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Introduction: Educating Democracy to the Promise and Dangers of Equality

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"Nothing in history [is] more worthy of sorrow and pity," Tocqueville wrote, "[than a nation experiencing a democratic revolution] without that concomitant change in the laws, ideas, customs, and morals which [is] necessary to render such a revolution beneficial."¹ A childhood shadowed by the family tragedies of the French Revolution and an early career directly effected by the July Revolution of 1830 gave Tocqueville "a passion for liberty," ^{made} making the study of democracy more than a scholastic interest. From *Democracy' in America* through his unfinished masterwork, *The Old Regime and the French Revolution*, Tocqueville examined how democratic aspirations advance or destroy liberty.

In America, Tocqueville sought "the very image of democracy." By depicting American practices accurately, he would portray democracy's character, "throwing into relief its thoughts, prejudices, and passions. "America," he wrote to John Stuart Mill of his early work, "was only my frame, *democratic* the subject."² With this portrait Tocqueville hoped to show succeeding generations what they may hope and fear as they give shape to their democratic ideas in politics.³ By "democracy" Tocqueville meant more than a form of government. "Democracy" manifested in politics and philosophy "the most ancient and permanent trend in history," increasing social equality. The principle of equality figures so prominently in *Democracy* that Tocqueville intended to use *egalite* rather than *democratic* in the title of the final part of his work.⁴ If America provided his frame, seven centuries of increasing social equality supplied the setting for Tocqueville's study.

Tocqueville introduced his reader to these ideas by placing American democracy in the context of (1) historical events, inventions, and innovations leading to greater equality of social conditions; (2) developing beliefs that all people share essential qualities, are

beings of equal moral worth, and that humanity alone confers an equal natural right; and, consequently, (3) the evolution of a political ideal, democracy, that reflects these beliefs in the language of equal rights, popular sovereignty, and political liberty. These developments were complex and not entirely positive. Along with the obvious benefits of increasing equality come latent, socially destructive habits of heart and mind. Tocqueville set for himself the task of telling the "hard truths" about equality to his American and French audiences, taking, he believed, a less fashionable position than many of his contemporaries. "Here among us [in France]," he wrote, "equality has all sorts of flatterers, but there are not many firm and honest counselors."¹⁵ Only by beholding equality's destructive potential as well as its beneficial possibilities could a polity hope to obtain liberty from a democratic revolution.

Tocqueville described the love of equality as universal, its power as awesome. The desire for greater equality had leveled society with a power as irresistible as any natural force. Every event and every person in history promoted greater equality, he said, no human intervention could prevent its increase. As a social condition, equality shapes institutions and ideas, creating a new basis for political authority and modifying whatever it does not produce.⁶ Each instance of social leveling — universal suffrage, self-government, the destruction of privilege, mild despotism, popular violence — expressed this unyielding, even Providential destiny.

While the history of equality appeared to unfold with a kind of inevitability, Tocqueville did not interpret the predictable consequences of ideas and actions as the product of fate. He traced the trajectory of the increasingly equal social conditions that he called a "Providential fact" to specific causes. Municipal corporations, printing and publishing, the postal service, these and other innovations increased social equality.

Equality increased by means of ideas as well as inventions. Increasingly equal social conditions challenged the belief that legitimate political authority emerged from natural inequalities. Political inequalities neither resulted from a divine grant of authority nor did an aristocracy of fit governors emerge organically from observable human diversity, modern theorists argued. No one ruled by nature or divine bequest. Nature contained no hierarchies and nature's God refrained from such a direct role in human history. Inequalities found in family or clan were neither natural, nor a logical analog for political authority. Polities founded by conquest must admit to a legacy based on sheer force. Polities that may have evolved organically within structures of kinship, however minimal their intentional design, nevertheless owed their existence to human intelligence and creation.

In modern political philosophy, human beings are believed to share similar capacities for thought and action and lay equal claim to everything in nature. Viewing each person as naturally free and equal implies that inequalities of rank and status are the *unnatural* results of human artifice. If no authority could be legitimated on the basis of natural inequalities, the most fundamental inequality — that of sovereign and subject — must be founded on other principles. In history and philosophy the principle of consent offered such a premise.

Although consent implied an initial equality among the parties to a compact, founding agreements did not necessarily create a political body of equals. "Equality," Tocqueville concluded, "[can be] an accessory of absolutism . . . [or] the companion of liberty."⁷ Increasing equality made it possible to imagine a polity governed by "the sovereignty of the people," but the principle of equality alone could not insure self-government. Equality could diffuse a sincere love of law and sense of civic duty throughout society, but increasing social equality could also promote self-regard at the

expense of public life. For the sovereignty of the people to represent more than a revolutionary slogan, equality must pertain to rights for taking part in public deliberation and decision-making, the basic activities of self-government. Individual right must not only enable, but also oblige collective action.

Self-government depends on an open public realm, in which the people practiced the "science of association," engaging in the myriad collective decision that summed to a vital self-governing society. The public and public life represented to Tocqueville more than sociological terms. *Respublica*, the Latin root of "republic/ meaning literally "public matter" or "public thing," signified a radical reconceptualization of sovereignty in which political authority was transferred from the public person of the sovereign to the public acting for itself. In a self-governing polity ordinary citizens undertake a broad range of activities that provide public goods. Using the open public realm, *respublica*, Tocqueville observed that Americans responded collectively to meet their common needs.

Government, in a self-governing society, could not be adequately represented by the concept of a ruling state or by a narrow conception of politics. Only if citizens were able to create and govern the associations that conduct the public's — their common — business, could they be said to govern themselves. The permanent and ephemeral associations that self-governing people formed could be characterized by their methods of dispersing decision making powers, authority, and responsibilities, in short by their governing structure. As instruments of self-government, even voluntary associations must be viewed as part of a self-governing regime. "Politics" must be viewed broadly to grasp the mundane collective actions that comprise a self-governing polity.

Conceptualizing the political in terms of the activity found in an open public arena suggests not only a new view of politics, but also a new understanding of government. A public solving public matters collectively does not *ride*, it *governs*. Self-government, thus,

must be contrasted not only with a state ruled by the reigning monarch, but also with a state ruled by a dominant majority or oligarchy. If a faction of the people dominate, in effect making the public realm their possession, sovereignty becomes unitary and absolute; a faction embodies the public and rules the people. Governance is inconceivable without the associational life of *res publica*.

Equality was necessary to *res publica*, but, paradoxically, Tocqueville found the principle of equality was also at the root of the capture and transformation of the public realm into *res proprietas*, the private tenancy of those who ruled. In contrast to understanding political liberty as the means for participating in the community's life, democrats could apply the principle of equality only to their individual material conditions. Preoccupied with their private welfare, they disregard their most important possession, the "public," constituted collectively through the exercise of their individual rights. If rights are separated from this public purpose, individuals, as equals, form government by consent, as the first, but, perhaps, last use they make of their liberty.

Each increase in equality conditioned habits of thinking and acting that made even greater social leveling desirable, lending an inflationary quality to equality's progress. Equality had an inescapable hold on history, not only because each material change made greater equality possible, but also because the principles that justified the destruction of privilege made remaining material and political inequalities indefensible. As social equality increased, not only inequality, but difference itself can become intolerable, Tocqueville observed. Tocqueville foresaw profound consequences following from this subtle shift in perspective. Demands for uniformity would undermine right, the original object of equality, and individual agency would capitulate to a tutelary state that administered a homogenous mass society. The principle of equality would eclipse every other standard of value, leading, Tocqueville said, to a variety of strange paradoxes: skepticism could

flourish while majority opinion would be elevated to transcendent significance; the same heart could be indifferent and doctrinaire; the same mind could proclaim freedom of conscience and affirm intolerance; and the same society could praise equal rights, while extinguishing its liberty. Tocqueville guided his reader through each puzzle with a sense of irony and even wit, accentuating democracy's vulnerability to egoism and conformity. His argument is instructive for any society challenged to distinguish equality from uniformity as it seeks justice through equality in law.

Expressions of equality that separate individual rights from their social purpose, Tocqueville found, promote extreme individualism, materialism, and a preference for order over justice. When equality took this course, a polity might yet be called democratic, Tocqueville maintained, but it would not be self-governing. Order born of possessive individualism favored the mild oppressions of a tutelary state, "a new physiognomy of servitude," democratic despotism. While the iniquity of democratic despotism was less dramatic than a Reign of Terror, Tocqueville reasoned, its milder oppressions would be no less destructive to the human spirit,

Tocqueville struggled for words to express the oppressive regime that the love of equality could encourage. "Despotism" and "tyranny" were inappropriate, he wrote, "the thing itself is new, and since I cannot name, I must attempt to define it."⁸ He described this society in terms of three sets of relationships: (1) the individual and the multitude of citizens, (2) this social mass and government, and (3) the individual and government. Describing the first relationship, he writes,

The first thing that strikes the observation is an innumerable multitude of men, all equal and alike, incessantly endeavoring to procure the petty and paltry pleasures with which they glut their lives. Each of them, living apart, is as a stranger to the fate of all the rest; his children and his private friends

constitute for him the whole of mankind. As for the rest of his fellow citizens, he is close to them, but does not see them; he touches them, but he does not feel them; he exists only in himself and for himself alone; and if his kindred still remain to him, he may be said at any rate to have lost his country.⁹

An "immense, tutelary power," stands above society, taking "upon itself alone to secure their gratifications and to watch over their fate," with a power that is "absolute, minute, regular, provident, and mild."¹⁰ Such a power could be compared to the authority of parents, he explained, if it helped the citizen mature, but its purpose is the opposite, to maintain the citizen's dependence in perpetual childhood. Speaking of the relationship between society and government, he contended that the government willing labors for the citizens' happiness,

but it chooses to be the sole agent and the only arbiter of that happiness; it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, regulates the descent of property, and subdivides their inheritances: what remains, but to spare them all the care of thinking and all the trouble of living?¹¹

The government he described takes each individual into its grasp, shaping each citizen with a power that is mild and hardly perceptible. Describing the relationship between individual and government, he wrote that the "supreme power"

covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate, to rise above *the* crowd. The will of man is not shattered, but softened, bent, and guided; men are seldom

forced by it to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd.¹²

Equality is the cause, a self-administered oppression the consequence.

Every day [such a government] renders the exercise of the free agency of man less useful and less frequent; it circumscribes the will within a narrower range and gradually robs a man of all the uses of himself. The principle of equality has prepared men for these things; it has predisposed men to endure them and often to look on them as benefits.¹³

As an accessory of absolutism, the principle of equality promotes a public philosophy of individualism that makes popular sovereignty itself an instrument of paternalistic government.

I have always thought that servitude of the , . . . gentle kind . . . might be combined . . . with some outward forms of freedom, and . . . might establish itself under the wing of the sovereignty of the people.

Our contemporaries are constantly excited by two conflicting passions; they want to be led, and they wish to remain free. As they cannot destroy either of these contrary propensities, they strive to satisfy them both at once. They devise a sole, tutelary, and all-powerful form of government, but elected by the people. They combine the principle of centralization and that of popular sovereignty; this gives them a respite: they console themselves for being in tutelage by the reflection that they have chosen their own guardians.¹⁴

Self-government, Tocqueville concluded, requires that democratic polities make a practical commitment to liberty as great as their love of equality. Equality is more easily established, more permanent, and, Tocqueville thought, more readily worshipped than liberty. Equality's superficial gratifications are immediate, its deleterious consequences more subtle and more lasting. Equality could increase without liberty; liberty seemed at best inessential, but more often even appeared to be an obstacle to equality's progress. Equality privately profited the individual, while its costs were diffused throughout the whole political body. Liberty's private benefits seemed distant, its yoke, borne in solitude, exacted duties for the sake of abstract virtues. The passion for liberty that self-government requires, Tocqueville believed, is as ephemeral and its institutions are as vulnerable as equality is irresistible.

Everywhere history showed nations set on a course of increasing equality, but equality's path was not everywhere the same. Temporal, cultural, and environmental conditions, as well as a polity's founding principles, ideas, and institutions influence the way in which equality creates and modifies social and political relationships. Complete autonomy is as impossible for communities as it is for an individual, yet neither individuals nor nations are enslaved by pre-existing traditions or physical conditions. Individuals and nations could choose how they would adapt themselves to historical events that defied their resistance. "Providence has not created mankind entirely [dependent] or entirely free," Tocqueville wrote.¹⁵ Each person's life is circumscribed by "a fatal circle . . . beyond which he cannot pass; but within the wide verge of that circle he is powerful and free."¹⁶ Equality's effects will be determined not only by antecedent conditions, but by individual and collective choices. "The nations of our time cannot prevent the conditions of men from becoming equal," Tocqueville concluded, "but it depends upon themselves

whether the principle of equality is to lead them to servitude or freedom, to knowledge or barbarism, to prosperity or wretchedness."¹⁷

France, Tocqueville believed, suffered the results of breaking bonds of affinity as well as the bondage of class. Democracy destroyed the mutual dependencies of the Old Regime, but failed to create productive relationships from a new basis of social obligation. America presented an alternative scenario; there ideas and customs placed liberty on par with equality, assuring that private rights were exercised for public purposes.

America represented a "great experiment," an attempt "to construct society upon a new basis."¹⁸ A detailed exposition of this experiment, Tocqueville explained to his boyhood friend, Louis de Kergorlay, might "indicate to men, if it is possible, what they must do in order to escape from tyranny and degeneration while becoming *democratiques* .."¹⁹ His civics was meant:

to educate democracy, to reawaken, if possible, its religious beliefs; to purify its morals; to mold its actions; to substitute a knowledge of statecraft for its inexperience, and an awareness of its true interest for its blind instincts, to adapt its government to time and place, and to modify it according to men and to conditions.²⁰

America, for Tocqueville, represented the shape of things to come, not as a model democracy, but as an experiment in which citizens could reflect on the choices equality posed.

Reflecting on his journey to America, Tocqueville explained that he did not set out to write a book, but in America he had "encountered a thousand things beyond [his] expectations:" confirmation of democracy's vulnerabilities and ideas that might render good from the inevitable. Believing that "each man should account to society for his thoughts, as well as for his physical energy," he felt compelled to draw lessons from the

American experiment.²¹ Beginning the first volume of *Democracy in America* as soon as he embarked on the return journey to France, Tocqueville spoke of himself as standing between the world of the *ancient regime*, with its authoritative beliefs and clearly defined ranks and roles, and a skeptical, mercurial new world. As one attached to an aristocratic tradition yet drawn into the democratic tide, he considered himself to be in a unique position to evaluate political practices based on the "new science of politics" for the new world that equality had wrought.²² By publishing *Democracy* Tocqueville offered this new science to his generation and perhaps, for the variety of circumstances facing democracies today.

America's Covenantal Traditions and The New Science of Politics

It is the purpose of my study to examine a central, but neglected element of Tocqueville's new science, the covenantal tradition bequeathed by America's Puritan founders. Puritan covenants formed political as well as sacred bonds, giving American society a novel origin on which secular constitutions drew. American society had been constructed on a new basis, employing "theories hitherto unknown or deemed impractical," creating, Tocqueville said, "a spectacle for which the world had not been prepared by the history of the past." Covenants were new in two senses; they not only offered an alternative to foundings based on force or fate, but also posed an alternative to other conceptions of consent-based origins that were more inclined to Leviathans than self-government.²³ Covenants offered a way of ordering society that denied the a priori authority of rulers, whether their origin be based on divine right or a philosophy of natural stratification.

Covenants established obligations among citizens and joined each individual to the whole. Early American colonists not only used covenants to establish churches, they employed secular covenants to establish political communities. As responsible parties in

an agreement, covenantors could not submit slavishly *to* either religious or political authority. The Puritans, Tocqueville explained, created the bonds and the liberties of citizenship by their assent to eternal, transcendent principles — moral law — as well as by their consent to government. Covenants ultimately provided the institutional and conceptual foundation of constitutional government.

In colonial America, citizens covenanted to form a political body, obligating themselves to broadly reciprocal, perpetual relationships. God was called as a witness and, often, as a guarantor of such pacts. In some cases, God was even made a party to the agreement. Once such covenants had been established, the actions of individual citizens were judged not only in terms positive law, but also according to eternal, transcendent principles to which each person and the political body as a whole were, by their consent, bound. Citizens were obliged not only to do what law commands, but also to enact the "spirit of the law." Making covenants, they bound themselves to do what their relationships necessitated as well as what the law required. Early American covenants acknowledged the relationship of individual right to transcendent purpose and assumed that reasoned private judgment could be harmonized with the revelatory basis of the community.

Equality, a central principle in covenantal thinking, pertained to the ability to give or withhold consent.²⁴ In the cosmology of the English and Continental Reformed Protestant who colonized New England, consent was viewed as a natural capacity. The requisite abilities to reason as well as the moral capacity to reason rightly were assumed to be equal for those who signed the *Fundamental Orders of Connecticut*, the secular covenant that Tocqueville's primary example of colonial law. In such documents, equals covenanted to establish political bodies that preserved their fundamental equality to consent through

institutions that required members of the community *to* continue their participation in religious and secular associational life.

Covenantal thinking and the view of equality on which it relied also inspired a particular understanding of sovereignty. While the New England colonists insisted that sovereignty resides in the people, not the ruler, their thinking did not imply that individuals could take on self-government as a solitary pursuit. A collective process had established the civil society on which individual right depended. For such rights to remain in force, they must continue to be put to use in on-going collective decision making. From this perspective, a civil right is a "public thing" an instrument for collective decision making. "The people"¹ referred to the body politic, a "society governing itself for itself," not an aggregation of individuals.²⁵ Such a people, brought into being by reflection and choice, took form as an association of associations, not as a mass society. "Popular sovereignty," in American practice, reflected neither holistic nor purely individualistic methods of determining the public will. In covenanting polities, the phrase "sovereignty of the people" applied to a political body as a whole, yet this view of individuals' collective capacities did not diminish the foundation of civic engagement, individual assent.

Although Tocqueville never used the term covenantal, he interpreted the relevance of the Puritan world to America's character in a way that reflects the underlying premises of a covenanting process.²⁶ He emphasized two inseparable elements of America's covenantal founding, its religious and its republican practices. The Puritans "harmonized heaven and earth" through practical applications of faith in daily life. Self-government was integral to colonial expressions of religious faith, expressions that bound a religious interpretation of free will to conscious choice in political assent. By combining "two distinct elements . . . the *spirit of religion* and the *spirit of liberty*," the New England colonists developed institutions for the continuing practices of self-control, self-

organization, and self-rule. So significant were America's religious and republican origins that Tocqueville called them, "the germ of all that is to follow and the key to almost the whole work [of *Democracy*]." ²⁷ Tocqueville described the Puritan world of equality and the self-imposed constraints. Standing in awe of powers that transcend their own, Puritans renounced skepticism and accepted on faith what cannot be shown. By choice they forswore the liberty to doubt and debate, voluntarily exchanging complete independence for the constraints of civil or moral liberty.

Under their manipulation political principles, laws, and human institutions seem malleable things which can at will be adapted and combined. The barriers which hemmed in the society in which they were brought up fall before them; old views which have ruled the world for centuries vanish; almost limitless opportunities lie open in a world without horizon; the spirit of man rushes forward to explore it in every direction; but when that spirit reaches the limits of the world of politics, it stops of its own accord; in trepidation it renounces the use of its most formidable faculties; it forswears doubt and renounces innovation; it will not even lift the veil of the sanctuary; and it bows respectfully before truths which it accepts without discussion. ²⁸

Drawing on Continental and British Reformed Protestant traditions, New England Puritans developed a form of liberty, covenantal or federal liberty, that dedicated individual right to public purposes, based on freely accepted moral restraints. In the 17th century, John Winthrop had used the Latin root for covenant, *foedus*, "or federal, to express the relationship between individual right and civic responsibility implied in covenant-based constitutions. For Winthrop, the terms civil, federal, and moral were synonymous, implying that these adjectives modified the liberty of people in society according to transcendent belief as well as legal restraint. Quoting Winthrop at length,

Tocqueville showed that "federal liberty" emphasizes the relationship of individual right to moral law. Submitting themselves to God's authority, the members of a civil society renounced natural liberty and embraced federal liberty, the liberty necessary to perform their duty of tending the body politic. Civic duty not only derived from a particular understanding of "public" and "community," but also implied that political duties originated in service to God. Human political authority and individual will were viewed as limited by principles that transcended humanity's creative efforts and understanding.

"Concerning liberty, I observe a great mistake in the country about that. There is a twofold liberty, natural (I mean as our nature is now corrupt) and civil or federal. The first is common to man with beasts and other creatures. By this, man, as he stands in relation to man simply, hath liberty to do what he lists; it is a liberty to evil as well as to good. This liberty is incompatible and inconsistent with authority, and cannot endure the least restraint of the most just authority. The exercise and maintaining of this liberty makes men grow more evil, and in time to be worse than brute beasts . . . This is that great enemy of truth and peace, that wild beast, which all the ordinances of God are bent against, to restrain and subdue it. The other kind of liberty I call civil or federal; it may also be termed moral, in reference to the covenant between God and man, in the moral law, and the politic covenants and constitutions, among men themselves. This liberty is the proper end and object of authority, and cannot Subsist without it; and it is a liberty to that only which is good, just, and honest. This liberty you are to stand for, with the hazard not only of your goods, but of your lives, if need be. Whatsoever crosseth this, is not authority, but a distemper thereof. This liberty is maintained and exercised in a way of subjection to authority; it is the same kind of liberty wherewith Christ hath made us free. "²⁹

Natural liberty reflected the right of nature in which each person stood alone, possessing an equal right to do whatever was conducive to self-preservation, however these actions effected other beings. Even if actions taken in nature might be justified, this mentality of an equal right to all things would not work in civil society. Actions based on this view of natural liberty taken within a framework of just authority undermined peace, opposed the law of nature (for Winthrop, God's law) and as such, were evil. In civil order, a different view of liberty must replace natural liberty. For Winthrop, this liberty reflected a particular form of civil order, one based on the moral law of a covenant between God and humanity. Viewing humans as fallible while also recognizing the capacities implied in the ability to covenant, Winthrop could claim that individuals depended absolutely on community for their spiritual well being as well as material good.

Employing Winthrop's term to emphasize the transcendent foundation of covenantal political authority and the social dimension of individual right, Tocqueville turned to the character of the practical institutions that relied on federal liberty to create a polity in which the people governed themselves. Federal liberty requires an institutional framework that promotes the common good and protects individual rights in practice as well as theory. Tocqueville analyzed the "proper institutions" of federalism that might achieve this goal. Also taking its name from *foedus*, "federalism" denotes the framework of settlements linked by secular covenants and compacts into larger governing units. Through covenants and covenant-based constitutions, political bodies were connected, but each body's identity and authority remained intact. Like individual citizens, the various political bodies retained their essential integrity, but were bound by mutual responsibilities.

Federal liberty places individual rights in the context of the community good, but neither individuals nor the political bodies they form submit to the authority of the governing bodies they create in an unlimited way. The plurality of interdependent political

authorities helped preserve individual rights by offering numerous sites for deliberation and political action as well as several avenues that individuals could pursue to have their grievances heard and injustices redressed. A federal frame of limited, distributed, shared constitutional authorities must be joined to federal liberty, Tocqueville argued, if individuals were to continue to exercise their judgment, rights, and liberties in attending to the community good. Montesquieu had developed the modern doctrine of the separation of powers, but his theoretical writings were unlikely sources for such political practices in colonial America. Reformed Protestants distinguished the spirit of the law from the letter of the law in the mundane practices of self-government from which federal constitutionalism developed. Political bodies were united for a common purpose as a practical response to common problems. These governments retained their original powers, while accepting new responsibilities and shared authority. As a result power was disbursed among a number of offices and associations. Summarizing the connection between federal liberty and the evolution of federalism, Tocqueville again finds the germ of these political institutions in covenantal thinking.

It was never assumed in the United States that the citizen of a free country has a right to do whatever he pleases; on the contrary, more social obligations were there imposed upon him than anywhere else. No idea was ever entertained of attacking the principle or contesting the rights of society, but the exercise of its authority was divided, in order that the office might be powerful and the officer insignificant, and that the community should be at once regulated and free. In no country in the world does the law hold so absolute a language as in America; and in no country is the right of applying it vested in so many hands.³⁰

The choices made in constituting the permanent frame of government, Tocqueville said, reflected ideas that constitute a people's "character of mind . . . The whole moral and

intellectual condition of a people."³¹ Covenantal, or federal, principles bequeathed the rationale and practical means for uniting people and polities for common purposes, without negating established boundaries, identities, or authority.

The principles of government based on federal liberty — federalism — assumed each individual to be a moral whole, while also giving equal weight to the social dimension of our existence. *In* politics, citizens placed their interests in the broad context of the community's welfare rather than interpreting their liberty only in terms of narrower perceptions of self-interest. In covenanting societies, cognizance of this broader community framework ultimately relied on shared moral commitments, deduced from religious teachings, to which each covenantor had explicitly given assent. The moral grounds of covenant, Tocqueville believed, could be drawn from religion's "simple ideas" - a belief in a transcendent authority, a belief that humanity's purpose transcends mere existence, and a belief in the equal worth of all souls. These principles, Tocqueville argued, were common to all religions and they, not specific religious forms, were the inviolable foundations of covenants.

Federal liberty was the public philosophy that enabled a combined spirit of religion and spirit of liberty to become the spirit of the laws. Covenants must be understood as living agreements infused with meaning that reflected the experiences and beliefs of those who assented to them in successive generations. Experience, Tocqueville made clear, must continue to inform our shared standards as they are applied to new circumstances. America's federal framework and the self-governing consciousness it reflects also developed from colonial institutions of practical politics such as the township. *In* America, Tocqueville observed, the township arises as a natural association, joining the Puritan religion and these settlers' experience in self-government.³² Together, the natural

association of the township and the relationships of self-rule and shared rule implied in Puritan covenants became the moral foundation of federalism.

Federal liberty's central principle, the liberty to consent, along with religion's simple ideas balanced experience and belief. The balance between liberty and belief was fluid and fragile. It might be maintained only if citizens expressed the philosophy of federal liberty publicly in daily activities of self-government and applied their experiences with humility to their imperfect expressions of faith.

The federal framework and the public philosophy of federal liberty together stimulated civic education and engagement, enabling each generation to seek balance appropriate *to* its experiences. Voluntary associations were a means by which citizens learned and assented to the community's guiding principles. When individuals participated in the voluntary associations, they learned more of "the various notions and opinions current among" a people, notions that reflected the foundational ideas constituting their polity and experience with self-government. Participation in either constitutional or collective choice not only renewed an individual's attachment to founding ideas, but also tested those ideas, permitting reflection and change as well as renewal. Participation in voluntary associations taught "the habits of the heart" that a vital democracy required — a quality of mind that was secured by ideas developed through common assent and common action,

For Tocqueville, the norms of liberty and the requirements of faith could be reconciled — indeed they must be, he argued, if the excesses of equality were *to* be avoided. The Puritans placed some beliefs beyond debate, anchoring their political experiment to the moral firmament provided by the teachings of revealed religion. The narrow limits of the Puritans' religious opinions permitted daring political innovation, Tocqueville observed. Religion bounded the mercurial world of this political experiment,

but religion in this covenanting politics also drew from the practical experience of God's errand.

Following the founding period, constitutionally guaranteed religious freedom permitted the simple ideas common to all religions to inform the habits and mores of citizens, without directly imposing religious authority on political choices. Republican institutions promoted a commitment to experience, reason, and consent in politics. Political opinions contoured secular applications of religious belief; religion, while prevented from playing a direct role in politics could remain "the first of [America's] political institutions."³³ The New England way of "harmoniz[ing] earth with heaven"³⁴ bequeathed ideas and institutions fit for self-government. If founding colonists failed to appreciate the diversity of opinions that tolerance and freedom of conscience might bring, they nevertheless lay the philosophical foundations that permitted this reorientation of belief that neither destroyed religion nor weakened its moral import.

Drawing on these original covenantal relationships and experiences, later constitutional framers presented the theory of a compound and extended republic. The federal principle evolved as compacts joined communities for their common good without destroying their power to give or withhold consent, just as individuals continued to hold such authority within their covenants and compacts, their corporate bodies also retained similar powers. The federal form developed as a means of insuring that political relationships — among individuals and political bodies — would continue to be based on the central value of covenantal thinking, consent.

In the American experiment, increasing social equality had taken a novel path because the principle of equality had been applied to the individual's capacity to consent. As a public philosophy, federal liberty, tempered equality's effects on habits of thought and action. In this context, the covenantal basis of *foedus* ~ as an amalgam of religion and

republicanism — and the institutional arrangement of federalism could create the framework that moderated individualism, materialism, and majority dominance.

Today this covenantal view of social obligations has been displaced by the ideal of a more limited social contract. This change is not merely linguistic: covenants represent broadly reciprocal, perpetual relationships and duties that transcend the letter of the law; contracts, in contrast, specify duties precisely, limiting our obligations to the actions named in the contract and limiting our relationships to the duration of the contract's life. Covenants are enforced not only by what law stipulates, but also by bonds of trust. Trust and forbearance are among the attitudes habituated by covenantal practice. Experience with agreements that demand the parties to transcend what is merely required by law to undertake what is necessary to preserve a covenantal relationship condition the mores required for self-government. Not every activity makes such demands. We develop our capacity to discern which choices must evoke the spirit of the law by participating in associational life, the activities of self-government permitted and necessitated by *res publica*. Failing to *met* the obligations of federal liberty, neglecting the open public realm, in essence, failing to think covenantally, makes self-government a highly improbable activity.

Our contemporary views of individual liberty betray the narrowing conception of social responsibility found in the metaphor of contract. In this view, "rights" are merely private concerns without a social dimension. Covenantal and liberal theories vary in many respects, most significantly in their emphasis on the community's role in self-governing polities. In covenantal theory individuals can never be wholly autonomous from the communities to which they relate. Communities not only facilitate individual aims, in the covenantal world they reflect a cosmic totality through which individuals achieve

transcendental good. In this context, rights are viewed as collective capacities to address public problems and form a moral whole.

In the tradition of liberal individualism, the logic of collective action suggests that communities are constituted by political institutions that coordinate a variety of intersecting interests, smoothing out conflicts by government imposition. Individuals appear to have no relationship that transcends those created and mediated by government. More often used as a means of indemnifying the individual against the claims of others than as a necessary resource for tending the public's business, "equal rights" today ironically threaten liberty's very foundations.

Applying Covenantal Experience to Contemporary Challenges

Tocqueville contended that colonists such as Winthrop and the framers of the *Fundamental Orders* "were more conversant with the notions of right and the principles of true freedom than the greater part of their European contemporaries."³⁵ Yet it would be difficult to cite evidence that Winthrop ranked liberty of conscience and individual right, as we understand those terms, among the proper virtues of spiritual or political bodies. Even Thomas Hooker, Winthrop's more egalitarian Connecticut counterpart, could hardly be credited with democratic sensibilities befitting Tocqueville's 19th century observations; certainly neither Winthrop's nor Hooker's Jeremiads heralded the forms of liberty and equality expected today. Those dealing with democracy's dilemmas today cannot advocate Puritan institutions or beliefs as an appropriate basis for contemporary political relationships.

Tocqueville would not have thought it possible to return *to* the Puritan ideal of right, nor would he have advocated such a course were it possible. He cautioned against facile attempts to apply "the lessons of the past" to new circumstances, calling many of the Puritan's specific institutions "fantastic and oppressive." He would regard even well-

intentioned efforts to re-assert beliefs and institutions renounced as deficient as at least naive and vain, if not equally dangerous threats to liberty. Tocqueville admonished the members of his own generation to abandon their shortsighted conceits about re-establishing the age of aristocracy. His words apply to any simplistic revivalist course.

No man on the earth can as yet affirm, absolutely and generally, that the new state of the world is better than its former one ... [Aristocracy and democracy] are like two distinct orders of human beings, each of which has its own merits and defects, its own advantages and its own evils. Care must therefore be taken not to judge the state of society that is now coming into existence by notions derived from a state of society that no longer exists... . But as yet these things are imperfectly understood, I find that a great number of my contemporaries undertake to make a selection from among the institutions, the opinions, and the ideas that originated in the aristocratic constitution of society as it was; a portion of these elements they would willingly relinquish, but they would keep the remainder and transplant them into their new world, . . . The object is, not to retain the peculiar advantages which the inequality of conditions bestows upon mankind, but to secure the new benefits which equality may supply. We have not to seek to make ourselves like our progenitors but to strive to work out that species of greatness and happiness which is our own.³⁶

If these specific institutions and beliefs of colonial polities are unsuitable for a different time and place, what of covenantal thinking may be adapted to present circumstances? How might Tocqueville's insights be conducive to developing our own kind of greatness and happiness?

Those who love liberty, Tocqueville feared, understood very little of its vulnerabilities. The American experiment, its federal philosophy and political principle, educated its practitioners and could unmask the character and care of democratic institutions for the careful observer, but even the lessons of liberty were vulnerable to oversimplification. The American covenantal legacy entailed methods of formalizing secular relationships on terms that reflected sacred commitments, but the means of harmonizing earth with heaven escaped a direct connection of secular and sacred authority. The core of religious belief were "simple ideas," but their application in the evanescent activities of democratic life was far from simple. The import of America's covenantal origins could be reduced to pious slogans; the meaning of the federal framework could be interpreted as merely sterile mechanics. The confluence of numerous paths that produce a mildly despotic bureaucratic state could be viewed simplistically as only a consequence of institutional failure. If the more fundamental causes of possessive individualism were recognized at all, facile solutions based on a faulty understanding of the relationship of belief and self-interested actions could, ironically, promote egoism and self-righteousness.

Tocqueville examined the conditions that lead citizens to a myopic view of their obligations and a declining interest in common concerns. Much of his analysis treats the connection between the spiritual malaise of democratic people and a culture of acquisition. The path toward democratic despotism, he argued, originates in the skepticism and corollary anxiety of the liberal epoch and follows a course through possessive individualism to a general withdrawal from public concerns. The simple ideas of revealed religion, he said, helped deflect a democratic people from this course, but unctuous religious witness was no substitute for sentiments lost. In modern times, Tocqueville augured, religion could be reduced to its material signs in feigned religious renewal.

Democratic polities would not be profited by promoting salutary myth or civil religion. The value of religious sentiments to republican government depended on the vitality of such beliefs. Pious formulas would produce a cynical people, bereft of belief and the faculty to seek it.

Democratic societies taking a federal form based on covenants worked because of shared standards of value and shared beliefs about the methods of employing those values *in* the associational life that comprises "politics." The federal principle produced political institutions that preserved the governing authority of the constituent parts of political union, but the federal constitution, Tocqueville contended was based on "legal fictions," and would be "ill adapted to a people which has not been long accustomed to conducting its own affairs, or to one in which the science of politics has not descended to the humblest classes of society,"³⁷ As important as federal institutions were, the shared beliefs that made them operable were more important; how those who used a constitution believed it worked mattered as much as its legal provisions. These were among the major cautions and lessons taught by the American experience, but covenantalism itself represented more than a means to these ends.

Tocqueville believed "there is hardly any human action, however particular it may be, that does not originate in some very general idea men have conceived of the Deity, of his relation to mankind, of the nature of their own souls, and their duties to their fellow creatures."³⁸ Covenantal agreements revealed beliefs about human capacities, humanity's relationship to creation, and the human relationships that reflected this cosmic bond. As purposeful creations, human beings were obliged to form human associations compatible with the capacity for moral judgment given to them by their Creator. The foundational covenant with God supplies the model for human partnerships and the authority designed to enforce them. Covenantors conceive the cosmic bond as a freely entered agreement,

establishing a perpetual partnership. Human relationships conforming to this ideal are also based on consent and similarly implied continuous applications of covenantal principles as the relationship developed.

Covenants, federal liberty, and the federal principle represent, respectively, a kind of relationship, a philosophy of rights and obligations, and a type of institutional design. Covenants create agreements that exact obligations from the parties that require their continuous thoughtful engagement with one another. The perpetual relationships created by covenants develop according to the shared philosophy of the parties, federal liberty. Federalism institutionalizes these relationships, forming associations of associations by creating a framework in which an individual might be a party to several covenants simultaneously. Such associations combine to achieve common purposes according to the federal principle, a method of linking associations and individuals without destroying their existing obligations, identities, or governing structure.

Federal agreements reflect conscious choices — to consent and bind oneself freely -- even when the federal framework that they inspire appear to evolve organically. Citizens using the federal principle accept continuous institutional development as the proper orientation to complexity and change. The idea of "planning"¹ takes an unusual form in federal designs, as "ad hoc" development, a "patchwork" of institutional arrangements, as well as overlapping and fragmented authority all represent realistic responses to evolving civic problems. In a federal setting, self-governing citizens are free to covenant, creating *the* sorts of relationships necessary to their common benefit. Federal frameworks facilitate the continuous institutional design expected of people who use collective instrumentalities, including the governments they empower, to solve their common problems.

Covenants, federal liberty, and the federal principle offer a basis and structure for human associations in a heterogeneous world. Rather than envisioning larger authorities

that absorb smaller associations, political integration along covenantal lines preserves the internal diversity of a whole formed and maintained by the willing consent of parties who retain their capacities for constitutional and collective choice. Newly created agreements need not destroy or supplant existing relationships. For individuals, union might create new obligations and a new identity as a member of the newly constituted entity, but new agreements do not erase existing identities. For associations, newly constituted joint authority does not destroy the authority of existing associations. Governments unite, yet their existing authority remain intact; individuals unite, but do not lose their capacity to give or withhold consent. Using the federal principle, individuals and peoples constitute a governing structure in which there are no higher or lower centers of power, only larger and smaller arenas of decision-making and action.³⁹

The federal principle and covenantalism offer an alternative institutional form and way of thinking about the rights of minority cultures, and, more generally, the problem of political integration. The rights of minority cultures are often placed in opposition to the rights of individuals and the authority of nation-states, each viewed as having absolute dominion in its sphere. In the present debate on "multiculturalism" group rights are conceived as state administered claims, largely lacking the mechanisms for collective decisions. In federations based on federal liberty and covenantal thinking, such agency would be assumed to be appropriate as would instruments that enable a group as a whole to deal collectively with common problems in a manner that enhances rather than diminishing the powers of individual group members. To be a viable means for integrating diverse political actors, federal institutional arrangements require a particular view of rights and liberties as well as commitments and responsibilities for collective decision-making and action on the parts of all participants. When these conditions are met, federal

institutions may bridge group and individual political claims in a manner conducive to just relations in a heterogeneous world.

With shared standards of value and a commitment to collective activity, covenants might be used to knit diverse communities together into a federated form of political authority. Tocqueville suggested that the fortuitous circumstances of the American founding had created the science of self-government required, but perhaps not universally available to all who would construct such institutions. Not only may some political communities lack the experience necessary to employ this science, those experienced in self-government may fail to attribute their achievement to this knowledge. The content and practice of Tocqueville's new science is not universally acclaimed, even among its practitioners. Before turning to the a synopsis of the chapters that follow, more needs to be said of Tocqueville's method, this science, and its critics.

Compact Traditions and The New Science of Politics

To a 17th century reader, mention of a new science of politics would signify the social compact ideal, its moral precepts — prudence, trust, promise keeping, reputation, and honor -- its operational premises -- reasoned judgment, self-limitation, and binding mutual agreements — as well as virtues such as self-reliance, individual liberty and equity. In the compact tradition right reason disciplined choice and science instructed judgment, providing the method of reckoning causes and consequences and distinguishing false tenets from plausible propositions. In a science of politics, institutions and actions could not be separated from the antecedent ideas that created them. A science of politics assumed that thought preceded action and made the self-conscious decisions of individuals — their reflection, reckoning, and choice — axiomatic in the creation of the commonwealth.

Hobbes and Locke each offered a political science that denied the a priori authority of rulers — whether their origin be based on divine right or the belief in a natural aristocracy, but neither theorist's emphasis on human capacities to constitute authority negated the Divine impulse. A Supreme Authority transcended humanity's creative potential and works. Right reason revealed Laws of Nature that were associated with a transcendent order, beyond human understanding and control. Humanity might reflect the Creator's image, might use God's Law and their God-given endowments to good purpose, but humankind differed from God in kind; in the 17th century God was seen in all creation, but no creation was identified as God. Politics based on reason and choice replaced the human claim of Divine Right, but the Divine's claim on humanity remained a central feature of the social compact.

Two hundred years later, science, Nature, and human capacities were viewed differently. Tocqueville beheld America's romance with Nature and the Frontier. He perceived the nation's ambivalence about expansion and the civilization of the Wild, its citizen's anxiety amidst prosperity, and their belief in humanity's ultimate perfection. He witnessed the "cold and logical" deism of Unitarian worship and glimpsed the mysticism and pantheism of nascent Transcendental Idealism.⁴⁰ Yet he still saw the effects of the Puritan's new science of politics in America's associational life. The key to understanding the American experiment, Tocqueville contended, was found in the thinking and experience of those who faced the difficulties of limiting individual and collective exercise of power and experimented with methods of doing so.⁴¹

Covenants presupposed a particular view of obligations and rights. Federal liberty represented those claims. The federal principle institutionalized the relationships that followed. Covenants, federal liberty, and federalism all drew on a mental stance that permitted some beliefs to be removed from daily debate, while leaving political activities

open to experimentation and innovation. The key to understanding what might be empirically observed of American life was to be found in particular social and ideational conditions: social equality, to be sure, lay the foundation for politics, but more importantly the Puritans assumed an equal capacity to consent or refuse to agree to collective decisions. Their emphasis on this form of liberty presupposed a social unity extensive enough to prevent dissent from rending the social fabric. Experimentation and innovation required shared values and common understanding of the rules for collective decision making — the standards for evaluating collective and individual action.

When, in the late 18th century, Alexander Hamilton asked if governments could be constituted on the basis of reflection and choice, he seemed to view the idea of a great experiment as more than metaphor. Tocqueville echoed these words and, like Hamilton, asserted that this was the question of the modern age. Suppose we take seriously the conception of a polity as an experiment in self-government. In that case, the significance of the term "experiment" warrants our attention.

To understand an experiment, we must understand what the experimenter had in mind. "Experiment" suggests precise connections between ideas and actions as well as some notion of how to interpret the results and adjust to the findings we observe. How would a self-governing group engage in an experiment? An experiment in self-government implies collective processes of deliberation as well as individual reflection and choice; these activities, in turn, depend on individual and collective capacities for creating more fundamental rules, for making constitutional choices. Together these processes characterized self-government.

The sovereignty of the people had no meaning, for Tocqueville, unless the people themselves based their decisions on the experiences they had from working with articulated principles in civic association. To view their collective choices as part of an

experiment implies that everyday life provides the opportunities to employ theories of organization that amount to theories of collective and constitutional choice. Individuals not only consented to follow laws, they agreed about how rules would be used to order their activities based on their vision of how relationships might be consciously and creatively designed. In such an experiment, "politics" and political institutions must be broadly construed to capture the activities of self-government, Tocqueville meant to do so and his effort redirects our attention to new objects of institutional analysis.

Not only government itself, but the activities of voluntary, political, and commercial associations are our subject matter. Not only is the open public realm of critical importance to our evaluations of self-governing societies, the reciprocal effects of private relationships and public institutions must also be a part of political inquiry. The goals of a new science of politics also differ from our usual way of thinking. Viewing self-government as an experiment suggests that we must look at more than the tangible manifestations of collective choices, our decisions and deeds. We cannot interpret these empirical observations without understanding the ideas that inspired them. For Tocqueville, the new science was not a canon for political scientists, but a framework that guided the choices of citizens. They were the experimenters employing a science in the ongoing inquiry of civic education.

The idea of experiment implies that human beings have certain capacities, among them the ability to develop habits of mind compatible with this science's method of solving public problems. The civic culture necessary to self-government is a culture of inquiry, developed by practicing the art of association according to articulated principles of organization based in experience and common belief. All of this, the new objects of study, the belief that ideas and actions were linked, and the focus on citizens as the practitioners of political science, suggest that Tocqueville's method must be appropriate to a broad

interpretation of governance, governing institutions, and self-governors, Tocqueville's critics have often failed to appreciate the requirements of this method, narrowing the scope of the new science of politics.

Social scientists as esteemed as Harold Lasswell have viewed Tocqueville's method as either atheoretical, brute empiricism or overly theoretical abstraction.⁴² Tocqueville's institutional analysis has more recently been called an unimportant, dated presentation of the empirical characteristics of American rule, "classic," perhaps "fascinating," but irrelevant to "his basic philosophic-political concern, . . . the '*science politique nouvelle*.'"⁴³ The whole of his analysis has been dismissed as a jumble of empirical details, lacking a corresponding elaboration of hypotheses. Not only has his work been viewed as a failed attempt at an empirical study, his contemporary, James Bryce, in his own description of American democracy, criticized Tocqueville's work for offering only "a general and speculative view of democracy," an abstract theory lacking either a philosophical or empirical foundation,⁴⁴ *Democracy* has been read as travelogue, amateur history, and according to one of the greatest historians of Tocqueville's American journey, George Wilson Pierson, a self-conscious, if not pretentious, attempt at scientific analysis that fails because it is so unscientific. Pierson is worth quoting at length since he took Tocqueville's desire to offer a scientific assessment of democracy seriously, reads Tocqueville sympathetically, and connects the faults he finds with specific methodological inadequacies. Writing in 1938 about Tocqueville's method he had this to say:

Tocqueville believed he was using a scientific method, and the most rigorous accuracy. For he had a clearly developed approach, and he governed his thinking by a most exacting law. On any given topic, his research was painstakingly pushed through the same predetermined — and to him scientific — series of steps. He would begin . . . by a conscientious

search for document and information; his first step was always — eliminating prejudice — to establish the ordinary and visible facts. His second step was inductive and interpretative. He would study the phenomena he had noted, analyze them for points of similarity, ponder their probable origins, and thus seek to read into them a message. In a word, he would *induce* into his materials their real character: find the basic idea or ideas of which they were all an expression: squeeze from them their hidden meaning. That done, he had the key. And rigorous, logical thought would then *deduce* from the fundamental force he had discovered all the consequences that it held for the given society. By linking observation, induction, and deduction, in that order, Tocqueville made bold to think that a scientific explanation could be produced.

The trouble was that he overreached himself on the second and third steps. He was too logical, too mathematical, too intellectual — and not sufficiently inquisitive. He relied too much on induction, and then too much on deduction. Once he had found the 'true explanation,' he tended to gather only those facts that fitted his theory. And once his thesis was fairly stated, his preoccupation became the discovery of all its myriad consequences. On these he would ponder and ponder until he was satisfied; and he was rarely satisfied before he had in some fashion related almost every observable phenomenon to his great central Law or primary cause. Sometimes the intensive meditation . . . led him to the most unexpected and illuminating discoveries. On other occasions he could be detected drawing from the same origin the most contradictory conclusions. In any case, the tendency was to over-simplify, to explain too much by too little, to substitute a

universal man for particular men, to fuse all causes and all origins into the single law. The vice of Tocqueville's method . . . was precisely its *unscientific* quality.⁴⁵

Among the effects of this vice, according to Pierson, were a fundamental doctrine that only partly corresponded to reality and an exaggerated emphasis on "the role of religion and of personal morality and of law in the maintenance of good government," reflecting his desire to "champion the individual against . . . the claims of the State and the destructive regimentation of some mass Utopia."⁴⁶ Fixated on equality's negative effects, Pierson contended, Tocqueville's sole concern with preserving freedom and human dignity led him to disregard other values such as physical comfort, wealth, and economic happiness, and material progress. His single-minded focus on liberty, Pierson said, prevented him from recognizing the effects of industrial exploitation, the importance of political parties, the rising abolitionist movement, and the importance of the state government to constitutional balance and juridical experimentation.

Criticism by one of this century's premiere social scientists, Harold Lasswell, and able historians such as Bryce and Pierson, demand careful consideration; in the cases of Lasswell and Bryce, they have been given a detailed response in the work of Vincent Ostrom.⁴⁷ These misreadings of Tocqueville are, I think, symptomatic of a greater failure, ignoring the key to the whole work, the experiment's theoretical and practical base, covenant's, federal liberty and the federal principle. Pierson most obviously errs when he fails to see why Tocqueville emphasized religion, mores, and law as the foundations of good government; Lasswell and Bryce misapprehend Tocqueville's purpose and approach to the "great experiment" in more subtle ways. Their appraisals are based on conceptions of "politics" and "democracy" that are entirely at odds with Tocqueville's understanding of those terms. They distort Tocqueville's "new science of politics," reducing it to a study of

government forms, representation of a mass will; in essence they think in terms of a science of politics in service to the centralized tutelary state, just the democratic reduction of covenantal thinking that Tocqueville feared.

Tocqueville's institutional analysis is central to the new science of politics and, for that reason is a foundation for this book. The detailed arguments of the *Federalist* informed Tocqueville's understanding of the governing instruments of the compound and extended republic, but it was his reading of covenantalism that suggested how these ideas and the institutions they inspired shape the perceptions, understanding, and choices of those participation in the American experiment. In his institutional analysis Tocqueville unites the tools of governance with the habits of heart and mind required to use them. The covenantal or federal principle necessitated shared-rule to achieve self-rule. In such designs, authority is limited, distributed, and shared, according to the constitutional choices of citizens who continue to design institutions for collective action. Studying the forms such institutions take illuminates the general framework of the federal form and reveals the design principles consistent with covenantal thinking. Tocqueville showed that the federal principle offered an alternative to centralization. The importance of federalism and its covenantal base eludes those who envision political authority as necessarily concentrated and search for the power center that directs dependent, peripheral units of government.⁴⁸ Tocqueville embarks in a new direction, giving attention to the framework itself and relating the strength of that framework to the covenantal principles that form its base.

Synopsis

In the first part of this book I lay out Tocqueville's analysis of America's religious and republican origins, the federal form that reflects these covenantal traditions. I compare these ideas and institutions to political liberalism's description of the origin of

rights and our contemporary views of individual autonomy. I present Tocqueville's analysis of individualism and his judgment that by emphasizing autonomy and neglecting our interdependence, we undermine our self-governing capabilities. In chapter one I contrast covenantal approaches to the individual and community with that of political liberalism. I relate Tocqueville's analysis of democracy's tendency toward individualism and materialism to the construction of the individual and community found in political liberalism and consider the evidence supporting Tocqueville's claim that America originated from a different philosophical base. I conclude the chapter by presenting Tocqueville's case that the amalgam of religion and republicanism, which I identify as covenantal thinking, created a view of individual liberty and community good that is essential to self-government.

In Chapter two I elaborate the relationship between federalism and covenantal thinking, drawing from the previous chapter's conclusions that self-government requires a mental stance associated with covenantal thinking. I link covenant-based habits of heart and mind to the federal principle and institutional arrangements that preserve limited, distributed, shared constitutional authority. I begin the chapter by discussing covenantal thinking as it developed from the founding to the period of constitutional framing, focusing on changing notions of God, nature, and the limits (or limitless nature) of human will during this time. Although the development in covenantal thinking may be described by a gradual, subtle shift in perspective, these changes led to a dramatic reconfiguration of political life. Ideational change caused the balance between religious and political authority to be renegotiated, precipitating a reconceptualization of institutional arrangements that bridge the public right and individual liberty. The fear of majority tyranny, especially the tyranny of religious faction, gained prominence as the primary threat *to* liberty during constitutional framing.

While this threat was substantial, Tocqueville argued that it was not the only danger to democracies. Individualism, materialism, tyrannical public opinion, and the desire for uniform laws combined, he showed, to promote the centralization of political authority, destroying the federal form and making way for democratic despotism. He traced this threat to the progressive estrangement of religion and public life.

Religion, Tocqueville thought, played a vital, but indirect role in politics. Any impediment to religion's positive influence on public life hindered democratic processes; legislators hoping to thwart overly ambitious divines must design safeguards to liberty carefully. Paradoxically, policies that destroyed religious authority also created a fertile environment for incomparable intolerance and authoritarianism.

Skepticism, indifference, and relativism encourage habits of thought that ultimately cripple the public arena of debate on which political liberty depends. Rather than freeing our intellectual capacities, disbelief inhibits moral development, threatening the basis of mature political judgment. Instead of promoting political liberty, disbelief favors fanatical secular movements, factions that not only trampled individual rights, but also impeded the role religious virtues might play in preserving them. In this climate, public opinion, not religious dogma, threatened to subvert the mores of self-government.

While the period from founding to constitutional framing is characterized by substantial institutional change, skepticism represents an ideational transformation, not a direct result of constitutionally guaranteed religious freedom. In America, Tocqueville found institutional arrangements that encouraged religion's moral power without increasing the political power of clerics. The separation of church and state permitted religion to inform the moral ground of politics, yet protected freedom of conscience by preventing specific doctrines from being directly imposed on political choices. Toleration

affirmed the voluntary nature of covenant and signified neither a betrayal of religious convictions nor indifference to belief.

Tocqueville's insight into the psychology of freedom and problem of skepticism permitted him to reveal the complexity of the federal principle and the relationship of federal institutions to covenantal thinking. This chapter lays the foundation for chapter three in which I examine the relationship of public opinion to majority tyranny and religious intolerance and chapter four in which I link the indirect political role played by religion's simple ideas to the federal principle and covenantal thinking that might preserve freedom of conscience and, more generally, the basic liberty to consent.

Chapter three's primary aim is to show why Tocqueville so greatly feared that public opinion would become the religion of democracy and how majority opinion might overwhelm the safeguards against majority tyranny in electoral politics and legislative bodies. Although Tocqueville admired the *Federalist* presentation of a multi-tiered framework of limited, distributed, shared authority, this chapter examines why he believed the compound republican design provided inadequate protections against majority and, perhaps, even minority tyranny. The Federalist design, his analysis shows, addressed majority tyranny primarily as a direct result of majority dominance in legislative processes, ignoring possibilities for tyrannical opinion and its indirect effect on law,

Democracy, coupled with skepticism, Tocqueville believed, produced an increasingly self-referential citizenry, comprised of timid, isolated individuals who are at once independent and powerless. I follow his reasoning that under these conditions opinions will become more homogeneous, self-censorship more common, and self-confidence more rare. Ultimately, he contended, the greater truth would be seen in the greater number and this view, coupled with the superior moral claim of a numerical majority, lay *the* groundwork for such institutional failure as majority dominance.

Chapter four continues this argument, focusing on the role religion plays in the political designs for self-government. Tocqueville examined a role for religion in a world of skepticism that supposes neither that Truth as such exists nor that reasoned debate will necessarily lead Truth to prevail. Arguing that reason does not exist independently of culture, Tocqueville suggested that private judgment depends on ideas that transcend the individual intellect. He considered majority opinion and the teachings of revealed religion as potential sources of authority for private as well as public philosophies, concluding that the latter was a *fax* superior safeguard of liberty. Yet even an indirect role for religion in political activity raises important concerns about tolerance and freedom of conscience. In the chapters that follow, I examine the tension assumed to inhere in the relationship between faith and liberty.

Chapter five completes the book's first part by linking civic obligations to political participation, covenantal relationships, and federal institutions. I begin by discussing Tocqueville's belief that self-interest is an insufficient basis for self-government, a conclusion that follows from the propositions discussed in the preceding two chapters. Federal institutions require the interest and participation of vigilant citizens whose pursuit of their private interests, in Madison's words, acts as a "sentinel over the public right"⁴⁹. Tocqueville not only showed why such participation might fail to materialize, but also indicated that some forms of participation may enhance, not limit the power of factions.

Tocqueville contended that citizens are only moved to address some significant public problems by a sense of justice that transcends enlightened interest. Such a moral foundation relies, he believed, on the teachings of revealed religion. Religious tenets, as Tocqueville described them, promoted a disinterested concern for those who lacked the resources to affect our interests. Chapter five shows that skepticism and indifference harm self-governing polities not only through indirect paths leading to intolerance and tyrannical

public opinion, but also by directly effecting political participation. Disbelief, Tocqueville argued, extinguishes the motive for the kind of participation implied by the concept of federal liberty. Disbelief, in summary, is associated with the loss of covenantal principles and the deterioration of federal institutions, including safeguards to various forms of dominance and tyranny. In contrast, a people could place some beliefs beyond discussion, Tocqueville concluded, not only enhancing its tolerance for political debate, but also making essential forms of participation possible.

Tocqueville believed we had much to gain and much less to lose by permitting fixed ideas about God to play an indirect role in politics. Such a statement can be persuasive today only if beliefs and institutions are such that they also decrease opportunities for imposing dogma in an undeniably heterogeneous world. Neither the tension between consent and constraint nor demands of faith and desires of liberty can be permanently resolved. Tocqueville's analysis teaches that they may be bridged through the habits learned by leading a life of public engagement, allowing religious ideas and political experience to be reconciled in the minds of mature political actors. In this chapter I consider the "art of association" and how it facilitates the development of such private and public philosophies. I argue that federal principles, federal liberty, and covenantal thinking could provide such a moral firmament, without waging war on the demands of toleration and freedom of conscience. I suggest that these are principles and institutional forms that can preserve cultural heterogeneity and religious diversity. To conclude this chapter I focus specifically on a covenantal understanding of individual and group rights, I link the art of association with federal liberty and its way of defining rights as citizens' collective capacities. I argue that the federal principle is based on a conception of right that offers an alternative to the dichotomy of state and individual right. This chapter concludes by presenting common property rights, or the "commons," understood in terms of covenants,

federal liberty, and the federal principle, as an alternative theoretical basis for discussing community or group rights.

The book's second part contrasts covenantal and liberal theory by applying these ideas to the contemporary discussion of gender equity and multiculturalism. Chapter six applies covenantal and liberal theory to issues of gender difference, raising theoretical questions about the nature of citizenship, the relationship of private and public life, and the role (if any) biological difference may play in our understanding of individual rights in community.

Several puzzles emerge from the liberal models of citizen and community, assent and authority. Nowhere do the problems of this theoretical view of the individual become more clear than in an analysis of gender. As many contemporary policy initiatives attest, these theoretical puzzles show up as practical conflicts, signaling tensions between private and public domains, and between liberty and equality. The theoretical source of liberalism's puzzles is often the contemporary construction of an abstract "individual" whose interests are aggregated and coordinated to form community. The abstract actors playing a role in these puzzles bear rights and pursue interests, but have neither transcendent meaning nor physical bodies. Yet, the real citizen is not an abstraction. As an issue in contemporary politics, gender is not an artifact of our wills to be handled by increasingly clever institutional designs. In chapter six I explore Tocqueville's ideas about gender difference and family structure not only to look at the important equity concerns raised by these issues, but also to show how covenantal theory offers a different approach to these issues.

In chapter seven I suggest how the federal principle may be an appropriate means for understanding and addressing the claims that cultural groups make against larger government units. I use covenantal thinking to assess contemporary theoretical efforts to

deal with the problem of political integration. Charles Taylor, Amy Gutman, and Will Kymlicka have all engaged in a serious re-examination of liberal assumptions about culture and individual rights, although each approaches the subject of multiculturalism in different ways. Arguing either for communitarian approaches to rights (Taylor and Gutman) or that liberal theory can include culture as a primary good (Kymlicka), these scholars challenge the theoretical framework of political liberalism, particularly as expressed by John Rawls.

Through a Tocquevillean framework this chapter suggests an alternative to these methods of rehabilitating or abandoning liberal theory. In covenantal theory, individual good is experienced not in isolation, but through community. Tocqueville suggested that covenantal communities are the medium through which individuals achieve their private aims. Tocqueville also demonstrated that communities exist not merely as distributors of rights, but as entities with claims against the individuals that comprise them. This observation raises a particular challenge to liberal assumptions that government cannot articulate rights to citizens in a collective capacity. Madison and Hamilton objected to this latter institutional design, arguing that no collective could mediate the relationship between citizen and government. To overcome a formula that such astute practitioners of governance believed would lead to tyranny, covenantal theory must describe relationships among citizens within collectives that are characterized by liberty. While communities may be the medium for achieving our individual aims, they nevertheless may not subordinate those aims to such notions as a general will or an intangible common good. I approach the dilemma posed by advocates of individualism and communitarianism by assessing the actual means of animating the general or collective response, finding in federal principles an alternative mode of thinking about collective choice and individual liberty.

In the concluding chapter I consider how we might approach institutional analysis generally through covenantal theory. My discussion takes its heading from Hamilton's query, whether human societies "are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force." The institutional arrangements for a mentality of experimentation and innovation may require a clearer moral compass than deontological liberalism supposes. This chapter explores how the present generation balances this need against other claims important claims, including individual right.

¹ Alexis de Tocqueville. [1830-1835] 1945. *Democracy in America Vol. I and 2*, 1945. Henry Reeves, trans. New York: Vintage, orig. pub. 1830-1835, 1:8-14. All citations are to the Reeves translation unless otherwise noted.

² Ibid. 15 and Tocqueville, *Oeuvres Complete: Correspondence Anglaise, Correspondance entre Alexis De Tocqueville et John Stuart Mill*, "Letter to J. S. Mill, 19 September, 1836." ed. J. P. Mayer Paris: Gallimard- V. 6: pt. 2, p. 315.

³ *Democracy* 1:15

⁴ Tocqueville wrote from Paris 14 November 1839 (*Oeuvres*, loc. cit. 327) promising Mill a copy of the work, *Influence de Vegalite sur les idées et les sentiments des hommes*. The work appeared in 1840 and is translated as *The Influence of Democratic Ideas and Feelings on Political Society*.

⁵ Ibid.

⁶ *Democracy* 1: 48

⁷ Alexis de Tocqueville. [1858] 1955. *The Old Regime and the French Revolution*, Garden City, N.Y.: Doubleday Anchor Books. 254.

⁸ Tocqueville, *Democracy*, 2: 336.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid. 2: 337

¹³ Ibid. 2: 336-337

¹⁴ Ibid. 2: 337

¹⁵ Ibid. 2: 352

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid. 1:26

¹⁹ *Oeuvres Complete: Correspondance D'Alexis de Tocqueville et de Louis de Kergorlay*, "Letter to Louis de Kergorlay, 26 December, 1836." ed. J. P. Mayer Paris: Gallimard. Vol. 13, 1: 431.

²⁰ *Democracy* 1: 7

²¹ *Oeuvres Complete*. 13, 1: 374; Alexis de Tocqueville. 1985. *Selected Letters on Politics and Society*. Roger Boesche, ed.; James Toupin and Roger Boesche, trans. Berkeley: University of California Press. 95.

²² *Democracy* 1: 7

²³ In another sense, covenants are not at all new, but represent one of three basic ways of organizing politics and thinking about humanity's purpose and human relationships found in the history of the ancient Near East to the present day. See Daniel J. Elazar. 1995. *Covenant & Polity in Biblical Israel: Biblical Foundations and Jewish Expressions, Volume 1, Of the Covenant Tradition in Politics*. New Brunswick: Transaction Publishers.

²⁴ *Democracy* 1: 48

²⁵ *Ibid.* 1: 59

²⁶ Contemporary scholarship underscores the importance of the Calvinist and Puritan covenants and compacts that under gird the constitutional founding of the Federalists. See, Donald S. Lutz (1988. *The Origins of American Constitutionalism*. Baton Rouge: Louisiana State University Press. 25) concerning the transfiguration of covenant to compacts to constitutions.

²⁷ *Democracy* 1:29

²⁸ Alexis de Tocqueville. [1830-35] 1969. *Democracy in America*, J.P. Mayer ed., George Lawrence trans. Garden City: Doubleday & Company, 47. In this case, Lawrence's translation is more accurate than that of Reeves which may be found at 1: 45 to say: "Under their hand, political principles, laws, and human institutions seem malleable, capable of being shaped and combined at will. As they go forward, the barriers which imprisoned society and behind which they were born are lowered; old opinions, which for centuries had been controlling the world, vanish; a course almost without limits, a field without horizon, is revealed; the human spirit rushes forward and traverses them in every direction. But having reached the limits of the political world, the human spirit stops of itself; in fear it relinquishes the need of exploration; it even abstains from lifting the veil of the sanctuary; it bows with respect before truths which it accepts without discussion."

²⁹ *Ibid.*

³⁰ *Ibid.* 1: 73-74. Although the George Lawrence translation suggests otherwise (Alexis de Tocqueville. 1969. *Democracy in America*, J.P. Mayer ed., George Lawrence, trans. Garden City: Doubleday & Company. 46) Tocqueville quotes accurately Winthrop's "Speech to the General Court, July 3, 1645." The entire text may be found in Perry Miller and Thomas H. Johnson, ed. 1963. *The Puritans: A Sourcebook of their Writings*. New York: Harper & Row. 1: 205-207.

³¹ *Democracy* 1: 310

³² *Ibid.* 1: 62

³³ *Ibid.* 1: 316

³⁴ *Ibid.* 1: 310

³⁵ Ibid.

³⁶ Ibid. 2: 351-352

³⁷ Ibid.

³⁸ Ibid. 2: 21

³⁹ Daniel Elazar (1979. "The Role of Federalism in Political Integration," *Federalism and Political Integration*. Daniel Elazar, ed. Ramat Gan, Israel: Turtledove Publishing. 15) describes the federal form as a matrix characterized by a diffusion of power for the purposes of liberty and a uniting of powers for the energetic pursuit of common ends.

⁴⁰ Alexis de Tocqueville. 1985. "To Louis de Kergorlay, Yonkers June 29, 1831, 20 miles from New York," *Selected Letters on Politics and Society*. Roger Boesche, ed.; James Toupin and Roger Boesche, trans. Berkeley: University of California Press. 51; *Oeuvres Complete*. 13, 1: 230

⁴¹ Ibid 1: 27

⁴² Harold Lasswell and Abraham Kaplan. 1950. *Power and Society: A Framework for Political Inquiry*. New Haven: Yale University Press. x.

⁴³ William Hennis, "Tocqueville's Perspective: Democracy in America: In search of the "new science of politics," *Interpretations: A Journal of Political Philosophy*, 16:1 (fall 1988), 61-86. p. 85.

⁴⁴ James Bryce. [1888] 1995. *The American Commonwealth*. Indianapolis: Liberty Fund, Liberty Classics. 1: 3-4.

⁴⁵ George Wilson Pierson. 1959. *Tocqueville in America*. Garden City: Anchor Doubleday. 461-462.

⁴⁶ Ibid. 463.

⁴⁷ Vincent Ostrom. 1997. *The Meaning of Democracy and the Vulnerabilities of Democracies: A Response to Tocqueville's Challenge*. Ann Arbor: University of Michigan Press.

⁴⁸ Daniel Elazar (op. cit. and 1997. *The Covenant Tradition in Politics, 3: Covenant and Constitutionalism*. New Brunswick: Transaction Publishers. See especially the introduction and chapters 4 and 5) discusses the tendency of political scientists to view political power in this "center-periphery" modality.

⁴⁹ Alexander Hamilton, John Jay and James Madison. [1788] n.d. *The Federalist*. (Number 51) New York: The Modern Library. 337