Tocqueville and the American Amalgam

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ABSTRACT

Any serious attempt to understand the original meaning of the Constitution requires an inquiry into what was, if any, the dominant political theory that guided the founding of the American regime. Recent decades have witnessed a lively scholarly debate between the partisans of the liberal interpretation of the Founding, which posits that liberal political theory is the intellectual foundation of our regime, and those of classical republicanism. The classical republicans argue that the influence of liberal theory on the Founding has been exaggerated and that the Founders cared more about securing the authority to govern their communities in the name of the common good.

In response to this challenge, and the appearance of other intellectual schools with a plausible claim to influence on the Founding, leaders of the liberal school have argued that the best way to understand American political thought is the idea of the “amalgam.” The amalgam approach argues that while sources of thought such as English common law or Protestant theology undoubtedly influenced the Founding, these ideas were assimilated into, and in some cases transformed by, the liberal intellectual framework that truly guided the Founding generation.

In this article, I ask whether Alexis de Tocqueville, in his study of America, revealed whether he shares the liberalism he attributes to the Americans. If Tocqueville is a liberal, it must be of the amalgam variety, because his work articulates a radical and often devastating critique of liberalism. If not moderated, liberalism leads to the disease of “individualism,” which manifests itself in excessive concern for one’s material well-being and neglect of one’s duties as a citizen. Unchecked individualism will most probably lead to a soft, but real, despotism.

Tocqueville, I conclude, is a genuine liberal, but of a new kind. While he attributes the liberalism of the Americans more to their social circumstances than to any deliberate political choice, his account of the origins of the American belief in equality is not, at bottom, inconsistent with the American understanding of these principles. Furthermore, I show that a close reading of his work demonstrates that Tocqueville and the Americans agree on the foundation of a principled and just order. In fact, Tocqueville demonstrates that the dangers to a good society posed by liberalism are best averted by both expanding the scope of popular sovereignty and by relying on institutions, such as religion, that moderate liberalism but have also been transformed by it.

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"What happens now in America must be of interest to all civilized people and is of particular interest to me, who am half Yankee."†

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INTRODUCTION

Our perpetual debate over the proper meaning of the Constitution, at least for those willing to embrace originalist arguments, is greatly influenced by one's understanding of the true theoretical foundation of the Founding, that dominant mode of thought, if any, of the Founders. The usual point of departure for contemporary debates over the true foundation of the Founding is the "liberal" interpretation most famously espoused by Louis Hartz.†

The liberal account of the origins of American political thought maintains that the Founding principally derived from the thoughts of John Locke. The Founders, following Locke, understood the purpose of political society as the protection of natural rights, particularly the rights of life, liberty and property. In the argot of modern liberalism, the core of the liberal project is securing the right of individuals to devise and implement their life plan. As the joint opinion in Planned Parenthood of Western Pennsylvania v. Casey so famously put it, "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." Thus, in order for individuals to flourish, government must be limited. The key to imposing effective restraint on government is the articulation and enforcement of individual rights. The liberal interpretation of the American Revolution viewed

† Alexis de Tocqueville, Letter from Alexis de Tocqueville to E.V. Childs, December 12, 1856, in TOCQUEVILLE ON AMERICA AFTER 1840 I (Aurelian Craik and Jeremy Jennings eds., 2009).
2. ALAN GIBSON, INTERPRETING THE FOUNDING 13 (2d ed. 2009) (The liberal interpretation "suggests that the core of the Founders' political thought is encapsulated in the Lockean variation of the principles of classical liberalism.")
through the dichotomy articulated by Isaiah Berlin emphasizes securing negative liberty over exercising positive liberty, freedom from government restraint over the right to positively participate in governance.⁵

In the next decade, however, the scholarly wheel turned toward those who saw the Founding as being far more concerned with positive, rather than negative, liberty. Led by the seminal works of Bernard Bailyn⁶ and Gordon Wood⁷, the "classical republicanism" school of interpretation holds that the liberal interpretation of the Revolution exaggerates the importance of Lockean liberalism and, consequently, of individual rights.⁸ The Founding generation, republican theorists argue, cared more about vindicating the authority of communities to govern themselves against the efforts of corrupt elites who tried to impose their will on the virtuous people. The American project, the republican vision holds, revolved around pursuit of the common good more than it did individual self-fulfillment.⁹

Once the bastion of the liberal paradigm was breached by the widespread acceptance of the classical republican critique, a cottage industry soon arose of scholarly theories seeking to establish the importance of other sources of the Founders' political thought. These theories make the case, for example, for the importance of Protestant faith (particularly Puritanism), English common law, and the Scottish Enlightenment.¹⁰ All these theories share the same premises: Lockean liberalism was not as historically significant as Hartz and his followers contend, and an American political thought founded on liberalism is normatively unattractive. Rights-based liberalism, the critics argue, produces a state too weak to pursue common goals and a society too concerned with individual gratification to foster genuine community.

As should have been expected, the defenders of liberalism, while acknowledging that past scholarship unduly ignored other traditions that influenced the Founders, have attempted to rescue the case for the preeminence of Lockean liberalism in American political thought. A growing chorus of scholars, led by Michael Zuckert, have proposed that the best way to understand the special place of Lockean liberalism in the Founders' thought and to afford proper recognition to the important role played by other traditions in that thought is to understand American political thought as an "amalgam."¹¹ But the amalgam thesis does not consider each source of thought equally important; instead, amalgam theorists argue that liberal, or natural-rights principles, constitute the foundation of the regime. While the other sources of thought contributed to the

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⁸ Gibson, supra note 2, at 35–36.
⁹ Id. at 29–30.
¹⁰ For a description of the various schools, see id. at 37–140.
¹¹ Id. at 53–63; see also Andrew C. Spiropoulos, Just Not Who We Are: A Critique of Common Law Constitutionalism, 54 Vill. L. Rev 181, 215 (2009).
thought of the Founding, just as different threads come together to create a tapestry, sources such as the common law, religion, or republican ideology, while undoubtedly important, were subordinate to Lockean principles. Amalgam partisans argue that the best way to understand how and why liberal principles were preeminent is to examine how the subordinate sources of thought were reformed by liberalism. The common law, for example, was revised to incorporate the core tenets of liberalism, and religious institutions were also reformed in accordance with liberal principles. Liberalism may not have been the sole source of the Founding principles but it certainly was the predominant mode of thought and, thus, set the terms for how Americans viewed and discussed politics.

In this paper, taking the amalgam thesis as the point of departure, I explore Alexis de Tocqueville's understanding of the foundations of American regime as elucidated in *Democracy in America*. Tocqueville's thought is worthy of close examination because, in the words of Harvey Mansfield, "*Democracy in America* is at once the best book ever written on democracy and the best book ever written on America." Tocqueville's description of the institutions and, more importantly, what he calls the "mores"—the constellation of ideas, beliefs, and customs we tend to call culture—of America is both comprehensive and incisive. It would be both interesting and illuminating to know whether Tocqueville identifies any particular theoretical foundation for the regime.

In reading Tocqueville, it appears that the best proponents of the preeminence of liberalism can hope for is that Tocqueville articulates some version of the amalgam thesis. We know that for Tocqueville America represents more than a particular regime—it provides "an image of democracy itself, of its penchant, its character, its prejudices, its passions." To Tocqueville, the essential characteristic of democratic society is "the equality of conditions." This equality is what he calls "the generative fact" of the regime, from which each particular fact of the society follows. Equality of conditions is the "singular and dominating fact to which all the others are connected" and is the fact that "gives rise to a mother idea, or a principal passion, that in the end attracts and carries along in its course all sentiments and all ideas. It is like a great river toward which each of the surrounding streams seems to run."

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13. *Id.* at 226.
17. *Id.* at 13.
18. *Id.*
19. *Id.* at 3.
20. *Id.* at 480.
This principal passion, Tocqueville tells us, is the love of equality, and while this love produces many positive effects, and is, indeed, the foundation of democracy, it also generates difficult problems for, and grave threats to, democracy.\textsuperscript{21} The most serious threat to democracy is “individualism,” the “sentiment that disposes each citizen to isolate himself from the mass of those like him and to withdraw to one side with his family and his friends, so that after having thus created a little society for his own use, he willingly abandons society at large to itself.”\textsuperscript{22} Like its cousin selfishness, individualism attacks virtue. It first “dries up only the source of public virtues; but in the long term it attacks and destroys all the others and will finally be absorbed in selfishness.”\textsuperscript{23}

Americans, fortunately, Tocqueville explains, “have combated the individualism to which equality gives birth with freedom, and they have defeated it.”\textsuperscript{24} The defining elements of American society, both of which are indispensable in combating the corrosive effects of equality, are “the spirit of freedom” and the “spirit of religion.”\textsuperscript{25} The spirit of liberty that Tocqueville discusses, however, is not the negative liberty cherished by Lockesians; rather, it is the positive liberty—political freedom—emphasized by republican theorists that Tocqueville describes as the “one efficacious remedy” for “the evils of equality.”\textsuperscript{26} Civic participation, particularly in local government, “recall[s] to each citizen constantly and in a thousand ways that he lives in society.”\textsuperscript{27}

The spirit of religion, on the other hand, by providing Americans a respite from the relentless commercial activity of a democratic society, tears them “from the small passions that agitate [their] life and the passing interests that fill it” and enables them to enter “into an ideal world in which all is great, pure, eternal.”\textsuperscript{28} In that world, the Americans hear “of the innumerable evils caused by pride and covetousness” and learn “the necessity of regulating [their] desires, of the delicate enjoyments attached to virtue alone, and of the true happiness that accompanies it.”\textsuperscript{29} Because “[t]here is no religion that does not place man’s desires beyond and above earthly goods and that does not naturally raise his soul toward regions much superior to those of the senses,” societies that foster religion are “naturally strong in precisely the spot where democratic peoples are weak.”\textsuperscript{30}

Given the importance, indeed, the indispensability of the spirit of liberty and the spirit of religion to the health of American society, it is clear that Tocqueville’s account of the theory that governs American politics, from the
perspective of the liberal interpretation of the regime, must be at best an amalgam. The question that now arises is whether Tocqueville’s account of American political thought and culture includes, in any meaningful way, liberal political theory.

In this paper, I argue that, while there is great force to the argument that Tocqueville underplays or even ignores the importance of liberal political theory, on balance, Tocqueville both articulates his own version of the amalgam and is, at heart, a liberal, albeit of a different type than Locke or Jefferson. In making this argument, I will first explain the case for the proposition that Tocqueville, in his account of America, assigns little or no importance to liberal political principles. I will then demonstrate that Tocqueville’s indifference to liberalism is greatly exaggerated and that his theoretical commitments are misunderstood. A close examination of several of his critical arguments demonstrates that Tocqueville is indeed a liberal of the amalgam variety. It is a mistake to allow Tocqueville’s inclination to prefer the discussion of political practice to theory to mislead us into missing his genuine commitment to liberalism.

I. THE CASE AGAINST TOCQUEVILLE’S LIBERALISM

Those who argue that Tocqueville is at best indifferent, or at worst hostile, to liberal political theory begin with the simple, but persuasive, point that at no point in either volume of *Democracy in America* does he mention the seminal documents expressing the American commitment to the idea of natural rights, particularly the Declaration of Independence, or the principal philosophic sources of these principles, especially John Locke.31 There is no mention, for example, of the idea of the state of nature, and equality is understood more as a description of social conditions than as a political principle. Tocqueville does discuss the importance of individual rights, but only briefly and in a way that is more instrumental than foundational.32 As Mansfield puts it, “Tocqueville is obviously aware of the old liberalism, but he deals with it by ignoring it.”33 This neglect of the philosophical understanding of equality does not surprise the student of Tocqueville because Tocqueville makes it abundantly clear from the beginning of his work that he believes that political regimes are more a

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Yet Tocqueville misunderstands the American Revolution. He never mentions that in our Founding we Americans understood ourselves to be dedicated to the truth that all men are created equal, and that this dedication, and this truth, are what justified the break with Britain and made us a nation. Tocqueville’s total silence on the Declaration of Independence—in a 700-page book on America!—is characteristic.

Id.

32. TOCQUEVILLE, supra note 14, at 228–29.

product of social conditions than of human choice.\textsuperscript{34} As one would expect from a founder of the discipline of sociology, Tocqueville’s chief concern is to understand the nature of a society, or what he calls the “social state.”\textsuperscript{35} This social state “is ordinarily the product of a fact, sometimes of laws, most often of these two causes united; but once it exists, one can consider it as the first cause of most of the laws, customs, and ideas that regulate the conduct of nations; what it does not produce, it modifies.”\textsuperscript{36} Applied to our particular circumstances, if Tocqueville’s premise is correct, American democratic political institutions are less the product of our choice to adopt a particular theory of politics than they are a product of our social conditions. He removes any doubt of his view when he states, “The social state of the Americans is eminently democratic. It has had this character since the birth of the colonies; it has it even more in our day.”\textsuperscript{37}

Thus, the American commitment to democracy did not arise because its political leaders and citizens were adherents of the principles of liberalism. Instead, democracy arose from the social conditions present at the settlement of the colonies. The most important of these social circumstances was the equality of conditions of the colonists, meaning (with the vital and destructive exception of slavery) that there were not great disparities of wealth or status among the settlers. They were generally well educated, with sufficient resources, and, particularly in New England, middle class, not grand proprietors: “Their gathering on American soil presented, from the origin, the singular phenomenon of a society in which there were neither great lords nor a people, and, so to speak, neither poor nor rich.”\textsuperscript{38}

This equality of material conditions was reinforced by an additional social fact: the original Northern emigrants were largely Puritans, a faith conducive to the advent of democracy. Indeed, in the mother country, “the home of Puritanism continued to have its place in the middle classes; it was from the heart of the middle classes that most of the emigrants came.”\textsuperscript{39} Another factor leading toward the development of democracy was the nature of Puritan thought. Puritanism “was not only a religious doctrine; it blended at several points with the most absolute democratic and republican theories.”\textsuperscript{40} Having suffered severe persecution, “the Puritans sought a land so barbarous and abandoned by the world that they might yet be permitted to live there in their manner and pray to

\begin{itemize}
\item 34. Tocqueville’s view that the regime is a product of the social state and not human choice, appears to contradict that of Publius, who argues that the Americans seek to establish that human beings are capable of “establishing good government from reflection and choice” and are not “forever destined to depend for political constitutions on accident and force.” Compare \textit{TOCQUEVILLE, supra} note 14, at 45, with \textit{THE FEDERALIST} No. 1 (Alexander Hamilton).
\item 35. Tocqueville, \textit{supra} note 14, at 45.
\item 36. \textit{Id.}
\item 37. \textit{Id.} at 46.
\item 38. \textit{Id.} at 32.
\item 39. \textit{Id.} at 35.
\item 40. \textit{Id.} at 32.
\end{itemize}
God in freedom." 41

Such equality in belief and material fact has political consequences; it "gives a certain direction to public spirit, a certain turn to the laws, new maxims to those who govern, and particular habits to the governed." 42 From its origins in the rocky soil of Plymouth, a new kind of regime arose:

The population of New England grew rapidly, and while the hierarchy of ranks still classed men despotically in the mother country, the colony more and more offered the new spectacle of a society homogeneous in all its parts. Democracy such as antiquity had not dared to dream of sprung full-grown and fully armed from the midst of the old feudal society. 43

For liberal theorists, the problem with this account is its determinism; no space is made for human agency. Liberal scholars rightly point out that Tocqueville's seemingly deliberate indifference to the Founders' own statements, which are replete with their professed fealty to and reliance on liberty political theory, fails to understand the Founding generation as they understood themselves. Can one accurately or even fairly understand American politics or society without even mentioning, never mind taking seriously, the fervent debates of the Revolutionary period? No matter what it may say about the weakness of his account, however, Tocqueville's neglect of the arguments regarding the proper theoretical foundation of the regime demonstrates his view that liberalism was not important to the founding of the regime.

But what Tocqueville says about the democratic or liberal regime is more damning than what he does not say. His scorn for the individualism that is the most plausible social consequence of liberal institutions and mores demonstrates that Tocqueville should be counted as an adversary, not a friend, of liberalism. The radical nature of his critique of liberalism becomes evident when one begins with what Tocqueville most admires and fears in political life. Democracy, he explains, undermines what is most admirable—greatness of soul and deed 44—and threatens the most serious political evil, the imposition of tyranny and servitude. 45 We should not be surprised, then, (although, even when read today, it is still bracing) when Tocqueville writes in the introduction to the work, that Democracy in America "was written under the pressure of a sort of religious terror in the author's soul, produced by the sight of this irresistible revolution" that continues to advance "amid the ruins it has made." 46

Democracy is hostile to human greatness because it is generated by the fact of equality of conditions and is ruled by the principle of popular sovereignty in

41. Id.
42. Id. at 3.
43. Id. at 35.
44. MANSFIELD & WINthrop, supra note 15, at xxiii.
46. TOCQUEVILLE, supra note 14, at 6.
every aspect of life—equality of ideas as well as condition. One cost to this equality is that, compared to aristocracy, human life is deprived of a "certain loftiness to the human spirit," the absence of which makes it difficult to "maintain profound convictions" and "prepare for great devotions." The consequence of this deflation of the human spirit is that it is more unlikely that one's society will be dedicated to "elevating manners," "making the arts shine," or fostering of "poetry, renown, [or] glory." Instead, under democracy, society turns "the intellectual and moral activity of man to the necessities of material life and to employ it in producing well-being"; the individual, then, prefers living "in the midst of a prosperous society" to "acting within a brilliant society" that gives "the most force or the most glory possible to the entire body of the nation." Democracy produces a "mediocrity that is both stagnant and restive, passive yet dissatisfied and Tocqueville must teach us how to rescue it from its faults." But perhaps even worse than democracy's inveterate mediocrity is the high likelihood it will lead to tyranny. To Tocqueville, liberty is the highest political good: "There is nothing more prolific in marvels than the art of being free." Despotism, on the other hand, is miserable. Tocqueville makes this clear in his discussion of American slavery, commenting that, for the American slave, "the habit of servitude has given him the thoughts and ambition of a slave; he admires his tyrants more than he hates them and finds his joy and his pride in servile imitation of those who oppress him. His intellect has been debased to the level of his soul." Tocqueville does not merely make the argument that in a democracy the majority may oppress the minority—a possibility made evident by the oppression of the African and Native Americans. He instead argues that there is a significant danger that democracy will lead to a despotic regime in which the majority is oppressed. Indeed, Tocqueville states,

I believe that it is easier to establish an absolute and despotic government in a people where conditions are equal than in any other, and I think if such a government were once established in a people like this, not only would it oppress men, but in the long term it would rob each of them of several of the principal attributes of humanity.

What will lead to tyranny? The roots of despotism can be found in equality's cardinal sins: individualism and materialism. Democracy, as we have seen,

47. Id. at 234.
48. Id.
49. Id. at 234–35.
50. MANSFIELD, supra note 33, at 5.
51. TOCQUEVILLE, supra note 14, at 229.
52. Id. at 304.
53. Id. at 666.
leads to individualism, in which the members of society neglect public life to tend their own private garden. The principal passion and activity of that private life is the pursuit of material well-being, "the salient and indelible feature of democratic ages." It is natural that a society founded on the equality of conditions—a middle class society—will value the pursuit of wealth; the middle class have enough wealth to experience and understand its pleasures but not enough to sate their desires. The problem is that the desire for wealth becomes not one part of a meaningful life, but the dominating force of society and individual lives. As Tocqueville complains, "What I reproach equality for is not that it carries men away in the pursuit of forbidden enjoyments; it is for absorbing them entirely in the search of permitted enjoyments."

When engaged in their headlong pursuit of riches, members of democratic society cannot be bothered to participate in public life and wish to be spared the trouble of even formulating their own opinions. One of the paradoxical consequences of popular sovereignty, the foundation of liberal society, is that the power of public opinion, representing the views of the majority, makes it even less likely in a society that is nominally free that individuals will think for themselves and resist the authority of the majority. Tocqueville goes so far as to say, "I do not know any country where, in general, less independence of mind and genuine freedom of discussion reign than in America." This intellectual tyranny is, in many ways, worse than the physical; conventional tyranny only oppresses the body, this kind of tyranny "goes straight to the soul."

This obsession with material wealth and the routine refusal to engage with or even independently contemplate the public realm makes democratic society a ripe target for potential despots. In imagining the future of democratic—meaning liberal—society, Tocqueville sees "an innumerable crowd of like and equal men who revolve on themselves without repose, procuring the small and vulgar pleasures with which they fill their souls." Because these people only care and exist for themselves, it is easy for clever despots to raise "an immense tutelary power" which "provides for their security, foresees and secures their needs, facilitates their pleasures, conducts their principal affairs, [and] directs their industry," thus, taking "away from them entirely the trouble of thinking and the pain of living" and reducing the nation to "being nothing more than a herd of timid and industrious animals of which the government is the shepherd." Given this nightmarish vision of the dénouement of liberal democracy, it is difficult to see how one can call Tocqueville a liberal. Liberalism seems to be the source of his fear, not his aspirations.

54. Id. at 422.
55. Id. at 509.
56. Id. at 244.
57. Id.
58. Id. at 663.
59. Id.
II. A DIFFERENT, BUT GENUINE, LIBERAL

There is little doubt that if Tocqueville is a liberal, he is a liberal of a different sort. Indeed, Tocqueville described himself as "a new kind of liberal." He certainly differs from the founders of liberalism (such as Locke and Hobbes) in his distaste for philosophical abstraction. He seldom refers to philosophers and, when he does, it is usually with disdain. His intention is not to build cities in speech, but to improve the ones that exist. His purpose, he explains, is to build "[a] new political science . . . for a world altogether new." The goal of this new political science is to

instruct democracy, if possible to reanimate its beliefs, to purify its mores, to regulate its movements, to substitute little by little the science of affairs for its inexperience, and knowledge of its true interests for its blind instincts; to adapt government to time and place; to modify it according to circumstances and men.

To be certain, Tocqueville's efforts to rescue democracy from itself are grounded in his critique of democratic institutions and mores. His method is to identify the dangers posed by democracy—individualism, the chief among them—and then to identify, using American practices as his source of guidance, ways to avert or alleviate political harm, the most serious of which is the loss of liberty. As we have seen in the discussion of religion and self-government, many of his proposals involve devising and employing institutions to counter the authority of democratic government. Tocqueville unapologetically states that, while "one must always place somewhere one social power superior to all the others, . . . freedom [is] in peril when that power finds no obstacle before it that can restrain its advance and give it time to moderate itself." This need to moderate the passions and actions of a democratic people is one reason that, unlike the early liberals, who often saw religion as a threat to democratic institutions that needed to be neutralized, Tocqueville maintains that religion is indispensable to the optimal functioning of a democracy. Religion should be "considered as the first of their political institutions; for if it does not give them the taste for freedom, it singularly facilitates their use of it."
We should not, however, permit both Tocqueville's different, and more, practical, orientation to politics and his relentless effort to identify and strengthen institutions that will moderate the weaknesses of liberalism to force us to conclude that Tocqueville was not a liberal. As a practitioner, rather than theoretician, of politics, he seeks to solve the concrete problems that accompany democracy, not maintain political purity. His commitment to liberalism should not be judged by the means he is willing to use but by the end that he is attempting to achieve. A close study of Tocqueville's work demonstrates that, while his theoretical perspective and emphasis on pragmatic solutions to the problems caused by democracy differ from the progenitors of liberalism, his political principles are consistent with liberalism. By examining the foundational premises of his political science, including the cures he suggests for the ills of democracy, I will demonstrate that he is a genuine, albeit pessimistic and anxious, liberal.

A. Tocqueville's Emphasis on the Importance of the Social State Is Not Inconsistent with Liberal Political Theory

Tocqueville's project, it must not be forgotten, is to explain both the advent of, and threats to, democracy and then to demonstrate, despite its problems, how democracy can nevertheless be preserved. His understanding of the foundations of democracy, while less reliant on the intellectual edifice of natural-rights theory, is consistent with the principles of liberal political theory. Take for example Tocqueville's argument that democracy follows from the substantive equality of conditions and, by implication, not from the Lockean theoretical definition of equality. To Tocqueville, there is no point in justifying the principle of human equality through philosophical argument; the Americans already believe in it. It is not an idea to be proved but a fact that must be accepted and understood.

There is no reason to conclude that Tocqueville's sociological explanation of American equality is fundamentally inconsistent with explaining equality in liberal terms. The Founders could very well have understood themselves as applying the principles of liberal theory, while, at the same time, being influenced by the origins of their society. Liberal principles, after all, may have appealed to them because of the particular experiences, religion, and mores of the generations that preceded them. The fact that the particular circumstances in America made it easier to adopt liberal principles does not mean that the principal actors in American political life did not, in fact, adopt these principles and act upon them.

A close reading of Tocqueville demonstrates that, while he prefers not to discuss these matters in overtly theoretical terms, he does recognize and elucidate the centrality of liberalism in American society. He states that the "great maxim on which civil and political society in the United States rests" is the "dogma of the sovereignty of the people," which is rooted in the idea that "Providence has given to each individual, whoever he may be, the degree of
reason necessary for him to be able to direct himself in things that interest him exclusively." Once this idea, which Tocqueville calls "the generative principle of the republic," takes hold, it governs the operation of both private and public life. As Pierre Manent explains, to Tocqueville, popular sovereignty is the prism through "which Americans see the world and perceive their tasks, rights, and duties in this world. It is the matrix of opinion, the maxim of actions, the horizon for all undertakings. . . . The uniqueness of their regime resides in the total hold that this principle has on their entire life."

According to Tocqueville, it does not matter whether Americans' commitment to the principle of popular sovereignty derived from their original social state or from the conscious adoption of the theories of John Locke. While he may not cite the Declaration of Independence or Locke for these propositions, it cannot be denied that, as defined by Tocqueville, this "dogma of the sovereignty of the people" expresses the core tenets of liberalism: (1) all human beings are created equal in the sense that no one is the natural ruler of the others; (2) given that equality, each person must decide for himself what to do with his life, and any government over that person must be instituted by consent; and (3) each person, even if he consents to be governed for certain purposes, must retain the authority or right to make those decisions that concern his rights and not the rights of others. No one should be surprised that Americans came to understand themselves by liberal principles; these principles were, from the beginning of the colonial era, embedded in the particular institutions of the American social state, including the republican aspects of Puritan theology, as well as the "real, active, altogether democratic and republican political life" embodied in township government.

It is evident, finally, that there is, at the end, little conflict between the Lockean account of the principle of popular sovereignty, including its predicted effects on society, and that of Tocqueville. Hobbes, Locke, and the other founders of liberalism sought to avoid the civil discord and violence caused by a politics that sought to impose a particular moral or religious vision on the entire society. They instead sought to reorient political life toward the goal of comfortable self-preservation. Once human beings are happily engaged in the chase for personal wealth, the theory holds, they will have no time or taste for political disputes. Tocqueville certainly shares the liberal view that a democratic society will be most interested in the pursuit of material well-being. He only

66. Id. at 381.
67. Id.; see also MANENT, supra note 45, at 5 ("What appears to define American democracy is neither the social state or the governing political authority, but the political principle of the sovereignty of the people. . . .")
68. Id. at 8-9.
69. TOCQUEVILLE, supra note 14, at 381.
70. Id. at 32.
71. Id. at 40.
72. MANENT, supra note 45, at 55.
differs in thinking that there are both positive and negative consequences to this lowering of our aspirations for the political realm.

B. Tocqueville Is a Positive Proponent of Liberal Principles

To this point, one could argue that all I have demonstrated is that Tocqueville's positive account of the meaning and effects of the idea of popular sovereignty in America is consistent with the arguments of traditional liberals. Nothing I have said so far proves that Tocqueville, in fact, is a proponent of liberalism. Indeed, given the virulence of his critique of liberalism, it is not unreasonable to question whether Tocqueville is normatively committed to liberal principles.

The best understanding, however, of Tocqueville demonstrates that he is, in fact, a genuine liberal. It should not be forgotten that, for Tocqueville, the chief political good is freedom, undeniably the foundation of liberal political theory. Late in his life, Tocqueville wrote that political freedom is indispensable to a truly human life because "it creates the light that allows us to see and judge the vices and virtues of men." Freedom must be loved for its own sake, not for the sake for some other good:

It is the pleasure to speak, act, breathe without constraint under the sole government of God and laws. He who looks to freedom for something other than itself is made to serve . . . [Love of freedom] enters of itself into the great hearts that God has prepared to receive it. It fills and inflames them. One can give up trying to make mediocre souls who have never felt it understand it.

Freedom, then, is indispensable to a fulfilled and truly human life—its exercise is also the only possible path to greatness of soul and deed. Before concluding, though, that Tocqueville is a genuine liberal, it is reasonable to ask whether Tocqueville, in discussing the pleasures of liberty, really means the freedom that follows from equality of conditions—popular sovereignty—or perhaps means an aristocratic form of freedom, in which only the few possess true freedom. Again, Tocqueville himself provides us the answer. In an essay published in 1836, between the publication of the two volumes of Democracy in America, Tocqueville describes both models of liberty and left no doubt about which one he preferred.

Liberty can appear . . . in the human spirit in two different forms. Liberty appears as the customary possession of a right or the enjoyment of a privilege . . . . This aristocratic notion of liberty (liberty as privilege) appears among those who have inherited an elevated sentiment of their individual value, an impassioned taste for independence. It gives to egoism an energy

73. ALEXIS DE TOCQUEVILLE, L'ANCIEN REGIME ET LA REVOLUTION 75 (Gallimard ed., 1952), quoted in MANENT, supra note 45, at 118.
74. TOCQUEVILLE, supra note 73, at 217, quoted in MANENT, supra note 45, at 118.
and a singular power. Experienced by individuals, it has often brought men to the most extraordinary acts. Adopted by an entire nation, it has created the greatest people that ever existed. The Romans thought they alone in the human race were to enjoy independence. And it was much less from nature than from Rome that they believed they held the right to be free. According to the modern idea, the democratic idea, and I dare say the correct idea of liberty, each man is presumed to have received from nature the lights necessary to govern himself, and possesses from birth an equal and inalienable right to live independent from his fellow men, in all that concerns himself only, and to decide his destiny as he understands it.... Each having an absolute right over himself, it follows that the sovereign will can emanate only from the union of the wills of everyone. From this moment on, it also follows that obedience has lost its moral character and there is no longer anything that separates the manly and proud virtues of the citizen from the lowly self-indulgence of the slave.  

It cannot be doubted, then, that Tocqueville is as committed a proponent of the foundational principles of liberalism as a Locke or a Jefferson. He too believes that because each person is born free and equal and thus has the right to self-government, government can only be formed by consent. Indeed, it is only through the path of equality and democracy that human beings can truly achieve political freedom. 

Tocqueville’s adherence to liberal principles is all the more remarkable considering that Tocqueville believed that the advent of equality meant the possible demise of the most brilliant forms of human greatness. Worse yet, a possible, even likely, consequence of the spread of equality was the transformation of human nature from one capable of the greatest achievement to one that is satisfied by a pathetic existence enjoying vulgar pleasures while obeying the commands of the master who supplies these base needs. 

Why, then, does Tocqueville choose to follow the path of liberalism? Because the benefit to humankind of relieving the misery caused by servitude is worth the cost of both reducing the possibilities of human greatness and incurring the risk of bureaucratic tyranny. In Democracy in America, for example, Tocqueville describes, in vivid detail, the evil reality and devastating consequences of American slavery. 

Even where the slave has been emancipated, his servitude

75. TOCQUEVILLE, supra note 73, at 62–63, quoted in MANENT, supra note 45, at 118–19.
76. See MANENT, supra note 45, at 129 ("[O]nly by fully accepting the democratic principle is it possible to maintain or give rise to political freedom.").
77. See TOCQUEVILLE, supra note 14, at 303–07, 326–33. It should be noted, however, that Tocqueville does not hold democracy responsible for the advent or evil of slavery. In his working papers for Democracy in America, he commented:

When you see the Americans outrage reason and nature in the way they treat Blacks, you say that these are the effects of an immoderate and unpitying democracy! But wait a moment. Democracy need not blush for the crimes which you impute. The only aristocratic idea which exists in America is that of whites. The only aristocratic idea is that of color and race.
has not ended, Tocqueville explains, for, while he is technically free, "he can share neither the rights, nor the pleasures, nor the labors, nor the grief, nor even the tomb of the one whose equal he has been declared; nowhere can he meet with him, neither in life nor in death." 78

The degradation of slavery does, however, serve to demonstrate the importance of freedom to the human soul. In his working notes for Democracy in America, Tocqueville comments:

[O]f all modern people, the Americans have pushed equality and inequality among men the farthest. They have universal suffrage and servitude . . . . Some claim that by establishing universal suffrage and the dogma of [popular] sovereignty, the Americans have shown the world the advantages of equality. But I think that they have above all proved this by establishing servitude; and I find that they demonstrate the advantages of equality much less by democracy than by slavery. 79

Democracy at its best abolishes the horrors of servitude and organizes its polity "to procure the most well-being for each of the individuals who compose it and to have each avoid the most misery." 80 Democracy, and the equality that is its cause, can produce a kind of human greatness—the majesty of justice. At the end of his great work, Tocqueville states that "[e]quality is perhaps less elevated; but it is more just, and its justice makes for its greatness and its beauty." 81

While it would have made the task of his readers easier if Tocqueville had explicitly announced his agreement with the premises and works of liberal political theory, the evidence he left regarding the nature of his thought makes it abundantly clear where he stood. In a draft of Democracy in America, the important passages of which were unfortunately deleted from the final version, Tocqueville explicitly articulates the tenets of liberal theory he is said to have ignored:

In a society founded on the dogma of the sovereignty of the people . . . . each individual, born free and perfectly independent of his fellow men, master of his fate, is presumed able to govern himself. When he combines with others

James T. Schleifer, Jefferson and Tocqueville, in INTERPRETING TOCQUEVILLE'S DEMOCRACY IN AMERICA, supra note 31, at 178, 190 and accompanying references.
78. TOCQUEVILLE, supra note 14, at 329.
79. See Schleifer, supra note 77, at 191 and accompanying references. It should also be noted that, contrary to Jefferson, who was at best unsure that the human beings of different races, were, by nature, equal, Tocqueville believed that all human beings were naturally equal. In a fragment of his working papers, for example, he stated: "I do not believe that there are races destined to freedom and others to servitude; the ones to happiness and enlightenment, the others to misfortunes and ignorance. These are cowardly doctrines." Id. at 185 and accompanying references.
80. TOCQUEVILLE, supra note 14, at 235.
81. Id. at 675.
for social ends, he voluntarily concedes a part of his independence to the governing majority which he hopes sooner or later to join. But it is evident that such a concession can only be made for a social purpose. The man who yielded to that end wanted only to unite his individual strength with that of his fellows and to have some control over the use of their combined force. He certainly did not intend to put himself in tutelage. So in all that concerns him alone he reserves the inalienable (impresscriptible) right of his liberty and is responsible only to God.  

It seems likely that, had Tocqueville not deleted these passages, there would be less scholarly doubt about his fealty to liberal principles. We should not, however, ignore that the final work Tocqueville did provide us, albeit more subtly, does make clear his adherence to the principles of liberalism.

**C. Tocqueville’s Liberal Cure for the Diseases of Liberalism**

What makes it so difficult to accept, despite the considerable evidence in its favor, the idea that Tocqueville is truly a liberal? It is his comprehensive and acute critique of democracy, coupled with his extraordinary pessimism about its likely future, a slow and steady decline into petty materialism and compliant acceptance of the yoke of a seemingly benevolent despot.  

It is difficult to believe that anyone can support a regime that will lead society to such an ignominious fate.

But, we must remember, for all his alleged determinism, Tocqueville does not believe our spiral toward despotism is inevitable—we can choose to arrest it. He tells us that “equality produces, in fact, two tendencies: one leads men directly to independence and can drive them all at once into anarchy, the other conducts them by a longer, more secret, but surer path toward servitude.” It turns out, after all, that Publius and Tocqueville are not so far apart; the direction in which Americans take their democracy will determine if human beings are capable of governing themselves by reflection and choice instead of accident and force.

The path away from despotism requires us to understand that equality “renders men independent of one another” and “makes them contract the habit and taste of following their will alone in their particular actions.” The independence fostered by equality “disposes them to consider all authority with the eye of a malcontent and soon suggests to them the idea and love of political freedom,” thus directing society “toward free institutions.”

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82. See Schleifer, supra note 77, at 181–82 and accompanying references.

83. In his working notes for Democracy in America, he characteristically complains that “men have at their command so large a reservoir of baseness that they always turn out to be more or less the same in the service of all despots, whether people or king.” See Schleifer, supra note 77, at 202 and accompanying references.

84. TOCQUEVILLE, supra note 14, at 640.

85. See The Federalist No. 1 (Alexander Hamilton), supra note 34.

86. TOCQUEVILLE, supra note 14, at 639.

87. Id.
The enlightened statesman—one guided by Tocqueville’s new political science—will foster this love of political freedom and ensure that citizens actively participate in these “free institutions.” Participation in public and social life—the exercise of political freedom—is a liberal cure for the cancer of individualism, the disease most incident to liberalism. As Tocqueville puts it: “[T]o combat the evils that equality can produce there is only one efficacious remedy; it is political freedom.”

It is the exercise of political freedom that Tocqueville calls the “spirit of freedom.”

For Tocqueville, the spirit of freedom is not only fostered by involvement in public institutions, of which the most important is local government, but is also advanced by active involvement in private associations, including both political parties and civil associations. With perhaps uncharacteristic optimism, he remarks, “[t]he free institutions that the inhabitants of the United States possess and the political rights of which they make so much use recall to each citizen constantly and in a thousand ways that he lives in society.” It is only through the exercise of political freedom that a democratic society can hope to recapture the possibility of human greatness jeopardized by the advent of equality. Pierre Manent states it well: “It is true that democracy is in a very real sense the enemy of human grandeur, but the enemies of democracy are much more dangerous enemies of this grandeur.” For Tocqueville, then, the remedy for the evils of democracy is not less democracy, but more.

But before we can conclude that Tocqueville suggests only liberal remedies for the problems of liberalism, we must consider the second cornerstone of American mores, the “spirit of religion.” Surely, democracy’s need to foster religiosity demonstrates that freedom must be limited in order for society to survive. Tocqueville does not deny that democracy, and thus the exercise of freedom, must be moderated. This need for moderation is, in fact, true of all regimes, for “[t]he whole art of the legislator consists in discerning well and in advance these natural inclinations of human societies in order to know when one must aid the efforts of citizens and when it would rather be necessary to slow them down.” For democracy, what must be moderated is the obsession with material well-being and the low, but attractive, pleasures it can purchase, the pursuit of which turns us away from much that gives life true meaning. For “while a man takes pleasure in this honest and legitimate search for well-being, it is to be feared that he will finally lose the use of his most sublime faculties,

88. Id. at 488.
89. Id. at 43.
90. Id. at 489–92.
91. Id. at 488.
92. MANENT, supra note 45, at 129. Manent also explains how political freedom helps overcome the individualism that threatens human greatness: “In the exercise of political freedom, men have access to a humanum commune where they forget convention and overcome the dizziness of absolute individual independence, the foundation of the democratic dogma.” Id.
93. TOCQUEVILLE, supra note 14, at 518.
and that by wishing to improve everything around him, he will finally degrade himself.”

If their people are not to plunge into the death-spiral of individualism and materialism:

Legislators of democracies and all honest and enlightened men who live in them must therefore apply themselves relentlessly to raising up souls and keeping them turned toward Heaven. It is necessary for all those who are interested in the future of democratic societies to unite, and for all in concert to make continuous efforts to spread within these societies a taste for the infinite, a sentiment of greatness, and a love of immaterial pleasures.

 Democracies must be especially careful to inculcate belief in the immortality of the soul, a belief that is “more necessary to such a people than to all others.”

But, while there can be no doubt that Tocqueville argues that religious belief and practice are necessary to moderate the often corrosive effects of equality, the need for these moderating institutions does not undermine the regime’s core commitments to equality and popular sovereignty. In fact, for religion to play the vital role in society that Tocqueville envisions, its system of belief must be modified to suit the mores of a democratic people. Americans learn to reconcile liberalism and religion not by diminishing the importance of liberty, but by making religion more liberal. As Tocqueville explains:

In the United States, even the religion of the greatest number is itself republican; it submits the truth of the other world to individual reason, as politics abandons to the good sense of all the care of their interests, and it grants that each man freely take the way that will lead him to Heaven, in the same manner that the law recognizes in each citizen the right to choose his government.

Religion in America is kept separate from public power, because religious leaders know that a democratic society cannot coerce belief and that, in fact, “[religion’s] empire is all the better established when it reigns by its own strength alone and dominates over hearts without support.”

Americans, therefore, have married the “spirit of religion” and “the spirit of freedom;” they have “united” them “intimately with one another: they reigned together on the same soil.” By, on one hand, liberalizing religious doctrine and

94. Id. at 518–19.
95. Id. at 519.
96. Id.
97. Id. at 381.
98. Id. at 43.
99. Id. at 282.
practice, making religion "democratic and republican," and, on the other hand, removing religion from any direct role in politics, America became:

[T]he place in the world where the Christian religion has most preserved genuine powers over souls; and nothing shows better how useful and natural to man it is in our day, since the country in which it exercises the greatest empire is at the same time the most enlightened and most free.

We see here, then, Tocqueville move beyond describing American institutions and mores to positively praising the American joining of liberty and virtue. This American synthesis—or, better yet, amalgam—is not a marriage of equals. It is driven by the chief American "dogma"—the sovereignty of the people, or, as we have traditionally understood it, the principles of liberalism. It is the predominance of liberal principles that makes it possible to reap the social benefits of both freedom and faith.

CONCLUSION

So if Tocqueville is, at bottom, a liberal, what makes him a new liberal? Or, put differently, how does he differ from a Locke or a Jefferson? The key to understanding what makes Tocqueville's liberalism distinctive is his choice to approach politics from the perspective of a practitioner, rather than a theorist. It is not simply that he is less interested in philosophical approaches to politics and more interested in the here and now. It is that he believes that viewing politics through the prism of abstractions is positively harmful.

The old kind of liberalism, which derives its commitment to, and definition of, liberalism from abstract principles, makes it difficult for liberalism to draw upon other sources of ideas or institutions in order to moderate its weaknesses. A more philosophical and abstract liberalism is more likely to reject ideas or institutions that are inconsistent with the liberal catechism. When liberalism, on the other hand, is understood as a product of the social institutions and ideas of a particular culture, then other ideas and institutions of that culture, some of them illiberal, can more easily be assimilated into liberalism. Religion, for example, need not be extirpated from democratic society simply because it does not mesh well with a particular understanding of liberal theory.

Compared to most of the old liberals, Tocqueville sees more clearly the need to moderate the forces unleashed by equality and understands that some of the

100. Id. at 275. Even the Catholic Church, the most traditionalist of institutions, cannot help but be modified by American liberalism: "The Catholic clergy of the United States has not tried to struggle against this political tendency; rather, it seeks to justify it. Catholic priests in America have divided the intellectual world into two parts: in one, they have left revealed dogmas, and they submit to them without discussing them; in the other, they have placed political truth, and they think that God has abandoned it to the free inquiries of men. Thus Catholics in the United States are at once the most submissive of the faithful and the most independent of citizens." Id. at 276–77.

101. Id. at 278.
ideas and institutions necessary to preserve democracy will not all be liberal ones. Tocqueville, knowing that he will be dismissed by some as an opponent of liberalism, begs his fellow liberals to remember that “Men do not receive the truth from their enemies” and that it was “because [he] was not an adversary of democracy that [he] wanted to be sincere with it.” Pierre Manent captures perfectly the spirit and aspiration of Tocqueville: “To love democracy well, it is necessary to love it moderately.”

There is something to be said, though, for the more fervent, and less conflicted, love of the old liberals. There are great advantages to understanding liberalism as a commitment to a set of abstract principles. When held and articulated in the manner of a philosophical proof, liberal principles can be stated clearly and logically, providing authoritative guidance to those aspiring to reform society along liberal lines. Tocqueville was correct about the overwhelming importance and general intractability of the social state, but he may have been too pessimistic about the ability of statesmen, when guided by a coherent and correct set of principles, to alter that social state.

The late U.S. Senator Daniel Patrick Moynihan once wrote: “The central conservative truth is that it is culture, not politics, that determines the success of society. The central liberal truth is that politics can change a culture and save it from itself.” While the labels of today’s ideological struggle do not justice to his thought, it is fair to say that while Tocqueville always understood that culture is the foundation of politics, he sometimes did not fully appreciate how a politics guided and inspired by a coherent account of liberal principle can transform a culture.

It is true, then, that, because Tocqueville’s account of liberalism is more suggestive than authoritative, it too often does not provide clear answers to the difficult questions of political science. Its great strengths, however, are its relentless focus on understanding the practical problems of democracy and its openness to adopting institutions and ideas that may seem inconsistent with democracy, but, in fact, make it possible for democracy to survive. Tocqueville may write or reason differently than the founders of the liberal project, or fail to share their optimism about its prospects, but following him may give us a better chance for it to succeed.

103. TOCQUEVILLE, supra note 14, at 400; see MANSFIELD, supra note 33, at 58.
104. MANENT, supra note 45, at 132.
105. DANIEL PATRICK MOYNIHAN, A PORTRAIT IN LETTERS OF AN AMERICAN VISIONARY 3 (Steven R. Weisman ed., 2010).