring statesmanship, learning, and literature to the level of the lowest, are no longer considered. The violence of party spirit has been mitigated, and the judgment of the wise is not subordinated to the prejudices of the ignorant. Other dangers have come. Equality of conditions no longer exists. Prophets of evil predict the downfall of democracy, but the student of M. de Tocqueville will find consolation and encouragement in the reflection that the same spirit which has vanquished the perils of the past, which he foresaw, will be equally prepared for the responsibilities of the present and the future.

The last of the four volumes of M. de Tocqueville’s work upon American institutions appeared in 1840.

In 1838 he was chosen member of the Academy of Moral and Political Sciences. In 1839 he was elected to the Chamber of Deputies. He became a member of the French Academy in 1841. In 1848 he was in the Assembly, and from June 2nd to October 31st he was Minister of Foreign Affairs. The coup d’état of December 2, 1851 drove him from the public service. In 1856 he published “The Old Regime and the Revolution.” He died at Cannes, April 15, 1859, at the age of fifty-four.

Hon. John J. Ingalls
CHAPTER 4

Of the Principle of the Sovereignty of the People in America

It dominates all of American society.—Application that the Americans already made of this principle before their Revolution.—Development that the Revolution gave to it.—Gradual and irresistible lowering of the property qualification.

When you want to talk about the political laws of the United States, you must always begin with the dogma of the sovereignty of the people.a

The principle of the sovereignty of the people, which is more or less always found at the base of nearly all human institutions, ordinarily remains there as if buried. It is obeyed without being recognized, or if sometimes it happens, for a moment, to be brought into the full light of day, people soon rush to push it back into the shadows of the sanctuary.

The national will is one of those terms abused most widely by schemers of all times and despots of all ages. Some have seen it expressed in votes bought from the brokers of power; others in the votes of an interested or fearful minority. There are even some who have discovered it fully formulated in the silence of the people and who have thought that from the fact of obedience came, for them, the right of command.b

In America, the principle of the sovereignty of the people is not hidden or sterile as it is in certain nations [a vain show and a false principle as among

a. "Sovereignty of the people and democracy are two perfectly correlative words; the one represents the theoretical idea, the other its practical realization" (YTC, CVh, 1, p. 22).

b. In the margin, with a bracket enclosing the entire paragraph: “# [This seems trite to me.] #”
certain others; it is a legal and omnipotent fact that rules the entire society; that spreads freely and reaches its fullest consequences without obstacles; it is recognized by the mores, proclaimed by the laws; it spreads freely and reaches its fullest consequences without obstacles.

If there is a single country in the world where the true value of the dogma of the sovereignty of the people can hope to be appreciated, where its application to the affairs of society can be studied and where its advantages and dangers can be judged, that country is assuredly America.

I said before that, from the beginning, the principle of the sovereignty of the people had been the generative principle of most of the English colonies of America.

It then fell far short, however, of dominating the government of society as it does today.

Two obstacles, one external, one internal, slowed its invasive march.

It could not appear openly in the laws because the colonies were still forced to obey the home country; so it was reduced to hiding in the provincial assemblies and especially in the town. There it spread in secret.

American society at that time was not yet ready to adopt it in all its consequences. For a long time, learning in New England and wealth south of the Hudson, exercised, as I showed in the preceding chapter, a sort of aristocratic influence that tended to confine the exercise of social powers to a few hands. It still fell far short of electing all public officials and of making all citizens, voters. Everywhere the right to vote was restricted to certain limits and subordinated to the existence of a property qualification which was very low in the North and more considerable in the South.

The American Revolution broke out. The dogma of the sovereignty of the people emerged from the town and took over the government; all
classes took risks for its cause; they fought and triumphed in its name; it became the law of laws.

e. Of the sovereignty of the people.

I draw a great difference between the right of a people to choose its government, and the right that each individual among this people would have to take part in the government.

The first proposition seems to me to contain an incontestable truth; the second, a manifest error.

I cannot acknowledge the absolute right of each man to take an active part in the affairs of his country, and I am astonished that this doctrine, so contradictory to the ordinary course of human affairs, could be proposed.

What is more precious to man than his liberty? It is recognized, however, that society can take liberty away from one of its members who makes poor use of it.

What is more natural to manage your own property? All peoples have recognized, however, that, before a certain age and in certain circumstances, this control could be withdrawn, because it was thought these individuals either did not yet have or had never had the judgment necessary to make good use of this power. And would this faculty of judgment that some individuals are found to lack for conducting themselves then be granted to everyone for conducting the affairs of society? The constitutions that have apparently been founded on the doctrine that I am combating have never dared to admit all of its consequences. Even in the United States the poor man who pays no taxes obeys laws to which he has consented neither directly nor indirectly. How does that happen if the right to be involved in the affairs of government is a right inherent in the nature of man?

So all questions of democracy and aristocracy (aristocracy as a ruling body), of monarchy and republic, are not questions of right, but questions of fact, or rather the question of fact always precedes the other. Show me a people in which all the citizens may be involved in the government and, in my eyes, this people will have the right to govern itself democratically. Imagine another, if you can, in which no class or citizen may have the required capacity; and although I hardly like the power of one man alone, I will grant that it is legitimate and will take care to live elsewhere.

[In the margin: How so? If you recognize that some of the individuals who compose a people are incapable of taking part in its government, how even more would they be able to make a good choice? Now, if you remove some from this choice, it is no longer the people who choose. Moreover, from the moment you recognize that some can be incapable of choosing well, you must imagine a social state where no one could choose well; and then you are moving even further from the maxim that all people have the right to choose their government. Everything is reduced to this: to choose a government and to take part in government, these are two analogous products of human judgment. It is difficult entirely to concede the one while entirely refusing the other.]
A change almost as rapid was carried out within the interior of society. The law of inheritance completed the dismantling of local influences.

At the moment when this effect of the laws and of the revolution began to be evident to all, victory had already been irrevocably declared in favor of democracy. Power was in fact in its hands. Even struggling against it was no longer permitted. So the upper classes submitted without a murmur and without a fight to an evil henceforth inevitable. What usually happens to powers that are in decline happened to them: individual egoism took hold of the members of the upper classes. Since force could no longer be wrested from the hands of the people and since they did not detest the multitude enough to take pleasure in defying it, they came to think only of winning

Response:

Judgment is necessary to choose a good government. But only intelligence and experience are needed to find that an existing government is not suitable and that it should be changed.] (YTC, CVh, 5, pp. 4–6). Cf. Guizot, tenth lecture, entitled De la représentation, in Journal des cours publics de jurisprudence, histoire et belles-lettres (Paris: au bureau du journal, 1821–1822, vol. II, especially pages 131–33). Also see note c of pp. 99–100.

f. Hervé de Tocqueville:

I do not know if Alexis has grasped all the causes of this phenomenon. I indicated one in the remarks on the preceding chapter that I ask him to think about. To know if the necessity to recompense soldiers has not obligated leaders to grant them rights; perhaps even a sentiment more noble than necessity, gratitude. Afterwards, democratic appetites have grown. I see in note 2 of chapter III that only in 1786 has equal division been established in New York, from where it has spread throughout the Union. Nor do I know if individual egoism can suddenly dominate an entire class in such a way as to make it give up its most precious advantages. Something else is involved there other than just the desire to please the multitude. There is always in my mind a difficulty that I do not believe I have expressed clearly enough. In the beginning the position of the settlers in each state was identical, whether it appeared aristocratic or democratic. There was no “people”; how was “the people” formed so that there was a mass demanding concessions alongside a mass that granted them? I believe that Alexis should have said something about it in the first chapter.

Édouard de Tocqueville: “Doesn’t inequality come from the lack of inheritance laws?” (YTC, CIIIb, 2, pp. 89–90).

its good will at any cost. [Moreover, men have at their disposal such a deep reservoir of baseness, that it is always found more or less the same in the service of all despots, whether people or king.]

Moreover, men have at their disposal such a deep reservoir of baseness, that it is always found more or less the same in the service of all despots, whether people or king. In an effort to outdo each other, the most democratic laws were then voted by the men whose interests were most damaged by them. In this way, the upper classes did not incite implacable popular passions against themselves; but they themselves hastened the triumph of the new order. So, a strange thing! The democratic impulse showed itself that much more irresistible in the states where aristocracy had more roots.

The state of Maryland, which had been founded by great lords, was the first to proclaim universal suffrage and introduced the most democratic forms into its whole government.

When a people begins to tamper with the electoral qualification, you can foresee that, after a more or less long delay, it will make that qualification disappear completely. That is one of the most invariable rules that govern societies. As the limit of electoral rights is pushed back, the need grows to push it further; for, after each new concession, the forces of democracy increase and its demands grow with its new power. [It is the history of the Romans buying peace with gold.]

The ambition of those left below the electoral qualification is aroused in proportion to the great number of those who are found above. Finally, the exception becomes the rule; concessions

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1. Amendments made to the constitution of Maryland in 1801 and 1809.

g. Hervé de Tocqueville

The history of the great lords who founded the colony of Maryland bothers me because it implies a contradiction with what Alexis says about the original equality that was established at first in the states of the Union. I know that this contradiction is only apparent, but it leaves some suspicion in the mind. Alexis must clearly explain how and why the ideas, pretensions, etc. of these great lords were absorbed right away by the influence of the spirit of equality spread throughout the Union (YTC, CIIIb, 2, p. 108).

h. Hervé de Tocqueville: “The example does not seem to me to relate to the subject” (YTC, CIIIb, 2, p. 90). These are the very words of Montesquieu. Considération sur les causes de la grandeur des Romains et de leur décadence, in Œuvres complètes (Paris: Pléiade, 1951), II, chapter XVIII, p. 171.
follow one after the other without letup, and there is no more stopping until universal suffrage is reached.¹

Today in the United States the principle of the sovereignty of the people has attained all the practical developments that imagination can conceive. It has been freed from all the fictions that have been carefully placed around it elsewhere; it is seen successively clothed in all forms according to the necessity of the case. Sometimes the people as a body make the laws as at Athens; sometimes the deputies created by universal suffrage represent the people and act in their name under their almost immediate supervision.

There are countries where a power, in a way external to the social body, acts on it and forces it to follow a certain path.

There are others where force is divided, being simultaneously inside and outside the society. Nothing of the sort is seen in the United States; there society acts by itself and on itself. Power exists only inside it; hardly anyone may even be found who dares to conceive and especially to express the idea of seeking power elsewhere. The people participate in the composition of

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¹ In a letter to an unknown recipient, Tocqueville again takes up some arguments expressed at the time of a conversation with Charles Carroll:

But, I replied, the Revolution over, what forced you to destroy English institutions and to establish democracy among yourselves?—“We were divided after the victory,” responded Charles Carroll. “Each party wanted to use the people and, to gain their adherence, granted them new privileges, until finally the people became our master and showed us all the door.”

What do you think of this apology? Doesn’t it have the air of being said in Paris toward the end of 1830 or at the very least in the course of the year of grace 1831? I am, however, a very faithful narrator (Draft of a letter of Tocqueville dated November 8, 1831, YTC, Bla2).

² A symbol in the text refers to the following note: “Place a chapter here explaining what is called a constitution in America. Say that it is only a changing expression of the sovereignty of the people, that has nothing of the perpetual, that binds only until it is amended. Difference from what is understood by constitution in Europe, even in England.

[In the margin: Ask advice here.]”
the laws by the choice of the legislators, in their application by the election of the agents of executive power. It can be said that they govern themselves, so weak and restricted is the part left to the administration, so much does the administration feel its popular origin and obey the power from which it emanates. The people rule the American political world as God rules the universe. They are the cause and the end of all things; everything arises from them and everything is absorbed by them.

m. In the manuscript: “The people enter into the composition of the laws . . .”

Hervé de Tocqueville:

I keep repeating the same objection, for it strikes me at every step. What is “the people” in a society where, as much as possible, ranks, fortunes, and minds approach the level of equality? Assuredly, in the New World the word people has none of the same meaning as among us. I believe that a sense of this must be given somewhere. Otherwise, the chapter moves along very well.

Édouard de Tocqueville: “I understand the preceding objection when it involved explaining the successive formation of American society; but here it isn’t the same thing anymore. Alexis describes the government of democracy, and in this case the word people is appropriate and is perfectly understood. This entire passage seems remarkable to me” (YTC, CIIIb, 2, p. 90).
CHAPTER 5

Necessity of Studying What Happens in the Individual States before Speaking about the Government of the Union

The following chapter is intended to examine what form government founded on the principle of sovereignty of the people takes in America, what its means of action, difficulties, advantages and dangers are.

A first difficulty arises: the United States has a complex constitution. You notice two distinct societies there, bound together and, if I can explain it in this way, nested like boxes one inside the other. Two completely separate and nearly independent governments are seen: the one, habitual and undefined, which answers to the daily needs of the society; the other, exceptional and circumscribed, which applies only to certain general interests. They are, in a word, twenty-four small sovereign nations, that together form the great body of the Union.

To examine the Union before studying the state is to embark on a path strewn with difficulties. The form of the federal government in the United States appeared last; it was only a modification of the republic, a summary of political principles spread throughout the entire society before the federal government existed, and subsisting there independently of it. As I have just said, the federal government is, moreover, only an exception; the government of the states is the common rule. The writer who would like to

a. According to a rough draft (YTC, CVh, 3, p. 83), this section would at first have constituted an independent chapter.

b. In the margin: "Perhaps immediately after having treated the sovereignty of the people, it would be necessary to talk about election, which is its first and most complete application to the government of society."
show such a picture as a whole before pointing out its details would necessarily lapse into obscurities and repetitions.

There can be no doubt that the great political principles that govern American society today arose and developed in the state. So to have the key to all the rest, the state must be understood.

The states that make up the American Union today all look the same with regard to the external appearance of institutions. Political and administrative life there is found concentrated in three centers of action that could be compared to the various nerve centers that make the human body move.

At the first level is found the town;\textsuperscript{3} higher, the county; finally, the state.

Of the Town System in America\textsuperscript{c}

Why the author begins the examination of political institutions with the town.—The town is found among all peoples.—

Difficulty of establishing and maintaining town liberty.—

Translator’s Note 3: I have translated commune, when it refers to America, as town rather than township. Town is, by far, the more common term in the United States, especially in New England. And American historians almost unanimously use the term town. When commune refers to France, I have usually left it in French, italicized.

\textsuperscript{c} When he starts on the study of the American administration, Tocqueville realizes that he hardly knows that of his own country. In the month of October 1831, he asks his father and two of his colleagues, Ernest de Chabrol and Ernest de Blosseville, to draw up for him a summary sketch of the French administration. Tocqueville writes to his father:

Nothing would be more useful to me for judging America well than to know France. But it is this last point that is missing; I know in general that among us the government gets into nearly everything; a hundred times people have blared into my ears the word centralization, without explaining it to me. . . . If you could, my dear papa, analyze for me this word centralization, you would help me immensely (letter to his father, New York, 7 October 1831, YTC, Bla2).

In reply, Hervé de Tocqueville sends his son a long report bearing the title \textit{Coup d’œil sur l’administration française} [\textit{Brief View of the French Administration}]. There the former prefect develops several of the ideas presented in \textit{De la charte provinciale} (Paris: J. J. Blaise, 1829, 62 pp.). After several pages devoted to description of the administration,
Its importance.—Why the author has chosen the town organization of New England as the principal object of his examination.

Not by chance do I first examine the town. [

The town is the first element of the societies out of which peoples take form; it is the social molecule; if I can express myself in this way, it is the embryo that already represents and contains the seed of the complete being.]

the author considers in detail the problem of centralization and the way to lessen its abuses. Hervé de Tocqueville, who fears that the autonomy of the French communes [towns] will divide the country into a multitude of small republics, insists a great deal on the fact that the King must exercise the administration and have the right to dissolve the conseils communaux [town councils]. But he recognizes, nonetheless, the extreme slowness of an excessively centralized administration and recommends the creation of special juries for the purpose of deciding administrative questions as the most effective means to accelerate decision making. In his response, Chabrol considers, above all, the question of administrative jurisdiction. Macarel had in fact pointed out to him that the majority of trials between the administration and individuals that were judged by the conseils municipaux [municipal councils] were trials of an ordinary type that could have been judged according to the forms of the ordinary judicial system. Chabrol also points out that a large part of the administration still carries the trace of the centralizing concepts of the Napoleonic administration. The report of Blosseville, shorter and less precise than the other two, allows for the shift of administrative trials to ordinary jurisdiction, in agreement with Chabrol. (A copy of the three reports is found at Yale, under the classification CIIIa).

For the preparation of this chapter, the report on the local administration of New England, written by Jared Sparks for Alexis de Tocqueville, also has considerable importance. On this document and Brief View of the French Administration, see George W. Pierson, Tocqueville and Beaumont in America, pp. 403–13. Finally, there is a note by Beaumont that relates an interesting conversation with Sparks (in Beaumont, Lettres d’Amérique, pp. 152–54). The questions posed by Tocqueville to Jared Sparks and the responses of the latter have been published by H. B. Adams in Jared Sparks and Alexis de Tocqueville, Johns Hopkins University Studies in Historical and Political Science, XVIth series, n. 12, 1898. A rough draft with several notes for this chapter also contains numerous references to the report of Sparks (YTC, CVb, p. 17). It is Jared Sparks who points out to Tocqueville that Nathaniel Niles, Secretary of the American delegation in Paris and native of New England, can be useful to him for the chapter on the town administration of this part of the United States. It seems that, following this suggestion, Tocqueville contacted the latter (see note v for p. 62).
The town is the only association that is so much a part of nature that wherever men are gathered together, a town takes shape by itself.

Town society exists therefore among all peoples no matter what their customs and their laws; it is man who establishes kingdoms and creates republics; the town seems to come directly from the hands of God. [≠ The town is not only the first of social elements, but also the most important of all. ≠] But if the town has existed ever since there have been men, town liberty is something rare and fragile. A people can always establish great political assemblies, because it usually contains a certain number of men among whom, to a certain degree, enlightenment takes the place of the practice of public affairs. The town is made up of crude elements that often resist the action of the legislator. Instead of diminishing as nations become more enlightened, the difficulty of establishing town independence increases with their enlightenment. A highly civilized society tolerates the trial efforts of town liberty only with difficulty; it rebels at the sight of its numerous errors and despairs of success before having reached the final result of the experiment.

Of all liberties, town liberty, which is so difficult to establish, is also the most exposed to the encroachments of power. Left to themselves, town institutions could scarcely resist a strong and enterprising government; to defend themselves successfully, they must have reached their

d. In the margin:

Cause of its little importance. The coarse elements that it brings into use. It can hardly arise except during little developed centuries when individuality is the first need.

The town puts liberty and government within the grasp of the people; it gives them an education or creates great national assemblies.

A town system is made only with the support of mores, laws, circumstances and time.

Town liberty is the most difficult to suppress, the most difficult to create.

It is in the town that nearly all the strength of free peoples resides.

It is in the town that the liberty of peoples resides. Makes kingdoms and creates republics. Cf. conversation with Mr. Gray (non-alphabetic notebooks 2 and 3, YTC, BIIa and Voyages, OC, V, i, pp. 94–95).
fullest development and be mingled with national ideas and habits. Thus, as long as town liberty has not become part of the mores, it is easy to destroy; and it can become part of the mores only after existing in the laws for a long time.

Town liberty therefore escapes human effort so to speak. Consequently it is rarely created; as in a sense it arises by itself. It develops almost in secret within a semi-barbaric society. The continuous action of laws and of mores, circumstances, and above all time succeed in its consolidation. You can say that, of all the nations of the European continent, not a single one knows town liberty.

The strength of free peoples resides in the town, however. Town institutions are to liberty what primary schools are to knowledge; they put it within the grasp of the people; they give them a taste of its peaceful practice and accustom them to its use. Without town institutions, a nation can pretend to have a free government, but it does not possess the spirit of liberty. Temporary passions, momentary interests, the chance of circumstances can give it the external forms of independence; but des-


f. Hervé de Tocqueville: “This does not seem to me to agree very well with what precedes. How does it develop almost in secret, if it has subsisted for a long time in the laws?” (YTC, CIIIb, 2, p. 84).

In his notes on the government of India, Tocqueville sees in the permanence and power of the town the reason for the survival of Hindu culture through revolution and the lack of interest in general politics: “The entire political life of the Indians withdrew into the town; the entire administration was concentrated there. As long as the town still existed, who controlled the empire was of little importance to the inhabitants. They hardly noticed the change of masters” (Écrits et discours politiques, OC, III, 1, p. 430).
potism, driven back into the interior of the social body, reappears sooner or later at the surface.

To make the reader understand well the general principles on which the political organization of the town and the county in the United States rests, I thought that it was useful to take one state in particular as a model, to examine in detail what happens there, and then to cast a quick glance over the rest of the country.

I have chosen one of the states of New England.

The town and the county are not organized in the same way in all the parts of the Union; it is easy to recognize, however, that throughout the Union the same principles, more or less, have presided over the formation of both.

[1] The town institutions of New England were the first to reach a state of maturity. They present a complete and uniform whole. They serve as a model for the other parts of the Union and tend more and more to become the standard to which all the rest must sooner or later conform.[1]

Now, it seemed to me that in New England these principles were considerably more developed and had attained further consequences than anywhere else. So they are, so to speak, more evident there and are thus more accessible to the observation of the foreigner.

The town institutions of New England form a complete and regular whole. They are old; they are strong because of the laws, stronger still because of the mores; they exercise a prodigious influence over the entire society.

In all these ways, they merit our attention.

Town District

The town in New England (Township) falls between the canton and the commune [town] in France. Generally it numbers from two to three thousand inhabitants.1 So it is not too extensive for all its inhabitants to share

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1. In 1830, the number of towns, in the State of Massachusetts, was 305; the number of inhabitants 610,014; this gives an average of about 2,000 inhabitants per town.
nearly the same interests; and on the other hand, it is populated enough to assure that elements of a good administration are always found within it.

Town Powers in New England

The people, source of all powers in the town as elsewhere.—
There they deal with principal matters by themselves.—
No town council.—The largest part of town authority concentrated in the hands of the selectmen.—How the selectmen function.—General assembly of the inhabitants of the town (Town Meeting).—Enumeration of all the town officers.—
Offices mandatory and paid.

In the town as everywhere else, the people are the source of social powers, but nowhere else do they exercise their power more directly. In America, the people are a master who has to be pleased to the greatest possible degree.

In New England, the majority acts through representatives when the general affairs of the state must be dealt with. This was necessary; but in the town, where legislative and governmental action is closer to the governed, the law of representation is not accepted. There is no town council; the body of voters, after naming their magistrates, directs them in everything that is not the pure and simple execution of the laws of the state.²

h. For Tocqueville, the lack of representation is the principal characteristic of the town; he gives the town a role similar to that of the small republic in the thought of Rousseau. If here he asserts that the lack of representation is a characteristic of the town across the Atlantic, in the Ancien Régime et la Révolution (OC, II, 1, pp. 119–20), he will admit that in the parish of the old regime he found the lack of political representation and other traits that he had formerly judged as belonging only to North America.

2. The same rules do not apply to the large towns:¹ These generally have a mayor and a municipal body divided into two branches; but that is an exception that must be authorized by a law. See the law of 22 [23 (ed.)] February 1822, regulating the powers of the city of Boston. Laws of Massachusetts, vol. II, p. 388. This applies to large cities. It also frequently
This state of things is so contrary to our ideas, and so opposed to our habits, that it is necessary to provide a few examples here for it to be well understood.

Public offices are extremely numerous and highly divided in the town, as we will see below. The largest part of administrative powers is concentrated, however, in the hands of a small number of individuals elected annually who are called selectmen.³

The general laws of the state have imposed a certain number of obligations on the selectmen. To fulfill them they do not need the authorization of those under their jurisdiction, and they cannot avoid their obligations without engaging their personal responsibility. State law charges them, for example, with drawing up the electoral lists in their town; if they fail to do so, they make themselves guilty of a misdemeanor. But in all things that are left to the direction of the town authority, the selectmen are the executors of the popular will, as with us the mayor is the executor of the deliberations of the town council. Most often they act on their private responsibility and, in actual practice, only carry out the implications of principles previously set down by the majority. But if they want to introduce any change whatsoever in the established order, if they desire to pursue a new undertaking, they must return to the source of their power. Suppose that it is a question of establishing a school: the selectmen convocate on a

³ Three are elected in the smallest towns; nine, in the largest. See The Town Officer, p. 186. Also see the principal laws of Massachusetts relative to the selectmen:

given day, in a place specified in advance, the whole body of voters; there, they set forth the need that is felt; they show the means to satisfy it, the money that must be spent, the location that should be chosen. The assembly, consulted on all those points, adopts the principle, determines the location, votes the tax and puts the execution of its will into the hands of the selectmen.

Only the selectmen have the right to call the town meeting, but they can be made to do so. If ten property owners conceive a new project and want to submit it for approval by the town, they call for a general convocation of the inhabitants; the selectmen are obliged to agree to the call and only retain the right to preside over the meeting.  

Without a doubt, these political mores, these social customs are very far from us. At this moment I want neither to judge them nor to show the hidden causes that produce and animate them; I am limiting myself to presenting them.  

The selectmen are elected annually in the month of April or May. At the same time the town meeting chooses a host of other town magistrates, appointed for certain important administrative tasks. Some, known as assessors, must determine the tax; others, known as collectors, must collect it. One officer, called the constable, is charged with keeping the peace, supervising public places and assuring the physical execution of the laws. Another, named the town clerk, records all deliberations; he keeps minutes of the acts of the civil registry. A treasurer keeps the town funds. Add to these officers an overseer of the poor, whose duty, very difficult to fulfill, is to enforce the laws relative to the poor; school commissioners, who direct public education; road surveyors, who are responsible for all the routine tasks relating to the roadways, large and small; and you will have the list of the principal agents of town administration. But the division of offices does

5. Ibid.
k. In the margin: "What makes town spirit powerful./ Independence of the town. /Importance of the town. /Constant political life. /Division of town powers."
not stop there. You still find, among the town officers,\textsuperscript{6} parish commissioners who must regulate church expenses; inspectors of various kinds, some charged with directing the efforts of citizens in case of fire; others, with overseeing the harvest; these, with temporarily relieving difficulties that can arise from fencing; those, with supervising wood allotments or with inspecting weights and measures.

In all, principal offices in the town number nineteen. Each inhabitant is obligated, under penalty of a fine, to accept these different offices; but also most of these offices are paid,\textsuperscript{9} so that poor citizens can devote their time to them without suffering a loss. The American system, moreover, does not give any fixed salary to officers. In general, each act of their administration has a value, and they are remunerated only in proportion to what they have done.\textsuperscript{o}

\textsuperscript{6}. All these magistrates actually exist in practice.

To know the details of the duties of all of these town magistrates, see the book entitled \textit{Town Officer}, by Isaac Goodwin, Worcester 1829; and the collection of the general laws of Massachusetts in 3 vols., Boston, 1823.

\textsuperscript{m}. Tocqueville learned from Goodwin that in the United States the town inhabitants were obliged to contribute to the support of a Protestant minister. This seems to him nearly the sign of a State religion, and he says so to Sparks. Apparently in agreement, Sparks answers him: “It is one of those cases in which early prejudice, habit, and accidental causes, may pervert the sense of a majority and operate against the equal rights of the whole” (H. B. Adams, \textit{Jared Sparks and Alexis de Tocqueville}, p. 25).

\textsuperscript{n}. The manuscript says: “paid, little it is true, but enough, however, so that poor citizens . . .”

\textsuperscript{o}. I found myself in a Boston salon behind two respectable \textit{gentlemen} who appeared to treat an important subject with interest:

“How much will that gain you much [sic]?” said one.

“It’s a fairly good business,” answered the other, “about one hundred dollars is given for each.”

“As you say,” replied the first, “that truly is a good business.”

Now, it concerned nothing less than two pirates who were to be hanged the next day. One of these speakers, who was the \textit{City Marshal}, was obliged by his position to be present at the execution and to see that everything was done according to order. The law allocated to him for his right to be present one hundred dollars for each one hanged; and he spoke of these two condemned men like a pair of cattle that he had to sell the next day at the market.

Told by the consul (alphabetic notebook B, YTC, BIIa, and \textit{Voyage, OC}, V, 1, p. 241).
Of Town Life

Each person is the best judge of what concerns only himself alone.—Corollary of the principle of sovereignty of the people.—Application that the American towns make of these doctrines.—The New England town, sovereign in everything that concerns only itself; subject in everything else.—Obligation of the town toward the state.—In France, the government lends its agents to the town.—In America, the town lends its to the government.

I said previously that the principle of sovereignty of the people hovers over the entire political system of the Anglo-Americans. Each page of this book will show some new applications of this doctrine.

Among nations where the dogma of the sovereignty of the people reigns, each individual forms an equal portion of the sovereign power, and participates equally in the government of the state.

Each individual is therefore considered to be as enlightened, as virtuous, as strong as any of his fellows.

So why does he obey society, and what are the natural limits of this obedience?

He obeys society, not at all because he is inferior to those who direct it, or less capable than another man of governing himself; he obeys society because union with his fellows seems useful to him and because he knows that this union cannot exist without a regulatory power.

So in all that concerns the mutual duties of citizens, he has become a subject. In all that concerns only himself, he has remained the master; he is free and is accountable for his actions only to God. Thus this maxim, that the individual is the best as well as the only judge of his particular interest and that society has the right to direct his actions only when it feels harmed by them, or when it needs to call for his support.

This doctrine is universally accepted in the United States. Elsewhere I will examine what general influence it exercises over even the ordinary acts of life; but at this moment I am talking about the towns.

The town, 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 applies.

Town liberty in the United States follows, therefore, from the very dogma of the sovereignty of the people. All the American republics have more or less recognized this independence; but among the people of New England, circumstances have particularly favored its development.

In this part of the Union, political life was born very much within the towns; you could almost say that at its origin each of them was an independent nation. When the Kings of England later demanded their share of sovereignty, they limited themselves to taking central power. They left the town in the situation where they found it; now the towns of New England are subjects; but in the beginning they were not or were scarcely so. They did not therefore receive their powers; on the contrary, they seem to have relinquished a portion of their independence in favor of the state; an important distinction which the reader must keep in mind.

In general the towns are subject to the states only when an interest that I will call social is concerned, that is to say, an interest that the towns share with others.

For everything that relates only to them alone, the towns have remained independent bodies. No one among the inhabitants of New England, I think, recognizes the right of the state government to intervene in the direction of purely town interests.

So the towns of New England are seen to buy and sell, to sue and to defend themselves before the courts, to increase or reduce their budget

p. In the margin: “#The dogma of sovereignty of the people, it must not be forgotten, has as its end not to make the people do all that they should want, but all that they do want.#”

q. Cf. conversations with Sparks and Mr. Gray (non-alphabetic notebooks 2 and 3, YTC, BIIa, and Voyage, p. 96). See also H. B. Adams, Jared Sparks and Alexis de Tocqueville, p. 18.

r. Earlier draft: “#I do not believe anyone has ever dared to profess that the duty and the right of a government was to watch over the governed in such a paternal way that they could not even do what can be of harm only to themselves.#”
without any administrative authority whatsoever thinking to oppose them.\footnote{This right has only a single limit. That is found in the institution of the judicial power, but we will examine it later.}

As for social duties, they are required to fulfill them. Thus, if the state needs money, the town is not free to grant or to deny its cooperation.\footnote{If the state wants to open a road, the town does not have the right to close its territory. If it establishes a regulation concerning public order, the town must execute it. If it wants to organize education according to a uniform plan throughout the country, the town is required to create the schools desired by the law. We will see, when we talk about administration in the United States, how and by whom the towns, in all these different cases, are forced to obey. Here I only want to establish the existence of the obligation. This obligation is strict, but the state government, while imposing it, only enacts a principle; for carrying out the principle, the town generally recovers all its rights of individuality. Thus, it is true that the tax is voted by the legislature, but it is the town that apportions and collects it; a school is prescribed, but it is the town that builds, funds and directs it.}

In France the tax collector of the State levies the taxes of the town; in America the tax collector of the town raises the tax of the state.

With us, therefore, the central government lends its agents to the town; in America, the town lends its officers to the government. That alone makes clear to what degree the two societies differ.

Of Town Spirit in New England

Why the New England town attracts the affections of those who live there.—Difficulty met in Europe in creating town spirit.—

Town rights and duties that work together in America to form this spirit.—The native land has a more distinctive

\footnote{See Laws of Massachusetts, law of 23 March 1786, vol. I, p. 250.}
\footnote{Ibid., law of 20 February 1786, vol. I, p. 217.}
\footnote{See the same collection, law of 2 June 1789, and 8 [10 (ed.)] March, 1827, vol. I, p. 367, and vol. III, p. 179.}
physiognomy in the United States than elsewhere.—How town spirit is shown in New England.—What fortunate effects it produces there.

Laws act on mores; and mores, on laws. Wherever these two things do not lend each other mutual support, there is unrest, revolution tearing apart the society.

The legislation of New England constituted the town. Habits have completed the establishment of a true town spirit there.

The town is a center around which interests and passions gather and where real and sustained activity reigns. #]

In America not only do town institutions exist, but also a town spirit that sustains and animates them.\(^s\)

The New England town brings together two advantages that, wherever they are found, strongly excite the interest of men—namely, independence and power. It acts, it is true, within a circle that it cannot leave, but within that circle its movements are free. This independence alone would already give the town real importance even if its population and size would not assure its importance.

You must realize that in general the affections of men go only where strength is found. Love of native land does not reign for long in a conquered country.\(^t\) The inhabitant of New England is attached to his town, not so much because he was born there as because he sees in this town a free and strong corporate body to which he belongs and which merits the trouble of trying to direct it.

In Europe the very people who govern often regret the absence of town spirit; for everyone agrees that town spirit is a great element of order and public tranquillity; but they do not know how to produce it. By making the town strong and independent, they fear dividing social power and exposing the State to anarchy. Now, take strength and independence away

\(s\). In the margin: “<The person who focuses his affections and his hopes on the town, who knows how to take his place there and to participate in its governance, that person possesses what I call town spirit.>”

\(t\). In the margin, in pencil, on a paper glued into place: “I do not know if this thought is very accurate. Witness, Poland.”
from the town, and you will forever find there only people who are administered, not citizens.

Note, moreover, an important fact. The New England town is so constituted that it can serve as a center of strong affections, and at the same time there is nothing nearby that strongly attracts the ambitious passions of the human heart.

The officials of the county are not elected and their authority is limited. The state itself has only a secondary importance; its existence is indistinct and tranquil. To gain the right to administer it, few men agree to distance themselves from the center of their interests and to disrupt their existence.

The federal government confers power and glory on those who direct it; but the number of men who are able to influence its destiny is very small. The presidency is a high office that can hardly be attained except after reaching an advanced age. When someone reaches other high level federal offices, it is by chance in a way and after already becoming famous by pursuing another career. Ambition cannot make these high offices the permanent aim of its efforts. The Union is a nearly ideal being that nothing represents to the mind.

It is in the town, at the center of the ordinary relations of life, that the desire for esteem, the need for real interests, the taste for power and notice are focused. These passions, which so often trouble society, change character when they can operate thus near the domestic hearth and, in a way, within the family.

See with what art, in the American town, care has been taken to scatter power, if I can express myself in this way, in order to interest more people in public life. Apart from the voters called from time to time to perform the acts of government, how many diverse offices, how many different magistrates, who all, in the circle of their attributions, represent the powerful corporate body in whose name they act! How many men thus
exploit the power of the town for their profit and are interested in it for themselves!

Nor is the American system, even as it divides municipal power among a great number of citizens, afraid to multiply town duties. In the United States people think rightly that love of country is a kind of religious cult that attaches men by observances.

In this way, town life makes itself felt at every moment as it were; it manifests itself every day by the accomplishment of a duty or by the exercise of a right. This political existence imparts a continual, but at the same time peaceful, movement to society that agitates without troubling it.\(^w\)

The Americans are attached to the city by a reason analogous to the one that makes mountain dwellers love their country. Among them the native land has marked and characteristic features; it has a more distinctive physiognomy than elsewhere.

In general the New England towns have a happy existence. Their government suits their taste and is their choice as well. Within the profound peace and material prosperity that reign in America, the storms of municipal life are few. Leadership of town interests is easy. The political education of the people, moreover, was done a long time ago, or rather they arrived already educated on the soil they occupy. In New England, division of ranks does not exist even in memory; so there is no portion of the town tempted to oppress the other, and injustices, which strike only isolated individuals, are lost in the general contentment. Should the government exhibit some faults, and certainly it is easy to point them out, they are not obvious to view, because the government truly derives from the governed. And it is sufficient for town government to operate, whether well or poorly, for it to be protected by a kind of paternal pride. The Americans, moreover, have no point of comparison. England once ruled the colonies as a whole, but the people have always directed town affairs. So sovereignty of the

\(^w\) “Rights and duties are multiplied in the town in order to attach man by its benefits, like religion by its observances. Town life makes itself felt at every moment. Duty, flexible and easy to fulfill; social importance that that scatters” (YTC, CVb, p. 17).
people in the town is not only a long-standing condition, but also an original one.

The inhabitant of New England is attached to his town, because it is strong and independent; he is interested in it, because he participates in its leadership; he loves it, because he has nothing to complain about in his lot. In the town he places his ambition and his future; he joins in each of the incidents of town life; in this limited sphere, accessible to him, he tries his hand at governing society. He becomes accustomed to the forms without which liberty proceeds only by revolutions, is infused with their spirit, acquires a taste for order, understands the harmony of powers, and finally gathers clear and practical ideas about the nature of his duties as well as the extent of his rights.

Of the County in New England

The county in New England, analogous to the arrondissement in France.—Created for a purely administrative interest.—Has no representation.—Administered by non-elective officials.

The American county is very analogous to the French arrondissement. As for the latter, an arbitrary circumscription was drawn for the former; it forms a body whose different parts have no necessary bonds with each other and for whom neither affection nor memory nor shared existence serve as attachments. It is created only for a purely administrative interest.

The town was too limited in area ever to contain the administration of justice. The county is, therefore, the primary judicial center. Each county has a court of justice, a sheriff to execute the decisions of the courts, a prison that must hold the criminals.

There are needs that are felt in a more or less equal way by all the towns of a county; it was natural that a central authority was charged with providing for them. In Massachusetts, this authority resides in the hands of a

certain number of magistrates, appointed by the Governor of the state, with the advice of his council.  

The county administrators have only a limited and exceptional power that applies only to a very small number of cases provided for in advance. The state and the town are sufficient for the ordinary course of things. These administrators only prepare the county budget; the legislature votes it.  

So truly speaking, the county has no political existence.

A double tendency is noticeable in most American constitutions, which leads the law-makers to divide executive power and to concentrate legislative power. The New England town by itself has a principle of existence that is not stripped away from it. But this existence would have to be created artificially in the county, and the usefulness of doing so has not been felt. All the towns united together have only a single representative, the state, center of all national powers; apart from town and national action, you could say that there are only individual powers.

Of Administration in New England

In America, you do not see the administration.—Why.—

Europeans believe they are establishing liberty by taking away some of the rights belonging to the social power; Americans, by
dividing their exercise.—Nearly all of the administration strictly speaking contained in the town, and divided among town officers.—No trace of an administrative hierarchy is seen, either in the town or above it.—Why it is so.—How the state happens, however, to be administered in a uniform way.—Who is charged with making the town and county administrations obey the law.—Of the introduction of the judicial power into the administration.—Result of extending the elective principle to all officials.—Of the justice of the peace in New England.—Appointed by whom.—Administers the county.—Ensures the administration of the towns.—Court of sessions.—The way in which it acts.—Who apprises it.—The right of inspection and of complaint, scattered like all administrative functions.—Informers encouraged by sharing fines.

What most strikes the European who travels across the United States is the absence of what among us we call government or administration. In America, you see written laws; you see their daily execution; everything is in motion around you, and the motor is nowhere to be seen. The hand that runs the social machine escapes at every moment.

But just as all peoples, in order to express their thoughts, are obliged to resort to certain grammatical forms that constitute human languages, all societies, in order to continue to exist, are compelled to submit to a certain amount of authority; without it, they fall into anarchy. This authority can be distributed in different ways; but it must always be found somewhere.

There are two means to diminish the strength of authority in a nation. The first is to weaken power in its very principle, by taking from society the right or the capacity to defend itself in certain cases; to weaken au-

b. Hervé de Tocqueville: “I do not like the word authority here very much. It seems too generic to me to apply to the species; there is the authority of laws that cannot be diminished, nor that of the magistrates. I would prefer power. It would be dropped in the following sentence” (YTC, CIIIb, 2, p. 86 prima).
authority in this way is what, in Europe, is generally called establishing liberty.c

[This method has always seemed to me barbaric and antisocial.]

There is a second means to diminish the action of authority. This one consists not of stripping society of some of its rights or paralyzing its efforts, but of dividing the use of its powers among several hands; of multiplying officials while attributing to each all the power needed to carry out what he is meant to do. There are peoples who can still be led to anarchy by this division of the social powers; in itself, however, it is not anarchic. By sharing authority in this way, its action is made less irresistible and less dangerous, it is true; but authority is not destroyed.

The Revolution in the United States was produced by a mature and thoughtful taste for liberty, and not by a vague and undefined instinct for independence. It was not based upon passions for disorder; on the contrary, it proceeded with love of order and of legality.d

So in the United States, the Americans did not claim that, in a free country, a man had the right to do everything; on the contrary, social obligations more varied than elsewhere were imposed on him. They did not have the idea of attacking the power of society in its principle and of contesting its rights; they limited themselves to dividing power in its exercise. In this way they wanted to make authority great and the official small, so that society might continue to be well regulated and remain free.

There is no country in the world where the law speaks a language as

c. Édouard de Tocqueville:

I cannot understand this. How can someone think to establish liberty by taking from society the right to defend itself? Fine, if you had said: by taking from the government which represents society, etc. You wanted to say, I think, that someone thought to establish liberty by weakening the government, the governmental power. Well! That is badly expressed, for to weaken the government of a society or to weaken this society are two very different things. French society was not weak under the Convention, but the old government had just been destroyed” (YTC, CIIIb, 2, pp. 81–82).

d. In the margin of another version: “#When democracy comes with mores and beliefs, it leads to liberty.
When it comes with moral and religious anarchy, it leads to despotism.#”
absolute as in America, nor is there one where the right to apply the law is divided among so many hands.

Administrative power in the United States presents nothing either centralized or hierarchical in its constitution; that is why you do not see it. Power exists, but you do not know where to find its representative.

We saw above that the New England towns were not subordinate. So they take care of their own individual interests.

It is also the town magistrates who are usually charged with seeing to the execution of the general laws of the state or with executing them themselves.\(^{14}\)

Apart from the general laws, the state sometimes makes general regulations concerning public order. But ordinarily it is the towns and the town officers who, jointly with the justices of peace and according to the needs of the localities, regulate the details of social existence and promulgate prescriptions relating to public health, good order and the morality of citizens.\(^{15}\)

Finally it is the municipal magistrates who, by themselves and without needing to wait for outside initiative, provide for the unexpected needs that societies often feel.\(^{16}\)

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14. See The Town Officer, particularly the words Selectmen, Assessors, Collectors, Schools, Surveyors of Highways . . . Example among many others: the state forbids unnecessary travel on Sunday. It is the tythingmen, town officers, who are especially charged with using their authority to enforce the law.


The selectmen draw up the electoral lists for the election of the Governor and forward the result of the vote to the secretary of the republic. Law of 24 February 1796, id., vol. I, p. 488.

15. Example: the selectmen authorize the construction of sewers, designate the locations where slaughterhouses can be built, and where certain types of business whose proximity is harmful can be established.

See the law of 7 June 1785, vol. I, p. 193.

e. In the first draft: “#The administration in societies where the legislative and executive powers are not concentrated in the same hands [where the principle of sovereignty of the people reigns] has only two obligations:

1. To execute the existing laws.
2. To provide for the unforeseen accidents of social life. #”

16. Example: the selectmen attend to public health in case of contagious diseases, and
As a result of what we have just said, administrative power in Massachusetts is almost entirely contained within the town; but it is divided there among many hands.

In the French town there is in fact only a single administrative official, the mayor.

We have seen that there were at least nineteen in the New England town.

The nineteen officers do not generally depend on each other. The law has carefully drawn a circle of action around each of these magistrates. Within this circle, they have all the power needed to fulfill the duties of their office and are not under any town authority.

If you look above the town, you see scarcely a trace of an administrative hierarchy. Sometimes county officials correct a decision made by the towns or by the town magistrates, but in general you can say that the administrators of the county do not have the right to direct the conduct of the administrators of the town. The former have authority over the latter only in things that concern the county.

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17. I say almost, because there are several incidents of town life that are regulated, either by a justice of the peace in their individual capacity, or by the justices of the peace assembled as a body at the county-seat. Example: it is the justices of the peace who grant licenses. See the law of 28 February 1787, vol. I, p. 297.

18. Example: a license is granted only to those who present a certificate of good conduct given by the selectmen. If the selectmen refuse to give this certificate, the person can complain to the justices of the peace assembled in the court of sessions, and they can grant the license. See the law of 12 March 1808, vol. II, p. 186. The towns have the right to make regulations (bylaws) and to require the observation of these bylaws by fines the level of which are fixed; but these bylaws must be approved by the court of sessions. See the law of 23 March 1786, vol. I, p. 254.

19. In Massachusetts, the county administrators are often called to assess the acts of the town administrators; but we will see later that they engage in this examination as a judicial power, and not as an administrative authority.
The town magistrates and those of the county are required, in a very small number of cases stipulated in advance, to report the result of their actions to the officers of the central government. But the central government is not represented by one man charged with making general regulations concerning public order or ordinances for the execution of the laws, with communicating routinely with the administrators of the county and town, with examining their conduct, with directing their actions and punishing their mistakes.

So there is no center where the lines of administrative power come together.

Then how do you manage to run society according to a more or less uniform plan? How can counties and their administrators, towns and their officers be made to obey?

In the states of New England, the legislative power extends to more objects than with us. The legislator penetrates in a way to the very heart of the administration; the law gets into the smallest details. It simultaneously prescribes the principles and the means to apply them; thus it encloses the secondary bodies and their administrators within a multitude of strict and rigorously defined obligations.

As a result, if all the secondary bodies and all the officials follow the law, all parts of society proceed in a uniform way. But there still remains the

20. Example: the town school committees are bound to make an annual report on the state of the school to the secretary of the republic. See the law of 10 March 1827, vol. III, p. 183.

g. Administrative and judicial powers.

Among all nations there are two methods of executing the laws:
The administrative method.
The judicial method.
The administrative method always addresses the cause; the other, the effect. The one is direct; the other, indirect.

Example: a town makes an illegal decree.
The executive power quashes it. The judicial power prevents it from having any effects and protects those who resist it.

An obstruction arises on the public road. The executive power has it removed; the judicial power gets to the same end indirectly by fining those who caused it (YTC, CVb, pp. 19–20).
question of knowing how the secondary bodies and their officials can be forced to follow the law.

In a general way you can say that society finds at its disposal only two means to force officials to obey the laws.

It can entrust to one of the officers the discretionary power to direct all the others and to remove them from office in case of disobedience.

Or it can charge the courts with imposing judicial penalties on those who break the law.

You are not always free to choose one or the other of these means.

The right of directing an official assumes the right to remove him from office, if he does not follow the orders given to him, or to promote him if he zealously fulfills all of his duties. Now, an elected magistrate can be neither removed nor promoted. Elective offices are by nature irrevocable until the end of the term. In reality, the elected magistrate has nothing either to hope or to fear except from the voters. So when all public offices result from election, there can be no true hierarchy among officials, since both the right to command and the right to quell disobedience effectively cannot be given to the same man; and the power to command cannot be joined with that of rewarding and punishing.

h. Centralization. Town liberties.

In France there are two means available against the decisions of the Administration, an administrative means and a judicial means.

When an agent of the administration orders something contrary to the law, you can apply to his superior and have his decision changed.

In the same situation, you can refuse to obey, and then the question comes before the courts that decide indirectly if the official had the right to issue the order. See a discussion where these ideas are treated by Odilon Barrot. Débats [Journal des débats (ed.)] of 1 March 1834 (YTC, CVj, 2, pp. 26–27).

Tocqueville’s papers contain an article clipped from the Journal des débats of the same date, relating to the discussion on 28 February 1834 on the municipal law (copied in YTC, CVj, 2, pp. 27–46). On the occasion of the debate, Barrot defends the independence of the French towns against Thiers and the government, which took a position in favor of a strict control of the mayor by the prefect.

j. “Where there is election, the supervision by the superior official of his inferior is less necessary. Elections deal with negligence; the courts, with misdeed.

Be careful to distinguish carefully what is judicial from what is administrative. Nearly all the administration strictly speaking is concentrated in the towns; it is only a matter of having them fulfill their obligations” (YTC, CVb, p. 6).
People who introduce election into the secondary mechanisms of their government are therefore led necessarily to make heavy use of judicial penalties as a means of administration.

This is not obvious at first glance. Those who govern see making offices elective as a first concession, and submitting elected magistrates to the decisions of judges as a second concession. They dread these two innovations equally; and because they are requested to do the first more than the second, they grant the election of the official and leave him independent of the judge. One of these two measures, however, is the only counterbalance that can be given to the other. We should be very careful about this; an elective power not submitted to a judicial power escapes sooner or later from all control or is destroyed. Between the central power and elected administrative bodies, only the courts can serve as an intermediary. They alone can force the elected official to obey without violating the right of the voter.

So in the political world, the extension of judicial power must be correlative with the extension of elective power. If these two things do not go together, the State ends by falling into anarchy or servitude.\(^k\)

It has been noted in all times that judicial habits prepared men rather poorly for the exercise of administrative power.

The Americans took from their fathers, the English, the idea of an institution that has no analogy whatsoever with what we know on the continent of Europe: the justices of the peace.

The justice of the peace holds a middle place between a public figure and the magistrate, administrator and judge. The justice of the peace is an enlightened citizen, but not necessarily one who is versed in knowledge of the laws. Consequently, he is charged only with keeping order in society, something that requires good sense and uprightness more than knowledge. The justice of the peace brings to administration, when he takes part in it, a certain taste for forms and for publicity that makes him a highly trou-

\(^k\) Hervé de Tocqueville: “This sentence is abstract.”
Édouard de Tocqueville: “It is very concise. I do not find it obscure” (YTC, CIIIb, 2, p. 87).
Gustave de Beaumont: “Excellent sentence. Do not listen to paternal advice” (YTC, CIIIb, 2, p. 72).
blesome instrument to despotism. But he does not appear to be a slave to those legal superstitions that make magistrates little capable of governing.

The Americans appropriated the institution of justices of the peace, all the while removing the aristocratic character that distinguished it in the mother country.

The Governor of Massachusetts appoints, in all the counties, a certain number of justices of the peace, whose term in office lasts seven years.

Among these justices of the peace, moreover, he designates three of them who form in each county what is called the court of sessions.

The justices of the peace individually take part in public administration. Sometimes, along with the elected officials, they are charged with certain administrative acts; sometimes they form a court before which the mag-

m. Édouard de Tocqueville: “I would like there: that generally make magistrates little capable, etc. . . . No one must be hurt, and by allowing for exceptions, everyone applies the exception to himself; besides, I believe that there really are some” (YTC, CIIIb, 2, p. 82).

n. Édouard de Tocqueville (?):

We have not yet heard about a governor. The reader is even totally unaware what this pompous label corresponds to in a republican country. Astonishment is redoubled when he learns that in the same country where the principle of informing [delegation? (ed.)] has penetrated everywhere, the governor appoints, in all the counties, a certain number of justices of the peace, etc.

I know that further along, on page 229, you explain what the functions of the governor are, but it appears indispensable to me that you say a word about it here, since the reader is bewildered when reading this paragraph. You could, I believe, begin this paragraph more or less like this: There is in each county a magistrate who has the title of governor. I will say further on how he gets his powers and what his attributions are. Or better still, this could be put in a note at the bottom of the page, or simply in a note at the word governor: head of the executive power of the county (YTC, CIIIb, 2, pp. 82–83).

Note 21 does not exist in the manuscript.

21. We will see further on what the Governor is; I must say at this moment that the Governor represents the executive power of the whole state.

22. See the Constitution of Massachusetts, chap. II, section I, paragraph 9; chap. III, paragraph 3.

23. Example among many others: a stranger arrives in a town, coming from a country ravaged by a contagious disease. He falls ill. Two justices of the peace, with the advice of the selectmen, can order the county sheriff to transport him elsewhere and to watch over him. Law of 22 June 1797, vol. I, p. 540.

In general, the justices of the peace intervene in all the important acts of administrative life and give them a semi-judicial character.
istrates summarily charge the citizen who refuses to obey, or the citizen
denounces the crimes of the magistrates. But it is in the court of sessions
that the justices of the peace exercise the most important of their admin-
istrative functions.

The court of sessions meets twice a year at the county seat. In Massa-
chusetts it is charged with upholding the obedience of most24 of the public
officials.25

Careful attention must be paid to the fact that in Massachusetts the court
of sessions is simultaneously an administrative body strictly speaking and
a political court.

[The administrative and judicial functions of the court of sessions are
so often confused in practice, that it is difficult to separate them even in
theory. But it is useful to do so.

The court of sessions has attributions of two kinds. It administers the
county and ensures the administration of the towns.]

24. I say most because in fact certain administrative crimes are referred to the ordinary
courts. Example: when a town refuses to raise the funds needed for its schools, or to appoint
the school committee, a very considerable fine is imposed. The court called supreme judicial
court or the court of common pleas pronounces this fine. See the law of 10 March 1827, vol.
III, p. 190. Id. When a town fails to make provision for war supplies. Law of 21 February

25. The justices of the peace, in their individual capacity, take part in the government
of the towns and counties. The most important acts of town life are generally undertaken only
with the support of one of them.

Hervé de Tocqueville:

I do not believe that the word capacity exactly expresses the thought of the author.
Care must be taken about using words whose specific expression is made uncertain
by their multiple meanings. It seems to me that, from page 189 to 193, Alexis does
not say enough about how the justices of the peace participate in town administra-
tion. He must not lose sight of the fact that America is something new for most of
his readers, and that they will be looking in his book still more for instructions than
for reflections. I admit that here, being uninformed, my curiosity is not satisfied. I
feel humiliated by my lack of knowledge, and I am annoyed that the author has
assumed that I am more informed than I am. These pages must be reviewed and more
precise details given about the administrative action of the justices of the peace, when
they act outside of the court of sessions. Most readers do not even know how they
act in England.

Édouard de Tocqueville: “Quite right. It seems to me that here the word capacity
means attribution. This word would be better I believe” (YTC, CHllb, 2, pp. 87–88).
We said that the county had only an administrative existence. It is the court of sessions by itself that is in charge of the small number of interests that relate to several towns at the same time or to all the towns of the county at once, interests that consequently cannot be entrusted to any single town in particular.

When it concerns the county, the duties of the court of sessions are therefore purely administrative, and if it often introduces judicial forms into its way of proceeding, it is only as a means to inform itself, and as a guarantee given to the citizens. But when the administration of the towns must be ensured, the court of sessions almost always acts as a judicial body, and only in a few rare cases, as an administrative body.

The first difficulty that presents itself is making the town itself, a nearly independent power, obey the general laws of the state.

We have seen that each year the towns must appoint a certain number of magistrates who, as assessors, apportion taxes. A town tries to evade the obligation to pay the tax by not appointing the assessors. The court of sessions imposes a heavy fine. The fine is raised by head on all the inhabitants. The county sheriff, officer of the law, executes the decision. In this way, in the United States, power seems eager to hide itself carefully from sight. Administrative command is almost always veiled there as a judicial mandate; as such it is only more powerful, having in its favor the almost irresistible strength that men grant to legal forms.

This procedure is easy to follow and is easily understood. What is required of the town is, in general, clear and defined; it consists of a simple and uncomplicated act, of a principle, and not a detailed application.

26. The things relating to the county and that the court of sessions attends to can be reduced to these:

1. The building of prisons and courts of justice; 2. The proposed county budget (it is the state legislature that votes on it); 3. The apportionment of these taxes thus voted; 4. The distribution of certain licenses; 5. The establishment and repair of county roads.

27. When it is a matter of a road, this is the way that the court of sessions, with the help of the jury, settles nearly all the difficulties of execution.


29. There is an indirect way to make the town obey. The towns are compelled by law to keep their roads in good condition. If they neglect to vote the funds required for this main-
the difficulty begins when it concerns securing the obedience, not of the
town any longer, but of the town officers.

All the reprehensible actions that a public official can commit fall definitively into one of these categories:

- He can do, without enthusiasm and without zeal, what the law requires of him.
- He cannot do what the law requires of him.
- Finally, he can do what the law forbids.

A court can get at the conduct of an official only in the last two cases. A positive and appreciable act is needed as grounds for judicial action.

Thus, if the selectmen fail to fulfill the formalities required by law in the case of town elections, they can be fined. 30

But when the public official fulfills his duty without intelligence, when he obeys the instructions of the law without enthusiasm and without zeal, he is entirely beyond the reach of a judicial body.

In this case, the court of sessions, even when vested with its administrative attributions, is impotent to force him to fulfill all of his obligations. Only fear of removal can prevent these quasi-failings; and the court of sessions does not hold within itself the source of town powers; it cannot remove officials that it does not appoint. 30

In order to make certain, moreover, that there is negligence or lack of zeal, the subordinate official would have to be put under constant supervision. Now, the court of sessions meets only twice a year; it does not conduct inspections; it judges only the reprehensible acts that are brought before it.

The town magistrate responsible for the roads is then authorized, as a matter of course, to raise the needed money. Since he is himself responsible to individuals for the bad condition of the roads, and can be sued by them before the court of sessions, it is assured that he will exercise against the town the extraordinary right given to him by the law. Thus, by threatening the officer, the court of sessions forces the town to obey. See the law of 5 March 1787, vol. I, p. 305.


p. Hervé de Tocqueville: "Que, qui, que" within a few lines. I do not know why, when the thought is powerful, the style drags. It comes from repeated use of "c'est que, il n'y a que; you must fight to the death against them. In a work of this type a concise and dogmatic sentence is better than a drawn-out sentence. Example: Montesquieu" (YTC, CIIIb, p. 109).
Only the discretionary power to remove public officials can guarantee the kind of enlightened and active obedience on their part that judicial suppression cannot impose.

In France we seek this last guarantee in administrative hierarchy; in America, they seek it in election.

Thus to summarize in a few words what I have just explained:

Should the public official in New England commit a crime in the exercise of his duties, the ordinary courts are always called to bring him to justice.

Should he commit an administrative fault, a purely administrative court is charged with punishing him, and when the matter is serious or urgent the judge does what the official should have done.31

Finally, should the same official be guilty of one of those intangible failings that human justice can neither define nor assess, he appears annually before a tribunal from which there is no appeal, that can suddenly reduce him to impotence [[remove him from power without even telling him why]]. His power is lost with his mandate.

Certainly this system encompasses great advantages, but in its execution a practical difficulty is encountered that must be noted.

I have already remarked that the administrative tribunal that is called the court of sessions did not have the right to inspect the town magistrates; following a legal term, it can only act when it is apprised. But that is the delicate point of the system.

The Americans of New England have not established a public prosecutor attached to the court of sessions,32 and you must understand how

31. Example: if a town stubbornly persists in not naming assessors, the court of sessions names them, and the magistrates chosen in this way are vested with the same powers as the elected magistrates. See the law already cited of 20 February 1787.

q. In the margin: “Perhaps enumerate them at this time.

Human dignity.

Legal, not arbitrary habits.

People at their business.”

32. I say attached to the court of sessions. There is a magistrate, attached to the ordinary courts, who fulfills several of the functions of the public prosecutor’s office.
difficult it would have been for them to establish one. If they had limited themselves to placing a prosecutor at each county seat, and if they had not given him agents in the towns, why would this magistrate have been more informed about what was happening in the county than the members of the court of sessions themselves? If he had been given agents in each town, the power most to be feared,[*] that of administering through the courts, would have been centralized in his hands. Laws are, moreover, the daughters of habits, and nothing similar existed in English legislation.

So the Americans have divided, like all other administrative functions, the right of inspection and the right of complaint.

Under the terms of the law, the members of the grand jury must notify the court, to which they are attached, of crimes of all kinds that might be committed in their county.** There are certain great administrative crimes that the ordinary public prosecutor must pursue as a matter of course.*** Most often, the obligation to have the offenders punished is imposed on the fiscal officer, charged with collecting the proceeds of the fine; thus the town treasurer is charged with pursuing most of the administrative crimes that are committed in his sight.

But above all, American legislation appeals to individual interest;† that is the great principle found constantly when you study the laws of the United States.

[*]. Far from wanting to create a magistrate of this kind, the Americans have, on the contrary, such a great fear of combining too much administrative power in the same hands, that when they assign responsibility to someone for suing for administrative crimes, they hardly ever choose the most important officials.

Should a town refuse to raise the state tax, it is not the Governor who notifies the court of sessions, it is the state Treasurer. Laws of Massachusetts, vol. I, p. 209.

Should an assessor refuse to accept the functions that are granted to him, it is not the selectmen who sue, it is the town treasurer. Id., vol. I, p. 218.

33. Grand juries are obliged, for example, to inform the courts about the bad condition of the roads. Laws of Massachusetts, vol. I, p. 308.

34. If, for example, the county treasurer does not provide his books. Laws of Massachusetts, vol. I, p. 406.

35. Example among many: an individual damages his vehicle or is hurt on a poorly maintained road; he has the right to ask the town or the county responsible for the road for damages before the court of sessions. Laws of Massachusetts, vol. I, p. 309.
American legislators show little confidence in human honesty; but they always assume an intelligent man. So most often they rely on personal interest for the execution of laws.

Indeed, when an individual is positively and presently hurt by an administrative crime, it is understood that personal interest guarantees the lodging of a complaint.

But it is easy to foresee that, if it concerns a legal prescription that has no utility felt by an individual at the moment, even though the legal prescription is useful to society, each person will hesitate to come forward as accuser. In this way, by a kind of tacit agreement, the laws could fall into disuse.

Thrown into this extremity by their system, the Americans are forced to interest informers by calling them in certain cases to share in the fines.36

Dangerous measure that assures the execution of laws by debasing mores.

Above the county magistrates, there is truly no other administrative power, only a governmental power.

General Ideas on Administration in the United States

How the states of the Union differ among themselves, by the system of administration.—Town life less active and less complete

36. In case of invasion or insurrection, when the town officers neglect to provide the militia with necessary equipment and supplies, the town may be fined 200 to 500 dollars (1000 to 2700 [2500 (ed.)] francs). It can easily be imagined that, in such a case, it could happen that no one would have either the interest or the desire to take the role of accuser. Consequently, the law adds: “[the fine is] to be sued for and recovered by any person, who may prosecute for the same, [. . . (ed.) . . .] one moiety to the prosecutor.” See the law of 6 March 1810, vol. II, p. 236.

The same arrangement is found very frequently reproduced in the laws of Massachusetts.

Sometimes it is not the individual that the law incites in this way to sue public officials; it is the official who is encouraged to have the disobedience of particular individuals punished. Example: an inhabitant refuses to do the share of work assigned to him on a major roadway. The surveyor of roads must sue him; and if the surveyor has him found guilty, half of the fine comes to him. See the laws already cited, vol. I, p. 308.
as you move toward the south.—The power of the magistrate then becomes greater; that of the voter smaller.—Administration passes from the town to the county.—State of New York, Ohio, Pennsylvania.—Administrative principles applicable to all the Union.—Election of public officials or fixed term of their offices.—Absence of hierarchy.—Introduction of judicial means into the administration.

I previously announced that, after having examined in detail the constitution of the town and county in New England, I would cast a general glance over the rest of the Union.

There are towns and town life in each state; but in none of the confederated states do you find a town identical to the New England town.

As you move toward the south, you notice that town life becomes less active; the town has fewer magistrates, rights and duties; the population there does not exercise so direct an influence on town affairs; town meetings are less frequent and involve fewer matters. The power of the elected magistrate is therefore comparatively greater and that of the voter, smaller; town spirit there is less awake and less powerful.37

You begin to see these differences in the state of New York; they are already very apparent in Pennsylvania; but they become less striking when you move toward the Northwest. Most of the emigrants who go to establish the states of the Northwest come from New England, and they bring the


See in the collection entitled: Digest of the Laws of Pennsylvania, the words Assessors, Collectors, Constables, Overseers of the Poor, Supervisors of highways. And in the collection entitled: Acts of a General Nature of the State of Ohio, the law of 25 February 1824, relating to the towns, p. 412. And next, the particular arrangements relative to the diverse town officers, such as: Township’s Clerks, Trustees, Overseers of the Poor, Fence Viewers, Appraisers of Property, Township’s Treasurers, Constables, Supervisors of Highways.
administrative habits of their mother land to their adopted country. The Ohio town has much in common with the Massachusetts town.

We have seen that in Massachusetts the principle of public administration is found in the town. The town is the center where the interests and affections of men converge. But it ceases to be so the more you move toward the states where enlightenment is less universally spread and where, consequently, the town offers fewer guarantees of wisdom and fewer elements of administration. So as you move away from New England, town life passes in a way to the county. The county becomes the great administrative center and forms the intermediate power between the [central] government and the ordinary citizens.

I said that in Massachusetts county matters were directed by the court of sessions. The court of sessions is made up of a certain number of magistrates appointed by the Governor and his council. The county has no representation, and its budget is voted by the national [sic: state] legislature.

In the large state of New York, on the contrary, in the state of Ohio and in Pennsylvania, the inhabitants of each county elect a certain number of deputies; these deputies meet together to form a representative county assembly.38

The county assembly possesses, within certain limits, the right to tax the inhabitants; in this regard, it constitutes a true legislature. It simultaneously administers the county, directs the administration of the towns in several instances, and limits their powers much more strictly than in Massachusetts.r

These are the principal differences presented by the constitution of the town and county in the various confederated states. If I wanted to get into


r. In the state of New York, each town elects a deputy, and this deputy participates at the same time in the county administration and in that of the town.

In the margin: "#Ask L[ouis (ed.]) and B[eaumont (ed.)] if it is necessary to support these generalities with notes. Here either very minutely detailed notes are needed or nothing."
the details of the means of execution, there are still many other dissimilarities that I could point out. But my goal is not to give a course in American administrative law.

I have said enough about it, I think, to make the general principles that administration in the United States rests upon understood. These principles are applied in different ways; they have more or less numerous consequences depending on the place; but fundamentally they are the same everywhere. The laws vary; their physiognomy changes; the same spirit animates them.

The town and county are not constituted in the same way everywhere; but you can say that everywhere in the United States the organization of the town and county rests on the same idea: that each person is the best judge of what concerns himself alone, and the one most able to provide for his individual needs. So the town and county are charged with looking after their special interests. The state governs and does not administer. Exceptions to this principle are found, but not a contrary principle.

The first consequence of this doctrine has been to have all the administrators of the town and county chosen by the inhabitants themselves, or at least to choose these magistrates exclusively from among the inhabitants.

The second, to put into their hands the administration of nearly all the interests of the town and county.

The state has retained the power to impose laws on all the towns and counties, but it has not put into the hands of any official the power to direct the administration in a general way.

s. “To place.

 Jealousy of legislatures against intermediate bodies.

In New England the justice of the peace prepares the county budget; it is the legislature that votes on it. In the state of New York it is a representation of the county that votes on the tax, but its power is confined to very narrow limits” (YTC, CVh, 5, p. 13).

t. Hervé de Tocqueville: “It seems to me that you cannot say as positively that these administrators are chosen by the inhabitants since you have taught us that the justices of the peace are chosen by the Governor” (YTC, CIIIb, 2, p. 111). Cf. note 48.

[*]. I say this because in the laws of Tennessee, which are probably those found among all those of Virginian descent, the justices of the peace or magistrates composing the county court (who hold their offices during good behavior) are in charge of the entire administration. I believe that it is purely and simply the English system.
Since administrators everywhere are elected or at least irrevocable, the result has been that rules of hierarchy have not been able to be introduced anywhere. So there are nearly as many independent officials as offices. Administrative power finds itself scattered among a multitude of hands.

Since administrative hierarchy exists nowhere and administrators are elected and irrevocable until the end of their term, the obligation followed to introduce courts, more or less, into the administration. From that comes the system of fines, by means of which the secondary bodies and their representatives are forced to obey the law. This system is found from one end of the Union to the other.

The power of suppressing administrative crimes or of taking administrative actions as needed has not been granted, moreover, to the same judges in all the states.

The Anglo-Americans have drawn the institution of the justices of the peace from a common source; it is found in all the states. But they have not always taken advantage of it in the same way.

Everywhere the justices of the peace take part in the administration of the towns and counties,39 either by administering them directly or by suppressing certain administrative crimes committed in them. But in most states, the most serious of these crimes are submitted to ordinary courts.

Election of administrative officials, or irremovability from office, lack of administrative hierarchy, and introduction of judicial measures into the government of society at the secondary level are, therefore, the principal

39. *There are even states in the South where the magistrates of the county courts are charged with all details of the administration. See* The Statutes of the State of Tennessee, *the art. Judiciary, Taxes . . . .*

u. Hervé de Tocqueville: “If there are states where the court of sessions is charged with all details of the administration, what becomes in these states of the town spirit so praised by the author?

“It would seem, from the end of the chapter, that certain states are beginning to feel the disadvantage of excessive decentralization. This consideration must be weighed by the author in the following chapter” (YTC, CIIIB, 2, p. 77).
characteristics by which American administration, from Maine to Florida, is recognized.\textsuperscript{v}

There are some states where signs of administrative centralization begin to be seen. The state of New York is the most advanced along this path.

In the state of New York, officials of the central government exercise, in certain cases, a kind of supervision and control over the conduct of the secondary bodies.\textsuperscript{40} In certain other cases, they form a type of court of appeal for deciding matters.\textsuperscript{41} In the state of New York, judicial penalties

\textsuperscript{v} “No hierarchy and no centralization, character of American administration. So in the town, more powers and more magistrates than in the French town, but all independent.

“Division of powers among those charged with making them fulfill their duties. Finally, when they are concentrated, it is in a judicial body, that is to say, legal and far from arbitrary [v: slave to forms]” (YTC, CVb, p. 16).

\textsuperscript{40} Example: the running of public education is centralized in the hands of the government. The legislature appoints the members of the university, called regents; the Governor and the Lieutenant-Governor of the state are members ex officio. (Revised Statutes, vol. I, p. 456). The regents of the university visit the colleges and universities each year and submit an annual report to the legislature; their supervision is not illusory, for the following particular reasons: the colleges, in order to become corporations that can buy, sell and own, need a charter; but this charter is granted by the legislature only on the advice of the regents. Each year the state distributes to the colleges and academies the interest from a special fund created to encourage education. It is the regents who are the distributors of this money. See chap. XV, Public Education, Revised Statutes, vol. I, p. 455.

Each year, the boards of public schools are required to send a report on conditions to the superintendent of the Republic. Id., p. 488.

A similar report on the number and condition of the poor must be made annually to him. Id., p. 631.

\textsuperscript{41} When someone believes himself wronged by certain acts coming from the school commissioners (these are town officers), he can appeal to the superintendent of primary schools whose decision is final. Revised Statutes, vol. I, p. 487.

You find here and there, in the laws of the state of New York, provisions analogous to those I have just cited as examples. But in general these tentative efforts at centralization are weak and not very productive. While the highest officials of the state were given the right to supervise and direct inferior agents, they were not given the right to reward or punish them. The same man is hardly ever charged with giving the order and with suppressing disobedience; so he has the right to command, but not the ability to make himself obeyed.

In 1830, the superintendent of schools, in his annual report to the legislature, complained that several school commissioners, despite notice from him, had not forwarded the accounts.
are used less than elsewhere as an administrative measure. There, the right to bring proceedings against administrative crimes is also placed in fewer hands.\textsuperscript{42}

The same tendency is slightly felt in several other states.\textsuperscript{43} But, in general, you can say that the salient characteristic of public administration in the United States is to be prodigiously decentralized.

Of the State

I have talked about the towns and about administration; I still have to talk about the state and about government.

Here, I can move faster without fear of being misunderstood; what I have to say is found all sketched out in written constitutions that anyone can easily obtain.\textsuperscript{44} These constitutions rest on a simple and rational theory.

Most of the forms that they prescribe have been adopted by all peoples who have constitutions; they have therefore become familiar to us.

So I have only to do a brief overview here. Later I will try to judge what I am about to describe.

\textsuperscript{42} Example: the district attorney in each county is charged with suing for the recovery of all fines above 50 dollars, as long as this right has not been expressly granted by law to another magistrate. Revised Statutes, part I, chap. XII, vol. I, p. 383.

\textsuperscript{43} There are several signs of administrative centralization in Massachusetts. Example: the town school boards are charged with making an annual report to the Secretary of State. Laws of Massachusetts, vol. I, p. 367.

\textsuperscript{44} See the text of the constitution of New York.\textsuperscript{w}

w. Reproduced as an appendix in the first editions.
Legislative Power of the State

Division of the legislative body into two houses.— Senate.—House of representatives.— Different attributions of these two bodies.

The legislative power of the state is entrusted to two assemblies; the first is generally called the senate.

The senate is normally a legislative body; but sometimes it becomes an administrative and judicial body.

It takes part in administration in several ways depending on the different constitutions; but ordinarily it enters into the sphere of executive power by taking part in the choice of officials.

It participates in judicial power by judging certain political crimes and sometimes as well by ruling on certain civil actions.

Its members are always few in number.

The other branch of the legislature, usually called the house of representatives, participates in nothing related to administrative power, and takes part in judicial power only when accusing public officials before the senate.

The members of the two houses are subject almost everywhere to the same conditions of eligibility. Both are elected in the same way and by the same citizens.

The only difference that exists between them is due to the fact that the mandate of senators is generally longer than that of representatives. The second rarely remain in office more than a year; the first ordinarily hold their seats two or three years.

By granting senators the privilege of being named for several years, and by replacing them by cohort, the law has taken care to maintain, among the legislators, a nucleus of men, already used to public affairs, who can exercise a useful influence over the newcomers.

45. In Massachusetts, the Senate is vested with no administrative function.
46. As in the state of New York.

x. See conversation with Mr. Spencer (non-alphabetic notebook 1, YTC, BIIa, and Voyage, OC, V, 1, p. 68).
So by the division of the legislative body into two branches, the Americans did not want to create one hereditary assembly and another elective one; they did not intend to make one into an aristocratic body, and the other into a representative of the democracy. Nor was their goal to make the first into a support for the governing power, while leaving the interests and passions of the people to the second.\(^y\)

To divide legislative power, to slow in this way the movement of political assemblies, and to create a court of appeal for the revision of laws, such are the only advantages that result from the current constitution of the two houses in the United States.

Time and experience have shown the Americans that, reduced to these advantages, the division of legislative powers is still a necessity of the first order.

Pennsylvania alone, among all the united republics, tried at first to establish a single assembly. Franklin himself, carried away by the logical consequences of the dogma of sovereignty of the people, had worked toward this measure. The law soon had to be changed and two houses established. The principle of the division of legislative power thus received its final consecration; henceforth then, the necessity to divide legislative activity among several bodies can be considered a demonstrated truth. This theory, more or less unknown in the ancient republics, introduced into the world almost by chance, like most great truths, misunderstood among several modern peoples, has finally passed as an axiom into the political science of today.\(^z\)

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\(^y\) Division of administrative power, concentration of legislative power. \textit{American principle} (important).

The legislature most often appoints \textit{special agents} to enforce its will. Thus, power not even \textit{regular or necessary executor} of the laws.

The Governor’s veto is not a barrier to the democracy, the Governor emanating entirely from it. Only the judges are a real barrier.

Not only is power divided among several hands, but the exercise of power is divided. The Governor cannot appoint the official and direct him at the same time. \textit{Subtle and dubious}.

The institution of the senate is a barrier to the democracy because named for a longer time; they \textit{[sic]} are not as immediately subject to the fear of not being reelected (\textit{YTC}, CVb, pp. 15–16).

\(^z\) Tocqueville, it must be remembered, was part of the commission charged with
drafting the constitution of 1848. There, he defended the division of legislative power into two branches. This idea came to nothing. In his *Souvenirs* (*OC*, XII, pp. 148–87), he gives some details about it. The notes taken by Beaumont during the work of the commission offer in this regard some interesting, previously unpublished details (*YTC*, *DIVk*). Beaumont notes as follows, in a rapid and necessarily schematic fashion, Tocqueville’s answers to the proposal of Marrast concerning the creation of a single chamber (25 May 1848):

Tocqueville.—Recognizes that the cause of two chambers is lost. The state of minds is such that it would be almost dangerous to insist upon a system that [illegible word] in itself is bad only in the circumstances.

—But, necessary to show how two chambers are the only institution that can perhaps make the republic viable.

—History!

—The United States. The Constitution of the United States must be set aside; take the thirty democratic constitutions of the United States that have same social and political state as we.

—Now, in these 30 states the question of two chambers is an accomplished fact and an uncontested truth.

—Is it [that this (ed.)] historical tradition is English?

—No. Instead of following the English tradition, they broke with it. Congress began with a single assembly. Those of Massachusetts and Pennsylvania in the same way (for thirteen years in Pennsylvania); and at the end of thirteen years with a single assembly. Pennsylvania changed the system of a single assembly and adopted two chambers.

—So in France what made opinion so hostile to single chambers?

—It is a misunderstanding. Until now in Europe the system of two chambers was to give a special expression to two different elements, the aristocrat and the democrat; from that it was concluded that the establishment of two chambers was an aristocratic principle. This natural conclusion is correct, if it was a question of introducing the slightest element of aristocracy into the government.

—But is the existence of two chambers in itself a fact aristocratic by nature?

—How so! The two chambers in America are from the aristocracy!! What is it then? The two chambers are chosen by the same electors, for the same time, in the same conditions, more or less.

—Objection that if the second chamber has no use as a counterbalance to the democracy, what purpose does it serve? Then it is a superfluity.

—No.

—Even logically, it can be sustained. What is logical is that the nation be all powerful; but what [more (ed.)] contrary to logic than that the sovereignty of the nation have one or two agents.

—Now logically what purpose do two chambers serve?
Of the Executive Power of the State

What the Governor is in an American state.—What position he occupies vis-à-vis the legislature.—What his rights and duties are.—His dependency on the people.

The executive power of the state is represented by the Governor.[*] [†Not only is the Governor of each state an elected magistrate, but also he is generally elected only for a year; in this way he is tied by the shortest possible chain to the body from which he emanates.†]

Three principal uses.

1. Necessity in France of giving the executive power great force. But, certain considerable matters cannot be absolutely conducted by the executive power without any everyday control. In the United States, the Senate assists the President in certain acts, or rather controls him; treaties, choice of high officials. Body small enough to be able to act in concert with the executive power and strong because it comes from the people. This could be done, it is true, by [the (ed.)] Conseil d’État.

2. Driving impulses of democracies. Perilous and untenable situation of the executive power, in the eternal head to head of this one man and this single assembly; eternal conflict between two wills face to face. — The only means for no conflict is that the man always gives way to the assembly. Then no struggle.

3. The great disease of democracies is legislative intemperance, violence in proceedings, rapidity in actions. The advantage of two chambers is not to prevent violent revolutions, but to prevent the bad government that ends up leading to revolution.

—What means to combat the inherent vices of this single body? It is to divide it.
—Two chambers drawn from the same elements can have different thoughts however.
—Difficulty for two or three men to dominate a country when there are two chambers. Very easy when there is only one chamber.
—Utility of two considerations of a question. But there are two considerations only when there are two assemblies. Two readings do not mean two considerations. It is resubmitting a judgment to those who have made it, and who will only repeat what they judged (YTC, DIVk).

The papers of Beaumont, which contain innumerable notes on the American constitutions, are there to witness to the importance given to American constitutional history during the discussions of the constitutional commission of 1848.

[*]. See the Constitution of Massachusetts, chap. I, part II, chap 11.
It is not by chance that I have used the word *represents*. The Governor of the state in effect represents the executive power; but he exercises only some of its rights.

The supreme magistrate, who is called the Governor, is placed alongside the legislature as a moderator and adviser. He is armed with a qualified veto that allows him to stop or at least to slow the legislature’s movements as he wishes. To the legislative body, he sets forth the needs of the country and makes known the means that he judges useful to provide for those needs; for all enterprises that interest the entire nation, he is the natural executor of its will. In the absence of the legislature, he must take all proper measures to protect the state from violent shocks and unforeseen dangers.

The Governor combines in his hands all of the military power of the state. He is the commander of the militia and chief of the armed forces.

When the power of opinion, which men have agreed to grant to the law, is not recognized, the Governor advances at the head of the physical force of the state; he breaks down resistance and restores customary order.

The Governor, moreover, does not get involved in the administration of the towns and counties, or at least he participates only very indirectly by the appointment of the justices of the peace whom he cannot thereafter remove.

The Governor is an elected magistrate. Care is even taken, generally, to elect him only for one or two years; in this way, he always remains narrowly dependent on the majority that created him.

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47. *In practice, it is not always the Governor who carries out the enterprises conceived by the legislature; often, at the same time that the latter votes a principle, it names special agents to oversee its execution.*

48. *In several states, the justices of the peace are not appointed by the Governor.*

   a. The manuscript says: “... he is tied by the shortest possible chain to the body from which he emanates.”

   Édouard de Tocqueville: “This sentence is absolutely unintelligible. Why? What do you mean by the body from which he emanates? From what body does he emanate? And how is he tied to this body by the shortest possible chain by the fact that he is named for only two years? I repeat, I do not understand this paragraph at all” (YTC, CHhb, 2 p. 112).

   b. In the manuscript, at the end of the first chapter, is a cover sheet with the title:
Of the real influence that the President exercises in the conduct of public affairs [in the margin: Real and habitual influence in foreign affairs, almost entirely personal influence in domestic affairs./Study to do.]; in it, the following fragment on the Governor is found:

[The beginning is missing] The first of these two obligations is marked out in a clear and precise manner.

The second depends essentially on the circumstances that give it birth.

Among most nations, the same man or at least the same authority is charged with fulfilling these two obligations. He sees to it by himself or through his agents that order reigns, and when order begins to be disturbed, by some violent shock, some unforeseen event, he is still the one who temporarily takes the place of the missing national will and takes charge of remedying the evil.

In America, it is rarely so; the Governor is only occasionally charged with the peaceful execution of the laws. His functions consist, above all, of overseeing in a general manner the state of society, of enlightening the legislative body with his advice and of providing for the accidental needs of the state.

[In the margin: in a way, the Governor participates in legislative power by the veto.

In executive power by the administrative council.

In France it is the same man who is charged.

Start with the extreme concentration of powers.

There are some countries where the legislative, administrative and judicial powers are united.

There are some others where the legislative power is separate from the other two.

There are still others.] Thus, it is not the Governor who is charged with using his authority to see that the towns execute their duties faithfully and punctually. If the legislature orders the opening of a canal or road, it is not generally the Governor who is charged with supervising the projects. The legislative power, at the same time it votes the principle, appoints special agents to supervise the execution.

But if an unforeseen danger emerges, if an enemy appears, if an armed revolt breaks out, then the Governor truly represents the executive power of the State. He commands and directs the police force.

In the accidental cases that I have just enumerated, the concentration of power on a single head is an indispensable condition for the existence of societies; thus the Governor of a state in America is the sole and absolute leader of the armed force.

But as for the daily, peaceful execution of the laws, powers are still divided to a degree that our imagination can scarcely conceive.

[In the margin: Only it is not judicial strength that comes to add to administrative strength. It is administrative strength that comes to join with judicial strength; now, liberty never has to fear judicial strength./

Concentration of powers and administrative hierarchy are two synonymous words, for where there is hierarchy you necessarily arrive at unity by moving upward.

Concentration of power is not a necessity so absolute./]
Of the Political Effects of Administrative Decentralization in the United States

*Distinction to establish between governmental centralization and administrative centralization.*—*In the United States, no*

I am beginning to believe that it is *definitely* the judicial power that *administers*. In America, therefore, you arrive, in a round about way, at the union of administrative and judicial powers.

In order to understand this part of my subject well, I take the most robust individual with whom the state would have to deal, that is to say the town, and I ask how the town is made to obey the laws.

Here reread my town notes.

c. Letter of Édouard de Tocqueville to his brother, Alexis:

St Germain, 15 June [1834 (ed.)].

I have read and examined your chapter very attentively, my dear friend; I send you the notes and remarks that I have made about it, as well as some observations that I have added to those of your father. All that you say about centralization is remarkable and well considered, but this chapter, the last in this thick folder, will be the subject of the most serious criticism from me.

The general tone of your work is serious, impartial, philosophical. You see things there in too lofty a way for your expressions to reveal passion. We guess your opinion, your sympathies, but you leave the need to conclude to the reader; you just accumulate enough facts and reasons, leading to the conclusion you desire, to carry the reader there inevitably; that is what a tightly reasoned work should do. The author should stay behind the curtain and be content to produce conviction without insisting upon it and saying: as for me, here is the conclusion that I draw from all this. This personal opinion adds nothing to the strength of reasoning, and can harm it to the extent that this perfect impartiality that inspires confidence is no longer seen in the author. I find, therefore, that in this last chapter you are too much on stage; you enter the lists armed with your personal opinion; you apply your principles to France; you enter into politics; it is no longer simply logical, clear and profound deduction from facts and institutions attentively studied that you present to the reader, but your own ideas about these facts, these institutions, about their consequences and their application. You judge, when the reader must be allowed to judge; you must only put all the pieces of evidence before him. His good sense must do the rest, and it will do so if your book is good.

Consider carefully that your book must not carry the date 1834, nor even the colors of France; to live in posterity, it must be removed from the influences of time and place.

To conclude: I believe that this chapter will be entirely as strong and stronger, when you have cut from it all that reveals the polemical and when you content your-
Centralization is a word repeated constantly today, and, in general, no one
tries to clarify its meaning.

Two very distinct types of centralization exist, however, that are impor-
tant to know well.

Certain interests are common to all parts of the nation, such as the for-

tmation of general laws and the relationships of the people with foreigners.

Other interests are special to certain parts of the nation, such as town

terprises, for example.

To concentrate in the same place or in the same hands the power to direct
the first is to establish what I will call governmental centralization.d
To concentrate in the same way the power to direct the second is to establish what I will name administrative centralization.$^e$

There are points at which these two types of centralization merge. But by taking, as a whole, the matters that fall more particularly in the domain of each of them, we easily manage to distinguish them.$^f$

It is understood that governmental centralization acquires immense strength when it is joined with administrative centralization. In this way, it accustoms men to making a complete and continuous abstraction of their will, to obeying, not once and on one point, but in everything and every day. Then, not only does it subdue them by force, but also it captures them by their habits; it isolates them and then, within the common mass, catches hold of them, one by one.

These two types of centralization lend each other mutual aid, attract each other; but I cannot believe that they are inseparable.

Under Louis XIV, France saw the greatest governmental centralization that could be imagined, since the same man made general laws and had the power to interpret them, represented France to the outside world and acted in its name. L’Etat, c’est moi, he said; and he was right.$^g$

to the State, the duty to do everything inside and outside that is of general interest and is therefore in the interest of the State. The State must do everything in the country that matters strongly to it, either in the department or in the town.

The State must not intervene in what interests only the locality (YTC, DIVk).

e. “Administrative centralization does not create strength within a nation, but despotism” (YTC, CVb, p. 25).

f. Variant: “The first, which I will call governmental centralization, is the concentration in a single hand or in the same place of the great social powers. The power to make the general laws and the strength to force obedience to them. The direction of the foreign affairs of the State and the means to succeed in them.

The second type of centralization, which I will name administrative centralization, is the concentration in a single hand or in the same place of the power to regulate the ordinary affairs of society, to rule the diverse parts of the State in the direction of their special affairs and to be in charge of the daily details of their existence.”

g. “In France the administrative power has been placed at the center, not because it was in itself more useful there, perhaps the opposite, but in order to increase political power, which is different” (YTC, CVb, p. 10).
Under Louis XIV, however, there was much less administrative centralization than today. h

h. In the essay on the French administration drafted in response to the request for information from his son, Hervé de Tocqueville remarks:

In the state of things as set up by the charter of 1814, the King is present everywhere. He has command over individual wills in order to unite them against the common danger. His action makes itself felt in all parts of the administration. Without him, it can do nothing; it moves if he allows; it stops when he so commands. We still do not know what the consequences will be of the notable changes that have taken place since 1830. Will not the principle of election introduced into the formation of all the conseils inspire in the provincial bodies pretensions of independence that are difficult to suppress; and will not this same principle applied to the nomination of officers of the national guard harm the passive obedience imposed on this armed force for public security? The newspapers that call themselves royalist ask for the reestablishment of the old provinces and insist daily on the creation of provincial assemblies that would be charged with the direction of local affairs. It is probable that these assemblies would tend constantly to increase their own power and that France would soon be no more than a vast federation, the weakest of governments, in the middle of the compact monarchies that surround it (YTC, CIIIe, pp. 38–39).

After having praised the effects of centralization on the accountability of the French towns, he adds:

The tutelage of the King is excellent because it prevents poorly planned undertakings, useless or superfluous expenditures and the waste of funds. But one wonders if it has not gone too far, or rather if it is not surrounded by too many formalities. It seems that a part of the things that must be submitted to the ministry of the interior could be decided by the provincial authority (Ibid., p. 40).

And further along:

It will be concluded from what precedes that, if centralization has become a little too extensive in the relations between superior and inferior authorities, it becomes difficult to bear, above all, when it is exerted over the portion of private interests that are discussed and regulated administratively. In summary, it is useful to keep the tutelage of the administration in what concerns administrative expenditures. . . . Royal intervention in the affairs of the towns should be limited to the authorization to sell, acquire, exchange and borrow. Then again, small loans could be authorized by the prefect (Ibid., pp. 41–42).

It is difficult to establish the precise influence that the report of the author’s father, the letters of Chabrol and Blosseville, the conversations and correspondence with Sparks had on the formation of Tocqueville’s ideas on centralization. If all of this material was able to help him clarify several points, it seems that his ideas on centralization date at least from the first days of his journey on American territory.

In a letter to his father of 3 June 1831, that is, four months before asking for help,
In our time, we see a power, England, where governmental centralization is carried to a very high degree; the State there seems to move like a single man; at will, it rouses immense masses, gathers and delivers, wherever it wants, the utmost of its strength.

England, which has done such great things for the last fifty years, does not have administrative centralization.

For my part, I cannot imagine that a nation could live or, above all, prosper without strong governmental centralization.

Tocqueville already referred to centralization: “All that there is of good in centralization seems to be as unknown as what there is of bad; no central idea seems to regulate the movement of the machine” (OCB, VII, p. 21). The theme is found again a month later in a letter also addressed to his father:

Here, moreover, the central government is hardly anything. It is involved only with what relates to the state as a whole; the localities arrange their affairs all by themselves. That is how they have made the republic practicable. Everywhere individual ambition finds a small center of action at hand where its activity is exercised without danger for the state. I imagine that if the Bourbons, instead of fearing the organization of the towns, had sought little by little, from the beginning of the Restoration, to give importance to the localities, they would have had less difficulty struggling against the mass of passions that were raised against them (Albany, 4 July 1831, YTC, B1a2).


Tocqueville returns to this subject in his report on Algeria (Écrits et discours politiques, OC, III, 1, especially pp. 331–38). There he denounces an excess of administrative centralization and a lack of political centralization. Algeria opens to Tocqueville a potential for political creativity in which he envisions using the theoretical tools forged in America. More than once, Tocqueville encounters in French Africa situations entirely similar to those at the beginning of the American colonies. His intervention in parliament retains a certain transatlantic flavor easy to detect. The project of buying land in Algeria with Kergorlay, which would come to nothing, is there to attest to his interest in the colony. See the reports and parliamentary interventions, published in the Moniteur Universel, 24 and 25 May, and 1, 9, 10, 11, and 12 June 1847 (reproduced in OCB, IX, pp. 423–512, and in Écrits et discours politiques, OC, III, 1, pp. 308–409). His travel notes and other writings on Algeria also contain numerous references to centralization and to other American subjects. Cf. note f for p. 1210 of volume II.
But I think that administrative centralization is suitable only to enervate the peoples who submit to it, because it constantly tends to diminish the spirit of citizenship in them.\textsuperscript{j} Administrative centralization, it is true, succeeds in gathering at a given time and in a certain place all the available forces of a nation, but it is harmful to the multiplication of those forces. It brings the nation victory on the day of battle and over time reduces its power. So it can work admirably toward the passing greatness of a man, not toward the lasting prosperity of a people.\textsuperscript{k} [\textless\# I see there an element of despotism, but not of lasting national strength [in pencil: that would be].\textgreater\]

You must be very careful; when someone says that a State is unable to act because it has no centralization, he is, without knowing it, almost always talking about governmental centralization.\textsuperscript{m} The German empire, it is said repeatedly, has never been able to gain all that it possibly could from its forces. Agreed. But why? Because national force has never been centralized there; because the State has never been able to compel obedience to its general laws; because the separate parts of this great body have always had the right or the possibility to refuse their support to the agents of the common authority, even in what concerned all citizens; in other words, because there was no governmental centralization. The same remark applies to the Middle Ages. What produced all the miseries of feudal society was that the power, not only to administer, but also to govern, was divided among a thousand hands and fragmented in a thousand ways; the absence of any governmental centralization then prevented the nations of Europe from moving with energy toward any goal.

\textsuperscript{j} In the manuscript: “… to diminish the number of citizens. …”
\textsuperscript{k} In the manuscript: “… the greatness of a man, but not that of the State.”
Moreover, like nearly all the harmful things of this world, administrative centralization is easily established and, once organized, can hardly ever be destroyed again except with the social body itself. n

When all the governmental force of a nation is gathered at one point, it is always easy enough for an enterprising genius to create administrative centralization. We ourselves have seen this phenomenon take place before our eyes. The Convention had centralized government to the highest degree, and Bonaparte needed only to will it in order to centralize the administration. It is true that for centuries in France our habits, mores and laws had always worked simultaneously toward the establishment of an intelligent and enlightened despotism. [*]

Once administrative centralization has lasted for a time, should the power that established it sincerely desire to destroy it, that same power almost always finds itself unable to bring about its ruin.

In fact, administrative centralization assumes a skillful organization of authority; it forms a complicated machine in which all the gears fit together and offer mutual support.

When the law-maker undertakes to scatter this administrative power that he has concentrated in a single place, he does not know where to begin, because he cannot remove one piece of the mechanism without disrupting the whole thing. At each moment, he sees that either nothing must be changed or everything; but what hand, so foolhardy, would dare to smash with one blow the administrative machinery of a great people?

To attempt it would be to invite disorder and confusion into the State.

The art of administration is assuredly a science, and peoples do not have more innate knowledge than individuals do. Delivered to itself without any transition, society would almost entirely cease to be administered.

Moreover, one of the greatest misfortunes of despotism is that it creates in the soul of the men submitted to it a kind of depraved taste for tranquillity and obedience, a sort of self-contempt, that ends by making them

n. In the margin: “Perhaps all of that to delete as irrelevant.”

[*]. “Truthfully, in France, the provinces have never administered themselves; it was always the authority of one man that was exercised and that regulated, directly or indirectly, all the affairs of society. Only, the administrative range was limited; the Revolution of 1789 just extended it.”
indifferent to their interests and enemies of their own rights. In nothing, however, is it more necessary for the governed themselves to show a definite and sustained will.

Nearly all the passionate and ambitious men who talk about centralization lack a real desire to destroy it. What happened to the Praetorians happens to them; they willingly suffer the tyranny of the emperor in the hope of gaining the empire. So decentralization, like liberty, is something that the leaders of the people promise, but that they never deliver. In order to gain and keep it, nations can count only on their own efforts; and if they themselves do not have a taste for it, the evil is without remedy.

Surprisingly, the same corporations, in whose name the power of self-administration has been passionately claimed, are often seen to accept without enthusiasm the portion of power granted to them and to show themselves almost eager to lay it down again, like a useless and heavy burden.

We have seen that in the United States no administrative centralization existed. Scarcely a trace of hierarchy is found there. Decentralization there has been carried to a point that no European nation could bear, I think, without a profound uneasiness, and that, even in America, produces unfortunate effects. But, in the United States, governmental centralization exists to the highest degree. It would be easy to prove that national [sic: state] power is more concentrated there than it has been in any of the old monarchies of Europe. Not only is there just a single body in each state that makes laws; not only is there just a single power able to create political life around it; but in general, the Americans have avoided bringing together numerous district or county assemblies for fear that these assemblies would be tempted to move beyond their administrative attributions and hinder the movement of the government. In America the legislature of each state is faced by no power capable of resisting it. Nothing can stop it in its tracks, neither privileges, nor local immunity, nor personal influence, not even the authority of reason, for it represents the majority that claims to be the only

0. In the margin: “<[To review the part on centralization and perhaps shorten it. Advice of Beau[mont (ed.).]>”
instrument of reason. So it has no limit to its action other than its own will. Next to it and close at hand is found the representative of the executive power who, with the aid of physical force, has to compel the discontent to obey.

Weakness is found only in certain details of governmental action.

The American republics do not have a permanent armed force to suppress minorities, but up to now minorities there have never been reduced to starting a war; and the need for an army has not yet been felt. Most often, the state uses town or county officials to act upon the citizens. Thus, for example, in New England, it is the town assessor who apportions the tax; the town tax collector levies it; the town treasurer makes sure that the tax revenue goes into the public treasury; and complaints that arise are submitted to the ordinary courts. Such a way to collect taxes is slow and awkward; at every instant it would hinder the movement of a government that had great pecuniary needs. In general, for everything essential to its exist-

p. In the manuscript: “Next to it and close at hand is found an executive power, absolute head of physical force, to compel the minorities to obedience.”
q. In a letter to Ernest de Chabrol, Tocqueville explained:

All the offices, like all the registers, have been open to us, but as for the government, we are still looking for it. It does not really exist at all. The legislature regulates everything that is of general interest; the municipalities have the rest.

The advantage of this arrangement is to interest each locality very actively in its own affairs and greatly to feed political activity. But the disadvantage, even in America, seems to me to be to deprive the administration of any kind of uniformity, to make general measures impossible and to give to all useful enterprises a character of instability that you cannot imagine.

We are, above all, in a position to notice these effects of the lack of centralization in what relates to the prisons: nothing fixed, nothing certain in their discipline; men replace each other; with them, the systems; the methods of administration change with each administrator, because no central authority exists that can give everything a common direction.

The United States must thank heaven that until now they have been placed in such a way that they have no need for standing armies, for police or for skillful and sustained foreign policy. If one of these three needs ever presents itself, you can predict without being a prophet that they will lose their liberty or concentrate power more and more (Auburn, 16 July 1831, YTC, Blaz).
tence, you would want the government to have officials of its own, chosen and removable by it, and to have ways to move ahead rapidly; but it will always be easy for the central power, organized as it is in America, to introduce more energetic and effective means of action, as needed.*

So it is not, as is often repeated, because there is no centralization in the United States, that the republics of the New World will perish. It can be asserted that the American governments, very far from not being centralized enough, are centralized too much; I will prove it later. Each day the legislative assemblies devour some of the remains of governmental powers; they tend to gather them all unto themselves, just as the Convention did. The social power, thus centralized, constantly changes hands, because it is subordinate to popular power. Often it happens to lack wisdom and foresight, because it can do everything. That is where the danger to it is found. So it is because of its very strength, and not as a result of its weakness, that the social power is threatened with perishing one day.†

[*]. The creation of paid and standing military bodies to suppress or to prevent insurrections has already happened in Massachusetts and in Pennsylvania. See Federalist, p. 115 [No. 28 (ed.)].

†. Variant in a draft: “. . . but because the central power is constantly in different hands and is subordinated to popular power, a power eminently variable by nature and, for this reason, incapable of governing society for long” (YTC, CVb, p. 1).

†. In a first version, under a paper glued into place: “{Executive power is nothing while remaining in their hands. This is, moreover, an inherent weakness in completely [uncertain reading (ed.)] democratic government. See the Federalist, p. 213 [No. 48 (ed.)].}”

t. In the margin:

#When a people renounces the centralization of power, the need for administrative courts is felt; now, I admit that it is always with terror that I see the administration and the judicial system concentrated in the same hands. Of all tyrannies, the worst is the one that covers itself in legal forms. Administrative courts, once subservient, seem to me one of the most fearsome instruments of despotism.

Recall the words of Montesquieu: “No tyranny is more cruel than the one you exercise under the cloak of the laws and with the colors of justice: when, so to speak, you drown the unfortunate on the very plank on which they were saved.” Considérations sur les causes de la grandeur des Romains et de leur décadence, in Œuvres complètes (Paris: Pléiade, 1951), II, chapter XIV, p. 144. Cf. note o for p. 1228 of the fourth volume.
Administrative decentralization produces several diverse effects in America.

We have seen that the Americans had almost entirely isolated administration from government; in that, they seem to me to have gone beyond the limits of healthy reason, because order, even in secondary things, is still a national interest.\(^{49}\)

The state has no administrative officials of its own, who are placed in permanent posts at different points of the territory and to whom it can give a common impulse; the result is that it rarely attempts to establish general rules of public order. Now, the need for these rules makes itself sharply felt. The European often notices their absence. This appearance of disorder, which reigns on the surface, persuades him, at first view, that there is complete anarchy in the society; it is only by examining things in depth that he corrects his error.

[This absence of national (v: central) administration often prevents the different states from engaging in certain undertakings of a general interest, the execution of which would present great difficulties if handed over to the localities and left to temporary and special agents. Besides, it is always to be feared that, without a permanent authority to centralize and supervise, the work, once done, might self-destruct.

As for differences that would make themselves felt between the administrative principles of one portion of the territory and those of another, differences that would be very great in Europe are not noticeable in America. The states are not so vast as to present examples; and above all, their population is too perfectly homogeneous and too enlightened for these differences to be lasting. All the counties, moreover, are forced to obey general laws that are the same for each of them.

\(^{49}\) The authority that represents the state, even when it does not itself administer, must not, I think, relinquish the right to inspect local administration. I suppose, for example, that a government agent, placed at a set post in each county, might refer crimes that are committed in the towns and in the county to the judiciary. In this case, would not orderly organization be more uniformly followed without compromising the independence of the localities? Now, nothing like this exists in America. Above the county courts, there is nothing; and in a way, only by chance are these courts made officially aware of administrative crimes that they must suppress.
I recognize as well that in America the views that direct the administration are rarely permanent. It is difficult to decentralize administrative power without putting a portion of it back into the hands of the people; and the people never proceed except by momentary efforts and sudden impulses.

I come to the great objection that has been made from time immemorial to the system of administrative decentralization, the objection that encompass [sic] all of the others. *

The partisans of centralization in Europe . . .

Certain enterprises interest the entire state and yet cannot be carried out because there is no national [sic: state] administration to direct them. Abandoned to the care of the towns and counties, left to elected and temporary agents, they lead to no result or produce nothing lasting.

The partisans of centralization in Europe maintain that governmental power administers the localities better than they would be able to administer themselves. Perhaps that is true, when the central power is enlightened, and the localities are not; when it is active, and they are passive; when it is in the habit of taking action, and they are in the habit of obeying. You can even understand that the more centralization increases, the more this double tendency grows; and the capacity of the one and incapacity of the other become more striking.

But I deny that this is so when the people are enlightened, alert to their interests, and accustomed to consider them as they do in America.

I am persuaded, on the contrary, that in this case the collective strength of the citizens will always be more powerful for producing social well-being than the authority of the government.

I admit that it is difficult to indicate with certainty how to awaken a people who are asleep, how to give them the passions and enlightenment that they lack. To persuade men that they should take charge of their own affairs is, I am aware, a difficult enterprise. Often it would be less awkward to interest them in the details of court etiquette than in the repair of their town hall [[and I would conclude, if you want, that there are certain nations [v: peoples] who cannot do without despotism.]].

But I also think that when the central administration claims to replace
completely the free participation of those who have the primary interest, it is mistaken or wants to deceive you.

A central power, as enlightened, as skillful as can be imagined, cannot by itself encompass all the details of the life of a great people. It cannot, because such a task exceeds human power. When, on its own, it wants to create and put into operation so many different mechanisms, it either contents itself with a very incomplete result or exhausts itself in useless efforts.

Centralization easily manages, it is true, to subject the outward actions of men to a certain uniformity that is ultimately loved for itself, apart from the things to which it is applied; like the devout who worship the statue, forgetting the divinity it represents. Centralization succeeds without difficulty in imparting a steady appearance to everyday affairs; in skillfully dictating the details of social order; in suppressing slight disturbances and small transgressions; in maintaining society in a status quo which is not exactly either decadence or progress; in keeping a kind of administrative somnolence in the social body that administrators customarily call good order and public tranquillity.50 In a word, it excels at preventing, not at doing. When it is a matter of profoundly shaking society or moving it rapidly, centralization loses its strength. As soon as its measures need the support of individuals, you are totally surprised by the weakness of this immense machine; it suddenly finds itself reduced to impotence.

Then sometimes centralization, in desperation, tries to call citizens to its aid. But it says to them: “You will act as I want, as long as I want, and exactly in the way that I want. You will take charge of these details without aspiring to direct the whole; you will work in the shadows, and later you will judge my work by its results.” Under such conditions you do not gain the support

50. China seems to me to offer the most perfect symbol of the type of social well-being that can be provided by a very centralized administration to the people who submit to it. Travelers tell us that the Chinese have tranquillity without happiness, industry without progress, stability without strength, physical order without public morality. Among them, society functions always well enough, never very well. I imagine that when China opens to Europeans, the latter will find there the most beautiful model of administrative centralization that exists in the universe.
of human will, which requires liberty in its ways, responsibility in its actions. Man is made so that he prefers remaining immobile to moving without independence toward an unknown end.u

[During the almost forty years that we in France have completed the system of administrative centralization, what great improvement has been introduced into the state of the civilization of the people? Who would compare our social progress to that of the English during the same period? But, centralization does not exist in England.]

I will not deny that in the United States you often regret the lack of those uniform rules that seem constantly to watch over each of us.

From time to time, great examples of unconcern and of social negligence are found there. Here and there crude blemishes appear that seem completely at odds with the surrounding civilization.

Useful undertakings that require constant care and rigorous exactitude in order to succeed often end up being abandoned; for in America, as elsewhere, the people proceed by momentary efforts and sudden impulses.v

The European, accustomed to finding an official constantly at hand who gets involved in nearly everything, becomes used to these different mechanisms of town administration with difficulty. In general it can be said that the small details of social order that make life pleasant and easy are neglected in America; but the guarantees essential to man in society exist there as much as everywhere else. Among the Americans, the force that administers the State is much less stable, less enlightened, less skillful, but is one hundred times greater than in Europe. When all is said and done, there is no country in the world where men make as many efforts to create social well-being. I know of no people who have managed to establish schools so numerous and so effective; churches more appropriate to the religious needs of the inhabitants; town roads better maintained. So, in the United States, do not look for uniformity and permanence of views, minute attention to

u. To the side, in the manuscript: “#Louis advises placing this elsewhere, but where?#”

v. In the margin: “#[The small details of] social [order] are generally neglected, but in short the guarantees essential to man in society exist as much in America as everywhere else.#”
details, perfection in administrative procedures.51 What is found there is the image of strength, a little wild, it is true, but full of power; of life, accompanied by accidents, but also by activities and efforts.x

I will admit, moreover, if you want, that the villages and counties of the United States would be administered more profitably by a central authority that was located far from them and remained unknown to them, than by officials drawn from within. I will acknowledge, if you insist, that more security would reign in America, that wiser and more judicious use of social resources would be made there, if the administration of the entire country were concentrated in a single hand. The political advantages that the Americans gain from the system of decentralization would still make me prefer it to the opposite system.

51. A talented writer who, in a comparison between the finances of the United States and those of France, proved that the mind could not always make up for knowledge of facts, rightly reproaches the Americans for a type of confusion that prevails in their town budgets; and, after giving the model of a departmental budget in France, he adds: “Thanks to centralization, admirable creation of a great man [which is slandered without knowing it (ed.)], municipal budgets, from one end of the kingdom to the other, those of the largest cities, like those of the most humble towns, show the same order and method.” That, certainly, is a result that I admire; but I see most of these French towns, whose accounts are so perfect, plunged into a profound ignorance of their true interests and given over to an apathy so invincible, that society there seems rather to vegetate than to live; on the other hand, I notice in these same American towns, whose budgets are not drawn up according to methodical or, above all, uniform plans, an enlightened, active, enterprising population; there I gaze upon a society always at work. This spectacle astonishes me; for in my eyes the principal end of a good government is to produce the well-being of peoples and not to establish a certain order in the midst of their misery. So I wonder if it would not be possible to attribute to the same cause the prosperity of the American town and the apparent disorder of its finances, the distress of the French town and the perfection of its budget. In any case, I distrust a good that I find intermingled with so much evil, and I am easily consoled about an evil that is offset by so much good.


x. “The admirable effect of republican governments (where they can subsist) is not to present a glimpse of regularity, of methodical order in the administration of a people, but the picture of life. Liberty does not carry out each of its enterprises with the same perfection as intelligent despotism, but in the long run, it produces more than intelligent despotism” (pocket notebook 3, YTC, BIIa, and Voyage, OC, V, 1, p. 184).
So what, after all, if there is an authority always at the ready, [[that muzzles dogs [v: waters public walkways] during the heat wave, that breaks up river ice during the winter]] that makes sure that my pleasures are peaceful, that flies before my steps to turn all dangers aside without the need for me even to think about them; if this authority, at the same time that it removes the smallest thorn from my route, is absolute master of my liberty and life; if it monopolizes movement and existence to such a degree that everything around it must languish when it languishes, sleep when it sleeps, perish if it dies?

There are such nations in Europe where the inhabitant considers himself a sort of settler, indifferent to the destiny of the place where he lives. The greatest changes occur in his country without his participation; he does not even know precisely what happened; he surmises; he has heard about the event by chance. Even more, the fortune of his village, the policing of his street, the fate of his church and his presbytery have nothing to do with him; he thinks that all these things are of no concern to him whatsoever, and that they belong to a powerful stranger called the government. [v: At each moment, you think you hear him say: what concern is this to me; it is the business of the authorities to provide for all of this, not mine.] As for him, he enjoys these benefits like a usufructuary, without a sense of ownership and without ideas of any improvement whatsoever. This disinterestedness in himself goes so far that if his own security or that of his children is finally compromised, instead of working himself to remove the danger, he crosses his arms to wait until the entire nation comes to his aid. Moreover, this man, even though he has so completely sacrificed his own free will, likes to obey no more than anyone else. He submits, it is true, to the will of a clerk; but, like a defeated enemy, he likes to defy the law as soon as power withdraws. Consequently, you see him oscillate constantly between servitude and license.

When nations have reached this point, they must modify their laws and mores or perish, for the source of public virtues has dried up; subjects are still found there, but citizens are seen no more.

I say that such nations are prepared for conquest. If they do not vanish from the world stage, it is because they are surrounded by similar or inferior nations. It is because within them there still remains a kind of indefinable
patriotic instinct, I do not know what unthinking pride in the name that the nation carries. It is because there still remains I do not know what vague memory of past glory, not precisely linked to anything, but enough to impart an impulse of preservation as needed.

You would be wrong to reassure yourself by thinking that certain peoples have made prodigious efforts to defend a native land where, so to speak, they lived as strangers. Be very careful here, and you will see that in that case religion was almost always their principal motive.

For them, the duration, glory or prosperity of the nation had become sacred dogmas, and by defending their native land, they also defended this holy city in which they were all citizens.

The Turkish populations have never taken any part in the direction of the affairs of society; they accomplished immense enterprises, however, as long as they saw the triumph of the religion of Mohammed in the conquests of the Sultans. Today religion is disappearing; despotism alone remains for them; they are in decline.y

y. Original version in one of the drafts:

There are peoples living under despotism who have a great sentiment of nationality, however; you see them making immense sacrifices to save a native land where they live without interests and without rights.

But then be very careful here; for them, it is always religion which takes the place of patriotism.

For them, the duration, glory or prosperity of the nation is a religious dogma. By defending their country, they defend this holy city in which they are all citizens.

The Turkish populations have never taken any part in the direction of the affairs of society. They accomplished immense things, however, as long as they saw the triumph of the religion of Mohammed in the conquests of the Sultan. Today religion is disappearing; only despotism remains for them, and they are in decline.

The Russian, who does not even have an interest in the land on which he was born, is one of the bravest soldiers of Europe; and he burns his house and harvest to ruin the enemy. But it is the Holy Empire that he defends, and when he dies for his country, heaven opens and his reward is ready.

Despotic governments are made formidable when the peoples they direct are transformed by a religious enthusiasm. Then the unity of power, instead of harming the social power, does nothing more than direct it; nations in this condition have the strength of free peoples, without the disadvantages of liberty. Forces are combined and there is a single direction. Their impact is nearly irresistible... Then a strange thing happens: the harder and more oppressive the government, the more it does
Montesquieu, by giving despotism a strength of its own, gave it, I think, an honor that it did not deserve. Despotism, all by itself, can sustain nothing lasting. When you look closely, you notice that what made absolute governments prosper for a long time was religion, and not fear.

No matter what, you will never find true power among men except in the free participation of wills. Now, in the world, only patriotism or re-

great things; the more unfortunate the nation, the more it makes the effort to protect a soil that it does not possess; the less these men cling to life, the better they defend it. It is not with this world in view that religious people act in this way; and the more miserable they are, the more easily they die.

Montesquieu, by giving despotism a lasting strength, gave it an honor that it does not deserve. Despotism is something so bad by nature that, all by itself, it can neither create nor maintain anything. Fear, all by itself, can only serve for a while.

When you look closely, you notice that what makes absolute governments last and act is religion, and not fear; religion, principle of strength that they use, but that is not in them. When a nation still enslaved ceases to be religious, there is no human means to keep it bundled together for long.

In summary, I am profoundly convinced that there is no lasting strength except in the collaboration of human wills. So to apply this force to the preservation of societies, men must have an interest in this world or the other (YTC, CVe, pp. 55–57).

Tocqueville defends the preeminence of social and intellectual habits over laws; it is therefore inevitable that he finds Montesquieu’s idea of despotism based far too much on legal criteria. The author seems to be more concerned with the problems envisioned by Montesquieu than with the solutions he proposes, which does not, for all that, reduce the influence of the author of *Esprit des lois*. Nonetheless, Kergorlay denies a stylistic influence of Montesquieu on his friend (“Étude littéraire sur Alexis de Tocqueville,” Correspondant 52 (1861): 758–59): “I would not go so far as to say that Tocqueville never, at any period of his literary life, sought in Montesquieu some models to follow. But it was only in a quite secondary manner, not very lasting and not very effective.” On the other hand, Kergorlay recognizes the influence of Pascal, Voltaire and La Bruyère. On the influence of Montesquieu, see Melvin Richter, “Modernity and Its Distinctive Threats to Liberty: Montesquieu and Tocqueville on New Forms of Illegitimate Domination,” in Michael Hereth and Jutta Höfken, eds., Alexis de Tocqueville. Zur Politik in der Demokratie, Baden Baden: Nomos, 1981, pp. 362–98.

2. Édouard de Tocqueville: “How did Louis XIV, Peter the Great, Frederick, Bonaparte, not give great power to their nations? And with them what became of the free collaboration of wills?” (YTC, CIIIb, 2, p. 113).
ligion can make the totality of citizens march for long toward the same goal. It does not depend on the laws to revive beliefs that are fading; but it does depend on the laws to interest men in the destinies of their country. It depends on the laws to awaken and to direct that vague patriotic instinct that never leaves the human heart, and, by linking it to thoughts, passions, daily habits, to make it into a thoughtful and lasting sentiment. And do not say that it is too late to try; nations do not grow old in the same way that men do. Each generation born within the nation is like a new people who comes to offer itself to the hand of the law-maker.

What I admire most in America are not the administrative effects of decentralization, but its political effects. In the United States, country makes itself felt everywhere. It is an object of solicitude from the village to the whole Union. The inhabitant becomes attached to each of the interests of his country as to his very own. He glories in the glory of the nation; in the successes that it achieves, he believes that he recognizes his own work, and he rises with them; he rejoices in the general prosperity that benefits him. For his country, he has a sentiment analogous to that you feel for your family, and it is even by a kind of egoism that he is interested in the State.

Often the European sees in the public official only force; the American sees the law. So it can be said that in America, a man never obeys a man, but obeys justice or the law.

Consequently, he has conceived an often exaggerated, but almost always salutary opinion of himself. Without fear, he relies on his own powers that seem to him all sufficient. An individual conceives the idea of some enterprise; even if this enterprise has some direct connection with the well-being of society, it does not occur to him to address himself to public authority to gain its support. He makes his plan known, offers to carry it out, calls other individual powers to his aid, and struggles hand-to-hand against all obstacles. Often, doubtless, he succeeds less than if the State took his place; but in the long run the general result of all of these individual undertakings surpasses by a great deal what the government would be able to accomplish.\[a\]

\[a\] The example was provided to Tocqueville by Mr. Quincy, President of Harvard
Since administrative authority is placed next to the administered, and in a way represents them, it excites neither jealousy nor hate. Since its means of action are limited, each person feels that he cannot rely on it alone. So when the administrative power intervenes within the circle of its attributions, it does not find itself alone, as in Europe. No one believes that the duties of individuals have ceased because the public representative happens to act. On the contrary, each person guides, supports and sustains him. By joining the action of individual powers with the action of social powers, you often succeed in doing what the most concentrated and energetic administration would be unable to carry out.¹

I could cite many facts to support what I am advancing; but I prefer to present only one and to choose the one I know best.

In America, the means put at the disposal of authority to uncover crimes and to pursue criminals are few.

Police control does not exist; passports are unknown. Officers of the court in the United States cannot be compared to ours. The agents of the public prosecutor’s office are few; [they do not communicate with each other;] they do not always have the right to initiate legal proceedings; preliminary investigation is rapid and oral. I doubt, however, that, in any country, crime as rarely escapes punishment.

The reason for it is that everyone believes himself interested in providing proof of the crime and in catching the offender.

I saw, during my stay in the United States, the inhabitants of a county, where a great crime had been committed, spontaneously form committees for the purpose of pursuing the guilty party and delivering him to the courts.

In Europe, the criminal is an unfortunate who is fighting to hide from the agents of power; the population in a way helps in the struggle. In America, he is an enemy of the human species, and he has all of humanity against him.

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¹ University, 20 September 1831 (non-alphabetic notebooks 1 and 2, YTC, BIIa, and Voyage, OC, V, 1, pp. 89–90).
I believe provincial institutions useful to all peoples; but none seems to me to have a more real need for these institutions than the one whose social state is democratic. In an aristocracy, a certain order is sure to be maintained in the midst of liberty. Since those who govern have a great deal to lose, order has a great interest for them. In an aristocracy, it can be said as well that the people are sheltered from the excesses of despotism, because organized forces are always found, ready to resist the despot. A democracy without provincial institutions possesses no guarantee against similar evils. How can a multitude that has not learned how to make use of liberty in small things, be made to support it in larger ones? How to resist tyranny in a country where each individual is weak, and where individuals are united by no common interest? So those who are afraid of license and those who fear absolute power must equally desire the gradual development of provincial liberties.\(^b\)

I am convinced, moreover, that there are no nations more at risk of falling under the yoke of administrative centralization than those whose social state is democratic. Several causes lead to this result, but among others, these: The permanent tendency of these nations is to concentrate all governmental power in the hands of the single power that directly represents the people, because, beyond the people, nothing more is seen except equal individuals merged into a common mass.

\(^b\) Once a man has contracted the habit of obeying a foreign and arbitrary will in nearly all the actions of his life, and notably in those that come closest to the human heart, how do you expect him to conceive a true taste for great political liberty and independence in general actions? Town institutions not only give the art of using great political liberty, but they bring about the true taste for liberty. Without them, the taste for political liberty comes over peoples like childish desires or the hotheadedness of a young man that the first obstacle extinguishes and calms (YTC, CVh, 1, pp. 1–2; the same fragment is found, almost word for word, in YTC, CVe, p. 61).
Now, when the same power is already vested with all the attributes of government, it is highly difficult for it not to try to get into the details of administration [[so you often see democratic peoples simultaneously establish liberty and the instruments of despotism]]; and it hardly ever fails to find eventually the opportunity to do so. We have witnessed it among ourselves.

[If we shift our view to times closer to us, we see a strange confusion prevailing in most of the States of Europe. Kings descend into the administration of [the narrowest communal interests].]

In the French Revolution, there were two opposing movements that must not be confused: one favorable to liberty, the other favorable to despotism.

c. In the margin: “That is, you have wanted to make a city without citizens, a republic with subjects [and transform servants of a clerk into republicans] [and place the spirit of liberty in the very midst of servitude].” On the idea of citizenship as participation, see Doris S. Goldstein, “Alexis de Tocqueville’s Concept of Citizenship,” Proceedings of the American Philosophical Society 108, no. 1 (1964): 39–53.

d. “Ask Mr. Feuillet if there is a book that can give basic ideas about the French constitution in 1789” (YTC, CVb, p. 33). Feuillet was the librarian at the Bibliothèque Royale. See note v for pp. 1110–13 of the fourth volume.

e. Of centralization.

When you speak about centralization you are constantly struggling in the shadows because you have not made the distinction that I established above between governmental centralization and administrative centralization.

You blame or praise without knowing why.

There are people who cite as one of the advantages of centralization the establishment of the present system where everything ends at a supreme court. As one of the proofs of the evils caused by decentralization, they cite the old system of parlements. They do not see that the system of parlements was a gross abuse and not a natural consequence of the system of decentralization. If there is one thing in the world that is a national necessity, it is the unity of law. For the law to be one, two things are needed: 1. that it comes from a single authority, 2. that it is interpreted by a single authority. For to interpret the law is, in a way, to make it again. That is how all the American republics have understood it.

A judicial system where seventeen sovereign courts can interpret the same law at the same time, on the same question, in seventeen different ways is a political mon-
For a nation to bear such a division of the judicial system without itself dividing, all the real power in the nation must be in hands other than judicial ones. That is what happened in France, where the King easily made his will prevail over the courts in all things that essentially concerned politics and acutely interested the State, and where he let anarchy reign only on secondary points that did not matter much to the general course of public affairs. That was a necessary cure, but one almost as bad as the illness. Interpretation, instead of being made by a central judicial power, was made by a (illegible word) council [v: power]. France of the old regime, already much too centralized relative to several objects, was evidently not centralized enough on the former. And when the partisans of decentralization stand on this ground, they are wrong. They defend what they should concede at the beginning.

What has caused our greatest misfortunes in France is that there is a host of excellent principles that we have never known and felt except by their exaggerated consequences. Strange thing! We have often experienced the abuse of the thing, without knowing the thing itself. Decentralization is among this number. Apart from our continental situation, which has always made us feel more acutely the need for the concentration of power, decentralization has never appeared to us other than as a division of the essential rights of sovereignty, that is, as the most active agent of oppression and anarchy. Today, we have not learned better; the word decentralization represents in our mind only a multitude of small sovereigns, judging with sovereignty, dispensing justice, coining money. And for us, it is even quite difficult to place this power, divided in this way, in hands other than those of an envious, haughty, exclusive aristocracy. Iudex irae.

England, on the contrary, alone among all the peoples of Europe, had the good fortune that, from the beginning, the part of the central power was largely established. In that country, the system of decentralization, contained right away within true limits, awakens only ideas of order, prosperity and glory. The system of decentralization made and still makes the strength of England. England had strong and despotic kings at a time when royalty was too crude to want to take charge of everything. The kings created governmental centralization; the mores and the social state, administrative decentralization.

Moreover, we must not be mistaken about this. It is democratic governments that arrive most quickly at administrative centralization while losing their political liberty. Aristocracies struggle an infinitely longer time, because the power of resistance is greater in each of the parts of the social body organized in this way.

1. The American Union, which is a confederation, is more centralized on this point than was the absolute monarchy of France.

2. Thus in France, when the King intervened in the administration of justice, the abuse of governmental centralization was pointed out; when, on the contrary, the courts were free to establish judicial anarchy, all minds felt the abuse of administrative decentralization. But no one perceived the precise limits of the one and the other” (YTC, CVe, pp. 57–60, and BIIb, pp. 6–8).
In the old monarchy, the King alone made the law. Below the sovereign power were found some remnants, half destroyed, of provincial institutions. These provincial institutions were incoherent, poorly ordered, often absurd. In the hands of the aristocracy, they had sometimes been instruments of oppression.

The Revolution has declared itself against royalty and provincial institutions at the same time. It has mingled in the same hatred all that had preceded it, absolute power and what could temper its rigors; it has been simultaneously republican and centralizing.

This double character of the French Revolution is a fact that the friends of absolute power have laid hold of with great care. When you see them defend administrative centralization, do you think that they are working in favor of despotism? Not at all; they are defending one of the great conquests of the Revolution. In this way, they can remain a man of the people and an enemy of the rights of the people, secret servant of tyranny, and declared friend of liberty.

I have visited the two nations that have developed the system of provincial liberties to the highest degree, and I have heard the voice of the parties dividing these nations.

In America, I found men who secretly longed to destroy the democratic institutions of their country. In England, I found others who openly attacked the aristocracy; I did not meet a single one who did not view provincial liberty as a great good.

In these two countries, I saw the ills of the State imputed to an infinity of diverse causes, but never to town liberty.

I heard citizens attribute the greatness or the prosperity of their native land to a multitude of reasons; but I heard all of them put provincial liberty in the first rank and list it at the head of all the other advantages.

When men, who are naturally so divided that they do not agree on either religious doctrines or on political theories, fall into agreement on a single

f. The manuscript indicates that Tocqueville at one moment considered the possibility of placing here a section entitled of the excellence of town institutions.

g. To the side: “Aristocrats and democrats, royalists and republicans.”
fact, a fact that they can best judge, since it occurs everyday before their eyes, am I to believe that this fact might be wrong?

Only peoples who have only a few or no provincial institutions deny their utility; that is, only those who do not know the thing at all, speak ill of it.
CHAPTER 6

Of the Judicial Power in the United States and Its Action on Political Society

The Anglo-Americans have kept all the characteristics that distinguish the judicial power among other peoples.—They have,

a. This chapter and the following one are not found in the copy read by friends and family, which suggests that they were included belatedly in the project. From the beginning of the voyage, Tocqueville, as a lawyer, showed a lively interest in how the American judicial power functioned. Notebook F of his travel notes is devoted exclusively to civil and criminal law in America (YTC, BIIа, and Voyage, OC, V, 1, pp. 296–335); and in the first plans of the book (YTC, CVh, 1, pp. 20–31) the judicial power, as well as the civil and criminal laws, occupy an important place. Beyond the notebook cited, a great number of commentaries on the American judicial power appear in the other notebooks of the travel diaries and in the correspondence. There are certain indications that Tocqueville had in particular asked his friend, Élie de Beaumont, judge at Versailles, for information about the French judicial power. We recall that Tocqueville used this method of comparing the situation in France with that in the United States when he considered centralization. A letter from Tocqueville to another magistrate, Ernest de Chabrol, dated November 26, 1831 (YTC, BI а2) contains, along with a description of the American jurisdictional organization, a reference to an earlier note on justices of the peace; the note was a reflection made in a letter (apparently lost) addressed to Élie de Beaumont. Another possible source of information is mentioned in a rough draft: “Speak to Mr. Livingston about the American judicial system” (YTC, CVh, 3, p. 10).

b. Judicial power./
The most original and most difficult part to understand of all the American constitution. Elsewhere there have been confederations, a representative system, a democracy; but no where a judicial power organized as that of the Union.

How the judicial power of the Union is conservative without harming that great principle of the necessity of a single dominating principle in constitutions. It slows, it cannot stop the people, because the latter by changing the constitution can always arrive at what they desire.

How all the laws that challenge the judicial power in America are truly destructive of order and of liberty (YTC, CVh, 5, p. 40).
I have thought that a separate chapter must be devoted to the judicial power. Its political importance is so great that it seemed to me that talking about it in passing would diminish it in the eyes of readers.

There have been confederations elsewhere than in America; we have seen republics in places other than on the shores of the New World; the representative system is adopted in several States in Europe; but I do not think that until now any nation in the world has constituted the judicial power in the same way as the Americans.

The Americans have established the judicial power as counterbalance and barrier to the legislative power. They have made it a political power of the first order.

What is most difficult for a foreigner to understand in the United States is the judicial organization. There is, so to speak, no political event in which he does not hear the authority of the judge invoked; and he naturally concludes that in the United States the judge is one of the premier political powers. Then when he comes to examine the constitution of the courts, he discovers at first view only judicial attributions and habits. In his eyes, the magistrate seems never to get into public affairs except by chance; but this very chance recurs daily.

When the Parlement of Paris made remonstrances and refused to register an edict, when on its own it summoned a corrupt official to appear before it, the political action of the judicial power could be recognized. But nothing similar is seen in the United States. [The American judge never enters...]

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c. “#In my eyes, the constitution of the judicial power forms the newest and most original portion of the entire political system of the Americans#” (YTC, CVh, 4, pp. 16–17).
The Americans have kept all the characteristics by which the judicial power is customarily recognized. They have enclosed it exactly within the circle where it habitually moves.

The first characteristic of the judicial power, among all peoples, is to serve as arbiter. For the courts to take action, a case must be brought. For there to be a judge, there must be proceedings. As long as a law does not give rise to a case, the judicial power has no occasion to get involved with it. The judicial power is there, but it doesn’t see the law. When a judge, as part of a trial, attacks a law relating to the trial, he extends the circle of his attributions, but he does not go beyond them, since in a way he must judge the law in order to be able to judge the trial. When he delivers a verdict on a law, outside of a trial, he goes completely beyond his sphere and enters into that of the legislative power.

The second characteristic of the judicial power is to deliver a verdict concerning particular cases and not concerning general principles. Should a judge, while deciding a particular question, make it certain that each of the consequences of the same principle is struck down in the same way, the principle becomes sterile. While destroying the general principle in this way, he remains within the natural circle of his action. But should a judge directly attack the general principle and destroy it without having a particular case in view, he goes beyond the circle where all peoples have agreed to enclose him; he becomes something more important, perhaps more useful than a magistrate, but he ceases to represent the judicial power.

The third characteristic of the judicial power is to be able to act only when it is called upon, or, following the legal expression, when it is apprised. This characteristic is not found as generally as the other two. I believe, however, that, despite exceptions, it can be considered as essential. By its nature, the judicial power is passive; to stir, it must be put in motion. Someone denounces a crime before it and it punishes the guilty; someone calls upon it to redress an injustice and it redresses it; someone submits an act to it and it interprets it; but it does not go on its own to pursue criminals, seek out injustice and examine facts. In a way the judicial power would do vi-
of the judicial power 1 7 0

[<Two things must not be confused. The same man can be vested with political and judicial powers without thereby mingling political and judicial power. The mind sees them as distinct in the very midst of the confusion of actions. When the Parlement of Paris issued decisions, registered edicts and made regulations for public order, it formed only a single body; but within it three different powers were easily distinguished>.]

The Americans have kept these three distinctive characteristics for the judicial power. The American judge can deliver a verdict only when there is a lawsuit. He can never get involved except in a particular case; and to act he must always wait to be apprised.

So the American judge perfectly resembles the magistrates of other nations. He is vested, however, with an immense political power [that the latter do not have. His power forms the most formidable barrier to the encroachments of the legislature].

What causes that? He moves within the same circle and uses the same means as other judges; why does he possess a power that the latter do not have?

The cause is this single fact: the Americans have recognized the right of judges to base their decisions on the constitution rather than on the laws. In other words, they have allowed them not to apply laws that would appear unconstitutional to them.

I know that a similar right has sometimes been claimed by the courts of other countries; but it has never been granted to them. In America, it is recognized by all powers; no party, not even a man is met who contests it.

The explanation for this must be found in the very principle of American constitutions.

In France, the constitution is, or is considered to be, an immutable work. No power can change anything in it; such is the accepted theory.£ 1.

d. In the margin: "#The oath is therefore a very rational consequence of very absurd principles.#"

e. In the margin, with a mark: "#Is this true?#"
In England, Parliament is recognized to have the right to modify the constitution. In England, therefore, the constitution can change constantly, or rather it does not exist at all. Parliament is, at the same time, the legislative body and the constituent body.\textsuperscript{M}

In America, political theories are simpler and more rational.

An American constitution is not considered to be immutable, as in France; it cannot be modified by the ordinary powers of society, as in England. It forms a work apart that, representing the will of all the people, binds legislators as well as ordinary citizens; but it can be changed by the will of the people following established forms and in cases for which provisions have been made.

So in America, the constitution can vary; but as long as it exists, it is the source of all powers. Predominant force resides in it alone.

It is easy to see how these differences must influence the position and rights of the judicial body in the three countries that I have cited.

If, in France, the courts could disobey the laws on the grounds that they found them unconstitutional, the constituent power would actually be in their hands, since they alone would have the right to interpret a constitution whose terms no one could change. They would therefore take the place of the nation and would dominate society, at least in so far as the inherent weakness of the judicial power would allow them to do so.\textsuperscript{f}

\textsuperscript{f} If the French judge had the right to disregard the laws on the grounds that they are unconstitutional, not only would he usurp the constituent power, but also he would escape from all constraint, for in France the courts are answerable only to themselves. Political jurisdiction is introduced only against the principal organs of the government. Therefore the judge, while becoming a political power, would continue to be answerable only to a judicial power, which implies an obvious confusion in all ideas.

In America the judge interprets the constitution, but his opinion is not necessarily followed; he takes a place naturally among the principal political powers, but he answers for his actions to a central political court. He cannot shield either his actions [v. opinions] or his person from the control of society.

In the United States political jurisdiction is a weapon always hanging over the head of the magistrate, a weapon all the more formidable because by his position the judge is the habitual censor of those who are called to deliver his decision.

So the high prerogatives granted to American magistrates never put them beyond
I know that by denying judges the right to declare laws unconstitutional, we indirectly give the legislative body the power to change the constitution, since it no longer encounters a legal barrier that stops it. But better to grant the power to change the constitution of the people to men who imperfectly represent the will of the people, than to others who represent only themselves.

It would be still more unreasonable to give English judges the right to resist the will of the legislative body, because Parliament, which makes the law, makes the constitution as well, and because, as a result, a law cannot

the reach of the majority; and their independence is not such that there is not always a single dominant power in society before which all must definitively submit. Judicial power slows the people; it cannot stop them.

When you examine the constitution of the different powers that govern society, you easily discover that the weakest of all is the judiciary when it finds itself abandoned solely to its own resources. The legislature relies on the moral force that belongs to the whole nation; the executive power has its right to initiate and the physical strength of its agents; but the magistracy represents only the authority of reason. The judicial power only becomes formidable when united with another power. There is no more powerful agent of tyranny in the world than the body of magistrates when it joins its action with that of a despot. Because it then delivers to him the only thing that force alone cannot create: the support of the law. Then human liberty does not know where to flee and comes to expire at the very door of the temple of laws. In America the magistrate cannot seek the principle of power outside of himself. The executive power would willingly come to his aid; but it without influence. The people would be able to offer him more real help, but the people often see him only as an inconvenient censor. The American judge is therefore isolated among the crowd. To the passions that swirl around him, to the impetus of public opinion, he can only oppose his word; he commands only as long as they want to obey.

It must be remarked, moreover, that in the United States the judge could only get involved in politics through the unconstitutionality of laws. When the people act within the circle drawn by the constitution, whatever the nature of their acts, the judge is reduced to silence. Actually the American magistrates do not have the right to constrain the will of the people; they can only force the people not to be unfaithful to their will and not to fall into self-contradiction.

If, against the view of the majority and after public opinion has had the time to come to a decision, the magistrate persists in his refusal, the people can always change or clarify the terms of the constitution. And immediately resistance ceases along with the motive or the pretext that gave it birth.

1. Don’t I previously say the opposite? (YTC, CVh, 5, pp. 16–19).
in any case be called unconstitutional when it issues from the three powers. Neither of these two arguments applies to America.

In the United States, the constitution dominates the legislators as well as ordinary citizens. It is, therefore, the highest law and cannot be modified by a law. So it is right that the courts obey the constitution in preference to all laws [and by doing so, they do not make themselves masters of society since the people, by changing the constitution, can always reduce the judges to obedience. So American judges refuse without hesitation to apply laws that seem to them contrary to the constitution]. This follows from the very essence of the judicial power: to choose from among legal provisions those that bind him most strictly is in a way the natural right of the magistrate.

In France, as well, the constitution is the highest law, and judges have an equal right to base their decisions on it. But by exercising this right, they would not be able to avoid encroaching upon another right still more sacred than theirs: that of the society in whose name they act. Here ordinary reason must yield to reason of state.8

In America, where the nation can always reduce magistrates to obedience by changing its constitution, a similar danger is not to be feared. On this point, therefore, politics and logic are in agreement, and the people as well as the judges equally retain their privileges.

When a law that the judge considers contrary to the constitution is invoked before the courts of the United States, he can refuse to apply it. This power is the only one particular to the American magistrate, but a great political influence follows from it.

There are, in fact, very few laws that can by nature escape judicial analysis for long, for there are very few of them that do not harm an individual interest, and that litigants cannot or must not cite before the courts.

Now, from the day when the judge refuses to apply a law in a trial, it

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8. “In France [during the Restoration], we have often seen the executive power seek to reduce judicial authority, while the democratic party sought with all its efforts to raise it up. It seems to me that on both sides they acted against themselves” (YTC, CVh, 5, pp. 26–27).
of the judicial power 1 7 4

instantly loses part of its moral force. Those who have been wronged by the law are then alerted that a way exists to escape the obligation to obey it; trials multiply, and it becomes powerless. Then one of these two things happens: the people change the constitution or the legislature revokes its law.

So the Americans have given their courts an immense political power; but by forcing them to challenge laws only by judicial means, they have greatly diminished the dangers of this power.

If the judge had been able to challenge laws in a theoretical and general fashion; if he had been able to take the initiative and censure the legislator, he would have burst upon the political scene. Having become the champion or the adversary of one party, he would have called upon all the passions that divide the country to join in the struggle. But when the judge challenges a law in an obscure debate and on a particular application, he partially conceals the importance of the challenge from the eyes of the public. His decision intends only to strike an individual interest; the law is harmed only by chance.

The law censured in this way, moreover, is not destroyed; its moral force is lessened, but its material effect is not suspended. Only little by little, and under the repeated blows of jurisprudence, does it finally succumb. [If the law were challenged directly it would triumph or succumb in a day.]

Furthermore, it is easily understood that by charging individual interest with provoking the censure of laws, by intimately linking the trial of the law to the trial of a man, you assure that legislation will not be lightly challenged. In this system legislation is no longer exposed to the daily aggression of parties. By pointing out the mistakes of the legislator, you obey a real need; you start with a definite and appreciable fact, since it must serve as the basis for a trial.

I do not know whether the way in which the American courts act, at the same time that it is most favorable to public order, is not most favorable to liberty as well.

If the judge could challenge the legislators only head on, there are times when he would be afraid to do so; there are other times when partisan spirit would push him daily to dare to do so. Thus the laws would be challenged when the power from which they came was weak, and you would submit
to them in silence when that power was strong. That is to say that the laws would often be challenged when respect for them would be most useful, and would be respected when oppression in their name would become easy.

But the American judge is led onto political terrain despite himself. He judges the law only because he has a trial to judge and cannot avoid judging the trial. The political question that he must resolve is linked with the interest of the litigants, and he cannot refuse to settle it without committing a denial of justice. By fulfilling the strict duties imposed on the profession of magistrate, he performs the act of a citizen. It is true that judicial censure, exercised by the courts on legislation, cannot be extended in this way to all laws without distinction, for there are some that can never give rise to this kind of clearly formulated dispute that is called a trial. And when such a dispute is possible, it is still conceivable that there will be no one who wants to submit it to the courts.

The Americans have often felt this drawback, but they have left the remedy incomplete for fear of making it dangerously effective in all cases.

Enclosed within its limits, the power granted to the American courts to rule on the unconstitutionality of laws still forms one of the most powerful barriers that has ever been raised against the tyranny of political assemblies.

h. Note: “# This is what happened particularly at the time of the constitution of the year VIII. The senate was established as overseer of the other powers, and it had to denounce to the legislative bodies attacks against the constitution. We know that it refrained from doing so on any occasion. Under Napoleon’s son, this very senate could perhaps have hindered the legal course of government.”

j. “# The absence of administrative centralization is more a fortunate circumstance than the result of the wisdom of the law-maker. But the judicial power in the United States is a barrier raised by design against the omnipotence of the majority. It can be considered as the only powerful or real obstacle that the American laws have placed before the steps of the people” (YTC, CVh, 4, pp. 16–17).

"Judicial power in general./
"Utility of the judicial power to oppose the encroachments of popular power. See Kent, vol. 1, p. 275" (YTC, CVh, 5, p. 41).
Other Powers Granted to American Judges

In the United States, all citizens have the right to accuse public officials before ordinary courts.—How they exercise this right.—Art. 75 of the French constitution of the year VIII.—The Americans and the English cannot understand the sense of this article.

I do not know if I need to say that among a free people, like the Americans, all citizens have the right to accuse public officials before ordinary judges, and that all judges have the right to condemn public officials, it is so natural a thing.

To allow the courts to punish agents of the executive power when they violate the law is not giving the courts a particular privilege. To forbid them to do so is taking away a natural right.

It did not appear to me that in the United States, by making all officials responsible to the courts, the forces of government had been weakened.

It seemed to me, on the contrary, that the Americans, by acting in this way, had increased the respect that is owed to those who govern, the latter being much more careful to avoid criticism.

Nor did I observe in the United States that many political trials were instituted, and it is easily explained. A trial is always, whatever its nature, a difficult and costly enterprise. It is easy to accuse a public man in the newspapers, but it is not without grave motives that someone decides to bring him before the law. So to bring legal proceedings against an official, it is necessary to have just grounds of complaint; and officials hardly provide such grounds when they fear having proceedings brought.

This does not result from the republican form that the Americans have adopted, for the same experience can occur every day in England.

These two peoples did not believe that their independence had been assured by allowing the principal agents of power to be put on trial. Instead, they thought that they succeeded in guaranteeing liberty, much more by small trials, placed daily within the reach of the least citizen, than by great proceedings that were never used or were used too late.
In the Middle Ages, when it was very difficult to reach criminals, judges, when they got hold of some of them, often inflicted terrible punishments on these unfortunates; this did not reduce the number of those guilty. Since then, we have discovered that by making justice both more certain and milder, we have made it more effective at the same time.

The Americans and the English think that arbitrariness and tyranny must be treated like theft: make it easier to take legal action and make the penalty more mild.

In the year VIII of the French Republic, a constitution appeared whose article 75 was worded thus: “The agents of the government, other than the ministers, cannot have legal proceedings instituted against them for facts relating to their functions, except by virtue of a decision of the Conseil d’État; in this case, the proceedings take place before the ordinary courts.”

The constitution of the year VIII passed from the scene, but not this article, which remained after it [[and we are still so inexperienced in the art of [being (ed.)] free.]]; and it is still used every day to oppose the just complaints of citizens.

[[But this is particular to France.]]

I have often tried to explain the sense of this art. 75 to some Americans or Englishmen, and it has always been very difficult for me to succeed in doing so.

What they noticed first was that the Conseil d’État, in France, was a high court seated at the center of the kingdom; there was a kind of tyranny in sending all complainants before it as a preliminary step.

But when I tried to make them understand that the Conseil d’État was not a judicial body at all, in the ordinary sense of the term, but an administrative body, whose members were dependent on the King; and that the King, as sovereign, after ordering one of his servants, called prefect, to commit a wrongful act, could order, as sovereign, another of his servants, called councilor of the Conseil d’État, to prevent someone from having the first punished; when I showed them the citizen harmed by the order of the prince, reduced to asking the prince himself for the authorization to seek justice, they refused to believe in such enormities and accused me of lying and of ignorance.

Often, in the old monarchy, the parlement ordered the arrest of the public official who made himself guilty of a crime. Sometimes the royal au-
thority, intervening, had the procedure annulled. Despotism then showed itself openly, and people, while obeying, submitted only to force.

So we have retreated far from the point reached by our fathers; for we allow, under the color of justice, and consecrate, in the name of law, deeds that violence alone imposed on them.
CHAPTER 7

Of Political Jurisdiction in the United States

What the author understands by political jurisdiction.—How political jurisdiction is understood in France, England and the United States.—In America, the political judge concerns himself only with public officials.—He orders dismissals rather than punishments.—Political jurisdiction, customary method of government.—Political jurisdiction, as understood in the United States, is, despite its mildness, and perhaps because of it, a very powerful weapon in the hands of the majority.

[#Political jurisdiction is a violation of the great principle of the separation of powers; you resort to it as an extreme measure to reach certain guilty individuals. #]

I understand by political jurisdiction the decision delivered by a political body temporarily vested with the right to judge.

In absolute governments, it is useless to give judgments extraordinary forms. The prince, in whose name the accused is prosecuted, is master of the courts as of everything else, and he has no need to seek a guarantee beyond the idea that is held of his power.a The only fear that he can imagine

Translator’s Note 4: For this chapter, there is no totally satisfactory way to translate jugement politique. The most direct translation, political judgment, is extremely ambiguous. For want of a better alternative, I have decided to use the traditional translation, political jurisdiction, since the chapter has to do with the right of a political body, in particular circumstances, to bring to trial, to judge and to punish a public figure.

a. In the margin:

It was necessary to give the superior political power control of all powers for the unity of government, and for that it was necessary to give the legislature the entirely administrative power to dismiss or the entirely judicial power to judge.
is that not even the external appearances of justice are kept, and that his authority is dishonored in the desire to assert it.

But in most free countries, where the majority can never act on the courts as an absolute prince would, judicial power is sometimes placed temporarily in the hands of the very representatives of society. Temporarily mixing powers in this way is preferred to violating the necessary principle of the unity of government. England, France and the United States have introduced political jurisdiction into their laws; it is curious to examine how these three great peoples have turned it to good account.

In England and in France, the chamber of peers forms the highest criminal court of the nation. It does not judge all political crimes, but it can do so.

Alongside the chamber of peers is another political power, vested with the right to accuse. On this point, the only difference that exists between the two countries is this: in England, the members of the House of Commons can accuse whomever they choose before the Lords; while in France the deputies can only prosecute the ministers of the King in this way.

In these two countries, moreover, the chamber of peers finds all the penal laws at its disposal for striking the delinquents.

In the United States, as in Europe, one of the two branches of the legislature is vested with the right to accuse, and the other with the right to judge. The representatives denounce the guilty party; the Senate punishes him.

But a matter can be referred to the Senate only by the representatives; and before the Senate, the representatives can accuse only public officials. Therefore the Senate has a more limited competence than the French court of

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On the other hand, it was very dangerous to liberty and humanity to vest a political power with the most formidable rights of a judicial body.

From that the mixed American system. Political jurisdiction more than dismissal, less than a ruling.

1. The court of Lords in England furthermore forms the last appeal in certain civil matters. See Blackstone, book III, chap. IV.

b. In the margin: ”I find nothing in Blackstone that justifies this distinction. However I think it is correct.”
the peers, and the representatives have a broader right to accuse than our deputies.

But here is the greatest difference that exists between America and Europe. In Europe, political courts can apply all the provisions of the penal code. In America, when they have removed from the guilty party the public character with which he was vested, and have declared him unworthy to hold any political offices whatsoever in the future, their right is exhausted, and the task of the ordinary courts begins.

I suppose that the President of the United States has committed a crime of high treason.

The House of Representatives accuses him; the senators decide his removal. Afterward he appears before a jury that alone can take away life or liberty.

This succeeds in throwing a bright light on the subject that occupies us.

By introducing political jurisdiction into their laws, Europeans wanted to reach great criminals whatever their birth, rank or power in the State. To achieve that, they temporarily united, within a great political body, all the prerogatives of the courts.

The legislator is then transformed into a magistrate; he can establish the crime, classify and punish it. By giving him the rights of the judge, the law imposed all of the judge’s obligations on him, and bound him to the observation of all the forms of justice.

When a political court, French or English, has a public official as a defendant and delivers a verdict condemning him, by doing so, it removes him from office and can declare him unworthy to hold any office in the future. But here the dismissal and political interdiction are a consequence of the decision and not the decision itself.

So in Europe, political jurisdiction is more a judicial act than an administrative measure.

The opposite is seen in the United States, and it is easy to be persuaded that political jurisdiction there is more an administrative measure than a judicial act.

It is true that the decision of the Senate is judicial in form; to make it, the senators are obliged to conform to the solemnity and customs of the procedure. It is also judicial by the grounds on which it is based; the Senate
is, in general, obliged to base its decision on a crime of the common law. But it is administrative in its objective.

If the principal aim of the American law-maker had really been to arm a political body with a great judicial power, he would not have restricted its action to the circle of public officials, for the most dangerous enemies of the State may hold no office at all. This is true above all in republics, where the favor of parties is the first of powers, and where someone is often much stronger when not legally exercising any power.

If the American law-maker had wanted to give society itself, like judges, the right to prevent great crimes by fear of punishment, he would have put at the disposal of the political courts all the resources of the penal code. But he only provided them with an incomplete weapon that cannot reach the most dangerous of criminals. For what use is a judgment of political interdiction against someone who wants to overturn the laws themselves?

The principal aim of political jurisdiction in the United States is, therefore, to withdraw power from someone who is making poor use of it, and to prevent the same citizen from being vested with power in the future. That, as we see, is an administrative act that has been given the solemnity of a judgment.

So in this matter, the Americans have created something mixed. They have given all the guarantees of political jurisdiction to administrative dismissal, and they have removed from political jurisdiction its greatest rigors. This point settled, everything closely follows; we then discover why the American constitutions submit all civil officials to the jurisdiction of the Senate, and exempt the military whose crimes are, however, more to be feared [(in republics)]. In the civil order, the Americans have, so to speak, no removable officials; some are irremovable; others hold their rights by a mandate that cannot be abrogated. So to remove them from power, they must all be judged. c But military officers depend on the head

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c. To the side: “#Action of the two systems.
“French system more effective, more dangerous.
“American system more just, more rational in the separation of power. Less effective in times of crisis, more everyday.”
of State, who himself is a civil officer. By reaching the head of State, they strike them all with the same blow. 2

Now, if we come to compare the European and American systems in the effects that each produces or can produce, we discover differences no less noticeable.

In France and in England, political jurisdiction is considered as an extraordinary weapon that society should use only to save itself in moments of great peril.

We cannot deny that political jurisdiction, as understood in Europe, violates the conservative principle of the separation of powers and constantly threatens the life and liberty of men.

Political jurisdiction in the United States strikes only an indirect blow at the principle of separation of powers. It does not threaten the existence of citizens; it does not, as in Europe, hang over all heads, since it strikes only those who, by accepting public offices, subject themselves to its rigors in advance.

It is simultaneously less to be feared and less effective.

Moreover, the law-makers of the United States did not consider it as an extreme remedy for the great ills of society, but as a customary means of government.

From this point of view, it perhaps exercises more real influence over the social body in America than in Europe. You must not in fact be fooled by the apparent mildness of the American legislation regarding political jurisdiction. It must be noted, in the first place, that in the United States the court that delivers these judgments is composed of the same elements and is subject to the same influences as the body charged with accusing; this gives an almost irresistible impulse to the vindictive passions of parties. If political judges, in the United States, cannot order punishments as severe as those ordered by political judges in Europe, there is less chance of being acquitted by them as a result. Conviction is less to be feared and more certain.

Europeans, by establishing political courts, had as their principal object

2. Not that his rank can be taken from an officer, but he can be removed from his command.
to *punish* the guilty; Americans, to *remove* them from power. Political jurisdiction in the United States is a preventive measure in a way. So judges there must not be bound by very exact criminal definitions.

Nothing is more frightening than the vagueness of American laws, when they define political crimes strictly speaking. The crimes that will justify the conviction of the President, says the Constitution of the United States, section IV, art. I [*sic*: Article II, Section 4], are “Treason, Bribery, or other high Crimes and Misdemeanors.” Most of the state constitutions are even more obscure.

“Public officials, says the constitution of Massachusetts, will be condemned for their culpable behavior and for their bad administration.” All officials who put the State in danger by bad administration, corruption or other misdemeanors, says the constitution of Virginia, are impeachable by the House of Delegates.” There are constitutions that, in order to let an unlimited responsibility weigh upon the public officials, specify no crime.

But what makes the American laws in this matter so formidable arises, I dare say, from their very mildness.

We have seen that in Europe the dismissal of an official, and his political interdiction, were consequences of the penalty, and that in America it was the penalty itself. The result is this. In Europe, the political courts are vested with terrible rights that sometimes they do not know how to use; and it happens that they do not punish for fear of punishing too much. But in America, they do not back away from a penalty that humanity does not bemoan. To condemn a political enemy to death, in order to remove him from power, is in everybody’s eyes a horrible assassination. To declare an adversary unworthy to possess this same power and to take it away from him, while leaving him his life and liberty, can appear as the honest outcome of the struggle.

d. The Massachusetts Constitution reads: “The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives, against any officer or officers of the commonwealth, for misconduct and mal-administration in their offices.”


4. *See the constitutions of Illinois, Maine, Connecticut and Georgia.*
Now, this judgment, so easy to decide, is nonetheless the height of misfortune for the ordinary man among those to whom it is applied. Great criminals will undoubtedly defy its empty rigors; ordinary men will see in it a decision that destroys their position, stains their honor, and that condemns them to a shameful inaction worse than death.

So the less formidable political jurisdiction in the United States seems, the greater the influence it exercises on the course of society. It does not act directly on the governed, but it makes the majority entirely master of those who govern. It does not give the legislature an immense power that could be exercised only in a day of crisis; it allows the legislature to have a moderate and regular power that can be used every day. If the power is less, on the other hand, its use is more convenient and its abuse easier.

By preventing political courts from ordering judicial punishments, the Americans seem to me therefore to have avoided the most horrible consequences of legislative tyranny, rather than tyranny itself. And all things considered, I do not know if political jurisdiction, as it is understood in the United States, is not the most formidable weapon ever put in the hands of the majority.

When the American republics begin to degenerate, I believe that it will be easy to recognize; it will be enough to see if the number of cases of political jurisdiction increases.\[N\]
CHAPTER 8

Of the Federal Constitution

Until now I have considered each state as forming a complete whole, and I have shown the different mechanisms that the people put in motion there, as well as the means of action that they use. But all these states that I have envisaged as independent are, in certain cases, forced to obey a supreme authority, which is that of the Union. The time has come to examine the portion of sovereignty that has been conceded to the Union, and to cast a rapid glance over the federal constitution.¹

Historical Background of the Federal Constitutionᵃ

Origin of the first Union.—Its weakness.—Congress summons the constituent power.—Interval of two years that

¹. See the text of the federal Constitution. [In Appendix in the first editions (ed.)]
ᵃ. In the margin: “# Where to find the outline of the first federation?
“Bad result of the first federation. See Federalist, p. 60 [No. 15 (ed.)]. #”

The Federalist is, without any doubt, the work that Tocqueville cites most often. Its decisive influence on the drafting of this chapter must be recognized, even if such an influence on the whole book is difficult to define and remains to be determined. When Tocqueville reads the Federalist, he certainly has in mind, and at hand, Montesquieu and Rousseau. He rediscovers many of their ideas in the American work. An initial examination of the citations taken from the work seems to indicate that, above all, Tocqueville found in it a confirmation of his own ideas. This does not mean, as has often been asserted, that he intentionally omitted citations of the text in other chapters. If undeniable similarities exist between the American text and the Democracy, they demonstrate the result of a shared origin of ideas between the two texts more than a direct influence of the first book on the second. Another important work concerning information on the political organization of the United States is the commentaries on the Constitution by Justice Joseph Story. In a letter to Francis Lieber of May 9, 1840, Story, apparently
passes between this moment and that when the new Constitution is promulgated.

[#I am not among those who profess a blind faith in legal prescriptions and who think that it is sufficient to change the laws of a people in order to modify easily their social and political state. Laws act only in two ways, either by their long duration, when a power superior to society manages to impose them over many years, or by their perfect harmony with the mores, habits and civilization of the people. In this last case, the laws are only the conspicuous and legal manifestation of a preexistent fact.\textsuperscript{b}

But I admit that when laws are found to be in harmony with the needs [the social state] of a country, its mores and its habits, their effect is often something of a miracle.

\textsuperscript{b} The government of the United States is not truly speaking a federal government, it is a national government whose powers are limited. Important.

Mixture of national and federal in the constitution. See Federalist, p. 166 [No. 28 (ed.)].

The Union enters most profoundly into the government of the United States by the right to invalidate laws that are contrary to vested rights. Note that it is the federal judicial power alone that acts in this case.

[To the side: I am not among those who believe that there is a force in the laws that commands obedience to such an extent that all the present and all the future of a people depend on its legislation.]

You could deal with the principles of union, from complete independence, league, confederation, to finally national government. #]
No country on earth more than America has ever given a greater example of the power of laws on the life of political society.

The thirteen colonies that simultaneously threw off the yoke of England at the end of the last century had, as I have already said, the same religion, the same language, the same mores, nearly the same laws; they struggled against a common enemy. So they must have had strong reasons to unite closely together, and to be absorbed into one and the same nation.

But each of them, having always had a separate existence and a government close at hand, had created particular interests as well as customs; and each found repugnant a solid and complete union that would have made its individual importance disappear within a common importance. From that, two opposing tendencies: one that led the Anglo-Americans to unite; the other that led them to separate.

As long as the war with the mother country lasted, necessity made the principle of union prevail. And, although the laws that constituted the union were defective, the common bond continued to exist in spite of them.

But as soon as peace was concluded, the vices of the legislation became clear; the State seemed to dissolve all at once. Each colony, having become an independent republic, seized full sovereignty. The federal government, condemned by its very constitution to weakness, and no longer supported by the feeling of public danger, saw its flag abandoned to the outrages of the great peoples of Europe. At the same time, it could not find sufficient resources to stand up to the Indian nations and to pay the interest on debts contracted during the war for independence. About to perish, it officially declared its own impotence and summoned the constituent power.

2. See the articles of the first confederation formed in 1778. This federal constitution was adopted by all the States only in 1781.

Also see the analysis that the Federalist makes of this constitution, from No. 15 to No. 22 inclusive, and Mr. Story in his Commentaries on the Constitution of the United States, pp. 85 (84 [ed.])–115.

c. Hervé de Tocqueville: “I do not know if you shouldn’t say: of the constitution” (YTC, CIIIb, 3, pp. 9–10).

3. Congress made this declaration on February 21, 1787.
If ever America was capable of rising for a few moments to the high level of glory that the proud imagination of its inhabitants would like constantly to show us, it was at this supreme moment when the national power had, in a way, just abdicated authority.

For a people to struggle energetically to conquer its independence is a spectacle that every century has been able to provide. The efforts made by the Americans to escape from the yoke of the English have, moreover, been much exaggerated. Separated from their enemies by 1,300 leagues of ocean, aided by a powerful ally, the United States owed their victory to their position much more than to the merit of their armies or to the patriotism of their citizens. Who would dare to compare the American war to the wars of the French Revolution, and the efforts of the Americans to ours? France, the object of attacks from the whole of Europe, without money, credit, allies, threw one-twentieth of its population before its enemies, with one hand putting out the conflagration that devoured its bowels and with the other carrying the torch abroad. But what is new in the history of societies is to see a great people, warned by its legislators that the gears of government are grinding to a halt, turn its attention to itself, without rushing and without fear; sound the depth of the trouble; keep self-control for two whole years, in order to take time to find the remedy; and, when this remedy is indicated, voluntarily submit to it without costing humanity either a tear or a drop of blood.

When the insufficiency of the first federal constitution made itself felt, the excitement of the political passions that had given birth to the revolution was partially calmed, and all the great men that it had created still lived. This was double good fortune for America. The small as-

d. The manuscript says: “. . . that the vain imagination . . .”

Hervé de Tocqueville: “I would cross out the word vain in order not to shock the Americans among whom the book should have a great deal of success” (YTC, CIIIb, 3, p. 10).

e. In the margin: “#If you want to know what a people can do for its independence, it is not America that you must look at. #”

f. Hervé de Tocqueville: “If you keep this paragraph, you must suppress this last sentence which is declamatory, vague and could be interpreted as praise for violence in the manner of Thiers” (YTC, CIIIb, 3, p. 10).
which charged itself with drafting the second constitution, included the best minds and most noble characters that had ever appeared in the New World. George Washington presided over it. h

This national commission, after long and mature deliberations, finally offered to the people for adoption the body of organic laws that still governs the Union today. All the states successively adopted it. g The new federal government began to operate in 1789, after two years of interregnum. So the American Revolution finished precisely at the moment when ours began.

4. It was composed of only 55 members. Washington, Madison, Hamilton, the two Morris were part of it.

5. It was not the legislators who adopted it. The people named deputies for this express purpose. In each of these assembles the new Constitution was the object of thorough discussion.

h. Great men of the early times of the republic.

Their enlightenment. Their true patriotism. Their high character. Convention that made the federal Constitution. Few prejudices that were met there; constant struggle against provincial prejudices. Sincere love of republican liberty, but courageous and constant struggle against the bad passions of the people.

Character of Washington. Still more admirable for his courage in struggling against popular passions than for what he did for liberty. The gods are disappearing! A separate chapter on Washington. Washington has been admired for not having wanted to become a dictator, for having returned to the crowd. . . . Ignorance about the true state of things; historical memories badly applied.

Cincinnatus. Washington could not reasonably think to dominate. But admirable in his resistance to the exaggerations of popular opinion; there is his superiority; there is the culminating point.

Washington could not rise by arms (absurd), but by popular favor. And he did not seek it out for a moment.

Why did Washington, who in the end during his lifetime lost the majority, become more than a man after his death? YTC, CVc, pp. 61–62.

In a bundle of notes where Tocqueville had gathered information for new chapters, the following title is found: Of the Great Men of America and of Washington in Particular (YTC, CVh, 1, p. 1).
Summary Picture of the Federal Constitution

Division of powers between federal sovereignty and that of the states.—The government of the states remains the normal law;—the federal government, the exception.

A first difficulty must have presented itself to the minds of the Americans. It was a question of sharing sovereignty in such a way that the different states that formed the Union continued to govern themselves in everything that related only to their internal prosperity, and that the whole nation, represented by the Union, did not cease to be a body and to provide for all its general needs. A complex question, difficult to resolve.

It was impossible to set in advance, in an exact and complete manner, the portion of power that had to revert to each of these two governments that were going to share sovereignty.

Who would be able to anticipate in advance all the details of the life of a people?

The duties and rights of the federal government were simple and easy enough to define, because the Union had been formed for the purpose of meeting a number of great general needs. The duties and rights of the government of the states were, on the contrary, numerous and complicated, because this government penetrated into all the details of social life.

So the attributions of the federal government were defined with great care, and everything that was not included in the definition was declared to be part of the attributions of the government of the states. Thus, the

j. Union./
The Union has an artificial sovereignty; the states, a natural sovereignty; cause of difference in real strength (perhaps subtle)./Power of the Union in what concerns it: The Union has more extensive and more essential prerogatives, in what concerns it, than a number of States forming only a single body have had (YTC, CVh, 1, p. 51).

k. In the margin: “I believe that the principle of the unity of the American people regarding the matters provided for in the Constitution—principle rich in consequences and which you come back to constantly—must be placed at the beginning of this part (I do not know where).”

m. #Here there was a principle that was supposed to dominate the whole matter:
government of the states remained the normal law; the federal government was the exception.\textsuperscript{6}

But it was anticipated that, in practice, questions could arise relative to the exact limits of this exceptional government, and that it would be dangerous to abandon the solution of these questions to the ordinary courts established in the different states, by the states themselves. So a high federal court,\textsuperscript{7} a single tribunal, was created; one of its attributions was to maintain the division of powers between the two rival governments as the Constitution had established it.\textsuperscript{8}

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The Union has only a circumscribed sovereignty, but within this circle it forms only one and the same people.\textsuperscript{1}

(You could define the Union as a people who does not enjoy all the rights of sovereignty.) Within this circle the Union is sovereign. This set forth and accepted, the rest is easy; for from the origin of societies, this point is agreed: that a people has the right to have all that involves its security and independence judged by its own courts.

Now, since the Union, for the particular matters indicated by the Constitution, forms only one people, the above rule was as applicable to it as to all others.

Nothing more was involved than determining what its interests were within the circle of its existence, traced by the Constitution.

1. Some restriction has indeed been put on these principles by introducing the states as independent powers in the Senate and by making them vote separately in the House of Representatives in the case of election of the President. But these are exceptions. The opposite principle predominates (YTC, CVb, p. 20).


Note indeed that, whenever the Constitution has not reserved to Congress the exclusive right to regulate certain matters, the states can do so, while waiting for Congress to choose to take charge of them. Example: Congress has the right to pass a general bankruptcy law; it doesn’t do so; each state could pass one in its own way. This point was established, moreover, only after discussion before the courts. It is only jurisprudence.

7. The action of this court is indirect, as we will see later.

8. This is how the Federalist, in No. 45 [p. 200], explains this division of sovereignty between the Union and the particular states:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. [. . . (ed.) . . . ] The powers reserved to the several states will
Attributions of the Federal Government

Power granted to the federal government to make peace, war, to establish general taxes.—Matter of internal political policy with which it can be involved.—The government of the Union, more centralized on some points than was the royal government under the old French monarchy.

Peoples in relation to one another are only individuals. Above all, a nation needs a single government to appear with advantage in regard to foreigners.

So the Union was granted the exclusive right to make war and peace; to conclude treaties of commerce; to raise armies, to equip fleets.9

The necessity of a national government does not make itself as strongly felt in the direction of the internal affairs of society.

Nonetheless, there are certain general interests for which only a general authority can usefully provide.

The Union was left the right to regulate all that relates to the value of money; it was charged with the postal service; it was given the right to open

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*extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the state.*

I will often have the occasion to cite the Federalist in this work. When the proposal that has since become the Constitution of the United States was still before the people, and submitted for adoption, three men who were already celebrated and have since become even more famous, John Jay, Hamilton and Madison, joined together for the purpose of making the advantages of the proposal clear to the nation. With this idea, they published, in the form of a newspaper, a series of articles that together form a treatise. They gave the newspaper the name Federalist, which has remained the title of the work.

*The Federalist* is a fine book that, though particular to America, should be familiar to the statesmen of all countries.

n. James T. Schleifer has identified the English edition used by Tocqueville. It was the one published in Washington by Thomson & Homans, in 1831. In his notes, Tocqueville also cites a French edition of 1792 (probably that of Buisson, Paris).

the great avenues of communication that had to unite the various parts of the territory.10

The government of the different states was generally considered free in its sphere, but it could abuse this independence and compromise the security of the entire Union through imprudent measures. For these rare cases, defined in advance, the federal government was permitted to intervene in the internal affairs of the states.11 That explains how, while still recognizing in each of the confederated republics the power to modify and change its legislation, each was, nevertheless, forbidden to make retroactive laws and to create bodies of noblemen within its midst.12

Finally, since the federal government had to be able to fulfill the obligations imposed on it, it was given the unlimited right to levy taxes.13

When you pay attention to the division of powers as the federal constitution has established it; when, on the one hand, you examine the portion of sovereignty that the particular states have reserved to themselves and, on the other, the share of power that the Union took, it is easily discovered that the federal law-makers had formed very clear and very sound ideas about what I earlier called governmental centralization.9

The United States forms not only a republic, but also a confederation.9 But the national authority there is, in several respects, more centralized than it was in the same period under several of the absolute monarchies of Europe. I will cite only two examples.

10. There are also several other rights of this type, such as that to pass a general law on bankruptcy, to grant patents. . . . What made the intervention of the whole Union necessary in these matters is felt well enough.
11. Even in this case, its intervention is indirect. The Union intervenes through its courts, as we will see further on.
9. In a variant of the manuscript: “#You can even say that the necessity of governmental centralization was better understood by them than it was in several of the monarchies of Europe.#”

p. Throughout the book, Tocqueville uses the words federation and confederation with not much precision.
France counted thirteen sovereign courts that, most often, had the right to interpret the law without appeal. It possessed, in addition, certain provinces called pays d'États that could refuse their support, after the sovereign authority, charged with representing the nation, had ordered the raising of a tax.

The Union has only a single court to interpret the law, as well as a single legislature to make the law; a tax voted by the representatives of the nation obligates all the citizens. So the Union is more centralized on these two essential points than the French monarchy was; the Union, however, is only a collection of confederated republics.

In Spain, certain provinces had the power to establish their own customs system, a power that, by its very essence, stems from national sovereignty.

In America, Congress alone has the right to regulate commerce among the states. So the government of the confederation is more centralized on this point than that of the kingdom of Spain.

It is true that, in the end, you arrived at the same point, since in France and in Spain the royal power is always able to execute, by force if necessary, what the constitution of the kingdom denied it the right to do. But I am talking here about theory.

Federal Powers

After having enclosed the federal government within a clearly drawn circle of action, it was a matter of knowing how to make it work.

q. In the manuscript: “each province.”
Legislative Powers

[Difference Between the Constitution of the Senate and that of the House of Representatives]

Division of the legislative body into two branches.—Differences in the way the two houses are formed.—The principle of the independence of the state triumphs in the formation of the Senate.—The dogma of national sovereignty, in the composition of the House of Representatives.—Singular effects that result from this, that constitutions are logical only when peoples are young.

In the organization of the powers of the Union, the plan that was traced in advance by the particular constitution of each of the states was followed on many points.

The federal legislative body of the Union was composed of a Senate and a House of Representatives.

The spirit of conciliation caused different rules to be followed in the formation of each of these assemblies.

I brought out above that, when the Americans wanted to establish the federal constitution, two opposing interests found themselves face to face. These two interests had given birth to two opinions.

Some wanted to make the Union a league of independent states, a sort of congress where the representatives of distinct peoples would come to discuss certain points of common interest.

Others wanted to unite all the inhabitants of the old colonies into one and the same people, and give them a government that, although its sphere would be limited, would be able to act within this sphere, as the one and only representative of the nation. The practical consequences of these two theories were very different.

Thus, if it was a matter of organizing a league and not a national government, it was up to the majority of the states to make laws, and not up

r. In the manuscript: “legislative power.”
to the majority of the inhabitants of the Union. For each state, large or small, would then conserve its character of independent power and would enter into the Union on a perfectly equal footing.

On the contrary, from the moment when the inhabitants of the United States were considered to form one and the same people, it was natural that only the majority of the citizens of the Union made the law.

Understandably, the small states could not consent to the application of this doctrine without completely abdicating their existence in what concerned federal sovereignty; for, from co-regulating power, they would become an insignificant fraction of a great people. The first system would have granted them an unreasonable power; the second nullified them.

In this situation, what almost always happens when interests are opposed to arguments happened: the rules of logic were made to bend. The lawmakers adopted a middle course that forced conciliation of two systems theoretically irreconcilable.

The principle of the independence of the states triumphed in the formation of the Senate; the dogma of national sovereignty, in the composition of the House of Representatives.

s. Senate/
The constitution of the Senate is the least logical and the least rational part of the Constitution of the United States. That is what Hamilton remarks in the Federalist. All of his discussion on this point shows great distress to see this system introduced, though he considers it a necessity given the state of opinion.

The equal representation of the states in the Senate goes directly against the principle of the Constitution to create a national, not a federal government.

In practice, however, I believe few disadvantages result from this anomaly. Once the majority is well and constitutionally established in the House of Representatives, a power enormously popular by its nature, the Senate is forced to go along.

You could be astonished to see the Senate charged with participating in a treaty. . . . But this power, though not expressed in all constitutions, exists in fact among all free peoples, even in monarchies.

In America, as among us, all the preliminary negotiations are done, moreover, by the executive power acting alone. It is the treaty itself that needs the support of the Senate (YTC, CVh, 1, pp. 42–43).

t. "Political assemblies/
"The more numerous they are, the more prone they are to the oligarchical direction of some members. See Federalist, p. 235 [No. 58 (ed.)].
Each state had to send two senators to Congress and a certain number of representatives, in proportion to its population.

Today, as a result of this arrangement, the state of New York has forty representatives in Congress and only two senators; the state of Delaware, two senators and only one representative. So in the Senate, the state of Delaware is the equal of the state of New York, while the latter has, in the House of Representatives, forty times more influence than the first. Thus, it can happen that the minority of the nation, dominating the Senate, entirely paralyzes the desires of the majority, represented by the other chamber; this is contrary to the spirit of constitutional governments.

All this shows clearly how rare and difficult it is to link all the parts of legislation together in a logical and rational manner.

In the long run, time always gives birth to different interests and consecrates diverse rights in the same people. Then, when it is a question of establishing a general constitution, each of these interests and rights serves as so many natural obstacles that are opposed to following all of the consequences of any one political principle. So only at the birth of societies can you be perfectly logical in the laws. When you see a people enjoy this advantage, do not rush to conclude that they are wise; instead, think that they are young.

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"January 30, 1832, Washington. Small number of the members of Congress" (YTC, CVc, p. 51; this note is not reproduced in Voyage, OC, V, 1).

u. “Ask Mr. Livingston or other Americans at the nomination of the King what the current rule of apportionment for the representatives is” (YTC, CVb, p. 34).

14. Every ten years, Congress again fixes the number of deputies that each state must send to the House of Representatives. The total number was 69 [65 (ed.)] in 1789; it was 240 in 1833. (American Almanac, 1834, p. 104 [124 (ed.)].)

The Constitution had said that there would not be more than one representative for 30,000 inhabitants; but it did not set a lower limit. Congress has not believed that it had to increase the number of representatives in proportion to the growth of the population. By the first law that dealt with this subject, April 14, 1792 (see Laws of the United States by Story, vol. 1, p. 235), it was decided that there would be one representative for 33,000 inhabitants. The last law, which occurred in 1832, set the number at 1 representative for 48,000 inhabitants. The population represented is composed of all free men and three-fifths of the number of slaves.
At the time when the federal Constitution was formed, only two interests positively opposed to each other existed among the Anglo-Americans: the interest of individuality for the particular states, and the interest of union for the whole people. It was necessary to come to a compromise.

You must recognize, nonetheless, that up to now this part of the Constitution has not produced the evils that could be feared.

All the states are young; they are near each other; they have homogeneous mores, ideas and needs; the difference that results from their greater or lesser size is not sufficient to give them strongly opposed interests. So the small states have never been seen to join together in the Senate against the plans of the large. There is, moreover, such an irresistible force in the legal expression of the will of an entire people that, when the majority expresses itself in the organ of the House of Representatives, the Senate, facing it, finds itself quite weak.

Beyond that, it must not be forgotten that it did not depend on the American law-makers to make one and the same nation out of the people to whom they wanted to give laws. The aim of the federal Constitution was not to destroy the existence of the states, but only to restrain it. So, from the moment when a real power was left to those secondary bodies (and it could not be taken from them), the habitual use of constraint to bend them to the will of the majority was renounced in advance. This said, the introduction of the individual strengths of the states into the mechanism of the federal government was nothing extraordinary. It only took note of an existing fact, a recognized power that had to be treated gently and not violated.

v. Hervé de Tocqueville: “I would prefer new, for if they are young in terms of establishment, they are old in terms of civilization” (YTC, CIIIb, 3, p. 12).
Another Difference between the Senate and the House of Representatives

*The Senate named by the provincial legislators. —
The representatives, by the people. — Two levels of election for the first. — A single one for the second. — Length of the different mandates. — Attributions.*

The Senate differs from the other chamber not only by the very principle of representation, but also by the mode of election, by the length of mandate and by the diversity of attributions.

The House of Representatives is named by the people; the Senate, by the legislators of each state.

The one is the product of direct election; the other, of indirect election.

The mandate of representatives lasts only two years; that of the senators, six.

The House of Representatives has only legislative functions; it participates in judicial power only by accusing public officials. The Senate participates in the making of laws; it judges political crimes that are referred to it by the House of Representatives; it is, in addition, the great executive council of the nation. Treaties, concluded by the President, must be validated by the Senate; his choices, to be definitive, need to receive the approval of the same body.15

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w. In the manuscript: “other differences between . . .”

Of Executive Power

Dependence of the President.—Elective and accountable.—Free in his sphere; the Senate oversees him and does not direct him.—The salary of the President fixed at his entry into office.—Qualified veto.

The American law-makers had a difficult task to fulfill: they wanted to create an executive power that depended on the majority and yet was strong enough by itself to act freely in its sphere.\(^x\)

The maintenance of the republican form required that the representative of the executive power be subject to the national will.

The President is an elective magistrate. His honor, goods, liberty, life answer continually to the people for the good use that he will make of his power. While exercising his power, moreover, he is not completely independent. The Senate watches over him in his relations with foreign powers, as well as in the distribution of positions; so he can be neither corrupted nor corrupt.

The law-makers of the Union recognized that the executive power could not fulfill its task usefully and with dignity, if they did not succeed in giving it more stability and strength than it had been granted in the particular states.


\(^x\). The President and in general the executive power of the Union.

Some advantages of a strong executive power:

1. It executes the constitutional desires of the legislatures with more skill and sagacity than they would be able to do themselves.

2. It is a barrier against the abuse of their power; it prevents their omnipotence from degenerating into tyranny (see, on the subject of the requisite conditions for the creation of a sufficient executive power, the Federalist, pp. 301 and 316 [No. 70 (ed.)]).

To divide the executive power, to subordinate its movements to the desires of a council, is to diminish its accountability.

It was necessary to liberty that the President depended on the national will. He is elective, not inviolable (YTC, CVh, 1, p. 53).
The President was named for four years and could be re-elected. With a future, he had the courage to work for the public good and the means to implement it.

The President was made the one and only representative of the executive power of the Union. Care was even taken not to subordinate his will to those of a council: a dangerous measure that, while weakening the action of the government, lessens the accountability of those who govern. The Senate has the right to strike down some of the acts of the President, but it can neither force him to act, nor share the executive power with him.

The action of the legislature on the executive power can be direct; we have just seen that the Americans took care that it was not. It can also be indirect.

The chambers, by depriving the public official of his salary, take away a part of his independence; it must be feared that, masters of making laws, they will little by little take away the portion of power that the Constitution wanted to keep for him.

This dependence of the executive power is one of the vices inherent in republican constitutions. The Americans have not been able to destroy the inclination that leads legislative assemblies to take hold of government, but they have made this inclination less irresistible.

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In the manuscript: “The Americans have not been able to destroy the inclination [v: tendency], but they have made it less irresistible [v: rapid].”

Gustave de Beaumont:

On this page there is an error of style. Executive power is taken here in a double sense; first, as presenting the idea of the persons who govern, and then, as including the idea of the administration itself. This word can indeed be used in this double sense, but not in places so close together, because it sows confusion in the mind. That is so true that, when we read: The Americans have not been able to destroy the inclination to drag the executive power into the legislative assemblies . . ., we think we are going to see the President of the United States brought into the House of Representatives, because you were speaking about him a moment before under the name executive power. This is certainly not the thought of the author, since he means, on the contrary, that the legislative assemblies are always led toward taking hold of the executive power. I would put: The Americans have not been able to destroy the inclination that leads legislative assemblies to take hold of power, but . . .” (YTC, CIIIb, 3, pp. 51–52).
The salary of the President is fixed, at his entry into office, for the entire time that his leadership lasts. In addition, the President is armed with a qualified veto that permits him to stop the passage of laws that would be able to destroy the portion of independence that the constitution left to him. There can only be an unequal struggle, however, between the President and the legislature, since the latter, by persevering in its intentions, always has the power to overcome the resistance that opposes it. But the qualified veto at least forces it to retrace its steps; it forces the legislature to consider the question again; and this time, it can no longer decide except with a two-thirds majority of those voting. The veto, moreover, is a kind of appeal to the people; the executive power pleads its cause and makes its reasons heard. Without this guarantee, it could be oppressed in secret. But if the legislature perseveres in its intentions, can it not always overcome the resistance that opposes it? To that I will answer that in the constitution of all peoples, no matter what its nature, there is a point where the law-maker is obliged to rely on the good sense and virtue of the citizens. This point is closer and more visible in republics, more removed and more carefully hidden in monarchies; but it is always found somewhere. There is no country where the law can foresee everything and where the institutions must take the place of reason and mores.
How the Position of the President of the United States Differs from That of a Constitutional King in France

The executive power, in the United States, limited and exceptional, like the sovereignty in the name of which it acts.—The executive power in France extends to everything, like the sovereignty there.—The King is one of the authors of the law.—The President is only the executor of the law.—Other differences that arise from the duration of the two powers.—The President hampered in the sphere of executive power.—The King is free there.—France, despite these differences, resembles a republic more than the Union does a monarchy.—Comparison of the number of officials who depend on the executive power in the two countries.

The executive power plays such a great role in the destiny of nations that I want to stop for an instant here in order to explain better what place it occupies among the Americans.

In order to conceive a clear and precise idea of the position of the President of the United States, it is useful to compare it to that of the King in one of the constitutional monarchies of Europe.  

z. Dissimilarity and similarity between the President and the King of England. Federalist, pp. 295 and 300 [No. 69 (ed.)].

1. Elective magistrate.
2. Subject to the courts, accountable.
3. Qualified veto.
4. Commands the militia, but only in time of war.
5. Cannot pardon in case of impeachment.
6. He cannot adjourn the legislature except in a case allowed.
7. He can make treaties only with two-thirds of the Senate.
8. He can only appoint to office with the advice and consent of the Senate.
9. He can prescribe no rule concerning commerce and monetary system of the country.
10. He has no ecclesiastical jurisdiction whatsoever.
In this comparison, I will attach little importance to the external signs of power; they fool the observer more than they help.

When a monarchy is gradually transformed into a republic, the executive power there keeps titles, honors, respect, and even money, long after it has lost the reality of power. The English, after having cut off the head of one of their kings and having chased another from the throne, still knelt to speak to the successors of these princes.

On the other hand, when republics fall under the yoke of one man, power continues to appear simple, plain and modest in its manners, as if it had not already risen above everyone. When the emperors despotically disposed of the fortune and the life of their citizens, they were still called Caesar when spoken to, and they went informally to have supper at the homes of their friends.

So we must abandon the surface and penetrate deeper.

Sovereignty, in the United States, is divided between the Union and the states; while among us, it is one and compact. From that arises the first and greatest difference that I notice between the President of the United States and the King in France.

In the United States, executive power is limited and exceptional,¹ like

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**England.**

1. Hereditary.
2. Inviolable.
3. Absolute veto.
4. At all times and throughout the kingdom.
5. In all cases.
6. He can always prorogue and dissolve Parliament.
7. He alone makes treaties. He is the only representative of England abroad.
8. He appoints to all offices, even creates offices, and beyond that can confer a multitude of graces, either honorary or lucrative.
9. On certain points he is the arbiter of commerce; he can establish markets, regulate weights and measures, strike money, set an embargo.
10. He is the head of the national church (YTC, CVh, 1, pp. 58–59).

a. Édouard de Tocqueville:

How is the sovereignty represented by the executive power (that is the national sovereignty) limited and exceptional? That can only be applied to the executive power, which is in fact very limited.

Upon reflection, I understand the thought. As we saw in the preceding chapter,
the very sovereignty in whose name it acts; in France, it extends to everything, like the sovereignty there.

The Americans have a federal government; we have a national government.

This is a primary cause of inferiority that results from the very nature of things; but it is not the only one. The second in importance is this: strictly speaking, sovereignty can be defined as the right to make laws.

The King, in France, really constitutes one part of the sovereign power, since laws do not exist if he refuses to sanction them. In addition, he executes the law.

The President also executes the law, but he does not really take part in making the law, since, by refusing his consent, he cannot prevent it from existing. So he is not part of the sovereign power; he is only its agent.

Not only does the King, in France, constitute one portion of the sovereign power, but he also participates in the formation of the legislature, which is the other portion. He participates by naming the members of one chamber and by ending at his will the term of the mandate of the other. The President of the United States takes no part in the composition of the legislative body and cannot dissolve it.

The King shares with the Chambers the right to propose laws.

The President has no similar initiative.

The King is represented, within the Chambers, by a certain number of agents who set forth his views, uphold his opinions and make his maxims of government prevail.

The President has no entry into Congress; his ministers are excluded as he is, and it is only by indirect pathways that he makes his influence and his opinion penetrate this great body.

the Union was granted, by the Constitution, only a limited power, very defined and perhaps exceptional. But, it seems to me, the President does not represent only this portion of sovereignty that has been attributed to the federal government; he also represents the entire sovereignty of the country, its internal as well as external will; in a word, he is the instrument of national sovereignty (YTC, CIIIb, 3, pp. 1–2).
So the King of France operates as an equal with the legislature, which cannot act without him, as he cannot act without it.

The President is placed beside the legislature, as an inferior and dependent power.

In the exercise of executive power strictly speaking, the point on which his position seems closest to that of the King in France, the President still remains inferior due to several very great causes.

First, the power of the King in France has the advantage of duration over that of the President. Now, duration is one of the first elements of strength. Only what must exist for a long time is loved and feared.

The President of the United States is a magistrate elected for four years. The King in France is a hereditary leader.

In the exercise of executive power, the President of the United States is constantly subject to jealous oversight. He prepares treaties, but he does not make them; he designates people for offices, but he does not appoint them.\textsuperscript{17}

The King of France is the absolute master in the sphere of executive power.

The President of the United States is accountable for his actions. French law says that the person of the King of France is inviolable.

But above the one as above the other stands a ruling power, that of public opinion. This power is less defined in France than in the United States; less recognized, less formulated in the laws; but, in fact, it exists there. In America, it proceeds by elections and by decisions; in France, by revolutions. Hence France and the United States, despite the diversity of their constitutions, have this point in common: public opinion is, in effect, the dominant power.\textsuperscript{b} So the generative principle of the laws is, in actual fact, the

\textsuperscript{17} The Constitution had left it doubtful whether the President was required to ask the advice of the Senate in the case of removal, as in the case of nomination of a federal official. The Federalist, in No. 77, seemed to establish the affirmative; but in 1789, Congress decided with all good reason that, since the President was accountable, he could not be forced to use agents that did not have his confidence. See Kent’s Commentaries, vol. I, p. 289.

\textsuperscript{b} In the margin: “#This fact, the sovereignty of the people, the capital point common to the two countries, gives a similarity to their constitutions despite the diversity of the laws.#”
same among the two peoples, although its developments are more or less free, and the consequences that are drawn from it are often different. This principle, by its nature, is essentially republican. Consequently, I think that France, with its King, resembles a republic more than the Union, with its President, resembles a monarchy.

In all that precedes, I have been careful to point out only the main points of difference. If I had wanted to get into details, the picture would have been still more striking. But I have too much to say not to want to be brief.

I remarked that the power of the President of the United States, in his sphere, exercises only a limited sovereignty, while that of the King, in France, acts within the circle of a complete sovereignty.

I could have shown the governmental power of the King in France surpassing even its natural limits, however extensive they were, and penetrating into the administration of individual interests in a thousand ways.

To this cause of influence, I could join that which results from the great number of public officials, nearly all of whom owe their mandate to the executive power. This number has surpassed all known limits among us; it reaches 138,000. Each of these 138,000 nominations must be considered as an element of strength. The President does not have an absolute right to appoint to public positions, and those positions hardly exceed 12,000.

18. The sums paid by the State to these various officials amount annually to 200,000,000 francs.

19. Each year in the United States an almanac, called the National Calendar, is published; the names of all the federal officials are found there. The National Calendar of 1833 furnished me with the figure I give here.

It would follow from what precedes that the King of France has at his disposal eleven times more places than the President of the United States, although the population of France is only one and a half times greater than that of the Union.
Accidental Causes That Can Increase the Influence of the Executive Power

External security that the Union enjoys.—Cautious policy.—Army of 6,000 soldiers.—Only a few ships.—The President possesses some great prerogatives that he does not have the opportunity to use.—In what he does have the opportunity to execute, he is weak.

If the executive power is less strong in America than in France, the cause must be attributed to circumstances perhaps more than to laws.

It is principally in its relations with foreigners that the executive power of a nation finds the opportunity to deploy skill and force.

If the life of the Union were constantly threatened, if its great interests were found involved daily in those of other powerful peoples, you would see the executive power grow in opinion by what would be expected of it and by what it would execute.

The President of the United States is, it is true, the head of the army, but this army is composed of 6,000 soldiers; he commands the fleet, but the fleet numbers only a few vessels; he directs the foreign affairs of the Union, but the United States has no neighbors. Separated from the rest of the world by the ocean, still too weak to want to dominate the sea, they have no enemies; and their interests are only rarely in contact with those of the other nations of the globe.

This demonstrates well that the practice of government must not be judged by theory.

The President of the United States possesses some nearly royal prerogatives that he does not have the opportunity to use; and the rights that, up to now, he is able to use are very circumscribed. The laws allow him to be strong; circumstances keep him weak.

On the contrary, circumstances, still more than the laws, give royal authority in France its greatest strength.

c. 4,000 in the manuscript.
In France, the executive power struggles constantly against immense obstacles and disposes of immense resources to overcome them. It increases with the greatness of the things that it executes and with the importance of the events that it directs, without thereby modifying its constitution. Had the laws created it as weak and as circumscribed as that of the Union, its influence would soon become very much greater.

Why the President of the United States, to Lead Public Affairs, Does Not Need to Have a Majority in the Chambers

It is an established axiom in Europe that a constitutional King cannot govern when the opinion of the legislative chambers is not in agreement with his.

Several Presidents of the United States have been seen to lose the support of the majority of the legislative body, without having to leave power, nor without causing any great harm to society.

I have heard this fact cited to prove the independence and strength of the executive power in America. A few moments of reflection are sufficient, on the contrary, to see there the proof of its weakness.

A European King needs to obtain the support of the legislative body to fulfill the task that the constitution imposes on him, because this task is immense. A European constitutional King is not only the executor of the law; the care of its execution so completely devolves onto him that, if the law is against him, he would be able to paralyze its force. He needs the chambers to make the law; the chambers need him to execute it; they are two powers that cannot live without each other; the gears of government stop at the moment when there is discord between them.

In America, the President cannot stop the making of laws; he cannot escape the obligation to execute them. His zealous and sincere support is undoubtedly useful, but it is not necessary to the course of government. In everything essential that he does, he is directly or indirectly subject to the legislature; where he is entirely independent of it, he can hardly do anything. So it is his weakness, and not his strength, that allows him to live in opposition to the legislative power.
In Europe, there must be agreement between the King and the Chambers, because there can be a serious struggle between them. In America, agreement is not required, because the struggle is impossible.

Of the Election of the President

_The danger of the system of election increases in proportion to the extent of the prerogatives of the executive power._—_The Americans can adopt this system because they can do without a strong executive power._—_How circumstances favor the establishment of the elective system._—_Why the election of the President does not make the principles of government change._—

_Influence that the election of the President exercises on the fate of secondary officials._

The system of election, applied to the head of the executive power among a great people, presents some dangers that experience and historians have sufficiently pointed out.

Consequently, I do not want to talk about it except in relation to America.

The dangers feared from the system of election are more or less great, depending on the place that the executive power occupies and its importance in the State, depending on the method of election and the circumstances in which the people who elect are found.

Not without reason, the elective system, applied to the head of State, is criticized for offering such a great lure to individual ambitions and inflaming them so strongly in the pursuit of power that often, when legal means are no longer sufficient, they appeal to force when right happens to desert them.

It is clear that the greater the prerogatives of the executive power, the greater the lure; also, the more the ambition of the pretenders is excited, the more it finds support among a host of men of lesser ambition who hope to share power after their candidate has triumphed.\(^d\)

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\(^d\) The wording of this paragraph is a bit different in the manuscript. The published version was suggested by Beaumont (YTC, CIIIb, 3, pp. 52–53).
The dangers of the elective system increase therefore in direct proportion to the influence exercised by the executive power in the affairs of the State.

The Polish revolutions should not be attributed only to the elective system in general, but to the fact that the elected magistrate was the head of a large monarchy.

So before discussing the absolute goodness of the elective system, there is always an intervening question to resolve, that of knowing if the geographic position, laws, habits, mores and opinions of the people among whom you want to introduce it allow you to establish a weak and dependent executive power. To want the representative of the State to be simultaneously armed with great power and elected is, to my mind, to express two contradictory desires. For my part, I know only one way to make hereditary royalty change to a state of elected power. Its sphere of action must be contracted in advance; its prerogatives gradually reduced; and little by little, the people accustomed to living without its aid. But the republicans of Europe are hardly concerned with this. Since many among them hate tyranny only because they are the objects of its rigors, the extent of executive power does not offend them; they attack only its origin, without noticing the tight bond that links these two things.

No one has yet been found who cared about risking his honor and his life to become President of the United States, because the President has only a temporary, limited and dependent power. Fortune must put an immense prize at stake in order for desperate players to enter the lists. [For my part, I would prefer to be Premier Ministre in France than President of the Union.] No candidate, until now, has been able to raise ardent sympathies and dangerous popular passions in his favor. The reason is simple. Once at the head of the government, he can distribute to his friends nei-

e. Cf. Rousseau, *Considérations sur le gouvernement de Pologne*, chapters VIII and XIV.

f. Hervé de Tocqueville: “Carefully check if this paragraph agrees well with what the author says in the chapters on the crisis [of election] and on re-election. You must be careful about even the appearance of contradiction. Later you talk about intrigues, about the efforts of the President to get himself re-elected and about the development of his power in this regard” (YTC, CIIIb, 3, p. 13).

g. In the manuscript: “. . . the President has only a few places . . .”

Hervé de Tocqueville: “These sentences are in clear opposition to what the author
ther much power, nor much wealth, nor much glory; and his influence in the State is too weak for factions to see their success or their ruin in his elevation to power.

Hereditary monarchies have a great advantage. Since the particular interest of a family is continually tied in a close way to the interest of the State, there is never a single moment when the latter is left abandoned to itself. I do not know if in these monarchies public affairs are better conducted than elsewhere; but at least there is always someone who takes charge for good or ill, depending on his capacity.

In elective States, on the contrary, at the approach of the election and a long time before it happens, the gears of government no longer function, in a way, except by themselves. The laws can undoubtedly be put together so that the election takes place at one go and rapidly, and the seat of executive power never remains vacant so to speak; but no matter what is done, an empty place exists mentally despite the efforts of the law-maker.

At the approach of the election, the head of the executive power thinks only of the struggle to come; he no longer has a future; he can undertake nothing, and pursues only languidly what someone else perhaps is going to achieve. “I am so near the moment of my retirement,” wrote President Jefferson on 21 [28 (ed.)] January 1809 (six weeks before the election), “that I no longer take part in public affairs except by expressing my opinion. To me, it seems just to leave to my successor the initiation of measures that he will have to execute and for which he will have to bear responsibility.”

On its side, the nation has its eyes focused only on a single point; it is occupied only with overseeing the birth about to take place.

says on pages 346 and 347. Moreover, can one say that a man has only a few places to distribute when 20,000 nominations depend on him in a machine as simple as the American organization?” (YTC, CIIIb, 3, p. 14).

h. Cf. non-alphabetic notebook 1, conversation with John (?) Livingston (YTC, BIIa, and Voyage, OC, V, 1, p. 60).

j. “In France, for society to work, social power must be not only centralized, but also stable.

“Power can be centralized in an assembly; then it is strong, but not stable. It can be centralized in a man. Then it is less strong, but more stable” (YTC, Cve, p. 64).
The more vast the place occupied by the executive power in the leadership of public affairs, the greater and more necessary is its habitual action, and the more dangerous such a state of things is. Among a people who have contracted the habit of being governed by the executive power, and with even more reason, of being administered by it, election cannot help but produce a profound disturbance.

In the United States, the action of the executive power can slow down with impunity, because this action is weak and circumscribed.

When the head of government is elected, a lack of stability in the internal and external policies of the State almost always follows. That is one of the principal vices of this system.

But this vice is felt more or less, depending on the portion of power granted to the elected magistrate. In Rome, the principles of government never varied, although the consuls were changed annually, because the Senate was the directing power; and the Senate was an hereditary body. In most of the monarchies of Europe, if the King were elected, the kingdom would change faces with each new choice.

In America, the President exercises a fairly great influence on affairs of State, but he does not conduct them; the preponderant power resides in the whole national representation. Therefore, the mass of people must be changed, and not only the President, in order for the maxims of policy to change. Consequently, in America, the system of election, applied to the head of the executive power, does not harm the steadiness of government in a very tangible way.

The lack of steadiness is an evil so inherent in the elective system, moreover, that it still makes itself keenly felt in the President’s sphere of action, no matter how circumscribed.

Mr. Quincy Adams, when he took power, dismissed most of those appointed by his predecessor; and of all the removable officials that the federal administration uses, I do not know of a single one who was left in office by General Jackson in the first year that followed the election.\(^k\)

\(^k\) This paragraph, which does not appear in the manuscript, is included in the edition of 1835 and eliminated from the sixth and later editions, following a letter from John Quincy Adams, dated June 12, 1837:
The Americans thought correctly that the head of the executive power, in order to fulfill his mission and bear the weight of full responsibility, had to remain free, as much as possible, to choose his agents himself and to remove them at will; the legislative body watches over rather than directs.

The truth is that I never dismissed a single individual named by my predecessor. It was a principle of my administration to dismiss no person from office but for misconduct, and there were in the course of four years that I presided, only two persons dismissed from civil executive office, both of them for gross official misdemeanors. My successor it is true did pursue a different principle. He dismissed many subordinate officer executive [sic] not however so generally as the remainder of the paragraph in your book, which I have cited, supposes. He left in office many of those who had been appointed by his predecessors, and would probably have left many more but for the influences by which he was surrounded (YTC, Clida).

On December 4, 1837, Tocqueville answers from Paris:

I receive with great pleasure the complaint that you very much wanted to address to me relating to a sentence in my book that concerns you. You can be assured that this sentence will disappear in the sixth edition which is supposed to appear, I believe, this winter. I am delighted that you have given me this occasion to please you and to correct an error that I regret having made. The fact you complain about and that you say is inaccurate had been affirmed to me in America itself (my notes prove it) by a man on whose veracity I thought I could count (YTC, Clida, and OC, VII, pp. 67–68). See, in the non-alphabetic notebooks 2 and 3, the second conversation with Mr. Walker (YTC, BIIa, and Voyage, OC, V, 1, p. 130).

m. In the manuscript:

The legislative body therefore interferes only very little in the choices of men to whom public positions are entrusted. It limits itself to supervising the President; it does not direct him. What is the result? At each election, a complete replacement takes place in the federal administration. [In the margin: This happened only under Quincy Adams and under Jackson.] There is not an employee so lowly who can claim to escape from the result of the vote. His place belongs in advance to the friends of the new power. People in the constitutional monarchies of Europe complain about seeing the fate of the secondary employees of the administration depend on the fate of the ministers. It is still much worse in States where the head of government is elected. Of the [blank (ed.)] revocable officials employed by the federal administration, I do not think that there was a single one that General Jackson left in place the first year that followed his election. The reason for this difference is easily understood. In monarchies, the ministers, in order to come to power and remain there, have no need to extend the circle of their influence very far; as long as they obtain the majority in the chambers, it is enough. But to bring about his election or reelection, the President needs to reach the popular masses; and in order to succeed in that, he must not neglect...
the President. From that it follows that at each new election, the fate of all federal employees is as if in suspense.

a single means of action. Each election, therefore, brings to public affairs a new administration whose education is completed at the expense of the administered. As for the individual misfortunes that result . . .

(In the margin) False, for to bring about election and reelection of the deputies, the ministers need the same means.

Hervé de Tocqueville:

Here is a piece that Alexis proposes to delete. But it contains views and a fact worth keeping; perhaps it could be modified in the following way:

After the sentence: The legislative body therefore interferes only very little in, I would like a short note that explained how the legislative body intervenes in nominations. The flaw in this explanation is that something is missing.

A complete replacement takes place in the administration. Here a note at the bottom of the page where you will say that, because this replacement has taken place at the election of the last two Presidents, it may be believed that this precedent will be followed by their successors (YTC, CIIIb, 3, p. 14).

Gustave de Beaumont:

I would very much hesitate to delete the piece crossed out. Possibly it contains some ideas and opinions that need to be revised and modified. But as a whole it is very interesting and will be especially for the public, because it touches on a question extremely exciting to the personal interests of all public officials.

The contrast between the President and the ministers does not exist; they are in an analogous position in the sense that the ministers of a French monarchy have an interest in bringing their weight to bear on the least agents, in order to gain the majority in the chambers from the electoral body. And they cannot remain ministers if they do not have this majority, just as the President will not be elected if he does not gain it.

But here is the difference: a minister cannot think of dismissing everyone in order to remain minister; and if he wanted to do it, he would not be able to do so. Because public opinion, on which he depends, would never understand that the end justified the means. It is the opposite when it is a matter, for a man, of being head of the State (YTC, CIIIb, 3, pp. 53–54).

Édouard de Tocqueville:

Whatever your decision regarding this piece, I will make several observations; first this sentence: to remove them at will is trite. But the most serious flaw in this piece is to present a striking contradiction to what you said a few sentences earlier. Here you say that all the employees are replaced at the coming into office of the President and that he is obligated, in the machinery he puts in motion, to reach the popular masses, without neglecting a single means of action. While you say, p. 324, that no one cares about risking his honor and his life to become President, that no candidate
In the constitutional monarchies of Europe, the complaint is that the destiny of the obscure agents of the administration often depends on the fate of the ministers. It is even worse in States where the head of government is elected. The reason for this is simple. In constitutional monarchies, ministers replace each other rapidly; but the principal representative of the executive power never changes, which contains the spirit of innovation within certain limits. So administrative systems there vary in the details rather than in the principles; one cannot be suddenly substituted for another without causing a kind of revolution. In America, this revolution takes place every four years in the name of law.

As for the individual misfortunes that are the natural consequence of such legislation, it must be admitted that the lack of stability in the lot of officials does not produce in America the evils that would be expected elsewhere. In the United States, it is so easy to make an independent living that to remove an official from an office that he holds sometimes means taking away the comforts of life, but never the means to sustain it.

I said at the beginning of this chapter that the dangers of the mode of election, applied to the head of the executive power, were more or less great, depending on the circumstances in which the people who elect are found.

Efforts to reduce the role of the executive power are made in vain. There is something over which this power exercises a great influence, whatever the place that the laws have given it. That is foreign policy; a negotiation can hardly be started and successfully carried through except by a single man. ([Physical force can only be adequately put in motion [v: directed] by a single will.]])

The more precarious and perilous the position of a people, the more the need for consistency and stability makes itself felt in the direction of foreign

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has been able to raise <i>ardent sympathies in his favor</i> and that he can attach to his cause neither <i>personal interest</i> nor party interest, that he has only a few <i>places</i> to distribute to <i>his friends</i>.

How then do you say afterwards, p. 330, that <i>the place of the lowliest employee belongs in advance to the friends of the new power</i>, and that General Jackson did not leave a single official in place? And again, page 346, <i>the positions he has at his disposal</i>, etc. (YTC, CIIIb, 3, p. 3).
affairs, and the more dangerous the system of election of the head of State becomes.

The policy of the Americans in relation to the whole world is simple; you would almost be able to say that no one needs them, and that they need no one. Their independence is never threatened.

So among them, the role of executive power is as limited by circumstances as by laws. The President can frequently change his views without having the State suffer or perish.

Whatever the prerogatives with which the executive power is vested, the time that immediately precedes the election and the time while it is taking place can always be considered as a period of national crisis.

The more the internal situation of a country is troubled and the greater its external perils, the more dangerous this moment of crisis is for it. Among the peoples of Europe, there are very few who would not have to fear conquest or anarchy every time that they chose a new leader.

In America, society is so constituted that it can maintain itself on its own and without help; external dangers are never pressing. The election of the President is a cause for agitation, not for ruin.

Mode of Election

Skill which the American law-makers have demonstrated in the choice of the mode of election.—Creation of a special electoral body.—Separate vote of special electors.—In what case the House of Representatives is called to choose the President.—What has happened in the twelve elections that have taken place since the Constitution has been in force.

Apart from the dangers inherent in the principle, there are many others that arise from the very forms of election and that can be avoided by the care of the law-maker.

n. The draft of this passage has been corrected by Gustave de Beaumont (YTC, CIIib, 3, p. 33).
When a people gather in arms in the public square to choose a leader, it exposes itself not only to the dangers presented by the elective system itself, but also to all those of civil war which arise from such a method of election.

When Polish laws made the choice of the king depend on the veto of a single man, they invited the murder of this man or created anarchy in advance.

As you study the institutions of the United States and look more attentively at the political and social situation of this country, you notice a marvelous accord there between fortune and human efforts. America was a new country; but the people who lived there had already long made use of liberty elsewhere: two great causes of internal order. Furthermore, America had no fear of conquest. The American law-makers, taking advantage of these favorable circumstances, had no difficulty in establishing a weak and dependent executive power; having created it so, they could make it elective without risk.

Nothing remained for them to do except to choose, from among the different systems of election, the least dangerous; the rules that they drew up in this respect completed admirably the guarantees that the physical and political constitution of the country already provided.

The problem to solve was to find a mode of election that, while still expressing the real will of the people, little excited their passions and kept the people in the least possible suspense. First, they granted that a simple majority would make the law. But it was still very difficult to obtain this majority without having to fear delays that they wanted to avoid above all.

It is rare, in fact, to see a man get the majority of votes on the first try from among a large population. The difficulty increases still more in a republic of confederated states where local influences are much more developed and more powerful.

A way to obviate this second obstacle presented itself: to delegate the electoral powers of the nation to a body that represented it.

This mode of election made a majority more probable; for the fewer the electors, the easier it is for them to agree among themselves. It also presented more guarantees for a good choice.

But should the right to elect be entrusted to the legislative body itself,
the usual representative of the nation; or, on the contrary, must an electoral college be formed whose sole purpose would be to proceed to the naming of the President?²⁰

The Americans preferred this last option. They thought that the men sent to make ordinary laws would only incompletely represent the wishes of the people relating to the election of the first magistrate. Being elected, moreover, for more than a year, they could represent a will that had already changed. They judged that, if the legislature was charged with electing the head of the executive power, its members would become, long before the election, the objects of corrupting maneuvers and the playthings of intrigue; while special electors, like jurors, would remain unknown in the crowd until the day when they must act and would only appear at one moment to deliver their decision.

So they established that each state would name a certain number of electors,²⁰ who would in turn elect the President. And, since they had noticed that assemblies charged with choosing heads of government in elective countries inevitably became centers of passions and intrigue, that sometimes they took hold of powers that did not belong to them, and that often their operations, and the uncertainties that followed, lasted long enough to put the State in danger, they decided that the electors would all vote on a set day, but without meeting together.²¹

The mode of election in two stages made a majority probable, but did not guarantee it, for it could be that the electors would differ among themselves as those who named them would have differed.

In this case, the Americans were led necessarily to take one of three measures: it was necessary to have new electors named, or to consult once again those already named, or finally to refer the choice to a new authority.

²⁰. Gustave de Beaumont: “335, 336, 337, 338, etc. . . . All these pages seem excellent to me and I very strongly urge the author not to make the corrections that are advised by imprudent friends” (YTC, CHIIb, 3, pp. 55–56).

²¹. As many as the members they send to Congress. The number of electors for the election of 1833 was 288 (The National Calendar [1833] [p. 39 (ed.)]).

²¹. The electors of the same state meet; but they send to the seat of the central government the list of individual votes and not the result of the majority vote.
The first two methods, apart from the fact that they were not very certain, led to delays and perpetuated an always dangerous excitement.

So they settled on the third and agreed that the votes of the electors would be transmitted in secret to the president of the Senate. He would count the votes on the day fixed and in the presence of the two houses. If no candidate had gained a majority, the House of Representatives would itself proceed immediately to the election; but they took care to limit its right. The Representatives could only elect one of the three candidates who had obtained the largest number of votes.\textsuperscript{22}

As you see, only in a rare case, difficult to foresee in advance, is the election left to the ordinary representatives of the nation; and even then, they can only choose a citizen already designated by a strong minority of the special electors; a happy combination, that reconciles the respect owed to the will of the people with the rapidity of execution and the guarantees of order required by the interest of the State. Yet, by making the House of Representatives decide the question, in case of division, the complete solution of all difficulties had still not been achieved; for the majority in the House of Representatives could in turn be doubtful, and this time the Constitution offered no remedy. But by establishing required candidates, by restricting their number to three, by relying on the choices of some enlightened men, it had smoothed all the obstacles\textsuperscript{23} over which it could have some power; the others were inherent in the elective system itself.\textsuperscript{p}

\textsuperscript{22}. In this circumstance, it is the majority of the states, and not the majority of the members, that decides the question. So that New York does not have more influence on the deliberation than Rhode Island. Thus the citizens of the Union, considered as forming one and the same people, are consulted first; and when they cannot agree, the division by states is revived, and each of the latter is given a separate and independent vote.

That again is one of the strange things that the federal constitution presents and only the clash of opposing interests can explain.

\textsuperscript{23}. In 1801, however, Jefferson was named only on the thirty-sixth ballot.

p. Tocqueville writes to Corcelle:

There is a piece of your work that particularly pleased me a great deal. It is where you indicate, as a remedy for the excesses of democracy, election by stages. In my opinion that is a capital idea that must be introduced very prudently and that is very
During the forty-five years the federal Constitution has existed, the United States has already elected its President twelve times.

Ten elections were done immediately, by the simultaneous vote of the special electors seated at different points of the territory.

The House of Representatives has used the exceptional right with which it is vested in case of division only twice. The first, in 1801, was at the time of the election of Jefferson; and the second, in 1825, when Quincy Adams was named.

### Election Crisis

*The moment of the election of the President can be considered a moment of national crisis.—Why.—Passions of the people.—Preoccupation of the President.—Calm which follows the agitation of the election.*

I have talked about the favorable circumstances in which the United States was found for adopting the elective system, and I have shown the precautions taken by the law-makers to reduce its dangers. The Americans are used to having all kinds of elections. Experience has taught them what level of agitation they can reach and where they must stop. The vast extent of their territory and the distribution of the inhabitants make a collision important to introduce gradually to the thinking of those who love liberty and the equality of men. I firmly believe, without yet saying it as strongly as I think it, that different stages of election form the most powerful and perhaps the only means that democratic peoples have to give the direction of society to the most skillful, without making them independent of everyone else (Letter of October 1835 (?) *Correspondance avec Corcelle, OC, XV, I, p. 57*. Cf. *Souvenirs, OC, XII*, pp. 188–90).

In the report that he did as a member of the Commission charged with the revision of the constitution (“Rapport fait à l’Assemblée législative au nom de la Commission chargée d’examiner les propositions relatives à la révision de la constitution . . .,” *Moniteur Universel*, July 9, 1851, pp. 1943–1945, and *OCB*, IX, pp. 574–606), Tocqueville praises the American system of indirect election of the President. He sees there a way to avoid revolutions as well as the temptation to resort to dictatorship. In a letter of 1853 (partially reproduced in *OCB*, VI, pp. 212–20), he will share with W. R. Greg, English essayist and ardent defender of free trade, extremely lucid views on French electoral laws under the monarchy and the republic.
among the different parties less probable and less perilous than anywhere else. Until now, the political circumstances in which the nation has found itself during elections have not presented any real danger. [<Finally, the power of the President is so dependent and so limited that the passions of the candidates and those of their partisans can never be either very ardent or very long-lasting.>]

But the moment of the election of the President of the United States can still be considered a period of national crisis.

The influence that the President exercises on the course of public affairs is undoubtedly weak and indirect, but it extends over the entire nation; the choice of President has only a moderate importance for each citizen, but it matters to all citizens. Now, an interest, however small, assumes a character of great importance from the moment it becomes a general interest.

Compared to a king of Europe, the President has certainly few means to create partisans for himself; nonetheless, the places he has at his disposal are numerous enough for several thousands of the voters to be either directly or indirectly interested in his cause.

In the United States as elsewhere, moreover, parties feel the need to gather around a man, in order to be more easily understood by the crowd. So they generally use the name of the candidate for President as a symbol; in him, they personify their theories. Thus, parties have a great interest in determining the election in their favor, not so much for making their doctrines triumph with the help of the elected President, as for showing, by his election, that these doctrines have won the majority.

Long before the fixed moment arrives, the election becomes the greatest and, so to speak, the sole matter that preoccupies minds. Factions redouble their ardor [the administration finds itself attacked from all directions; slanders, insults, rantings of all types are thrown lavishly against it]; all the artificial passions that can be imagined, in a happy and tranquil country, are stirred up at this moment in full view.

q. Hervé de Tocqueville: “Check if that agrees with page 324 where it is said: no candidate, until now, has been able to raise, etc.” (YTC, CHlb, 3, p. 15).
On his side, the President is absorbed by the care to defend himself. He no longer governs in the interest of the State, but in that of his re-election; he grovels before the majority; and often, instead of resisting its passions, as his duty requires, he runs ahead of its caprices.

As the election approaches, intrigues become more active; agitation, more intense and more widespread. The citizens divide into several camps, each taking the name of its candidate. The entire nation falls into a feverish state; the election is then the daily story of the public papers, the subject of individual conversations, the goal of all moves, the object of all thoughts, the sole interest of the moment. [#The danger certainly is more apparent than real. #]

It is true that as soon as fortune has decided, this ardor dissipates; everything becomes calm, and the river, once overflowing, retreats peacefully to its bed. But shouldn’t we be astonished that the storm could arise? [<For the choice that so strongly preoccupied the nation can influence its prosperity and its dreams only in a very indirect way; the passions that arose did not find their source in those real interests and penchants [doubtful reading (ed.)] that so profoundly trouble the human heart [v: society] [v: stirring the deepest levels of the human heart and turning society upside down to be satisfied]. For the election of the President of the United States cannot put into play any of those dangerous human passions that find their source in profound beliefs or in great positive interests.>]

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**Federal Constitution** 224
Of the Re-election of the President

When the head of the executive power is eligible for re-election, it is the State itself that schemes and corrupts.—Desire to be re-elected that dominates all the thoughts of the President of the United States.—Disadvantage of re-election, special to America.—The natural vice of democracies is the gradual subservience of all powers to the slightest desires of the majority.—The re-election of the President favors this vice.

Were the law-makers of the United States wrong or right to allow the re-election of the President?

To prevent the head of the executive power from being re-elected seems, at first glance, contrary to reason. We know what influence the talents or character of one man exercise over the destiny of an entire people, especially in difficult circumstances and in times of crisis. Laws that forbid citizens to re-elect their primary magistrate would deny them the best means of ensuring the prosperity of the State or of saving it. You would, moreover, arrive at this bizarre result, that a man would be excluded from the government at the very moment when he would have finally proved that he was capable of governing well.

These reasons are certainly powerful; but can’t they be opposed by still stronger ones?

r. In the Souvenirs, Tocqueville reproaches himself for having supported, in the committee to draft the Constitution of 1848, Beaumont’s proposal that urged that a president leaving office not be re-elected. “On this occasion, we both fell into a great error that, I am very afraid, will have very damaging consequences,” wrote Tocqueville in March 1851 (Souvenirs, OC, XII, p. 190). The impossibility of being re-elected was, we know, one of the reasons that pushed Louis Napoleon to the coup d’etat.

s. In the margin: “#Eight years, term indicated by experience.” See note y p. 229.

t. In the margin: “#1. The great end of the laws is to mingle individual interest and State interest.

2. Weakening of the executive power, capital vice to avoid in republics.”

u. Variant:

“The great object of the laws [v: of the law-maker] must always be intimately to mingle individual interest and State interest. Certainly laws can never reach such a
Intrigue and corruption are the natural vices of elective governments. But when the head of the State can be re-elected, these vices spread indefinitely and compromise the very existence of the country. When an ordinary candidate wants to succeed by intrigue, his maneuvers can only be degree of perfection, but it can be said that the more difficult it is to separate these two interests, the better the laws.

If the President were not eligible for re-election, he would have only one goal, to leave a great recollection in the memory of men and to return to private life surrounded by the respect as well as the love of his fellow citizens. To obtain this goal, he could hardly follow another path than to govern well; for at the bottom of the human heart, there is a secret instinct that constantly calls out that the approval of the present [v: the sincere approval of contemporaries] and the admiration of posterity belong to virtue alone.

In place of this entirely non-material and distant interest, the American laws have given the President a positive and current interest that, if not contrary to, is at least distinct from that of the State.

The President has naturally two goals to pursue: to govern well and to be re-elected. I know you will stop me here by saying: the two interests are the same, for the only way to be re-elected is to govern well. This argument is far from satisfying to me; it goes back to the argument that the majority is not subject to error, that it has neither prejudice to be flattered nor passions to be inflamed, that favor [added: and intrigue] have no hold on it, a proposition that cannot be sustained and that does not merit the effort to refute. It is incontestable that there are two ways for the President to be re-elected. The first, it is true, consists of governing well, but that is within reach of only great souls. Even then, success is always uncertain. Washington had lost the majority when he voluntarily removed himself from public activities. The second, easier and more within the reach of ordinary minds, is to buy partisans at any cost, to make offices the recompense for services rendered to the President, not to the country, to exploit public power in favor of individual interests, and to turn all laws into a combination of personal and party interests.

It is impossible to examine the ordinary course of public affairs in the United States without noticing that the desire to be re-elected dominates the thoughts of the President, that the entire policy of his administration focuses on this point, that his slightest declarations are subordinated to this end, that above all, as the moment of crisis nears, the interest of the State becomes more and more incidental to him and re-election becomes his principal interest.

By allowing re-election of the President, the Americans introduced intrigue and corruption [v: a new element] into government.>

# That is still not the most frightening result of the system of re-election. Certain physicians believe that when each man comes into the world, he already has the seed of the illness that one day will kill him. This remark may be applied to government. #

Each government . . .
extended over a circumscribed space. When, on the contrary, the head of the State himself gets into the fray, he borrows for his own use the strength of the government.\textsuperscript{v}

In the first case, it is one man with his limited means; in the second, it is the State itself with its immense resources that schemes and corrupts.

The ordinary citizen who uses reprehensible maneuverings to gain power can harm public prosperity only in an indirect manner; but if the representative of the executive power enters the lists, concern for the government becomes, for him, something of secondary interest; the main interest is his election. Negotiations, like laws, are, for him, nothing more than electoral schemes; positions become recompense for services rendered, not to the nation, but to its leader. Even if the action of the government would not always be contrary to the interest of the country, it would at least no longer serve it. Yet the action of the government is undertaken for its use alone.

It is impossible to consider the ordinary course of affairs in the United States, without noticing that the desire to be re-elected dominates the thoughts of the President; that the entire policy of his administration leads to this point; that his smallest steps are subordinated to this end; that above all, as the moment of crisis approaches, individual interest replaces general interest in his mind.

So the principle of re-election makes the corrupting influence of elective government more widespread and more dangerous. It tends to degrade the political morality of the people and to replace patriotism with cleverness.

In America, it attacks the sources of national existence even more fundamentally.

Every government carries within itself a natural vice that seems attached to the very principle of its life; the genius of the law-maker is to discern

\textsuperscript{v} Hervé de Tocqueville: “Isn’t Alexis drawing too excited a picture there, relative to what precedes? He tried hard in several places to show us that the President has only limited means at his disposal. Here he exalts his strength and his immense resources. Perhaps the imagination of the author has sought to prove too much, for fear of not proving enough” (YTC, CIIIb, 3, p. 16).
A State can overcome many bad laws, and the evil they cause is often exaggerated. But every law whose effect is to develop this seed of death cannot miss becoming fatal in the long run, even if its bad effects do not immediately make themselves felt.

The principle of ruin in absolute monarchies is the unlimited and unreasonable expansion of royal power. A measure that removes the counterweight that the constitution left to this power would therefore be radically bad, even if its effects seemed unnoticeable for a long time.

In the same way, in countries where democracy governs and where the people constantly draw everything to themselves, laws which make their action more and more immediate and irresistible attack, in a direct way, the existence of the government.

The greatest merit of the American law-makers is to have seen this truth clearly and to have had the courage to put it into practice. [The greatest glory of this people is to have known how to appreciate it and to submit themselves to it.]

They understood that beyond the people there needed to be a certain number of powers that, without being completely independent of the people, nonetheless enjoyed in their sphere a fairly large degree of liberty; so, though forced to obey the permanent direction of the majority, they could nevertheless struggle against its caprices and refuse its dangerous demands.

To this effect, they concentrated all the executive power of the nation in one pair of hands; they gave the President extensive prerogatives, and armed him with a veto, to resist the encroachments of the legislature. x

w. Cf. Montesquieu, *De l’esprit des lois*, particularly books II and VIII.

x. Hervé de Tocqueville:

This locution seems contradictory to what has been said and repeated earlier about the slight power of the President. Isn’t it to be feared that Alexis will be accused of reducing or augmenting this power as his theory requires? Perhaps this chapter has the fault of not coming to a conclusion. It is clear that the author blames re-election, and I believe he is right. What would he want in its place? Four years in office are very few.

Édouard de Tocqueville:

It doesn’t seem to me that there is a contradiction here. They armed the President with great power and *took from him the will to make use of it*. That is why this power, strong in appearance, is weak in reality.
But by introducing the principle of re-election, they have partially destroyed their work. They have granted great power to the President, and have taken from him the will to use it.

Not re-eligible, the President was not independent of the people, for he did not cease being responsible to them; but the favor of the people was not so necessary to him that he had to bend in all cases to their will.

Re-eligible (and this is true above all in our time when political morality is becoming lax and when men of great character are disappearing), the President of the United States is only a docile instrument in the hands of the majority. He loves what it loves, hates what it hates; he flies ahead of its will, anticipates its complaints, bends before its slightest desires. The law-makers wanted him to lead the majority, and he follows it.

Thus, in order not to deprive the State of the talents of one man, they have rendered his talents almost useless; and to arrange for a resource in extraordinary circumstances, they have exposed the country to daily dangers.  

Of the Federal Courts\textsuperscript{24}

\textit{Political importance of the judicial power in the United States.}—Difficulty in treating this subject.—Utility of the judicial system in confederations.—What courts could the Union have?  

Everything has its advantages and disadvantages. Here Alexis presents those of the principle of election, without claiming, by doing so, that it must be destroyed (YTC, CIIIb, 3, pp. 17–18).

\textsuperscript{y} “In my opinion the President of the United States should be chosen for a longer term and not be re-eligible” (YTC, CVh, 1, p. 58).

24. See ch. VI entitled “Of the Judicial Power in the United States.” This chapter shows the general principles of the Americans in the matter of the judicial system. Also see the federal Constitution, art. 3.

See the work with the title: The Federalist, Nos. 78–83 inclusive. Constitutional Law, Being a View of the Practice and Jurisdiction of the Courts of the United States, by Thomas Sergeant.


[Kent’s Commentaries, vol. 1, p. 275 [273 (ed.)] and following.]
I have examined the legislative power and the executive power of the Union. It still remains for me to consider the judicial power.

Here I must reveal my fears to readers.

The judicial institutions exercise a great influence on the destiny of the Anglo-Americans; they hold a very important place among political institutions properly so called. From this point of view, they particularly merit our attention.

But how to make the political action of the American courts understood, without entering into some of the technical details of their constitution and of their forms; and how to get into the details without discouraging, by the natural dryness of such a subject, the curiosity of the reader? How to remain clear and still be concise?

[<So I have said only what I believed indispensable for someone to judge the political action of courts within the confederation.> So often, I have assumed the reader’s pre-existent ideas on the administration of justice among the people of the English race; even more often I counted on him searching in the sources that I point out in order to fill out my ideas. In a word, I have said only what I believed indispensable for someone to be able to understand the political action of the federal courts.]

I do not flatter myself that I have escaped these different dangers. Men of the world will still find that I go on too long; legal specialists will think that I am too brief. But that is a disadvantage connected to my subject in general and to the special matter that I am treating at this moment.

The greatest difficulty was not to know how the federal government would be constituted, but how obedience to its laws would be assured.

Governments generally have only two means to overcome the efforts of the governed to resist them: the physical force that they find within themselves; the moral force that the decisions of the courts bestow on them.

A government that would have only war to enforce obedience to its laws would be very close to its ruin. One of two things would probably happen to it. If it were weak and moderate, it would use force only at the last ex-
tremity and would let a host of incidents of partial disobedience go by unnoticed; then the State would fall little by little into anarchy.

If it were audacious and powerful, it would resort daily to the use of violence, and soon you would see it degenerate into pure military despotism. Its inaction and its action would be equally harmful to the governed.

The great object of justice is to substitute the idea of law for that of violence; to place intermediaries between the government and the use of physical force.

The power of opinion generally granted by men to the intervention of the courts is something surprising. This power is so great that it is still attached to judicial form when the substance no longer exists; it gives flesh to the shadow.

The moral force with which the courts are vested renders the use of physical force infinitely rarer, substituting for it in most cases; and when, finally, physical force must be exerted, its power is doubled by the moral force that is joined with it.

A federal government, more than another government, must desire to obtain the support of the judicial system, because it is weaker by its nature; and efforts at resistance can more easily be organized against it. If it always and immediately had to resort to the use of force, it would not be adequate to its task.  

25. It is federal laws that most need courts, and yet federal laws have least accepted them. The cause is that most confederations have been formed by independent states that had no real intention of obeying the central government; and, while giving it the right to command, they carefully reserved to themselves the ability to disobey.

2. The great interest of the law-maker is to substitute as many intermediaries as possible between man and the use of physical force. All men have known propensities, based on known needs, interests and passions. The natural inclination of man will always be to gain for himself what he desires, or to avoid what displeases him, by the shortest and most effective of all means: physical force. It does not depend on the laws to prevent men, absolutely and in all cases, from using physical force. But it does depend on them to reduce the occasions greatly. For that, the legal means of action and of resistance must be multiplied. Reduced in this way to using force only in extremely rare circumstances, or for satisfying clearly evil passions, man will renounce the use of violence almost completely. That is why, where the agents of the administration are open to attack before the courts, administrative power is more respected within the circle of its attributions, and revolts are more rare.
To make citizens obey its laws, or to repel the aggressions that would be directed against it, the Union therefore had a particular need for courts.

But what courts could it use? Each state already had a judicial power organized within it. Would it be necessary to resort to these courts? Would it be necessary to create a federal judicial system? It is easy to prove that the Union could not adapt to its use the judicial power established in the states.

It is undoubtedly important to the security of each person and to the liberty of all that the judicial power should be separated from all the others; but it is no less necessary to national existence that the different powers of the State have the same origin, follow the same principles and act in the same sphere, in a word, that they are correlative and homogeneous. No one, I imagine, has ever thought to have crimes committed in France judged by foreign courts in order to be more certain of the impartiality of the magistrates.

The Americans form only a single people, in relation to their federal government. But in the midst of this people, political bodies, dependent on the national government on certain points and independent on all the others, have been allowed to continue to exist; they have their particular origins, their own doctrines and their special means of action. To entrust the enforcement of the laws of the Union to courts instituted by these political bodies, was to deliver the nation to foreign judges.

When the American Union had only war to make the different states obey, it was not obeyed at all; and if the Union had wanted to be, it would have enveloped America in a series of violent scenes. From the moment when it was able to use the courts [text interrupted (ed.)] there is such a social state where power, to exist, needs the prompt and passive obedience of its agents. (This is the case of several European nations.) Then, it avoids the legal impediments that would hamper its march and prefers to risk insurrections more than trials. But the closer you get to this situation, the further you get from civilization. In Turkey, where there is only a single intermediary between obedience and revolt, either you submit to the Sultan or you strangle him.

1. There are governments for which the rapidity of enforcement is a condition of life (YTC, CVb, pp. 21–22).

Cf. note m for p. 90, where Hervé de Tocqueville also refers to strangling the Sultan of Turkey. For Montesquieu and his entire period, the government of this country was the best possible example of oriental despotism.
Even more, each state is not only a foreigner in relation to the Union, but it is also a daily adversary, since the sovereignty of the Union can only be lost to the profit of that of the states.

So by having the laws of the Union applied by the courts of the individual states, the nation would be delivered, not only to foreign judges, but also to partial judges.

It was not their character alone, moreover, that made the state courts incapable of serving a national end; it was above all their number.

At the moment when the federal Constitution was formed, there were already in the United States thirteen supreme courts of justice from which there was no appeal. Today they number twenty-four. How to accept that a State can endure when its fundamental laws can be interpreted and applied in twenty-four different ways at once! Such a system is as contrary to reason as to the lessons of experience.

So the law-makers of America agreed to create a federal judicial power, in order to apply the laws of the Union and to decide certain questions of general interest which were carefully defined in advance.

All of the judicial power of the Union was concentrated in a single tribunal called the Supreme Court of the United States. But to facilitate the dispatch of affairs, inferior courts were added to assist and were charged with judging with sovereign power cases of little importance or with ruling on more important disputes in the first instance. The members of the Supreme Court were not elected by the people or the legislature; the President of the United States had to choose them with the advice of the Senate.

In order to make them independent of the other powers, they were made irremovable, and it was decided that their salary, once fixed, would be beyond the control of the legislature.\textsuperscript{26}

\textsuperscript{26. The Union was divided into districts; in each of these districts a federal judge was seated. The court where this judge presided was called the district court.}

\textsuperscript{In addition, each of the judges of the Supreme Court must travel annually over a certain part of the territory of the Republic, in order to decide certain more important cases on site; the court over which this magistrate presides was given the name circuit court.}
It was easy enough to proclaim the establishment of a federal judicial system in principle, but a host of difficulties arose the moment its attributes had to be set.

Way of Determining the Jurisdiction of the Federal Courts

Difficulty of determining the jurisdiction of the various courts in confederations.—The courts of the Union given the right to determine their own jurisdiction.—Why this rule attacks the portion of sovereignty that the individual states reserved to themselves.—The sovereignty of these states limited by laws and

Finally, the most serious matters must come, either directly or on appeal, before the Supreme Court where all the judges of the circuit courts gather once each year to hold a formal session. The jury system was introduced in federal courts, in the same way as in state courts, and in similar cases.

There is hardly any analogy at all, as you see, between the Supreme Court of the United States and our Cour de cassation. The Supreme Court can be apprised of a case in the first instance, and the Cour de cassation can be only in the second or third instance.* The Supreme Court indeed forms, like the Cour de cassation, a single court charged with establishing a uniform jurisprudence; but the Supreme Court judges fact as well as law, and decides itself, without sending the matter to another court; two things that the cour de cassation cannot do.


[*]. “See, for the organization, the organic law of 1789, Kent’s Commentaries, vol. I, p. 273 and following. Sergeant’s (sic: Sergeant’s) Constitutional Law.”

a. In the manuscript: “only in the third instance.”

Gustave de Beaumont:

This is inexact. The Cour de cassation can be apprised of any judgment or decision made in the last resort; and many judgments are made in the last resort without having been appealed. Such are judgments about simple offenses, judgments of the justices of the peace not exceeding 50 francs; id. of courts of the first instance not exceeding 1,000 francs, etc. You must say in the second or third instance (YTC, CIIIb, 3, pp. 28–29).

Translator’s Note 5: Compétence, in relation to the courts, has a more narrowly legal, a more restricted meaning in French than competence would have in English; the English word jurisdiction is closer to the meaning.
A first question arose. The Constitution of the United States set up, face to face, two distinct sovereignties, represented in terms of judicial structure by two different court systems; no matter what care was taken to establish the jurisdiction of each of these two court systems, you could not prevent frequent conflicts between them. Now, in this case, who would have the right to establish jurisdiction?

Among peoples who form only one and the same political society, when a question of jurisdiction arises between two courts, it is usually brought before a third that serves as arbiter.

This is easily done because, among these peoples, questions of judicial jurisdiction do not have any relation to questions of national sovereignty.

But above the highest court of an individual state and the highest court of the United States, it was impossible to establish any kind of court that was not either one or the other.

So one of these two courts had to be given the right to judge in its own case and to take or accept cognizance of the matter in dispute. This privilege could not be granted to the various courts of the states; that would have destroyed the sovereignty of the Union in fact, after having established it in law; for interpretation of the Constitution would soon have given back to the individual states the portion of independence that the terms of the Constitution took away from them.

By creating a federal court, the desire had been to remove from the courts of the states the right to settle, each in its own way, questions of national interest and, by doing so, to succeed in shaping a uniform body of jurisprudence for the interpretation of the laws of the Union. The goal would not have been reached at all if the courts of the individual states, while abstaining from judging cases considered federal, had been able to judge them by pretending that they were not federal.

The Supreme Court of the United States was therefore vested with the right to decide all questions of jurisdiction.27

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27. Moreover, to make the cases of jurisdiction less frequent, it was decided that, in a very
That was the most dangerous blow brought against the sovereignty of the states. It thus found itself limited not only by the laws, but also by the interpretation of the laws; by a known limit and by another that was unknown; by a fixed rule and by an arbitrary one. It is true that the Constitution had set precise limits to federal sovereignty; but each time this sovereignty is in competition with that of the states, a federal court must decide.

The dangers, moreover, with which this way of proceeding seemed to menace the sovereignty of the states were not as great in reality as they appeared to be.

We will see further along that, in America, real strength resides more in the provincial governments than in the federal government. Federal judges sense the relative weakness of the power in whose name they act; and they are more likely to abandon a right of jurisdiction in cases where it is granted to them by law, than they are led to claim it illegally.

**Different Cases of Jurisdiction**

The matter and the person, bases of federal jurisdiction.—Proceedings against ambassadors,—against the Union,—against an individual state.—Judged by whom.—Proceedings that arise from the laws of the Union.—Why judged by the federal courts.—Proceedings relating to breach of contracts judged by the federal judicial system.—Consequence of this.

After having recognized the means to set federal jurisdiction, the law-makers of the Union determined the cases in which that jurisdiction must be exercised.

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large number of federal cases, the courts of the individual states would have the right to decide concurrently with the courts of the Union; but then the losing party would always have the right to appeal to the Supreme Court of the United States. The Supreme Court of Virginia contested the right of the Supreme Court of the United States to hear an appeal of its decisions, but unsuccessfully. See Kent’s Commentaries, vol. I, pp. 300, 370, and following. See Story’s Commentaries, p. 646, and the organic law of 1789, Laws of the United States, vol. I, p. 53.
They acknowledged that there were certain litigants who could only be judged by the federal courts, no matter what the subject of the proceedings. They then established that there were certain proceedings that could only be decided by these same courts, no matter what the qualification of the litigants.

So the person and the matter became the two bases of federal jurisdiction.

Ambassadors represent nations friendly to the Union; everything that involves ambassadors involves in a way the entire Union. When an ambassador is party to a legal proceeding, the proceeding becomes an affair that touches on the welfare of the nation; it is natural that a federal court decides.

The Union itself can be the subject of proceedings; in this case, it would have been contrary to reason as well as to the custom of nations, to bring it for judgment before courts representing a sovereignty other than its own. It is for the federal courts alone to decide.

When two individuals, belonging to two different states, have a legal proceeding, you cannot, without disadvantage, have them judged by the courts of one of the two states. It is safer to choose a court that cannot incite the suspicion of any of the parties, and the court that very naturally presents itself is that of the Union.

When the two litigants are no longer isolated individuals, but states, this reason for equity is joined by a political reason of the first order. Here the status of the litigants gives a national importance to all proceedings; the smallest litigious issue between two states involves the peace of the entire Union.28

Often the very nature of the proceedings must serve as a rule of juris-

28. The Constitution says as well that the proceedings that can arise between a state and the citizens of another state will be under the jurisdiction of the federal courts. Soon the question arose of knowing if the Constitution meant all proceedings that can arise between a state and the citizens of another state, whether the ones or the others were plaintiffs. The Supreme Court decided affirmatively; but this decision alarmed the individual states who feared being brought despite themselves, for the slightest reason, before the federal court system. So an amendment was introduced to the Constitution, by virtue of which the judicial power of the Union could not extend to judging the cases that had been initiated against one of the United States by the citizens of another. See Story’s Commentaries, p. 624.
diction. Thus all questions that are related to maritime commerce must be settled by federal courts.  

The reason is easy to point out: nearly all these questions get into an estimation of the law of nations. From this perspective, they essentially involve the whole Union in relation to foreigners. Since the sea, moreover, does not fall into one judicial circumscription rather than another, only the national court system can have a claim on legal proceedings that have a maritime origin.

The Constitution has enclosed in a single category nearly all the proceedings that, by their nature, must be under the jurisdiction of the federal courts.

In this regard, the rule that it indicates is simple, but it comprises in itself alone a vast system of ideas and a multitude of facts.

The federal courts, it says, must judge all proceedings that arise in the laws of the United States.

Two examples will make the thought of the law-maker perfectly clear.

The Constitution forbids the states the right to make laws on the circulation of money; despite this prohibition, a state makes such a law. Interested parties refuse to obey it, understanding that it is contrary to the Constitution. The matter must be brought before a federal court, because the grounds for the case are drawn from the laws of the United States.

Congress establishes a tariff law. Difficulties arise over the understanding of this law. Again, the matter must be presented before the federal courts, because the cause for the proceeding is in the interpretation of a law of the United States.

This rule is in perfect agreement with the bases adopted for the federal Constitution.

The Union, as constituted in 1789, had, it is true, only a limited sovereignty, but the desire was that, within this circle, the Union formed only one and the same people. 30 Within this circle, it is sovereign. This point

29. Example: all acts of piracy.
30. A few restrictions were certainly placed on this principle by introducing the individual states as independent powers in the Senate, and by having them vote separately in the House of Representatives in the case of election of the President; but these are exceptions. The opposite principle is the dominant one.
set forth and accepted, all the rest becomes easy; for if you recognize that
the United States, within the limits posed by their Constitution, form
only one people, the rights belonging to all peoples must surely be granted
to them.

Now, since the origin of societies, this point is agreed upon: each people
has the right to have all questions relating to the enforcement of its own
laws judged by its courts. But you answer: the Union is in the singular
position that it forms one people only relative to certain matters; for all
others, it is nothing. What is the result? At least for all the laws that relate
to these matters, the Union has the rights that would be granted to complete
sovereignty. The real point of difficulty is knowing what those matters are.
This point settled (and we have seen above, while treating jurisdiction, how
it was settled), no question truly speaking remains; for once you have es-
stablished that a proceeding was federal, that is, came within the portion of
sovereignty reserved to the Union by the Constitution, it naturally followed
that a federal court alone would decide.

So whenever someone wants to attack the laws of the United States, or
invoke them in self-defense, it is the federal courts that must be addressed.

Thus, the jurisdiction of the courts of the Union expands or contracts
depending on whether the sovereignty of the Union itself expands or
contracts.

We have seen that the principal aim of the law-makers of 1789 had been
to divide sovereignty into two distinct portions. In one, they placed the
direction of all the general interests of the Union; in the other, the direction
of all the interests particular to some of its parts.

Their principal concern was to arm the federal government with enough
power for it to be able to defend itself, within its sphere, against the en-
croachments of the individual states.

As for the latter, the general principal adopted was to leave them free in
their sphere. Within that sphere, the central government can neither direct
them nor even inspect their conduct.

I have indicated in the chapter on the division of powers that this last
principle had not always been respected. There are certain laws that an
individual state cannot enact, even though the laws apparently involve only
that state.
When a state of the Union enacts a law of this nature, the citizens who are harmed by the execution of this law can appeal to the federal courts.\(^b\)

Thus, the jurisdiction of the federal courts extends not only to all the proceedings that have their source in the laws of the Union, but also to all those that arise in the laws that the individual states have enacted unconstitutionally.

The states are forbidden to promulgate \textit{ex post facto} laws in criminal matters; the man who is sentenced by virtue of a law of this type can appeal to the federal judicial system.

The Constitution also forbids the states to make laws that can destroy or alter rights acquired by virtue of a contract (impairing the obligations \textit{sic: obligation} of contracts).\(^31\)

From the moment when an individual believes that he sees a law of his state that harms a right of this type, he can refuse to obey and appeal to the federal justice system.\(^32\)

\(^b\). “Other defect of federal jurisdiction. The federal courts can only be apprised by an individual interest. Now, what would happen if a state passed an unconstitutional act that harmed only the sovereignty of the Union? Nearly impossible case” (YTC, CVh, t, pp. 50–51).

\(^31\). It is perfectly clear, says Mr. Story, p. 503, that every law that expands, contracts or changes in whatever way the intention of the parties, such as result from the stipulations contained in a contract, impairs this contract. In the same place, this same author carefully defines what federal jurisprudence understands by a contract. The definition is very broad. A concession made by a state to an individual and accepted by him is a contract, and cannot be taken away by the effect of a new law. A charter granted by the state to a company is a contract, and binds the state as well as the concessionary. The article of the Constitution that we are speaking about therefore assures the existence of a great portion of vested rights, but not all. I can very legitimately own a property without its having passed into my hands by a contract. Its possession is for me a vested right, and this right is not guaranteed by the federal constitution.

\(^32\). Here is a remarkable example cited by Mr. Story, p. 508. Dartmouth College, in New Hampshire, had been founded by virtue of a charter granted to certain individuals before the American Revolution. Its administrators formed, by virtue of this charter, a constituted body, or, following the American expression, a corporation. The legislature of New Hampshire believed it necessary to change the terms of the original charter and transferred to new administrators all the rights, privileges and immunities that resulted from this charter. The former administrators resisted and appealed to the federal court, which agreed to hear the case, understanding that, since the original charter was a true contract between the state and the concessionaries, the new law could not change the disposition of this charter without violating the vested rights of a contract and consequently violating article I, section X, of the Constitution of the United States.
To me, this disposition seems to attack the sovereignty of the state more profoundly than all the rest.\(^c\)

The rights granted to the federal government, for ends clearly national, are defined and easy to understand. Those that are indirectly conceded to it by the article that I have just cited are not easily felt, and their limits are not easily traced. There is, in fact, a multitude of political laws that act upon the existence of contracts, and that could therefore furnish grounds for encroachment by the central power.

The Federal Courts’ Way of Proceeding

*Natural weakness of the judicial system in confederations.— Efforts that law-makers must make to place, as much as possible, only isolated individuals and not states before the federal courts.—How the Americans succeeded in doing this.—Direct action of the federal courts on ordinary individuals.—Indirect attack against states that violate the laws of the Union.—The decision of the federal judicial system does not destroy provincial law; it enervates it.*

I have made known the rights of the federal courts; it is no less important to know how they are exercised.

The irresistible strength of the judicial system, in countries where sovereignty is not divided, comes from the fact that, in those countries, the courts represent the entire nation in a contest with a single individual who has been struck by a judgment. To the idea of law is joined the idea of the force that supports the law.

But in countries where sovereignty is divided, it is not always so. There, the judicial system most often finds itself facing, not an isolated individual,

\(^c\) In a first version: “... than all the rest. But it is so difficult to calculate in advance the impact of laws, that it is not unusual to see the most numerous assemblies consecrate long discussions to uninteresting points, while an article that will lead to the most characteristic effect of the law is precisely the one that passes unnoticed and is revealed only by experience.”
but a fraction of the nation. Its moral power and its physical power are diminished as a result.

So in federal States, the judicial system is naturally weaker; and the one subject to trial, stronger.

The law-maker, in confederations, must constantly work to give the courts a position analogous to the one they occupy among peoples who have not divided sovereignty. In other words, his most constant efforts must strive toward having the federal judicial system represent the nation, and having the one subject to trial represent an individual interest.

A government, whatever its nature, needs to act on the governed in order to force them to give the government what it is owed; it needs to take action against them in order to defend itself from their attacks.

As for the direct action of the government on the governed, in order to force them to obey the law, the Constitution of the United States saw to it that the federal courts, acting in the name of these laws, never had any dealing except with individuals (and that was its highest achievement). In fact, since it had been declared that the confederation formed only one and the same people within the circle drawn by the Constitution, the government, created by this Constitution and acting within its limits, was, as a result, vested with all the rights of a national government, the principal one being to have its injunctions reach ordinary citizens without an intermediary. So when the Union levied a tax, for example, it did not have to apply to the states to collect it, but to each American citizen, according to his share. In turn, the federal judicial system charged with assuring the enforcement of this law of the Union, had to condemn not the recalcitrant State, but the taxpayer. Like the judicial system of other peoples, it found only an individual facing it.

Note that here the Union itself has chosen its adversary. It has chosen a weak one; it is entirely natural that he succumbs.

But when the Union, instead of attacking, is reduced to defending itself, the difficulty increases. The Constitution recognizes the power of the states

d. In the margin: “#In this, the judicial power only follows the laws of its nature which lead it to judge only on particular cases. Only a political court can break a legislative measure. #”
to make laws. These laws can violate the rights of the Union. Here, necessarily, the Union finds itself in conflict with the sovereignty of the state that enacted the law. Nothing remains except to choose, from among the means of action, the least dangerous. This means was indicated in advance by the general principles that I stated before.

You see that, in the case that I have just supposed, the Union would have been able to cite the state before a federal court that would have declared the law void; this would have followed the most natural course of ideas. But, in this way, the federal judicial system would have found itself directly facing a state, something it wanted to avoid as much as possible.

The Americans have thought that it was nearly impossible for a new law, in its execution, not to harm some individual interest.

It is on this individual interest that the authors of the federal constitution rely to attack a legislative measure about which the Union could complain. To this individual interest, they offer a protection.

A state sells lands to a company; one year later, a new law disposes of the same lands in another way, and thus violates the part of the Constitution which forbids changing rights vested by contract. When the one who bought by virtue of the new law presents himself in order to take possession, the owner, who holds his rights from the former law, brings an action before the courts of the Union and has the title of the new owner voided.

Therefore, in reality, the federal judicial system is grappling with the sovereignty of the state; but it attacks that sovereignty only indirectly and on an application of detail. It thus strikes the law in its consequences, not in its principle. It does not destroy the law; it enervates it.

A final hypothesis remained.

Each state formed a corporation that had a separate existence and separate civil laws; consequently, it could sue or be sued before the courts. A state could, for example, bring suit against another state.

In this case, it was no longer a matter for the Union of attacking a provincial law, but of judging a case in which a state was a participant. It was

33. See the chapter entitled: “Of the Judicial Power in America [in the United States (ed.)].”
a case like any other; only the status of the litigants was different. Here the danger noted at the beginning of this chapter still exists. But this time it cannot be avoided; it is inherent in the very essence of federal constitutions that they will always result in creating, in the midst of the nation, individuals powerful enough to make it difficult to use the judicial system against them.

Elevated Rank That the Supreme Court Occupies among the Great Powers of the State

No other people have constituted a judicial power as great as the Americans.—Extent of its attributions.—Its political influence.—The peace and the very existence of the Union depend on the wisdom of seven federal judges.

When, after examining the organization of the Supreme Court in detail, you come to consider all of the attributions that it has been given, you easily discover that never has a more immense judicial power been constituted among any people.

The Supreme Court is placed higher than any known court, both by the nature of its rights and by the type of those subject to trial.

In all the civilized nations of Europe, the government has always shown a great reluctance to allow the ordinary judicial system to decide questions that involve the government itself. This reluctance is naturally greater when the government is more absolute. As liberty increases, on the contrary, the circle of the attributions of the courts is always going to widen; but not one of the European nations has yet thought that every judicial question, of no matter what origin, could be left to judges of ordinary law.

In America, this theory has been put in practice. The Supreme Court of the United States is the one and only national court.

It is charged with the interpretation of laws and of treaties; questions relating to maritime trade, and all those generally relating to the law of nations, are exclusively within its competence. You can even say that its attributions are almost entirely political, although its constitution is entirely
judicial. Its unique purpose is to have the laws of the Union enforced. And the Union determines only the relations of the government with the governed and of the nation with foreigners; nearly all of the relations of citizens among themselves are governed by the sovereignty of the states.

To this first cause of importance, another still greater must be added. In the nations of Europe, only individuals are subject to trial before the courts; but you can say that the Supreme Court of the United States makes sovereigns appear before it. When the bailiff, climbing the steps of the court, comes to proclaim these few words: “The State of New York versus the State of Ohio,” you feel that you are not within the realm of an ordinary court of justice. And when you consider that one of these litigants represents a million men, and the other, two million, you are astonished at the responsibility that weighs upon the seven judges whose decision is going to delight or sadden such a large number of their fellow citizens.

In the hands of seven federal judges rest unceasingly the peace, prosperity, the very existence of the Union. Without them, the Constitution is a dead letter. To them, the executive power appeals in order to resist the encroachments of the legislative body; the legislature, to defend itself against the undertakings of the executive power; the Union, to make the states obey; the states, to repulse the exaggerated pretensions of the Union; public interest against private interest; the spirit of conservation against democratic instability. Their power is immense; but it is a power of opinion. They are omnipotent as long as the people consent to obey the law; they can do nothing once the people scorn the law. Now, the power of opinion is the most difficult one to exercise, because it is impossible to know its limits exactly. Often it is as dangerous to fall short, as to go beyond those limits.

So the federal judges must be not only good citizens, learned and upright men, qualities necessary for all magistrates, but they must also be statesmen; they must know how to discern the spirit of the times, to brave the obstacles that can be overcome, and to change direction when the current threatens to carry away, with them, the sovereignty of the Union and the obedience due to its laws.

The President can fail without having the State suffer, because the President has only a limited duty. Congress can go astray without having the
Union perish, because above Congress resides the electoral body that can change the spirit of Congress by changing its members.

But if imprudent or corrupt men ever came to compose the Supreme Court, the confederation would have to fear anarchy or civil war.

But make no mistake; the root cause of the danger is not in the constitution of the court, but in the very nature of federal governments. We have seen that nowhere is it more necessary to constitute a strong judicial power than among confederated peoples, because nowhere are individual existences, which can struggle against the social body, greater and in better condition to resist the use of the physical force of the government.

Now, the more necessary it is that a power be strong, the more scope and independence it must be given. The more extensive and independent a power, the more dangerous is the abuse that can be made of it. So the origin of the evil is not in the very constitution of this power, but in the very constitution of the State that necessitates the existence of such a power.

How the Federal Constitution Is Superior to the State Constitutions

How the Constitution of the Union can be compared to those of the individual states.—The superiority of the federal Constitution must be attributed particularly to the wisdom of the federal law-makers.—The legislature of the Union less dependent on the people than those of the states.—The executive power freer in its sphere.—The judicial power less subject to the desires of the majority.—Practical consequences of this.—The federal law-makers have mitigated the dangers inherent in democratic government; the law-makers of the states have heightened these dangers.

The federal Constitution differs essentially from the constitutions of the states in the purpose that it intends, but it is highly similar in the means to achieve this purpose. The object of government is different, but the forms of government are the same. From this special point of view, they can usefully be compared.
I think that the federal Constitution is superior to all of the state constitutions. This superiority stems from several causes.

The present Constitution of the Union was formed only after those of most of the states; so the Union could profit from acquired experience.

You will be convinced, nonetheless, that this cause is only secondary, if you consider that, since the establishment of the federal Constitution, the American confederation has increased by eleven new states, and that these new states have nearly always exaggerated rather than mitigated the defects existing in the constitutions of their precursors.

The great cause of the superiority of the federal Constitution is in the very character of the law-makers.

At the time when it was formed, the ruin of the American confederation seemed imminent; it was obvious to all, so to speak. In this extremity, the people chose, perhaps not the men they loved most, but those they respected most.

I have already pointed out above that nearly all the law-makers of the Union had been remarkable by their enlightenment and more remarkable still by their patriotism.

They had all risen in the midst of a social crisis, during which the spirit of liberty had constantly to struggle against a strong and dominating authority. When the struggle ended, and while the excited passions of the crowd were, as usual, still fixed on combating dangers that for a long time no longer existed, these men had stopped; they had cast a calmer and more penetrating eye on their country; they had seen that a definitive revolution was accomplished, and that henceforth the perils that threatened the people could only arise from the abuses of liberty. What they thought, they had the courage to say, because deep in their hearts they felt a sincere and passionate love for this very liberty; they dared to speak of limiting it, because they were certain of not wanting to destroy it.\textsuperscript{35}

\textsuperscript{e. In the manuscript: “of their power [of their liberty].”}

\textsuperscript{35. In this period, the celebrated Alexander Hamilton, one of the most influential framers of the Constitution, was not afraid to publish the following in the Federalist, No. 71 [p. 307]. He said:}
Most of the constitutions of the states give a term of one year to the house of representatives and two years to the senate. In this way the members of the legislative body are tied constantly and in the closest way to the slightest desires of their constituents.

The law-makers of the Union thought that this extreme dependence of the legislature distorted the principal effects of the representative system, by placing in the people themselves not only the source of powers, but also the government.

They increased the length of the electoral mandate in order to allow the deputy greater use of his free will.

The federal Constitution, like the different constitutions of the states, divided the legislative body into two branches.

But in the states, these two parts of the legislature were composed of the same elements and followed the same mode of election. As a result, the

_There are some," he said, "who would be inclined to regard the servile pliancy of the executive to a prevailing current, either in the community or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which the public happiness may be promoted._

_The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they entrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests._

_It is a just observation that the people commonly intend the public good. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they always reason right about the means of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, best as they continually are by the wiles of parasites and syphophants, by the snares of the ambitious, the avaricious, the desperate, by the artifices of men who possess their confidence more than they deserve it, and of those who seek to possess rather than to deserve it._

_When occasions present themselves in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests to withstand the temporary delusion in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure._
passions and will of the majority emerged as easily and found an organ and an instrument as rapidly in one as in the other of the houses. This gave a fierce and hasty character to the making of laws.

The federal Constitution also had the two houses come out of the votes of the people; but it varied the conditions of eligibility and the mode of election. So, if one of the two legislative branches did not represent interests different from those represented by the other, as in certain nations, at least it represented a higher wisdom.

To be a Senator you had to have reached a mature age; and a small assembly, itself already elected, was charged with the election.

Democracies are naturally led to concentrate all social force in the hands of the legislative body. The latter, being the power that comes most directly from the people, is also the one that most partakes of the omnipotence of the people.

So, in the legislative body, you notice an habitual tendency that leads it to gather all kinds of authority within itself.

This concentration of powers, at the same time that it singularly harms the good management of public affairs, establishes the despotism of the majority.

The law-makers of the states have frequently surrendered to these democratic instincts; those of the Union always fought courageously against them.

In the states, executive power is placed in the hands of a magistrate who appears to be placed alongside the legislature, but who, in reality, is only a blind agent and passive instrument of its will. From where would he draw his strength? In the length of his term in office? Generally, he is named for only one year. In his prerogatives? He has, so to speak, none at all. The legislature can reduce him to impotence by granting the execution of its laws to special committees drawn from its midst. If it wanted, it could, in a way, nullify him by taking away his salary.

The federal Constitution has concentrated all the rights of the executive power, as well as all of its responsibility, in a single man. It gave the President a four-year term; it assured him his salary during the entire length of his term in office; it created a group of supporters for him and armed him with a qualified veto. In a word, after carefully drawing the sphere of executive
power, it sought, within this sphere, to give the executive power as strong and as free a position as possible.

The judicial power, of all the powers, is the one that, in the state constitutions, remained least dependent on the legislative power.

Nonetheless, in all the states, the legislature retained the authority to set the salaries of judges, which necessarily subjected the former to immediate legislative influence.

In certain states, judges are appointed only for a time, which again removes a large part of their strength and freedom.

In others, legislative and judicial powers are entirely mixed. The Senate of New York, for example, serves as the highest court of the state for certain trials.

The federal Constitution has, on the contrary, carefully separated the judicial power from all the others. In addition, it made judges independent by declaring their salaries fixed and making their office irrevocable.

The practical consequences of these differences are easy to see. It is clear to all attentive observers that the affairs of the Union are conducted infinitely better than the particular affairs of any state.

The federal government is more just and more moderate in its action than the state governments. There is more wisdom in its views, more continuity and intelligent design in its projects, more skill, steadiness and firmness in the execution of its measures.

A few words suffice to summarize this chapter.

Two principal dangers menace the existence of democracies:

The complete subservience of the legislative power to the will of the electoral body.

The concentration, in the legislative power, of all the other powers of government.

The law-makers of the states favored the development of these dangers. The law-makers of the Union did what they could to make them less to be feared.
The American confederation outwardly resembles all confederations.—Its effects are different, however.—What causes that?—How this confederation stands apart from all others.—The American government is not a federal government, but an incomplete national government.

The United States of America has not presented the first and only example of a confederation. Without mentioning antiquity, modern Europe has furnished several. Switzerland, the German Empire, the Dutch Republic have been or still are confederations.

When you study the constitutions of these different countries, you notice with surprise that the powers they confer on the federal government are more or less the same as those granted by the American Constitution to the government of the United States. Like the latter, they give the central power the right to make war or peace, the right to raise an army, to levy taxes, to provide for general needs and to regulate the common interests of the nation.

Among these different peoples, however, the federal government has almost always remained deficient and weak, while that of the Union conducts public affairs with vigor and ease.

Even more, the first American Union could not continue to exist because of the excessive weakness of its government. Yet this government, so weak,

\*f. In the margin: “Temporary alliance, league.
  “Lasting alliance, confederation.
  “Complete national government.
  “The Union is not a confederation [v: federal government], but an incomplete national government.”
had received rights as extensive as the federal government of today. You can even say that in certain respects its privileges were greater.\(^g\)

So several new principles are found in the current Constitution of the United States that are not striking at first, but make their influence profoundly felt.

This Constitution, which at first sight you are tempted to confuse with previous federal constitutions, rests as a matter of fact on an entirely new theory that must stand out as a great discovery in the political science of today.

In all the confederations that have preceded the American confederation of 1789, peoples who combined for a common purpose agreed to obey the injunctions of a federal government; but they retained the right to command and to supervise the execution of the laws of the Union at home.

The American states that united in 1789 agreed not only that the federal government could dictate laws to them, but also that the federal government itself would execute its laws.

In the two cases, the right is the same; only the exercise of the right is different. But this single difference produces immense results. [Such is the power of laws over the fate of societies.]\(^h\)

In all the confederations that have preceded the American Union of today, the federal government, in order to provide for its needs, applied to the individual governments. In the case where the prescribed measure displeased one of them, the latter could always elude the need to obey. If it was strong it appealed to arms; if it was weak, it tolerated a resistance to the laws of the Union that had become its own, pretended weakness and resorted to the power of inertia.

Consequently, one of these two things has constantly happened: the

\(^g\) “The old constitution gave Congress great power to command the different states (illegible word) in order to compel them other than by war. It established a league among independent states, not a federal government” (YTC, CVh, 1, p. 47).

\(^h\) Hervé de Tocqueville: “I believe that this paragraph could be deleted. It develops an idea that springs from what precedes and comes naturally to the mind of the reader. By removing it, the pace will be faster. Be careful about slowing the pace by reflections, when they are not absolutely necessary. The last sentence of the paragraph is a useless commonplace” (YTC, CIIIb, 3, p. 22).
most powerful of the united peoples, taking hold of the rights of the federal authority, has dominated all the others in its name;\textsuperscript{36} or the federal government has been left to its own forces. Then anarchy has become established among the confederated peoples, and the Union has fallen into impotence.\textsuperscript{37}

In America, the Union governs not the states, but ordinary citizens. When it wants to levy a tax, it does not apply to the government of Massachusetts, but to each inhabitant of Massachusetts. Former federal governments faced peoples; the Union faces individuals. It does not borrow its strength, but draws upon its own. It has its own administrators, courts, officers of the law, and army.

Certainly the national [sic: state] spirit, collective passions, provincial prejudices of each state still strongly tend to diminish the extent of federal power so constituted, and to create centers of resistance to the will of the federal power. Limited in its sovereignty, it cannot be as strong as a government that possesses complete sovereignty; but that is an evil inherent in the federal system.

In America, each state has far fewer opportunities and temptations to resist; and if the thought occurs, the state can act on it only by openly violating the laws of the Union, by interrupting the ordinary course of justice, and by raising the standard of revolt. In a word, it must suddenly take an extreme position, something men hesitate to do for a long time.

In former confederations, the rights granted to the Union were causes of war rather than of power, since these rights multiplied its demands without augmenting its means of enforcing obedience. Consequently, the real weakness of federal governments has almost always been seen to grow in direct proportion to their nominal power.

\textsuperscript{36} This is what was seen among the Greeks under Philip, when this prince took charge of enforcing the decree of the Amphictyons. This is what happened to the republic of the Netherlands, where the province of Holland has always made the law. The same thing is still going on today among the Germans. Austria and Prussia are the agents of the Diet and, in its name, dominate the entire confederation.

\textsuperscript{37} It has always been so for the Swiss confederation.—Were it not for the jealousy of its neighbors, Switzerland, for several centuries, would no longer exist.
This is not so for the American Union; the federal government, like most ordinary governments, can do everything that it has the right to do.

The human mind invents things more easily than words; this is what causes the use of so many incorrect terms and incomplete expressions.\(^j\)

Several nations form a permanent league and establish a supreme authority that, without acting on ordinary citizens as a national government could, nonetheless acts on each of the confederated peoples, taken as a group.

This government, so different from all the others, is given the name federal.

Next, a form of society is found in which several peoples truly blend together as one for certain common interests, and remain separate and only confederated for all the others.

Here the central power acts without intermediary on the governed, administering and judging them as national governments do, but it acts this way only within a limited circle. Clearly that is no longer a federal government; it is an incomplete national government. So a form of government, neither precisely national nor federal, is found. But here things have stopped, and the new word needed to express the new thing does not yet exist.\(^k\)

Because this new type of confederation was unknown, all unions have arrived at civil war, or slavery, or inertia. The peoples who composed them have all lacked either the enlightenment to see the remedy to their ills, or the courage to apply them.

\(^j\) Hervé de Tocqueville: “In my opinion, this paragraph and the four following must be deleted and replaced by one or two sentences. It is long and a bit heavy; its importance does not justify its defects. I therefore advise pruning the grammatical discussion and quickly going straight to the paragraph: Because this new type of confederation was unknown…”

Édouard de Tocqueville: “I cannot share this opinion. This reflection seems very profound to me. Moreover, if you went to the paragraph beginning Because this new type …, it would have absolutely no sense, since it relates only to the deleted paragraph” (YTC, IIIb, 3, p. 22).

\(^k\) In the margin: “# The thing is new [v: other], but an old word is still needed to designate it.”
The first American Union had also lapsed into the same faults. But in America, the confederated states, before achieving independence, had been part of the same empire for a long time; so they had not yet contracted the habit of complete self-government, and national prejudices had not been able to become deeply rooted. Better informed than the rest of the world, they were equal to each other in enlightenment; they only weakly felt the passions that ordinarily, among peoples, resist the extension of federal power; and these passions were fought against by the greatest citizens. The Americans, at the same time that they felt the evil, resolutely envisaged the remedy. They corrected their laws and saved the country.

Of the Advantages of the Federal System in General, and of Its Special Utility for America

Happiness and liberty that small nations enjoy.—Power of large nations.—Large empires favor the developments of civilization.—That strength is often the first element of prosperity for nations.—The purpose of federal systems is to combine the advantages that peoples gain from the largeness and the smallness of their territory.—Advantages that the United States derives from this system.—The law yields to the needs of the populations; the populations do not yield to the necessities of the law.—Activity, progress, taste for and practice of liberty among the American peoples.—The public spirit of the Union is only the sum of provincial patriotism.—Things and ideas circulate freely within the territory of the United States.—The Union is free and happy, like a small nation; respected, like a large one.

Among small nations, society keeps its eye on everything; the spirit of improvement gets down to the smallest details. Since the weakness of the people profoundly tempers their ambition, their efforts and resources are

m. In the margin: “Perhaps this chapter should be shifted to the place where I will talk about the future of the Union.”
almost entirely focused on their internal well-being and are not likely to be wasted on the empty illusion of glory. Since the capacities of each one are generally limited, desires are limited as well. The mediocrity of wealth makes conditions nearly equal; and mores have a simple and peaceful air. Thus, considering everything and taking into account various degrees of morality and enlightenment, more comfort, population and tranquility are usually found in small nations than in large ones.

When tyranny establishes itself within a small nation, it is more troublesome than anywhere else; acting inside a smaller circle, it extends to everything within this circle. Unable to undertake some great objective, it is busy with a multitude of small ones; it appears both violent and meddlesome. From the political world, which is strictly speaking its domain, it penetrates into private life. After dictating actions, it aspires to dictate tastes; after governing the State, it wishes to govern families. But that rarely happens; as a matter of fact, liberty forms the natural condition of small societies. There, government offers too little attraction to ambition, and the resources of individuals are too limited, for sovereign power to be easily concentrated in the hands of one man. Should it happen, it is not difficult for the governed to unite together and, by a common effort, to overthrow the tyrant and the tyranny at the same time. [Liberty is, moreover, something so natural and so easy within a small nation that abuse can hardly be brought about.]

So small nations have at all times been the cradle of political liberty. It has happened that most of them have lost this liberty by growing larger, which clearly reveals that liberty is due to the small size of a people and not to the people themselves.

The history of the world provides no example of a large nation that remained a republic for long; this has led men to say that the thing was impractical. As for me, I think that it is very imprudent for man to want to limit the possible and to judge the future; the real and the present elude

n. In the margin: “#The power of one man easily succeeds in putting itself above the law and the interest of all.”

38. I am not speaking here about a confederation of small republics, but of a large consolidated republic.
him every day, and he finds himself constantly surprised by the unexpected in the things he knows best. What can be said with certainty is that the existence of a large republic will always be infinitely more at risk than that of a small one.⁹

All the passions fatal to republics grow with the extent of the territory, while the virtues that serve to support them do not increase in the same measure.⁹

The ambition of individuals increases with the power of the State; the strength of parties, with the importance of the end that they have in mind; but love of country, which must combat these destructive passions, is not stronger in a vast republic than in a small one. It would even be easy to prove that love of country there is less developed and less powerful. Great riches and profound poverty, large cities, depravity of mores, individual egoism, complexity of interests are so many perils that almost always result from the large size of the State. Several of these things do not harm the existence of a monarchy; some can even work toward its duration. In monarchies, moreover, government has a strength of its own; it makes use of the people and does not depend on them; the more numerous the people, the stronger the prince. But to these dangers, republican government can oppose only the support of the majority. Now, this element of strength is not proportionately more powerful in a vast republic than in a small one. Thus, while the means of attack constantly increase in number and power, the strength of resistance remains the same. It can even be said that it decreases, for the more numerous the people and the more varied the nature

⁹ “I suspect that this doctrine that presents small States to us as the only ones that are suitable for republican forms will be refuted by experience. Perhaps it will be recognized that in order to establish a republic in which justice reigns, the republic must be large enough so that local egoism is never able to harm the whole, nor corrupt the major part of those who lead it; so that on every question you will always be sure to find in the councils a majority free of particular interests and capable of making solely the principles of justice prevail.”


⁹ The wording of this sentence comes from Beaumont (YTC, CIHb, 3, p. 34).
of minds and interests, the more difficult it is, as a result, to form a compact majority.

[Republican government is fragile by nature. It lasts much more because of the weakness of the attacks directed against it than because of a strength of its own [v: its own power]. It relies only on a certain sentiment of order, virtue and moderation on the part of the governed. The immoderate desires of parties, great riches and great poverty, vast cities, and the profound corruption of mores that they engender, constantly threaten the existence of republics. Now, all of these things are found only among large nations alone. A government that has the source of its power outside of the people can continue to exist for a long time, whatever the opinions of the people; but a republican government has strength only in the support of the majority; the more numerous the people, the harder to form a majority. Here my reasoning is based only upon a numerical calculation.‡]

We have been able to note, moreover, that human passions acquired intensity, not only from the greatness of the end that they wanted to attain, but also from the multitude of individuals who felt them at the same time. There is no one who does not find himself more moved in the middle of an agitated crowd that shares his emotion than if he were to feel it alone. In a large republic, political passions become irresistible, not only because the objective that they pursue is immense, but also because millions of men experience those political passions in the same way and at the same moment.

So it is permissible to say that, in general, nothing is so contrary to the well-being and to the liberty of men as large empires.

Large States have particular advantages, however, that must be recognized.

In them, the desire for power is more passionate among common men than elsewhere. So too the love of glory there is more developed among certain souls who find in the applause of a great people an objective that is worthy of their efforts and appropriate for raising them, in a way, above themselves. There, thought in all fields is given a more rapid and powerful impetus; ideas circulate more freely; large cities are like vast intellectual centers where all the lights of the human mind come to shine and combine.
This fact explains for us why large nations bring more rapid progress to enlightenment and to the general cause of civilization than small ones. It must be added that important discoveries often require a development of national strength of which the government of a small people is incapable; among large nations, the government has a greater number of general ideas; it is more completely free from the routine of antecedents and from local egoism. There is more genius in its conceptions, more boldness in its ways of doing things.

Internal well-being is more complete and more widespread among small nations as long as they remain at peace; but a state of war is more harmful to them than it is to large nations. In the latter, great distance from the borders sometimes allows most people to remain far from danger for centuries. For them, war is more a cause of discomfort than of ruin. [Large nations are at war more than small ones, but all things considered, among the large ones, there are more men at peace.]

Moreover, in this matter as in many others, there is a consideration that predominates over all the rest: that of necessity.

If there were only small nations and not any large ones, humanity would certainly be freer and happier; but the existence of large nations cannot be avoided.

This introduces into the world a new element of national prosperity, which is strength. What good is it for a people to present a picture of comfort and liberty, if they are exposed each day to devastation or conquest? What good is it that they have manufacturing and commerce, if another people commands the seas and establishes the law for all markets? Small nations are often miserable, not because they are small, but because they are weak; large nations prosper, not because they are large, but because they are strong. So for nations, strength is often one of the first conditions of happiness and even of existence. Because of that, barring particular circumstances, small peoples always end up being violently united with large ones or uniting with them on their own. I know of no condition more deplorable than that of a people able neither to defend itself nor to be self-sufficient.

q. This sentence and the preceding one have been corrected by Beaumont (YTC, CIIIb, 3, pp. 34–35).
The federal system has been created to unite the various advantages that result from the large and the small sizes of nations.\(^{r}\)

It is enough to look at the United States of America to see all the good that comes to those who adopt this system.

Among large centralized nations, the legislator is forced to give laws a uniform character that does not allow for the diversity of places and mores; never learning about individual cases, he can only proceed by general rules. Men are then obliged to bend to the necessity of legislation, for legislation cannot adapt to the needs and mores of men; this is a great cause of trouble and misery.\(^{s}\)

This disadvantage does not exist in confederations. The congress regulates the principal actions of social existence; all the detail is left to the provincial legislatures.

You cannot imagine to what degree this division of sovereignty serves the well-being of each of the states that compose the Union. In these small societies, not preoccupied by the need to defend themselves or to expand, all public power and all individual energy are turned toward internal improvements.\(^{t}\) The central government of each state, situated close to the governed, is alerted daily to needs that make themselves felt. Consequently, each year new plans are presented; these plans, discussed in town assemblies or the state legislature and then reproduced in the press, excite universal improvement.

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\(^{r}\) Rousseau made the following recommendation to the Poles: “Apply yourselves to expanding and perfecting the system of federative governments, the only one that unites the advantages of large and small States” (\textit{Considérations sur le gouvernement de Pologne}, chapter V, in \textit{Œuvres complètes}, III, Paris: Pléiade, 1964, p. 971). The same idea is set forth at the beginning of \textit{Jugement sur le projet de paix perpétuelle}, and it appears in a note at the end of chapter XV of book III of \textit{Le Contrat social} (\textit{ibid.}, p. 431). The advantages of the federal form had been equally praised by Montesquieu in the first chapter of book IX of \textit{Esprit des lois} (in \textit{Œuvres complètes}, Paris: Pléiade, 1951, II, p. 369).

\(^{s}\) Cf. conversation with Mr. Bowring (\textit{Voyage en Angleterre}, OC, V, 2, p. 35).

\(^{t}\) “#Nevertheless, the greatest difficulty is not to find some peoples who know how to manage their own affairs, but to find some with this habit who can understand federal sovereignty and submit to it#” (\textit{YTC}, CVh, 4, p. 4).
interest and the zeal of the citizens. This need to improve agitates the American republic constantly and does not trouble them; there, ambition for power is replaced by the love of well-being, a more vulgar, but less dangerous passion. It is an opinion generally shared in America that the existence and duration of republican forms in the New World depend on the existence and the duration of the federal system. A great part of the miseries engulfing the new States of South America is attributed to the desire to establish large republics there, instead of dividing sovereignty.

As a matter of fact, it is incontestable that in the United States the taste and the practice of republican government were born in the towns and within the provincial assemblies. In a small nation such as Connecticut, for example, where the important political matter is opening a canal or laying out a roadway, where the state has no army to pay nor war to sustain, and where the state can give to those who lead it neither wealth nor much glory, you can imagine nothing more natural and more appropriate to the nature of things than a republic. Now, this same republican spirit, these mores and these habits of a free people, after being born and developing in the various states, are then applied easily to the whole country. In a way, the public spirit of the Union is itself only a summary of provincial patriotism. Each citizen of the United States transfers, so to speak, the interest inspired in him by his small republic to the love of the common native land. By defending the Union, he defends the growing prosperity of his district, the right to direct its affairs, and the hope of winning acceptance there for the plans for improvement that are to enrich him himself: all things that ordinarily touch men more than the general interests of the country and the glory of the nation.

u. Hervé de Tocqueville: “All that precedes is very good. A thought however: Isn’t the well-being that, for the states of the Union, results from the division of sovereignty disturbed by the vices of their democratic organization that Alexis had pointed out?”

Édouard de Tocqueville: “It seems to me that this can only be related to the whole. It is certain that the United States, as they are constituted, enjoy an enormous prosperity, and that the nations of the South are in anarchy” (YTC, CHIb, 3, p. 24).

v. In the first version, the state cited was Massachusetts.
On the other hand, if the spirit and the mores of the inhabitants make them more suitable than others to cause a large republic to prosper, the federal system has made the task much less difficult. The confederation of all the American states does not show the usual disadvantages of numerous human agglomerations. The Union is a large republic in terms of expanse; but in a way, it can be likened to a small republic, because of the small number of matters that concern its government. Its acts are important, but rare. Since the sovereignty of the Union is hindered and incomplete, the use of this sovereignty is not dangerous to liberty. Nor does it excite those immoderate desires for power and reputation that are so deadly to great republics. Since everything there does not necessarily end up at a common center, you see neither vast cities, nor enormous wealth, nor great poverty, nor sudden revolutions. Political passions, instead of spreading instantaneously like a firestorm over the whole surface of the country, are going to break against the individual passions and interests of each state.

Within the Union, however, ideas and things circulate freely, as among one and the same people. Nothing stops the rise of the spirit of enterprise. Its government draws upon talents and enlightenment. Within the boundaries of the Union, as within the interior of a country under the same empire, a profound peace reigns. Outside, the Union ranks among the most powerful nations of the world; it offers to foreign trade more than eight hundred leagues of coastline. Holding in its hands the keys to a whole world, it enforces respect for its flag in the far reaches of the seas.

w. Hervé de Tocqueville: “And New York which is so large?”
Édouard de Tocqueville: “New York, it seems to me, is only a large city and not a metropolis, in the true meaning of this word” (YTC, CIIIb, 3, p. 24).

x. Hervé de Tocqueville: “This peroration is beautiful, but isn’t Alexis making America into too much of an El Dorado? It must not be forgotten that he thinks himself obliged to disenchant us in the following chapters. Two sentences here appear too strong to me: that of the profound peace that reigns within the interior—two recent examples have shown that this peace is easily troubled—and that of respect for the flag, which exists only because the European nations wish it or do not agree to humiliate it. Not with its small fleet would America force the maritime powers to respect its flag.”
Édouard de Tocqueville: “Alexis shows in several places what the future dangers of the American government are, and what its weak side is at the present time. But, if one judges it now as a whole, one can say, as in the last sentence, ‘The Union is free and happy, etc.’” (YTC, CIIIb, 3, pp. 24–25).
The Union is free and happy like a small nation, glorious and strong like a large one.\textsuperscript{y}

What Keeps the Federal System from Being within the Reach of All Peoples; And What Has Allowed the Anglo-Americans to Adopt It

There are, in all federal systems, inherent vices that the law-maker cannot fight.—Complication of all federal systems.—It requires from the governed the daily use of their intelligence.—Practical knowledge of the Americans in the matter of government.—Relative weakness of the government of the Union, another vice inherent in the federal system.—The Americans have made it less serious, but have not been able to destroy it.—The sovereignty of the individual states weaker in appearance, stronger in reality than that of the Union.—Why.—So among confederated peoples, there must be natural causes of union, apart from the laws.—What these causes are among the Anglo-Americans.—Maine and Georgia, 400 leagues apart, more naturally united than Normandy and Brittany.—That war is the principal danger to confederations.—This proved by the very example of the United States.—The Union has no great wars to fear.—Why.—Dangers that the peoples of Europe would run by adopting the federal system of the Americans.

[Of all beings, man is assuredly the one best known; and yet his prosperity or miseries are the product of unknown laws of which only a few isolated and incomplete fragments come into our view. Absolute truth is hidden and perhaps will always remain hidden.] The law-maker sometimes succeeds, after a thousand efforts, in exercising an indirect influence on the destiny of nations, and then his genius is celebrated. While often, the geo-

\textsuperscript{y} See the conversation with Mr. MacLean (non-alphabetic notebooks 2 and 3, YTC BIIa, and \textit{Voyage, OC, V}, 1, p. 127).
graphic position of the country, over which he has no influence; a social state that was created without his support; mores and ideas, whose origin is unknown to him; a point of departure that he does not know, impart to society irresistible movements that he struggles against in vain and that carry him along as well.

The law-maker resembles a man who plots his route in the middle of the sea. He too can navigate the ship that carries him, but he cannot change its structure, raise the wind, or prevent the ocean from heaving under his feet.

I have shown what advantages the Americans gain from the federal system. It remains for me to explain what allowed them to adopt this system; for not all peoples are able to enjoy its benefits.

Accidental vices arising from the laws are found in the federal system; these can be corrected by law-makers. Others are encountered that are inherent in the system; these could not be destroyed by the peoples who adopt it. So these peoples must find within themselves the strength to withstand the natural imperfections of their government.

Among the vices inherent to all federal systems, the most visible of all is the complication of means that they use. This system necessarily brings two sovereignties face to face. The law-maker succeeds in making the movements of these two sovereignties as simple and as equal as possible, and he can enclose both of them within clearly defined spheres of action. But he cannot make it so that there is only one of them, nor prevent them from being in contact at some point.

[The federal system of the United States consists of combining two governments: one, provincial; the other, national.

It is already not so easy to find a people who have the taste and, above all, the habit of provincial government. I have already remarked earlier that, among enterprises that can be attempted, certainly one of the most difficult was to persuade men to attend to their own affairs. It follows that the federal system is hardly ever established except among nations who, independent of one another for a long time, have naturally contracted this taste and these habits to a high degree. Notably, this is what happened in the United States. Before the Revolution, they all recognized the authority of the mother country, but each of them had its individual government as well and did not depend on its neighbor.
Nonetheless, the great difficulty is not finding some peoples who know how to run their own affairs, but finding some who can understand federal sovereignty and submit to it.

So no matter what is done, the federal system rests on a complicated theory whose application requires, in the governed, the daily use of the light of their reason.\(^z\)

In general, only simple conceptions take hold of the mind of the people. An idea that is false, but clear and precise, will always have more power in the world than a true, but complicated, idea. It follows that parties, which are like small nations within a large one, are always quick to adopt, as a symbol, a name or a principle that often represents only very incompletely the end that they propose and the means that they employ. But without this symbol, they would be able neither to subsist nor to stir. Governments that rest only on a single idea or single sentiment, easy to define, are perhaps not the best, but they are assuredly the strongest and the most durable.

On the contrary, when you examine the Constitution of the United States, the most perfect of all known federal constitutions, you are alarmed by the many varieties of knowledge and by the discernment that it assumes among those whom it must govern. The government of the Union rests almost entirely on legal fictions. The Union is an ideal nation that exists only in the mind so to speak; intelligence alone reveals its extent and its limits.

Once the general theory is well understood, the difficulties of application remain; they are innumerable, for the sovereignty of the Union is so entangled with the sovereignty of the states that it is impossible at first

\(^z\) In the fourth lecture of his course on civilization in Europe, Guizot insisted on this point:

The federative system, logically the most simple, is in fact the most complex; in order to reconcile the degree of independence, of local liberty, that it allows, with the degree of general order, of general submission that it requires and assumes in certain cases, a very advanced civilization is clearly required. . . . The federative system is therefore the one that clearly requires the greatest development of reason, of morality, of civilization, in the society to which it applies (*Histoire générale de la civilisation en Europe*, Brussels, Société belge de Librairie, 1839, lesson IV, p. 41).
glance to perceive their limits. Everything is by convention and by artifice in such a government, and it can only suit a people accustomed, for a long time, to running their own affairs, a people among whom political knowledge has penetrated to the lowest levels of society. I have never admired the good sense and practical intelligence of the Americans more than in the way in which they escape the innumerable difficulties that arise from their federal constitution. I almost never met a common man in America who did not, with surprising ease, discriminate between the obligations arising from the laws of Congress and those originating in the laws of his state, and who, after distinguishing the matters that were among the general attributions of the Union from those that the local legislature had to regulate, could not indicate the point at which the jurisdiction of the federal courts began and the limit at which that of the state courts ended.

The Constitution of the United States resembles those beautiful creations of human industry that shower glory and wealth on those who invent them, but that remain sterile in other hands.

This is what Mexico has demonstrated in our times.

The inhabitants of Mexico, wanting to establish the federal system, took as a model and almost completely copied the federal constitution of the Anglo-Americans, their neighbors.39 But while importing the letter of the law, they could not at the same time import the spirit that gives it life. So they are seen constantly encumbered by the mechanism of their double government. The sovereignty of the states and that of the Union, leaving the circle that the constitution had drawn, penetrate each other daily. Still today, Mexico is constantly dragged from anarchy to military despotism, and from military despotism to anarchy.

[But even if a people were advanced enough in civilization and versed enough in the art of government to submit intelligently to so complicated a political theory, it would still not mean that the federal system could meet all their needs.

There is, in fact, a vice inherent in this system that will manifest itself no matter what is done. That is the relative weakness of the government of the Union.]

39. See the Mexican constitution of 1824.
The second and more destructive of all the vices, which I regard as inherent in the federal system itself, is the relative weakness of the government of the Union.

The principle on which all confederations rest is the division of sovereignty. Law-makers make this division hardly noticeable; they even hide it from view for awhile, but they cannot keep it from existing. Now, divided sovereignty will always be weaker than complete sovereignty.

In the account of the Constitution of the United States, we saw how artfully the Americans, while enclosing the power of the Union within the limited circle of federal governments, succeeded in giving it the appearance and, to a certain extent, the strength of a national government.

By acting in this way, the law-makers of the Union reduced the natural danger of confederations; but they were not able to make it disappear entirely.

The American government, it is said, does not address itself to the states; it applies its injunctions directly to the citizens and bends them, separately, to the work of the common will.

But if federal law collided with the interests and prejudices of a state, should it not be feared that each of the citizens of this state would believe himself interested in the cause of the man who refuses to obey? When all the citizens of the state found themselves thus harmed at the same time and in the same way by the authority of the Union, the federal government would seek in vain to isolate them in order to combat them. They would instinctively feel that they must unite to defend themselves, and in the portion of sovereignty left for their state to enjoy, they would find an organization already prepared. Fiction would then disappear and give way to reality, and you would be able to see the organized power of one part of the territory joining battle with the central authority.

[This is, moreover, the spectacle most recently presented by South Carolina. The regulations of the United States concerning the tariff had become completely unpopular in Carolina; the state legislature took the initiative and suspended the enforcement of the federal law. This result is inevitable. When the interest or passions of men are left a powerful means of satisfaction, you can be assured that legal fictions will not long prevent them from noticing and making use of that means. #This is so well understood
even in America that, no matter how large certain states already are, care has been taken not to create district assemblies that could represent a collective resistance. The legislature never has to make anything obey, other than towns, without links to each other. 

Former federal constitutions obliged the states to act. The Constitution of the United States only obliges them to allow action, an essential difference that makes resistance very rare; for it is very much easier to refuse to act than to prevent someone else from acting. But once what you resolved simply to endure reaches a certain level of pain, the reluctance that men have to take initiative does not take long to disappear, and the precaution of the law-maker is found wanting.

The principle of federal law is that the Court of the United States must endeavor to judge only individuals. In this way, it does [not (ed.)] generally attack the laws of the states, which reduces the danger of a collision between the two sovereignties. But if, in a particular interest, it violates an important state law, or harms a general state principle or interest, the precautions of the law-maker are again useless; and the struggle, real if not obvious, is between the harmed state, represented by a citizen, and the Union, represented by its courts. The Constitution gives the Union . . . [text of note 40 (ed.)].

It is enough, moreover, to see in what a persuading and conciliatory manner the federal government calls for the execution of laws, in order to judge that, despite appearances and the efforts of the law-maker, the federal government constantly finds itself facing not individuals, but sovereigns.

It is even easy to go further, and it must be said with the famous Hamilton in the Federalist that of the two sovereignties, the stronger is assuredly the sovereignty of the state.

You can even go further . . . [cf. infra (ed.)] . . .]

I will say as much about the federal judicial system. If, in a particular trial, the courts of the Union violated an important state law, the real, if not obvious, struggle would be between the harmed state, represented by a citizen, and the Union, represented by its courts. 40

40. Example: The Constitution gave the Union the right to have unoccupied lands sold for its benefit. I suppose that Ohio claims this same right for those that are enclosed within its
You must have little experience in the ways of this world to imagine that, after leaving the passions of men a means of satisfaction, you will always prevent them, with the aid of legal fictions, from noticing and making use of that means.

So the American law-makers, while making the struggle between the sovereignties less probable, did not destroy the causes.

You can even go further and say that they were not able to secure preponderance to the federal power in case of conflict.\(^a\)

They gave the Union money and soldiers, but the states retain the love and the prejudices of the people.

The sovereignty of the Union is an abstract thing connected to only a small number of external matters. The sovereignty of the states is felt by all the senses; it is understood without difficulty; every moment, it is seen in action. One is new; the other was born with the people themselves.

The sovereignty of the Union is a work of art. The sovereignty of the states is natural; it exists by itself, without effort, like the authority of the father of a family.

The sovereignty of the Union touches men only through a few general interests; it represents an immense and distant country, a vague and indefinite sentiment. The sovereignty of the states envelops each citizen in a way and catches him every day by details. It is the state that takes responsibility

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\(^a\) With a bracket that goes from this paragraph to the one that ends with the words “that carry them toward peace”:

To note.

I say the same thing with more development in the last chapter on the future. Ask for advice?\(^a\)

Hervé de Tocqueville: “Do not put it here. One can do without it.”

Édouard de Tocqueville: “The more I reread the passage, the more I regret that there is a question of deleting it, even more because I have not read the one that it repeats” (YTC, CIIIb, 3, p. 25).
for guaranteeing his prosperity, his liberty, his life; at every moment, it influences his well-being or his misery. The sovereignty of the states rests on memories, on habits, on local prejudices, on the egoism of province and of family; in a word, on all the things that make the instinct for native land so powerful in the heart of man. How can its advantages be doubted?

Since the law-makers cannot prevent the occurrence of dangerous collisions between the two sovereignties that are brought face to face by the federal system, their efforts to turn confederated peoples away from war must be joined with particular dispositions that carry them toward peace.

It follows that the federal pact cannot exist for long if, among the peoples to whom it applies, a certain number of conditions for union are not found that make this common life easy for them and facilitate the task of government.

Thus, to succeed, the federal system needs not only good laws, but also favorable circumstances.

All peoples who have been seen to form a confederation have had a certain number of common interests that serve as the intellectual bonds of the association.

But beyond material interests, man still has ideas and sentiments. For a confederation to last for a long time, there must be no less homogeneity in the civilization than in the needs of the diverse peoples who constitute it. The civilization of a canton in Vaud compared with that of a canton in Uri is like the XIXth century compared with the XVth; so Switzerland has never truly had a federal government. The union among the different cantons exists only on the map; and that would be clearly seen if a central authority wanted to apply the same laws over the whole territory.b


André Jardin indicates that in his view Tocqueville must have visited Switzerland at least five times between 1823 and 1836. The notes of the voyage to Switzerland in 1836 are known to us thanks to the text published in the Oeuvres complètes, Beaumont edition. André Jardin (“Tocqueville et la décentralisation,” in La décentralisation, VI colloque d’histoire, Aix-en-Provence: Publication des Annales de la Faculté des Lettres, 1961, pp. 89–117, 97) has nonetheless remarked that certain similarities between these notes
There are men who pretend that one of the advantages of federal constitutions is to allow each portion of the same empire to live entirely in its own way, without ceasing to be united. That is true, if confederation means a kind of offensive and defensive league, by means of which different peoples unite to repel a common danger and remain strangers to each other for everything else. But if, among confederated peoples, you want to create a common existence and a true national government, it is absolutely necessary that their civilization be homogeneous in nature. This necessity makes itself felt even much more in confederations than in monarchies, because in order to be obeyed, government has much more need for the support of the governed in the first than in the second.

The federal system allows and favors diversity in laws dealing with specifics, which is a great good; but it often resists uniformity in general laws, which is a great evil.

In the United States there is a fact that admirably facilitates the existence of the federal government. The different states not only have more or less the same interests, the same origin and the same language, but also the same degree of civilization; this almost always makes agreement among them easy. I do not know if there exists any European nation, however small, that, in its different parts, does not present a less homogeneous face than the American people whose territory is as large as half of Europe.

From the state of Maine to the state of Georgia, there are about four hundred leagues. However, less difference exists between the civilization of Maine and that of Georgia than between the civilization of Normandy and that of Brittany. So Maine and Georgia, placed at two extremities of a vast
empire, naturally find more real ease in forming a confederation, than Normandy and Brittany, which are separated only by a stream.

With these opportunities, which the mores and habits of a people offer to the American law-makers, are joined others that arise from the geographic position of the country. It is principally to the latter that the adoption and maintenance of the federal system must be attributed.\(^{c}\)

[Despite all these obstacles, I believe federal governments still more appropriate for maintaining internal peace and for favoring, over a vast empire, the peaceful development of social well-being, than for struggling with advantage against foreign enemies.

It is the difficulty that confederations find in sustaining great wars that makes so many peoples incapable of enduring federal government.]

The most important of all the actions that can mark the life of a people is war. In war, a people acts as a single individual vis-à-vis foreign peoples; it fights for its very existence.

As long as it is only a question of maintaining peace within the interior of a country and of favoring prosperity, skill in the government, reason among the governed, and a certain natural attachment that men almost always have for their country can easily suffice. But for a nation to be able to wage a great war, the citizens must impose numerous and painful sacrifices on themselves. To believe that a large number of men will be capable of submitting themselves to such social exigencies, is to know humanity very badly. [Were the necessity of war to be universally acknowledged, the natural inclination of the human mind is to reject the annoying conse-

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\(^{c}\) In the margin:

# General ideas. 
Insular position of the Union.
Indians, nothing. 4,000 soldiers. Attacked from a distance, defended close by./
Impossibility of taxes. Federalist./
Difficulties over the militias in the War of 1812./
Inability of the large nations of Europe to live federally./
Fortunate Americans. #
quences of the principle that it previously accepted. So once the principle of war is accepted, an authority capable of forcing individuals to bear its consequences must be found somewhere.]

It follows that all peoples who have had to wage great wars have been led, almost despite themselves, to augment the forces of the government. Those who have not been able to succeed in doing so have been conquered. A long war almost always puts nations in this sad alternative; their defeat delivers them to destruction, and their triumph, to despotism.

[There is a great nation in Europe where the forces of society [v: governmental forces] are centralized in such a way that in case of war, a drum-beat assembles the entire nation, so to speak, around its leader, like the inhabitants of a village. This nation, apart from its courage, must have a great advantage over others for waging war; on several occasions, therefore, we have seen it dominate all of Europe by force of arms.

The fact is that to draw from people the enormous sacrifices of men and money that war requires and to concentrate, in one place and at a given time, all national forces, nothing less is required than the efforts of complete sovereignty.

Now, the inevitable evil of confederations, I have already said, is the division of sovereignty. In the federal system, not only is there no administrative centralization or anything approaching it, but also governmental centralization itself exists only very incompletely. That is always a great cause of weakness when it is a question of defense against peoples among whom governmental centralization exists.

In the federal Constitution of the United States . . . [cf. infra (ed.)].

So, in general, it is during a war that the weakness of a government is revealed in a most visible and dangerous manner; and I have shown that the inherent vice of federal governments was to be very weak.

In the federal system, not only is there no administrative centralization or anything approaching it, but also governmental centralization itself exists only incompletely. That is always a great cause of weakness, when defense is necessary against peoples among whom governmental centralization is complete.

In the federal Constitution of the United States, of all federal constitutions, the one where the central government is vested with the most real
strength, this evil still makes itself acutely felt. [The law gives Congress, it is true, the right to take all measures required by the interest of the country, but the difficulty is to exercise such a right. If Congress, pressed by urgent needs, comes to impose on the governed sacrifices equal to the dangers, the discontent of those individuals who suffer does not fail to find a place of support in the sovereignty of the states, or at least in the ambition of those who lead the states and who, in turn, want the support of the malcontents. The states that do not want to wage war, or to whom the war is useless or harmful, easily find in the interpretation of the Constitution the means to refuse their support. The physical and, above all, the moral force of the nation is considerably reduced by it, for even the possibility of such an event renders the federal government weak and slow to act; it fills the government with hesitations and fears and prevents it from even attempting all that it could do.

“It is evident,” says Hamilton in the *Federalist*, no. 12, “from the state of the country, from the habits of the people, from the experience we have had on the point itself that it is impracticable to raise any very considerable sums by direct taxation.” The direct tax is in fact the most visible and burdensome of taxes; but at the same time, it is the only one that can always be resorted to during a war.

A single example will allow the reader to judge.

The Constitution gives Congress the right to call the state militias into active duty when it is a matter of suppressing an insurrection or repelling an invasion. Another article says that in this case the President of the United States is the Commander in Chief of the militia.

At the time of the War of 1812, the President ordered the militias of the North to move toward the national borders; Connecticut and Massachusetts, whose interests were harmed by the war, refused to send their contingents.

The Constitution, they said, authorizes the federal government to use the militias in cases of insurrection or invasion; but in the present situation there was neither insurrection nor invasion. They added that the same Constitution that gave the Union the right to call the militias into active service, left the states the right to appoint the officers. It followed, according to them, that even in war, no officer of the Union had the right to command
the militias, except the President in person. But this was a matter of serving in an army commanded by someone other than him.

These absurd and destructive doctrines received not only the sanction of the Governors and the legislature, but also that of the courts of justice of these two states; and the federal government was forced to find elsewhere the troops that it needed.41

[A fact of this nature proves, better than all that I could say, the inability the American Union would have to sustain a great war, even with the improved organization that the 1789 Constitution gave it.]

Allow for a moment the existence of such a nation in the midst of the aggressive peoples of Europe where sovereignty is unified and omnipotent, and the relative weakness of the American Union will become for you a proven and plain truth.]

So how is it that the American Union, all protected as it is by the relative perfection of its laws, does not dissolve in the middle of a great war? It is because it has no great wars to fear.e

[In general, we must give up citing the example of the United States to prove that confederations can sustain great wars, for the Union has never had a single one of this nature.]

Even that of 1812, which the Americans speak about with such pride, was nothing compared to the smallest of those that the ambition of Louis XIV or the French Revolution brought about in Europe. The reason is simple.]

Placed in the center of an immense continent, where human industry

41. Kent’s Commentaries, vol. I, p. 244. Note that I have chosen the example cited above from the time after the establishment of the current Constitution. If I had wanted to go back to the period of the first confederation, I would have pointed out even more conclusive facts. ([Nothing more miserable can be imagined than the way the central government conducted the War of Independence and yet]) Then true enthusiasm reigned in the nation; the Revolution was represented by an eminently popular man; and yet, in that period, Congress had no resources at all, so to speak. Men and money were needed at every moment; the best laid plans failed in the execution; and the Union, always at the brink of perishing, was saved much more by the weakness of its enemies than by its own strength.d

d. At first, the text of this note was found before “[In general . . .].”

e. In the beginning, note 41 was found at this place in the manuscript.
can expand without limits, the Union is almost as isolated from the world as if it were enclosed on all sides by the ocean.\textsuperscript{f}

Canada numbers only a million inhabitants; its population is divided into two enemy nations. The rigors of climate limit the extent of its territory and close its ports for six months of the year.

From Canada to the Gulf of Mexico, there are still a few, half-destroyed, savage tribes that six thousand soldiers\textsuperscript{g} drive before them.

In the South, the Union at one point touches the empire of Mexico; probably great wars will come from there one day [if the Anglo-Americans and the Mexicans each continue to form a single, unified nation. In Mexico, in fact, there is a numerous population that, different from its neighbors by language, religion, habits and interest [broken text (ed.)]]. But, for a long time still, the little developed state of its civilization, the corruption of its mores and its poverty will prevent Mexico from taking an elevated rank among nations. As for the great powers of Europe, their distance makes them little to be feared.\textsuperscript{O}

So the great happiness of the United States is not to have found a federal constitution that allows it to sustain great wars, but to be so situated that there are none to fear.

No one can appreciate more than I the advantages of the federal system. There I see one of the most powerful devices favoring prosperity and human liberty. I envy the fate of nations permitted to adopt it. But I refuse, nonetheless, to believe that confederated republics could struggle for long, with equal strength, against a nation where governmental power would be centralized.

The people who, in the presence of the great military monarchies of Europe, would come to divide sovereignty, would seem to me to abdicate, by this fact alone, its power and perhaps its existence and its name.

Admirable position of the New World where man has only himself as an enemy. To be happy and free, he only has to want to be.

\textsuperscript{f} In the margin, with a bracket that includes this paragraph and the two following: "To note.
I also say part of all of this at the future. Quid?"

\textsuperscript{g} The figure 4,000 appears in the manuscript as well as in a few other places.
CHAPTER 2

Of Parties in the United States

A great division among parties must be made.—Parties that differ among themselves like rival nations.—Parties strictly speaking.—Difference between great and small parties.—In what times they arise.—Their different characters.—America had great parties.—It no longer has them.—Federalists.—Republicans.—Defeat of the Federalists.—Difficulty of creating parties in the United States.—What is done to succeed in creating them.—Aristocratic or democratic character that is found in all parties.—Struggle of General Jackson against the Bank.

First I must establish a great division among parties.

There are countries so vast that the different populations living there, though united under the same sovereignty, have contradictory interests that give rise to a permanent opposition among them. Then, the various portions of the same people do not form parties strictly speaking, but distinct nations; and if civil war happens to break out, there is a conflict between rival peoples rather than a struggle between factions.

[#What I call truly a party is a gathering of men who, without sharing the bond of a common birth, view certain points in a certain way.]

But when citizens differ among themselves on points that interest all portions of the country equally, such as the general principles of government, for example, then what I will call truly parties are seen to arise.
Parties are an evil inherent in free governments; but they do not have the same character and the same instincts in all periods of time.

There are periods of time when nations feel tormented by such great ills that the idea of a total change in their political constitution occurs to their mind. There are other periods when the malaise is even more profound and when the social state itself is compromised. That is the time of great revolutions and great parties.

Between these centuries of disorders and miseries, you find others when societies are at rest and when the human race seems to catch its breath. In truth, that is still only outward appearance. The march of time does not stop for peoples any more than for men; both advance each day toward an unknown future; and when we believe them stationary, it is because their movements escape us. They are men who are walking; to those who are running, they seem immobile.

[Similar to the hand that marks the hours; everyone can tell the path it has already followed, but the hand must be watched for a long time to discover that it is moving.]

Be that as it may, there are periods when the changes that take place in the political constitution and social state of peoples are so slow and so imperceptible, that men think they have arrived at a final state; the human mind then believes itself firmly seated on certain foundations and does not look beyond a certain horizon.

This is the time of intrigues and of small parties.

What I call great political parties are those that are attached to principles more than to their consequences, to generalities and not to particular cases, to ideas and not to men. In general, these parties have more noble traits, more generous passions, more real convictions, a more candid and bold appearance than the others. Here, particular interest, which always plays the greatest role in political passions, hides more cleverly behind the veil of public interest; sometimes it even manages to hide from the view of those whom it arouses and brings into action.

Small parties, on the contrary, are generally without political faith. Since they do not feel elevated and sustained by great objectives, their character is stamped by an egoism that occurs openly in each of their acts. They get worked up from a cold start; their language is violent, but their course is
timid and uncertain. The means they use are miserable, like the very end that they propose. That is why, when a time of calm follows a violent revolution, great men seem suddenly to disappear and souls withdraw into themselves.

Great parties turn society upside down; small ones trouble it; the ones tear it apart and the others deprave it. [Both have a common trait, however: to reach their ends, they hardly ever use means that conscience approves completely. There are honest men in nearly all parties, but it can be said that no party should be called an honest man.>] The first sometimes save society by shaking it up; the second always disturb it to no profit.

America had great parties; today they no longer exist. From that it has gained a great deal in happiness, but not in morality.a

a. The ideas of this paragraph and the three preceding ones are found again almost literally in a note of 14 January 1832 from Notebook E of the American Journey (YTC, BIIa, and Voyage, OC, V, 1, pp. 260–61) and in a nearly identical note from pocket notebooks 4 and 5 (YTC, BIIa, and Voyage, OC, V, 1, pp. 197–98). The last paragraph continues in this way:

I do not know of a more miserable and more shameful spectacle in the world than the one presented by the different coteries (they do not deserve the name parties) that divide the Union today. Within them, you see stirring, in full view, all the petty and shameful passions that ordinarily take care to hide deep within the human heart. As for the interest of the country, no one considers it; and if someone speaks about it, it is a matter of form. The parties put it at the head of their articles of association, just as their fathers did, in order to conform to long-standing usage. It has no more relation to the rest of the work than the license of the king that our fathers printed on the first page of their books.

It is pitiful to see what a flood of coarse insults, what petty, malicious gossip, and what coarse slanders fill the newspapers that all serve as organs of the parties; with what shameless contempt for social proprieties, they bring the honor of families and the secrets of the domestic hearth before the court of opinion each day.

In a letter dated 1 October 1858 and addressed to William R. Greg (OCB, VI, pp. 455–56), Tocqueville comments on an article by the latter on political parties (“The State of the Parties,” National Review 7, no. 13 (1858): 220–43). He notes as well another danger tied to the absence of great political parties:

When there are no more great parties, well bound together by shared interests and passions, foreign policy hardly ever fails to become the primary element of parliamentary activity. . . . Now, I regard such a state of things as contrary to the dignity
When the War of Independence finally ended and it was a matter of establishing the foundations of the new government, the nation found itself divided between two opinions. These opinions were as old as the world, and they are found under different forms and given various names in all free societies. One wanted to limit popular power; the other, to expand it indefinitely.

Among the Americans, the struggle between these two opinions never took on the violent character that has often marked it elsewhere. In America, the two parties were in agreement on the most essential points. Neither one had to destroy an old order or turn an entire social state upside down in order to win. Consequently, neither one bound a large number of individuals’ lives to the triumph of its principles. But they touched upon non-material interests of the first order, such as love of equality and of independence. That was enough to arouse violent passions.

The party that wanted to limit popular power sought, above all, to apply its doctrines to the Constitution of the Union, which earned it the name Federalist.

The other, which claimed to be the exclusive lover of liberty, took the title Republican.\footnote{b}

and security of nations. Foreign affairs, more than all other matters, need to be treated by a small number of men, with consistency, in secret.

And further on he adds:

I find that, with rare sagacity, you have indicated the conditions under which great parties, well disciplined, can exist in a free country. As you say, each of them must be the representative of one of the two great principles that eternally divide human societies, and that, to be brief, can be designated by the names aristocracy and democracy.

b. The history of the Federalists and the Republicans owes a great deal to a conversation with Mr. Biddle, President of the Bank of the United States (non-alphabetic notebooks 2 and 3, YTC, BIIa, and \textit{Voyage, OC,} V, 1, pp. 122–23). The idea that, in America, there are no real parties had already appeared in April 1831, in a conversation with Mr. Schermerhorn on the \textit{Havre}, during the crossing of the Atlantic (notebook E, YTC, BIIa, and \textit{Voyage, OC,} V, 1, pp. 292–93). Beaumont will report this conversation to his father in a letter of 16 May 1831 (\textit{Lettres d’Amérique}, p. 40), and will mention it in Marie (I, p. 360).

On Tocqueville’s theory of parties, see especially Nicola Matteucci, “Il problema de partito politico nelle riflessioni d’Alexis de Tocqueville,” \textit{Pensiero politico} 1, no. 1 (1968):
America is the land of democracy. So the Federalists were always a minority; but they counted in their ranks nearly all the great men who had emerged from the War of Independence, and their moral power was very extensive. Circumstances, moreover, favored them. The ruin of the first confederation made the people afraid of falling into anarchy, and the Federalists profited from this temporary frame of mind. For ten or twelve years, they led affairs and were able to apply, not all of their principles, but some of them; for, day by day, the opposing current became too violent for anyone to dare to struggle against it.

In 1801, the Republicans finally took possession of the government. Thomas Jefferson was named President; he brought them the support of a celebrated name, a great talent, and an enormous popularity.

The Federalists had only survived thanks to artificial means and with the aid of temporary resources; the virtue or talents of their leaders, as well as the good fortune of circumstances, had brought them to power. When the Republicans, in turn, gained power, the opposing party was as if enveloped by a sudden flood. An immense majority declared against it, and the party found itself at once in such a small minority that it immediately gave up hope. From that moment, the Republican or Democratic party has marched from conquest to conquest and has taken possession of the entire society.

The Federalists, feeling defeated, without resources, and finding themselves isolated within the nation, divided; some joined the victors; others put down their banner and changed their name. They entirely ceased to exist as a party a fairly great number of years ago.

The transitional period when the Federalists held power is, in my opinion, one of the most fortunate events that accompanied the birth of the great American union. The Federalists struggled against the irresistible inclination of their century and country. Their theories, however excellent or flawed, had the fault of being inapplicable as a whole to the society that the Federalists wanted to govern; so what happened under Jefferson would
have happened sooner or later. But at least their government let the new republic have time to get established and allowed it afterward to bear, without difficulty, the rapid development of the doctrines that they had fought. A great number of their principles ended up, moreover, being accepted into the creed of their adversaries; and the federal Constitution, which still continues to exist in our time, is a lasting monument to their patriotism and wisdom.

So today great political parties are not seen in the United States. Parties that threaten the future of the Union abound there; but none exist that appear to attack the present form of government and the general course of society. The parties that threaten the Union rest, not on principles, but on material interests. In the different provinces of so vast an empire, these interests constitute rival nations rather than parties. That is how the North

c. Parties.

- - - great parties that shared the first times of the Union - - - but their principles are found again. That one of the two, it is true, attained an immense superiority. That from there came the miserable party spirit of today. Principles no longer being in question, but men, or at least principles forced to hide behind interests and men. Analogous example in France. There was grandeur in the struggle of the liberal party with the royalist party. But since the first triumphed, there is only pettiness in the debates that stir within it (YTC, CVh, 4, p. 35).

d. Gustave de Beaumont:

Is this a theory safe from criticism? So you call great parties only those that rest on a political theory, and you deny this name to those that have immense interests for their base. That is arbitrary.

I see clearly that the moral and political consequences of the different parties are not the same. They are parties nonetheless.

Do you get out of it well by saying: these are rival nations rather than parties?

But the parties concerned (for example, those for and against free trade) are not only from province to province, but also in each province, from citizen to citizen.

It would have been more correct, I believe, to establish a distinction between great parties that have political theories as objectives and great parties that are tied to material interests. Certainly America, turned upside down and threatened with dissolution by the question of free trade, has within it great parties; though different from ours, they are no less great. Note that these parties would be powerful among us, if we did not have others. After all, the developments of the author lead to the same result (YTC, CIIIb, 2, pp. 57–58).
was recently seen to uphold the system of commercial tariffs, and the South, to take arms in favor of free trade. The sole reason is that the North engages in manufacturing and the South in agriculture, and the restrictive system works to the profit of the one and to the detriment of the other.

For lack of great parties, the United States swarms with small ones, and public opinion splinters infinitely on questions of details. The pain that is taken there to create parties cannot be imagined; it is not an easy thing to do in our time. In the United States, there is no religious hatred, because religion is universally respected and no one sect is dominant; no class hatred, because the people are everything and no one still dares to struggle against them; finally there are no public miseries to exploit, because the material state of the country offers such an enormous scope to industry that leaving man to himself is enough for him to work wonders. But [particular] ambition must indeed succeed in creating parties, because it is difficult to throw someone who holds power out of office for the sole reason that you want to take his place. So all the skill of politicians consists of forming parties. A politician, in the United States, seeks first to discern his interest and to see what analogous interests could be grouped around his; then he busies himself finding out if, by chance, a doctrine or principle exists in the world that could be placed conveniently at the head of the new association, to give it the right to come into being and to circulate freely. It amounts to what would be called the license of the king that our fathers used to print on the first sheet of their works and incorporated into the book, even though it was not part of it.

e. The manuscript says: “... and the South only in producing and the restrictive system...”

Édouard de Tocqueville: “Economists will find that this term only in producing is incorrect. Manufacturers being producers, like farmers or makers of sugar” (YTC, CIIIb, 2, p. 51).


g. In the manuscript: “... had no relation to the object of the book.”

Gustave de Beaumont: “I beg your pardon; all the licenses of the king were related to the book and to its objective. So say: that our fathers used to print on the first sheet of their works and incorporated into the book, even though it was not part of it” (YTC, CIIIb, 2, p. 59).
This done, the new power is introduced into the political world.

To a foreigner, nearly all the domestic quarrels of the Americans seem, at first view, incomprehensible or childish, and you do not know if you should pity a people who seriously keeps itself busy with such miseries or envy it the good fortune of being able to keep busy in that way.

But when you come carefully to study the secret instincts that govern factions in America, you easily discover that most of them are more or less linked with one or the other of the two great parties that have divided men since free societies have existed. As you enter more profoundly into the intimate thought of these parties, you notice that some of them work to narrow the use of public power, others, to expand it.

I am not saying that American parties always have as their open aim, or even as their hidden aim, making aristocracy or democracy prevail in the country. I am saying that aristocratic or democratic passions are easily found at the bottom of all the parties, and, although hidden from view, they form the tender spot and the soul of the parties.

I will cite a recent example. The President attacks the Bank of the United States. The country is aroused and divided; the enlightened classes generally side with the Bank; the people favor the President. Do you think that the people knew how to discern the reasons for their opinion in the middle of the twists and turns of such a difficult question, where experienced men hesitate? Not at all. But the Bank is a great establishment that has an independent existence; the people, who destroy or raise all powers, can do nothing to it; that astonishes them. Amid the universal movement of society, this immobile point shocks their sight, and they want to see if they cannot succeed in getting it moving like the rest.
Of the Remnants of the Aristocratic Party in the United States

Secret opposition of the rich to democracy.—They withdraw into private life.—Taste that they show inside their residences for exclusive pleasures and luxury.—Their simplicity outside.—Their affected condescension for the people.

Sometimes among a people divided by opinions, when the equilibrium among parties is broken, one of them acquires an irresistible preponderance. It crushes all obstacles, overpowers its adversary and exploits the entire society to its profit. The vanquished, then despairing of success, hide or fall silent. A universal immobility and silence develop. The nation seems united by the same idea. The conquering party stands up and says: “I have brought peace to the country; you owe me thanks.”

But beneath this apparent unanimity, profound divisions and a real opposition are still hidden.

This is what happened in America. When the democratic party gained preponderance, you saw it take exclusive possession of the leadership of public affairs. Since then, it has not ceased to model the mores and laws after its desires.\(^h\)

Today you can say that, in the United States, the wealthy classes of society are almost entirely out of public affairs, and that wealth, far from being a right, is a real cause of disfavor and an obstacle to reaching power.

So the rich prefer abandoning the contest to sustaining an often unequal struggle against the poorest of their fellow citizens. Not being able to take a rank in public life analogous to the one they occupy in private life, they

h. There is an often very effective means to reestablish peace in a country divided by opinion; it is to give so complete a preponderance to one of the parties that the other disappears or falls into silence. Experience has proved that this was buying peace at a high price. When Ferdinand and Isabella chased the Moors from Spain, they made a great cause of internal troubles disappear; but they impoverished the country and delivered a blow to its industry from which it has never recovered.

The democratic party acted in the same way in America. Once in power, it took exclusive possession of the leadership of public affairs and modeled the mores and laws after its desires (YTC, CVh, 4, pp. 40–41).
abandon the first in order to concentrate on the second. In the middle of the State, they form something like a society apart with its own tastes and enjoyments.

The rich man submits to this state of things as to an evil without remedy; with great care, he even avoids showing that it wounds him. So you hear him publicly praise the sweet pleasures of republican government and the advantages of democratic forms. For, next to hating their enemies, what is more natural to men than flattering them?

Do you see this opulent citizen? Wouldn’t you say, a Jew of the Middle Ages who is afraid of arousing suspicion of his wealth? His attire is simple; his gait is modest. Within the four walls of his dwelling, he adores luxury; into this sanctuary, he lets only a few chosen guests that he arrogantly calls his equals. You meet no nobleman in Europe who appears more exclusive in his pleasures than he, more envious of the slightest advantages that a privileged position assures. But here he is, leaving his house, to go to work in a tiny, dusty room that he occupies in the business center of the city, where everyone is free to come to meet him. Along his path, his shoemaker happens by, and they stop. They begin to converse with each other. What can they be saying? These two citizens are dealing with the affairs of the State, and they will not part without shaking hands.

At the bottom of this enthusiasm for convention and in the midst of these obsequious forms toward the dominant power, it is easy to notice in the rich a great disgust for the democratic institutions of their country. The people are a power that they fear and despise. If, one day, the bad government of democracy led to a political crisis, if monarchy ever presented itself in the United States as something feasible, you would soon discover the truth of what I am advancing.

The two great weapons that parties use to succeed are newspapers and associations.

j. “General picture. A mass, not impassioned, wanting the good. In the middle of it, parties that seek to create a majority to legalize their ideas” (YTC, CVh, 4, p. 40).
CHAPTER 5

Of the Government of
Democracy in America

I know that I am walking here on fiery ground. Each of the words of this chapter must in some respects offend the different parties dividing my country. I will, nonetheless, express my whole thought.

In Europe, we have difficulty judging the true character and permanent instincts of democracy, because in Europe there is a struggle between two opposite principles. And we do not know precisely what should be attributed to the principles themselves or to the passions that the conflict has produced.

It is not the same in America. There, the people dominate without obstacles; there are no dangers to fear or wrongs to revenge.

So, in America, democracy is given over to its own inclinations. Its pace is natural, and all its movements are free. That is where it must be judged. And for whom would this study be interesting and profitable, if not for us, who are dragged along each day by an irresistible movement and who march blindly, perhaps toward despotism, perhaps toward the republic, but definitely toward a democratic social state?

Of Universal Suffrage

I said previously that all the states of the Union had allowed universal suffrage. It is also found among populations situated at different levels of [civilization] the social scale. I have had the opportunity to see its effects in various places and among races of men made nearly strangers to each other by their language, their religion, or their mores, in Louisiana as in New England, in Georgia as in Canada. I noted that, in America,
universal suffrage was far from producing all the good and all the evil that are expected in Europe, and that, in general, its effects were other than those supposed.a

Of the Choices of the People and of the Instincts of American Democracy in Its Choices

In the United States the most outstanding men are rarely called to the leadership of public affairs.—Causes of this phenomenon.—The envy that animates the lower classes in France against the upper classes is not a French sentiment, but democratic.—Why, in America, distinguished men often move away on their own from political careers.

Many people in Europe believe without saying, or say without believing, that one of the great advantages of universal suffrage is to call men worthy of public confidence to the leadership of public affairs.b It is said that a people cannot govern itself, but always sincerely wants the good of the State, and its instinct hardly ever fails to point out those who are animated by the same desire and who are most capable of holding power.c

I must say that, for me, what I saw in America does not authorize me to think that this is so. Upon my arrival in the United States, I was struck

a. Marginal note: “#For that I do not know what to do. The interests that divide men are innumerable, but truth is singular and has only one way to come about.#”

b. “#What is most important to a nation is not that those who govern are men of talent, but that they have no interests contrary to the mass of their fellow citizens#” (YTC, CVh, 4, p. 90).

c. Repetition of an argument from Montesquieu, who asserts in chapter II of book II of the *Esprit des lois*:

The people are admirable for choosing those to whom they must entrust some part of their authority. In order to decide they have only things that they cannot ignore and facts that are tangible. . . . But would they be able to conduct a matter, to know the places, the occasions, the moments, how to profit from them? No, they will not. . . . The people, who have enough capacity to understand the management of others, are not fit to manage by themselves (*Oeuvres complètes* [Paris: Pléiade, 1951], II, pp. 240–41. Cf. note e for p. 93).
with surprise to find out how common merit was among the governed and how uncommon it was among those governing.\textsuperscript{d} Today it is a constant fact in the United States that the most outstanding men are rarely called to public office, and we are forced to recognize that this has occurred as democracy has gone beyond all its former limits. Clearly the race of American statesmen has grown singularly smaller over the past half century.

Several causes of this phenomenon can be indicated.

It is impossible, no matter what you do, to raise the enlightenment of the people above a certain level. Whatever you do to make human learning more accessible, improve the methods of instruction and make knowledge more affordable, you will never be able to have men learn and develop their intelligence without devoting time to the task.

So the greater or lesser facility that the people have for living without working sets the necessary limit to their intellectual progress. This limit is further away in certain countries, closer in certain others; but for there to be no limit, it would be necessary for the people not to have to be occupied with the material cares of life; that is, for them no longer to be the people.\textsuperscript{e} So it is as difficult to imagine a society in which all men are very enlightened, as a State in which all citizens are rich; these are two correlative difficulties. I will admit without difficulty that the mass of citizens very sincerely wants the country’s good. I go even further, and I say that, in general, the lower classes of society seem to me to mingle fewer calculations of personal interest with this desire than do the upper classes; but what they always more or less lack is the art of judging the means while sincerely desiring the end.

\textsuperscript{d} Why, when civilization spreads, do prominent men decline in number? Why, when learning becomes the privilege of all, do great intellectual talents become more rare? Why, when there are no more lower classes, are there not more upper classes? Why, when understanding of government reaches the masses, are great geniuses missing from the leadership of society? America clearly poses these questions. But who will be able to resolve them? (pocket notebook 3, 6 November 1831, YTC, BIIa, and Voyage, \textit{OC}, V, 1, p. 188).

\textsuperscript{e} “As the cares of material life demand less time, the development of the intelligence of the people will be greater. The one concerned with none of these cares will always have an intellectual advantage over those who are obliged to be concerned with them” (YTC, CVb, 4, p. 37).
What long study, what diverse notions are necessary to get an exact idea of
the character of a single man! There the greatest geniuses go astray, and the
multitude would succeed! The people never find the time and the means
to give themselves to this work. They must always judge in haste and attach
themselves to the most salient objects. As a result, charlatans of all types
know very well the secret of pleasing the people, while their true friends
most often fail. [In most of the states of the Union I saw positions oc-
cupied by men who had succeeded in gaining them only by flattering the
slightest passions and bowing before the smallest caprices of the people.]

Moreover, it is not always the capacity to choose men of merit that de-
mocracy lacks, but the desire and the taste.

The fact must not be concealed that democratic institutions develop the
sentiment of envy in the human heart to a very high degree, not so much
because they offer each person the means to become equal to others, but
because these means constantly fail those who use them. Democratic in-
stitutions awaken and flatter the passion for equality without ever being
able to satisfy it entirely. Every day, at the moment when people believe
they have grasped complete equality, it escapes from their hands and flees,
as Pascal says, in an eternal flight. People become heated in search of this
good, all the more precious since it is close enough to be known, but far
enough away not to be savored. The chance to succeed rouses the people;
the uncertainty of success irritates them. They get agitated, grow weary,
become embittered. Then, everything that is in some way beyond them
seems an obstacle to their desires, and there is no superiority, however le-
gitimate, that they do not grow tired of seeing.

Many people imagine among us that the secret instinct that leads the
lower classes to keep the upper classes away from the leadership of public
affairs as much as they can is found only in France. That is an error: the
instinct that I am speaking about is not French, it is democratic. Political
circumstances have been able to give it a particular character of bitterness,
but they did not give birth to it.

In the United States, the people have no hatred for the upper classes of
society; but they feel little goodwill toward them and carefully keep them

out of power; they do not fear great talents, but they appreciate them little. In general, you notice that everything that arises without their support gains their favor with difficulty.

While the natural instincts of democracy lead the people to keep distinguished men away from power, an instinct no less strong leads the latter to remove themselves from a political career in which it is so difficult for them to remain entirely themselves, and to operate without debasing themselves. This thought is very ingenuously expressed by Chancellor Kent. The celebrated author about whom I am speaking, after giving great praise to the part of the Constitution that grants the nomination of judges to the executive power, adds: “The fittest men would probably have too much reservedness of manners, and severity of morals, to secure an elec-

tion resting on universal suffrage” (Kent’s Commentaries, vol. I, p. 272 [273 (ed.)].) This was published without contradiction in America in the year 1830.

This demonstrated to me that those who regard universal suffrage as a guarantee for good choices are under a complete illusion. Universal suffrage has other advantages, but not that one.

Of the Causes That Can Partially Correct These Democratic Instincts

Opposite effects produced on peoples as on men
by great perils.—Why America saw so many remarkable men
at the head of its public affairs fifty years ago.—
Influence that enlightenment and mores exercise on the choices of
the people.—Example of New England.—States of
the Southwest.—How certain laws influence the choices of
the people.—Indirect election.—Its effects on the
composition of the Senate.

When great perils threaten the State, you often see people happily choose the citizens most appropriate to save them.

It has been remarked that, in pressing danger, man rarely remains at his usual level; he rises well above, or falls below. The same thing happens to peoples themselves. Extreme perils, instead of elevating a nation, sometimes finish demoralizing it; they arouse its passions without guiding them; and, far from enlightening its mind, they trouble it. The Jews still slit their own throats amid the smoking ruins of the Temple. But, among nations as among men, it is more common to see extraordinary virtues arise from very present dangers. Then great characters appear like those monuments, hidden by the darkness of night, that suddenly stand out against the glow of a fire. Genius is no longer averse to reappearing on its own, and the people, struck by their own dangers, temporarily forget their envious passions. Then, it is not uncommon to see celebrated names emerge from the electoral urn. I said above that in America the statesmen
of today seem\(^h\) greatly inferior to those who appeared at the head of public affairs fifty years ago. This is due not only to laws, but also to circumstances. When America fought for the most just of causes, that of one people escaping from the yoke of another people; when it was a matter of having a new nation emerge in the world, all souls rose to reach the lofty goal of their efforts. In this general excitement, superior men courted the people and the people, embracing them, placed them at their head. But such events are rare; judgment must be based on the ordinary course of things.

If temporary events sometimes succeed in combating the passions of democracy, enlightenment and, above all, mores exercise a no less powerful and more enduring influence on its inclinations. This is clearly noticed in the United States.

In New England, where education and liberty are the daughters of morality and religion, where society, already old and long settled, has been able to form maxims and habits, the people, while escaping from all the superiorities that wealth and birth have ever created among men, have become used to respecting and submitting to intellectual and moral superiorities without displeasure; consequently, you see democracy in New England make better choices than anywhere else.

In contrast, as you descend toward the south, in the states where the social bond is less ancient and less powerful, where instruction is less widespread, and where the principles of morality, religion, and liberty are less happily combined, you notice that talents and virtues become more and more rare among those governing.

When, finally, you enter the new states of the Southwest, where the social body, formed yesterday, still presents only an agglomeration of adventurers or speculators, you are astounded to see what hands hold the public power, and you wonder by what force independent of legislation and men the State can grow and society prosper there.

\(^h\) The manuscript says “were.”
There are certain laws of a democratic nature, however, that succeed in partially correcting these dangerous democratic instincts.

When you enter the House chamber in Washington, you feel struck by the vulgar aspect of the great assembly. Often your eye searches in vain for a celebrated man within the assembly. Nearly all its members are obscure persons, whose names bring no image to mind. They are, for the most part, village lawyers, tradesmen, or even men belonging to the lowest classes. In a country where instruction is nearly universal, it is said that the representatives of the people do not always know how to write correctly.j

If they speak, their language is usually without dignity and the ideas they express are devoid of scope and loftiness.

Two steps from there opens the Senate chamber, whose narrow enclosure contains a large portion of the famous men of America. You notice hardly a single man there who does not evoke the idea of recent celebrity. They are eloquent lawyers, distinguished generals, skilled magistrates, or known statesmen. All the words that issue from this [august] assembly would do honor to the greatest parliamentary debates of Europe.

What causes this bizarre contrast? Why is the nation’s elite found in this chamber rather than in the other? Why does the first assembly gather so many vulgar elements, while the second seems to have a monopoly of talents and enlightenment? Both come from the people, however; both are

j. The manuscript says: “the representatives of the people do not know . . .”

Elections.

When the right to vote is universal, and deputies are paid by the State, the choices of the people can descend and stray to a singular degree.

Two years ago, the inhabitants of the district in which Memphis is the capital, sent to the House of Representatives of Congress an individual named David Crockett, who has no education, can scarcely read, has no property, no fixed abode, but spends his life hunting, selling his game to make a living, and living constantly in the woods. His competitor was a man of talent and moderate wealth who lost. Memphis, 20 December 1831 (YTC, BIIa, notebook E, and Voyage, OC, V, 1, pp. 274–75).
the result of universal suffrage, and, until now, no voice has been raised in America to maintain that the Senate might be the enemy of popular interests. So what causes such an enormous difference? I see only a single fact that explains it. The election that produces the House of Representatives is direct; the one producing the Senate is subject to two stages. The universality of citizens names the legislature of each state, and the federal Constitution, transforming each of these legislatures into electoral bodies, draws from them the members of the Senate. So the Senators express the result of universal suffrage, though indirectly. For the legislature, which names the Senators, is not an aristocratic or privileged body that derives its electoral right from itself; it is essentially dependent on the universality of citizens. In general it is elected by them annually, and they can always direct its choices by remaking it with new members. But it is sufficient for the popular will to pass through this chosen assembly in order, in a sense, to be transformed and to emerge clothed in more noble and more beautiful forms. So the men elected in this way always represent exactly the governing majority of the nation; but they represent only the elevated thoughts that circulate in its midst, the generous instincts that animate it, and not the small passions that often trouble it and the vices that dishonor it.

It is easy to see a moment in the future when the American republics will be forced to multiply the use of two stages in their electoral system, under pain of getting miserably lost among the pitfalls of democracy.\(k\)

I will have no difficulty in admitting it; I see in indirect election the only means to put the use of political liberty within reach of all classes of the people. Those who hope to make this means the exclusive weapon of one party, and those who fear this means, seem to me to be equally in error.

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\(k\). On the contrary, the seventeenth amendment to the American Constitution, approved 31 May 1913, establishes direct election of Senators, by regularizing in large part a preexisting situation, by which the second voters committed themselves to scrupulously following the desires expressed by the votes of the first voters.
Influence That American Democracy Has Exercised on Electoral Laws

The rarity of elections exposes the State to great crises.—
Their frequency keeps it in a feverish agitation.—
The Americans have chosen the second of these two evils.—
Variableness of the law.—Opinion of Hamilton, Madison and Jefferson on this subject.

When election recurs only at long intervals, the State runs the risk of upheaval at each election.
Parties then make prodigious efforts to grasp a fortune that comes so rarely within reach; and since the evil is almost without remedy for candidates who fail, everything must be feared from their ambition driven to despair. If, in contrast, the legal struggle must soon be renewed, those who are defeated wait.
When elections follow one another rapidly, their frequency maintains a feverish movement in society and keeps public affairs in a state of constant change.
Thus, on the one hand, there is a chance of uneasiness for the State; on the other, a chance of revolution; the first system harms the goodness of government, the second threatens its existence.
The Americans have preferred to expose themselves to the first evil rather than to the second. In that, they have been guided by instinct much more than by reasoning, since democracy drives the taste for variety to a passion. The result is a singular mutability in legislation.
Many Americans consider the instability of the laws as a necessary consequence of a system whose general effects are useful. But there is no one

m. In the margin: “I believe this small chapter decidedly bad. Hackneyed ideas.”
n. “Political men” in the manuscript. The change was suggested by Beaumont (YTC, CIIIb, 2, p. 30).
o. Democracy-Aristocracy./
Legislative instability in America./
I have just found one of the strongest proofs of this instability in the laws of Massachusetts (the most stable state in the Union).
in the United States, I believe, who pretends to deny that this instability exists or who does not regard it as a great evil.

Hamilton, after having demonstrated the utility of a power that could prevent or at least slow the promulgation of bad laws, adds: "It may perhaps be said that the power of preventing bad laws includes that of preventing good ones. . . . But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments" (Federalist, No. 73).

"[The] facility and excess of lawmaking," says Madison, "seem to be the diseases to which our governments are most liable" (Federalist, No. 62).

Jefferson himself, the greatest democrat who has yet emerged from within the American democracy, pointed out the same perils.

The instability of our laws is really a very serious disadvantage, he says. I think that we will have to deal with that by deciding that there would always be an interval of a year between the proposal of a law and the definitive vote. It would then be discussed and voted, without being able to change a word, and if circumstances seemed to require a more prompt resolution, the proposed law could not be adopted by a simple majority, but by a two-thirds majority of both houses.¹

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¹ From 1803 to 1827, the administrative attributions of the Court of Sessions were changed many times in order to convey them to the Court of Common Pleas. See Laws of Massachusetts, vol. II, p. 98 (YTC, CVb, p. 24). The quotations included in the text follow.

p. This paragraph and the one preceding belonged to chapter VII of this second part (p. 407).

1. Letter to Madison, 20 December 1787, translation of Mr. Conseil.³

q. The second sentence reads differently in the French translation of Conseil (volume I, pp. 310–18; the citation is found on page 318).
Of Public Officials under the Dominion of American Democracy

Simplicity of American officials.—Lack of official dress.—All officials are paid.—Political consequences of this fact.—In America, there is no public career.—What results from that.

Public officials in the United States remain mixed within the crowd of citizens; they have neither palaces, nor guards, nor ceremonial dress [but they are all paid]. This simplicity of those who govern is due not only to a particular turn of the American spirit, but also to the fundamental principles of the society.

In the eyes of the democracy, government is not a good, but a necessary evil. A certain power must be accorded to officials; for, without this power, what purpose would they serve? But the external appearances of power are not indispensable to the course of public affairs; they needlessly offend the sight of the public.

Officials themselves are perfectly aware that, by their power, they have not obtained the right to put themselves above others, except on the condition of descending, by their manners, to the level of all.

I can imagine nothing plainer in his ways of acting, more accessible to all, more attentive to demands, and more civil in his responses, than a public figure in the United States.

I like this natural look of the government of democracy; in this internal

r. In the manuscript: “I like this simple look . . .”

Hervé de Tocqueville:

I am afraid that a bit of the enthusiasm of a young man may be seen in this admiration for American simplicity. In our old Europe, there is often a need to catch the imagination by a certain pomp, and the simplicities of Louis-Philippe have attracted as much scorn as his villainies. The author is bold to pronounce himself categorically against one of the most general ideas. When you have this boldness, you must at least try to justify your opinion by an example whose truth is striking and perceptible to everyone. At the end of the second paragraph, which finishes with the words solely to his own merit, the example would have to be cited of jurors in tail coats who are more imposing than magistrates in red robes (YTC, CIIib, 2, pp. 24–25).
strength that is attached more to the office than to the official, more to the
man than to the external signs of power, I see something manly that I
admire.

As for the influence that official dress can exercise, I believe that the
importance that it must have in a century such as ours is greatly exaggerated.
I have not noticed that in America the official, by being reduced solely to
his own merit, was greeted with less regard and respect in the exercise of
his power.6

From another perspective, I strongly doubt that a particular garment
leads public men to respect themselves when they are not naturally disposed
to do so; for I cannot believe that they have more regard for their outfit
than for their person.

When, among us, I see certain magistrates treat parties brusquely or ad-
dress them with false courtesy, shrug their shoulders at the means of defense
and smile with complacency at the enumeration of charges, I would like
someone to try to remove their robe, in order to discover if, finding them-


6. In the margin: “#I do not even know if a particular costume does not make what
is lacking in the one wearing it, more salient in the eyes of the public.#”

7. Hervé de Tocqueville: “I believe this paragraph should be removed. It would be
good if the book were to be read only by the French; but as it will probably be sought
out by foreigners, I do not know if it is suitable to expose our base acts to them” (YTC,
CIIIb, 2, p. 25).

u. This paragraph is missing in the 1835 edition. It appears in the manuscript, but the
wording is a bit different.
people still retain the right to choose, the exercise of the right then has necessary limits.

When you see a democratic republic make paid officials unsalaried, I believe that you can conclude that it is moving toward monarchy. And when a monarchy begins to pay unsalaried offices, it is the sure sign that you are advancing toward a despotic state or toward a republican state.\v

So the substitution of salaried offices for unpaid offices seems to me to constitute, in itself alone, a true revolution.

I regard the complete absence of unpaid offices as one of the most visible signs of the absolute dominion that democracy exercises in America. Services rendered to the public, whatever they may be, are paid there; moreover, each person has, not only the right, but also the possibility of rendering them.

If, in democratic States, all citizens can gain positions, not all are tempted to try to obtain them. It is not the conditions of candidacy, but the number and the capacity of the candidates that often limit the choice of the voters.\w

For peoples among whom the principle of election extends to everything, there is no public career strictly speaking. In a way men reach offices only by chance, and they have no assurance of remaining there. That is true above all when elections are annual. As a result, in times of calm,

\v. Public offices.

Little power of officials, their large number, their dependence on the people, little \emph{stability} in their position, the mediocrity of their emoluments, the ease of making a fortune in another way, fact that few capable persons aspire to the leadership of society, except in times of crisis.

Disposition that tends to make government less skillful, but that assures liberty.\v

Every position that demands a certain apprenticeship and a special knowledge must usually be poorly filled in America. Who would want to prepare at length to gain what a caprice or even the ordinary order of things can take away from you from one moment to another?" (YTC, CVh, 1, pp. 4–5).

\w. This paragraph does not appear in the manuscript. The following note is found in the margin: ”#Influence of election and of repeated election on the personnel of officials. More public careers in ordinary times. Example of the Romans ready for anything because elected. #”
public offices offer little lure to ambition. In the United States, it is men of moderate desires who commit themselves to the twists and turns of politics. Great talents and great passions generally move away from power, in order to pursue wealth; and often someone takes charge of leading the fortune of the State only when he feels little capable of conducting his own affairs.

The great number of vulgar men who occupy public offices must be attributed to these causes as much as to the bad choices of democracy. In the United States, I do not know if the people would choose superior men who bid for their votes, but it is certain that the latter do not bid for them.

Of the Arbitrariness of Magistrates under the Dominion of American Democracy

Why the arbitrariness of magistrates is greater under absolute monarchies and in democratic republics than in limited monarchies.—Arbitrariness of magistrates in New England.

There are two types of government in which a great deal of arbitrariness is joined with the action of magistrates; it is so under the absolute government of one man and under the government of democracy.

2. Here, I understand the word magistrate in its broadest sense; I apply it to all those who are charged with executing the laws.

x. "Put this chapter next to the one that deals with the despotism of the majority. Despotism and arbitrariness are two. For this chapter, see pocket notebook number 3, p. 15. All the main ideas are there. To find examples" (YTC, CVh, 4, p. 74). See the note for 14 October 1831, pocket notebook 3, YTC, IIIa, and Voyage, OC, V, 1, p. 183.

y. Hervé de Tocqueville: “Yes, there can be a great deal of arbitrariness under the absolute government of one man. Under the regular government of democracy there is free will and not arbitrariness, which is very different. I observe that despotism as the author depicts it exists only in Turkey, but is found to this extent in no other European State” (YTC, CIIIb, 2, p. 27). Hervé repeats this same observation about arbitrariness in other places (YTC, CIIIb, 2, pp. 27 and 34).
This same result comes from almost analogous causes.

In despotic States, no one’s fate is assured, not that of public officials any more than that of simple individuals. The sovereign, always holding in his hand the life, fortune and sometimes the honor of the men he employs, thinks that he has nothing to fear from them; and he leaves them great freedom of action, because he thinks he is assured that they will never use that freedom against him.

In despotic States, the sovereign is so in love with his power that he fears the constraint of his own rules; and he loves to see his agents go more or less haphazardly in order to be sure never to find among them a tendency contrary to his desires.

Nor in democracies does the majority fear that power will be used against it, because every year it can remove power from the hands of those to whom power has been confided. Able at every moment to make its will known to those who govern, the majority prefers to abandon them to their own efforts rather than to bend them to an invariable rule that, by limiting those who govern, would in a sense limit the majority itself.

You even discover, looking closely, that under the dominion of democracy, the arbitrariness of the magistrate must be still greater than in despotic States.

Hervé de Tocqueville:

This entire chapter is very obscure and the mind must work to follow the connection of ideas. That comes about partly because the author sometimes used certain words that do not exactly have the meaning that he wants to give them. Starting with the title, the word arbitrariness loses meaning, because arbitrariness is commonly understood as the action of a power that is placed or puts itself above the law, and acts without concern for legal prescriptions. Such is not the type of action of magistrates in America. The law leaves infinitely more to their judgment than anywhere else. But there is no arbitrariness there. I propose to put, in place of arbitrariness, the free will of magistrates, etc. Next, I do not know why the author struggles so much to tell us about despotic government, which is not in his subject, and throws himself into abstract though ingenious definitions in order to tell us a truth that could be expressed with less difficulty, to know that the Americans leave great latitude and great freedom of action to their magistrates, because frequent elections banish all fear of the abuse that they could make of it (YTC, CIIIb, 2, pp. 26–27).
In these States, the sovereign can punish in a moment all the misdeeds that he notices, but he cannot flatter himself that he notices all the misdeeds that he should punish. In democracies, on the contrary, the sovereign is simultaneously omnipotent and omnipresent. You see, therefore, that American officials are much freer within the circle of action that the law traces for them than any official in Europe. Often the Americans limit themselves to showing officials the end toward which they must aim, leaving them with the authority to choose the means.

In New England, for example, the duty to draw up the jury list is referred to the selectmen of each town. The only rule that is stipulated is this: they must choose the jurors from among those citizens who enjoy the right to vote and who are of good reputation.⁴

In France, we would believe the lives and liberty of men at risk if we confided the exercise of so fearsome a right to an official, whoever he was. In New England, these same magistrates can have the names of drunkards posted in taverns and, by penalty of a fine, prevent the occupants from providing them with wine.⁴

Such a censorial power would outrage people in the most absolute monarchy; here, however, people submit without difficulty.

Nowhere has the law left a larger portion of arbitrariness than in democratic republics, because there does not seem to be any reason to fear arbitrariness. You can even say that, as the right to vote expands and as the term in office becomes more limited, the magistrate becomes freer.

₃. See the law of 27 February 1813. General Collection of the Laws of Massachusetts, vol. II, p. 331. It must be said that afterward the jurors are drawn by lot from the lists.

₄. Law of February 28, 1787. See General Collection of the Laws of Massachusetts, vol. I, p. 302. Here is the text:

That the selectmen in each town shall cause to be posted up in the houses and shops of all taverners, innholders and retailers [. . . (ed.) . . .] a list of the names of all persons reputed common drunkards, [. . . (ed.) . . .] or common gamblers, mispending their time and estate in such houses. And every keeper of such house or shop, after notice given him, as aforesaid, that shall be convicted, [. . . (ed.) . . .] of entertaining or suffering any of the persons, in such a list, to drink or tipple, or game, in his or her house, [. . . (ed.) . . .] or of selling them spirituous liquor, as aforesaid, shall forfeit and pay [the sum of thirty shillings (ed.).]
That is why it is so difficult to have a democratic republic become a monarchy. The magistrate, while ceasing to be elective, usually keeps the rights and preserves the customs of the elected magistrates. Then you arrive at despotism.\(^2\)

Only in limited monarchies does the law, while drawing a circle of action around public officials, still take care at the same time to guide them at each step. The reason for this fact is easy to state.

In limited monarchies, power is divided between the people and the prince. Both are interested in having the position of the magistrate stable.

The prince does not want to put the fate of officials back into the hands of the people, for fear that the officials will betray his authority; on their side, the people are afraid that the magistrates, placed in absolute dependence on the prince, will help to crush liberty; so, in a way, the magistrates are made to depend on no one.

The same reason that leads the prince and the people to make the official independent, leads them to seek guarantees against the abuse of his independence, so that he does not turn against the authority of the one or the liberty of the other. Both agree, therefore, on the need to trace in advance a line of conduct for the public official, and find it in their interest to impose rules on him that are impossible for him to evade.

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\(^2\) This idea is found in Montesquieu, who asserts: “There is no authority more absolute than that of a prince who succeeds the republic: for he finds himself with all the power of the people who were not able to limit themselves” (Considerations sur les causes de la grandeur des Romains et de leur décadence, chapter XV, in Oeuvres complètes, Paris: Pléiade, 1951, II, p. 150). In the Republic (Book VIII, 564), Plato had already noted that extreme liberty would necessarily be followed by extreme subjection.
Administrative Instability in the United States

In America, the actions of society often leave fewer traces than the actions of a family.—Newspapers, the only historical memorials.—How extreme administrative instability harms the art of governing.

Men hold power only for an instant and then are lost in a crowd that, itself, changes face every day; as a result, the actions of society in America often leave less trace than the actions of a simple family. Public administration there is, in a way, oral and traditional. Nothing is put in writing, or what is put in writing flies away with the slightest wind, like the leaves of the Sybil, and disappears forever.

The only historical memorials of the United States are newspapers. If an issue happens to be missing, the chain of time is as if broken: present and past are no longer joined. I do not doubt that in fifty years it will be more difficult to gather authentic documents about the details of the social existence of the Americans of today, than about the administration of the French of the Middle Ages; and if an invasion of barbarians happened to surprise the United States, it would be necessary, in order to know something about the people who live there, to resort to the history of other nations.

Administrative instability began by entering into habits; I could almost say that today each person has ended up by acquiring the taste for it. No one is worried about what was done before. No method is adopted; no collection is assembled; no documents are gathered, even when it would be easy to do so. When by chance someone has them in his possession, he hardly holds onto them. Among my papers, I have original pieces that were given to me in the offices of the public administration in order to answer some of my questions. In America, society seems to live from day to day, like an army in the field. Yet, the art of administration is definitely a science;

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a. Variant: “<# . . . a singular instability in the course of administrative affairs. No one finishes what he began; no one hopes to finish what he begins. #>”
and all sciences, to progress, need to link together the discoveries of different generations as they succeed each other. One man, in the short space of a life, notices a fact, another conceives an idea; this one invents a method, that one finds a formula; humanity gathers along the way these various fruits of individual experiences and forms the sciences. It is very difficult for American administrators to learn anything from one another. Therefore, they bring to the conduct of society the knowledge that they find widespread in society, but not the learning that is their own. So democracy, pushed to its extreme limits, harms progress in the art of governing. From this perspective, it is better suited to a people whose administrative education is already formed than to a people who are inexperienced novices in public affairs.

This, moreover, does not relate uniquely to administrative science. Democratic government, which is based upon such a simple and natural idea, always supposes the existence of a very civilized and learned society. At first you would think it contemporaneous with the earliest ages of the world; looking more closely, you easily discover that it could have come about only during the last.

[If nations had begun with democratic government, I doubt they would ever have become civilized.]

b. In the margin: “Dem[ocratic (ed.)] government, the chef-d’oeuvre of civilization and enlightenment.”

c. “Legislative instability in America, its effects, its causes.”

“Mutability of public officials. Madison proves very ingeniously that this mutability, apart from its recognized ill effects, diminishes the responsibility of officials. New proposition, Federalist, p. 271 [No. 63 (ed.)]” (YTC, CVh, p. 25).

“After the electoral system, a small chapter on legislative and administrative instability in America is absolutely necessary. Show how, since nothing has any follow-up, no one can finish what he began. In this way responsibility diminished instead of increased, as is believed (Federalist, p. 268 [No. 62 (ed.)])” (YTC, CVh, 4, p. 27).


5. It is unnecessary to say that here I am talking about democratic government applied to a people and not to a small tribe.

e. In the margin: “Is this clear and developed enough? Ask G[ustave (ed.)] and L[ouis (ed.)]?”
Of Public Expenses under the Dominion of American Democracy

In all societies, citizens are divided into a certain number of classes.—Instinct that each of these classes brings to the management of the finances of the State.—Why public expenses must tend to increase when the people govern.—What renders the lavish expenditures of democracy less to fear in America.—Use of public monies under democracy.

Is democratic government economical? First of all, we must know to what we mean to compare it.

The question would be easy to resolve if we wanted to establish a parallel between a democratic republic and an absolute monarchy [v: despotic State]. We would find that public expenditures in the first are more considerable than in the second. But this is the case in all free States, compared to those that are not free. It is certain that despotism ruins men more by preventing them from being productive, than by taking the fruits of production from them; it dries up the source of wealth and often respects acquired wealth. Liberty, in contrast, gives birth to a thousand times more goods than it destroys, and, among nations that know liberty, the resources of the people always increase faster than taxes.

f. In chapter VIII of book III of the *Social Contract* (*Contrat social*), Rousseau had asserted, on the contrary, that the democratic form was the least costly.

g. Édouard de Tocqueville:

This entire paragraph seems to me to leave much to be desired. The first sentence presents, with the tone of affirmation, a proposition that is in no way evident; there have been and there still are very economical absolute monarchies; witness Austria, Prussia today. What I criticize most in this piece is that you seem to confuse two perfectly distinct things: the comparatively high level of public expenses and the sources of wealth; it is certain that generally the latter must increase with liberty; as for the reduction of public expenses, that is less sure. All that one can say is that, with an absolute government, economy can never be permanent because a prodigal prince may succeed an economical prince, but this economical prince can be found and is found often enough. So I would propose softening the beginning of this paragraph
What is important to me at this moment is to compare free peoples, and among the latter to note what influence democracy exercises on the finances of the State.

Societies, just as organized bodies do, follow certain rules in their formation that they cannot evade. They are composed of certain elements that are found everywhere and in all times.

It will always be easy to divide each people ideally into three classes.

The first class will be composed of the rich. The second will include those who, without being rich, live well-off in all things. The third will contain all those who have only few or no properties and who live particularly from the work provided to them by the first two classes.

The individuals included in these different categories can be more or less numerous, depending on the social state [added: and the laws]; but you cannot make these categories cease to exist.

It is evident that each of these classes will bring its own distinctive instincts to the handling of the finances of the State.

Suppose that the first makes the laws. Probably it will be little concerned with economizing public monies, because a tax that happens to strike a considerable fortune only takes what is superfluous and produces an effect that is little felt.\h

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and finishing the first page as follows: Still this principle can have some exceptions, but what is beyond doubt is that despotism ruins peoples much more by preventing them from being productive than by taking the fruits of production from them. That way the two ideas are distinct (YTC, CIIIb, 2, pp. 6–7).

h. Edouard de Tocqueville:

This proposition can be and will be contested; in most States, the rich are not so rich as to be indifferent to the total amount of the tax that strikes their fortune. I do not even know if they have ever been seen to be so; and in France in the time of the great lords and great fortunes, it was the rich who screamed the most when taxes were increased. So this paragraph is applicable only to the class of courtiers that one tried hard to confuse with all of the nobility, but that had never been more than a very small portion. All the nobles of the provinces and the rich who did not dissipate their income at the court desired economy in finances and saw public expenses increase with great disgust (YTC, CIIIb, 2, p. 7).
Assume, on the contrary, that the middle classes alone make the law. You can count on the fact that they will not be lavish with taxes, because there is nothing so disastrous as a heavy tax that happens to strike a small fortune.

It seems to me that, among free governments, the government of the middle classes must be, I will not say the most enlightened, nor, especially, the most generous, but the most economical.

Now I suppose that the last class is exclusively charged with making the law; I clearly see the chance for public expenses to increase instead of decrease, and this for two reasons.

Since the greatest portion of those who in that case vote the law have no taxable property, all the money expended in the interest of society seems to be only to their profit, never to their harm; and those who have some bit of property easily find the means to fix the tax so that it hits only the rich and profits only the poor, something that the rich cannot do in their case when they are in control of the government.

So countries in which the poor would exclusively be charged with mak-
ing the law could not hope for great economy in public expenditures; these expenditures will always be considerable, either because taxes cannot reach those who vote, or because they are fixed so as not to reach them. In other words, the government of democracy is the only one in which the one who votes the taxes can escape the obligation to pay them.

You will object in vain that the well understood interest of the people is to handle the fortune of the rich carefully, because it would not take long for the people to feel the effects of any difficulties caused. But isn’t it also the interest of kings to make their subjects happy, and that of the nobles to know how to open their ranks opportunely? If long-term interest could prevail over the passions and needs of the moment, there would never have been tyrannical sovereigns or exclusive aristocracies.

You will stop me here, saying: Who ever imagined charging the poor alone with making the law? Who! Those who have established universal suffrage. Is it the majority or the minority that makes the law? Undoubtedly the majority; and if I prove that the poor always make up the majority, won’t I be correct to add that in countries where the poor are called to vote, they alone make the law?

Now, it is certain that until now, among all the nations of the world, the greatest number has always been composed of those who had no property, or of those whose property was too limited for them to be able to live comfortably without working. So universal suffrage really gives the government of society to the poor.

The poor must be deleted everywhere; on the one hand, it does not present a sufficiently clear idea and, on the other hand, does not agree with the condition in America of the class that the author wants to indicate. He says further along that this class lives in affluence, and an effort must always be made to connect ideas to America. Without that, there would be no unity in the composition. I would put here in place of poor, the country in which the last class that I named, etc.

To the side, in the handwriting of Alexis de Tocqueville according to the copyist: “The word poor has a relative, not an absolute meaning. The American poor could often appear rich compared to those of Europe. But they [above: count as] are always the poor [above: the class of the poor] if you compare them to those of their fellow citizens who are richer than they” (YTC, CIllb, 2, p. 12).

o. The manuscript says “the lower classes.”
The unfortunate influence that popular power can sometimes exercise over the finances of the State made itself clear in certain democratic republics of antiquity, in which the public treasury was exhausted to help indigent citizens, or to give games and spectacles to the people.

It is true to say that the representative system was almost unknown in antiquity. Today, popular passions arise with more difficulty in public affairs; you can, however, count on the fact that, in the long run, the delegate will always end by conforming to the spirit of his constituents and by making their propensities as well as their interests prevail.

[This same tendency is even more noticeable in England with the poor tax, the only tax that is established by the people, that profits only them, and that has a democratic origin and object.]

The profusions of democracy are, moreover, less to be feared the more people become property owners, because then, on the one hand, the people have less need for the money of the rich and, on the other hand, they encounter more difficulties establishing a tax that does not hit them. From this perspective, universal suffrage would be less dangerous in France than in England, where nearly all taxable property is gathered in a few hands. America, where the great majority of citizens own property, is in a more favorable situation than France.

Still other causes can raise the sum of public expenditures in democracies.  

When the aristocracy governs, the men who conduct State affairs escape all needs by their very position; content with their lot, they ask above all

p. Of the principle of representation.  
It is the principle of representation that eminently distinguishes modern republics from ancient republics.  
Partially known in antiquity however. See Federalist, p. 273 [No. 63 (ed.)].  
Superiority that it gives to the modern ones, practicability of the republic.  
It tends to be weakened more and more in America.  
Public vote (YTC, CVh, 1, pp. 5–6).

q. In the manuscript, what follows forms a section entitled: OTHER CAUSES THAT MAKE PUBLIC EXPENDITURES RISE HIGHER UNDER DEMOCRATIC GOVERNMENT THAN UNDER OTHERS.
for power and glory from society; and, placed above the anonymous crowd of citizens, they do not always see clearly how the general welfare necessarily works toward their own grandeur. It is not that they see the sufferings of the poor without pity; but they cannot feel the miseries of the poor as though they shared them themselves. As long as the people seem to be content with their own fortune, these men consider themselves satisfied and expect nothing more from the government. Aristocracy thinks more about maintaining than improving.

When, on the contrary, public power is in the hands of the people, the sovereign power seeks everywhere for something better, because it has a sense of unease.

The spirit of amelioration then extends to a thousand different objects; it gets down to infinite details and is applied, above all, to types of amelioration that cannot be achieved except by paying; for it is a matter of improving the condition of the poor who cannot help themselves.

In addition there exists in democratic societies an agitation without a specific aim; a sort of permanent fever reigns there that turns toward all kinds of innovation, and innovations are nearly always costly.

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r. In the manuscript: “When the aristocracy governs society, the only necessary care it has for the people is to prevent an uprising against it.”

Hervé de Tocqueville:

This sentence is harsh though true. But let us not forget that the violent acts of the Revolution came from the fact that this truth had penetrated the people too deeply. Let us not once again put on the foreheads of the upper classes this mark that has been so deadly to them. It is more than useless for Alexis to alienate himself from these classes. So this sentence must be cut or softened. It can be cut without disadvantage to what follows. Then the chapter would begin in this way: When the governing power is placed in the people, the spirit of amelioration is extended to a host of objects.

If Alexis absolutely does not want to sacrifice it, this must be inserted: The aristocracy has often been reproached for not having a care for the people, etc. Then it is not he who pronounces and condemns; he is only reporting an opinion current in the world.

Édouard de Tocqueville: “This observation seems just to me” (YTC, CIIIb, 2, pp. 13–14).

Gustave de Beaumont: “Idea much too absolute that is suitable to modify” (YTC, CIIIb, 2, p. 21).
In monarchies and in aristocracies, the ambitious flatter the natural taste that carries the sovereign power toward fame and power, and they often push it therefore toward great expenditures.

In democracies, where the sovereign power is needy, you can hardly gain its good will except by increasing its well-being; that can hardly ever be done except with money.\[s\]

Moreover, when the people themselves begin to reflect on their position, a host of needs arises that they had not felt at first and that can only be satisfied by turning to the resources of the State. As a result, public expenses seem generally to increase with civilization, and you see taxes rise as enlightenment spreads.\[t\]

Finally, a last cause often makes democratic government more expensive than another. Sometimes the democracy wants to economize on its expenditures, but it cannot succeed in doing so, because it does not have the art of being economical.

As the democracy frequently changes views and, still more frequently, changes agents, it happens that enterprises are poorly conducted or remain incomplete. In the first case, the State makes expenditures disproportionate

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\[s\] In the margin: "Isn't this subtle?"

\[t\] In the manuscript, this paragraph finishes in this way: "... taxes generally increase with enlightenment; and public expenses with civilization which should seemingly make them almost unnecessary."

Hervé de Tocqueville: "This is nothing less than clear [sic]. I do not understand why civilization should make public expenses nearly unnecessary."

Édouard de Tocqueville: "Nor do I" (YTC, CIIIb, 2, p. 14).

Hervé de Tocqueville:

Here are two divisions of the chapter devoted to generalities. But the author comes to no conclusion, and the reader will not fail to complain about it. He proves very well that democratic government is and must be expensive. But he does not arrive at the application that is indispensable to justify a theory. Is American democratic government proportionately more expensive than another; are public expenditures higher there? Not only must the author say so, but he must also explain why, give certain examples. If he has refrained because he is going to do so later, he must indicate it here. It is impossible for this division to end in this way, in a vague way.

Édouard de Tocqueville: "That is very true" (YTC, CIII b, 2, p. 14).
to the grandeur of the end that it wishes to achieve; in the second, it makes unproductive expenditures.

Of the Instincts of American Democracy in Determining the Salaries of Officials

In democracies, those who institute large salaries do not have the chance to profit from them.—Tendency of the American democracy to raise the salaries of secondary officials and to lower those of principal officials.—Why this is so.—Comparative picture of the salary of public officials in the United States and in France.

One great reason leads democracies, in general, to economize on the salaries of public officials.

In democracies, since those who institute the salaries are very numerous, they have very little chance ever to get them.

In aristocracies, on the contrary, those who institute large salaries almost always have a vague hope to profit from them. These salaries are capital that they create for themselves, or at the very least resources that they prepare for their children.

It must be admitted, however, that democracy appears to be very parsimonious only toward its principal agents.

In America, officials of secondary rank are paid more than elsewhere, but high officials are paid much less. [There are states in which the Governor receives less money as a salary than one of our sub-prefects.]

These opposite effects are produced by the same cause; the people, in both cases, set the salaries of public officials. They think about their own needs, and this comparison guides them. Since they themselves live in great comfort, it seems natural to them that those who are serving them share it. But when it is time to set the lot of the great officers of the State, this rule escapes them, and they proceed only haphazardly.

7. The comfort in which secondary officials live in the United States is also due to another
The poor man does not have a clear idea of the needs that the superior classes of society may feel. What would appear to be a modest sum to a rich man, appears to be a prodigious sum to the poor man who contents himself with what’s necessary; and he considers that the Governor of the state, provided with his two thousand écus, should still be happy and excite envy.  

If you try to make him understand that the representative of a great nation must appear with a certain splendor in the eyes of foreigners, he will understand you at first. But when, thinking about his simple dwelling and about the modest fruits of his hard labor, he thinks about all that he could do with this very salary that you judge insufficient, he will find himself surprised and almost frightened by the sight of such riches.

Add that the secondary official is nearly at the level of the people, while the other towers above them. So the first can still excite their interest, but the other begins to arouse their envy.

This is seen very clearly in the United States, where salaries seem in a way to decrease as the power of the officials grows greater.

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cause. This one is foreign to the general instincts of democracy: every type of private career is highly productive. The State would not find secondary officials if it did not agree to pay them well. So it is in the position of a commercial enterprise, obliged, whatever its tastes for economy, to sustain a burdensome competition.

8. The state of Ohio, which has a million inhabitants, gives the Governor only 1,200 dollars in salary or 6,504 francs.

9. To make this truth clear to all, it is sufficient to examine the salaries of some of the agents of the federal government. I thought the salary attached, in France, to the analogous office should be placed in juxtaposition, in order for the comparison to enlighten the reader.

United States

Treasury Department

<table>
<thead>
<tr>
<th>Position</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendant</td>
<td>3,734 fr.</td>
</tr>
<tr>
<td>The lowest paid clerk</td>
<td>5,420 fr.</td>
</tr>
<tr>
<td>The highest paid clerk</td>
<td>8,672 fr.</td>
</tr>
<tr>
<td>Chief Clerk</td>
<td>10,840 fr.</td>
</tr>
<tr>
<td>Secretary of State [sic: of the Treasury]</td>
<td>32,520 fr.</td>
</tr>
<tr>
<td>The President</td>
<td>135,000 fr.</td>
</tr>
</tbody>
</table>
Under the dominion of aristocracy, on the contrary, high officials receive very large emoluments, while lower level ones often have hardly enough on which to live. It is easy to find the reason for this fact in causes analogous to those that we have indicated above.

If the democracy does not imagine the pleasures of the rich man or envies them, the aristocracy from its perspective does not understand the miseries of the poor man; or rather it is unaware of them. The poor man is not, strictly speaking, similar to the rich man; he is a being of another species. So the aristocracy worries very little about the fate of its lower level agents. It raises their salaries only when they refuse to serve for too small a price.

The parsimonious tendency of democracy toward principal officials has caused great economical propensities to be attributed to democracy that it does not have.

It is true that democracy gives scarcely what is needed to live honestly to those who govern it, but it spends enormous sums to relieve the needs

<table>
<thead>
<tr>
<th>France</th>
<th>Ministry of Finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendant of the Minister</td>
<td>1,500 fr.</td>
</tr>
<tr>
<td>The lowest paid clerk</td>
<td>1,000 to 1,800 fr.</td>
</tr>
<tr>
<td>The highest paid clerk</td>
<td>5,200 to 5,600 fr.</td>
</tr>
<tr>
<td>Chief Clerk</td>
<td>20,000 fr.</td>
</tr>
<tr>
<td>Minister</td>
<td>80,000 fr.</td>
</tr>
<tr>
<td>The King</td>
<td>12,000,000 fr.</td>
</tr>
</tbody>
</table>

Perhaps I was wrong to take France as the point of comparison. In France, where, daily, democratic instincts increasingly penetrate the government, you already notice a strong tendency that leads the Chambers to raise small salaries and above all to lower the large ones. Thus the Minister of Finance, who, in 1834, receives 80,000 fr., received 160,000 under the Empire; the general directors of finance, who receive 20,000, then received 50,000.

u. In various articles about public expenditures in the United States and in France, which we will speak about later (see note j for p. 349), comparisons of this type abound.

v. “Ask Mr. Livingston if apart from the clerks in the American Treasury Department, there are still lower paid employees” (YTC, CVh, 3, p. 11).

w. Hervé de Tocqueville: “I ask for the deletion of this paragraph and the following for the reason that I gave on page 135. They are, moreover, superfluous and entirely unnecessary, because the author is not treating aristocracy. In addition, they are written with a bitterness against the aristocracy that cannot come from the pen of Alexis and that will bring his impartiality into question” (YTC, CIIIb, 2, p. 15). Cf. note r for p. 338.
or to facilitate the pleasures of the people. That is a better use of the tax revenue, not an economy.

In general, democracy gives little to those who govern and a great deal to the governed. The opposite is seen in aristocracies where the money of the State profits above all the class that leads public affairs.

**Difficulty of Discerning the Causes That Lead the American Government to Economy**

[# In the silence of his study, the observer draws up general rules, and he believes that he has grasped the truth. But a fact, the first cause of which is often lost in the night, appears in his thoughts, and it seems to him that truth is escaping from him.]

The man who searches among facts for the real influence exercised by laws on the fate of humanity is exposed to great errors, for there is nothing so difficult to appreciate as a fact.

One people is naturally thoughtless and enthusiastic; another, reflective

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10. *See among other items, in American budgets, what it costs for the support of the poor and for free education.*

*In 1831, in the state of New York, the sum of 1,200,000 francs was spent for the support of the poor. And the sum devoted to public education was estimated to amount to 5,420,000 francs at least (William's New York Annual Register, 1832, pp. 205 and 243). The state of New York in 1830 had only 1,900,000 inhabitants, which is not double the population of the département du Nord.*

x. *Former title: That reasons taken from the mores of a people often disrupt or modify general arguments.*

Hervé de Tocqueville:

The title [This concerns the definitive title (ed.)] of this division does not seem good to me for two reasons. First, it establishes a sort of contradiction with the preceding chapters, which established that democratic government is not economical; then the difficulty is suddenly resolved in the chapter. I propose changing this title and putting: **OF THE CAUSES FOR THE ECONOMY OF THE AMERICAN GOVERNMENT FOR CERTAIN OBJECTS.** As for the rest, the chapter is very good. I will make only one observation to which I do not attach great importance; the author assumes preliminary knowledge in his reader. He reasons as if the reader already knew that the Americans like neither the luxury of festivals, nor that of buildings (YTC, IIIb, 2, p. 16).
or to facilitate the pleasures of the people.\textsuperscript{10} That is a better use of the tax revenue, not an economy.

In general, democracy gives little to those who govern and a great deal to the governed. The opposite is seen in aristocracies where the money of the State profits above all the class that leads public affairs.

**Difficulty of Discerning the Causes That Lead the American Government to Economy\textsuperscript{x}**

\[\#\text{In the silence of his study, the observer draws up general rules, and he believes that he has grasped the truth. But a fact, the first cause of which is often lost in the night, appears in his thoughts, and it seems to him that truth is escaping from him.\textsuperscript{\#}}\]

The man who searches among facts for the real influence exercised by laws on the fate of humanity is exposed to great errors, for there is nothing so difficult to appreciate as a fact.

One people is naturally thoughtless and enthusiastic; another, reflective

\textsuperscript{10.} See among other items, in American budgets, what it costs for the support of the poor and for free education.

\textsuperscript{x.} Former title: That reasons taken from the mores of a people often disrupt or modify general arguments.

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and calculating. This is due to their physical constitution itself or to distant causes that I do not know.\textsuperscript{y}

You see peoples who love show, noise and pleasure, and who do not regret spending a million that goes up in smoke. You see others who value only solitary pleasures and who seem ashamed to appear contented.

In certain countries, a great price is attached to the beauty of buildings. In certain others, no value whatsoever is placed on objects of art, and what has no return is scorned. Finally, there are some in which fame is loved, and others in which money is placed before all else.

Apart from the laws, all these causes influence in a very powerful way the management of the finances of the State.

If the Americans have never happened to spend the people’s money on public festivals, it is not only because, among them, the people vote the tax; it is because the people do not like to enjoy themselves.

If they reject ornament in their architecture and prize only material and real advantages, it is not only because they are a democratic nation, but also because they are a commercial people.

The habits of private life are continued in public life; and among the Americans the economies that depend on institutions and those that follow from habits and mores must be clearly distinguished.\textsuperscript{z}

\textsuperscript{y. Fragment of a first version in the manuscript:}

\textsuperscript{#There is indeed in the bent of the ideas and tastes of a people a hidden force that struggles with advantage against revolutions and time. This intellectual physiognomy of nations, which is called their character, is found throughout all the centuries of their history and amid the innumerable changes that take place in the social state, beliefs and laws. A strange thing! What is least perceptible and most difficult to define among a people is at the same time what you find most enduring among them. Everything changes among them except the character, which disappears only with nations themselves. #}

\textsuperscript{z. In the margin: “#The beginning of the chapter does not exactly correspond to the end. The beginning contains a general idea on national character; the end contains a clear and precise observation on what gives the Americans their character. #”}
[Influence of the Government of Democracy on the Tax Base {and on the Use of the Tax Revenues}]a

The form of government greatly influences the tax base. The instinct of the aristocracyb leads it to handle the producer carefully {and to burden the consumer} because the aristocracy holds the sources of wealth. It is the opposite for the democracy, which willingly takes on the producer and han-

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a. “The advice of Louis (ed.) is that the ideas of this chapter are questionable, that in any case they are presented too succinctly and in a superficial way” (YTC, CVh, 3, p. 90).

A first version of this part is found in YTC, CVh, 3, pp. 74–80; it presents numerous differences from the manuscript version. Notably, the opening of this draft states:

I know that minds are much preoccupied with comparing the expenses of the United States with ours. If such were not the disposition of the public, I would not have done this chapter. For I am convinced that such a comparison is necessarily incomplete and, consequently, unproductive and that, were it complete, the truth would not be self-evident. It can be useful only to those who are looking for figures to support their ideas and not to those who want truth to emerge from figures (p. 74).

b. Hervé de Tocqueville:

I do not believe the word aristocracy is very applicable here. The same thing would happen in a democracy in which the governing party was, in the majority, composed of owners of landed properties, large or small.

This division has the same fault as one of the preceding ones; it leaves the reader almost completely wanting in terms of facts. We see clearly that the Americans have not wanted one tax, but you do not say what taxes they do want. A detailed account of this subject would be useless. But at least it would be necessary to tell us the nature of the taxes and to justify, with examples, the truth of the theory that the author is establishing. If by chance in America there was no contribution based on land, as I believe, and the producer was thus treated very carefully, then the chapter would come crashing down and it would have to be revised. I have a vague memory of having heard that there were only indirect taxes in America, and we know that indirect taxes weigh particularly on the consumer. I believe that the customs duties are the principal revenue of the American government (YTC, CIIib, 2, pp. 16–17).
dles the consumer carefully, because the resources of the people scarcely reach the level of the ordinary prices of objects of consumption.

Among the English, land has not been taxed and indirect taxes have been multiplied. All the exemptions have been made in favor of the rich, while taxes that hit only the poor have always continued to grow. In America, when the legislature attempted to establish a tax on fermented liquors, a revolt ensued and in 1794 the legislature was forced to repeal the law.[*]

Only the despotism of one man is indifferent to the tax base. Its instinct leads it only to strike the taxpayer most able to give and least able to resist.]d

[Influence of Democratic Government on the Use of Tax Revenues]

[The partisans of democracy claim that the government of democracy is more economical than any other, and I think they are mistaken. If they said, instead, that, of all governments, democratic government is the one that generally makes best use of tax revenues, they would put themselves, I believe, on their true ground.

c. Édouard de Tocqueville:

This sentence is completely unintelligible to me; the resources of the people hardly reach the level of the price of the most ordinary objects of consumption would seem understandable, but the thought still would not seem sound to me. Here you fail, I think, into the fault, almost inevitable for a European, of using the word people for low people or populace. Well, even in France the resources of the people, of the mass, often reach beyond the price of ordinary consumer objects, that is to say, food and clothing; with greater reason, can you say that in America, where the greatest comfort reigns for the mass, in such a country can you say that the people willingly take on the producer? I do not believe it, for they would be taking on themselves as consumers. The more economical the price of production, the more the objects of consumption fall within reach of the people; and when the latter have tasted these consumer objects, the objects become needs for them (YTC, CIIIb, 2, p. 9).

[*]. See Marshall, Life of Washington, and Pitkin.

I spoke above about the squanderings of democracy [bread and spectacles the Romans of the decline would say], but such excesses are rare and are ordinarily found during the centuries when enlightenment is weak and corruption very great. If the government of democracy levies more considerable sums on society than another government, it generally uses public monies for objects of a more certain and more extensive utility and uses them to relieve more real needs. Incontestably, democracies have never built the palace of Versailles, nor based the political world on money as the aristocracy of England has done.

Apart from its direct influence on the object of public expenditures, the government of democracy exercises still another influence, no less great, on how they are handled. Democratic institutions tend to make habits simpler and to remove, if not the taste for luxury and ostentation, the usual appendage to the inequality of fortunes, at least the possibility of indulging in that taste. As a result of this general spirit of the nation, expenditures are made on more modest and more economical plans.

(e. In the margin, under a paper glued into place: "It uses it for schools, for roads, for measures of order and health."

f. To the side:

Democracy shows itself parsimonious toward its agents.

This is due to two causes.

The first is that the poor man, who then makes the law, measures by his own scale the needs of those who serve him. What appears to be a modest sum to a rich man, appears to be a prodigious sum to him who has nothing; and he feels that a public official [v: the Governor of the state], with his puny salary, should still be happy and excite envy. The second is that since those who institute the salaries are very numerous under the dominion of democracy, they have very little chance to get them.

This parsimony of democracy for the principal ones among its agents gives an illusion about its economical inclinations. But if it limits itself to giving public officials what is needed to live, it spends enormous sums to relieve the needs [to establish free schools] or to facilitate the pleasures of the people [to aid the poor]. It is a better use of the tax revenue, but not an economy. In general, democracy gives little to those who govern and a great deal to the governed, against aristocratic governments where the money .-.-.-. above all the class that .-.-.-. public affairs.

(g. In the margin, under a paper glued into place: "Perhaps put at the end of the chapter, the chapter on mores placed above."
In all that precedes I have kept to subjects as a whole and not to details. I happened to notice many times in America that public expenditures were not applied to the most useful objects or that they were made without economy; but it appeared to me that these were particular cases and that they should be blamed much less on a natural tendency of the government of democracy than on the poor choice of its agents. For, of all masters, the people are assuredly the worst served.\(^h\)

\(^h\) Hervé de Tocqueville:

I do not believe this idea developed enough. This last division of the chapter presents a great imperfection in my eyes. The good faith of the author leads him to admit that several facts in America contradict his theory. In several of the preceding divisions, facts, unstated, did not support the theory. Here, in certain respects, they are opposed to it. Alexis has too much wisdom not to see that by operating thus, he gives a wide scope to criticism. Overall, he has changed his way of writing, and I regret it. In the first volume, facts led naturally to theory that seemed a natural consequence. Here theory precedes facts, and sometimes does without them; that is dangerous. The reader willingly submits to the author’s opinion when it seems to be a deduction, so to speak, from facts, because then the author does not seem to want to impose his opinion. It would be otherwise if it preceded facts and, above all, if facts were lacking to support it. Then the intelligence of the author exercises over that of the reader a sway to which the latter does not always adapt and against which he sometimes takes a strong stand. I acknowledge with great pleasure that this last chapter is very well written and that it contains new and ingenious insights. But this merit does not compensate for the disadvantage of the absence of facts to support the theory.

In my opinion, every time Alexis is led to develop general insights, he must hasten to connect them to America. Without that, his work would lose its unity of composition, which is a major disadvantage in works of the mind. The reader glimpses in this case two aims without being able to set exactly the limits of each of the things that relate to each other; and a kind of confusion arises in his mind that forces him to a tedious effort that displeases him.

I have conscientiously examined if the paragraphs on aristocracy are necessary to establish a useful parallel between it and democracy. I am convinced of the opposite. Not only are they unnecessary, but they come as irrelevant, because aristocracy is in no way within the author’s subject. There is no point, without a pressing need, in turning the upper classes against him. Alexis has been carried away by his natural frankness and also by a generous sentiment, that of knowing how to put himself above the prejudices of his class. All that he says was appropriate when the aristocracy was powerful. At present, I believe that one must abstain from doing it. I do not need to expand on the reasons.
Can the Public Expenditures of the United States Be Compared with Those of France?

Two points to be established in order to appreciate the extent of public expenses: national wealth and taxation.—Fortune and expenses in France are not known exactly.—Why you cannot hope to know fortune and expenses in the Union.—Research of the author to learn the total amount of taxes in Pennsylvania.—General signs by which you can recognize the extent of the expenses of a people.—Result of this examination for the Union.

Some have been much occupied recently with comparing the public expenditures of the United States with ours. All of these efforts have been without result, and a few words will suffice, I believe, to prove that it must be so.

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To the side, written by Alexis, according to the copyist: “and that it (three illegible words) it would not have (illegible word) at State expense to buy the younger branches of certain families as the English aristocracy did” (YTC, CIIIb, 2, pp. 17–19).

Édouard de Tocqueville:

*General observation.* This entire chapter needs, in my opinion, to be altered. Economic questions are not treated in it with enough assurance; there are several propositions that can be questioned. Certain thoughts are inadequately developed. All in all, I do not find this chapter at the same level as the preceding ones. The author here does not seem to be as perfectly in control of his subject (YTC, CIIIb, 2, p. 10).

j. This section does not exist in the manuscript; it does not appear in the criticisms of family and friends. It seems to have been included following a polemic on the economy of republican government, in which the United States was generally taken as the example. In September 1831, Sebastien L. Saulnier, official voice of the government, prefect of police and editor of the *Revue Britannique*, published “Rapprochements entre les dépenses publiques de la France et celles des États-Unis” (*Revue Britannique*, n.s., VI, 1831, pp. 272–324, reprinted in various publications), in which he claimed that the United States had an extremely expensive form of government and that American finances were consequently in chaotic condition. Since the moment for discussion in the Chamber of Deputies of the proposed budget for 1832 was at hand, Lafayette saw in this article an attempt on the part of the government to influence the parliamentary debate. He solicited the opinions of James Fenimore Cooper and of General Bernard, following which
In order to be able to appreciate the extent of public expenses among a people, two operations are necessary: first, you must learn the wealth of this people, and then what portion of this wealth they devote to State expenditures. The person who researches the total amount of taxes without showing the extent of the resources that must provide them, would be pursuing unproductive work; for it is interesting to know not the expenditure, but the relation of the expenditure to the revenue.

The same tax that a wealthy taxpayer easily bears will succeed in reducing a poor man to poverty.

The wealth of peoples is made up of several elements: real estate holdings form the first, personal property constitutes the second.\(^k\)

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he published a brochure that circulated among the deputies (Le général Lafayette à ses collègues de la Chambre des députés, Paris: Paulin, 1832, 68 pp.) The letter of Cooper had been published separately, in English (Letter of J. Fenimore Cooper to Gen. Lafayette, on the expenditure of the United States of America, Paris: Baudry, December 1831, pp. 50, iii, and also in the Revue des deux mondes, n.s., V, January 1832, pp. 145–82). Saulnier answered with two new writings: “Nouvelles observations sur les finances des États-Unis, en réponse à une brochure publiée par le Général Lafayette” (Revue Britannique, n.s., VIII, pp. 195–260), and a letter to the editor of the same review (n.s., IX, November 1833, pp. 164–94). In 1834, Francisque de Corcelle published an article, “Administration financière des États-Unis” (Revue des deux mondes, 3rd series, I, 1834, pp. 561–84), with new statistics obtained from an inquiry into the American financial system done by Edward Livingston. New data, Corcelle argued, would demonstrate that the Americans paid lower taxes than the French. The article by Corcelle had probably attracted Tocqueville’s attention, because he wrote to D. B. Warden on 21 July 1834 (YTC, CId), asking him for “the brochures of Bernard, Lafayette and Cooper.” Regarding this, the following note is also found in the drafts: “Brochure of General Bernard and of Mr. Cooper on the finances of the United States appeared in the middle of 1831. I believe that General Lafayette’s aide-de-camp published something on the same subject” (YTC, CVh, 4, pp. 21–22). See note 51 for p. 156.

k. In the 1835 edition: “The wealth of peoples is made up of several elements: population is the first; real estate holdings form the second, and personal property constitutes the third.

“Of these three elements, the first is easily discovered. Among civilized peoples you can easily reach an exact count of the citizens; but it is not the same with the other two. It is difficult to . . . ”

The correction is probably due to a criticism from Nassau William Senior in a letter to Tocqueville of 17 February 1835:

I cannot think that population is an element of wealth. It may rather be said to be an element of poverty. The wealth or poverty of the people of a country depends on
It is difficult to know the extent of land suitable for cultivation that a
nation possesses and its natural or acquired value. It is still more difficult
to estimate all of the personal property that a people has at its disposal.
Personal property, because of its diversity and amount, eludes almost all
efforts of analysis.

Consequently we see that the oldest civilized nations of Europe, even
those in which the administration is centralized, have not yet established
the state of their wealth in any precise way.

In America, no one has even conceived the idea of trying. And how could
you think to succeed in this new country where society has not yet peace-
fully and finally settled down, where the national government does not find
at its disposal, as ours does, a multitude of agents whose efforts can be
simultaneously commanded and directed; where, finally, statistics are not
studied, because no one is found who has the power to gather the docu-
ments or the time to look through them?

So the constituent elements of our calculations cannot be obtained. We
do not know the comparative wealth of France and of the Union. The
wealth of the one is not yet known, and the means to establish that of the
other do not exist.

But, for a moment, I agree to put aside this necessary term of compar-
ison; I give up knowing the relationship of tax to revenue, and I limit myself
to wanting to establish what the taxes are.

The reader is going to recognize that by narrowing the circle of my re-
search, I have not made my task easier.

I do not doubt that the central administration of France, aided by all
the officials at its disposal, might succeed in discovering exactly the total
amount of direct or indirect taxes that weigh upon the citizens. But this

the proportion between their numbers and the aggregate wealth of that country.
Diminish their numbers, the wealth remaining the same, and they will be, individu-
ally, richer. The people of Ireland, and indeed of England, would be richer if they
were fewer. I do call a country like China, where there is an immense population,
individually poor, a rich country, though the aggregate wealth of China is greater
than the aggregate wealth of Holland, where the population is, comparatively, indi-
vidually rich (Correspondence and Conversations of Alexis de Tocqueville with Nassau
work, which an individual cannot undertake, the French government itself has not yet finished, or at least it has not made the results known. We know what the State expenses are; the total of the departmental expenses is known; we do not know what happens in the French towns. So no one can say, as of now, what amount public expenditures in France total.

If I now return to America, I notice difficulties that become more numerous and more insurmountable. The Union makes public the exact amount of its expenses; I can obtain for myself the individual budgets of the twenty-four states that constitute the Union; but who will teach me what the citizens spend for the administration of the county and of the town? Federal authority cannot extend to forcing the provincial governments to enlighten us on this point; and if these governments themselves wanted to lend us simultaneously their support, I doubt that they would be able to satisfy us. Apart from the natural difficulty of the enterprise, the political

11. The Americans, as you see, have four types of budgets: The Union has its; the states, counties, and towns have theirs as well. During my stay in America, I did extensive research to know the total amount of public expenditures in the towns and in the counties of the principal states of the Union. I was able easily to obtain the budget of the largest towns, but it was impossible for me to get that of the small towns. So I cannot form any exact idea of town expenditures. For what concerns the expenditures of the counties, I possess some documents that, though incomplete, are perhaps the kind that are worthy of the reader’s curiosity. I owe to the goodness of Mr. Richards, former11 mayor of Philadelphia, the budgets of thirteen counties of Pennsylvania for the year 1830, those of Lebanon, Center, Franklin, Fayette, Montgomery, Luzerne, Dauphin, Butler, Allegheny [Allegheny (ed.)], Columbia, Northumberland, Northampton, Philadelphia. In 1830, there were 495,207 inhabitants. If you cast your eyes on a map of Pennsylvania, you will see that these thirteen counties are dispersed in all directions and subject to all the general causes that can influence the state of a country; so that it would be impossible to say why they would not provide an exact idea of the financial state of the counties of Pennsylvania. Now, these very counties spent, during the year 1830, 1,808,221 francs, which yields 3.64 fr. per inhabitant. I calculated that each of the same inhabitants, during the year 1830, devoted to the needs of the federal Union 12.70 fr., and 3.80 fr. to those of Pennsylvania; the result is that in the year 1830 the same citizens gave to society, to meet all public expenditures (except town expenditures), the amount of 20.14 fr. This result is doubly incomplete, as you see, because it applies only to a single year and to one part of public expenses; but it has the merit of being certain.

m. The word “former” appears only after the first editions.
organization of the country would still conflict with the success of their efforts. The magistrates of the town and of the county are not appointed by administrators of the state, and do not depend on them. So it may be believed that if the state wanted to obtain the information we need, it would meet great obstacles in the carelessness of the lower level officials it would be forced to use.¹²

Useless, moreover, to try to find out what the Americans would be able to do in such a matter, because certainly until now they have done nothing.

So today in America or in Europe not a single man exists who can teach us what each citizen of the Union pays annually to meet the expenses of society.¹³

¹². Those who have wanted to establish a parallel between the expenditures of the Americans and ours have clearly felt that it was impossible to compare the total of the public expenditures of France to the total of the public expenditures of the Union; but they have sought to compare detached portions of these expenditures. It is easy to prove that this second way of operating is no less defective than the first.

To what will I compare, for example, our national budget? To the budget of the Union? But the Union is occupied with far fewer objects than our central government, and its expenses must naturally be much less. Will I contrast our departmental budgets to the budgets of the individual states that make up the Union? But in general the individual states attend to more important and more numerous interests than the administration of our departments; so their expenditures are naturally more considerable. As for the budgets of the counties, you find nothing in our system of finance that resembles them. Will we add expenditures made there to the budget of the state or to that of the towns? Town expenditures exist in the two countries, but they are not always analogous. In America, the town assumes several needs that in France are left to the department or to the State. How, moreover, must town expenditures in America be understood? The organization of the town differs depending on the states. Will we take as the rule what happens in New England or in Georgia, in Pennsylvania or in the state of Illinois?

It is easy to see, between certain budgets of two countries, a sort of analogy; but since the elements that constitute them always differ more or less, you cannot establish a serious comparison between them.

¹³. Should you succeed in knowing the precise sum that each French or American citizen pays into the public treasury, you would still have only one part of the truth.

Governments ask not only money from the taxpayers, but also personal efforts that have a monetary value. The State raises an army; apart from the balance that is charged to the entire nation to supply it, the soldier must still give his time, which has a greater or lesser value depending on the use that he would make of it if he remained free. I will say as much about the service of the militia. The man who is part of the militia temporarily devotes a precious
Let us conclude that it is as difficult to compare fruitfully the social expenditures of the Americans with ours, as it is to compare the wealth of the Union to that of France. I add that it would even be dangerous to attempt it. When statistics are not based on rigorously true calculations, they mislead rather than guide. The mind is easily led astray by the false air of exactitude that statistics conserve even in their discrepancies, and it rests untroubled in the errors that it thinks are cloaked in the mathematical forms of truth.

So let us abandon numbers and try to find our proof elsewhere. Does a country present an aspect of material prosperity; after paying the State, does the poor man still have resources and the rich man superfluity; do both appear satisfied with their lot, and do they still seek to improve it each day, so that industry never lacks capital and capital in turn does not lack industry? Lacking positive documents, it is possible to resort to such indicators to know if the public expenses that burden a people are proportionate to its wealth.

The observer who kept to this evidence would undoubtedly judge that the American of the United States gives to the State a less significant portion of his income than the Frenchman.

But how could you imagine that it would be otherwise?

time to public security, and really gives to the State what he fails to acquire for himself. I have cited these examples; I would have been able to cite many others. The government of France and that of America collect taxes of this nature; these taxes burden the citizens. But who can appreciate with exactitude their total amount in the two countries?

This is not the last difficulty that stops you when you want to compare the public expenditures of the Union to ours. The State has certain obligations in France that it does not assume in America, and reciprocally. The French government pays the clergy; the American government leaves this concern to the faithful. In America, the State takes care of the poor; in France, it leaves them to the charity of the public. We give all our officials a fixed salary; the Americans allow them to collect certain fees. In France, service charges occur only on a small number of roads; in the United States, on nearly all roads. Our roads are open to travelers who can travel on them without paying anything; in the United States there are many toll roads. All these differences in the way in which the taxpayer acquires himself of the expenses of the society make comparison between the two societies very difficult; for there are certain expenditures that the citizens would not make or that would be less, if the State did not take it upon itself to act in their name.
One part of the French debt is the result of two invasions; the Union has nothing to fear about that. Our position obliges us as a rule to keep a numerous army under arms; the isolation of the Union allows it to have only 6,000 soldiers. We maintain nearly 300 ships; the Americans have only 52\(^{14}\) of them. How could the inhabitant of the Union pay to the State as much as the inhabitant of France?

So there is no parallel to establish between the finances of countries so differently placed.

It is by examining what happens in the Union, and not by comparing the Union with France, that we can judge if American democracy is truly economical.

I cast my eyes on each of the various republics that form the confederation, and I discover that their government often lacks perseverance in its designs, and that it does not exercise continuous surveillance over the men it employs. From this I naturally draw the conclusion that it must often spend the money of the taxpayers uselessly, or devote more of their money than necessary to its undertakings.

I see that, faithful to its popular origin, it makes prodigious efforts to satisfy the needs of the lower classes of society, to open the paths to power to them, and to spread well-being and enlightenment among them. It supports the poor, distributes millions each year to the schools, pays for all services, and generously recompenses its least important agents. If such a means of governing seems useful and reasonable to me, I am forced to recognize that it is expensive.

I see the poor man who leads public affairs and has national resources at his disposal; and I cannot believe that, profiting from State expenditures, he does not often drag the State into new expenditures.

So I conclude, without resorting to incomplete figures and without wanting to establish risky comparisons, that the democratic government of the Americans is not, as is sometimes claimed, an inexpensive govern-

\(^{14}\) See the detailed budgets of the Ministry of the Navy in France, and for America, the National Calendar of 1833, p. 228.\(^n\)

\(n\) The budget of the American navy is found on pages 290–91. On page 228, the list of warships is found; the total is 53 (Tocqueville seems to have eliminated from the list a barge, a small unarmed galley with about twenty oars aboard).
ment; and I am not afraid to predict that, if great difficulties came one day to assail the peoples of the United States, you would see taxes among them rise as high as in most of the aristocracies or monarchies of Europe.

Of the Corruption and Vices of Those Who Govern in Democracy; Of the Effects on Public Morality That Result from That Corruption and Those Vices

In aristocracies, those who govern sometimes seek to corrupt.—Often, in democracies, they prove to be corrupt themselves.—In the first, vices directly attack the morality of the people.—In the second, vices exercise an indirect influence on the morality of the people that is still more to be feared.

Aristocracy and democracy mutually reproach each other with facilitating corruption; it is necessary to distinguish.

In aristocratic governments, the men who come to public affairs are rich men who only want power. In democracies, the statesmen are poor and have their fortune to make.

It follows that, in aristocratic States, those who govern are not very open to corruption and have only a very moderate taste for money, while the opposite happens among democratic peoples.

But, in aristocracies, since those who want to arrive at the head of public affairs have great riches at their disposal, and since the number of those who can make them succeed is often circumscribed within certain limits, the government finds itself, in a way, up for sale.\(^0\) In democracies, on the

\(^0\) Hervé de Tocqueville:

It is clear that in this picture the author has England in view, but all aristocracies are not like that of England, which, however omnipotent it is, needs the people. There were other aristocracies, such as that of Venice and I believe that of Berne, that were self-sufficient, the people remaining outside; was corruption at work in the last ones? The author cites a mixed government rather than a clear-cut aristocracy. Some would probably object to him about it; to avoid it I would like him to put: “in aristocracies in which the popular vote is necessary” (YTC, CIIIb, 2, p. 3).
contrary, those who aspire to power are hardly ever rich, and the number of those who contribute to gaining power is very great. Perhaps, in democracies, men are for sale no less, but there are hardly any buyers, and, besides, too many people would have to be bought at once to achieve the end. As a result of this difference, in democracies corruption acts upon those who govern and in aristocracies upon the governed. In the one, public officials are corrupted; in the other, the people themselves.

Thus, corruption finds some way to be exercised in the two governments: its object alone varies.

Among the men who have occupied power in France during the past forty years, several have been accused of having made a fortune at the expense of the State and its allies; a reproach that was rarely made to the public men of the old monarchy. But, in France, there is almost no example of someone buying the vote of an elector for money, while this is notoriously and publicly done in England.

In aristocracies corruption is generally exercised in order to gain power. In democracies it is linked to those who have gained power. So in demo-

p. In the manuscript: “Nearly all the men . . .”

Édouard de Tocqueville (?):

That reproach was not addressed to anyone during the fifteen years of the Restoration. I do not know if it was generally addressed to Bonaparte’s ministers, M. de Talleyrand excepted, although it was addressed to his generals. So we are left then with the ministers of the Republic and, above all, those of the Directory. A great number of the ministers of the Restoration entered power poor and still remain so. So you cannot with justice say: during the past forty years nearly all the men, etc. Couldn’t you say: “Nearly all the men who have occupied power after the establishment of the French republic and during its existence, that is to say, when citizens, until then obscure and poor, suddenly found themselves carried to the head of public affairs, nearly all these men, I say, have been accused . . .”? (YTC, CIIIb, 2, p. 4).

Hervé de Tocqueville: “In this paragraph what Alexis says is not true. Most of the ministers since the Directory were beyond suspicion of mischief, and several ministers under the old regime were regarded as great knaves” (YTC, CIIIb, 2, p. 5).

q. Hervé de Tocqueville: “It is true that they are rarely bought for cash money, but often enough by the lure of places or other advantages, which is a corruption that differs only by the means. The government candidate at Cherbourg had promised the same place of juge de paix to 15 persons” (YTC, CIIIb, 2, p. 6).
cratic States corruption harms the public treasury more than the morality of the people. It is the opposite in aristocracies.]

I have never heard it said that in the United States someone used his riches to win over the governed; but I have often seen the integrity of public officials called into question. Still more often I have heard their success attributed to low intrigues or to guilty maneuvers.

[It must be said, moreover, that the result is not as fearsome in America as it would be in Europe.

Great robberies can only be practiced among powerful democratic nations in which the government is concentrated in few hands and in which the State is charged with executing immense enterprises.]

So if the men who lead aristocracies sometimes seek to corrupt, the heads of democracies are corrupted themselves. In the one, the morality of the people is directly attacked; in the other, an indirect action is exerted on the public conscience that must be feared even more.

Among democratic peoples, those who head the State are almost always exposed to deplorable suspicions; so they give the support of the government, in a way, to the crimes of which they are accused. Thus they present dangerous examples to still struggling virtue, and provide glorious comparisons to hidden vice.

You would say in vain that dishonest passions are met at all levels; that they often accede to the throne by the right of birth; that deeply despicable men can thus be found at the head of aristocratic nations as well as within democracies.

This response does not satisfy me. In the corruption of those who gain power by chance, something crude and vulgar is disclosed that makes it contagious to the crowd; on the contrary, there reigns, even in the deprav-

r. Édouard de Tocqueville (?): “What, so the United States is not a powerful democratic nation? And then the word robbery seems inadmissible to me in an elevated style; great misappropriations or great embezzlements is needed. Finally, how can power be concentrated in few hands in a democratic nation? That to me would seem impossible. This small paragraph must be revised” (YTC, CIIIb, 2, pp. 4–5). What follows this paragraph, until the end of the section, does not exist in the manuscript.
ities of great lords, a certain aristocratic refinement, an air of grandeur that often prevents its spread.\footnote{There, I confuse two things: corruption and embezzlements.}

The people will never penetrate the dark labyrinth of court spirit; it will always be difficult for them to discover the baseness hidden beneath the elegance of manners, the pursuit of taste, and the grace of language. But to rob the public treasury or to sell State favors for money, that the first wretch understands and can claim to be able to do in turn.

What is to be feared, moreover, is not so much the sight of the immorality of the great as that of immorality leading to greatness. In democracy, simple citizens see a man who emerges from their ranks and who in a few years achieves wealth and power; this spectacle excites their surprise and envy; they try to find out how the one who was their equal yesterday is today vested with the right to lead them. To attribute his elevation to his talents or his virtues is uncomfortable, for it means admitting that they themselves are less virtuous and less skillful than he. So they place the principal cause in some of his vices, and often they are right to do so. In this way, I do not know what odious mixture of the ideas of baseness and power, of unworthiness and success, of utility and dishonor comes about.

\footnote{There is corruption when you seek to obtain something which is not your due by sharing some stake with the one who gives it.}

\footnote{There is corruption on the part of the candidate who pays for the votes of the voter.}

\footnote{There is corruption on the part of the individual who obtains a favor from an official for money.}

\footnote{But when officials draw for their own account from the State treasury, it is not corruption; it is \textit{theft} \textit{(YTC, CVh, 4, p. 88)}.}
Of What Efforts Democracy Is Capable

The Union has fought for its existence only a single time.—
Enthusiasm at the beginning of the war.—Cooling at the end.—
Difficulty of establishing conscription or registration of sailors in America.—Why a democratic people is less capable than another of great sustained efforts.

I forewarn the reader that here I am speaking about a government that follows the real will of the people, and not about a government that restricts itself only to commanding in the name of the people.

There is nothing so irresistible as a tyrannical power that commands in the name of the people, because, while vested with the moral power that belongs to the will of the greatest number, it acts at the same time with the decisiveness, promptitude and tenacity that a single man would have.

It is quite difficult to say what degree of effort a democratic government is capable of in time of national crisis.

A great democratic republic has never been seen until now. It would be an insult to republics to give this name to the oligarchy that reigned over France in 1793. The United States alone presents this new spectacle.

Now, since the Union was formed a half-century ago, its existence has been put in question only once, at the time of the War of Independence. At the beginning of this long war, there were extraordinary acts of enthusiasm for serving the country. But as the struggle continued, you saw individual egoism reappear. Money no longer arrived at the public treasury; men no longer presented themselves for the army; the people still wanted independence, but they drew back from the means to obtain

1. Variant in the margin, under a paper glued into place: “The name republic given to the oligarchy of 1793 has never been anything except a bloody veil behind which was hidden the tyranny of some and the oppression of all.”

15. One of the most singular, in my opinion, was the resolution by which the Americans temporarily renounced the use of tea. Those who know that men generally cling more to their habits than to their life will undoubtedly be astonished by this great and obscure sacrifice obtained from an entire people.
the public expectation has been uniformly disappointed, and the treasuries of the States have remained empty. The popular system of administration, inherent in the nature of popular government, coinciding with the real scarcity of money incident to a languid and mutilated state of trade, has hitherto defeated every experiment for extensive collections, and has at length taught the different legislatures the folly of attempting them.

Since this period, the United States has not had to sustain a single serious war.

To judge what sacrifices democracies know how to impose on themselves, we must therefore await the time when the American nation will be forced to put into the hands of its government half of the revenue of its property, like England, or must throw one twentieth of its population all at once onto the field of battle, as France did.

In America, conscription is unknown; men are enrolled there for money. Forced recruitment is so contrary to the ideas and so foreign to the habits of the people of the United States that I doubt that anyone would ever dare to introduce it in the laws. What is called conscription in France assuredly is the heaviest of our taxes; but, without conscription, how would we be able to sustain a great continental war?

The Americans have not adopted English impressment. They have nothing that resembles our registration of sailors. The navy, like the merchant marine, recruits by voluntary enlistments.

Now, it is not easy to conceive that a people could sustain a great maritime war without resorting to one of the two means indicated above. Consequently, the Union, which has already fought with glory at sea, has never

[†]. See the Life of Washington by Marshall.
had large fleets, and the cost of manning the small number of its ships has always been very expensive.

I have heard American statesmen admit that the Union will have difficulty maintaining its rank on the seas, if it does not resort to impressment or to registration of sailors; but the difficulty is to force the people, who govern, to bear impressment or registration of sailors.\textsuperscript{u}

Incontestably, free peoples, when in danger, generally display an infinitely greater energy than those who are not free, but I am led to believe that this is true, above all, for free peoples among whom the aristocratic element predominates.\textsuperscript{v}

Democracy seems to me much more appropriate for leading a peaceful society, or for making a sudden and vigorous effort as needed, than for braving for a long time the great storms in the political lives of peoples. The reason for it is simple. Men expose themselves to dangers and privations out of enthusiasm, but they remain exposed for a long time only from reflection. In what is called instinctive courage itself, there is more calculation than we think; and although, in general, passions alone bring about the first efforts, efforts continue with the result in mind. You risk a portion of what is dear in order to save the rest.\textsuperscript{w}

\textsuperscript{u} On the back of the page: “\#Difficulty of establishing conscription as in France. Even impressment does not exist, though of English origin. Impossibility, however, of navy without impressment. See opinion Gallatin, non-alphabetic notebook I, p. 25.\#” See YTC, BIIa, and Voyage, OC, V, 1, p. 62.

\textsuperscript{v} In a first version: “It is not that the first impulse of democracy is often to assist the evil. Nothing is more impetuous than the movements of democracy, but enthusiasm, like all the other passions, soon burns itself out. In men [who (ed.)] expose themselves to dangers for a long time and submit to great sacrifices to attain an end, there is a great mixture of passion and calculation.”

\textsuperscript{w} Hervé de Tocqueville:

The entire paragraph preceding these words is very well put, and yet I have an observation to make that does not seem unimportant. Free countries make more efforts when in danger, because love of country predominates there more than in monarchies; this point granted, it seems that the devotion to public things should be greater in democracies than in aristocracies, for the author has proved well in the preceding chapters that democratic government is the one in which the people
Now, this clear perception of the future, based on learning and experience, must often be missing in democracy. The people feel much more than they reason; and if the present difficulties are great, the fear is that they will forget the greater difficulties that perhaps await them in case of defeat.

Still another cause must make the efforts of a democratic government less long-lasting than the efforts of an aristocracy.

The people not only see less clearly than the upper classes what can be hoped or feared in the future, but the people also suffer the troubles of the present quite differently from the upper classes. The nobleman, by exposing his person, runs as many chances for glory as perils. By giving the State the greater part of his income, he temporarily deprives himself of some of the pleasures of his wealth. But, for the poor man, death has no prestige, and the tax that bothers the rich man often attacks the poor man’s sources of life.

This relative weakness of democratic republics in time of crisis is perhaps the greatest obstacle opposing the establishment of such a republic in Europe. For the democratic republic to survive without difficulty among a European people, it would have to be established at the same time among all the other European peoples.

I believe that the government of democracy must, in the long run, increase the real forces of society; but it cannot assemble all at once, at one place, and at a given moment, as many forces as an aristocratic government or an absolute monarchy. If a democratic country remained under republican government for a century, you can believe that at the end of the century it would be richer, more populated and more prosperous than neighboring despotic States; but during this century, it would have run the risk several times of being conquered by them.

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are attached to the State by the most bonds; I know that there is nothing to bring up against the fact. But here the fact appears to me in contradiction with the theory, and the author, with Montesquieu. Perhaps it would be necessary for him to develop his idea a bit more. The following paragraph begins, moreover, to explain it well (YTC, CHIIb, 1, p. 110).
Of the Power That American Democracy Generally Exercises over Itself

*That the American people only go along with something in the long run, and sometimes refuse to do what is useful for their well-being.*—*Ability that the Americans have to make mistakes that can be corrected.*

This difficulty that democracy has in vanquishing passions and silencing the needs of the moment with the future in mind is noticeable in the United States in the smallest things.

The people, surrounded by flatterers [and sycophants], succeed with difficulty in triumphing over themselves. Every time you want them to impose a privation or discomfort on themselves, even for an end their reason approves, they almost always begin by refusing. The obedience that Americans give to laws is rightly praised. It must be added that in America legislation is made by the people and for the people. So in the United States, the laws appear favorable to those who, everywhere else, have the greatest interest in violating it. Thus, it may be believed that a bothersome law, which the majority felt had no present utility, would not be put into effect or would not be obeyed.

In the United States, no legislation exists relating to fraudulent bankruptcies. Would it be because there are no bankruptcies? No, on the contrary, it is because there are many of them. The fear of being prosecuted as a bankrupt surpasses, in the mind of the majority, the fear of being ruined by bankruptcies; and in the public conscience there is a sort of culpable tolerance for the crime that each person condemns individually.

In the new states of the Southwest, the citizens almost always take justice into their own hands, and murders \(^x\) happen constantly. That stems from the habits of the people being too rough and enlightenment being spread

\(^x\) In the manuscript: “are more frequent than fistfights among us.” The expression had been unanimously rejected by the readers: YTC, CIIIb, 1, p. 107 (Édouard de Tocqueville), p. 105 (Gustave de Beaumont), and CIIIb, 2, p. 1 (Hervé de Tocqueville).
too little in these wilderness areas for anyone to feel the utility of giving the law some force. There they still prefer duels to trials.

Someone said to me one day, in Philadelphia, that nearly all crimes in America were caused by the abuse of strong liquors that the lower classes could use at will, because it was sold to them at a very low price. “Why,” I asked, “don’t you put a duty on brandy?” “Our legislators have often considered it,” he replied, “but it is a difficult undertaking. They fear a revolt; and besides, the members who voted for such a law would very surely not be reelected.” “So,” I responded, “among you, drinkers are the majority, and temperance is unpopular.”

When you point out these things to statesmen, they simply respond: Let time pass; feeling the evil will enlighten the people and will show them what they need. This is often true. If democracy has more chances to make a mistake than a king or a body of nobles, it also has more chances to return to the truth, once enlightenment comes; within a democracy there are generally no interests that are contrary to the interest of the greatest number and that fight reason. But democracy can only gain the truth by experience, and many peoples cannot wait for the results of their errors without perishing.

So the great privilege of the Americans is not only to be more enlightened than others, but also to have the ability to make mistakes that can be corrected.

Add that, in order to profit easily from the experience of the past, democracy must already have reached a certain degree of civilization and enlightenment.

We see some peoples whose first education has been so perverted, and whose character presents such a strange mixture of passions, of ignorance and erroneous notions about everything, that they cannot by themselves discern the cause of their miseries; they succumb to evils that they do not know.

y. Édouard de Tocqueville (?): “The word duel does not apply well to a half-civilized people. Couldn’t you say: the majority still prefers fights to trials?” (YTC, CIIIb, 1, pp. 107–8).

Of the Manner in Which American Democracy Conducts the Foreign Affairs of the State

Direction given to the foreign policy of the United States by Washington and Jefferson.—Nearly all the natural defects of democracy make themselves felt in the conduct of foreign affairs, and its qualities are felt little there.

We have seen that the federal Constitution places the permanent leadership of the foreign interests of the nation in the hands of the President and of
of the government of democracy

the Senate,\textsuperscript{16} which to a certain extent puts the general policy of the Union outside of the direct and daily influence of the people. So we cannot say in an absolute manner that, in America, it is democracy that conducts the foreign affairs of the State.

There are two men who gave the policy of the Americans a direction that is still followed today; the first is Washington, and Jefferson is the second.

Washington said, in this admirable letter addressed to his fellow citizens that forms the political testament of this great man:

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests, which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence therefore it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships, or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one People, under an efficient government, the period is not far off, when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest guided by justice shall Counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with

\textsuperscript{16} "[The President]," says the Constitution, art. 2, sect. II, paragraph 2, "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties." The reader must not lose sight of the fact that the term of Senators lasts six years, and that, chosen by the legislators of each state, they are the result of indirect election.
that of any part of Europe, entangle our peace and prosperity in the toils of European Ambition, Rivalship, Interest, Humour or Caprice?

’Tis our true policy to steer clear of permanent Alliances with any portion of the foreign world. So far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements (I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy). I repeat it, therefore, let those engagements be observed in their genuine sense. But, in my opinion, it is unnecessary and would be unwise to extend them. Taking care always to keep ourselves, by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Previously Washington had expressed this excellent and sound idea: “The Nation, which indulges towards another an habitual hatred, or an habitual fondness, is in some degree a slave. It is a slave to its animosity or to its affection.”

The political action of Washington always aimed to follow his maxims. He succeeded in keeping his country at peace, when all the rest of the universe was at war, and he established as a point of doctrine that the well understood interest of Americans was never to take part in the internal quarrels of Europe.

Jefferson went still farther, and he introduced to the policy of the Union this other maxim: “That the Americans should never ask for privileges from foreign nations, so that they are never obligated themselves to grant such privileges.”[*]

These two principles, which due to their obvious soundness were easily grasped by the crowd, have extremely simplified the foreign policy of the United States.

Not mixing into Europe’s affairs, the Union has, so to speak, no foreign interests to discuss, for it does not yet have powerful neighbors in America [[it had to be grossly and groundlessly provoked in 1812 for it to consider taking up arms]]. Placed by its situation as much as by its will outside the

[*]. Washington had already indicated this maxim, but Jefferson put it into practice and introduced it into the ideas and mores of his country.
passions of the Old World, the Union does not have to protect itself from them anymore than to espouse them. As for the passions of the New World, they are still hidden in the future.

[The Union grows constantly larger; it appears different each year, for its prosperity has something revolutionary about it. So the clear interest of the Union, which changes daily, is not to create lasting ties. Ties useful today could soon hamper its course and compromise its future.]

The Union is free from previous commitments; so it profits from the experience of the old peoples of Europe, without being obliged, like them, to make use of the past and to adapt the past to the present; a it is not forced, as they are, to accept an immense heritage handed down by its fathers, a mixture of glory and misery, of national friendships and hatreds. The foreign policy of the United States is eminently one of wait-and-see; it consists much more of refraining from action than of doing.

So it is very difficult to know, for now, what skill American democracy will develop in the conduct of the foreign affairs of the State. b On this point, its adversaries as well as its friends must suspend their judgment.

As for me, I will have no difficulty in saying: it is in the leadership of the foreign interests of society that democratic governments seem to me decidedly inferior to others. [*] In democracy, experience, mores, and edu-

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a. In the margin: “#America appears amid the civilized world with the strength of [youth and the experience of mature age.]* “ Cf. conversation with Mr. Latrobe, 3 November 1831 (non-alphabetic notebooks 2 and 3, YTC, BIIc, and Voyage, OC, V, 1, p. 120).
b. To the side: “#So we must wait until matters become complicated and difficulties appear in order to be able to judge the degree to which American democracy will be capable of conducting the public affairs of society.”

Tocqueville’s short experience at the head of the Ministry of Foreign Affairs, from June to October 1849, confirmed his fears about the inferiority of democracies in foreign affairs (see his Souvenirs, OC, XII, p. 246). On this question, see Stephen A. Garrett, “Foreign Policy and the Democracies: De Tocqueville Revisited,” Virginia Quarterly Review 48, no. 4 (1972): 481–500.

[*]. #Note, moreover, that the federal Constitution places the permanent leadership of the foreign interests of the nation in the hands of the President and the Senate, which to a certain extent places the general policy of the Union outside the daily influence of the democracy.
cation almost always end by creating the sort of everyday practical wisdom and the skill in the small events of life that is called good sense. Good sense suffices for the ordinary routine of society; and among a people whose education is already accomplished, democratic liberty applied to the internal affairs of the State produces greater good than the evil that can be caused by the errors of democratic government. But it is not always so in the relations of one people with another.

Foreign policy requires the use of almost none of the qualities that belong to democracy and, on the contrary, demands the development of nearly all those qualities that it lacks. Democracy favors the growth of the internal resources of the State; it spreads comfort, develops public spirit; strengthens respect for law in the different classes of society; all things that have only an indirect influence on the position of a people vis-à-vis another. But only with difficulty can democracy coordinate the details of a great undertaking, settle on one plan and then follow it stubbornly across all obstacles. It is little capable of devising measures in secret and patiently awaiting their result. These are the qualities that belong most particularly to a man or to an aristocracy. Now, in the long run it is precisely these qualities that make a people, like an individual, predominate in the end.

If, on the contrary, you pay attention to the natural defects of aristocracy, you will find that the effect that these defects can produce can be felt hardly at all in the leadership of the foreign affairs of the State. The capital vice for which the aristocracy is reproached is to work only for itself alone.

c. Hervé de Tocqueville:

It is absolutely necessary to add the words in internal administration in order to establish clearly the division between internal and external, so that the author cannot be accused of praising here the institution that he blamed above. In fact, history proves that the aristocracy, very strong externally, because it is led solely by the interest of the State, commits many mistakes internally, because its personal interest misleads it. The aristocracy of Rome had been absolute in regard to the plebeians. That of France committed enormous mistakes, and that of England for fifty years has not been much wiser (YTC, CIIIb, 2, p. 3).
and not for the mass. In foreign policy, it is very rare for the aristocracy to have an interest distinct from that of the people.

The inclination that leads democracy in policy matters to obey sentiments rather than reasoning, and to abandon a long developed plan for the satisfaction of a momentary passion, clearly revealed itself in America when the French Revolution broke out. The simplest insights of reason would suffice then, as today, to make the Americans understand that it was not in their interest to get engaged in the struggle that was going to cover Europe in blood, and from which the United States could suffer no harm.

The sympathies of the people in favor of France came out with such violence, however, that nothing less was required to prevent a declaration of war against England than the unyielding character of Washington and the immense popularity that he enjoyed. And yet, the efforts made by the austere reason of this great man to combat the generous but unthinking passions of his fellow citizens very nearly deprived him of the only recompense that he had ever expected, the love of his country. The majority pronounced against his policy; now, the whole people approve it. 17

If the Constitution and public favor had not given Washington the leadership of the foreign affairs of the State, the nation would certainly have done then precisely what it condemns today. c

d. In the margin: “[see the History of Pitkin.]”
17. See the fifth volume of the Life of Washington by Marshall. “In a government established as that of the United States,” he says, page 314, “the chief executive, whatever his firmness, cannot long present a barrier to the torrent of popular opinion; and the popular opinion that then prevailed seemed to lead to war. In fact, in the session of Congress held at this time, it was seen very frequently that Washington had lost the majority in the House of Representatives. Outside, the violence of the language used against him was extreme; in a political meeting, some were not afraid to compare him indirectly with the traitor Arnold (p. 265). Those who belonged to the opposing party,” says Marshall again (p. 353), “claimed that the partisans of the administration were an aristocratic faction that was submissive to England and, wanting to establish a monarchy, was therefore the enemy of France; a faction whose members constituted a kind of nobility, that had shares of the Bank as titles, and that was so afraid of any measure that could influence its capital, that it was insensitive to the insults that both the honor and the interest of the nation demanded to be rejected.”

e. Cf. note h for p. 190.
Nearly all the peoples who have acted strongly on the world, those who have conceived, followed and executed great designs, from the Romans to the English, were led by an aristocracy; and how can you be surprised [when you see the part that must be attributed to the continuous effect of the same will in human events]?

In this world, what is most steady in its views is an aristocracy. The mass of people can be seduced by its ignorance or its passions. You can catch the mind of a king unawares and make him vacillate in his plans; and, besides, a king is not immortal. But an aristocratic body is too numerous to be won over, too few in number to yield easily to the intoxication of unthinking passions. An aristocratic body is a firm and enlightened man who does not die.

f. The Pennsylvania Historical Society retains a commentary by Tocqueville on the question of French indemnities in the United States and American foreign policy. (This document had been catalogued by mistake as belonging to Democracy in America.) The reference to the correspondence of Livingston and the possibility that the latter had not yet left France when Tocqueville wrote his commentary led to the thought that these pages date from April or the beginning of May 1835, that is, a few months after the publication of the first part of the book. Nor is there any indication in the Yale Collection that allows a relationship to be established between these pages and the manuscript of the work. Perhaps documents in the hands of the Commission charged with the edition of Tocqueville’s works would be able to offer some decisive information as to the origin of this commentary. This text, to an unknown recipient, is part of the collection of manuscripts of Ferdinand Dreer, even though the catalogue of the collection, edited by Dreer himself (A Catalogue of the Collection of Autographs formed by Ferdinand Julius Dreer, Philadelphia: printed for private distribution, 1890, 2 vols.), mentions no document of Tocqueville. This unedited manuscript had been utilized by William E. Lingelbach, in his commentary “American Democracy and European Interpreters,” Pennsylvania Magazine of History and Biography 61, no. 1 (January 1937): 1–25 (in pages 8 and 9).

Here is the text:

First here is what the Constitution says. Then I will examine the commentaries and the practice.

The second section of Article II of the constitution reads: “[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors.”

In section three of the same Article, you read: “[The President] shall receive Ambassadors and other public Ministers.”

Commentaries.
I consulted the three most respected commentaries. They are the *Federalist*, work published by three of the principal draftsmen of the federal Constitution, the commentaries of Chancellor Kent, and those of Justice Story.

[In the margin: *Federalist*, No. 43–64, vol. 2.  
Story’s Commentaries, pp. 556 and 576.]

Here are the doctrines that result. I will put my authorities in the margin.

The Senate of the United States is an assembly vested with a double character; it is at the same time a legislative body and an administrative body. In the first case, its deliberations are public; they are secret in the other case. The Senate in its quality of administrative body is charged jointly with the President with making treaties. As such it would clearly have the right to take part in negotiations, but it has been wisely admitted in practice that the Senate had to leave to the President, sole intermediary of the nation with foreign ministers, the right to start, direct, and provisionally conclude treaties. They are afterward submitted to the Senate, which approves, rejects or modifies them, depending on its views.

It was a great question in the United States to know if a treaty concluded in this way still had to be submitted to Congress or if it bound the nation ipso facto.

The House of Representatives declared in 1796 that when the enforcement of certain clauses required the passage of a law, Congress had the right, in regard to this law, to deliberate on the treaty itself. Washington in a message that same year refused to recognize such a power in Congress.

This opinion of Washington, says Kent, seems to have become the prevailing one in America. The House of Representatives in 1816 had the occasion to show that it shared it. To a certain degree, this opinion explains the language of General Jackson; it served him as pretext and support for saying [that (ed.)] France would fail to meet its agreements if the Chamber of Deputies rejected the treaty.

It is clear to me from the texts, and from the commentaries that I have just cited, as well as from what I learned myself in America, that the Constitution and practice made the President of the United States the usual and sole representative of the nation vis-à-vis foreigners. Ministers address themselves to him alone; all words and all pieces pass through him to reach the Senate.

Now, if President Jackson by his message, which is after all only the speech of an official, did not involve the American nation in a quarrel with the French nation, at least it is certain that, as an individual, he gravely offended France. Can France, respecting its honor, continue to accept this man as the sole and necessary intermediary between itself and the American nation, at least until this man has given some honorable explanations? I do not think so, neither as an individual, nor as a Frenchman.

Far from President Jackson appearing disposed during three months to retract his outrageous insinuations, his conduct has continued to be more and more arrogant. His letter to Mr. Livingston indicated that with pleasure he would have seen the
Ambassador of the United States immediately leave France at the moment when passports had been offered to him.

In summary, I think that the Chamber, by adopting the principle of the law, by agreeing to separate (which is not already to act like Louis XV) the American nation from its President, the Chamber, I say, can do nothing less than declare that it only acted in this way because it was persuaded that the ministers will not accredit any diplomatic agent close to the President of the United States except in the case that the latter would give a satisfactory explanation for his words.

By acting in this way, only a temporary embarrassment in relations can result, since the term of the President expires in two years.

1. Mr. Story says, p. 558: “The Senate has very rarely, if ever, been consulted before the clauses of the treaty were settled; the treaty was then submitted to the Senate for ratification.”


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The edition of the Federalist cited here by Tocqueville is probably the French translation, in two volumes, published by Buisson, which appeared in Paris in 1792. See note n for p. 193.