

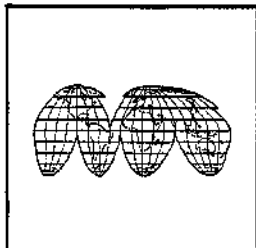
# Workshop in Political Theory and Policy Analysis

513 N. Park

Indiana University

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*Colloquium Presentation*  
*April 21, 1997*



Learning, sharing, and working  
with diverse languages in  
communicating and using  
knowledge.

*The Workshop in Political Theory and Policy Analysis combines teaching, research, and related activities where faculty, visiting scholars, and students have opportunities to participate in productive scholarship. The term "workshop" is used to emphasize a conviction that research skills are best acquired where students and faculty, working as apprentices and journeymen, participate in the organization and conduct of research.*

*Professor Barbara Allen, Department of Political Science, Carleton College, Northfield, MN, will be the guest speaker for the Workshop Colloquium on Monday, April 21, 1997. Her presentation is entitled "Federal Liberty and the Art of Association in Tocqueville's Analysis." An abstract of her paper is provided below.*

Tocqueville's *Democracy* chronicles the American experiment in self-government in a way that speaks to current scholarship in institutional analysis and development. Through his analysis we learn how institutional change can effect culture. All of the causes that contribute to maintaining a democratic republic in the United States, Tocqueville argued, can be reduced to three points: "1. The peculiar and accidental situation in which Providence has placed the Americans. 2. The laws. 3. The manners and customs of the people."

In the United States, Tocqueville, asserted, the framework of the federal government could not be understood without knowing its history, particularly its relationship to the intermediate and antecedent institutions that comprise it.

Political practice determined the relationship of the states to the Union and the status of citizens within each arena of political action. Such political activity ultimately revealed the citizens' views of liberty, equality, duty, and right, as well as the institutions they had designed according to these beliefs.

While voluntary associations played a vital role in America, in other political circumstances self-organization was not such a salutary part of political life. Tocqueville believed that self-organization is a ubiquitous human response and is not necessarily indicative of sustained self-government. Private interests could be a sentinel of public right as James Madison intended, but self-interest could also promote factions, as he feared. Not all associations nurture an understanding of self-interest that is proper to socially responsible public engagement. The two orientations toward equality that Tocqueville identified with democracy produced two types of self-organized institutions: Those with a democratic organizational structure and self-governing intentions and those whose structure was hierarchical and purpose was domination.

Copies of her paper are available by calling the above telephone number. Colloquium sessions begin at 12 noon and adjourn promptly at 1:30 p.m. You are welcome to bring your lunch. Coffee is provided free of charge and soft drinks are available. We hope you will be able to join us!

## **Federal Liberty and the Art of Association in Tocqueville's Analysis**

Barbara Allen  
Carleton College

Paper to be presented at the Workshop Colloquium, April 21, 1997  
Indiana University Workshop in Political Theory and Policy Analysis  
Bloomington, Indiana

## **Federal Liberty and the Art of Association in Tocqueville's Analysis**

Tocqueville placed the subject of American democracy in the context of historical events leading to greater equality of social conditions accompanied by a belief that all people share essential qualities that reveal their equal moral worth. As a consequence, a new political ideal, democracy, evolved, reflecting these changes in the language of equal political rights. These developments were complex and not entirely positive. As one who knew the revolutionary excesses of the French Revolution, Tocqueville learned that equality had two faces. Beneath the obviously positive results of increasing political equality lay hidden another popular way of thinking and acting as equals that promoted extreme individualism, excessive materialism, and a preference for order and uniformity over justice. While one view of equal right promised greater liberty, this second interpretation of equality threatened liberty's very foundation.

Tocqueville presents the reader with this provocative observation in the opening pages of *Democracy* by contrasting equality's various consequences. Equality diffused a sincere love of law and sense of virtue throughout society's ranks. Farmers as well as philosophers could recognize that obligation and right are inseparable and design "proper institutions" that reminded citizens that their civil liberty served a social purpose. In this view of equality, individual right enabled and obliged collective action. The rights to take part in public deliberation and action in order to design proper institutions — the basic activities of self-government — were the subject of equality.

These social purposes did not justify public action that disregarded individual rights to pursue and revise private aims. Institutions that treated rights as entailing social obligations reflected the interdependence of individual and society, not the negation of individual claims by social demands. Proper institutions in the age of equality drew on the normative claim that persons are not means, but ends with equal moral standing. They

also incorporated the practical observation that individuals generally know best what contributes to their private good. While persons were envisioned as moral equals their personal aims or ends were not necessarily seen as equally worthy. Ultimately, the public welfare was inseparable from the individual's good and each had to be valued in individual and collective decision making.

Private welfare depends on sustaining the collectively held institutions that create and protect the private right. People could not be treated as moral equals if institutional farmers viewed them as experiencing their equality in isolation. The norm of equality must transcend the idea of autonomous equals to address the collective problem of evaluating different, perhaps conflicting personal aims and claims in a social world. Proper institutions recognized this tension and provided means for aggregating and prioritizing individual aims, and balancing individual and social claims. People required equal rights to pursue their aims and act on their equal obligation to examine their ideas and actions as part of a social body. Equality motivated and necessitated public expressions of individual right to care for the social body. If democratic institutions did not reflect this view of equality, Tocqueville argued, the individuals of the social body would not long govern themselves.

In contrast to understanding equal right as the means for participating in the community's life, democrats could disregard public life in self-focused preoccupation. "Equal," in this case, conjured an image of an autonomous being who related to other such beings only when self-interest immediately and obviously demanded. For these democrats, existence conferred a right, polity protected us from equals whose exercise of right could injure us. Our only political responsibilities were not to hinder others and to behave in ways that maintained the authority of the sovereign arbiter of right who protected one and all.

This view of equality fit absolute government, but not a self-governing society. When private right was severed from public purpose, as Tocqueville showed, citizens would become increasingly isolated, taking a narrow view of their social duties. Where there is no public life, only government rises above "the universal depression,"<sup>11</sup> Tocqueville argued. Tocqueville explained that a decline in public life was associated with increasing government paternalism. The tutelary state and death of public life were the effect of a single cause, an individualistic conception of equality.

Increasing social equality seemed to advance a view of right that was as identified with claims for equal material conditions as it was divorced from civic responsibility. Those "whose object it is to materialize" humanity, Tocqueville believed, asserted that where need exists, right follows, heralding a type of equality that destroyed liberty as it promised to satiate an increasing array of individual desires. As a consequence, the concepts of right and responsibility, Tocqueville feared, would recede to a background of abstract ideas that had little bearing on political life. Eventually, he believed, equality would be applied to ideas themselves, fostering relativism, skepticism, and cynicism. As the ideas necessary to self-government were ground to "intellectual dust," Tocqueville predicted democracy's denouement as "a new physiognomy of servitude," democratic despotism. When equality took this course, its institutions might be called democratic, Tocqueville maintained, but they would not be self-governing.

Tocqueville found the march toward equal social conditions, moral claims, and political rights so compelling that he called it "Providential." Yet Providence had not determined equality's political denouement; either self-government or democratic despotism were plausible consequences of increasing equality. Thoughtful critics of democracy could influence its course. Their task would be

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.<sup>1</sup>

The challenge posed by increasing equality demanded "A new science of politics . . . for a new world." <sup>2</sup> Tocqueville identified a new approach to political relationships and a novel understanding of liberty and equality at work in what he believed was a "great experiment,"<sup>11</sup> an attempt "to construct society upon a new basis."<sup>3</sup> In America, equality had been tempered by the "sacred fire of liberty," forging individual rights with an explicit social dimension.<sup>4</sup> By studying the institutions that reflected these ideas, Tocqueville would offer a knowledge of statecraft for his generation and perhaps, for the variety of circumstances facing democracies today.

### **Institutional Analysis and the New Science of Politics**

Tocqueville's *Democracy* chronicles this experiment in a way that speaks to current scholarship in institutional analysis and development. Through his analysis we learn how institutional change can effect custom, habit, and, eventually, culture. We also learn of the limitations placed on institutional development by history and culture. All of the causes that contribute to maintaining a democratic republic in the United States, Tocqueville argued, can be reduced to three points:" 1. The peculiar and accidental situation in which Providence has placed the Americans. 2. The laws. 3. The manners and customs of the people."<sup>5</sup> To study democracy in America we must look at the environmental circumstances of colonization, the history, culture, and political ideas of the colonists, as well as the laws they established. No category of analysis stood alone. To depict the effect of ideas, history, and circumstances on the hopes and achievements of political actors, Tocqueville compared the legislator to a ship's captain.

When, after many efforts, a legislator succeeds in exercising an indirect influence upon the destiny of nations, his genius is lauded by mankind, while, in point of fact, the geographical position of the country, which he is unable to change, a social condition which arose without his cooperation, customs and opinions which he cannot trace to their source, and an origin with which he is unacquainted exercise so irresistible an influence over the courses of society that he is himself borne away by the current after an ineffectual resistance. Like the navigator, he may direct the vessel which bears him, but he can neither change its structure, nor raise the winds, nor lull the waters that swell beneath him.<sup>6</sup>

Law is conceived and implemented in circumstances that define as well as necessitate its authority. Transcending the influence of immediate circumstances, enduring practices and anterior events place law on a historical trajectory that shapes legislative results. History, belief, culture, and circumstance determine the meaning and effectiveness of particular laws and ultimately society's evolving governing framework.

In the United States, Tocqueville asserted, the framework of the federal government could not be understood without knowing its history, particularly its relationship to the intermediate and antecedent institutions that comprise it. Understanding the organization of the United States depended on knowing the operation, origin, and meaning of the township, being familiar with the art of association, and appreciating the role colonial political ideas played in its institutional development. Even the United States Constitution is incomplete, Tocqueville showed. It must be studied in the context of the state constitutions on which it depended and the earlier covenants from which they developed.<sup>7</sup> Finally, the ideas that informed the use Tocqueville's contemporaries made of their federal framework also must be joined to these historical and cultural foundations to interpret this institution correctly.

The federal framework, Tocqueville perceived, depended on legal fictions made real only through their actual use. The Union, he said was an ideal nation, existing only in the mind.<sup>8</sup> Political practice determined the relationship of the states to the Union and the status of citizens within each arena of political action. Such political activity ultimately

revealed the citizens' views of liberty, equality, duty, and right, as well as the institutions they had designed according to these beliefs. In the daily practice of self-government, citizens enacted these ideas through voluntary associations, intermediate institutions that enabled the federal framework to promote self-government by presenting means and opportunities for citizen action.

While voluntary associations played this vital role in America, in other political circumstances self-organization was not such a salutary part of political life. Tocqueville believed that self-organization is a ubiquitous human response and is not necessarily indicative of sustained self-government. Private interests could be a sentinel of public right as James Madison intended, but self-interest could also promote factions, as he feared. Not all associations nurture an understanding of self-interest that is proper to socially responsible public engagement. The two orientations toward equality that Tocqueville identified with democracy produced two types of self-organized institutions: those with a democratic organizational structure and self-governing intentions and those whose structure was hierarchical and purpose was domination.

The confluence of institutions, circumstances, and ideas in early America enabled the citizens that Tocqueville observed in 19th century America to practice an art of association that seemed uniquely suited to self-government. Civic engagement in America reflected the way in which citizens used their governing framework of limited, distributed, and shared powers. This framework, represented as federalism, developed from founding covenants and compacts based on a view of equality in which all individual rights have a social dimension. Tocqueville knew this way of thinking as "federal liberty." His institutional analysis showed that the voluntary associations of a self-governing America depended on its federal framework and federal liberty.



### **Institutions and Ideas as the Foundations of Voluntary Associations**

Tocqueville believed that people naturally organized themselves and created institutions. A right of association followed logically from a right to preserve oneself; common action appeared to Tocqueville as "inalienable in its nature as the right of personal liberty."<sup>9</sup> Indeed common action gave meaning and substance to the exercise of personal liberty. From a continuous process of collective action, institutional artisans established the permanent associations of township and city, turning their natural freedom into federal liberty.

#### **Federal Liberty**

Tocqueville linked the art of association practiced by 19th century Americans to the idea of federal liberty described in 1645 by John Winthrop, Governor of Connecticut and a founder of the Massachusetts colonies. Quoting Winthrop at length, Tocqueville showed that "federal liberty" emphasizes the relationship of individual right to moral law.

Winthrop associated federal liberty with our equal duty to tend the body politic. This duty derived from a particular understanding of "public" and "community," as well as the meaning and origin of authority in both.

"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."<sup>10</sup>

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.

Covenants, not constitutions, established a people; the moral law grounding covenants was assumed to be the foundation of the governing institutions and constitutions that followed. Liberty, in this sense, is circumscribed not only by positive law, but also by the antecedent moral law recognized in covenants. In this view, citizens cannot be considered wholly autonomous when they exercise their rights, nor is government's primary function to promote such and individualistic view of private rights. Private rights are not wholly private because communities are not mere aggregations from which the course of an individual's life could simply be subtracted. Even where civil law does not pronounce a limit on a citizen's liberty, the law of their covenant gives only the right to do, as Winthrop says, "what is right, good, and honest." Our choices are not determined, nor is the right, the good, and the honest course determined by private inquiry; the good of the individual is realized in society. The liberty to choose the good course necessitates the means for individuals to inquired of its meaning in public. Civil associations provide the public arena for this discovery; federal liberty motivates our

inquiry, and constitutionally guaranteed rights give us the means to participate in the community's life.

Many Puritan colonies held Winthrop's view that a covenant with God had produced a moral and spiritual community. Likening their position in the new world to a people in exodus in search of a New Zion, these communities assumed the position of the Old Testament covenant makers, Moses and Abraham. In terms of the religiously related political upheaval of early 17th century England, propounding a covenant between mortal beings and God was a bold move. This step, taken primarily by the Presbyterian faction of the Puritans, announced a form of authority that was independent and prior to the civil sovereign. It furthermore claimed this authority for the community as a whole, implying not only a new basis for unifying individuals into a "people," but also requiring a new organizational framework to reflect this conception. Some governing frameworks based on this idea were republican and representative, others used direct democracy; none, however, reflected the individualist assumptions of modern liberalism.

Not all Puritans based civil order on agreements to which God was a party. For some, the idea that God had articulated a promise like those recorded in Scripture to a 17th century group was preposterous or even blasphemous. These Puritans, known mostly as Independents, also assumed the mantle of a covenanting community, but their covenant was among themselves. God, known through faith, not revelation, was a witness and perhaps a guarantor, but not a party to their agreement. This form of covenanting emphasized individual faith and reflection instead of a community's election as God's people. Where God's election of a chosen people granted a community extraordinary, even metaphysical authority by fiat, a vision of God as witness, in contrast, made human fallibility and frailty in the exercise of human authority the prominent feature of human institutions. Fallible people could neither judge the interests of others accurately, nor trust

that their conception of their individual good would serve for a lifetime. Neither private nor public good could be determined once and for all. Just societies, in this view, required federal liberty to promote participation in the on-going discovery of private and public good.

In general, the Puritans understood themselves as communities on an "errand for God" in the wilderness. The content of this errand ranged from a vision of an exodus community, to a community in exile, to a community that was simply an outpost of the reformation, guarding the flame of faith until a more hospitable England made their return safe. These differences effected developing institutions and resulted in distinct institutional designs. Tocqueville's study of the New England's colonial institutions revealed that covenants informed by a conception of federal liberty preceded the colonists' frame of government, constitutions, and other less encompassing political agreements. All of these secular agreements were informed by a conception of federal liberty that all Puritan colonists shared. Political authority did, as Winthrop claimed, have federal liberty as its end and object. The federal framework evolved from these early agreements as the colonies developed practices and institutions based on federal liberty.

### **The Federal Form of Government**

The frame and constitutional form of permanent associations, Tocqueville showed, determined the kind of opportunities for collective action that were available after governments were instituted. Ideas and circumstances influenced the design of initial permanent associations, but once they were established, the governing framework they created joined ideas and circumstances in explaining how American democracy worked.

Tocqueville began examining the federal form of the Union by analyzing the origin and mechanics of the township. So natural is this form of association, Tocqueville said, that it seems to constitute itself wherever a number of people are collected. The township

is "coeval with humanity" and appears "to come directly from the hand of God."<sup>11</sup> He portrayed the social networks forming these permanent associations as ubiquitous, suggesting that their existence alone is insufficient evidence of self-government. New England townships were associated with sustained self-government. These townships, Tocqueville maintained, lay the foundation for American federalism and became the basis for the compound and extended republic established by the *Federalist* as the proper framework for American self-government.

Contemporary scholarship supports Tocqueville's conclusion. The New England township was the first type of secular political unit of government created by compacts and constitutions derived from the covenants of early settlement. The practices and institutions defined in these agreements were the basis for later combinations that linked various political bodies as a federation.<sup>12</sup> Tocqueville illustrated this first point with the Plymouth Colony and its Mayflower Compact (1620)<sup>13</sup> This political covenant called on God as a witness, explained why the agreement to be made was necessary, created a people from those who authorized the agreement, created a new institution — a "Civil Body Politick" — and defined the type of people the agreement would help them become.<sup>14</sup> Political scientist Donald Lutz's detailed study of these early covenants and compacts supports and extends Tocqueville's observations. Lutz argues that if the Mayflower Compact had a description of the institutions to be used for collective decision making, it would be a complete document on which a political community could be founded.<sup>15</sup> He demonstrates that the first such modern constitution, the Pilgrim Code of Law, approved in 1636, compiled and organized all the political practices and institutions in use in the Plymouth colony since 1620, including Mayflower Compact.

Lutz's research also verifies Tocqueville's perception that compacts not only founded communities, but were also the form used to knit settlements together.<sup>16</sup>

Federalism, Lutz shows, was evident in the New England Confederation of 1643, in which the colonies of Massachusetts, Plymouth, Connecticut, and New Haven, each comprised of its several towns that retained their governments, created and approved twelve articles to govern their common affairs. A federal framework developed as a result of such agreements. The colonists did not set out to implement a federal design; their choice of local independence and use of federal liberty necessitated it.<sup>17</sup>

Dating the constitution of New England townships by the Connecticut Code of Laws (1650), Tocqueville found in the Connecticut colony a paradigm for constitutional framing that reflected federal liberty in its laws and adopted a federal design to retain township governments. "In the Laws of Connecticut," Tocqueville said, "we find the germ and gradual development of the township independence which is the life and mainspring of American liberty at the present day."<sup>18</sup> Among the important feature of township government that Tocqueville found in the Connecticut Code were the mode of election responsibilities and rights of citizens, and duties and expertise of governing officials.

The Connecticut colony's electoral body consisted of the citizens assembled, often voting publicly by a show of hands rather than by secret ballot. This manner of assembly and method of voting emphasized the public and communal nature of governing. The purpose of the penal laws, to maintain the "orderly conduct and good morals" of the colony, also evinced these ideas.<sup>19</sup> Borrowing legal provisions from Exodus, Leviticus and Deuteronomy, for this purpose, the law "invaded the domain of conscience," with some civil punishments overreaching the bounds of religious toleration.<sup>20</sup> The most salient feature of these laws, Tocqueville argued, was not their zeal, however, but that these measures were self-imposed. Tocqueville did not doubt that these laws reflected human imperfection and in some cases, he said, even discredited reason, but they were freely

voted and on the whole, represented "a body of political laws" written in the 17th century, that were "still in advance of the liberties of [his] age."<sup>21</sup> In 17th century New England "the intervention of the people in public affairs, the free voting of taxes, the responsibility of the agents of power, personal liberty, and trial by jury" were recognized and established consensually. In the Connecticut colony and in New England, generally, Tocqueville learned

The condition of the poor was provided for; strict measures were taken for the maintenance of roads, and surveyors were appointed to attend to them; records were established in every town, in which the results of public deliberations and the births, deaths, and marriages of the citizens were entered; clerks were directed to keep these records; officers were appointed to administer the properties having no claimants, and others to determine the boundaries of inherited lands, and still others whose principle functions were to maintain public order in the community.<sup>22</sup>

Public goods were provided in a context that assumed individual responsibility. As a view of equality that considered the community's welfare, federal liberty permitted the law to enter into details of government and public service without diminishing individual initiative.

Tocqueville attributed the success of local government to the ideas of legislators as well as citizens. He found the legislator's knowledge of government drew on theories well advanced of Tocqueville's European contemporaries. Federal liberty informed the activities of New England's citizen-officials who held a "much loftier and more comprehensive" idea of the "duties of society toward its members," than those who governed France. The use of government instrumentalities in New England differed little from collective action outside the channels of codes and laws. These permanent associations differed little in their actual performance from the voluntary associations Tocqueville observed two hundred years later.

His contemporaries, Tocqueville contended understood the principles on which modern constitutions are based far less than the 17th century New Englander. Tocqueville

concluded from his assessment of these laws that "the boldest theories of the human mind were reduced to practice by a community so humble that not a statesman [in Europe] condescended to attend to it; and a system of legislation without precedent was produced offhand by the natural originality of men's imaginations."<sup>23</sup>

These theories were employed in the compacts that created state constitutions, and ultimately joined the states in a federal union. The people continued to govern the whole political system as the federal framework developed.<sup>24</sup> Municipal government was a logical and practical necessity for a self-governing people, Tocqueville asserted. Federalism developed by transferring the spirit of federal liberty from localities, to the states, and, finally, from the states to the Union. Compacts joined various governments, leaving existing governments intact. As Tocqueville describes this evolution, townships created larger communities, the states, in a manner analogous to the actions of individuals who establish communities with their equals. In a similar the manner, states established their Union. In each case, the individual person, township or state, retained rights, but incurred obligations, by enlarging the sphere in which liberty would be used. As Tocqueville explained, the Union "had its origin in the townships... they did not receive their powers from the central authority, but, on the contrary, they gave up a portion of their independence to the state."<sup>25</sup> For this reason townships were seldom subordinated to their state or to the Union. The citizenry believed that the state had no right to interfere in local affairs. When a state called on citizens to support state projects, citizens viewed themselves as the beneficiaries and providers for state-wide needs. In examples of state-wide public works townships were obliged to provide money and supplies; where uniform police regulation was warranted, townships also enforced the law. These were obligations, Tocqueville observed, that could be considered as similar to the obligations of individual citizens to take part in collective action. The township retained its independent



right through its administration of state mandates. Such rights reflect the federal liberty of earlier covenants. Neither township nor citizen was completely free, but obligations were freely assumed at each level of political action. Tocqueville's words for the individual operating in the context of federal liberty fit the township as well.

He obeys society, not because he is inferior to those who conduct it or because he is less capable than any other of governing himself, but because he acknowledges the utility of an association of his fellow men and he know that no such association can exist without a regulating force. He is subject in all that concerns the duties of citizens to each other; he is free, and responsible to God alone, for all that concerns himself Hence arises the maxim, that everyone is the best and sole judge of his own private interests, and that society has no right to control a man's actions unless they are prejudicial to the common weal or unless the common weal demands his help.<sup>26</sup>

Tocqueville viewed the resulting federal framework as virtually self-regulating. In the federal framework, he said, "power exists, but its representative is nowhere to be seen."<sup>27</sup> In this setting, people felt "an equal love and respect for the laws of which they consider themselves the authors," considering the authority of government "as necessary, and not divine."<sup>28</sup> The *Constitution or Form of Government for the Commonwealth of Massachusetts* (1780 and 1918-19 revisions discussed) illustrates how covenants were brought into state constitutions, reflecting federal liberty and creating a federal form.

#### **An Illustration of Federal Liberty and Federalism in Constitutional Development**

Early covenants in what would become the Commonwealth of Massachusetts established political bodies from the agreements of individual members with each other and with the body as a whole.<sup>29</sup> To the present day, the Massachusetts Constitution states that the purpose of its frame of government is

to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights and the blessings of life.<sup>30</sup>

Their 20th century constitution also left unchanged the 1780 account of establishing a political body by covenant and compact.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.<sup>31</sup>

According to this charge, the people, in framing their constitution must provide an equitable mode of making, interpreting, and executing laws, so that every person "may, at all times, find his security in them."<sup>32</sup> The preamble continues, framing liberty and equality in terms of the individual's power of constitutional choice and the constraint of their choice by the laws of the "Great Legislator of the universe."<sup>33</sup> Their deliberate act of "entering into an original, explicit and solemn compact with each other" contrasted with governments formed by "fraud, violence, or surprise."<sup>34</sup> They mutually agreed to form a free, sovereign and independent body politic and implored God for "direction in so interesting a design."<sup>35</sup>

Federal liberty is related directly to transcendent belief in the constitution's second and third articles. After article one describes humanity as, by nature, free and equal, with the inalienable right to defend life and liberty, article two explains the consequent "right and duty of all... in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the Universe."<sup>36</sup> The content and manner of worship must be freely chosen, as Winthrop's presentation of federal liberty had indicated. Article two concludes by leaving assent to the dictates of individual conscience.

No law could be passed prohibiting the free exercise of religion, but religion still had a role in politics. Article three begins by claiming that "the public worship of God and instruction in piety, religion, and morality, promote the happiness and prosperity of a people and the security of a republican government."<sup>37</sup> In the 18th and 20th century constitutions, religious instruction is presented along with secular education as a public concern vital to self-government. In 1780, the state legislature could authorize various body politics or religious societies, including towns, parishes, and precincts, to pay for

instruction in the public worship. Public funds could be used for "the support and maintenance of public Protestant teachers of piety, religion, and morality," if no voluntary provisions had been made. The people also invested their legislature "with the authority to enjoin" them to attend such public religious instruction, provided that each town, parish, or precinct elected their public teachers and contracted to support them. A person could require that she pay and attend only the instruction of her denomination, if instruction and a religious community were available, otherwise funds simply went to the parish or precinct teacher. Every Christian of any denomination enjoyed the equal protection of the laws in religious matters; equality in this case meant the free choice of a Christian sect.

Two hundred years later, few of these provisions have changed; religious societies, but not the legislature retain the powers of raising funds and electing religious teachers. Today members of religious societies are assumed to be partners in common action and must dissolve their church affiliation publicly if they wished not to be party to the church's contracts. In the 20th century the 1780's rationale for publicly funded religious instruction has been applied to constitutional provisions for funding secular public education. Instead of supporting religious teachers and churches, local taxes now pay for secular public schools. Like earlier provisions for local control of public religious instruction, present-day funding for secular public education is under the town, parish, or precinct's control, with money apportioned by the commonwealth also being disbursed according to the law and supervision of local elected officials.<sup>38</sup> While religious instruction was gradually secularized, covenantal thinking has persisted throughout Massachusetts's constitutional development. In this example, federal liberty has continued to be the public philosophy articulated in constitutional documents as the basis for citizens' political relationships.

Lessons from Federal Liberty and Federalism Learned in Voluntary Associations.

Self-government requires citizens who are able to deliberate publicly, reflect privately, and arrive at collective decisions by exercising their capacity for reasonable, rational choices. Mature political judgment, Tocqueville believed, started when citizens acknowledged the social dimension of their individual rights. The citizen's understanding of law and liberty determined how they would view the relationship between their private and the public's welfare. Citizens could emphasize law's role as a barrier circumscribing and protecting individual right. In contrast, they might view law as enabling broadly reciprocal relationships in which federal liberty extends their social obligations beyond the letter of the law. The idea of contract is associated with the first view of law, while covenant is related to this second understanding. Contracts limit liability and responsibility to the obligations made by specific agreement; law as seen from a covenantal perspective imposes social obligations.<sup>39</sup> While the right to contract is a vital part of self-government, the contract ideal is an inappropriate archetype for sustained social relationships. Applied to society, the mentality of contract implies limited social obligations and consequently, this view constrains the citizen's impulse to contribute to the common good voluntarily.

Covenants draw their authority from common assent and, in most cases, from a transcendental source. Covenants imply an important role for religion in politics, a consideration that produces no small amount of tension in plural democracies. Tocqueville argued that the spirit of religion and the spirit of liberty had been combined in a remarkable way in America.<sup>40</sup> The covenantal tradition produced by America's religious and republican origins provided a new basis for society, allowing daring innovations in politics by securing liberty's moral foundation. Puritanism was as much a political theory as a religion, Tocqueville observed, suggesting not only that religion played a vital indirect

role in politics, but also that religious practices might be influenced by the lessons of political life.

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 content of covenants. Covenants could be understood as living agreements infused with meaning that reflected the experiences of those giving them their assent over successive generations. Federal liberty was the public philosophy that enabled a combined spirit of religion and spirit of liberty to become the spirit of the laws. Federal liberty's central principle, freedom of conscience, along with religion's simple ideas balanced experience and belief. This balance was fluid and fragile and it required citizens to express this philosophy publicly in daily activities of self-government. The federal framework enabled citizens to exercise federal liberty by its arrangement of limited, distributed, and shared constitutional powers.

Summarizing the connection between federal liberty and the federal form, Tocqueville wrote,

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.<sup>41</sup>

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."<sup>42</sup> The federal form represented federal liberty in

constitutionally based institutions. Tocqueville called the constitution of the United States, the most perfect federal constitution that ever existed. Its implementation as law, he said, presupposed that the people that it was meant to govern had access to a "startling]... variety of information" and an unprecedented capacity for discerning the appropriate practice of democracy. The federal framework and the public philosophy of federal liberty reinforced each other in this civic education by stimulating civic engagement. Voluntary associations were the schools in which the phrase "sovereignty of the people" took on meaning, leading Tocqueville to conclude that Americans had designed a form of government in which "society governed itself, for itself."<sup>43</sup>

Voluntary associations were a means by which citizens assented to the community's guiding principles and learned the community's traditions and norms. 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 character of the mind that was secured by ideas developed through common assent and common action. In America, voluntary associations indicated that democracy worked; they were also the primary means by which democracy worked. Yet Tocqueville's analysis of voluntary associations cautions against oversimplifying the relationship between voluntary associations and democracy.

### **Voluntary Associations in America**

In addition to permanently established political organizations such as townships, cities, and other units of government, Tocqueville distinguished three forms of voluntary

associations: political, civil, and commercial associations, representing the main arenas in which political liberty could be publicly expressed: electoral politics, civil organizations, and commercial ventures. All forms of voluntary associations depended on specific constitutional provisions including rights of assembly and expression, a free press, and universal suffrage. Voluntary associations also depended directly on provisions for the enforcement of private contracts. The protection of private right and contract is obviously vital to commercial associations, but the ability to circumscribe duties in civil and political associations also limit risk and promote trust, adding to the foundations of viable covenants. These forms of association are interdependent, teaching lessons that can be transferred from one arena of public life to another. The effectiveness of each form of association also has an impact on the ways in which the other types of associations worked.

### **Commercial Associations**

Commercial enterprise and material prosperity have always been distinguishing features of American life. In Puritan cosmology and politics, prosperity was often used as a sign that Providence favored the activities of the community; economic decline occasioned Jeremiads to revive the community's commitment to founding religious and political principles.<sup>44</sup> self-interest played an important role in all types of civic engagement, but concern for material welfare could result in two related, yet contrasting effects in democracy.

The chance for material gain motivated participation in each type of association as citizens recognized that they shared these interests with others and found that they could benefit from their assistance. When citizens coordinated their efforts for gain with others, Tocqueville suggested, they might learn more about these citizens on whom their welfare depended. The activities involved in contracting to improve one's material state could

promote an interest in others and an on-going concern for the political conditions that made their entrepreneurial ventures possible. While self-interest might not lead citizens to see others as ends rather than means to the greater collective prosperity in which they all hoped to share, it provided the initial impetus toward partial, *if not proper*, understanding of self-interest. The material objectives, organizational form, and entrepreneurial lessons learned in commercial associations influenced the development and use of other types of associations as well. Political and civil associations could take a creative, entrepreneurial approach in tapping social networks and spending social capital. Knowledge of markets, hierarchies, and collective organizational forms learned in business could be translated into political and civil arenas. Although the effects of civil and political associations must be evaluated by measures other than profit and loss, commercial associations also had much to teach citizens about the political bottom line.

The citizen's desire for material comfort could also have a negative impact on civic virtue. When the private benefits of collective action were obscure, material interest provided an insufficient foundation for enlightening citizens about their civic duties. A concern for material well-being might even diminish the citizen's capacity for civic engagement. Material concerns could promote "a taste for physical gratification" that causes "secret disquietude . . . anxiety, fear, and regret."<sup>45</sup> Tocqueville associated this effect of materialism with the loss of belief in religion's simple ideas and a consequent desire to fill the spiritual void with commodities.<sup>46</sup> The resulting excessive drive for material gain tended to isolate citizens, narrow their views of their interests, and limit the objects of their political participation to government interventions that might limit commercial risk. Demands for uniform laws and government regulation accompanied extreme individualism and decline in civic activity, ultimately leading to the mild bureaucratic tyranny Tocqueville called democratic despotism.<sup>47</sup>



While commercial associations played a vital role in the life of American democracy, the material objectives for which they were created only had a salutary effect on public life if a philosophy of federal liberty and conditions provided by the federal framework prevailed. Commercial enterprise and materialism would not necessarily sustain these values and institutions; they could even diminish them. Participation in political and civil associations taught the methods of collective action and responsibilities of partnership that served commercial associations and assured their beneficial impact on political life.

### **Political and Civil Associatlons**

As Tocqueville saw it, American political parties and the temperance league taught their members similar lessons. These "free schools" of self-government taught the mechanics of organization and the habits of self-reliance, tolerance, and a right understanding of self-interest. Tocqueville pictured the relationship between political and civil associations as interactive and interdependent. Both types of associations coordinated the actions of those with similar interests, promoted negotiation and reciprocity, and, by building coalitions, taught individuals to see their interests in terms of a broader set of public concerns. They encourage a demeanor that facilitates common action, offered experience that refined political judgment, and encouraged trust in representative government.

Civil associations were means for directly remedying common problems through spontaneous or long-term self-organizing efforts. To illustrate America's reliance on its citizens' self-organizational capacities, Tocqueville described how people responded to a stalled vehicle in traffic. The driver, he explained, would be assisted by neighbors and other drivers who immediately form an "extemporaneous assembly." They remedied the situation "before anybody has thought of recurring to a pre-existing authority superior to that of the persons immediately concerned."

For Tocqueville, this spirit of self-help pervaded and defined the American style of self-government. In America, citizens developed habits of self-reliance and public-mindedness through practical experience. These habits encouraged citizens to determine which problems to solve voluntarily and which to address through government. In

Tocqueville's words,

The citizen of the United States is taught from infancy to rely upon his own exertions in order to resist the evils and the difficulties of life; he looks upon the social authority with an eye of mistrust and anxiety, and he claims its assistance only when he is unable to do without it.<sup>48</sup>

To be effective, civil associations not only had to make problems known, they also needed to offer forums for deliberation and when appropriate, the means for addressing public problems through voluntary action. If voluntary action was inadequate, civil associations relied on various public forums to prevail on government to address the problem. Political associations created these forums and offered access to the arena of electoral politics.<sup>49</sup> If a polity lacked an appropriate forum in politics or if civil associations lacked means to influence government, then self-organization promoted discontent, but offered no relief.

In Tocqueville's view nothing was more dangerous to self-government than agitation without real prospects for resolving the issue. Political associations in America had taken form as political parties that sustained rather than undermined the authority of government by offering a forum through which self-governing people could use their government to address the problems that could not be solved through voluntary action. Political parties are a vehicle for organizing and refining individual sentiments, and presenting them in the forums of electoral politics. Political parties redirect individual interests toward a broader set of public concerns. The parties helped shape the agenda for public problem solving and developed leaders for every level of political life.

To offer a viable forum for self-government, political parties depended on effective civil associations and effective government. Political parties were only able to represent conflicting views without resorting to civil war if republican government seemed credible. Successful civil associations encouraged this belief. Effective voluntary action not only taught citizens to discern the appropriate arenas for addressing problems, their successes indicated what reasonable expectations they could have of representative government. Political parties could be more effective when their activities matched these reasonable goals for government. In such a setting, political parties could avoid becoming factions focused on a limited set of irreconcilable demands. Political associations could take the form of great political parties that formed around the enduring questions facing democratic nations.

Great parties could help each generation find the appropriate balance between its desire for liberty and love of equality; great parties could bridge the divide between individual right and community good. While these parties compete for the power to represent their constituents more transitory interests, they seek electoral success without waging war on the Constitution or attempting to destroy the structure of society. When competing views can be reconciled without factional conflict, majority and minority political parties gain considerable moral power, strengthening the citizens' attachments to government as a whole. By using such political parties each generation could employ federal liberty and sustain a developing federal framework to fit the changing circumstances of democracy.

Without great political parties, public opinion is fractured into "a thousand minute shades of difference upon questions of detail." Rather than inspiring citizens to participate in a greater number of parties, this situation depresses their desire to participate at all. Political participation seems very distant from the immediate concerns of daily life; few

opinions are articulated which parties might refine and those that are seem scarcely possible to reconcile. If policy choices multiply and are not organized, citizens quickly abandon the hope that they might influence the policy process. Not only are citizens less able to take a role in representative government when parties decline, they lose the common ground of political ideas that only public expression can create.

As members of civil and political associations meet and deliberated, Tocqueville maintained, their ideas assume a more exact and explicit form. Both types of associations demanded that individual's set their views before the public. If public expression itself was not enough to motivate clear thinking and clear communication, the ensuing negotiation of positions would have this effect. Public negotiation and deliberation not only helped refine and combine individual views, but also helped individuals develop a way of thinking that transcended their specific negotiations. This public logic of inquiry represented the public philosophy of federal liberty in activities of self government.

Associations in America promoted the habits, mental stance, and knowledge required to sustain a self-governing society. Tocqueville found that the public philosophy associated with federalism and federal liberty produced objectives and results of self-organization that offered a striking contrast to the factions of European politics. In Europe, Tocqueville asserted, associations were viewed "as a weapon which is to be hastily fashioned and immediately tried in a conflict."<sup>50</sup> Associations may be formed for discussion, but its members always had action in mind. While action may start within the bounds of law, Tocqueville saw no reason citizens would view the legal course as the only legitimate means of success. In Europe, an organization established as a party or civil association, was often, in reality, an army.<sup>51</sup>

Political and civil associations had taken this form in Europe, Tocqueville showed, because minority views had no hope of being represented in government. This reality was

particularly distressing in France where political interests varied greatly and the inability to reconcile contesting views peacefully made nascent civil engagement the object of government oppression. When self-organization has proved dangerous, Tocqueville argued, governments limit the right of association and free expression. In this environment, civil association no longer have a purpose, only political associations can take action that matters. Political associations were forced to meet in secret and the constant threat of exposure led them to adopt "the habits and maxims of military life."<sup>52</sup>

By curtailing the liberty of association, government not only further diminished legitimate means for influencing government, its actions also produced associations whose organizational form taught lessons of command and control instead of self-government. American civil and political associations had adopted a form that imitated America's extended, compound republican framework. French organizations similarly conformed to what the governing framework offered. In the French case, political associations were centralized, with a small number of leaders directing their efforts. Members, Tocqueville said, professed doctrines of passive obedience and upon joining the organization, relinquished the exercise of their own judgment.<sup>53</sup> In these circumstances, Tocqueville found little reason to expect that rebellions would replace oppression with liberty; in these associations the habits of freedom were impossible to learn.

Civil and political associations could promote faction and warring militias or an "apprenticeship in liberty."<sup>54</sup> In America, federal liberty and the federal framework had insured that the idea of right developed from moral foundations that protected self-government. Political participation gave practical expression to America's public philosophy and encouraged the development of institutions that reflected these ideas.

### **Institutions and Ideas**

Institutional success is more than a matter of good laws. To good laws must be added favorable circumstances and the consciousness necessary to self-rule. In colonial America, the Puritan's idea of federal liberty and the federal framework that developed from these ideas promoted intermediate institutions, voluntary associations, that made democracy work.

Of the three factors that contributed most to the form democracy takes in America, Tocqueville ultimately considered the social condition born of laws and historical and cultural circumstances to be the most enduring influence. Social conditions created the path that further institutional development would take.<sup>55</sup>

One of the most striking features of America's social conditions was, according to Tocqueville, the extraordinary equality of its citizens' fortunes and intellect. The general political consequences of equality were easily deduced: Equality would be established in the political world by giving rights to every citizen, or none at all to anyone.<sup>56</sup> The actual effect of equality in any particular situation was, however, not so easily predicted. Social conditions were produced by ideas as well as material circumstances. In America, the self-governing institutions of the township had developed as a result of a public philosophy of federal liberty. The federal framework that evolved as a result provided the foundation that promoted voluntary associations and an engaged citizenry. In this instance ideas and institutions made democracy work.

### Bibliography

- Allen, Barbara. (1991) "The Spiral of Silence & Institutional Design: Tocqueville's Analysis of Public Opinion & Democracy", *Polity*, 24:2 (winter) 243-267.
- \_\_\_\_\_. (1996) "Tocqueville's Analysis of Belief in A Transcendent Order, Enlightened Interest, and Democracy," *Journal of Theoretical Politics*, 8: 3 (July) 383-414.
- Bellah, Robert N. et. al. (1985) *Habits of the Heart*. Berkeley: University of California Press.
- Sacvan Bercovitch. (1978) *The American Jeremiad*, Madison: University of Wisconsin Press.
- \_\_\_\_\_. (1993) *The Rites of Assent: Transformations in the Symbolic construction of America*. New York : Routledge.
- Boesche, Roger. (1987) *The Strange Liberalism of Alexis de Tocqueville*. Ithaca: Cornell University Press.
- Ceaser, James. (1985) "Tocqueville on Political Science, Political Culture, and the Role of the Intellectual", *American Political Science Review*, 79:2 656-672.
- Elazar, Daniel (1995) *Covenant and Polity in Biblical Israel*. New Brunswick: Transaction Publishers.
- \_\_\_\_\_. (1990) "To Secure the Blessings of Liberty": Liberty and American Federal Democracy," *Publius*, 20: 2 (spring) 1-13.
- Goldstein, Doris S. (1964) "Alexis de Tocqueville's Concept of Citizenship," *Proceedings of the American Philosophical Society*, 108: 1 (Feb) 37-53.
- \_\_\_\_\_. (1960) "The Religious Beliefs of Alexis de Tocqueville," *French Historical Studies*, 1: 4 (Dec) 379-393.
- \_\_\_\_\_. (1975) *Trial of Faith: Religion and Politics in Tocqueville's Thought* New York: Elsevier.
- Hamilton, Alexander, John Jay and James Madison. (n.d. orig pub. 1788) *The Federalist*. New York: The Modern Library.
- 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.
- Hereth, Michael. (1986) *Alexis de Tocqueville: Threats to Freedom in Democracy*, trans. George Bogardus. Durham: Duke University Press.
- Hinckley, Cynthia J. (1990) "Tocqueville on Religious Truth & Political Necessity", *Polity*, 23:1 (fall) 39-52.
- Jacobitti, Suzanne D. (1991) "Individualism & Political Community: Arendt & Tocqueville on the Current Debate in Liberalism", *Polity*, 23:4 (summer) 585-604.
- Kessler, Sanford. (1977) "Tocqueville on Civil Religion and Liberal Democracy", *The Journal of Politics*, 39:1 (Feb) 119-146.
- \_\_\_\_\_. *Tocqueville's Civil Religion: American Christianity and the Prospects for Freedom*, Albany: State University of New York Press.
- Ketcham, Ralph L. (1985) "James Madison and Religion A New Hypothesis, in James Madison *On Religious Liberty*, ed. Robert S. Alley, (Buffalo: Prometheus Books), 175-196.
- Kraynak, Robert P. (1987) "Tocqueville's Constitutionalism", *American Political Science Review*, 81: 4 (Dec.) 1175-1195.
- Levinson, Sanford. (1988) *Constitutional Faith*. Princeton: Princeton University Press.
- Lively, Jack. (1962) *The Social and Political Thought of Alexis de Tocqueville*. Oxford: Clarendon.
- Locke, John. (1969, orig. pub. 1690) *Two Treatises of Government*. New York: Hafner.
- Lutz, Donad S. (1988) *The Origins of American Constitutionalism*. Baton Rouge: University of Louisiana Press.

- Noelle-Neumann, Elisabeth. (1983) *The Spiral of Silence: Public Opinion -- Our Social Skin*. Chicago: University of Chicago Press.
- Ostrom, Vincent. (1987) *The Political Theory of the Compound Republic*, second edition. Lincoln: University of Nebraska Press.
- . (1991) *The Meaning of American Federalism: Constituting a Self-Governing Society*. San Francisco: ICS Press.
- Pierson, George Wilson. (1938) *Tocqueville and Beaumont in America*. Oxford: Oxford University Press.
- Poggi, Gianfranco. (1972) *Images of Society: Essays on the Sociological Theories of Tocqueville, Marx, and Durkheim*. Stanford: Stanford University Press.
- Putnam, Robert. (1993) *Making Democracy Work*, Princeton: Princeton University Press.
- . (1995) "Bowling Alone: America's Declining Social Capital," *Journal of Democracy*, 6:1 (January) 65-78.
- Schleifer, James T. 1989. "Tocqueville's Reputation in America," in *A Passion for Liberty: Alexis de Tocqueville on Democracy and Revolution*, Andrew J. Cosentino, ed. Washington; Library of Congress, 19-22.
- Tocqueville, Alexis de. (1945, orig. pub. 1830-1835) *Democracy in America*. 1-2, trans. Henry Reeve. New York: Vintage.
- . (1958, orig. pub. 1833-1835) *Journeys to England and Ireland*, trans. George Lawrence and IP. Mayer; J.P. Mayer, ed. New Haven: Yale University Press.
- . (1955, orig. pub. 1856) *The Old Regime and the French Revolution*, trans. Stuart Gilbert. New York: Doubleday.
- . (1951-present) *Oeuvres Completes*, ed. J.P. Mayer definitive edition. Paris: Gallimard.
- Zeitlin, Irving M. (1971) *Liberty, Equality and Revolution in Alexis de Tocqueville*. Boston: Little, Brown and Co.
- Zetterbaum, Marvin. (1967) *Tocqueville and the Problem of Democracy*. Stanford: Stanford University Press.
- Zuckert, Catherine. (1981) "Not by Preaching: Tocqueville on the Role of Religion in American Democracy", *Review of Politics*, 43: 2 (Apr) 259-280.
- . (1992) "The Role of Religion in Preserving American Liberty — Tocqueville's Analysis 150 Years Later", in *Tocqueville's Defense of Human Liberty*, ed. Peter A. Lawler and Joseph Alulis. New York: Garland Press. 223-239.



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<sup>1</sup> Alexis de Tocqueville, *Democracy in America Vol. 1 and 2*, 1945. Henry Reeves, trans, New York: Vintage, 1: 7

<sup>2</sup> Ibid

<sup>3</sup> Ibid 26

<sup>4</sup> The phrase "sacred fire of liberty" appears in George Washington's inaugural address, although it seems originally to have been use much earlier in the American colonies.

<sup>5</sup> Tocqueville, op. cit. 1: 298

<sup>6</sup> Ibid 1:171

<sup>7</sup> Donald Lutz (1988 *The Origins of American Constitutionalism* Baton Rouge, Louisiana State University Press), demonstrates Tocqueville's point with a much more detailed study of America's covenants, compacts, and constitutions.

<sup>8</sup> While the truth of this statement was more obvious before the Civil War, these events in the US Constitution's evolution support rather than negate Tocqueville's central point.

<sup>9</sup> Tocqueville, op. cit. 1: 203

<sup>10</sup> Ibid 1:45

<sup>11</sup> Ibid 1:62

<sup>12</sup> See Lutz, op. cit, especially his comparison of the Charlestown-Boston Church Covenant (1630) with the Mayflower Compact (1620) and the secular compact titled The Charlestown-Boston Church Covenant (1630)

In the Name of our Lord Jesus Christ, & in Obedience to His holy will & Divine Ordinance.

We whose names are hereunder written, being by His most wise, and good Providence brought together into this part of America in the Bay of Massachusetts, & desirous to unite ourselves into one Congregation, or Church, under the Lord Jesus Christ our Head, in such sort as becometh all those whom He hath Redeemed & Sanctified to Himself, do hereby solemnly and religiously, as in His most holy Presence, Promise, & bind ourselves, to walke in all our ways according to the Rule of the Gospel, & in all sincere Conformity to His holy Ordinances, & in mutual love, & respect each other, so near as God shall give us grace.

<sup>13</sup> Mayflower Compact November 11, 1620

In the Name of God, Amen. We, whose names are under-written, the Loyal Subjects of our dread Sovereign Lord King James, by the Grace of God, of Great Britain, France, and Ireland, King Defender of the Faith, &c Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the honor of our King and Country, a voyage to plant the first colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience. IN WITNESS whereof we have hereunto subscribed our names at Cape-Cod the eleventh of November, in the Reign

of our Sovereign Lord King James, of England, France, and Ireland, the eighteenth, and of Scotland, the fifty-fourth, Anno Domini, 1620.

<sup>14</sup> See also Donald S. Lutz, *op. cit.* 25-26.

<sup>15</sup> *Ibid.* 26

<sup>16</sup> *Ibid.* 31-32

<sup>17</sup> *Ibid.*

<sup>18</sup> Tocqueville, *op. cit.* 1: 42

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.* 1:41

<sup>22</sup> *Ibid.* 1:42-43

<sup>23</sup> *Ibid.* 1: 44 Political scientist Donald Lutz's survey of the early covenants amplifies Tocqueville's conclusion. He describes the Connecticut code as an "organic act" that "codifies and celebrates an agreement or set of agreements made through the years by a community." (Lutz, *op. cit.* 18) The Laws and Liberties of Massachusetts (1647), the Puritan Laws and Liberties (1658) as well as the Connecticut Code serve as colonial examples of organic acts. Lutz contends that "early state constitutions adopted in 1776 could well be viewed as organic acts as well as compacts, since they usually summarized and codified what the colonists of the respective states had developed over the year." (Lutz, *op. cit.* 18)

<sup>24</sup> Tocqueville, *op. cit.* 1: 44

<sup>25</sup> *Ibid.* 1:45

<sup>26</sup> *Ibid.* 1:67

<sup>27</sup> *Ibid.* 1:74; 170

<sup>28</sup> *Ibid.* 1:9

<sup>29</sup> The Massachusetts constitution was prepared by a convention which assembled at Cambridge on September 1, 1779 and continued its work until June 16, 1780. On March 2, 1780 the convention submitted the constitution to the people for a vote in town meetings; it was approved by the required two-thirds majority and went into effect October 25, 1780. A second convention met periodically from 1917 and 1919 to draft a rearranged constitution, correcting clerical and typographical errors and incorporating all amendments in the text. Although this version of the constitution was approved by the people in November 1919, the Supreme Judicial Court of Massachusetts has declared that the new document is not the fundamental law and that when the two documents conflict, the 1780 constitution is controlling.

<sup>30</sup> *The Constitution or Form of Government for the Commonwealth of Massachusetts*, 1780, Preamble

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

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<sup>35</sup> Ibid

<sup>36</sup> Ibid. Article 2

<sup>37</sup> Ibid. Article 3

<sup>38</sup> *The Constitution or Form of Government for the Commonwealth of Massachusetts*, 1919, Article 3

<sup>39</sup> Daniel Elazar (*Covenant and Polity in Biblical Israel* New Brunswick: Transaction Publishers, 1995 and "To Secure the Blessings of Liberty": Liberty and American Federal Democracy," *Publius*, 20: 2 (spring) 1990, 1-13) details the differences between contracts and covenants.

<sup>40</sup> Ibid. 1: 45, author's italics

<sup>41</sup> Ibid. 1:73-74

<sup>42</sup> Ibid. 1:310

<sup>43</sup> Ibid. 1:59

<sup>44</sup> See Sacvan Bercovitch (1978. *The American Jeremiad* Madison: University of Wisconsin Press and 1993. *The Rites of Assent: Transformations in the Symbolic construction of America*. New York : Routledge) for a discussion of the Jeremiad's role in Puritan rituals of assent.

<sup>45</sup> Tocqueville, op. cit. 2: 145

<sup>46</sup> For a more detailed discussion of this relationship see Barbara Allen, "Tocqueville's Analysis of Belief in A Transcendent Order, Enlightened Interest, and Democracy," *Journal of Theoretical Politics*, 8: 3 (July) 1996, 383-414.

<sup>47</sup> Tocqueville, op. cit. 2: 310-312; 336-337

<sup>48</sup> Ibid 1: 198

<sup>49</sup> Ibid. 1: 199

<sup>50</sup> Ibid 1:203

<sup>51</sup> Ibid.

<sup>52</sup> Ibid 1:205

<sup>53</sup> Ibid

<sup>54</sup> Ibid 1:256

<sup>55</sup> Ibid 1:48

<sup>56</sup> Ibid