

The Paradoxes of Liberty in Tocqueville's *Democracy in America*

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1 Introduction

This short paper analyzes two thematic tensions in Alexis de Tocqueville's *Democracy in America*. As such, it is concerned with evaluating the internal, conceptual validity of Tocqueville's work rather than its external, or empirical validity. That is, while an important scholarly conversation examines Tocqueville's neglect of identity-based forms of racial and gender inequalities (Smith 1993; Stevens 1995; Smith 2010) and the presence of a surprisingly developed administrative state in Jacksonian America (Skocpol 1997; Whittington 1998), I suspend empirical disbelief and engage Tocqueville on his own terms. Even so, there are plenty of tensions that permeate Tocqueville's work, and not all of them are adequately resolved to assuage readers' frustrations.

Substantively, I argue that Tocqueville's *Democracy* is not an excursus on political regimes, but an analysis of the contradictions of liberty. In this light, the book turns on two paradoxes. The first paradox is that liberty is safeguarded neither by the aristocratic rule of the few nor by the democratic rule of all. The second paradox is that both cool-minded habitus and passion-plagued chaos serve as cradles of liberty on the one hand and incubators of tyranny on the other. While Tocqueville repeatedly invokes the first paradox of liberty and works to resolve it, the second paradox of liberty is one that suffuses *Democracy* seemingly without its author's knowledge and is left unresolved.

2 Neither Liberal Democrat nor Conservative Aristocrat

Depending on whom one reads, Tocqueville is either a liberal democrat or a conservative aristocrat. Liberal scholars such as Louis Hartz (1955) seize on Tocqueville's *Democracy in America* as evidence that “[the] great advantage of the Americans is to have arrived at democracy without having to suffer democratic revolutions, and to have been born equal instead of becoming so” (Tocqueville 2010: 886). In this view, Tocqueville was an admirer of American democracy which, unmarred by the feudal struggles of Europe, had built “government by popular consent with respect for the equal rights of all” (Smith 1993: 549). To others, Tocqueville is a conservative who “believed aristocrats innately superior” (Stevens 1995: 988), “is alert to the dangers of “too much democracy,”” and “commiserates with the burdens borne by political elites” (Wolin 2001: 3).

To be fair, Tocqueville's *Democracy* appears to nurture these seemingly contradictory perspectives. *Democracy* proclaims that “[the] emigrants who came to settle in America... freed the principle of democracy” and seemed “destined to present the development of... the bourgeois and democratic liberty of which the history of the world did not yet offer a complete model” (Tocqueville 2010: 27; 51). Yet a few pages

later we are warned that democracy “is even more compatible with despotism than with liberty” (Ibid: 76). *Democracy* repeatedly invokes the “method of colonization, so favorable to liberty” of England, itself blessed by an “aristocratic liberty” whose “refinement” and “air of grandeur” can prevent the contagion of the “crude and vulgar” impulses of the masses (Ibid: 60; 51; 358-359). Yet it equally cites “tyrannical sovereigns or exclusive aristocracies,” aristocrats “who only want power,” and the belief that “[when] the aristocracy governs society, the only necessary care it has for the people is to prevent an uprising against it” (Ibid: 336; 338).

The difficulty of classifying Tocqueville - a difficulty some have sought to overcome by declaring a draw and devising the label of “liberal conservative” (Lakoff 1998) - stems from the mischaracterization of Tocqueville’s *Democracy* as a book about political regimes. Tocqueville himself went out of his way to convey his disinterest in regime type. “My mind favors democratic institutions. . . but my heart is aristocratic. . . I belong neither to the radical nor to the conservative party” (Ibid: 445). In a letter to Henry Reeve, he wrote that “I am given alternately democratic or aristocratic prejudices. . . I felt naturally and instinctively drawn to neither the one nor the other, and it did not take great efforts for me to look calmly at both sides” (Nolla 2010: lvii). And in *Democracy* he emphasizes that “[to] know whether democracy or aristocracy governs better is a very difficult question to decide,” for where “democracy hinders one man [the] aristocracy oppresses another” (Tocqueville 2010: 300).

Where Tocqueville does not mince words is in describing his passion for liberty. “I believe that tyranny is the greatest evil, liberty the first good,” for “[w]hat is more precious to man than his liberty?” (Ibid: 3; 93). “Liberty,” he declares, “gives birth to a thousand times more goods than it destroys,” and “[t]here is nothing more fruitful in wonders than the art of being free” (Ibid: 333; 393). Sometimes his dedication to liberty even borders on the obsessive: “Nearly everyone wants something more or less than liberty. But I really love it and want it” (Ibid: 32). Once we recognize that Tocqueville neither aimed to write a paean to democracy nor a defense of aristocracy, the appearance of contradiction in *Democracy* opens itself to resolution, particularly with regards to the first paradox of liberty, to which we now turn.

3 The First Paradox of Liberty

The first paradox of liberty in Tocqueville’s *Democracy* is that *both the aristocratic rule by the few and the democratic rule of all are not only insufficient for liberty, but actively threaten its existence*. It is this tension that underlies the unproductive debate over whether Tocqueville is a liberal democrat or a conservative aristocrat: Each side cites evidence in *Democracy* where liberty is associated with an aristocratic or democratic regime, but an equal amount of evidence could be cited associating both with despotism instead. Tocqueville is clearly aware of this, and he resolves the tension by breathing what was in the air since at least the 17th century.

As perceptively noted by Albert Hirschman in *The Passions and the Interests*, social theorists from Francis Bacon to Bernard Mandeville to Claude Adrien Helvetius had long been captivated by the problem of how people’s malevolent passions may somehow be transformed or harnessed for the public good. Bacon, in particular, devised the concept of the *countervailing passion*: “to set affection against affection and master one by another” (Hirschman 1977: 22). David Hume similarly argued “that the only way of checking [passion] is to have it countervail itself,” and even James Madison argued in *Federalist 51* that “[t]he ambition of one part of government is expected to counter that of another. . . it may be a reflection on human nature that such devices should be necessary to control the abuses of government” (Ibid: 25; 30).

In parallel form, Tocqueville declares that “liberty is in danger when [a social] power encounters no obstacle that can check its course” (Tocqueville 2010: 412). Consequently, “despotism is at the two ends of

sovereignty, when one man rules and when the majority governs. Despotism is attached to omnipotence, [such that] when I see the right and the ability to do everything granted to whatever power, whether called people or king, democracy or aristocracy, whether exercised in a monarchy or a republic, I say: the seed of tyranny is there” (Ibid: 412-413). Thus aristocratic states like England do not breed liberty because aristocrats are champions of freedom who radiate it to the masses through their own goodwill; They breed liberty because “secondary bodies [the elite] form natural associations that stop the abuses of power” of a monarch (Ibid: 307). Similarly, since in America jurists are the functional equivalent of European aristocrats who “secretly despise the government of the people,” their “instinctive love for the regular succession of ideas [makes] them naturally strongly opposed to the revolutionary spirit and the unthinking passions of democracy” (Ibid: 433; 431).

Hence Tocqueville calls upon “the influence of jurists. . . [to] increase in proportion to the power of the people,” such that they can “neutraliz[e] the vices inherent in popular government” and the countervailing passions can do liberty’s bidding: “To [the American people’s] democratic instincts, jurists secretly oppose their own aristocratic tendencies; to their love of novelty, the jurists’ superstitious respect for what is old; to the immensity of their designs, the jurists’ narrow views; to their disdain for rules, the jurists’ taste for forms; and to their hotheadedness, the jurists’ habit of proceeding slowly” (Ibid: 439). But lest Tocqueville be charged of swinging the pendulum too far towards aristocratic despotism, he clarifies: “I would never advise any people to leave to the courts the care of guaranteeing its liberty. I would be afraid that the courts would sacrifice it to monarchs or to themselves” (Ibid: 437; 436).

In short, Tocqueville dissolves the first paradox of liberty by opposing aristocracy to democracy, and arguing that liberty can only flourish when neither a privileged few nor the unruly mass occupy a position of omnipotence.

4 The Second Paradox of Liberty

The second paradox of liberty in Tocqueville’s *Democracy* is that *liberty flourishes both at critical junctures plagued by uncertainty, passion, and chaos, as well as via interest-driven, cool-headed periods of social order*. To complicate matters further, Tocqueville also suggests that the seeds of tyranny germinate within both of these social states. Unlike the first paradox, Tocqueville makes no explicit attempt to resolve the second, and the fact that it is referenced in *passim* - with the contradiction emerging by concatenating statements dozens of pages apart - suggests that he may not have been cognizant of its presence.

Let us consider the first state under which liberty tends to flourish: Chaotic critical junctures. We first see evidence of this when Tocqueville describes America’s “point of departure” (Ibid: 45-73). As *Democracy* recounts the pilgrims landing upon “a land so barbarous and so abandoned,” Tocqueville lets historian Nathaniel Morton set the scene: “[It] was the middle of winter; and those who know our climate know how harsh the winters are and what furious storms then devastate our coasts. . . Around them appeared only a hideous and desolate wilderness, full of animals and savage men whose level of ferocity and number they did not know. . . Everything had a barbarous appearance. Behind them, they saw only the immense ocean that separated them from the civilized world” (Ibid: 54; 57-58). This is Hobbes’ state of nature, discharged upon the pilgrims the moment they landed in New England. And to desperately forge order, the pilgrims established penal laws so harsh that they “shame the human spirit” and testify “to the infirmity of our nature” - the death penalty for insolent worship, blasphemy, witchcraft, adultery, and insulting one’s parents; flogging for flirtation, drunkenness, and smoking (Ibid: 62-64).

And yet, amidst this “barbarous” land and the “excesses” of puritan sectarian passions, a political “spirit of liberty” flourished that “still seem[s] very far ahead of the spirit of liberty of our age” (Ibid: 64). To make

his point, *Democracy* quotes a “beautiful definition of liberty” fervidly delivered by then-Massachusetts magistrate Wait Winthrop: “[T]here is a civil and moral liberty that finds its strength in union, and that the mission of power itself is to protect; it is the liberty to do without fear all that is just and good. This holy liberty we must defend at all cost, and if necessary, at risk of our life” (Ibid: 69). Winthrop, Tocqueville notes, had been accused of arbitrariness in his duties; and after delivering the speech, “he was acquitted with applause” (Ibid: 68). And so amidst the uncertainty, the threats, the penal harshness, Tocqueville uncovers “impassioned innovators” driven by the political pursuit of liberty, which guides one’s “way in the wilderness” (Ibid: 70).

American’s origins, then, comprised passion-plagued and chaotic times that revealed the ease with which a corruptible human nature turns to tyrannical coercion yet simultaneously sets liberty ablaze like “those fires kindled on the hilltops that, after spreading warmth around them, light the farthest bounds of the horizon with their brightness” (Ibid: 53). This tension permeates *Democracy* like a leitmotif. Tocqueville references how “liberty proceeds only by revolutions,” how “the fear of anarchy” keeps individuals “constantly in suspense and always ready to jump away from liberty at the first disorder,” and in his most explicit statement, that although “[d]espotism often presents itself. . . [as] the founder of order. . . Liberty, in contrast, is usually born amid storms; it is established painfully in the midst of civil discord, and only when it is already old can its benefits be known” (Ibid: 114; 951 393). And yet elsewhere *Democracy* equates “anarchy” with “a particular form of tyranny,” such that “if liberty is ever lost in America,” it will be because the “omnipotence of the majority” will indeed produce “anarchy, but it will arrive as a consequence of despotism” (Ibid: 878; 425).

An opposite cradle of liberty is also invoked in *Democracy* - one that is cool-headed, orderly, and disciplined rather than hot-headed, disorderly, and spontaneous. That is, whereas Tocqueville critiques Europeans’ “taste for disorder, restlessness of heart, instability of desires,” he admires how Americans “immediately encounte[r] the image of order and peace;” for “while the European seeks to escape his domestic sorrows by troubling society, the American draws from his home the love of order that he then carries into the affairs of the State” (Ibid: 474). In lauding New England and critiquing the American south and west, Tocqueville draws the same distinction: New England is “strong and well-ordered,” proceeding “with maturity and deliberation,” whereas in the south and west “something disorderly, passionate, you could almost say feverish, reign[s]” (Ibid: 497-498). Why? Because New Englanders have “formed habits” favorable to liberty, as opposed to “the inexperience and the unruly habits of emerging peoples” (Ibid: 498). This is the habitus of liberty - rational, collected, educated - *aristocratic*, one might say.

It is therefore unsurprising that *Democracy* returns to the common law courts to draw out this theme. Having acquired “work habits of order,” common-law judges “form a sort of privileged class among intelligent people. . . they serve as arbiters among citizens,” capable of “leading the blind passions of the litigants toward the goal” (Ibid: 432). Because of the common law tradition’s doctrine of *stare decisis*, or precedent, “with an English or American jurist the taste and respect for what is old is nearly always mingled with love of what is regular and legal” (Ibid: 437). Is there a more counter-revolutionary, dispassionate actor in *Democracy* than the jurist “who esteems the laws, not so much because they are good as because they are old?” (Ibid: 438). And yet it is precisely in describing the jurists’ habits that Tocqueville references their liberty-preserving function.

That is, until *Democracy* proclaims the opposite effect of habitus. The majority, certain of its omnipotent control over bureaucrats, “leaves American officials much more free” than their European counterparts, such that even Europeans “accustomed to the spectacle of arbitrariness” are astonished by the degree of administrative discretion in America (Ibid: 416). And it is precisely through these “habits being formed within liberty” that officials “will be able to become destructive of it” (Ibid). The majority, too, develops

self-destructive practices: It “lives in perpetual self-adoration,” so that it is only a breakup of routine - perhaps via a chance encounter with a foreign traveler - that “certain truths” can emerge, albeit temporarily (Ibid: 419). The majority develops a “courtier spirit,” whereby any critique must be prefaced with statements like “we know that we are speaking to a people too far above human weaknesses ever to lose control of itself” (Ibid: 421; 423). And as this self-flattering mindset ossifies amongst the people and official practices surreptitiously drift towards arbitrariness, the spirit of liberty is replaced with the habits of despotism.

5 Concluding Thoughts: The Challenge of Tocqueville’s Second Paradox

The second paradox of liberty is never explicitly resolved by Tocqueville, who seemed attracted to yet weary of both the creative liberty of anarchy and the conservative liberty of order. Under what conditions does passion-prone disorder transition from being liberty’s cradle to liberty’s grave? A similar question could be raised about social habitus: When does it transition from inculcating the spirit of liberty into mindless conformism and submissiveness?

Perhaps one could draw upon Tocqueville’s solution to the first paradox of liberty and pin disorderly chaos against orderly routine to mediate the contradictions inherent in both. And yet it is not immediately clear how this is possible. Anarchic revolutionary moments are totalizing critical junctures that engulf all of society, just as the “tranquil development of a society” is a macro-historical process that is unlikely to co-exist with anarchy (Ibid: 47). That is, unlike the conservative aristocracy and the democratic mass, which are social actors intimately tied together in space-time, social states like revolution and normal politics are more likely to be separated or sequenced across space and time. It is true that scholars of American Political Development (APD) have underscored the frequent presence of “intercurrences” - or the simultaneous operation of conflicting political orders - throughout American history (Orren and Skowronek 2004). But it is certainly unclear that intercurrences constitute the conditions favorable to liberty that *Democracy in America* obsessively seeks.

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